

Serial 102

Motor Accidents (Compensation) Amendment Bill 2002

Ms Martin

**A BILL
for
AN ACT**

to amend the *Motor Accidents (Compensation) Act*



NORTHERN TERRITORY OF AUSTRALIA
MOTOR ACCIDENTS (COMPENSATION) AMENDMENT ACT 2002

No. of 2002

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

AN ACT

to amend the *Motor Accidents (Compensation) Act*

[Assented to 2002]
[Second reading 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Motor Accidents (Compensation) Amendment Act 2002*.

2. Commencement

(1) Section 5 is taken to have come into operation on 1 July 1979.

(2) The remaining provisions of this Act come into operation on the day on which the Administrator's assent to this Act is declared.

3. Principal Act

The *Motor Accidents (Compensation) Act* is in this Act referred to as the Principal Act.

4. Object of this Act

The object of this Act is –

- (a) to confirm that the calculation of the benefit payable under section 13 of the Principal Act is to be determined by the Board, based on the average weekly earnings for all employees' total employment earnings in the Territory;
- (b) to confirm that, for a person who receives compensation under section 13 of the Principal Act, a variation or cessation of the compensation is to be based on a medical assessment that the person has an earning capacity to a specified extent (whether or not the person actually does engage in any employment);
- (c) to confirm that the medical assessment of the person's earning capacity only has regard to any residual disabilities arising from the accident and does not have regard to factors such as the availability of employment or the person's level of education, vocational skills, numeracy and literacy skills, or employment or other experience;
- (d) to confirm that the manner in which the compensation scheme provided by section 13 of the Principal Act (before the amendments made by this Act) has been administered by the Territory Insurance Office, prior to any doubt arising as a result of the decision in *Collman v TIO* [2002] NTSC 8, was the manner intended by the Legislative Assembly; and
- (e) to clarify the operation of section 13 of the Principal Act in accordance with paragraphs (a), (b), (c) and (d) by amending the section and applying the amendments retrospectively as if section 13 had been originally enacted in that form.

5. Compensation for loss of earning capacity

Section 13 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following:

"(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 Board, 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 Board, 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:

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- (i) the day of the accident;
 - (ii) any weekly period that the Board determines the person is capable of working full-time, regardless of the type of work;
 - (iii) any weekly period that the Board determines the person earned a sum equal to or exceeding the maximum amount determined by the Board 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 Board, 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 Board 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 Board 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 Board under subsection (2)(a)."

6. Previous alterations of rights etc. not affected

This Act does not affect any alterations of rights or liabilities effected by –

- (a) section 5 of the *Motor Accidents (Compensation) Amendment Act 1986* (Act No. 32 of 1986); or
- (b) section 8 of the *Motor Accidents (Compensation) Amendment Act (No. 2) 1989* (Act No. 61 of 1989).

