

THE NORTHERN TERRITORY OF AUSTRALIA

No. 117 of 1979

AN ACT

To amend the Motor Accidents (Compensation) Act 1979

[Assented to 15 October 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

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| 1. This Act may be cited as the <u>Motor Accidents (Compensation) Act (No. 2) 1979</u> . | Short title |
| 2. This Act shall be deemed to have come into operation on 1 July 1979. | Commencement |
| 3. The <u>Motor Accidents (Compensation) Act</u> is in this Act referred to as the <u>Principal Act</u> . | Principal Act |
| 4. Section 4 of the Principal Act is amended by omitting the definition of "accident" and substituting the following definition: | Interpretation |
| "accident" means - | |
| (a) in relation to the Territory - an occurrence - | |
| (i) on a public street, as defined in the <u>Motor Vehicles Act</u> , caused by or arising out of the use of a motor vehicle; or | |
| (ii) in any place in the Territory, other than a public street, caused by or arising out of the use of a Territory motor vehicle in respect of which a compensation contribution under Part V or section 137 of the <u>Motor Vehicles Act</u> has been paid or a motor vehicle currently registered in a State or another Territory in accordance with the law relating to the registration of motor vehicles applicable in that State or Territory; and | |

Motor Accidents (Compensation) (No. 2)

- (b) in relation to a place outside the Territory - an occurrence caused by or arising out of the use of a motor vehicle,

occurring on or after 1 July 1979, and which results in the death of or injury to a person."

Office to
indemnify
certain
persons

5. Section 6 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) Subject to sub-section (2), where a person is liable to pay damages in respect of the death of or injury to any person in or as a result of an accident -

- (a) that occurred in the Territory and at the time of that accident the first-mentioned person was in control of a motor vehicle other than a Territory motor vehicle; or

- (b) that occurred in any place, whether or not in the Territory, and at the time of that accident the first-mentioned person was -

- (i) the owner of a Territory motor vehicle involved in the accident and in respect of which he was so liable; or

- (ii) in control of a Territory motor vehicle,

the Office shall indemnify him or his personal representatives to the extent of his liability."

Benefits in
respect of
injuries

6. Section 7 of the Principal Act is amended by omitting "dies in or suffers injuries as a result of" and substituting "dies or suffers injuries in or as a result of".

Non-
entitlement

7. Section 10 of the Principal Act is amended by omitting from paragraph (b) "where he is entitled to compensation in respect of that accident" and substituting "in respect of death or injury in or as a result of an accident where that person is entitled to compensation in respect of that accident".

Office may
recover
certain
payments

8. Section 38 of the Principal Act is amended -

- (a) by omitting "The Office may, from time to time, sue and recover as a debt from" and substituting "(1) Subject to this section, the Office may, from time to time, sue for and recover as a debt from";

Motor Accidents (Compensation) (No. 2)

- (b) by omitting "or (d) the Commonwealth," and substituting the following:

"(d) a person referred to in section 6(1)(a);

(e) the Commonwealth; or

(f) the owner or driver of a motor vehicle referred to in section 40A(1),";

- (c) by omitting "and who is, or but for section 5 would be" and substituting "who is, or but for section 5 or 40A would be"; and

- (d) by adding at the end the following sub-sections:

"(2) Where a person in respect of whom a benefit has been paid under this Act was partly responsible for the accident in or as a result of which his death or injury occurred, the amount recoverable by the Office under sub-section (1) shall be the total amount from time to time paid by it in respect of the death or injury reduced by the percentage agreed on between the Office and the person against whom the claim is made as the degree of responsibility, if any, of the first-mentioned person for his death or injury.

"(3) Where, under sub-section (2), the Office and the person against whom a claim is made cannot agree on the degree of responsibility required to be determined, the court before which an action under sub-section (1) is brought shall determine the degree of responsibility, if any, of the person in respect of whom the benefit has been paid by the Office and reduce accordingly the amount otherwise payable under sub-section (1)."

9. The Principal Act is amended by inserting after section 40 the following section:

Nominal
defendant
provision

"40A.(1) Subject to sub-section (5), a claim for damages in respect of the death of, or injury to, a person who was not at the time of the accident a resident of the Territory caused by or arising out of an accident in the Territory involving a motor vehicle -

(a) that was not a Territory motor vehicle; and

(b) in relation to which there was not in force a policy of insurance complying with the provisions of a law in force in a State or another Territory requiring the owner or driver of a

Motor Accidents (Compensation) (No. 2)

motor vehicle to be insured against liability in respect of the death of, or injury to, any person caused by or arising out of the use of the motor vehicle,

shall lie, and may be enforced, against the Office and not against the owner or driver of the motor vehicle.

"(2) A claim referred to in sub-section (1) may be made and proceedings may be taken notwithstanding that the owner or driver of the motor vehicle referred to in that sub-section is dead or cannot be found.

"(3) Subject to sub-section (5), where the death of, or injury to, a person who is not a resident of the Territory is caused by or arises out of an accident in the Territory involving a motor vehicle but the identity of the motor vehicle cannot, after due inquiry and search, be established, any person who could have enforced a claim for damages against the owner or driver of the motor vehicle in respect of the death or injury may enforce against the Office the claim that he could have enforced against the owner or driver of the motor vehicle.

"(4) The inquiry and search for the purposes of establishing the identity of the motor vehicle referred to in sub-section (3) may be proved orally or by affidavit of the person who made the inquiry and search.

"(5) An action to enforce a claim referred to in this section shall not lie against the Office unless notice of intention to make a claim is given by the claimant to the Office within a period of 3 months after the occurrence out of which the right to make the claim under this section arose, or within such further period as the court, upon sufficient cause being shown, allows."
