

**NORTHERN TERRITORY OF AUSTRALIA**

**MOTOR ACCIDENTS (COMPENSATION) ACT**

As in force at 18 November 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 18 November 2010

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## MOTOR ACCIDENTS (COMPENSATION) ACT

**An Act to establish a no fault compensation scheme in respect of death or injury in or as a result of motor vehicle accidents, to prescribe the rates of benefits to be paid under the scheme, to abolish certain common law rights in relation to motor vehicle accidents, and for related purposes**

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Motor Accidents (Compensation) Act*.

#### 2 Commencement

This Act shall come into operation on 1 July 1979.

#### 3 Act binds the Crown

This Act binds the Crown.

#### 4 Definitions

In this Act:

***approved form*** means a form approved by the Office in writing.

***attendant care services***, see section 4D.

***average weekly earnings***, for a particular calendar year, means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory last published by the Australian Statistician before the commencement of the relevant calendar year.

***child***, of a person (the ***parent***), includes:

- (a) an unborn child; or
- (b) a person in relation to whom the parent stands or stood in loco parentis.

**claim**, for Part 6, see section 26.

**claimant**, for Part 6, see section 26.

**dependent child** – a child of a person (the **parent**) is a dependent child if:

- (a) the child:
  - (i) has not attained the age of 16 years; or
  - (ii) has not attained the age of 21 years and is a full-time student or physically or mentally handicapped; and
- (b) the child is not the spouse of another person; and
- (c) the child is dependent on the parent for financial support or, in the case of an unborn child, there is a reasonable expectation that the child will be dependent on the parent for financial support.

**dependent parent**, in relation to a person, includes an adoptive parent, a stepfather, a stepmother, a grandfather, a grandmother and a parent of the spouse of the person who, at the time of the accident, is primarily dependent on the person for financial support.

**designated person**, means the person holding or occupying the office of designated person mentioned in section 27.

**eligible person** means a person who is entitled to statutory benefits.

**(indexed)** indicates that the sum of money to which it relates increases or decreases on 1 January of each year in proportion to the increase or decrease of average weekly earnings for the relevant year.

**jurisdiction** means the Commonwealth, a State or Territory.

**licence** means a licence, permit or other authority to drive a motor vehicle under the law of the Territory or another jurisdiction (and includes an exemption granted by the Registrar of Motor Vehicles under the *Motor Vehicles Act* from the obligation to hold a licence, permit or other authority to drive a motor vehicle).

**medical and rehabilitation services**, see section 18(2).

**medical practitioner** means a person registered, and practising, as a medical practitioner in Australia.

**motor accident**, see section 4A.

**motor vehicle** means a vehicle designed to be self-propelled and includes a trailer when attached to such a vehicle but does not include:

- (a) a vehicle that runs on rails; or
- (b) a motorised wheelchair that is not capable of travelling at a speed greater than 10 km/h; or
- (c) a cycle powered by an engine with a power output not exceeding 200 watts.

**nurse** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student).

**nursing care** means care provided by a nurse other than as a member of the nursing staff at a hospital or other institution.

**Office** means the Territory Insurance Office established by the *Territory Insurance Office Act*.

**original decision**, for Part 6, see section 28A(1).

**permanent impairment**, see section 4C.

**prescribed discount rate** means:

- (a) the discount rate fixed by regulation; or
- (b) if the discount rate is not fixed by regulation – 6%.

**public place**, see the *Motor Vehicles Act*.

**public street**, see the *Motor Vehicles Act*.

**resident of the Territory**, see section 4B.

**review decision**, for Part 6, see section 28B(1)(c).

**spouse**, in relation to a person, means:

- (a) a spouse of the person who, at the relevant time, was living with the person on a bona fide domestic basis; or
- (b) a spouse of the person who, at the relevant time, was not living with the person on a bona fide domestic basis but, in the opinion of the Office, was wholly or substantially dependent upon the person at that time; or

- (c) a de facto partner of the person who had been the person's de facto partner for a continuous period of at least 2 years immediately preceding that time; or
- (d) a de facto partner of the person who had not been the person's de facto partner for a continuous period of at least 2 years immediately preceding the relevant time but who, in the opinion of the Office, was wholly or substantially dependent upon the person at that time; or
- (e) if the person is an Aboriginal or Torres Strait Islander:
  - (i) a person referred to in paragraphs (a), (b) or (c); or
  - (ii) an Aboriginal or Torres Strait Islander to whom the person is married according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which either person identifies.

**statutory benefits** means compensation or other benefits payable under this Act.

**Territory motor vehicle** means a motor vehicle currently registered under the *Motor Vehicles Act* and includes a motor vehicle currently registered under the *Interstate Road Transport Act 1985* (Cth) where the vehicle was last registered (or re-registered) in the Territory.

**Tribunal** means the Motor Accidents (Compensation) Appeal Tribunal established by section 28.

**unregistered** – a motor vehicle is to be regarded as unregistered if:

- (a) it is neither registered under the *Motor Vehicles Act* nor the corresponding law of another jurisdiction and is not deemed to be registered for the purposes of the *Traffic Act*; or
- (b) it is deemed to be unregistered for the purposes of the *Traffic Act*;

(but a motor vehicle exempted from registration by the Registrar of Motor Vehicles under the *Motor Vehicles Act* is not to be regarded as unregistered while the exemption remains in force).

**workers compensation legislation** means the *Workers Rehabilitation and Compensation Act* or the corresponding legislation of another jurisdiction.



**4A Motor accidents**

- (1) A motor accident is an occurrence:
  - (a) caused by or arising out of the use of a motor vehicle; and
  - (b) resulting in the death of, or injury to, a person.
- (2) A motor accident is caused by or arises out of the use of a motor vehicle if, and only if, it results directly from:
  - (a) the driving of the motor vehicle; or
  - (b) the motor vehicle moving out of control; or
  - (c) a collision, or action to avoid a collision, with the motor vehicle (whether the motor vehicle is stationary or moving).
- (3) If a person renders assistance, or attempts to render assistance, at the scene of a motor accident and, as a result of doing so, dies or is injured, the accident is taken to have resulted in the death or injury.

**4B Residents of the Territory**

- (1) A person is, at the time of a motor accident, a resident of the Territory if the person has resided in the Territory for a continuous period of at least 3 months.
- (2) However:
  - (a) a person who is, at the relevant time, not living in the Territory is not to be regarded as then being a resident of the Territory if, at that time:
    - (i) the person has been living outside the Territory for a continuous period of 6 months or more; and
    - (ii) the person's primary dwelling house or primary employment is not in the Territory; and
  - (b) a person who has left the Territory with the intention of no longer residing in the Territory is not to be regarded as a resident of the Territory.

**4C Permanent impairment**

- (1) The question whether an impairment or combination of impairments is permanent and, if so, the extent of the permanent impairment is to be determined by the Office.

- (2) The determination is to be made:
  - (a) in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment as published from time to time; and
  - (b) on the advice of a medical practitioner.
- (3) The extent of a permanent impairment is to be expressed as a percentage of the whole person in accordance with the relevant Guides.
- (4) An impairment is not considered to be a permanent impairment unless the extent of the impairment as assessed in accordance with this section is at least 5%.

#### **4D Attendant care services**

- (1) Attendant care services are personal and household services reasonably required by an injured person as a result of the injury.
- (2) However, attendant care services do not include:
  - (a) medical and rehabilitation services; or
  - (b) nursing care; or
  - (c) services provided in, or provided while the injured person is in, a hospital, nursing home or other institution for the treatment, rehabilitation or care of injured persons.
- (3) In this section:

**household services** means services of a domestic nature (including cooking, house cleaning, laundry, and gardening) for running and maintaining the injured person's household.

**personal services** means services for the essential and regular personal care of the injured person.

#### **4E Application of Part IIAA of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4E*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2                    Liability**

### **5                    Abolition of common law rights**

- (1) An action for damages does not lie (either at common law or by statute) for the death of, or injury to, a person arising from a motor accident that occurs in the Territory.
- (2) It is the Legislative Assembly's intention:
  - (a) that this section should apply within and outside the Territory; and
  - (b) that it should apply outside the Territory to the full extent of the extraterritorial legislative capacity of the Territory.

### **6                    Office to indemnify certain persons**

- (1) Subject to subsections (2) and (3), the Office must indemnify the owner or driver of a Territory motor vehicle for any relevant liability incurred in respect of the death of, or injury to, a person arising from a motor accident caused by, or arising out the use of, the motor vehicle outside the Territory but within Australia.
- (2) The Office is not bound to indemnify a person under subsection (1) where that person is already indemnified under any contract of insurance or under the law applicable in the place where the accident occurred.
- (3) A relevant liability is:
  - (a) a liability for damages (but not for exemplary or punitive damages); or
  - (b) if the death or injury is compensated under a statutory scheme and the owner or driver is liable to the administrator of the statutory scheme – the liability to the administrator of the statutory scheme.
- (4) A person who is entitled to be indemnified under subsection (1) must co-operate with the Office in respect of any action for damages in respect of the accident.
- (5) Without limiting subsection (4), the person must provide any information that the Office may reasonably require and attend to any matter that is reasonably incidental to the defence of any action for damages in respect of the accident.
- (6) If a person fails to comply with obligations under subsection (4) or (5) and the Office incurs expense or suffers other prejudice in

consequence of the failure, the Office may recover compensation from the person for the expense or other prejudice, as a debt, by action in a court of competent jurisdiction.

## **Part 3 Entitlement to benefits**

### **7 Benefits for death or injury resulting from motor accidents**

- (1) Subject to this Act, benefits are payable in accordance with this Act to, or in relation to, a person who suffers personal injury or dies in, or as a result of, a motor accident occurring in the Territory.
- (2) Subject to this Act, benefits are payable to, or in relation to, a resident of the Territory who suffers personal injury or dies in, or as a result of, a motor accident occurring outside the Territory if the accident:
  - (a) occurs in Australia; and
  - (b) is caused by or arises out of the use of a Territory motor vehicle.
- (3) However, a person who is entitled to statutory benefits under subsection (2) may elect to claim damages or compensation under the law of the jurisdiction in which the accident occurred and, if such a claim is made:
  - (a) the claimant must immediately give the Office written notice of the claim; and
  - (b) the claimant's entitlement to statutory benefits ceases; and
  - (c) if statutory benefits have already been paid to, or for the benefit of, the claimant under this Act:
    - (i) the Office is, to the extent of the payment, subrogated to the rights of the claimant on the claim; and
    - (ii) the claimant must reimburse the Office from damages or compensation (if any) awarded on the claim for the amount of the statutory benefits already paid.

### **9 Exclusions from certain benefits**

- (1) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:
  - (a) the accident occurred while the person was driving a motor vehicle; and

- (b) the person was under the influence of alcohol or a drug to such an extent that the person was, by driving a motor vehicle, committing an offence against relevant laws regulating road traffic; and
- (c) the influence of the alcohol or drug contributed, in the Office's opinion, to the accident.

(2) If:

- (a) the concentration of alcohol in the injured person's blood is shown to have been 80 milligrams or more in 100 millilitres of blood within 2 hours of the time of the motor accident; or
- (b) the injured person, having been lawfully required to submit to breath analysis, or to provide a sample of blood, failed to do so;

the Office is to presume that the influence of the alcohol contributed to the accident unless the contrary is established.

(3) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:

- (a) the injured person's conduct contributed, in the Office's opinion, to the accident; and
- (b) the injured person has been found guilty in respect of that conduct (by a court of the Territory or another jurisdiction) of:
  - (i) manslaughter; or
  - (ii) an offence of which an element is an intentional, reckless or criminally negligent act or omission that causes serious harm to, or endangers the life, health or safety of, another or others; or
  - (iii) an offence of which an element is dangerous driving.

(4) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:

- (a) the accident occurred while the injured person was in a motor vehicle; and
- (b) the motor vehicle was engaged in, or in preparations for, a race, competition or trial.

- (5) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:
- (a) the accident occurred while the injured person was engaged in conduct that created a substantial risk of injury to the injured person; and
  - (b) the injured person recklessly ignored the risk.

*Note*

*This subsection applies whether the injured person is the driver, a passenger, a cyclist or pedestrian or involved in the accident in some other way but is not intended to apply to conduct (such as a failure to wear a safety belt or safety helmet) for which other specific provision is made.*

- (6) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:
- (a) the accident occurred while the injured person was driving a motor vehicle; and
  - (b) one of the following applies:
    - (i) the injured person had never held a licence to drive a motor vehicle of the relevant class under a law of the Territory or another jurisdiction;
    - (ii) the injured person had held such a licence but it was, at the time of the accident, under suspension (for reasons other than for the enforcement of a fine or penalty);
    - (iii) the injured person had held such a licence but it had been cancelled;
    - (iv) the injured person had held such a licence but it had lapsed or expired at least 3 months before the date of the motor accident;
    - (v) the injured person held such a licence but was driving the motor vehicle in breach of conditions on which the person was authorised to drive the motor vehicle;

(but if the circumstances in which the vehicle was being driven amounted, in the opinion of the Office, to an emergency, this subsection does not apply).

- (7) A person is not entitled to benefits to which this section applies for an injury suffered in, or as a result of, a motor accident if:
- (a) the motor vehicle was unregistered and had been unregistered (in circumstances in which registration was required) for a period of at least 3 months; and
  - (b) the injured person is the owner or driver of the unregistered motor vehicle and, if the driver, knew or ought to have known that the vehicle was unregistered;
- (but if the circumstances in which the vehicle was being driven amounted, in the opinion of the Office, to an emergency, this subsection does not apply).
- (8) The benefits to which this section applies are:
- (a) compensation for loss of earning capacity; and
  - (b) lump sum compensation for a permanent impairment.

## **10 Exclusion from all benefits**

- (1) No benefits are payable under this Act for a person's injury or death in, or as a result of, a motor accident if the person:
- (a) was, under a law of the Territory or another jurisdiction, criminally responsible for the theft or unlawful use of a motor vehicle involved in the accident (whether or not the person's guilt has been established in criminal proceedings); or
  - (b) was using a motor vehicle involved in the accident for or in connection with the commission of an indictable offence (against a law of the Territory or some other jurisdiction); or
  - (c) was using a motor vehicle involved in the accident to escape from the scene of, or to avoid apprehension or escape detention for, an offence (against a law of the Territory or some other jurisdiction); or
  - (d) was using a motor vehicle involved in the accident intending to inflict death or injury on himself, herself or another.
- (2) No benefits are payable under this Act for a person's injury or death in, or as a result of, a motor accident if the injury or death:
- (a) is compensable under workers compensation legislation; or

- (b) would have been so compensable but for the fact that the person's injury or death:
  - (i) was deliberately self-inflicted; or
  - (ii) is attributable to the person's serious and wilful misconduct.
- (3) If a person is excluded from benefits under this section and also (but to a more limited extent) under some other provision of this Act, the total exclusion from benefits under this section subsumes the more limited exclusion under the other provision.

## **11 Partial exclusion from benefits**

- (1) If a person:
  - (a) is injured or dies in, or as a result of, a motor accident; and
  - (b) was, at the time of the accident, of or above the age of 16 years; and
  - (c) was not wearing a seat belt or safety helmet as required under the *Traffic Act* (or, if the motor accident occurred in another jurisdiction, the corresponding law of the relevant jurisdiction);

any statutory benefits payable to, or in relation to, the person (other than compensation for the cost of medical and rehabilitation services) are reduced by 25% of the amount otherwise payable.

### *Note*

*It should be noted that this provision applies only to an illegal failure to wear a seat belt or a safety helmet. It would not therefore be applicable if the injured person had the benefit of an exemption from the obligation to wear a seat belt or a safety helmet granted under the Motor Vehicles Act.*

- (2) If a person:
  - (a) is injured or dies in or as a result of a motor accident; and
  - (b) is insured under a policy of insurance or entitled to compensation under a compensation scheme (other than a workers compensation scheme);

any statutory benefits payable to, or in relation to, the person are reduced by the amount of the entitlement to insurance or compensation that arises, apart from this Act, in respect of the death or injury.



**12 Rights to benefits to be determined by Office**

- (1) The right of any person to, and the amount of, a benefit under this Act shall be determined by the Office, and regulations under this Act may prescribe the manner in which any such determination is to be made.
- (2) In the exercise of its power to make determinations under subsection (1), the Office may, on the advice of a medical practitioner, determine a treatment plan or a rehabilitation program for an injured person.
- (3) The Office may determine a treatment plan or rehabilitation program for an injured person:
  - (a) on application by the injured person; or
  - (b) on the Office's own initiative (and with or without the agreement of the injured person).
- (4) A treatment plan or rehabilitation program determined under this section:
  - (a) may define and limit the kind and extent of treatment and care (including attendant care services) for which statutory benefits will be paid; and
  - (b) may impose reasonable conditions, to be complied with by the injured person, on which the entitlement to statutory benefits for treatment and care is contingent.
- (5) In order to determine the nature or extent of statutory benefits to which an injured person is entitled, or to determine a treatment plan or rehabilitation program for an injured person, the Office may exercise either or both of the following powers:
  - (a) require the injured person to undergo an examination by a medical practitioner nominated by the Office;
  - (b) require a medical practitioner or other person who has examined or treated the person to provide it with details and results of any such examination or treatment.
- (6) Before the Office imposes a requirement under subsection (5)(b) it must obtain from the injured person a written authorisation (which will be irrevocable) to obtain information of the relevant kind from medical practitioners and other persons who have examined or treated the injured person.

- (7) The Office may suspend the payment of statutory benefits if an injured person fails without reasonable excuse to comply with:
- (a) a requirement under subsection (5); or
  - (b) a request for a written authorisation under subsection (6); or
  - (c) a condition of a treatment plan or rehabilitation program.
- (8) While the payment of statutory benefits is suspended under subsection (7) no right to statutory benefits accrues to the injured person.

## **Part 4                      Payments in respect of injuries**

### **13                      Compensation for loss of earning capacity**

- (1) Compensation for loss of earning capacity is payable under this section if an eligible person's capacity to earn income from personal exertion (either physical or mental) is, in the opinion of the Office, reduced as a result of an injury suffered in, or as a result of, the motor accident.
- (2) Subject to subsections (3), (4) and (5) and section 14, the amount of compensation payable to a person referred to in subsection (1) is to be calculated in accordance with the following:
- (a) the maximum amount payable per week is the amount determined by the Office, for each 6 month period commencing on 1 January or 1 July, to be 85% of the average weekly earnings for all employees' total employment earnings in the Territory based on what, in the opinion of the Office, are the best statistics available to it before 1 January or 1 July (as the case may be), less a notional deduction for income tax;
  - (b) compensation is not payable to the person under subsection (1) for any of the following periods:
    - (i) the day of the accident;
    - (ii) any weekly period that the Office determines the person is capable of working full-time, regardless of the type of work;
    - (iii) any weekly period that the Office determines the person earned a sum equal to or exceeding the maximum amount determined by the Office under paragraph (a);

- (c) an amount of compensation is payable to the person under subsection (1) for the person's loss of earning capacity, as determined by the Office, during any 6 month period referred to in paragraph (a), which amount is calculated in accordance with subsection (3);
  - (d) an amount of compensation payable under subsection (1) is to be paid without any deduction for income tax.
- (3) For the purposes of subsection (2)(c), the Office must calculate the amount of compensation payable to a person under subsection (1) in accordance with the following formula:

$$\left( \frac{40 - X}{40} \right) \times MA$$

where:

- X is the number of hours per week (not exceeding 40) the Office determines, based on a medical assessment, that the person is capable of working in any employment, whether such employment is reasonably available or not; and
  - MA is the maximum amount payable per week determined by the Office under subsection (2)(a).
- (4) Where a person referred to in subsection (1) is admitted as a full-time patient in a hospital or rehabilitation institution for any period which, in the opinion of the Office, is likely to exceed 6 months, the Office may suspend payment of the whole or part of the amounts otherwise payable under this section to that person for all or such part of that period as it thinks fit and, where that person has dependants, may make payments otherwise payable to that person to or for the benefit of such dependants, and in such amounts, as it thinks fit.
- (5) The entitlements conferred by this section are subject to the following qualifications:
- (a) a person ceases to be entitled to benefits under this section on attaining the age of 65 years;
  - (b) a person is not entitled to benefits under this section while detained in a penal institution (within or outside the Territory);
  - (c) a person is not entitled to benefits under this section while outside Australia.
- (6) An amount of benefit payable under this section may be paid in such instalments and at such times as the Office, from time to time,

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determines, and the Office may make any such payment in advance pending the calculation of a person's actual entitlement under this section.

#### **14 Benefits payable to young persons**

- (1) A person who would have been entitled to a benefit under section 13 had the person suffered a reduction of earning capacity but who, at the time of the relevant accident:
- (a) had not attained the age of 15 years; or
  - (b) had attained that age but was a full-time student at a school, college or university:
    - (i) there being, in the opinion of the Office, no substantial break in the continuation of studies;
    - (ii) who was not married or in a relationship that, in the opinion of the Office, was a de facto relationship; and
    - (iii) whose earnings from personal exertion (either physical or mental) in the 3 months to that time did not exceed 25% of what, in the opinion of the Office, were the average earnings during that period of wage earners in the Territory,

shall not receive a benefit under that section except in respect of a period commencing on the date on which:

- (c) the person attains the age of 15 years; or
- (d) the person ceases to be a full-time student or sooner marries or enters a relationship that, in the opinion of the Office, is a de facto relationship,

whichever is the later, and on so attaining that age, ceasing to be a full-time student or marrying or entering that relationship, as the case may be, the person shall be deemed to have suffered a reduction in earning capacity for the purposes of, and to be entitled to a benefit under, that section.

- (2) Subject to subsection (3), the amount of benefit payable under section 13 to a person entitled or deemed to be entitled to receive such a benefit but who has not attained the age of 21 years and is not married is, in respect of that period while the person remains of the age indicated in Column 1 of the following Table the relevant percentage, indicated in Column 2 of the Table and set out opposite the age in Column 1, of the amount that would otherwise be payable to the person under section 13:

TABLE

Column 1 Age	Column 2 Percentage
15	40
16	55
17	60
18	70
19	80
20	90

(3) A person referred to in subsection (2) who:

- (a) marries; or
- (b) enters a relationship that, in the opinion of the Office, is a de facto relationship; or
- (c) has a child or other person primarily dependent on the person for financial support,

shall be entitled to the full amount of benefit calculated in accordance with section 13 in respect of the period commencing on the date of the marriage, establishment of the relationship or commencement of the dependence, as the case may be.

## **17 Compensation for loss of limb or other permanent impairment**

(1) Compensation for permanent impairment is payable under this section to an eligible person if:

- (a) the injury suffered in, or as a result of, the motor accident results in a permanent impairment; and
- (b) the extent of the impairment, as assessed by the Office, is at least 5%.

(1A) The amount of the compensation is, subject to subsection (2), the assessed percentage of the prescribed amount.

(2) Where the percentage of permanent impairment of a person is assessed by the Office as a percentage of 5% or more but less than 15% as shown in Column 1 of the following Table, the percentage of the prescribed amount payable as compensation shall be that shown in Column 2 of the Table opposite to the relevant percentage in Column 1:

TABLE

Column 1 Degree of impairment	Column 2 Percentage of prescribed amount payable
not less than 5% but less than 10%	2
10%	3
11%	4
12%	6
13%	8
14%	12

- (3) In this section ***prescribed amount***, in relation to a payment, means 208 times average weekly earnings at the time the payment is made.
- (4) After compensation based on an assessment of the extent of a permanent impairment has been paid, no further right to compensation under this section arises even though the extent of the impairment later increases.
- (5) Compensation for a permanent impairment may only be paid under this section to, or for the benefit of, a person who is, at the time of the payment, in Australia.

## 18            **Medical and rehabilitation expenses**

- (1) Compensation is payable under this section for the reasonable cost of medical and rehabilitation services reasonably required by an eligible person as a result of an injury arising from the motor accident.
- (2) Medical and rehabilitation services are:
- (a) medical, surgical and dental treatment; and
  - (b) nursing and other professional care (not including attendant care services); and
  - (c) training and education (not including attendant care services) for rehabilitation of the injured person; and
  - (d) conveying the person to and from a hospital or other place for treatment, training, education or care referred to above; and

- (e) hospitalisation, or accommodation in some other institution for the treatment, rehabilitation or care of injured persons.
- (3) If the cost of accommodation, treatment or care in an Australian hospital, or an Australian institution for the treatment, rehabilitation or care of injured persons, is compensable, the compensation must, wherever practicable, be paid directly to the hospital or other institution.
- (4) In determining whether the cost of medical and rehabilitation services is reasonable, the Office will, where relevant, apply the Casemix system or other appropriate objective criteria.
- (5) No compensation is to be paid under this section for:
  - (a) attendant care services; or
  - (b) services provided outside Australia.

#### **18A Short-term benefits for attendant care services**

- (1) Benefits for attendant care services are payable under this section to or for the benefit of an eligible person if:
  - (a) the eligible person suffers an impairment as a result of the injury received in, or as a result of, the motor accident; and
  - (b) the person requires attendant care services in consequence of the impairment; and
  - (c) the person has not been assessed as eligible for long-term attendant care services.
- (2) However, benefits are only payable under this section if the services are of a standard the Office considers appropriate.
- (3) The benefits are to be at an hourly rate equivalent to 2% of average weekly earnings for the number of hours for which the attendant care services are provided in each week up to the relevant limit for that week.
- (4) The relevant limit for each week is 32 hours less the number of hours for which the eligible person receives nursing care in that week.
- (5) The benefits are to be allowed, in the first instance, for a period of up to one year but the Office may extend the period of one year if, after considering the advice of a medical practitioner, the Office considers the extension reasonable but the aggregate period for which the benefits are payable cannot exceed 2 years.

- (6) Benefits are not payable under this section for services provided outside Australia.

### **18B Long-term benefits for attendant care services**

- (1) Benefits for attendant care services are payable under this section to or for the benefit of an eligible person if:
- (a) the eligible person suffers a permanent impairment as a result of the injury received in, or as a result of, the motor accident; and
  - (b) the degree of the permanent impairment is assessed by the Office at 60% or more; and
  - (c) the person requires attendant care services in consequence of the impairment.
- (2) However, benefits are only payable under this section if the services are of a standard the Office considers appropriate.
- (3) The benefits are to be at an hourly rate equivalent to 2% of average weekly earnings for the number of hours for which the attendant care services are provided in each week up to the relevant limit for that week.
- (4) The relevant limit for each week is 32 hours less the number of hours for which the eligible person receives nursing care in that week.
- (5) At the end of each year for which the benefits have been paid, a further amount equivalent to 1/26 of the total amount paid for the previous year is to be paid.
- (6) Benefits are not payable under this section for services provided outside Australia.

### **18C Emergency travel benefit**

- (1) Benefits are payable, at the discretion of the Office, under this section if:
- (a) a person is injured or dies in, or as a result of, a motor accident; and
  - (b) if the accident occurred outside the Territory:
    - (i) the accident involved a Territory motor vehicle; and
    - (ii) the person who is injured or dies is (or was) a resident of the Territory; and



- (c) a close family member travels at least 1 000 km to be near the injured person or to make arrangements for the deceased person's funeral; and
  - (d) it is reasonable in the circumstances for the close family member to make the journey.
- (2) Benefits are payable under this section to reimburse the close family member for the costs of travel, loss of income and other financial loss resulting from the journey.
  - (3) If 2 or more close family members are entitled to benefits under this section, the benefits are to be divided between them as the Office thinks fit.
  - (4) The total amount to be paid in respect of any one motor accident cannot exceed \$4 000 (indexed).
  - (5) In this section:

**close family member** means a spouse, parent or child of the person injured or killed in, or as a result of, the motor accident.

## **19 Cost of providing appliances, special facilities etc.**

- (1) An eligible person is entitled to:
  - (a) the cost of obtaining appliances required in consequence of the injury suffered in, or as a result of, the motor accident; and
  - (b) the reasonable cost incurred, or to be incurred, in consequence of the injury in making alterations to:
    - (i) the building in which the person resides or proposes to reside; and
    - (ii) a motor vehicle; and
    - (iii) such other articles of personal use as, in the opinion of the Office, require modification; and
  - (c) the reasonable cost of special facilities and equipment the Office considers necessary for the person's rehabilitation.
- (2) However, entitlements under this section are subject to the following limitations and qualifications:
  - (a) a benefit is not payable under this section if the eligible person is outside Australia or the benefit is to be expended outside Australia;

- (b) any further limitations and qualifications imposed by the regulations.

## **Part 5                    Payments in respect of death**

### **20                    Definition**

In this Part:

***qualifying person*** means:

- (a) a person who dies as a result of injuries received in a motor accident occurring in the Territory; or
- (b) a resident of the Territory who dies as a result of injuries received in a motor accident, involving a Territory motor vehicle, occurring outside the Territory.

### **20A                  Reduction of benefits in certain cases**

- (1) The Office may reduce benefits payable under this Part if:
  - (a) the accident resulting in the death of the qualifying person occurred while that person was driving a motor vehicle; and
  - (b) the qualifying person was under the influence of alcohol or a drug to such an extent that the person was, by driving a motor vehicle, committing an offence against relevant laws regulating road traffic; and
  - (c) the influence of the alcohol or drug contributed, in the Office's opinion, to the accident.
- (2) If the concentration of alcohol in the qualifying person's blood is shown to have been 80 milligrams or more in 100 millilitres of blood, the Office is to presume that the influence of the alcohol contributed to the accident unless the contrary is established.
- (3) The Office may reduce benefits payable under this Part if:
  - (a) the accident occurred while the qualifying person was engaged in conduct that created a substantial risk of injury to the qualifying person; and
  - (b) the qualifying person recklessly ignored the risk.

*Note*

*This subsection applies whether the qualifying person was the driver, a passenger, a cyclist or pedestrian or involved in the accident in some other way.*

- (4) A reduction of benefits under this section is to be a proportion of the benefits otherwise payable considered appropriate by the Office having regard to the extent to which the influence of alcohol or the drug or the qualifying person's risky conduct (as the case requires) contributed to the accident.

## **21 Death benefits may be paid in respect of certain injured persons**

Where a person who, if the person had died in or as a result of the accident would have been a qualifying person is a full-time patient in a hospital or other institution because of injuries received in or as a result of an accident and, in the opinion of the Office, the person is likely permanently to remain a full-time patient in a hospital or institution, the Office may, at the written request of the spouse of the person, determine that this Part shall apply to and in relation to that person, and on that determination being made the person shall, for the purposes of this Part, be deemed to have died on the date of the determination and to have been a qualifying person on that date.

## **22 Lump-sum compensation in respect of death**

- (1) Subject to section 37, the following benefits are payable in respect of the death of a qualifying person:
- (a) to the person liable to meet the expense of the person's funeral – the cost of the funeral or 5.2 times average weekly earnings (whichever is the lesser amount);
  - (b) for the benefit of the qualifying person's spouse or dependent child (or spouse and dependent child) – the prescribed proportions of 156 times average weekly earnings at the time the payment is made.
- (2) For the purposes of subsection (1)(b), a person claiming to be a spouse or a dependent child of the deceased qualifying person may apply to the Office for a determination under that subsection.
- (3) For the purposes of subsection (1)(b), the prescribed proportions are those specified in column 2 of the Table in respect of the spouse or dependent child or dependent children specified opposite in Column 1 of the Table.

TABLE

Column 1 Dependants	Column 2 Proportion
Spouse	100%
one child	100%
2 or more children	Equally between children
Spouse and one child	10% to child, balance to spouse
Spouse and not more than 5 children	5% to each child, balance to spouse
Spouse and more than 5 children	25% divided equally between children, balance to spouse

- (4) If, before dying as a result of the injury, the qualifying person received compensation by way of lump sum for permanent impairment resulting from the same injury, the amount of the benefit payable under subsection (1)(b) is to be reduced by the amount of that lump sum.

### **23 Dependent children's benefits**

- (1) In addition to an amount payable under section 22(1)(b) to or for the benefit of a dependent child but subject to subsection (2), there shall be paid to or for the benefit of each dependent child of a deceased qualifying person an amount per week equal to 10% of average weekly earnings at the time the payment is made.
- (2) The aggregate of all amounts paid or payable per week under subsection (1) shall not exceed average weekly earnings and where there are more than 10 dependent children entitled to compensation under that subsection they shall be entitled in equal shares to an amount equal to average weekly earnings at the time the payment is made.

### **24 Dependent parents' benefit**

Where a qualifying person dies in or as a result of an accident leaving the person surviving neither a spouse nor a dependent child but a dependent parent or parents who normally resides or reside with the person, that parent or those parents shall be paid an amount equal to 156 times average weekly earnings and, if more than one, in equal shares.

## **Part 5A            Commutation of benefits**

### **25            Commutation of benefits**

If the regulations so provide, a liability to pay statutory benefits, or statutory benefits of a particular kind, may be commuted, in accordance with the regulations, to a liability to make a single payment by way of lump sum.

## **Part 6            Reviews and referrals to Tribunal**

### **Division 1        Preliminary matters**

#### **26            Definitions**

In this Part:

***claim***, for a benefit, includes a claim for the variation of a benefit.

***claimant***, for a benefit, means the person who made a claim for the benefit.

***original decision***, see section 28A(1).

***review decision***, see section 28B(1)(c).

#### **27            Designated person**

- (1) There is an office of designated person for this Act.
- (2) The Board of the Office must appoint an employee of the Office as the designated person.

#### **28            Motor Accidents (Compensation) Appeal Tribunal**

- (1) The Motor Accidents (Compensation) Appeal Tribunal continues.
- (2) The Tribunal is constituted of a Judge of the Supreme Court.
- (3) A Judge of the Supreme Court has, when sitting as the Tribunal, the same privileges and immunities as when sitting to exercise the jurisdiction of the Supreme Court.
- (4) A witness, legal practitioner or other person appearing before the Tribunal has the same privileges and immunities as if the proceedings were proceedings of the Supreme Court.

- (5) An officer of the Tribunal has the same privileges and immunities (if any) as an officer exercising corresponding functions for the Supreme Court.
- (6) The reference to an officer of the Tribunal extends to any person acting on the authority or by direction of the Tribunal.

## **Division 2            Review of claims**

### **28A            Review by designated person**

- (1) A claimant who is aggrieved by a decision made on the claimant's claim for a benefit (the ***original decision***) may ask the designated person to review the merits of the decision.
- (2) The claimant must request the review within 90 days after:
  - (a) receipt of notice of the original decision; or
  - (b) if notice of the original decision is not given – the claimant becomes aware of the decision.
- (3) The request must be in the approved form.

### **28B            Conducting review**

- (1) The designated person must:
  - (a) conduct the review in a way that is fair and expeditious; and
  - (b) give proper consideration to the issues; and
  - (c) make a decision on the request (a ***review decision***) within 30 business days after the request is made or that period as extended under subsection (3).
- (2) In conducting the review the designated person may, by written notice, request the claimant within a reasonable stated period:
  - (a) to attend a conference; or
  - (b) to give additional information that is relevant to, and reasonably required to enable the assessment of, the claimant's claim for a benefit.

- (3) If, in conducting the review, the designated person requests a conference or additional information, the period for making a review decision on the request is extended by the lesser of the following:
  - (a) the period equal to the period between the giving of the notice making the request and the holding of the conference or giving of the information;
  - (b) the period equal to the period between the giving of the notice and the period stated in the notice for attending a conference or giving the information.
- (4) This section is subject to section 28D.

### **28C        Decision on review**

- (1) In making a review decision on the request, the designated person must:
  - (a) confirm the original decision; or
  - (b) vary the original decision; or
  - (c) revoke the original decision and substitute another decision for it.
- (2) The designated person must give the claimant written notice of the review decision as soon as practicable after making it.
- (3) The notice must include:
  - (a) the reasons for the review decision; and
  - (b) the procedures for referral to the Tribunal under Division 3.
- (4) The validity of the review decision is not affected by a contravention of subsection (2) or (3).
- (5) A decision under subsection (1)(b) or (c) is, for this Act (other than this Part), taken to be the decision of the Office.

## **Division 3        Referral of claims to Tribunal**

### **28D        Referral to Tribunal – designated person's initiative**

The designated person may, if satisfied it is appropriate in the circumstances to do so, refer a request under section 28A to the Tribunal for its decision.

## **28E Referral to Tribunal – claimant's request**

- (1) This section applies if:
  - (a) a claimant is aggrieved by a review decision; or
  - (b) the designated person does not make a review decision on a claimant's request for a review of the original decision within the period provided under section 28B.
- (2) The claimant may refer the matter to the Tribunal by giving written notice to the Tribunal in the approved form.
- (3) The notice must be given within 28 days after:
  - (a) if subsection (1)(a) applies:
    - (i) receipt of notice of the review decision given under section 28C; or
    - (ii) if notice of the review decision is not so given – the claimant becomes aware of the decision; or
  - (b) if subsection (1)(b) applies – the end of the period provided under section 28B.

## **29 Hearing of referral**

- (1) On referral of a matter, the Tribunal must conduct a hearing into the matter in the way it considers appropriate.
- (2) In conducting a hearing, the Tribunal must:
  - (a) consider the matter afresh; and
  - (b) is not bound by anything considered in making the original or review decision to which the hearing relates (the **referred decision**).
- (3) Without limiting subsection (2), the Tribunal may:
  - (a) take evidence that was not considered in making the referred decision; and
  - (b) refuse to take evidence that was considered in making the referred decision.
- (4) In deciding the referral, the Tribunal must:
  - (a) confirm the referred decision; or



- (b) vary the referred decision; or
  - (c) revoke the referred decision and substitute another decision for it.
- (5) The Tribunal may make the orders it considers appropriate to give effect to its decision and the orders as to costs it considers just.
- (6) In making an order about costs, the Tribunal:
- (a) must take into account the efforts of the parties made to reach an agreement on the claimant's claim for a benefit; and
  - (b) may include as costs the reasonable costs of a party incurred in relation to the efforts.
- (7) A decision under subsection (4)(b) or (c) is, for this Act (other than this Part), taken to be the decision of the Office.

## **Division 4      Miscellaneous matters**

### **29A      Rules and procedure of Tribunal**

- (1) The Judges appointed under section 32(1) of the Supreme Court Act who are not additional Judges, or a majority of them, may make rules, not inconsistent with this Act:
- (a) regulating the practice and procedures of the Tribunal; and
  - (b) providing for the awarding of costs in matters before the Tribunal; and
  - (c) regulating the referral of matters to the Tribunal; and
  - (d) conferring on the Tribunal additional powers which are necessary or convenient for carrying out its functions, including powers to impose and enforce penalties for a contravention of or failure to comply with the rules.
- (2) The rules made under subsection (1) may confer on the Master of the Supreme Court powers and functions in relation to the Tribunal and matters referred to the Tribunal, and the Master may exercise those powers and shall perform those functions accordingly.
- (2A) In addition, the rules may provide for the approval of forms for carrying out the Tribunal's functions.
- (3) Subject to subsection (1), the practice and procedures of the Tribunal in relation to a matter referred to it are as determined by it.

**30 Tribunal's decision is final**

A decision of the Tribunal is final and shall not be capable of being reviewed in any court of law by prerogative writ or otherwise.

**30A Contempt of Tribunal**

A person shall not:

- (a) insult the Judge constituting the Tribunal in or in relation to the performance of functions or exercise of powers as the Tribunal; or
- (b) repeatedly interrupt the proceedings of the Tribunal; or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Fault element: The person intentionally does the act or thing.

Penalty: \$2,000 or imprisonment for 12 months.

**30B Operation and implementation of decision pending review or referral**

- (1) A request under section 28A by a claimant for a review of an original decision does not affect the operation or implementation of the decision.
- (2) However, the designated person may, by written notice to the claimant:
  - (a) suspend the operation or implementation of so much of the original decision as the designated person considers appropriate to effectively review the decision; or
  - (b) impose conditions on the operation or implementation of the decision until a review decision is made.
- (3) A referral of a matter under section 28D or 28E does not affect the operation or implementation of the original or review decision.
- (4) However, the Tribunal may make an order staying or otherwise affecting the operation or implementation of so much of the original or review decision as the Tribunal considers appropriate to effectively decide the matter.

- (5) The order:
  - (a) is subject to the conditions stated in the order; and
  - (b) has effect:
    - (i) for the period stated in the order; or
    - (ii) if no period is stated – until the Tribunal decides the matter.

## **Part 7                      Miscellaneous matters**

### **31                      Time for making claims**

- (1) A claim:
  - (a) for a benefit; or
  - (b) for the variation of a benefit,

under this Act shall be made as soon as practicable after the accident in or as a result of which the death or injury giving rise to the claim for a benefit, or the change in circumstances giving rise to the claim for variation of the benefit, occurred.
- (1A) A claim under this section shall be in an approved form containing the particulars and information requested in the form signed by or on behalf of the claimant.
- (2) The Office may refuse to consider:
  - (a) a claim in respect of an accident; or
  - (b) a claim for the variation of a benefit,

made later than 6 months after the date of the accident or the occurrence giving rise to the claim for variation, as the case may be.
- (3) The Office shall refuse to consider:
  - (a) a claim in respect of an accident; or
  - (b) a claim for the variation of a benefit,

made:

- (c) later than 3 years after the date of the accident or the occurrence giving rise to the claim for variation, as the case may be; or
- (d) in the case of a claimant who had not attained the age of majority at the time of the accident or the occurrence giving rise to the claim for the variation, as the case may be, later than 3 years after the date the claimant attained the age of majority.

### **32 Office not subject to direction**

In the exercise of its powers and performance of its functions under this Act the Office is not subject to the direction of anyone other than the Minister.

### **33 Office may extend limits**

In the exercising of its powers under this Act the Office may, where it considers that the circumstances of a particular case warrant such action because of special hardship that is likely to be suffered by any person, determine that the time limits imposed by this Act on the payment of benefits under Part 3, 4 (other than section 18(2A) or 18A) or 5 may be extended, and the benefits may be paid accordingly.

### **34 Office may take advice**

In considering any matter before it, the Office may take such medical and other advice, and from such sources, as it considers necessary.

### **35 Payments to minors**

- (1) Where under this Act a payment is required to be made to a person who has not attained the age of majority or is under some other legal disability, that payment may be made on behalf of that person to the Public Trustee or to the guardian or other person who, from time to time, has the responsibility for the immediate care and welfare of that person.
- (2) A payment made in pursuance of subsection (1) is a full discharge of the Office's obligations in respect of that payment and it is not bound to see to the application of the money so paid.

**36 Delegation by Office**

The Office may delegate any of the Office's powers and functions under this Act to the designated person or another employee of the Office.

**37 Multiple spouses of Aboriginals or Torres Strait Islanders**

- (1) Notwithstanding any other provision of this Act, where, in respect of a resident of the Territory who is an Aboriginal or Torres Strait Islander married to more than one person according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which the resident of the Territory or any of those persons identifies (whether or not one of those marriages is a marriage in accordance with the law in force in the Territory) a benefit would, but for the operation of this section, be payable to or in respect of each of those persons, the amount of such benefit that is payable is the amount that would be so payable if the resident of the Territory had contracted only one such marriage and, in the case of a benefit payable under this Act to a spouse, it shall be payable to such spouses in equal shares.
- (2) Where under section 22 there is payable to a qualifying person who is an Aboriginal or Torres Strait Islander a benefit in respect of the death of the person's spouse and the person has more than one spouse, the amount of benefit payable to the person is the amount provided in that section divided by the number of spouses at the date of death of the spouse.

**38 Indemnification of the Office for statutory benefits**

- (1) A person (the *indemnifier*) is liable to indemnify the Office for statutory benefits paid to another person in relation to death or injury arising from a motor accident if:
  - (a) the motor accident was caused by, or arose from, the use of a motor vehicle registered in another jurisdiction; and
  - (b) the indemnifier is:
    - (i) a person who would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury arising from the motor accident; or
    - (ii) a person who is liable to indemnify such a person for that liability under an insurance contract or a statutory insurance scheme.

- (2) A person (the ***indemnifier***) is liable to indemnify the Office for statutory benefits paid to another person in relation to death or injury arising from a motor accident if:
- (a) the motor accident was caused by, or arose from, the use of an unregistered motor vehicle on a public street or public place; and
  - (b) the indemnifier is a person who would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury arising from the accident.
- (3) A person (the ***indemnifier***) is liable to indemnify the Office for statutory benefits paid to another person in relation to death or injury arising from a motor accident if:
- (a) the indemnifier was the driver of the motor vehicle, or one of the motor vehicles involved in the accident; and
  - (b) the indemnifier would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury arising from the accident; and
  - (c) the indemnifier has been convicted in the Territory or elsewhere of an offence arising from the indemnifier's conduct at the time of the accident; and
  - (d) the offence involved:
    - (i) intentionally, recklessly or otherwise wrongfully causing the death of, or injury to, another person; or
    - (ii) driving while under the influence of alcohol or a drug; or
    - (iii) driving with a concentration of alcohol in the blood of 80 milligrams or more per 100 millilitres of blood; or
    - (iv) refusing or failing to submit to breath analysis, or to provide a sample of blood, when lawfully required to do so.
- (4) A person (the ***indemnifier***) is liable to indemnify the Office for statutory benefits paid to another person in relation to death or injury arising from a motor accident if:
- (a) the indemnifier was the manufacturer or repairer of the motor vehicle, or one of the motor vehicles involved in the accident; and

- (b) a defect in the manufacture or repair of the motor vehicle caused or contributed to the accident; and
  - (c) the indemnifier would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury.
- (5) A person (the ***indemnifier***) is liable to indemnify the Office for statutory benefits paid to another person in relation to death or injury arising from a motor accident if:
- (a) the indemnifier is a person (other than the owner or driver of a motor vehicle involved in the motor accident) whose wrongful or negligent act or omission caused or contributed to the accident; and
  - (b) the indemnifier would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury; and
  - (c) the indemnifier is not otherwise liable to indemnify the Office under this section.
- (6) If, assuming an action in tort against the indemnifier:
- (a) the indemnifier would have been entitled to a proportionate reduction of liability on account of contributory negligence; or
  - (b) the indemnifier would have been entitled to contribution from other persons liable for the same tort;
- the extent to which the indemnifier is liable to indemnify the Office is reduced accordingly.
- (7) The extent of a reduction of liability under subsection (6) is to be determined by agreement between the Office and the indemnifier or, in the absence of agreement, by a court in which an action for recovery of the indemnity is brought.
- (8) The Office may recover an indemnity under this section as a debt owed to the Office by the indemnifier.
- (9) If:
- (a) the Office brings an action against a natural person for recovery of an indemnity under this section; and
  - (b) the court is satisfied that the recovery of the full amount of the indemnity against the defendant would cause serious financial hardship;

the court may give judgment for a reduced amount that it considers reasonable in the circumstances.

#### **40 Office may conduct certain, proceedings**

- (1) The Office:
  - (a) may undertake the settlement of any claim against a person referred to in section 6(1) in respect of the person's liability referred to in that section; and
  - (b) may take over during such period as it thinks fit the conduct on behalf of that person of any proceedings taken or had to enforce the claim or for the settlement of any question arising with reference to the claim; and
  - (c) may defend or conduct those proceedings in the name and on behalf of that person; and
  - (d) shall indemnify that person against all costs and expenses of or incidental to any of those proceedings while the Office retains the defence or conduct of the proceedings.
- (2) The person referred to in subsection (1) shall sign all such warrants and authorities as the Office requires for the purpose of enabling it to have the defence or conduct of any proceedings referred to in that subsection and, in default of so doing, the court in which the proceedings are pending may order that the warrants and authorities be signed by the Office on behalf of that person.
- (3) Nothing said or done by or on behalf of the Office in connection with the settlement of any such claim or the defence or conduct of any such proceedings shall be regarded as an admission of liability in respect of, or shall in any way prejudice, any other claim, action or proceeding arising out of the same occurrence.

#### **42 Regulations**

The Administrator may make regulations under this Act.



## **Part 8 Transitional matters for Motor Accidents (Compensation) Amendment Act 2007**

### **43 Transitional provisions**

- (1) This Act, as amended by the *Motor Accidents (Compensation) Amendment Act 2007*, applies to, and in relation to, a motor accident that occurs on or after the commencement of that amending Act.
- (2) This Act, as in force before the commencement of the *Motor Accidents (Compensation) Amendment Act 2007* applies to, and in relation to, a motor accident that occurred before the commencement of that amending Act.
- (3) However:
  - (a) the amendments to Part 6 take effect in relation to proceedings related to motor accidents occurring both before and after the commencement of the *Motor Accidents (Compensation) Amendment Act 2007* as from the commencement of that amending Act; and
  - (b) a person injured in or as a result of a motor accident that occurred before the commencement of the *Motor Accidents (Compensation) Amendment Act 2007* who would, if the accident had occurred after the commencement of that amending Act, be entitled to benefits for attendant care services under section 18B is entitled to have benefits for attendant care services determined under that section instead of the previous provisions for the payment of such benefits.

## **Part 9 Savings matter for Territory Insurance Office and Other Legislation Amendment Act 2010**

### **44 Things previously done by Office for Board**

If, before the commencement of this section, the Office has purportedly done something under this Act for the Board, the thing is taken to have been done under this Act by the Board.

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**Schedule Injuries in respect of which special compensation is payable**

section 17(1)

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Column 1 Injury	Column 2 Percentage
Loss of, or total loss of sight of, both eyes	100
Loss of, or total loss of sight of, a useful eye, the other being blind or absent	100
Loss of both hands	100
Loss of hand and foot	100
Loss of both feet	100
Loss of, or total loss of sight of, one eye with serious diminution of the sight of the other	75
Loss of, or total loss of sight of, one eye	40
Total loss of hearing	70
Complete deafness of one ear	20
Total loss of power of speech	70
Loss of genitals	50
Total and permanent loss of capacity to engage in sexual intercourse	50
Severe and permanent facial disfigurement	50
Total and permanent loss of sense of taste or smell	10
Loss of arm at or above elbow	80
Loss of arm below elbow, loss of hand or loss of thumb and 4 fingers of the one hand	70
Loss of thumb	30
Loss of forefinger	20

Column 1 Injury	Column 2 Percentage
Loss of middle finger	16
Loss of ring finger	14
Loss of little finger	13
Total loss of movement of joint of thumb	14
Loss of distal phalanx or joint of thumb	16
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx or joint	14
Loss of 2 phalanges or joints of forefinger	12
Loss of 2 phalanges or joints of middle or ring finger	11
Loss of 2 phalanges or joints of little finger	10
Loss of distal phalanx or joint of forefinger	10
Loss of distal phalanx or joint of other finger	8
Loss of leg at or above knee	75
Loss of leg below knee	65
Loss of foot	60
Loss of great toe	20
Loss of any other toe	8
Loss of 2 phalanges or joints of any other toe	7
Loss of phalanx or joint of great toe	10
Loss of phalanx or joint of any other toe	6

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

**2****LIST OF LEGISLATION*****Motor Accidents (Compensation) Act 1979 (Act No. 75, 1979)***

Assent date 29 June 1979  
Commenced 1 July 1979 (s 2)

***Motor Accidents (Compensation) Act (No. 2) 1979 (Act No. 117, 1979)***

Assent date 15 October 1979  
Commenced 1 July 1979 (s 2)

***Motor Accidents (Compensation) Amendment Act 1981 (Act No. 111, 1981)***

Assent date 24 December 1981  
Commenced 1 July 1981 (s 2)

***Motor Accidents (Compensation) Amendment Act 1982 (Act No. 47, 1982)***

Assent date 20 July 1982  
Commenced ss 4 and 10: 1 July 1979; ss 7 to 9: 1 February 1982;  
rem: 20 July 1982 (s 2)

***Statute Law Revision Act (No. 2) 1982 (Act No. 54, 1982)***

Assent date 8 October 1982  
Commenced 8 October 1982

***Motor Accidents (Compensation) Amendment Act 1984 (Act No. 3, 1984)***

Assent date 3 April 1984  
Commenced s 4: 1 January 1984; ss 5 and 6: 1 July 1979;  
rem: 1 August 1984 (*Gaz S40*, 1 August 1984)

***Motor Accidents (Compensation) Amendment Act (No. 2) 1984 (Act No. 8, 1984)***

Assent date 28 June 1984  
Commenced 1 July 1984 (*Gaz S34*, 29 June 1984)

***Motor Accidents (Compensation) Amendment Act 1985 (Act No. 36, 1985)***

Assent date 18 September 1985  
Commenced 18 September 1985

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***Motor Accidents (Compensation) (Costs in Proceedings Before the Appeal Tribunal) Act 1985 (Act No. 51, 1985)***

Assent date 1 October 1985  
Commenced 1 October 1985

***Motor Accidents (Compensation) Amendment Act 1986 (Act No. 32, 1986)***

Assent date 19 September 1986  
Commenced 1 October 1986 (*Gaz S70*, 1 October 1986, p 2)

***Motor Accidents (Compensation) Amendment Act (No. 2) 1986 (Act No. 51, 1986)***

Assent date 19 December 1986  
Commenced 1 January 1987 (*Gaz S90*, 24 December 1986)

***Statute Law Revision Act 1987 (Act No. 9, 1987)***

Assent date 27 May 1987  
Commenced 27 May 1987

***Motor Accidents (Compensation) Amendment Act 1989 (Act No. 51, 1989)***

Assent date 20 September 1989  
Commenced 8 November 1989 (s 2, s 2 *Territory Insurance Office Amendment Act 1989* (Act No. 36, 1989) and *Gaz G44*, 8 November 1989, p 2)

***Motor Accidents (Compensation) Amendment Act (No. 2) 1989 (Act No. 61, 1989)***

Assent date 26 October 1989  
Commenced 8 November 1989 (*Gaz G44*, 8 November 1989, p 3)

***Motor Accidents (Compensation) Amendment Act 1991 (Act No. 8, 1991)***

Assent date 7 March 1991  
Commenced 1 July 1990 (s 2)

***Statute Law Revision Act 1991 (Act No. 31, 1991)***

Assent date 25 June 1991  
Commenced 25 June 1991

***Motor Accidents (Compensation) Amendment Act (No. 2) 1991 (Act No. 48, 1991)***

Assent date 26 September 1991  
Commenced 15 October 1991 (*Gaz S35*, 15 October 1991)

***De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)***

Assent date 24 December 1991  
Commenced 1 January 1992 (s 2)

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
Commenced 20 September 1994

***Motor Accidents (Compensation) Amendment Act 1994 (Act No. 77, 1994)***

Assent date 30 December 1994  
Commenced 30 December 1994

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

***Motor Accidents (Compensation) Amendment Act 1997 (Act No. 16, 1997)***

Assent date 11 April 1997  
 Commenced 6 August 1997 (*Gaz* G31, 6 August 1997, p 2)

***Motor Accidents (Compensation) Amendment Act 1998 (Act No. 40, 1998)***

Assent date 27 May 1998  
 Commenced 27 May 1998

***Motor Accidents (Compensation) Amendment Act 2000 (Act No. 24, 2000)***

Assent date 27 June 2000  
 Commenced 1 September 2000 (*Gaz* G34, 30 August 2000, p 3)

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date 29 June 2001  
 Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001)

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date 11 December 2001  
 Commenced 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 59, 2001) and *Gaz* G50, 19 December 2001, p 3)

***Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)***

Assent date 11 December 2001  
 Commenced 11 December 2001

***Motor Accidents (Compensation) Amendment Act 2002 (Act No. 73, 2002)***

Assent date 11 December 2002  
 Commenced s 5: 1 July 1979; rem: 11 December 2002 (s 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date 7 January 2004  
 Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

***Motor Accidents (Compensation) Amendment Act 2007 (Act No. 9, 2007)***

Assent date 17 May 2007  
 Commenced 1 July 2007 (*Gaz* G25, 20 June 2007, p 3)

***Law Reform (Work Health) Amendment Act 2007 (Act No. 30, 2007)***

Assent date 12 December 2007  
 Commenced 1 July 2008 (*Gaz* S29, 25 June 2008)

***Territory Insurance Office and Other Legislation Amendment Act 2010 (Act No. 35, 2010)***

Assent date 18 November 2010  
 Commenced pt 4: 1 January 2011; rem: 18 November 2010 (s 2)

**3****SAVINGS AND TRANSITIONAL PROVISIONS**

- s 11 *Motor Accidents (Compensation) Amendment Act 1982* (Act No. 47, 1982)
- s 12 *Motor Accidents (Compensation) Amendment Act 1984* (Act No. 3, 1984)
- s 18 *Motor Accidents (Compensation) Amendment Act (No. 2) 1984* (Act No. 8, 1984)
- s 3(2) *Motor Accidents (Compensation) (Costs in Proceedings Before the Appeals Tribunal) Act 1985* (Act No. 51, 1985)
- s 5(2) *Motor Accidents (Compensation) Amendment Act 1989* (Act No. 51, 1989)
- s 4 *Motor Accidents (Compensation) Amendment Act 1991* (Act No. 8, 1991)
- s 15 *Motor Accidents (Compensation) Amendment Act (No. 2) 1991* (Act No. 48, 1991)
- s 11(3) *De Facto Relationships (Miscellaneous Amendments) Act 1991* (Act No. 82, 1991)
- s 8 *Motor Accidents (Compensation) Amendment Act 2000* (Act No. 24, 2000)
- ss 4 and 6 *Motor Accidents (Compensation) Amendment Act 2002* (Act No. 73, 2002)
- s 77 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)

**4****LIST OF AMENDMENTS**

- pt 1 hdg amd No. 35, 2010, s 39
- s 4 amd No. 117, 1979, s 4; No. 8, 1984, s 4; No. 32, 1986, s 4; No. 51, 1986, s 3; No. 51, 1989, s 4; No. 61, 1989, s 4; No. 48, 1991, s 4; No. 82, 1991, s 11; No. 16, 1997, ss 4 and 13; No. 17, 2001, s 21; No. 1, 2004, s 62; No. 9, 2007, s 4; No. 30, 2007, s 59; No. 35, 2010, ss 27 and 39
- ss 4A – 4B ins No. 9, 2007, s 5
- s 4C ins No. 9, 2007, s 5
- s 4D amd No. 35, 2010, 39
- s 4E ins No. 9, 2007, s 5
- pt 2 hdg ins No. 35, 2010, s 28
- s 5 amd No. 35, 2010, s 39
- s 5 amd No. 8, 1984, s 5
- s 5 sub No. 61, 1989, s 5
- s 5 amd No. 48, 1991, s 5
- s 5 sub No. 16, 1997, s 5
- s 5 amd No. 24, 2000, s 4
- s 5 sub No. 9, 2007, s 6
- s 6 amd No. 117, 1979, s 5; No. 24, 2000, s 5; No. 9, 2007, s 7
- pt 3 hdg amd No. 35, 2010, s 39
- s 7 amd No. 117, 1979, s 6
- s 7 sub No. 9, 2007, s 8
- s 8 amd No. 61, 1989, s 6
- s 8 rep No. 9, 2007, s 8
- s 9 amd No. 47, 1982, s 4; No. 3, 1984, s 4; No. 8, 1984, s 6; No. 17, 1996, s 6; No. 16, 1997, s 6; No. 24, 2000, s 6; No. 60, 2001, s 11
- s 9 sub No. 9, 2007, s 9
- s 9 amd No. 35, 2010, 39

## ENDNOTES

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- s 10            amd No. 117, 1979, s 7  
                 sub No. 8, 1984, s 7  
                 amd No. 36, 1985, s 2; No. 9, 1987, s 2; No. 31, 1991, s 14; No. 50, 1994,  
                 s 16  
                 sub No. 9, 2007, s 9
- s 11            rep No. 48, 1991, s 6  
                 ins No. 9, 2007, s 9
- s 12            amd No. 61, 1989, s 7; No. 16, 1997, s 7; No. 9, 2007, s 10; No. 35, 2010,  
                 s 39
- pt 4 hdg       amd No. 35, 2010, s 39
- s 13            amd No. 47, 1982, s 5; No. 32, 1986, s 5; No. 61, 1989, s 8; No. 48, 1991,  
                 s 7; No. 16, 1997, s 8; No. 73, 2002, s 5; No. 9, 2007, s 11; No. 35, 2010, 39
- s 14            amd No. 47, 1982, s 6; No. 61, 1989, s 9; No. 1, 2004, s 62; No. 35, 2010, 39
- s 15            amd No. 16, 1997, s 13; No. 62, 2001, s 15  
                 rep No. 9, 2007, s 12
- s 16            amd No. 32, 1986, s 6  
                 rep No. 9, 2007, s 12
- s 17            amd No. 47, 1982, s 7; No. 8, 1984, s 8  
                 sub No. 61, 1989, s 10  
                 amd No. 48, 1991, s 8; No. 9, 2007, s 13; No. 35, 2010, s 39
- s 18            amd No. 111, 1981, s 3; No. 8, 1984, s 9; No. 61, 1989, s 11; No. 8, 1991,  
                 s 3; No. 48, 1991, s 9; No. 16, 1997, s 9  
                 sub No. 9, 2007, s 14  
                 amd No. 35, 2010, s 39
- s 18A           ins No. 61, 1989, s 12  
                 amd No. 16, 1997, s 10  
                 sub No. 9, 2007, s 14  
                 amd No. 35, 2010, s 39
- s 18B           ins No. 61, 1989, s 12  
                 amd No. 40, 1998, s 2  
                 sub No. 9, 2007, s 14  
                 amd No. 35, 2010, s 39
- s 18C           ins No. 9, 2007, s 14  
                 amd No. 35, 2010, s 39
- s 19            amd No. 61, 1989, s 13; No. 48, 1991, s 10  
                 sub No. 9, 2007, s 14  
                 amd No. 35, 2010, s 39
- pt 5 hdg       amd No. 35, 2010, s 39
- s 20            amd No. 61, 1989, s 14  
                 sub No. 9, 2007, s 15
- s 20A           ins No. 9, 2007, s 15  
                 amd No. 35, 2010, s 39
- s 21            amd No. 16, 1997, s 13; No. 35, 2010, s 39
- s 22            amd No. 47, 1982, s 8  
                 sub No. 3, 1984, s 5  
                 amd No. 8, 1984, s 10  
                 sub No. 32, 1986, s 7; No. 48, 1991, s 11  
                 amd No. 9, 2007, s 16; No. 35, 2010, s 39
- s 23            amd No. 47, 1982, s 9  
                 sub No. 3, 1984, s 5  
                 amd No. 8, 1984, s 11  
                 rep No. 32, 1986, s 7  
                 ins No. 48, 1991, s 11
- s 24            amd No. 8, 1984, s 12; No. 32, 1986, s 8  
                 sub No. 48, 1991, s 12  
                 amd No. 35, 2010, s 39
- pt VA hdg     ins No. 9, 2007, s 17  
                 amd No. 35, 2010, s 39



## ENDNOTES

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s 25	amd No. 3, 1984, s 6; No. 8, 1984, s 13; No. 32, 1986, s 9 rep No. 48, 1991, s 13 ins No. 9, 2007, s 17
pt 6 hdg	sub No. 35, 2010, s 39
pt 6	
div 1 hdg	ins No. 35, 2010, s 29
s 26	amd No. 8, 1984, s 14 rep No. 48, 1991, s 13 ins No. 35, 2010, s 29
s 27	sub No. 3, 1984, s 7 amd No. 32, 1986, s 10; No. 51, 1989, s 5; No. 16, 1997, s 11; No. 9, 2007, s 18 sub No. 35, 2010, s 29
s 28	amd No. 3, 1984, s 8; No. 36, 1985, s 3 sub No. 9, 2007, s 19
pt 6	
div 2 hdg	ins No. 35, 2010, s 30
ss 28A – 28C	ins No. 35, 2010, s 30
pt 6	
div 3 hdg	ins No. 35, 2010, s 31
ss 28D – 28E	ins No. 35, 2010, s 31
s 29	amd No. 3, 1984, s 9 sub No. 35, 2010, s 31
pt 6	
div 4 hdg	ins No. 35, 2010, s 39
s 29A	ins No. 3, 1984, s 10 amd No. 35, 2010, s 32
s 29B	ins No. 51, 1985, s 3(1) rep No. 51, 1985, s 3(2)
s 30A	ins No. 32, 1986, s 11 amd No. 35, 2010, s 33
s 30B	ins No. 35, 2010, s 34
pt 7 hdg	sub No. 35, 2010, s 39
s 31	amd No. 77, 1994, s 2; No. 16, 1997, s 12; No. 35, 2010, s 39
s 32	sub No. 35, 2010, s 35
s 33	amd No. 3, 1984, s 11; No. 61, 1989, s 15; No. 48, 1991, s 14; No. 35, 2010, s 39
ss 34 – 35	amd No. 35, 2010, s 39
s 36	amd No. 51, 1989, s 6 sub No. 35, 2010, s 36
s 37	amd No. 54, 1982, s 2; No. 32, 1986, s 12; No. 1, 2004, s 62; No. 35, 2010, s 39
s 38	amd No. 117, 1979, s 8; No. 8, 1984, s 15; No. 17, 1996, s 6; No. 24, 2000, s 7 sub No. 9, 2007, s 20
s 39	rep No. 8, 1984, s 16
s 40	amd No. 35, 2010, s 39
s 40A	ins No. 117, 1979, s 9 amd No. 47, 1982, s 10 rep No. 9, 2007, s 21
s 41	rep No. 9, 2007, s 21
s 42	sub No. 35, 2010, s 37
pt 8 hdg	ins No. 9, 2007, s 22 amd No. 35, 2010, s 39
s 43	ins No. 9, 2007, s 22 amd No. 35, 2010, s 39
pt 9 hdg	ins No. 35, 2010, s 38
s 44	ins No. 35, 2010, s 38

## ENDNOTES

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sch                      sub No. 8, 1984, s 17