



New South Wales

# Motor Accidents Compensation Amendment Bill 2010

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Motor Accidents Compensation Act 1999*:
    - (i) to extend the compulsory third-party insurance scheme to include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision or any vehicle running out of control, in addition to incidents and accidents that occur during such events, and
    - (ii) to allow for people who are not members of the Government Service (that is, contractors) to be appointed as claims assessors, and
    - (iii) to provide for an additional ex officio member to be appointed to both the Board of Directors of the Motor Accidents Authority and the Motor Accidents Council, and
    - (iv) to provide for additional members to be appointed to the Motor Accidents Council, and
  - (b) to amend the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide for an additional ex officio member to be appointed to both the Board
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of Directors of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

## 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 proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Motor Accidents                          Compensation Act 1999 No 41**

### **Motor accidents covered by compulsory third-party insurance**

**Schedule 1 [2]** extends the definition of *motor accident* in the *Motor Accidents Compensation Act 1999* to include not only incidents or accidents that occur during the driving of a motor vehicle, a collision or action taken to avoid a collision, or during a vehicle's running out of control, but also incidents and accidents that occur as a result of a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle's running out of control. The amendment is made as a response to a recent decision of the New South Wales Court of Appeal. That case concerned a person who was seriously injured when he lost control of the bicycle that he was riding and who claimed that an oil slick that remained on the road following a motor accident some hours earlier caused his accident. The Court held that the compulsory third-party insurance policy would not extend to indemnify the driver of the car in the earlier accident because the cyclist's injury did not occur during a collision but occurred some time later: see *Zotti v Australian Associated Motor Insurers Limited* [2009] NSWCA 323, which followed the High Court's decision in *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* [2005] HCA 26.

**Schedule 1 [3]** makes a consequential amendment to a provision about the application of the Act and the third party policy under the Act.

**Schedule 1 [18]** extends the protection of the amendments made by Schedule 1 [2] and [3] to motor accidents that occurred on or after 1 October 2006 (which is the date of commencement of earlier amendments that limited the incidents and accidents to which the Act applies).

### **Appointment of claims assessors**

**Schedule 1 [6]** provides for the appointment of any suitably qualified person as a claims assessor having functions under the *Motor Accidents Compensation Act 1999* (at present, only a member of staff of the Compensation Authorities Staff Division of the Government Service can be appointed).

**Schedule 1 [18]** validates the appointment of, and acts or omissions of, claims assessors who were not members of staff, or officers of the Motor Accidents Authority, when they were appointed (see proposed clause 39 of Schedule 5).

**Schedule 1 [1] and [4]** make consequential amendments.

**Schedule 1 [7]** transfers an existing provision about the Principal Claims Assessor (currently found in section 105 (3)) to a more appropriate provision.

**Schedule 1 [8]** provides for the Principal Claims Assessor to delegate functions to any claims assessor, not just a member of staff of the Compensation Authorities Staff Division of the Government Service.

**Schedule 1 [9]** inserts a standard provision attaching liability to the Crown in those circumstances where claims assessors (who are not necessarily public servants) are not personally liable.

**Schedule 1 [10]** restates an existing provision relating to the control and direction of claims assessors and extends its operation, as a consequence of the fact that claims assessors may not be public servants.

### **Membership of Board of Directors of the Motor Accidents Authority and Motor Accidents Council**

**Schedule 1 [11]** provides for an additional member on the Board of Directors of the Motor Accidents Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority.

**Schedule 1 [13]** provides for an additional member of the Motor Accidents Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority. In addition, if the Minister decides to appoint additional members, the amendment provides for up to 4 such additional members to be appointed to the Council.

**Schedule 1 [12], [14], [15] and [16]** make consequential amendments.

### **Other amendments**

**Schedule 1 [5]** corrects a cross-reference.

**Schedule 1 [17]** empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16**

**Schedule 2 [1]** provides for an additional member of the Board of Directors of the Lifetime Care and Support Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

**Schedule 2 [4]** makes a consequential amendment.

**Schedule 2 [2] and [3]** provide for an additional ex officio member of the Lifetime Care and Support Advisory Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

**Schedule 2 [5]** makes a consequential amendment.

**Schedule 2 [6]** empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.