

MOTOR ACCIDENT INSURANCE AMENDMENT BILL 2000

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Bill

The objective of the Bill is:

To introduce amendments to the *Motor Accident Insurance Act 1994*, recommended by the Committee of Review of the Queensland Compulsory Third Party Insurance Scheme, and designed to ensure the ongoing affordability and stability of the scheme.

Reason for the Bill

In April 1999 in an environment of rising Compulsory Third Party (CTP) premiums the Government commissioned a review of the CTP scheme examining the fundamentals of the scheme including design, affordability and the role of government. A review of the *Motor Accident Insurance Act 1994* in terms of the National Competition Policy Agreement was also undertaken.

The main findings of the Committee were that, while there were emerging pressures and issues which need to be addressed, the scheme had performed reasonably well, being able to retain full common law rights within a generally affordable set of premiums. However, premium increases in the past three years had placed pressures on affordability. Key recommendations in the report and the resultant proposed amendments relate to strategies designed to ensure the affordability, efficiency and stability of the scheme into the future.

Achievement of Objective

The objective of the Bill is achieved by introducing:

- an affordability index that in circumstances of premiums exceeding the level will trigger scheme redesign or benefit restriction;
- facilitating a premium filing system which allows greater premium and product competition between insurers, within floors and ceilings set by the Motor Accident Insurance Commission;
- a new claims process that should ensure the early provision of rehabilitation and expedited negotiated claims settlements;
- abolishing the legal costs indemnity rule for claims under \$30,000 in total damages and introducing capped legal cost recovery for claims between \$30,000 and \$50,000; and
- an upper limit for recovery of economic loss, thresholds for payment of loss of personal comfort/loss of employee's services, and introduction of a code governing gratuitous care claims.

Alternative Ways of Achieving the Policy Objectives

Alternative methods of assuring the long term affordability and stability of the scheme were extensively canvassed by the Committee in the preparation of the Report.

The affordability index proposal provides a trigger for modification of the scheme to ensure that premiums remain affordable for the Queensland motor vehicle owner. While there are other mechanisms and indicators which could be used as a trigger this option provides the desired outcome. Alternatives, such as tying increases in premium to movements in CPI, ignore the basis of premium setting where the premium pool required is determined by the anticipated number of claims and the cost of settling those claims. These elements are more likely to be affected by the litigiousness of the community and Court precedents in relation to damages, than any relationship with CPI.

The premium filing system proposals introduce controlled premium competition between insurers aimed at reducing premium costs. Some alternatives to the premium filing model include the retention of the current system where premium is fixed by regulation; the fixing of premiums

which are below the fully-funded level; or a fully deregulated premium setting process. The first option has National Competition Policy Agreement implications and keeps the process as a political process. The second option could result in the withdrawal of scheme underwriters and the third option has the disadvantage that it could create scheme instability, with unrestricted rating practices likely to impact on young drivers and those from lower socio-economic areas.

Proposed amendments including the abolition of the cost indemnity rule on smaller claims; restricted legal cost recovery for moderate sized claims; caps on economic loss and loss of consortium/servitium; and introduction of a code for gratuitous care payments are aimed at reducing scheme costs, particularly in relation to smaller claims. An alternative method of reducing the cost of small claims is to introduce caps and thresholds on damages. This method would raise concerns from legal practitioners and claimants and is not favoured at this time.

Estimated Cost for Government Implementation

The CTP scheme is funded by way of premiums paid by registered motor vehicle owners and this Bill will not result in any implementation costs to Government. Systems development work to be undertaken and ongoing higher costs of delivery incurred by Queensland Transport will be met respectively by the Motor Accident Insurance Fund and the administration fee paid as a component of the CTP premium charge.

Consistency with Fundamental Legislative Principles

There are Fundamental Legislative Principle issues arising from:

- the proposed abolition of the costs indemnity rule for smaller claims with total damages of less than \$30,000 and the capping of legal cost recovery for claims between \$30,000 and \$50,000;
- the introduction of the cap on economic loss claims;
- the thresholds on loss of consortium/servitium claims; and
- the code for gratuitous care claims;

will limit individual rights in relation to claims under the CTP scheme. The amendments are aimed at ensuring an appropriate balance between benefits and the cost of premiums and preserving adequate compensation to the moderately and seriously injured, rather than those with relatively minor injuries.

In order to ensure that the above limitations apply equally, irrespective of the jurisdiction in which the action is brought for an accident in Queensland, the new s57A imposes on the Court the requirement to regard any limits on liability as substantive law. The provision also gives the insurer the right of recovery from the claimant if the claimant obtained an amount greater than his/her entitlement. This aspect is designed to address any possible award given in an overseas jurisdiction eg USA. Overall the provision does not limit indemnity under the policy to the insured thereby, ensuring cover is comprehensive.

Under the existing legislation the Government sets the CTP premium by making a regulation. The proposed amendments in relation to the premium setting process will remove a current power from the Government. This has the objective of allowing insurers to set the price of the product, depoliticising the premium setting process and addressing National Competition Policy Agreement requirements. In recognition that third party insurance is compulsory and therefore the premium should be adequate to pay the claims of injured parties whilst not allowing excess profits to insurers, the Motor Accident Insurance Commission is to set the floor and ceiling ranges within which the insurers must file. This is a refinement of the New South Wales scheme where the regulatory authority in that State has the power to approve or disapprove of rates filed by insurers. Suggestions that Government should regulate the premium range for the purpose of scrutiny would not advance the depoliticisation process. Before approving these premium ranges the Commission will have gone through a rigorous process in which stakeholders are consulted, and independent actuarial advice and the input of an Advisory Committee on premiums are considered. Aspects to be considered by the Motor Accident Insurance Commission in setting the premium ranges will be specified in legislation. Parliament will retain overall control of the ceiling premium through the operation of the affordability index.

Under existing legislation, insurers are required to provide specified claims data to the Commission. This data is essential to the management of the scheme, particularly in relation to premium setting, accident prevention and the detection of fraudulent claims. The quality of data was a matter closely considered by the Committee of Review and the Committee found data quality was not of an acceptable standard. To enhance the quality of the data the new provision s88A gives authority to the Motor Accident Insurance Commission to enter an insurer's premises during business hours for the purpose of rectifying claims coding. The costs associated with the rectification of the data are recoverable from the insurer. While the provision gives broad powers to the Motor Accident Insurance Commission, such powers would only be used in extreme circumstances. The provision allows an alternative course to the imposition of a licence suspension or withdrawal where an insurer fails to provide the required information, and provides a strong incentive for compliance with the data requirements.

The Bill includes a number of new sections related to the investigation and prosecution of fraud within the scheme and extends the time limits for commencement of proceedings for fraud to within 2 years of the commission of the offence or within 6 months after the commission of the offence becomes known to the complainant. The provision reflects experience with long tail insurance in which fraud may lie undiscovered for several years. Similar provisions, albeit with a limitation of one year, apply within the WorkCover legislation.

Although the proposed legislation will infringe Fundamental Legislative Principles, as described above, the infringement is outweighed by the overall public benefit.

Consultation

In formulating the proposed Bill community consultation was undertaken with the Insurance Council of Australia, the scheme's licensed insurers, Motor Trades Association of Queensland, Queensland Trucking Association, Royal Automobile Club of Queensland, Australian Plaintiff Lawyers Association, Queensland Law Society, and the Bar Association.

NOTES ON PROVISIONS

Clause 1—Short title

This is a formal provision that states that the Act will be referred to as the *Motor Accident Insurance Amendment Act 2000*.

Clause 2—Commencement

The provisions commence on 1 October 2000, with the exception of sections 55A, 55C, 108, 109 and 110 and division 6A of part 4 which commence on 1 July 2000. These provisions relate to matters where a delay in implementation could be detrimental to the scheme, and to transitional matters.

Clause 3—Act amended

This clause identifies the *Motor Accident Insurance Act 1994* as the legislation to be amended.

Clause 4—Amendment of s3 (Objects)

This clause extends the objects of the Act to include a basis of assessing the affordability of CTP insurance to the average motorist. There is an affordability index and when it is exceeded, the action to be taken is prescribed in the proposed section 15.

Clause 5—Amendment of s4 (Definitions)

The clause amends definitions and also adds new definitions.

Clause 6—Insertion of new s4A

This clause takes account of new Commonwealth legislation and clarifies that an insurer's premium, a fee or costs must include GST.

Clause 7—Amendment of s5 (Application of this Act)

This clause amends s5(3)(a) to include “tractor”, which rectifies an unintentional omission from the 1994 Act.

Clause 8—Amendment of s10 (Commission’s functions)

This clause alters and extends the Commission’s functions in relation to its role in regulating the scheme. The amendments authorise the Commission to:

- fix a premium range for the introduction of the vehicle class filing premium model.
- recommend to government the levies and administration fee payable.
- establish and maintain a call centre which offers advice to the public.
- monitor the proportion of funds which are paid to claimants in relation to other costs against the scheme, for example legal costs and insurer expense allowances.

Clause 9—Replacement of s11 (Advisory committee)

This clause authorises the Commission to establish more than one advisory committee at any time to assist the Commission in the various facets of its business. The terms of reference are decided by the Commission with the approval of the Minister. The appointees and the terms of their appointment are also subject to ministerial approval.

Clause 10—Replacement of pt 2, div 3

This clause renames division 3 “Insurance premiums” to better reflect the contents of the division and omits and replaces all sections of the Act dealing with the setting of premiums.

The clause details the components of a premium including the levies and administration fee. It provides the mechanism by which the Commission determines the premium range (floors and ceilings) for each vehicle class, with particular emphasis on assessed financial soundness of the scheme. It also provides the process by which licensed insurers are notified of the requirements to file their premiums for an assessment period.

The clause further specifies the time limit within which the Commission must make recommendations in respect of the levies and the administration fee. It also makes allowance for the Commission to recommend an increase in the Nominal Defendant levy at any time where there has been an increase in the liabilities of the Nominal Defendant. The new section 14A prescribes that the levies and administration fee are fixed by regulation. It fixes a time limit for making the regulation and specifies when the regulation comes into force. It also makes provision for the commencement of a regulation where the time limit for making the regulation is exceeded.

The clause also provides an affordability index as a trigger for the Commission to make recommendations to the Minister in respect of the scheme and requires the Minister to table the recommendations in the Parliament. It is essential however that the premium fixed, regardless of the affordability index, is financially sound ensuring continuing viability of the scheme pending any review and possible scheme changes.

Clause 11—Amendment of s20A (Temporary gratuitous insurance)

Mechanical amendment to reflect current Queensland Transport legislation.

Clause 12—Replacement of s21 (Selection of insurer)

This clause is aimed at easing the requirements for a change of insurer, such as being able to request the change by telephone. It allows the registered operator at any time during the term of the registration to nominate a preference for another licensed insurer to underwrite the CTP policy of insurance on the vehicle. The nomination cannot however take effect until the next renewal, nor can it take effect if the ownership has changed or a subsequent nomination has been made.

The clause also deals with the potential situation of incorrect payments being received by Queensland Transport in an environment of marketing activity by insurers and given the range of premiums in each class which will exist under the vehicle class filing regime. The manner in which the payment is to be handled is specified wherein registration fees, the administration fee and levies are paid in full and the balance paid to the insurer. The clause allows the Commission to set tolerances for shortfalls in payments but the insurer is entitled to recover any shortfall as a debt.

Clause 13—Amendment of s23 (Statutory policy of insurance)

This clause provides, in circumstances of non payment or late payment of a premium, that the insurer nominated in Queensland Transport’s record at the due date for renewal is the insurer liable for the 30 day grace period. The clause also provides that a nomination of change of insurer prior to the due date and prior to payment is negated if there is a transfer of registration of the vehicle.

When the registration of a motor vehicle is paid late and also outside of the period of grace, there is a period in which the motor vehicle is uninsured, ie. from the end of the period of grace to the time of payment. Although transport administration may accept a late payment, and backdate the renewal, the insurer is only on risk for the period of grace and recommencing from the date and time of payment.

Clause 14—Amendment of s25 (Motor vehicle must be insured under correct class)

This clause increases the penalty for knowingly insuring a vehicle in the wrong class and extends liability to a person who drives a motor vehicle, or permits a motor vehicle to be driven on a road or in a public place, knowing the vehicle to be incorrectly insured.

Clause 15—Replacement of pt 3, div 3

This clause renames division 3 “Disbursements of gross insurance premiums” to better reflect the contents of the division. Section 27 is replaced and a new section is added to establish the mechanism for the disbursement of insurers’ premiums and scheme levies and administration fee in the two situations, where transport administration receives the premiums and where the insurers receive the premiums.

Clause 16—Amendment of s30 (Transfer of CTP business)

This clause addresses an anomaly in the legislation which unintentionally precluded the withdrawal of a licence where the insurer had ceased to write business but has not transferred its entire CTP business. The clause amends s30(4) to now include the partial transfer of a licensed insurer’s business as an adequate reason for withdrawing the licence.

Clause 17—Amendment of s31 (Principles for determining the insurer)

Under the Queensland scheme, like NSW and Victoria, separate CTP insurance is not provided on trailers. Rather, the indemnity for liability for the trailer is provided on the insurance policy of the hauling vehicle. This situation gives rise to gaps in cover when the trailer is coupled with a vehicle from a state where cover is not provided on the insurance policy of the hauling vehicle.

On the introduction of the legislation in 1994 the gaps in cover were part way addressed by having the Nominal Defendant provide gratuitous cover for any accidents in Queensland where cover was not provided under a policy of insurance. This was broad cover and was not in fact limited to trailers registered in Queensland. A level of exposure still remained where a Queensland registered trailer was taken interstate and not covered by a policy of insurance on the hauling vehicle. This clause now remedies the position by:

- providing Australia-wide cover through the Nominal Defendant for Queensland registered trailers with gross vehicle mass not greater than 4.5 tonnes; and
- removing gratuitous insurance through the Nominal Defendant for unregistered trailers or trailers registered in another state or territory.

The regulation will provide for optional insurance for the heavy trailers (greater than 4.5 tonne GVM) on the same premium rate as trailers registered under the Federal Interstate Registration Scheme.

Clause 18—Replacement of s34 (Duty to notify accidents)

The existing section 34 notification requirements have been superseded by the new section 37 requirements. Section 34 now stipulates that an accident must be reported to Police. There is an obligation under the *Transport Operations (Road Use Management—Road Rules) Regulation 1999* on the owner and driver to report an accident to Police where personal injury has been sustained. If such a report has not been made the claimant could request the owner or driver to make a report or alternatively, in terms of the provision, make a report to Police. This clause will assist in the early resolution of claims through the timely investigation of accidents. Further it could be a factor in minimising fraudulent claims.

Clause 19—Replacement of s37 (Notice to be given by claimant)

This clause replaces the existing requirements for a notice under section 37 and provides for the adoption of a simpler notice of accident claim form which contains an appropriate level of information relating to the injury and the accident. The form (Notice of Accident Claim Form) allows the insurer to make a determination on liability and consider an early start to rehabilitation. The time limits from date of accident or first appearance of symptoms to lodgement of the claim notice with the insurer remain unchanged. The requirement is modified however in circumstances where the claimant has consulted a lawyer about the possibility of making a claim and in these cases the notice must be given to the insurer within one month of the consultation. This timeframe aligns with the early notice provision that existed under the former section 34. If an unidentified vehicle is involved the timeframe for a notice to the Nominal Defendant remains unchanged at 3 months.

Subsections (3) and (4) reflect the current subsection (4) and (5), with minor alterations relating to the reason for the delay.

The clause also inserts a new s37A which allows an insurer to seek additional information, in a form approved by the Commission, from a claimant in relation to the claim and the circumstances out of which the claim arose. The claimant must complete and return the form to the insurer within whichever is the later of :

- one month of the request; or
- within nine months of the accident or first appearance of symptoms (for claims against the Nominal Defendant involving unidentified vehicles—3 months of the date of accident).

Clause 20—Amendment of s39 (Response to notice of claim)

The amendment introduced by this clause shortens the timeframe for the insurer to respond to a notice under s37. If an insurer fails to respond to the notice in terms of the subsection then the notice is to be presumed to have been satisfactorily given. The insurer's response must also contain advice that the insurer either will or will not meet the claimant's rehabilitation expenses. Such agreement is not to be taken as an admission of liability, but is designed to expedite the provision of rehabilitation services.

Subsections (5) and (6) require the provision of a notice of accident claim form as a pre-requisite to the claim proceeding. A court may however, on the claimant's application decide that the claimant has remedied any non-compliance. A court may give leave to proceed despite the non-compliance, but orders made should consider conditions which minimise the prejudice which arises from the non-compliance.

Clause 21—Amendment of s41 (Insurer must attempt to resolve claim)

The current provision of the legislation refers to liability, “in whole or in part” with the use of such words coming under judicial criticism. This clause now uses the more appropriate term, “contributory negligence”. The existing subsection (7) is deleted because of the new claim management provisions relating to mandatory final offers and costs.

Clause 22—Amendment of s42 (Payment of medical expenses etc.)

This clause now uses the more appropriate term, “contributory negligence”.

Clause 23—Amendment of s45 (Duty of claimant to cooperate with insurer)

The existing division places greater onus on the insurer to provide the claimant with copies of medical reports and other documentary material than the onus that applies to the claimant to supply information to the insurer. The amendment now applies the same standard for the exchange of information to both insurer and claimant. Subsections (4),(5) & (6) on medical examinations have been replaced by the new s45A.

Clause 24—Insertion of new s 45A (Panels of recognised medical experts)

As part of the framework to facilitate joint medico-legal reports this clause provides a mechanism by which the Commission may establish and review panels of medical experts. The clause also stipulates that in establishing panels, the Commission must consult with professional bodies.

Clause 25—Amendment of s46 (Claimant and insurer may jointly arrange for expert report)

This clause omits s46(5) because the cost of obtaining the expert report by agreement is now in the new s46B.

Clause 26—Insertion of new ss46A and 46B

This clause reflects the current section 45(4) (5) and (6) which enable the insurer to request the claimant to undergo medical examinations. The new provisions cover situations where reports are obtained by agreement and situations in the absence of agreement. The cost of the report is the insurer's expense.

This clause also provides for the claimant to be reimbursed by the insurer for the cost of a report obtained by agreement. However, this provision allows for the claimant and insurer to enter into an agreement on the reimbursement of the cost as well as the insurer to recover the cost of reimbursement, if an entitlement exists under the costs rules.

Clause 27—Replacement of s50 (Court's power to enforce compliance with Division)

The clause introduces a new division heading and also extends the court's power which previously covered only division 4. The change emphasises the importance within the claim process of the observance by both the claimant and insurer of the requirements of divisions 2 and 3.

Clause 28—Amendment of s51 (Obligation to provide rehabilitation services)

The proposed amendment introduced by this clause will make two fundamental changes to the existing arrangement. These are:

- a requirement for the insurer, if it wishes to recover any costs incurred in the rehabilitation of the claimant, to give a written notice stating how the cost of rehabilitation is to be taken into account in assessment of damages. A typical example would be where there is some contributory negligence. If a notice is not given, other than in the case of fraud, the insurer is not entitled to seek any recovery of costs; and

- the introduction of a mediation process as an alternative option to court applications, as a means of resolving disputes over the provision of rehabilitation. However, the claimant's right of recourse to the court remains.

Clause 29—Insertion of new pt 4, div 5A

The clause introduces a new division heading and provisions dealing with compulsory conferences. To assist in the early resolution of claims, particularly minor claims, it provides the claimant and insurer with a chance to meaningfully negotiate at a conference. However by agreement of the parties, or an application to the court, the conference may be dispensed with or postponed.

The clause also provides the mechanisms for the conduct of a conference.

If both parties agree, the conference may be held with a mediator. The procedure requires an exchange of documents between the parties 7 days prior to the conference, and the attendance of participants who are authorised to settle the claim. If the claimant is legally represented, a certificate of readiness has to be provided. The conference may be conducted by telephone, closed-circuit television or other suitable medium as agreed and a conference may be adjourned as agreed.

A certificate of readiness incorporates a costs statement which provides the claimant with details of incurred legal costs and an estimate of possible future legal costs.

In addition the clause prescribes the procedures to be followed if the conference cannot settle the claim, including the exchange of mandatory final offers. Cost penalties are provided which will not only encourage meaningful negotiation and early settlement when possible, but also will reduce the incidence of frivolous settlement offers.

The compulsory conference is a pre-requisite to bringing an action in a court and time limits apply to bringing the action.

However if there is no action by the claimant within the required time, the insurer can apply to the court for an order to have a time limit fixed in which the claimant must commence an action. If the claimant fails to start an action within the time fixed by the court, the claim is barred.

Clause 30—Insertion of new s52B (Exclusion of summary judgment on the basis of admissions)

This clause provides that a summary judgement is not to be given on the basis of the defendant's admissions. However, judgment by consent can be given.

Clause 31—Amendment of s55 (Awards for exemplary damages)

The current legislation excludes awards for exemplary or punitive damages and this clause extends the exclusion to the similar type of award of aggravated damages.

Clause 32—Insertion of new ss55A to 55F

The clause introduces the new provisions which:

- require the assessment of damages for loss of earnings or loss of earning capacity, to be limited to a weekly amount not exceeding 3 times average weekly earnings (as defined) (s55A).
- require damages for future loss to be discounted at a rate of 5% (s55B).
- establishes a threshold for eligibility for damages in respect of loss of consortium and loss of servitium and limits compensation to a weekly amount not exceeding 3 times average weekly earnings (as defined) (s55C).
- establishes a code for eligibility for damages for the payment of gratuitous care (s55D).
- aligns the calculation of interest payment for past losses to the Treasury Bond rate for 10 year investments. This will ensure the interest is appropriate for the economic conditions at the time of settlement (s55E).
- for smaller claims, limits apply to the recoverable legal costs. Where damages are \$30,000 or less, no legal costs are recoverable and, if greater than \$30,000 but not greater than \$50,000, the claimant has a maximum entitlement under the claim for legal fees of \$2,500. However, if the matter proceeds to trial,

costs subsequent to the issue of proceedings are recoverable in situations where judgements are more favourable than mandatory final offers made at the compulsory conference.

The provision also gives scope to the court to award costs in situations such as:

- introduction of evidence which should have been obtained prior to the making of mandatory final offers;
- repetitious evidence; and
- where there is a material change in the evidence or the claim which was not reasonably foreseeable by the party at the time of making the mandatory final offers (s55F).

Clause 33—Amendment of s57 (Alteration of period of limitation)

This clause is amended to allow for the 6 month period to be extended by the court. This alleviates an anxiety that some of the legal profession have concerning the effect of the current provision

Clause 34—Insertion of new pt 4, div 6A

Irrespective of the jurisdiction in which the action is brought for an accident in Queensland, this clause imposes on the Court the requirement to regard any limits on liability as substantive law. The provision also gives the insurer the right of recovery from the claimant if the claimant actually obtained an amount greater than his/her entitlement. The provision does not affect indemnity provided to an insured.

Clause 35—Amendment of s58 (Insurer's rights of recourse)

This clause amends the provision to make the blood alcohol level measurement in this Act consistent with the relevant measurement in the *Transport Operations (Road Use Management) Act 1995*. The clause also extends an insurer's right of recovery in circumstances where the insured person is affected by a non-medicinal drug or a combination of such a drug and alcohol. However, any recovery is subject to the insurer establishing the degree to which the alcohol or drug contributed to the accident.

Clause 36—Insertion of new s60A (Access to information etc.)

The Nominal Defendant Fund meets the cost of claims emanating from uninsured motor vehicles and has recovery rights against the uninsured owner and driver. This clause will provide the Nominal Defendant with the authority to access information from State and local government departments, agencies or instrumentalities, to facilitate the recovery of debts.

Clause 37—Amendment of s62 (Application for licence)

Subsection (7) is deleted. With the change of scheme design in a more deregulated market, the 5 year embargo on re-entering the scheme is no longer seen as appropriate.

Clause 38—Amendment of s64 (Conditions of licence)

Subsection (3) is deleted. With the intention to remove the minimum market share requirement contained in the regulation the example in the subsection is inappropriate.

Clause 39—Amendment of s67 (Effect of withdrawal or suspension on existing liabilities etc)

The clause amends s67 (5) so that in cases of the transfer of business, the provision still applies to insurers who have partially transferred their business.

Clause 40—Insertion of new pt 5A (Enforcement)

The clause introduces a new part strengthening the Commission's powers to combat fraud in the scheme. The clause:

- outlines the requirements of the Commission in the appointment of an authorised person. Persons who are subject to the supervision and control of transport administration, and in that capacity have some of the functions of an authorised person under this provision, are not regarded as an authorised person unless appointed as such by the Commission (s87A);

- specifies that authorised persons are able to conduct investigations and monitor compliance. It also specifies that an authorised person must act under the Commission's directions in exercising their powers (S87B);
- stipulates an authorised person's appointment conditions are stated in the instrument of appointment. It also specifies how an authorised person ceases to hold the appointment (s87C);
- requires an authorised person to have an identity card in the form prescribed and the identity card must be signed by the Insurance Commissioner. A person who ceases to be an authorised person has seven days to return their identity card. Seven days is a reasonable time frame for the return of cards and minimises the potential for identity cards to be in the possession of non-authorised officers (s87D);
- requires an authorised person to display or, if impracticable to display, to produce their identity card before exercising their powers (s87E);
- protects an authorised person from civil liability in the proper exercise of their power. Compensation could still be claimed from the Commission under s87N (s87F);
- allows an authorised person to require information relating to the Commission's operations from a person reasonably suspected of having the information. The provision also recognises that a person has the right not to give information requested under this provision if the person has a reasonable excuse, ie. if the giving of information or producing of documents would tend to incriminate the person (s87G);
- allows an authorised person to apply to a magistrate for a warrant for entry into a place. The provision gives guidelines to the magistrate in considering the application and if a warrant is to be issued, and prescribes the content of the warrant (s87H);
- provides grounds for a Magistrate to issue a warrant and stipulates what the warrant must state (s87I);

- allows an authorised person in urgent or special circumstances, to apply for warrants other than in person, ie by telephone, fax, radio or other form of communication, and prescribes the procedure (s87J);
- stipulates what an authorised person, named in the warrant, must reasonably attempt to do if it is intended to enter a place (s87K);
- allows an authorised person, who enters a place with a warrant to seize evidence (s87L);
- requires an authorised person to provide a receipt to the person from whom evidence has been seized (s87M);
- requires an authorised person to allow the owner of a seized item access to inspect or make copies of the thing (s87N);
- requires the authorised person to return a seized thing to its owner at the end of six months or at the end of the prosecution and any appeal from the prosecution (s87O);
- allows a person to claim compensation from the Commission for any loss or expense incurred due to the exercise of power by an authorised person (s87P);
- allows the Commission to recover administrative costs incurred in investigating and preparing for the prosecution of offences in the case of a conviction (s87Q);
- specifies that a person must not obstruct without reasonable excuse an authorised person in the exercise of a power (s87R);
- specifies that a person must not pretend to be an authorised person (s87S);
- imposes a severe penalty including possible imprisonment for a person who defrauds or attempts to defraud the Commission, the Nominal Defendant or an insurer. It also outlines the provision for dealing with recurrent offences in a complaint (s87T);
- states that it is an offence to provide false or misleading information or statements and imposes a severe penalty for a contravention (s87U);

- prescribes information, such as a person's criminal history and any brief of evidence, that may be given by the Commissioner of Police to the Commission. The information provided must not be used for any purpose other than an investigation or prosecution under the Act. For this provision, *the Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply (s87V);
- provides for a proceeding in a summary way before a magistrate. The time limit for taking proceedings is extended to provide for the commencement of proceedings up to 2 years after the commission of the offence or within 6 months of the offence becoming known to the complainant (s87W);
- prescribes the matters that may be certified by the Commission and transport administration and such certificate in the absence of evidence to the contrary, is admissible in a court (s87X).

Clause 41—Amendment of s88 (Information to be provided by licensed insurers)

The clause makes a minor amendment to reflect electronic transmissions of data.

Clause 42—Insertion of new s88A (Commission's power to intervene to establish information processing systems)

This clause gives the Commission the power to ensure that the Commission receives claims data required under s88, through compatible data transmission systems. Where an insurer fails to comply within a time limit stipulated by the Commission, the clause authorises the Commission to enter insurer's business premises during business hours and to engage contractors to rectify any problems with claims coding or data transmission, at the potential cost of the insurer. Where the court convicts an insurer of an offence under the section it may order the withdrawal of a licence.

Clause 43—Omission of s93 (False statements etc.)

This clause omits the section dealing with false and misleading statements which are now addressed in the proposed s87.

Clause 44—Omission of s96 (Restriction on commission)

The aspect of commissions was closely examined in the National Competition Policy review. With the change in scheme fundamentals to provide for market driven premiums, the omission of s96 allows insurers to determine the level of commissions paid in accordance with their individual marketing strategies.

Clause 45—Replacement of s97 (CTP premiums not to be discounted)

The changes in the scheme allow for different premiums between insurers and the class of motor vehicle but it does not allow for individual rating, a practice considered not in the overall interest of the community with particular disadvantages for young drivers or those living in lower socio-economic areas. A potential for premium discounting to be used as a means to introduce individual rating needs to be prohibited. The clause amends the section but essentially retains the features of the existing provision.

Clause 46—Omission of s98 (Certain prosecutions require authorisation)

This clause omits the section dealing with certain prosecutions which are now addressed in the proposed s87.

Clause 47—Replacement of s101 (Review of Act)

With the introduction of the affordability index the scheme is subject to ongoing review and this clause provides for a further statutory review of the scheme when appropriate and directs the Minister to instigate the required review. The Minister must have the outcome of any review tabled in the Parliament.

Clause 48—Insertion of new pt 7, div 3

This clause introduces a new heading and division, and covers the transitional arrangements for this amendment legislation. It provides for:

- the amendments to apply to claims arising from accidents on or after the commencement of the amendments;

- the policy of insurance, irrespective of when it comes into force, to be subject to the relevant amendments;
- the periods 1 July 2000 to 30 September 2000 and 1 October 2000 to 30 June 2001 as separate financial years, necessary to cover the situation of new levies and administration fee being set from 1 October 2000;
- work undertaken by the Commission in readiness for the new scheme to have been validly done.

Clause 49—Amendment of schedule (Policy of insurance)

The intention of the legislation has been to exclude liability of an employer for worker's compensation. The clause strengthens the exclusions under the policy of insurance to specifically exclude a failure of an employer to provide a safe system of work. The clause also incorporates the amendment introduced by clause 30, in relation to aggravated damages, and excludes liability relating to a series of incidents.