

First print



New South Wales

# Motor Accidents Amendment Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the scheme under the *Motor Accidents Act 1988*:

- (a) to improve procedures for claims management and to achieve, where possible, an early settlement of a claim without recourse to court proceedings, and
  - (b) generally to limit increases in the costs of the scheme and, consequently, to limit the amount of premiums paid for compulsory third-party insurance policies, and
  - (c) to make other miscellaneous amendments.
-

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the provisions of the proposed Act. The amendments relating to the limitation of damages for non-economic loss are backdated to the date on which the Government announced the proposed changes, namely, 26 September 1995.

**Clause 3** gives effect to the amendments to the *Motor Accidents Act 1988* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1** amends the *Motor Accidents Act 1988* in the following respects.

### Objects

A number of amendments are made to the *Motor Accidents Act 1988* to state the objects of the Act as a whole, or the objects of a Part of the Act, or the objects of a particular section of the Act. The amendments are made by **Schedule 1 [1], [8], [11], [14], [15], [22], [24], [28], [30], [31], [34] and [36]**.

Proposed section 2B (inserted into the Act by **Schedule 1 [1]**) requires the Act to be interpreted, and discretions conferred under the Act to be exercised, in a way that promotes its objects.

### Definition of "injury"

The definition of *injury* in the *Motor Accidents Act 1988* is substituted by **Schedule 1 [4]** in order to remove an overlap that exists between motor accident claims and workers compensation claims. **Schedule 1 [2] and [3]** make consequential amendments.

### Coverage of third-party policies

The amendments made by **Schedule 1 [6] and [41]** will limit the coverage available under a third-party policy in the case of vehicles subject to unregistered vehicle permits under Regulation 53A of the *Motor Traffic Regulations 1935* to those vehicles only when used or operated on a public street in New South Wales.

### **Claims against the Nominal Defendant**

**Schedule 1 [7]** amends section 27 of the *Motor Accidents Act 1988* to the effect that claims can only be made against the Nominal Defendant in respect of vehicles that are capable of being (with or without the repair of minor defects) and are required to be registered for use on a public street (including trailers), or are exempt from registration.

### **Mitigation of damages**

**Schedule 1 [9]** amends section 39 of the *Motor Accidents Act 1988* to make it clear that a person injured in a motor accident is under a duty to mitigate his or her damages and specifies some of the things that will comprise mitigation.

### **The requirement for “a full and satisfactory explanation”**

Under the *Motor Accidents Act 1988* a claimant who fails to comply with a duty imposed by the Act or who delays the carrying out of a procedure regulated by the Act is required to give the court “a full and satisfactory explanation”. **Schedule 1 [10]** inserts a definition of this expression to make it clear that the explanation, rather than being full and complete, must address the real reasons for the claimant’s failure.

### **Motor Accidents Authority’s access to police information**

**Schedule 1 [13]** inserts proposed section 42A into the *Motor Accidents Act 1988*. In order to facilitate the early settlement of claims, the proposed section gives the Authority a right to obtain police information concerning a motor accident and to pass that information on to the parties to the accident (or appropriate representatives) and to relevant insurers. A statement so provided to or by the Authority will not be admissible in legal proceedings concerning a claim.

### **Late making of claims**

**Schedule 1 [15]** substitutes section 43A of the *Motor Accidents Act 1988*. The substituted section makes the requirement that, in addition to giving a full and satisfactory explanation for delay, the late making of the claim will only be allowed if the total damages likely to be awarded to the claimant are not less than 10 per cent of the maximum amount that is prescribed under the Act as at the date of the relevant motor accident as damages for non-economic loss.

### **Insurer's duty to try to resolve claims**

**Schedule 1 [19]** amends section 45 of the *Motor Accidents Act 1988* relating to an insurers' obligation to make reasonable payments for necessary hospital, medical, pharmaceutical and rehabilitation expenses from the time of admitting liability, to include a requirement to make interim payments for necessary and reasonable respite care expenses in respect of a claimant who is seriously injured.

**Schedule 1 [20]** also amends section 45 to provide that payments made under the section are a statutory defence to any further claims for damages under that section.

### **Power of insurer to intervene in legal proceedings**

**Schedule 1 [21]** inserts proposed section 47A into the *Motor Accidents Act 1988*. The proposed section will give insurers limited power to intervene in proceedings for the purpose of arguing that the indemnification of the defendant should not be met under the compulsory third-party policy.

### **Provision of information to facilitate settlement of claim before commencing court proceedings**

**Schedule 1 [23]** inserts proposed section 50A into the *Motor Accidents Act 1988*. The proposed section requires a claimant, when the claimant has sufficient information to enable a proper assessment of the claimant's full entitlement to damages and before commencing court proceedings, to give that information to the person's insurer.

### **Time limitations on commencement of court proceedings**

**Schedule 1 [24]–[27]** make amendments that identify the period before which court proceedings cannot be commenced, the period during which they may be commenced and the period after which they may only be commenced with the leave of the court granted after hearing a full and satisfactory explanation for the delay. The object of the amendments is to ensure that court proceedings are neither commenced at an inappropriately early stage nor too remotely from the motor accident to which they relate.

Under the amendments, a claimant cannot commence court proceedings until the later or latest of the following events has occurred:

- 6 months have passed since giving notice of the claim
- 90 days have passed since the information sufficient to enable a proper assessment of the claimant's full entitlement to damages has been given under proposed section 50A

- if an offer of settlement has been made to the claimant, 28 days have passed since the claimant communicated his or her response to the offer.

The existing provision (in section 52 (3)) that a claimant may commence court proceedings within 12 months after the date on which the claim is made without being required to give a full and satisfactory explanation for delay is replaced with a provision (in proposed section 52 (4)) that the proceedings may be commenced within 3 years after the date of the relevant motor accident or, in the case of a claim made in respect of a person's death, the date of death. The 3-year period is extended to the extent to which it falls within the 90-day or 28-day period referred to above so as to avoid any increase in leave applications to the court.

If an application is made to the court for leave to commence proceedings after the 3-year period (or the 3-year period as so extended) has expired, the court cannot grant leave unless, in addition to being provided with a full and satisfactory explanation for the delay, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds will be not less than 25 per cent of the maximum amount that, at the date of the relevant motor accident, was determined under the *Motor Accidents Act 1988* in respect of non-economic loss.

### **Damages for future economic loss**

**Schedule 1 [29]** inserts proposed section 70A into the *Motor Accidents Act 1988* to prevent a court from awarding damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain the future loss claimed.

### **Motor vehicles engaged in motor racing**

**Schedule 1 [32]** and **[33]** amend section 76 of the *Motor Accidents Act 1988* relating to the defence of voluntary assumption of risk. Generally the defence is not available in proceedings to which the Act applies. It is, however, to be available in relation to motor accidents that occur in the course of motor racing, whether the motor racing is an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.

### **Determination of non-economic loss**

**Schedule 1 [34]–[36]** make amendments to the *Motor Accidents Act 1988* relating to the determination of non-economic loss. The existing section 79 (with the addition of a statement of its objects) will continue to apply to motor accidents that occurred before midnight on 26 September 1995.

Proposed section 79A is to apply to motor accidents occurring after that time. Under the proposed section, new criteria are established that must be met by the claimant before damages for non-economic loss can be assessed. Firstly, significant impairment must be evidenced for at least a 12-month period (currently 6 months) and, secondly, the level of impairment must be at least 15 per cent of a most extreme case. Once the two thresholds are passed, damages are assessed in accordance with the provisions of the proposed section as a percentage of a most extreme case.

**Schedule 1 [37] and [38]** make consequential amendments.

**Schedule 1 [39]** will empower the regulations under the Act to adopt guidelines relating to the determination of non-economic loss.

### **Proceedings for offences**

**Schedule 1 [40]** amends section 135 of the *Motor Accidents Act 1988* to provide that proceedings relating to the offence of making a false claim under section 65 may be commenced at any time within 2 years after the offence is committed.

### **Miscellaneous minor amendments**

The proposed Act inserts some notes into the text of the *Motor Accidents Act 1988*. The amendment made by **Schedule 1 [5]** makes it clear that notes do not form part of the Act.

**Schedule 1 [12]** requires, so as to avoid the possibility of fraud, the report of a motor accident that must be given to the police within 28 days after the accident to be a written report.

Several provisions in the *Motor Accidents Act 1988* enable a court to "strike out" proceedings. Because of the insertion of a definition of *dismiss* in the *District Court Rules 1973* having effect from 23 June 1995, the power to strike out is being replaced with a power to "dismiss". The relevant amendments are made by **Schedule 1 [15], [16] and [18]**.

**Schedule 1 [15] and [17]** amend sections 43A and 44B, respectively, of the *Motor Accidents Act 1988* to provide that the 2-month period in which an insurer may reject a claim on the basis of lateness or a failure to comply with certain notice requirements does not commence to run until the claim form has not only been received by the insurer but has also been served on the defendant.

### **Savings and transitional provisions**

**Schedule 1 [42] and [43]** contain savings and transitional provisions consequent on the amendments made by the proposed Act.

First print



New South Wales

# Motor Accidents Amendment Bill 1995

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Act 1988 No 102	2
 Schedule 1 Amendments	 3

---







New South Wales

## **Motor Accidents Amendment Bill 1995**

No. , 1995

---

### **A Bill for**

An Act to amend the *Motor Accidents Act 1988* to state its objects, to facilitate the early settlement of claims without recourse to court proceedings, to limit increases in the costs of the scheme under that Act, and for other purposes.

---

---

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

**1 Name of Act**

This Act is the *Motor Accidents Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2). 5
- (2) Schedule 1 [5], [34]–[38] and [43] are taken to have commenced at midnight on 26 September 1995.

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

The *Motor Accidents Act 1988* is amended as set out in Schedule 1. 10

---

## Schedule 1 Amendments

(Section 3)

### [1] Sections 2A, 2B

Insert after section 2:

#### 2A Objects of Act

5

(1) The objects of this Act are:

- (a) to repeal the *Transport Accidents Compensation Act 1987* and thereby to abolish the scheme for compensating victims of transport accidents (TransCover) established under that Act, and 10
- (b) to re-instate a common law based scheme under which damages can only be awarded after a finding of negligence, and
- (c) by the scheme under this Act:
  - (i) to reduce the cost of the former common law based scheme by limiting benefits for non-economic loss in the case of relatively minor injuries, and 15
  - (ii) to introduce a stricter procedure for the making and assessment of claims for damages, and 20
  - (iii) to preserve the benefits payable to persons with more severe injuries involving on-going disability, and
  - (iv) to give full weight to the need to identify fraudulent claims, deter their lodgment and prosecute those responsible for them, and 25
  - (v) to encourage recovery from injury and early and effective rehabilitation, where appropriate, as a key feature of the scheme, and 30

- (vi) to encourage the speedy, efficient and effective provision of benefits balanced by the need to investigate claims properly and the need to encourage an early return to employment. 5

**Note.** This statement of objects is based on the introduction to the outline of Option 3 in the TransCover Review, published in *Motor Accidents: The Act and Background Papers* by the Attorney General's Department, 1989, p 101.

- (2) It must be acknowledged in the application and administration of this Act: 10
- (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and 15
- (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and 20
- (c) that: 25
- (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
- (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and 30
- (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and 35
- (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law. 40

---

**2B Interpretation and application of Act by reference to objects**

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the object of this Act or the provision is to be preferred to a construction that would not promote that object. 5
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the object of this Act or of the provision concerned. 10

**[2] Section 3 Definitions**

Insert in section 3 (1) in alphabetical order:

*death* means death caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 15

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or 20
- (d) such use or operation by a defect in the vehicle.

**[3] Section 3**

Omit the definition of *deceased person* in section 3 (1).  
Insert instead:

*deceased person* means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 25

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or 30
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**[4] Section 3**

Omit the definition of *injury* in section 3 (1). Insert instead:

*injury*:

- (a) means personal or bodily injury caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the injury is a result of and is caused during:
  - (i) the driving of the vehicle, or 5
  - (ii) a collision, or action taken to avoid a collision, with the vehicle, or 10
  - (iii) the vehicle's running out of control, or
  - (iv) such use or operation by a defect in the vehicle, and
- (b) includes:
  - (i) pre-natal injury, and 15
  - (ii) psychological or psychiatric injury, and
  - (iii) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**[5] Section 3 (7)**

Insert after section 3 (6): 20

- (7) Notes in the text of this Act do not form part of this Act.

**[6] Section 9**

Omit the section. Insert instead:

**9 Third-party policies**

A third-party policy under this Act is a policy that: 25

- (a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle: 30

- 
- (i) if the motor vehicle is not one to which subparagraph (ii) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 5
- (ii) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales, and 10
- (b) is in the terms of Schedule 1.
- [7] Section 27 Claim against Nominal Defendant where vehicle not insured**
- Omit section 27 (5). Insert instead:
- (5) For the purposes of this section, and any regulations made for the purposes of this section: 15
- motor vehicle*** means a motor vehicle or a trailer:
- (a) that is exempt from registration, or
- (b) that is not exempt from registration and that:
- (i) is required to be registered to enable its lawful use or operation on a public street in New South Wales, and 20
- (ii) immediately before the motor accident occurred, was capable, or would, following the repair of minor defects, have been capable, of being so registered. 25
- [8] Section 34A**
- Insert before section 35:
- 34A Objects—Part 4**
- The objects of this Part are: 30
- (a) to encourage and support recovery from injury and the use of early and appropriate rehabilitation for people injured in motor accidents so that they can return, as far as possible, to their pre-accident lifestyle, and 35

Schedule 1 Amendments

---

- (b) to place obligations on insurers and claimants in order to encourage and facilitate that process, and
- (c) to recognise the importance of rehabilitation in achieving greater cost efficiencies in injury management, and 5
- (d) to stress that rehabilitation must not be ignored or attempted in a perfunctory way in order to maximise a claim for damages.

**[9] Section 39 Mitigation of damages**

Omit section 39 (1). Insert instead: 10

- (1) An injured person is under a duty to mitigate his or her damages, and, therefore, in assessing damages in respect of a claim, consideration is to be given to the steps taken by the injured person and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages. 15

(1A) Those steps include the following:

- (a) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the matters referred to in paragraphs (b)–(d), 20
- (b) undergoing medical treatment,
- (c) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program), 25
- (d) pursuing alternative employment opportunities.

**[10] Section 40 Definitions**

Insert at the end of section 40:

- (2) In this Part, a reference to a full and satisfactory explanation by a claimant for non-compliance with a duty or for delay is a reference to a full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a 30



---

satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay.

**Note.** The requirement for "a full and satisfactory explanation" is made in sections 42 (4), 43A (2), (4), (6) (a) and (7) and 52 (4B).

5

**[11] Section 40A**

Insert after section 40:

**40A Objects—Part 5**

The objects of this Part are:

10

(a) to ensure that claims are quickly brought to the attention of insurers:

(i) to enable early investigation and assessment of claims, and

(ii) to enable the early identification of the nature and severity of the injuries sustained in the motor accident and of the likely treatment and rehabilitation needs of the injured person, and

15

(iii) so that insurers can readily predict claim frequency and hence make appropriate provision for the calculation of premiums, and

20

(iv) to enable accident victims to receive prompt treatment and rehabilitation and prompt payment of lost earnings where liability is clear, and

25

(b) to promote negotiation between the parties and, by means of alternate dispute resolution, to ensure that the resolution of disputed claims by the courts is kept to a minimum, and

30

(c) to underscore the need to deter and prevent the making of fraudulent and exaggerated claims.

**[12] Section 42 Accident must be reported within 28 days**

Insert "written" before "report" wherever occurring.

**[13] Section 42A**

Insert after section 42:

**42A Authority's access to police information**

5

- (1) At the written request of the Authority with respect to a motor accident specified by it, the Commissioner of Police must provide a statement to the Authority in relation to the following matters if information as to those matters is held by a member of the Police Service: 10
  - (a) the registration numbers of all motor vehicles involved in the accident,
  - (b) the names of all persons killed or injured in the accident,
  - (c) the names of the hospitals to which the injured persons were taken, 15
  - (d) the vehicle or vehicles most likely to have been at fault in the accident.
- (2) The Authority is authorised to give a copy of a statement provided to it under this section to the next of kin of a person killed in the accident or a person injured in the accident (or to an appropriate representative of either such person), or to an insurer. 20
- (3) A statement or copy of a statement provided to or by the Authority under this section is not admissible in legal proceedings concerning a claim made under this Act. 25

**[14] Section 43 Time for and notice of making of claims**

Renumber section 43 (1) as section 43 (2).

Insert before section 43 (2) as renumbered:

- (1) The object of this section is to promote the early making of claims to enable the insurer: 30
  - (a) to commence investigations while evidence relating to a claim is available, and

- 
- (b) to identify injuries and facilitate the access of claimants to appropriate injury management and rehabilitation services and thus to expedite the claimant's recovery, and
  - (c) to allow the insurer to more accurately predict claim frequency and hence formulate premiums. 5

**[15] Section 43A**

Omit the section. Insert instead:

**43A Late making of claims**

- (1) The objects of this section are: 10
  - (a) to ensure that the issue of the lateness of a claim is dealt with as soon as possible after receipt of the claim, and
  - (b) to ensure that any delay caused to the consideration of the substantive claim by the lateness issue is kept to a minimum, and 15
  - (c) to ensure that the lateness issue is either resolved or made a mutually apparent substantive issue at an early date.
- (2) 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. 20 25
- (3) 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. 30
- (4) A late claim may not be made more than 12 months after the date determined under section 43 unless, in addition to the provision of a full and satisfactory explanation, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per 35

cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.

- (5) Subsection (4) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 5
- (6) 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) may apply to have the proceedings dismissed on: 25
- (i) the ground of delay, or
- (ii) in the case of a late claim that is made more than 12 months after the date determined under section 43, the ground of the amount of damages, 30
- or both, only within 2 months after the statement of claim is served on the defendant and received by the insurer. The insurer (or the person against whom the claim is made) may only apply to have the proceedings dismissed on the ground of delay if the insurer (or the person) has not lost the right to challenge the claim on the ground of delay. 35

- 
- (7) A court must dismiss 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 and, alternatively or in addition in the case of a late claim that is made more than 12 months after the date determined under section 43, that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5 10
- [16] Section 44B Challenging claims for failure to comply with s 44 or 44A**
- Omit “struck out” from section 44B (2). Insert instead “dismissed”.
- [17] Section 44B (2)** 15
- Insert “served on the defendant and” before “received”.
- [18] Section 44B (3)**
- Omit “strike out”. Insert instead “dismiss”.
- [19] Section 45 Duty of insurer to try to resolve claim etc**
- Insert after section 45 (2) (b): 20
- and
- (c) respite care in respect of a claimant who is seriously injured and in need of constant care over a long term,
- [20] Section 45 (4)** 25
- Omit section 45 (4). Insert instead:
- (4) A payment made under this section to or on behalf of a claimant before the claimant obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the claimant against the defendant for damages. 30

**Note.** Section 45 places obligations on insurers to act as expeditiously as possible, and to make certain payments of an interim nature once liability has been admitted or determined. The obligations are consistent with the insurer's obligations regarding the rehabilitation of the claimant under sections 37 and 38.

5

Failure to observe the obligations in individual cases exposes the insurer to an award of interest under section 73. Continual failure to observe the obligations places an insurer's licence at risk (section 45 (3)).

In order to meet its obligations, the insurer must have sufficient information to enable it to properly investigate and assess the claim, and make an appropriate offer of settlement. This requires early notice of the claim under section 43, and the provision of full particulars of the claim under section 48.

10

**[21] Section 47A**

15

Insert after section 47:

**47A Power of insurer to intervene in legal proceedings**

An insurer may apply to the court to be joined as a party to legal proceedings brought against a defendant who is insured under a third-party policy with the insurer in order to argue that in the circumstances of the case it has no obligation under the policy to indemnify the defendant.

20

**[22] Section 48 Duty of claimant to co-operate with other party**

Renumber section 48 (1) as section 48 (1A).

25

Insert before section 48 (1A) as renumbered:

- (1) The object of this section is to maximise communication between the parties so that sound and timely information is available and disputes are minimised.

**[23] Section 50A**

30

Insert after section 50:

**50A Provision of information to facilitate settlement of claim before commencing court proceedings**

Subject to section 52 (1A), a claimant is not entitled to commence court proceedings against another person in respect of a claim until the claimant has given the other person's insurer (if any) full details of:

35

- 
- (a) the injuries sustained by the claimant in the motor accident, and
- (b) all disabilities and impairments arising from those injuries, and
- (c) if those injuries, or any of them, have not stabilised, the prognosis for future recovery, and 5
- (d) any economic losses and other losses that are being claimed as damages,
- sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages. 10
- [24] Section 52 Time limitations on commencement of court proceedings**
- Omit section 52 (1). Insert instead:
- (1) The objects of this section are: 15
- (a) to encourage and facilitate the investigation, assessment and negotiation of a claim for damages without the commencement of court proceedings, and
- (b) to impose a limitation period of 3 years for the commencement of legal proceedings for damages under this Act and to enable the extension of that period only if: 20
- (i) the claimant can explain the reasons for the delay in not making the claim within the 3-year period, and 25
- (ii) the claim is likely to result in an award of substantial damages,
- or in the circumstances described in subsection (4A). 30
- (1A) A claimant is not entitled to commence court proceedings against another person in respect of a claim until:
- (a) 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer, or 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (b) 90 days have elapsed since the details required by section 50A were given to the other person's insurer, or
  - (c) if the other person's insurer has made an offer of settlement to the claimant before the claimant commences court proceedings, 28 days have elapsed from the date on which the claimant's response to the offer is communicated to the other person's insurer, 5  
whichever is the later or latest. 10
- (1B) Subsection (1A) (c) applies only to the first offer made by the other person's insurer and not to any subsequent offer.
- [25] Section 52 (2)**  
Omit "subsection (1)". Insert instead "subsection (1A)". 15
- [26] Section 52 (3)**  
Omit the subsection.
- [27] Section 52 (4)-(4C)**  
Omit section 52 (4). Insert instead:
- (4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after: 20
    - (a) the date of the motor accident to which the claim relates, or
    - (b) if the claim is made in respect of the death of a person, the date of death, 25except with the leave of the court in which the proceedings are to be taken.
  - (4A) However, if at the end of the 3-year period referred to in subsection (4), the claimant has complied with section 50A but is unable to commence court proceedings because of the effect of subsection (1A) (b) or (c), the claimant may commence court proceedings within 28 days after the period under subsection (1A) (b) or (c), or the later of those periods, has elapsed. 30



- 
- (4B) The leave of the court must not be granted unless:
- (a) the claimant provides a full and satisfactory explanation to the court for the delay, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5
- (4C) Subsection (4B) (b) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 10

**[28] Section 68A**

Insert after section 68:

**68A Objects—Part 6**

15

The objects of this Part are:

- (a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
- (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries. 20

**[29] Section 70A**

25

Insert after section 70:

**70A Claimant's prospects of future economic loss**

A court shall not award damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain the future loss claimed. 30

**[30] Section 72 Maximum amount of damages for provision of certain home care services**

Renumber section 72 (1) as section 72 (1A).  
Insert before section 72 (1A) as renumbered:

- (1) The objects of this section are: 5
  - (a) to limit to average weekly earnings the level of payment for services for additional domestic assistance that are above and beyond those rendered by family or household members, and
  - (b) to restrict access to those payments to claims where the need is long term, and 10
  - (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident.

**[31] Section 72 (7) 15**

Omit "subsection (1)". Insert instead "subsection (1A)".

**[32] Section 76 Defence of voluntary assumption of risk**

Omit "The" from section 76.  
Insert instead "Except as provided by subsection (2), the".

**[33] Section 76 (2) and (3) 20**

Insert at the end of section 76:

- (2) If a motor accident occurs while a motor vehicle is engaged in motor racing, the defence of volenti non fit injuria is available in proceedings for damages brought in respect of the death of or injury to: 25
  - (a) the driver of the vehicle so engaged, or
  - (b) a passenger in the vehicle so engaged, other than a passenger who is less than 18 years of age or who otherwise lacked capacity to consent to be a voluntary passenger. 30

- 
- (3) For the purposes of subsection (2), a motor vehicle is engaged in motor racing if it is participating in an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.
- [34] Section 79 Determination of non-economic loss—accidents occurring before midnight on 26.9.95** 5
- Renumber section 79 (1) as section 79 (1B).  
Insert before section 79 (1B) as renumbered:
- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995. 10
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 15
- [35] Section 79 (5)**
- Omit “subsections (1)–(3)”. Insert instead “this section”.
- [36] Section 79A**
- Insert after section 79: 20
- 79A Determination of non-economic loss—accidents occurring after midnight on 26.9.95**
- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 25 30
- (3) No damages are to 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 12 months by the injury suffered in the accident. 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case. 5
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table: 10

**Table**

Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)	
15%	1%	
16%	1.5%	
17%	2%	
18%	2.5%	20
19%	3%	
20%	3.5%	
21%	4%	
22%	4.5%	
23%	5%	25
24%	5.5%	
25%	6.5%	
26%	8%	
27%	10%	
28%	14%	30
29%	18%	
30%	23%	
31%	26%	
32%	30%	
33%	33%	35
34%–100%	34%–100% respectively	

- 
- (7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

**Note.** The following are the steps required in the assessment of non-economic loss in accordance with this section: 5

Step 1: Has the claimant demonstrated that his or her 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 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2. 10

Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act. 15

Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80. 20

Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table. 25

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

**[37] Section 80 Indexation of amounts relating to non-economic loss**

Insert "or 79A" after "section 79" in section 80 (1), (2) and (3) wherever occurring. 30

**[38] Section 80 (5)**

Insert "or 79A (5)" after "section 79 (3)".

**[39] Section 80A**

Insert after section 80:

**80A Regulations concerning the determination of non-economic loss**

The regulations may make provision for or with respect to the adoption of guidelines as in force from time to time relating to the determination of non-economic loss. 5

**[40] Section 135 Proceedings for offences**

Insert at the end of section 135:

- (2) Proceedings for an offence against section 65 may be commenced at any time within 2 years after the date of commission of the offence. 10

**[41] Schedule 1 Third-party policy**

Omit paragraph 1 of the third-party policy. Insert instead:

1. The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle: 15
- (a) if the motor vehicle is not one to which paragraph (b) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 20
- (b) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales. 25

**[42] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

the *Motor Accidents Amendment Act 1995*. 30

**[43] Schedule 4, Part 7**

Insert after Part 6:

**Part 7 Provisions arising from the enactment of  
the Motor Accidents Amendment Act 1995**

**17 Application of amendments**

- |   |    |
|---|----|
|   | 5  |
| (1) The provisions of sections 2A, 2B, 34A, 40A, 43 (1), 43A (1), 48 (1), 52 (1), 68A, 72 (1) and 79 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to claims made on or after the commencement of the relevant provision.  | 10 |
| (2) The amendments to this Act made by Schedule 1 [2], [3], [4], [7], [10], [12], [13], [19], [20], [24], [25] and [27] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to motor accidents occurring on or after the commencement of the amendment.   | 15 |
| (3) The amendments to this Act made by Schedule 1 [6] and [41] to the <i>Motor Accidents Amendment Act 1995</i> do not apply to limit the insurance under a third-party policy in respect of a permit issued under Regulation 53A of the <i>Motor Traffic Regulations 1935</i> before the commencement of the amendments. | 20 |
| (4) The amendments to this Act made by Schedule 1 [9], [16], [17], [18] and [31] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to claims made on or after the commencement of the amendment.  | 25 |
| (5) Section 47A, as inserted by the <i>Motor Accidents Amendment Act 1995</i> , extends to legal proceedings brought before the commencement of the section.  |    |
| (6) Sections 50A and 52 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to and in respect of claims made on or after 26 September 1995.  | 30 |
| (7) A claimant who was subject to the requirements of section 52 (3) immediately before its repeal by the <i>Motor Accidents Amendment Act 1995</i> does not have to provide a full and satisfactory explanation to the court for the delay in commencing proceedings.  | 35 |

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (8) An amount under section 79A, as inserted by the *Motor Accidents Amendment Act 1995*, does not have to be adjusted under section 80 before 1 October 1996.
- (9) Section 135 (2), as inserted by the *Motor Accidents Amendment Act 1995*, applies only in relation to offences committed after the commencement of the subsection. 5
- (10) Except to the extent provided by this clause or the regulations, a provision of this Act, as in force immediately before its amendment by the *Motor Accidents Amendment Act 1995*, continues to apply to and in respect of anything to which it then applied. 10



Second print



New South Wales

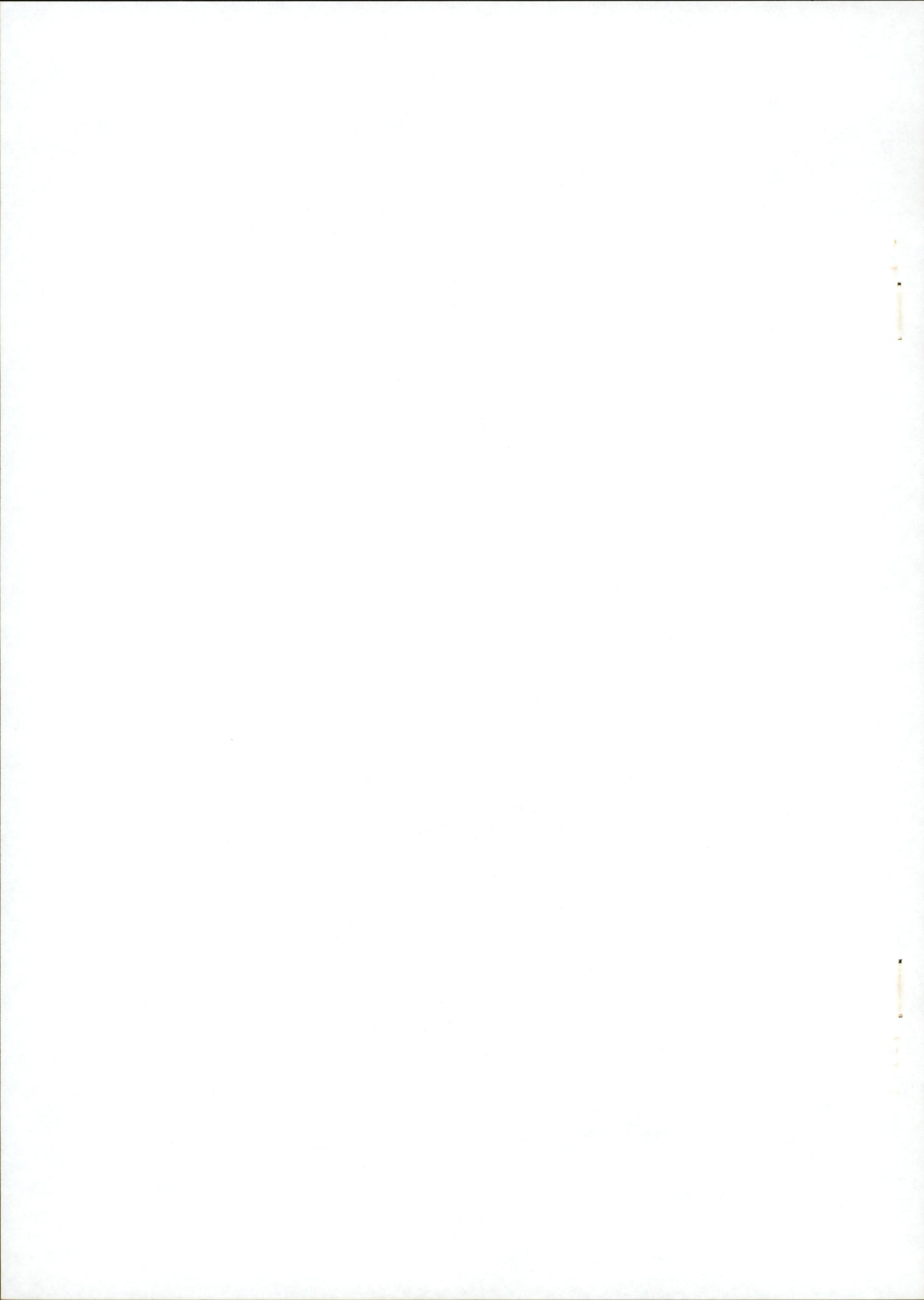
# Motor Accidents Amendment Bill 1995

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Act 1988 No 102	2
 Schedule 1 Amendments	 3

---



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

*Clerk of the Parliaments  
Legislative Council*



New South Wales

## **Motor Accidents Amendment Bill 1995**

Act No           , 1995

---

An Act to amend the *Motor Accidents Act 1988* to state its objects, to facilitate the early settlement of claims without recourse to court proceedings, to limit increases in the costs of the scheme under that Act, and for other purposes.

---

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

**1 Name of Act**

This Act is the *Motor Accidents Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2). 5
- (2) Schedule 1 [5], [34]–[38] and [43] are taken to have commenced at midnight on 26 September 1995.

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

The *Motor Accidents Act 1988* is amended as set out in Schedule 1. 10

---

## Schedule 1 Amendments

(Section 3)

### [1] Sections 2A, 2B

Insert after section 2:

#### 2A Objects of Act

5

- (1) The objects of this Act are:
  - (a) to repeal the *Transport Accidents Compensation Act 1987* and thereby to abolish the scheme for compensating victims of transport accidents (TransCover) established under that Act, and 10
  - (b) to re-instate a common law based scheme under which damages can only be awarded after a finding of negligence, and
  - (c) by the scheme under this Act:
    - (i) to reduce the cost of the former common law based scheme by limiting benefits for non-economic loss in the case of relatively minor injuries, and 15
    - (ii) to introduce a stricter procedure for the making and assessment of claims for damages, and 20
    - (iii) to preserve the benefits payable to persons with more severe injuries involving on-going disability, and
    - (iv) to give full weight to the need to identify fraudulent claims, deter their lodgment and prosecute those responsible for them, and 25
    - (v) to encourage recovery from injury and early and effective rehabilitation, where appropriate, as a key feature of the scheme, and 30

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (vi) to encourage the speedy, efficient and effective provision of benefits balanced by the need to investigate claims properly and the need to encourage an early return to employment. 5
- Note.** This statement of objects is based on the introduction to the outline of Option 3 in the TransCover Review, published in *Motor Accidents: The Act and Background Papers* by the Attorney General's Department, 1989, p 101.
- (2) It must be acknowledged in the application and administration of this Act: 10
- (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and 15
- (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and 20
- (c) that: 25
- (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
- (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and 30
- (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and 35
- (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law. 40

---

**2B Interpretation and application of Act by reference to objects**

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the object of this Act or the provision is to be preferred to a construction that would not promote that object. 5
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the object of this Act or of the provision concerned. 10

**[2] Section 3 Definitions**

Insert in section 3 (1) in alphabetical order:

*death* means death caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 15

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or 20
- (d) such use or operation by a defect in the vehicle.

**[3] Section 3**

Omit the definition of *deceased person* in section 3 (1).

Insert instead:

*deceased person* means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 25

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or 30
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**[4] Section 3**

Omit the definition of *injury* in section 3 (1). Insert instead:

*injury*:

- (a) means personal or bodily injury caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the injury is a result of and is caused during:
  - (i) the driving of the vehicle, or
  - (ii) a collision, or action taken to avoid a collision, with the vehicle, or
  - (iii) the vehicle's running out of control, or
  - (iv) such use or operation by a defect in the vehicle, and
- (b) includes:
  - (i) pre-natal injury, and
  - (ii) psychological or psychiatric injury, and
  - (iii) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**[5] Section 3 (7)**

Insert after section 3 (6):

- (7) Notes in the text of this Act do not form part of this Act.

**[6] Section 9**

Omit the section. Insert instead:

**9 Third-party policies**

- A third-party policy under this Act is a policy that:
- (a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle:



- 
- (i) if the motor vehicle is not one to which subparagraph (ii) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 5
- (ii) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales, and 10
- (b) is in the terms of Schedule 1.
- [7] Section 27 Claim against Nominal Defendant where vehicle not insured**
- Omit section 27 (5). Insert instead:
- (5) For the purposes of this section, and any regulations made for the purposes of this section: 15
- motor vehicle*** means a motor vehicle or a trailer:
- (a) that is exempt from registration, or
- (b) that is not exempt from registration and that:
- (i) is required to be registered to enable its lawful use or operation on a public street in New South Wales, and 20
- (ii) immediately before the motor accident occurred, was capable, or would, following the repair of minor defects, have been capable, of being so registered. 25
- [8] Section 34A**
- Insert before section 35:
- 34A Objects—Part 4**
- The objects of this Part are: 30
- (a) to encourage and support recovery from injury and the use of early and appropriate rehabilitation for people injured in motor accidents so that they can return, as far as possible, to their pre-accident lifestyle, and 35

- (b) to place obligations on insurers and claimants in order to encourage and facilitate that process, and
- (c) to recognise the importance of rehabilitation in achieving greater cost efficiencies in injury management, and 5
- (d) to stress that rehabilitation must not be ignored or attempted in a perfunctory way in order to maximise a claim for damages.

**[9] Section 39 Mitigation of damages**

Omit section 39 (1). Insert instead: 10

- (1) An injured person is under a duty to mitigate his or her damages, and, therefore, in assessing damages in respect of a claim, consideration is to be given to the steps taken by the injured person and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages. 15

(1A) Those steps include the following:

- (a) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the matters referred to in paragraphs (b)–(d), 20
- (b) undergoing medical treatment,
- (c) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program), 25
- (d) pursuing alternative employment opportunities.

**[10] Section 40 Definitions**

Insert at the end of section 40:

- (2) In this Part, a reference to a full and satisfactory explanation by a claimant for non-compliance with a duty or for delay is a reference to a full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a 30

---

satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay.

**Note.** The requirement for "a full and satisfactory explanation" is made in sections 42 (4), 43A (2), (4), (6) (a) and (7) and 52 (4B). 5

**[11] Section 40A**

Insert after section 40:

**40A Objects—Part 5**

The objects of this Part are: 10

- (a) to ensure that claims are quickly brought to the attention of insurers:
  - (i) to enable early investigation and assessment of claims, and
  - (ii) to enable the early identification of the nature and severity of the injuries sustained in the motor accident and of the likely treatment and rehabilitation needs of the injured person, and 15
  - (iii) so that insurers can readily predict claim frequency and hence make appropriate provision for the calculation of premiums, and 20
  - (iv) to enable accident victims to receive prompt treatment and rehabilitation and prompt payment of lost earnings where liability is clear, and 25
- (b) to promote negotiation between the parties and, by means of alternate dispute resolution, to ensure that the resolution of disputed claims by the courts is kept to a minimum, and 30
- (c) to underscore the need to deter and prevent the making of fraudulent and exaggerated claims.

**[12] Section 42 Accident must be reported within 28 days**

Insert "written" before "report" wherever occurring.

**[13] Section 42A**

Insert after section 42:

**42A Authority's access to police information**

5

- (1) At the written request of the Authority with respect to a motor accident specified by it, the Commissioner of Police must provide a statement to the Authority in relation to the following matters if information as to those matters is held by a member of the Police Service: 10
  - (a) the registration numbers of all motor vehicles involved in the accident,
  - (b) the names of all persons killed or injured in the accident,
  - (c) the names of the hospitals to which the injured persons were taken, 15
  - (d) the vehicle or vehicles most likely to have been at fault in the accident.
- (2) The Authority is authorised to give a copy of a statement provided to it under this section to the next of kin of a person killed in the accident or a person injured in the accident (or to an appropriate representative of either such person), or to an insurer. 20
- (3) A statement or copy of a statement provided to or by the Authority under this section is not admissible in legal proceedings concerning a claim made under this Act. 25

**[14] Section 43 Time for and notice of making of claims**

Renumber section 43 (1) as section 43 (2).

Insert before section 43 (2) as renumbered:

- (1) The object of this section is to promote the early making of claims to enable the insurer: 30
  - (a) to commence investigations while evidence relating to a claim is available, and

- 
- (b) to identify injuries and facilitate the access of claimants to appropriate injury management and rehabilitation services and thus to expedite the claimant's recovery, and
  - (c) to allow the insurer to more accurately predict claim frequency and hence formulate premiums. 5

**[15] Section 43A**

Omit the section. Insert instead:

**43A Late making of claims**

- (1) The objects of this section are: 10
  - (a) to ensure that the issue of the lateness of a claim is dealt with as soon as possible after receipt of the claim, and
  - (b) to ensure that any delay caused to the consideration of the substantive claim by the lateness issue is kept to a minimum, and 15
  - (c) to ensure that the lateness issue is either resolved or made a mutually apparent substantive issue at an early date.
- (2) 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. 20 25
- (3) 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. 30
- (4) A late claim may not be made more than 12 months after the date determined under section 43 unless, in addition to the provision of a full and satisfactory explanation, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per 35

- cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.
- (5) Subsection (4) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 5
- (6) 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) may apply to have the proceedings dismissed on: 25
- (i) the ground of delay, or
- (ii) in the case of a late claim that is made more than 12 months after the date determined under section 43, the ground of the amount of damages, 30
- or both, only within 2 months after the statement of claim is served on the defendant and received by the insurer. The insurer (or the person against whom the claim is made) may only apply to have the proceedings dismissed on the ground of delay if the insurer (or the person) has not lost the right to challenge the claim on the ground of delay. 35

- 
- (7) A court must dismiss 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 and, alternatively or in addition in the case of a late claim that is made more than 12 months after the date determined under section 43, that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5 10
- [16] Section 44B Challenging claims for failure to comply with s 44 or 44A**  
Omit "struck out" from section 44B (2). Insert instead "dismissed".
- [17] Section 44B (2)** 15  
Insert "served on the defendant and" before "received".
- [18] Section 44B (3)**  
Omit "strike out". Insert instead "dismiss".
- [19] Section 45 Duty of insurer to try to resolve claim etc**  
Insert after section 45 (2) (b): 20  
and  
(c) respite care in respect of a claimant who is seriously injured and in need of constant care over a long term,
- [20] Section 45 (4)** 25  
Omit section 45 (4). Insert instead:  
(4) A payment made under this section to or on behalf of a claimant before the claimant obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the claimant against the defendant for damages. 30

**Note.** Section 45 places obligations on insurers to act as expeditiously as possible, and to make certain payments of an interim nature once liability has been admitted or determined. The obligations are consistent with the insurer's obligations regarding the rehabilitation of the claimant under sections 37 and 38. 5

Failure to observe the obligations in individual cases exposes the insurer to an award of interest under section 73. Continual failure to observe the obligations places an insurer's licence at risk (section 45 (3)).

In order to meet its obligations, the insurer must have sufficient information to enable it to properly investigate and assess the claim, and make an appropriate offer of settlement. This requires early notice of the claim under section 43, and the provision of full particulars of the claim under section 48. 10

**[21] Section 47A** 15

Insert after section 47:

**47A Power of insurer to intervene in legal proceedings**

An insurer may apply to the court to be joined as a party to legal proceedings brought against a defendant who is insured under a third-party policy with the insurer in order to argue that in the circumstances of the case it has no obligation under the policy to indemnify the defendant. 20

**[22] Section 48 Duty of claimant to co-operate with other party**

Renumber section 48 (1) as section 48 (1A). 25

Insert before section 48 (1A) as renumbered:

- (1) The object of this section is to maximise communication between the parties so that sound and timely information is available and disputes are minimised.

**[23] Section 50A** 30

Insert after section 50:

**50A Provision of information to facilitate settlement of claim before commencing court proceedings**

Subject to section 52 (1A), a claimant is not entitled to commence court proceedings against another person in respect of a claim until the claimant has given the other person's insurer (if any) full details of: 35



- 
- (a) the injuries sustained by the claimant in the motor accident, and
  - (b) all disabilities and impairments arising from those injuries, and
  - (c) if those injuries, or any of them, have not stabilised, the prognosis for future recovery, and 5
  - (d) any economic losses and other losses that are being claimed as damages,
- sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages. 10

**[24] Section 52 Time limitations on commencement of court proceedings**

Omit section 52 (1). Insert instead:

- (1) The objects of this section are: 15
  - (a) to encourage and facilitate the investigation, assessment and negotiation of a claim for damages without the commencement of court proceedings, and
  - (b) to impose a limitation period of 3 years for the commencement of legal proceedings for damages under this Act and to enable the extension of that period only if: 20
    - (i) the claimant can explain the reasons for the delay in not making the claim within the 3-year period, and 25
    - (ii) the claim is likely to result in an award of substantial damages, or in the circumstances described in subsection (4A). 30
- (1A) A claimant is not entitled to commence court proceedings against another person in respect of a claim until:
  - (a) 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer, or 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (b) 90 days have elapsed since the details required by section 50A were given to the other person's insurer, or
    - (c) if the other person's insurer has made an offer of settlement to the claimant before the claimant commences court proceedings, 28 days have elapsed from the date on which the claimant's response to the offer is communicated to the other person's insurer, 5
  - whichever is the later or latest. 10
  - (1B) Subsection (1A) (c) applies only to the first offer made by the other person's insurer and not to any subsequent offer.
- [25] Section 52 (2)**
- Omit "subsection (1)". Insert instead "subsection (1A)". 15
- [26] Section 52 (3)**
- Omit the subsection.
- [27] Section 52 (4)-(4C)**
- Omit section 52 (4). Insert instead:
- (4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after: 20
    - (a) the date of the motor accident to which the claim relates, or
    - (b) if the claim is made in respect of the death of a person, the date of death, 25
- except with the leave of the court in which the proceedings are to be taken.
- (4A) However, if at the end of the 3-year period referred to in subsection (4), the claimant has complied with section 50A but is unable to commence court proceedings because of the effect of subsection (1A) (b) or (c), the claimant may commence court proceedings within 28 days after the period under subsection (1A) (b) or (c), or the later of those periods, has elapsed. 30

- 
- (4B) The leave of the court must not be granted unless:
- (a) the claimant provides a full and satisfactory explanation to the court for the delay, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5
- (4C) Subsection (4B) (b) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 10
- [28] Section 68A**
- Insert after section 68:
- 68A Objects—Part 6** 15
- The objects of this Part are:
- (a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
  - (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries. 20
- [29] Section 70A** 25
- Insert after section 70:
- 70A Claimant's prospects of future economic loss**
- A court shall not award damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain a future economic loss or that there is at least a 25 per cent likelihood that the claimant will sustain a diminution of future economic capacity, as the case requires. 30
- 35

**[30] Section 72 Maximum amount of damages for provision of certain home care services**

Re-number section 72 (1) as section 72 (1A).

Insert before section 72 (1A) as re-numbered:

- (1) The objects of this section are: 5
  - (a) to limit to average weekly earnings the level of payment for services for additional domestic assistance that are above and beyond those rendered by family or household members, and
  - (b) to restrict access to those payments to claims where the need is long term, and 10
  - (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident.

**[31] Section 72 (7) 15**

Omit "subsection (1)". Insert instead "subsection (1A)".

**[32] Section 76 Defence of voluntary assumption of risk**

Omit "The" from section 76.

Insert instead "Except as provided by subsection (2), the".

**[33] Section 76 (2) and (3) 20**

Insert at the end of section 76:

- (2) If a motor accident occurs while a motor vehicle is engaged in motor racing, the defence of volenti non fit injuria is available in proceedings for damages brought in respect of the death of or injury to: 25
  - (a) the driver of the vehicle so engaged, or
  - (b) a passenger in the vehicle so engaged, other than a passenger who is less than 18 years of age or who otherwise lacked capacity to consent to be a voluntary passenger. 30

- 
- (3) For the purposes of subsection (2), a motor vehicle is engaged in motor racing if it is participating in an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.
- [34] Section 79 Determination of non-economic loss—accidents occurring before midnight on 26.9.95** 5
- Renumber section 79 (1) as section 79 (1B).  
Insert before section 79 (1B) as renumbered:
- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995. 10
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 15
- [35] Section 79 (5)**
- Omit “subsections (1)–(3)”. Insert instead “this section”.
- [36] Section 79A**
- Insert after section 79: 20
- 79A Determination of non-economic loss—accidents occurring after midnight on 26.9.95**
- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 25 30
- (3) No damages are to 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 12 months by the injury suffered in the accident. 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case. 5
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table: 10

**Table**

Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)	
15%	1%	
16%	1.5%	
17%	2%	
18%	2.5%	20
19%	3%	
20%	3.5%	
21%	4%	
22%	4.5%	
23%	5%	25
24%	5.5%	
25%	6.5%	
26%	8%	
27%	10%	
28%	14%	30
29%	18%	
30%	23%	
31%	26%	
32%	30%	
33%	33%	35
34%–100%	34%–100% respectively	

- (7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

**Note.** The following are the steps required in the assessment of non-economic loss in accordance with this section:

5

Step 1: Has the claimant demonstrated that his or her 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 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2.

10

Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act.

15

Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80.

Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table.

20

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

25

**[37] Section 80 Indexation of amounts relating to non-economic loss**

Insert "or 79A" after "section 79" in section 80 (1), (2) and (3) wherever occurring.

30

**[38] Section 80 (5)**

Insert "or 79A (5)" after "section 79 (3)".

**[39] Section 80A**

Insert after section 80:

**80A Regulations concerning the determination of non-economic loss**

The regulations may make provision for or with respect to the adoption of guidelines as in force from time to time relating to the determination of non-economic loss. 5

**[40] Section 135 Proceedings for offences**

Insert at the end of section 135:

- (2) Proceedings for an offence against section 65 may be commenced at any time within 2 years after the date of commission of the offence. 10

**[41] Schedule 1 Third-party policy**

Omit paragraph 1 of the third-party policy. Insert instead:

1. The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle: 15
- (a) if the motor vehicle is not one to which paragraph (b) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 20
- (b) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales. 25

**[42] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

the *Motor Accidents Amendment Act 1995*. 30



---

**[43] Schedule 4, Part 7**

Insert after Part 6:

**Part 7 Provisions arising from the enactment of  
the Motor Accidents Amendment Act 1995**

**17 Application of amendments**

- |   |    |
|---|----|
|   | 5  |
| (1) The provisions of sections 2A, 2B, 34A, 40A, 43 (1), 43A (1), 48 (1), 52 (1), 68A, 72 (1) and 79 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to claims made on or after the commencement of the relevant provision.  | 10 |
| (2) The amendments to this Act made by Schedule 1 [2], [3], [4], [7], [10], [12], [13], [19], [20], [24], [25] and [27] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to motor accidents occurring on or after the commencement of the amendment.   | 15 |
| (3) The amendments to this Act made by Schedule 1 [6] and [41] to the <i>Motor Accidents Amendment Act 1995</i> do not apply to limit the insurance under a third-party policy in respect of a permit issued under Regulation 53A of the <i>Motor Traffic Regulations 1935</i> before the commencement of the amendments. | 20 |
| (4) The amendments to this Act made by Schedule 1 [9], [16], [17], [18] and [31] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to claims made on or after the commencement of the amendment.  | 25 |
| (5) Section 47A, as inserted by the <i>Motor Accidents Amendment Act 1995</i> , extends to legal proceedings brought before the commencement of the section.  |    |
| (6) Sections 50A and 52 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to and in respect of claims made on or after 26 September 1995.  | 30 |
| (7) A claimant who was subject to the requirements of section 52 (3) immediately before its repeal by the <i>Motor Accidents Amendment Act 1995</i> does not have to provide a full and satisfactory explanation to the court for the delay in commencing proceedings.  | 35 |

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (8) An amount under section 79A, as inserted by the *Motor Accidents Amendment Act 1995*, does not have to be adjusted under section 80 before 1 October 1996.
- (9) Section 135 (2), as inserted by the *Motor Accidents Amendment Act 1995*, applies only in relation to offences committed after the commencement of the subsection. 5
- (10) Except to the extent provided by this clause or the regulations, a provision of this Act, as in force immediately before its amendment by the *Motor Accidents Amendment Act 1995*, continues to apply to and in respect of anything to which it then applied. 10

Second print



New South Wales

# Motor Accidents Amendment Bill 1995

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Act 1988 No 102	2
 Schedule 1 Amendments	 3

---



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

*Clerk of the Parliaments  
Legislative Council*



New South Wales

## **Motor Accidents Amendment Bill 1995**

Act No      , 1995

---

An Act to amend the *Motor Accidents Act 1988* to state its objects, to facilitate the early settlement of claims without recourse to court proceedings, to limit increases in the costs of the scheme under that Act, and for other purposes.

---

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

**1 Name of Act**

This Act is the *Motor Accidents Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2). 5
- (2) Schedule 1 [5], [34]–[38] and [43] are taken to have commenced at midnight on 26 September 1995.

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

The *Motor Accidents Act 1988* is amended as set out in Schedule 1. 10

---

## Schedule 1 Amendments

(Section 3)

### [1] Sections 2A, 2B

Insert after section 2:

#### 2A Objects of Act

5

(1) The objects of this Act are:

- (a) to repeal the *Transport Accidents Compensation Act 1987* and thereby to abolish the scheme for compensating victims of transport accidents (TransCover) established under that Act, and 10
- (b) to re-instate a common law based scheme under which damages can only be awarded after a finding of negligence, and
- (c) by the scheme under this Act:
  - (i) to reduce the cost of the former common law based scheme by limiting benefits for non-economic loss in the case of relatively minor injuries, and 15
  - (ii) to introduce a stricter procedure for the making and assessment of claims for damages, and 20
  - (iii) to preserve the benefits payable to persons with more severe injuries involving on-going disability, and
  - (iv) to give full weight to the need to identify fraudulent claims, deter their lodgment and prosecute those responsible for them, and 25
  - (v) to encourage recovery from injury and early and effective rehabilitation, where appropriate, as a key feature of the scheme, and 30

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (vi) to encourage the speedy, efficient and effective provision of benefits balanced by the need to investigate claims properly and the need to encourage an early return to employment. 5
- Note.** This statement of objects is based on the introduction to the outline of Option 3 in the TransCover Review, published in *Motor Accidents: The Act and Background Papers* by the Attorney General's Department, 1989, p 101.
- (2) It must be acknowledged in the application and administration of this Act: 10
- (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and 15
- (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and 20
- (c) that: 25
- (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
- (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and 30
- (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and 35
- (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law. 40



---

**2B Interpretation and application of Act by reference to objects**

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the object of this Act or the provision is to be preferred to a construction that would not promote that object. 5
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the object of this Act or of the provision concerned. 10

**[2] Section 3 Definitions**

Insert in section 3 (1) in alphabetical order:

*death* means death caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 15

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or 20
- (d) such use or operation by a defect in the vehicle.

**[3] Section 3**

Omit the definition of *deceased person* in section 3 (1).

Insert instead:

*deceased person* means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during: 25

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or 30
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**[4] Section 3**

Omit the definition of *injury* in section 3 (1). Insert instead:

*injury*:

- (a) means personal or bodily injury caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the injury is a result of and is caused during:
  - (i) the driving of the vehicle, or 5
  - (ii) a collision, or action taken to avoid a collision, with the vehicle, or 10
  - (iii) the vehicle's running out of control, or
  - (iv) such use or operation by a defect in the vehicle, and
- (b) includes:
  - (i) pre-natal injury, and 15
  - (ii) psychological or psychiatric injury, and
  - (iii) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**[5] Section 3 (7)**

Insert after section 3 (6): 20

- (7) Notes in the text of this Act do not form part of this Act.

**[6] Section 9**

Omit the section. Insert instead:

**9 Third-party policies**

A third-party policy under this Act is a policy that: 25

- (a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle: 30

- 
- (i) if the motor vehicle is not one to which subparagraph (ii) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 5
- (ii) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales, and 10
- (b) is in the terms of Schedule 1.
- [7] Section 27 Claim against Nominal Defendant where vehicle not insured**
- Omit section 27 (5). Insert instead:
- (5) For the purposes of this section, and any regulations made for the purposes of this section: 15
- motor vehicle*** means a motor vehicle or a trailer:
- (a) that is exempt from registration, or
- (b) that is not exempt from registration and that:
- (i) is required to be registered to enable its lawful use or operation on a public street in New South Wales, and 20
- (ii) immediately before the motor accident occurred, was capable, or would, following the repair of minor defects, have been capable, of being so registered. 25
- [8] Section 34A**
- Insert before section 35:
- 34A Objects—Part 4**
- The objects of this Part are: 30
- (a) to encourage and support recovery from injury and the use of early and appropriate rehabilitation for people injured in motor accidents so that they can return, as far as possible, to their pre-accident lifestyle, and 35

- (b) to place obligations on insurers and claimants in order to encourage and facilitate that process, and
- (c) to recognise the importance of rehabilitation in achieving greater cost efficiencies in injury management, and 5
- (d) to stress that rehabilitation must not be ignored or attempted in a perfunctory way in order to maximise a claim for damages.

**[9] Section 39 Mitigation of damages**

Omit section 39 (1). Insert instead: 10

- (1) An injured person is under a duty to mitigate his or her damages, and, therefore, in assessing damages in respect of a claim, consideration is to be given to the steps taken by the injured person and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages. 15

(1A) Those steps include the following:

- (a) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the matters referred to in paragraphs (b)–(d), 20
- (b) undergoing medical treatment,
- (c) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program), 25
- (d) pursuing alternative employment opportunities.

**[10] Section 40 Definitions**

Insert at the end of section 40:

- (2) In this Part, a reference to a full and satisfactory explanation by a claimant for non-compliance with a duty or for delay is a reference to a full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a 30

---

satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay.

**Note.** The requirement for "a full and satisfactory explanation" is made in sections 42 (4), 43A (2), (4), (6) (a) and (7) and 52 (4B). 5

**[11] Section 40A**

Insert after section 40:

**40A Objects—Part 5**

The objects of this Part are: 10

- (a) to ensure that claims are quickly brought to the attention of insurers:
  - (i) to enable early investigation and assessment of claims, and
  - (ii) to enable the early identification of the nature and severity of the injuries sustained in the motor accident and of the likely treatment and rehabilitation needs of the injured person, and 15
  - (iii) so that insurers can readily predict claim frequency and hence make appropriate provision for the calculation of premiums, and 20
  - (iv) to enable accident victims to receive prompt treatment and rehabilitation and prompt payment of lost earnings where liability is clear, and 25
- (b) to promote negotiation between the parties and, by means of alternate dispute resolution, to ensure that the resolution of disputed claims by the courts is kept to a minimum, and 30
- (c) to underscore the need to deter and prevent the making of fraudulent and exaggerated claims.

**[12] Section 42 Accident must be reported within 28 days**

Insert "written" before "report" wherever occurring.

**[13] Section 42A**

Insert after section 42:

**42A Authority's access to police information**

5

- (1) At the written request of the Authority with respect to a motor accident specified by it, the Commissioner of Police must provide a statement to the Authority in relation to the following matters if information as to those matters is held by a member of the Police Service: 10
  - (a) the registration numbers of all motor vehicles involved in the accident,
  - (b) the names of all persons killed or injured in the accident,
  - (c) the names of the hospitals to which the injured persons were taken, 15
  - (d) the vehicle or vehicles most likely to have been at fault in the accident.
- (2) The Authority is authorised to give a copy of a statement provided to it under this section to the next of kin of a person killed in the accident or a person injured in the accident (or to an appropriate representative of either such person), or to an insurer. 20
- (3) A statement or copy of a statement provided to or by the Authority under this section is not admissible in legal proceedings concerning a claim made under this Act. 25

**[14] Section 43 Time for and notice of making of claims**

Renumber section 43 (1) as section 43 (2).

Insert before section 43 (2) as renumbered:

- (1) The object of this section is to promote the early making of claims to enable the insurer: 30
  - (a) to commence investigations while evidence relating to a claim is available, and

- 
- (b) to identify injuries and facilitate the access of claimants to appropriate injury management and rehabilitation services and thus to expedite the claimant's recovery, and
  - (c) to allow the insurer to more accurately predict claim frequency and hence formulate premiums. 5

**[15] Section 43A**

Omit the section. Insert instead:

**43A Late making of claims**

- (1) The objects of this section are: 10
  - (a) to ensure that the issue of the lateness of a claim is dealt with as soon as possible after receipt of the claim, and
  - (b) to ensure that any delay caused to the consideration of the substantive claim by the lateness issue is kept to a minimum, and 15
  - (c) to ensure that the lateness issue is either resolved or made a mutually apparent substantive issue at an early date.
- (2) 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. 20 25
- (3) 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. 30
- (4) A late claim may not be made more than 12 months after the date determined under section 43 unless, in addition to the provision of a full and satisfactory explanation, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.
- (5) Subsection (4) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 5
- (6) 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) may apply to have the proceedings dismissed on: 25
- (i) the ground of delay, or
- (ii) in the case of a late claim that is made more than 12 months after the date determined under section 43, the ground of the amount of damages, 30
- or both, only within 2 months after the statement of claim is served on the defendant and received by the insurer. The insurer (or the person against whom the claim is made) may only apply to have the proceedings dismissed on the ground of delay if the insurer (or the person) has not lost the right to challenge the claim on the ground of delay. 35



- 
- (7) A court must dismiss 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 and, alternatively or in addition in the case of a late claim that is made more than 12 months after the date determined under section 43, that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5 10
- [16] Section 44B Challenging claims for failure to comply with s 44 or 44A**  
Omit "struck out" from section 44B (2). Insert instead "dismissed".
- [17] Section 44B (2)** 15  
Insert "served on the defendant and" before "received".
- [18] Section 44B (3)**  
Omit "strike out". Insert instead "dismiss".
- [19] Section 45 Duty of insurer to try to resolve claim etc**  
Insert after section 45 (2) (b): 20  
and  
(c) respite care in respect of a claimant who is seriously injured and in need of constant care over a long term,
- [20] Section 45 (4)** 25  
Omit section 45 (4). Insert instead:  
(4) A payment made under this section to or on behalf of a claimant before the claimant obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the claimant against the defendant for damages. 30

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- Note.** Section 45 places obligations on insurers to act as expeditiously as possible, and to make certain payments of an interim nature once liability has been admitted or determined. The obligations are consistent with the insurer's obligations regarding the rehabilitation of the claimant under sections 37 and 38. 5
- Failure to observe the obligations in individual cases exposes the insurer to an award of interest under section 73. Continual failure to observe the obligations places an insurer's licence at risk (section 45 (3)).
- In order to meet its obligations, the insurer must have sufficient information to enable it to properly investigate and assess the claim, and make an appropriate offer of settlement. This requires early notice of the claim under section 43, and the provision of full particulars of the claim under section 48. 10
- [21] Section 47A** 15
- Insert after section 47:
- 47A Power of insurer to intervene in legal proceedings**
- An insurer may apply to the court to be joined as a party to legal proceedings brought against a defendant who is insured under a third-party policy with the insurer in order to argue that in the circumstances of the case it has no obligation under the policy to indemnify the defendant. 20
- [22] Section 48 Duty of claimant to co-operate with other party**
- Renumber section 48 (1) as section 48 (1A). 25
- Insert before section 48 (1A) as renumbered:
- (1) The object of this section is to maximise communication between the parties so that sound and timely information is available and disputes are minimised.
- [23] Section 50A** 30
- Insert after section 50:
- 50A Provision of information to facilitate settlement of claim before commencing court proceedings**
- Subject to section 52 (1A), a claimant is not entitled to commence court proceedings against another person in respect of a claim until the claimant has given the other person's insurer (if any) full details of: 35

- 
- (a) the injuries sustained by the claimant in the motor accident, and
  - (b) all disabilities and impairments arising from those injuries, and
  - (c) if those injuries, or any of them, have not stabilised, the prognosis for future recovery, and 5
  - (d) any economic losses and other losses that are being claimed as damages, 5
- sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages. 10

**[24] Section 52 Time limitations on commencement of court proceedings**

Omit section 52 (1). Insert instead:

- (1) The objects of this section are: 15
    - (a) to encourage and facilitate the investigation, assessment and negotiation of a claim for damages without the commencement of court proceedings, and
    - (b) to impose a limitation period of 3 years for the commencement of legal proceedings for damages under this Act and to enable the extension of that period only if: 20
      - (i) the claimant can explain the reasons for the delay in not making the claim within the 3-year period, and 25
      - (ii) the claim is likely to result in an award of substantial damages, 25
- or in the circumstances described in subsection (4A). 30
- (1A) A claimant is not entitled to commence court proceedings against another person in respect of a claim until:
    - (a) 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer, or 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (b) 90 days have elapsed since the details required by section 50A were given to the other person's insurer, or
  - (c) if the other person's insurer has made an offer of settlement to the claimant before the claimant commences court proceedings, 28 days have elapsed from the date on which the claimant's response to the offer is communicated to the other person's insurer, 5
- whichever is the later or latest. 10
- (1B) Subsection (1A) (c) applies only to the first offer made by the other person's insurer and not to any subsequent offer.
- [25] Section 52 (2)**  
Omit "subsection (1)". Insert instead "subsection (1A)". 15
- [26] Section 52 (3)**  
Omit the subsection.
- [27] Section 52 (4)-(4C)**  
Omit section 52 (4). Insert instead:
  - (4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after: 20
    - (a) the date of the motor accident to which the claim relates, or
    - (b) if the claim is made in respect of the death of a person, the date of death, 25
- except with the leave of the court in which the proceedings are to be taken.
- (4A) However, if at the end of the 3-year period referred to in subsection (4), the claimant has complied with section 50A but is unable to commence court proceedings because of the effect of subsection (1A) (b) or (c), the claimant may commence court proceedings within 28 days after the period under subsection (1A) (b) or (c), or the later of those periods, has elapsed. 30

- 
- (4B) The leave of the court must not be granted unless:
- (a) the claimant provides a full and satisfactory explanation to the court for the delay, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident. 5
- (4C) Subsection (4B) (b) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity. 10
- [28] Section 68A**
- Insert after section 68:
- 68A Objects—Part 6** 15
- The objects of this Part are:
- (a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
  - (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries. 20
- [29] Section 70A** 25
- Insert after section 70:
- 70A Claimant's prospects of future economic loss**
- A court shall not award damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain a future economic loss or that there is at least a 25 per cent likelihood that the claimant will sustain a diminution of future economic capacity, as the case requires. 30
- 35

**[30] Section 72 Maximum amount of damages for provision of certain home care services**

Renumber section 72 (1) as section 72 (1A).  
Insert before section 72 (1A) as renumbered:

- (1) The objects of this section are: 5
  - (a) to limit to average weekly earnings the level of payment for services for additional domestic assistance that are above and beyond those rendered by family or household members, and
  - (b) to restrict access to those payments to claims where the need is long term, and 10
  - (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident. 15

**[31] Section 72 (7) 15**

Omit "subsection (1)". Insert instead "subsection (1A)".

**[32] Section 76 Defence of voluntary assumption of risk**

Omit "The" from section 76.  
Insert instead "Except as provided by subsection (2), the".

**[33] Section 76 (2) and (3) 20**

Insert at the end of section 76:

- (2) If a motor accident occurs while a motor vehicle is engaged in motor racing, the defence of volenti non fit injuria is available in proceedings for damages brought in respect of the death of or injury to: 25
  - (a) the driver of the vehicle so engaged, or
  - (b) a passenger in the vehicle so engaged, other than a passenger who is less than 18 years of age or who otherwise lacked capacity to consent to be a voluntary passenger. 30

- 
- (3) For the purposes of subsection (2), a motor vehicle is engaged in motor racing if it is participating in an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.
- [34] Section 79 Determination of non-economic loss—accidents occurring before midnight on 26.9.95** 5
- Renumber section 79 (1) as section 79 (1B).  
Insert before section 79 (1B) as renumbered:
- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995. 10
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 15
- [35] Section 79 (5)**
- Omit “subsections (1)–(3)”. Insert instead “this section”.
- [36] Section 79A**
- Insert after section 79: 20
- 79A Determination of non-economic loss—accidents occurring after midnight on 26.9.95**
- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet. 25  
30
- (3) No damages are to 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 12 months by the injury suffered in the accident. 35

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case. 5
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table: 10

**Table**

Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)	
15%	1%	
16%	1.5%	
17%	2%	
18%	2.5%	20
19%	3%	
20%	3.5%	
21%	4%	
22%	4.5%	
23%	5%	25
24%	5.5%	
25%	6.5%	
26%	8%	
27%	10%	
28%	14%	30
29%	18%	
30%	23%	
31%	26%	
32%	30%	
33%	33%	35
34%–100%	34%–100% respectively	



- (7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

**Note.** The following are the steps required in the assessment of non-economic loss in accordance with this section:

5

Step 1: Has the claimant demonstrated that his or her 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 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2.

10

Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act.

15

Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80.

Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table.

20

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

25

**[37] Section 80 Indexation of amounts relating to non-economic loss**

Insert "or 79A" after "section 79" in section 80 (1), (2) and (3) wherever occurring.

30

**[38] Section 80 (5)**

Insert "or 79A (5)" after "section 79 (3)".

**[39] Section 80A**

Insert after section 80:

**80A Regulations concerning the determination of non-economic loss**

The regulations may make provision for or with respect to the adoption of guidelines as in force from time to time relating to the determination of non-economic loss. 5

**[40] Section 135 Proceedings for offences**

Insert at the end of section 135:

- (2) Proceedings for an offence against section 65 may be commenced at any time within 2 years after the date of commission of the offence. 10

**[41] Schedule 1 Third-party policy**

Omit paragraph 1 of the third-party policy. Insert instead:

1. The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle: 15
- (a) if the motor vehicle is not one to which paragraph (b) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or 20
- (b) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales. 25

**[42] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

the *Motor Accidents Amendment Act 1995*. 30

---

**[43] Schedule 4, Part 7**

Insert after Part 6:

**Part 7 Provisions arising from the enactment of  
the Motor Accidents Amendment Act 1995**

**17 Application of amendments**

- |   |    |
|---|----|
|   | 5  |
| (1) The provisions of sections 2A, 2B, 34A, 40A, 43 (1), 43A (1), 48 (1), 52 (1), 68A, 72 (1) and 79 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to claims made on or after the commencement of the relevant provision.  | 10 |
| (2) The amendments to this Act made by Schedule 1 [2], [3], [4], [7], [10], [12], [13], [19], [20], [24], [25] and [27] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to motor accidents occurring on or after the commencement of the amendment.   | 15 |
| (3) The amendments to this Act made by Schedule 1 [6] and [41] to the <i>Motor Accidents Amendment Act 1995</i> do not apply to limit the insurance under a third-party policy in respect of a permit issued under Regulation 53A of the <i>Motor Traffic Regulations 1935</i> before the commencement of the amendments. | 20 |
| (4) The amendments to this Act made by Schedule 1 [9], [16], [17], [18] and [31] to the <i>Motor Accidents Amendment Act 1995</i> apply only in relation to claims made on or after the commencement of the amendment.  | 25 |
| (5) Section 47A, as inserted by the <i>Motor Accidents Amendment Act 1995</i> , extends to legal proceedings brought before the commencement of the section.  |    |
| (6) Sections 50A and 52 (1A), as inserted by the <i>Motor Accidents Amendment Act 1995</i> , apply to and in respect of claims made on or after 26 September 1995.  | 30 |
| (7) A claimant who was subject to the requirements of section 52 (3) immediately before its repeal by the <i>Motor Accidents Amendment Act 1995</i> does not have to provide a full and satisfactory explanation to the court for the delay in commencing proceedings.  | 35 |

Motor Accidents Amendment Bill 1995

Schedule 1 Amendments

---

- (8) An amount under section 79A, as inserted by the *Motor Accidents Amendment Act 1995*, does not have to be adjusted under section 80 before 1 October 1996.
- (9) Section 135 (2), as inserted by the *Motor Accidents Amendment Act 1995*, applies only in relation to offences committed after the commencement of the subsection. 5
- (10) Except to the extent provided by this clause or the regulations, a provision of this Act, as in force immediately before its amendment by the *Motor Accidents Amendment Act 1995*, continues to apply to and in respect of anything to which it then applied. 10



New South Wales

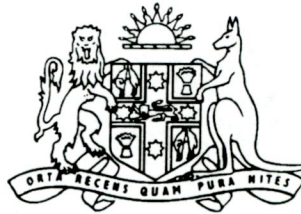
# Motor Accidents Amendment Act 1995 No 66

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Act 1988 No 102	2
Schedule 1 Amendments	3





New South Wales

## **Motor Accidents Amendment Act 1995 No 66**

Act No 66, 1995

---

An Act to amend the *Motor Accidents Act 1988* to state its objects, to facilitate the early settlement of claims without recourse to court proceedings, to limit increases in the costs of the scheme under that Act, and for other purposes. [Assented to 12 December 1995]

---

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

**1 Name of Act**

This Act is the *Motor Accidents Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [5], [34]–[38] and [43] are taken to have commenced at midnight on 26 September 1995.

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

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



---

## Schedule 1 Amendments

(Section 3)

### [1] Sections 2A, 2B

Insert after section 2:

#### 2A Objects of Act

- (1) The objects of this Act are:
  - (a) to repeal the *Transport Accidents Compensation Act 1987* and thereby to abolish the scheme for compensating victims of transport accidents (TransCover) established under that Act, and
  - (b) to re-instate a common law based scheme under which damages can only be awarded after a finding of negligence, and
  - (c) by the scheme under this Act:
    - (i) to reduce the cost of the former common law based scheme by limiting benefits for non-economic loss in the case of relatively minor injuries, and
    - (ii) to introduce a stricter procedure for the making and assessment of claims for damages, and
    - (iii) to preserve the benefits payable to persons with more severe injuries involving on-going disability, and
    - (iv) to give full weight to the need to identify fraudulent claims, deter their lodgment and prosecute those responsible for them, and
    - (v) to encourage recovery from injury and early and effective rehabilitation, where appropriate, as a key feature of the scheme, and

- (vi) to encourage the speedy, efficient and effective provision of benefits balanced by the need to investigate claims properly and the need to encourage an early return to employment.

**Note.** This statement of objects is based on the introduction to the outline of Option 3 in the TransCover Review, published in *Motor Accidents: The Act and Background Papers* by the Attorney General's Department, 1989, p 101.

- (2) It must be acknowledged in the application and administration of this Act:
  - (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and
  - (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and
  - (c) that:
    - (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
    - (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and
    - (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and
    - (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.

**2B Interpretation and application of Act by reference to objects**

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the object of this Act or the provision is to be preferred to a construction that would not promote that object.
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the object of this Act or of the provision concerned.

**[2] Section 3 Definitions**

Insert in section 3 (1) in alphabetical order:

*death* means death caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during:

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**[3] Section 3**

Omit the definition of *deceased person* in section 3 (1).  
Insert instead:

*deceased person* means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during:

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**[4] Section 3**

Omit the definition of *injury* in section 3 (1). Insert instead:

*injury*:

- (a) means personal or bodily injury caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the injury is a result of and is caused during:
  - (i) the driving of the vehicle, or
  - (ii) a collision, or action taken to avoid a collision, with the vehicle, or
  - (iii) the vehicle's running out of control, or
  - (iv) such use or operation by a defect in the vehicle, and
- (b) includes:
  - (i) pre-natal injury, and
  - (ii) psychological or psychiatric injury, and
  - (iii) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**[5] Section 3 (7)**

Insert after section 3 (6):

- (7) Notes in the text of this Act do not form part of this Act.

**[6] Section 9**

Omit the section. Insert instead:

**9 Third-party policies**

A third-party policy under this Act is a policy that:

- (a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle:

- (i) if the motor vehicle is not one to which subparagraph (ii) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or
  - (ii) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales, and
- (b) is in the terms of Schedule 1.

**[7] Section 27 Claim against Nominal Defendant where vehicle not insured**

Omit section 27 (5). Insert instead:

- (5) For the purposes of this section, and any regulations made for the purposes of this section:

*motor vehicle* means a motor vehicle or a trailer:

- (a) that is exempt from registration, or
- (b) that is not exempt from registration and that:
  - (i) is required to be registered to enable its lawful use or operation on a public street in New South Wales, and
  - (ii) immediately before the motor accident occurred, was capable, or would, following the repair of minor defects, have been capable, of being so registered.

**[8] Section 34A**

Insert before section 35:

**34A Objects—Part 4**

The objects of this Part are:

- (a) to encourage and support recovery from injury and the use of early and appropriate rehabilitation for people injured in motor accidents so that they can return, as far as possible, to their pre-accident lifestyle, and

- (b) to place obligations on insurers and claimants in order to encourage and facilitate that process, and
- (c) to recognise the importance of rehabilitation in achieving greater cost efficiencies in injury management, and
- (d) to stress that rehabilitation must not be ignored or attempted in a perfunctory way in order to maximise a claim for damages.

**[9] Section 39 Mitigation of damages**

Omit section 39 (1). Insert instead:

- (1) An injured person is under a duty to mitigate his or her damages, and, therefore, in assessing damages in respect of a claim, consideration is to be given to the steps taken by the injured person and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages.
- (1A) Those steps include the following:
  - (a) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the matters referred to in paragraphs (b)–(d),
  - (b) undergoing medical treatment,
  - (c) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program),
  - (d) pursuing alternative employment opportunities.

**[10] Section 40 Definitions**

Insert at the end of section 40:

- (2) In this Part, a reference to a full and satisfactory explanation by a claimant for non-compliance with a duty or for delay is a reference to a full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a

satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay.

**Note.** The requirement for "a full and satisfactory explanation" is made in sections 42 (4), 43A (2), (4), (6) (a) and (7) and 52 (4B).

**[11] Section 40A**

Insert after section 40:

**40A Objects—Part 5**

The objects of this Part are:

- (a) to ensure that claims are quickly brought to the attention of insurers:
  - (i) to enable early investigation and assessment of claims, and
  - (ii) to enable the early identification of the nature and severity of the injuries sustained in the motor accident and of the likely treatment and rehabilitation needs of the injured person, and
  - (iii) so that insurers can readily predict claim frequency and hence make appropriate provision for the calculation of premiums, and
  - (iv) to enable accident victims to receive prompt treatment and rehabilitation and prompt payment of lost earnings where liability is clear, and
- (b) to promote negotiation between the parties and, by means of alternate dispute resolution, to ensure that the resolution of disputed claims by the courts is kept to a minimum, and
- (c) to underscore the need to deter and prevent the making of fraudulent and exaggerated claims.

**[12] Section 42 Accident must be reported within 28 days**

Insert "written" before "report" wherever occurring.

**[13] Section 42A**

Insert after section 42:

**42A Authority's access to police information**

- (1) At the written request of the Authority with respect to a motor accident specified by it, the Commissioner of Police must provide a statement to the Authority in relation to the following matters if information as to those matters is held by a member of the Police Service:
  - (a) the registration numbers of all motor vehicles involved in the accident,
  - (b) the names of all persons killed or injured in the accident,
  - (c) the names of the hospitals to which the injured persons were taken,
  - (d) the vehicle or vehicles most likely to have been at fault in the accident.
- (2) The Authority is authorised to give a copy of a statement provided to it under this section to the next of kin of a person killed in the accident or a person injured in the accident (or to an appropriate representative of either such person), or to an insurer.
- (3) A statement or copy of a statement provided to or by the Authority under this section is not admissible in legal proceedings concerning a claim made under this Act.

**[14] Section 43 Time for and notice of making of claims**

Re-number section 43 (1) as section 43 (2).

Insert before section 43 (2) as re-numbered:

- (1) The object of this section is to promote the early making of claims to enable the insurer:



- (a) to commence investigations while evidence relating to a claim is available, and
- (b) to identify injuries and facilitate the access of claimants to appropriate injury management and rehabilitation services and thus to expedite the claimant's recovery, and
- (c) to allow the insurer to more accurately predict claim frequency and hence formulate premiums.

**[15] Section 43A**

Omit the section. Insert instead:

**43A Late making of claims**

- (1) The objects of this section are:
  - (a) to ensure that the issue of the lateness of a claim is dealt with as soon as possible after receipt of the claim, and
  - (b) to ensure that any delay caused to the consideration of the substantive claim by the lateness issue is kept to a minimum, and
  - (c) to ensure that the lateness issue is either resolved or made a mutually apparent substantive issue at an early date.
- (2) 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.
- (3) 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.
- (4) A late claim may not be made more than 12 months after the date determined under section 43 unless, in addition to the provision of a full and satisfactory explanation, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per

cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.

- (5) Subsection (4) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity.
- (6) 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) may apply to have the proceedings dismissed on:
    - (i) the ground of delay, or
    - (ii) in the case of a late claim that is made more than 12 months after the date determined under section 43, the ground of the amount of damages,or both, only within 2 months after the statement of claim is served on the defendant and received by the insurer. The insurer (or the person against whom the claim is made) may only apply to have the proceedings dismissed on the ground of delay if the insurer (or the person) has not lost the right to challenge the claim on the ground of delay.

- (7) A court must dismiss 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 and, alternatively or in addition in the case of a late claim that is made more than 12 months after the date determined under section 43, that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.

**[16] Section 44B Challenging claims for failure to comply with s 44 or 44A**

Omit "struck out" from section 44B (2). Insert instead "dismissed".

**[17] Section 44B (2)**

Insert "served on the defendant and" before "received".

**[18] Section 44B (3)**

Omit "strike out". Insert instead "dismiss".

**[19] Section 45 Duty of insurer to try to resolve claim etc**

Insert after section 45 (2) (b):

and

- (c) respite care in respect of a claimant who is seriously injured and in need of constant care over a long term,

**[20] Section 45 (4)**

Omit section 45 (4). Insert instead:

- (4) A payment made under this section to or on behalf of a claimant before the claimant obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the claimant against the defendant for damages.

**Note.** Section 45 places obligations on insurers to act as expeditiously as possible, and to make certain payments of an interim nature once liability has been admitted or determined. The obligations are consistent with the insurer's obligations regarding the rehabilitation of the claimant under sections 37 and 38.

Failure to observe the obligations in individual cases exposes the insurer to an award of interest under section 73. Continual failure to observe the obligations places an insurer's licence at risk (section 45 (3)).

In order to meet its obligations, the insurer must have sufficient information to enable it to properly investigate and assess the claim, and make an appropriate offer of settlement. This requires early notice of the claim under section 43, and the provision of full particulars of the claim under section 48.

**[21] Section 47A**

Insert after section 47:

**47A Power of insurer to intervene in legal proceedings**

An insurer may apply to the court to be joined as a party to legal proceedings brought against a defendant who is insured under a third-party policy with the insurer in order to argue that in the circumstances of the case it has no obligation under the policy to indemnify the defendant.

**[22] Section 48 Duty of claimant to co-operate with other party**

Renumber section 48 (1) as section 48 (1A).

Insert before section 48 (1A) as renumbered:

- (1) The object of this section is to maximise communication between the parties so that sound and timely information is available and disputes are minimised.

**[23] Section 50A**

Insert after section 50:

**50A Provision of information to facilitate settlement of claim before commencing court proceedings**

Subject to section 52 (1A), a claimant is not entitled to commence court proceedings against another person in respect of a claim until the claimant has given the other person's insurer (if any) full details of:

- (a) the injuries sustained by the claimant in the motor accident, and
- (b) all disabilities and impairments arising from those injuries, and
- (c) if those injuries, or any of them, have not stabilised, the prognosis for future recovery, and
- (d) any economic losses and other losses that are being claimed as damages,

sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages.

**[24] Section 52 Time limitations on commencement of court proceedings**

Omit section 52 (1). Insert instead:

- (1) The objects of this section are:
  - (a) to encourage and facilitate the investigation, assessment and negotiation of a claim for damages without the commencement of court proceedings, and
  - (b) to impose a limitation period of 3 years for the commencement of legal proceedings for damages under this Act and to enable the extension of that period only if:
    - (i) the claimant can explain the reasons for the delay in not making the claim within the 3-year period, and
    - (ii) the claim is likely to result in an award of substantial damages,or in the circumstances described in subsection (4A).
- (1A) A claimant is not entitled to commence court proceedings against another person in respect of a claim until:
  - (a) 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer, or

Schedule 1 Amendments

---

- (b) 90 days have elapsed since the details required by section 50A were given to the other person's insurer, or
- (c) if the other person's insurer has made an offer of settlement to the claimant before the claimant commences court proceedings, 28 days have elapsed from the date on which the claimant's response to the offer is communicated to the other person's insurer,

whichever is the later or latest.

- (1B) Subsection (1A) (c) applies only to the first offer made by the other person's insurer and not to any subsequent offer.

**[25] Section 52 (2)**

Omit "subsection (1)". Insert instead "subsection (1A)".

**[26] Section 52 (3)**

Omit the subsection.

**[27] Section 52 (4)-(4C)**

Omit section 52 (4). Insert instead:

- (4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after:
  - (a) the date of the motor accident to which the claim relates, or
  - (b) if the claim is made in respect of the death of a person, the date of death,

except with the leave of the court in which the proceedings are to be taken.

- (4A) However, if at the end of the 3-year period referred to in subsection (4), the claimant has complied with section 50A but is unable to commence court proceedings because of the effect of subsection (1A) (b) or (c), the claimant may commence court proceedings within 28 days after the period under subsection (1A) (b) or (c), or the later of those periods, has elapsed.

- (4B) The leave of the court must not be granted unless:
- (a) the claimant provides a full and satisfactory explanation to the court for the delay, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.
- (4C) Subsection (4B) (b) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity.

**[28] Section 68A**

Insert after section 68:

**68A Objects—Part 6**

The objects of this Part are:

- (a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
- (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries.

**[29] Section 70A**

Insert after section 70:

**70A Claimant's prospects of future economic loss**

A court shall not award damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain a future economic loss or that there is at least a 25 per cent likelihood that the claimant will sustain a diminution of future economic capacity, as the case requires.

**[30] Section 72 Maximum amount of damages for provision of certain home care services**

Renumber section 72 (1) as section 72 (1A).

Insert before section 72 (1A) as renumbered:

- (1) The objects of this section are:
  - (a) to limit to average weekly earnings the level of payment for services for additional domestic assistance that are above and beyond those rendered by family or household members, and
  - (b) to restrict access to those payments to claims where the need is long term, and
  - (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident.

**[31] Section 72 (7)**

Omit "subsection (1)". Insert instead "subsection (1A)".

**[32] Section 76 Defence of voluntary assumption of risk**

Omit "The" from section 76.

Insert instead "Except as provided by subsection (2), the".

**[33] Section 76 (2) and (3)**

Insert at the end of section 76:

- (2) If a motor accident occurs while a motor vehicle is engaged in motor racing, the defence of volenti non fit injuria is available in proceedings for damages brought in respect of the death of or injury to:
  - (a) the driver of the vehicle so engaged, or
  - (b) a passenger in the vehicle so engaged, other than a passenger who is less than 18 years of age or who otherwise lacked capacity to consent to be a voluntary passenger.



- (3) For the purposes of subsection (2), a motor vehicle is engaged in motor racing if it is participating in an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.

**[34] Section 79 Determination of non-economic loss—accidents occurring before midnight on 26.9.95**

Re-number section 79 (1) as section 79 (1B).

Insert before section 79 (1B) as re-numbered:

- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995.
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.

**[35] Section 79 (5)**

Omit “subsections (1)–(3)”. Insert instead “this section”.

**[36] Section 79A**

Insert after section 79:

**79A Determination of non-economic loss—accidents occurring after midnight on 26.9.95**

- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.
- (3) No damages are to 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 12 months by the injury suffered in the accident.

Motor Accidents Amendment Act 1995 No 66

Schedule 1 Amendments

- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case.
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table:

**Table**

<b>Severity of the non-economic loss (as a proportion of a most extreme case)</b>	<b>Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)</b>
15%	1%
16%	1.5%
17%	2%
18%	2.5%
19%	3%
20%	3.5%
21%	4%
22%	4.5%
23%	5%
24%	5.5%
25%	6.5%
26%	8%
27%	10%
28%	14%
29%	18%
30%	23%
31%	26%
32%	30%
33%	33%
34%–100%	34%–100% respectively

- 
- (7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

**Note.** The following are the steps required in the assessment of non-economic loss in accordance with this section:

Step 1: Has the claimant demonstrated that his or her 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 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2.

Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act.

Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80.

Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table.

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

**[37] Section 80 Indexation of amounts relating to non-economic loss**

Insert "or 79A" after "section 79" in section 80 (1), (2) and (3) wherever occurring.

**[38] Section 80 (5)**

Insert "or 79A (5)" after "section 79 (3)".

**[39] Section 80A**

Insert after section 80:

**80A Regulations concerning the determination of non-economic loss**

The regulations may make provision for or with respect to the adoption of guidelines as in force from time to time relating to the determination of non-economic loss.

**[40] Section 135 Proceedings for offences**

Insert at the end of section 135:

- (2) Proceedings for an offence against section 65 may be commenced at any time within 2 years after the date of commission of the offence.

**[41] Schedule 1 Third-party policy**

Omit paragraph 1 of the third-party policy. Insert instead:

1. The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle:
  - (a) if the motor vehicle is not one to which paragraph (b) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street), or
  - (b) if the motor vehicle is subject to a permit under Regulation 53A of the *Motor Traffic Regulations 1935*—in the use or operation of the vehicle on a public street in New South Wales.

**[42] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

the *Motor Accidents Amendment Act 1995*.

**[43] Schedule 4, Part 7**

Insert after Part 6:

**Part 7 Provisions arising from the enactment of the Motor Accidents Amendment Act 1995**

**17 Application of amendments**

- (1) The provisions of sections 2A, 2B, 34A, 40A, 43 (1), 43A (1), 48 (1), 52 (1), 68A, 72 (1) and 79 (1A), as inserted by the *Motor Accidents Amendment Act 1995*, apply to claims made on or after the commencement of the relevant provision.
- (2) The amendments to this Act made by Schedule 1 [2], [3], [4], [7], [10], [12], [13], [19], [20], [24], [25] and [27] to the *Motor Accidents Amendment Act 1995* apply only in relation to motor accidents occurring on or after the commencement of the amendment.
- (3) The amendments to this Act made by Schedule 1 [6] and [41] to the *Motor Accidents Amendment Act 1995* do not apply to limit the insurance under a third-party policy in respect of a permit issued under Regulation 53A of the *Motor Traffic Regulations 1935* before the commencement of the amendments.
- (4) The amendments to this Act made by Schedule 1 [9], [16], [17], [18] and [31] to the *Motor Accidents Amendment Act 1995* apply only in relation to claims made on or after the commencement of the amendment.
- (5) Section 47A, as inserted by the *Motor Accidents Amendment Act 1995*, extends to legal proceedings brought before the commencement of the section.
- (6) Sections 50A and 52 (1A), as inserted by the *Motor Accidents Amendment Act 1995*, apply to and in respect of claims made on or after 26 September 1995.
- (7) A claimant who was subject to the requirements of section 52 (3) immediately before its repeal by the *Motor Accidents Amendment Act 1995* does not have to provide a full and satisfactory explanation to the court for the delay in commencing proceedings.

Motor Accidents Amendment Act 1995 No 66

Schedule 1 Amendments

---

- (8) An amount under section 79A, as inserted by the *Motor Accidents Amendment Act 1995*, does not have to be adjusted under section 80 before 1 October 1996.
- (9) Section 135 (2), as inserted by the *Motor Accidents Amendment Act 1995*, applies only in relation to offences committed after the commencement of the subsection.
- (10) Except to the extent provided by this clause or the regulations, a provision of this Act, as in force immediately before its amendment by the *Motor Accidents Amendment Act 1995*, continues to apply to and in respect of anything to which it then applied.

[Minister's second reading speech made in—  
Legislative Council on 16 November 1995  
Legislative Assembly on 5 December 1995]

BY AUTHORITY