

Serial 87
Motor Accidents (Compensation) Amendment Bill 2007
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Motor Accidents (Compensation) Act*

NORTHERN TERRITORY OF AUSTRALIA
MOTOR ACCIDENTS (COMPENSATION) AMENDMENT ACT 2007

Act No. [] of 2007

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Act amended
4. Amendment of section 4 (Interpretation)
5. New sections 4A to 4D
 - 4A. Motor accidents
 - 4B. Residents of the Territory
 - 4C. Permanent impairment
 - 4D. Attendant care services
6. Repeal and substitution of section 5
 5. Abolition of common law rights
7. Amendment of section 6 (Office to indemnify certain persons)
8. Repeal and substitution of sections 7 and 8
 7. Benefits for death or injury resulting from motor accidents
9. Repeal and substitution of sections 9 and 10
 9. Exclusions from certain benefits
 10. Exclusion from all benefits
 11. Partial exclusion from benefits
10. Amendment of section 12 (Rights to benefits to be determined by Board)
11. Amendment of section 13 (Compensation for loss of earning capacity)
12. Repeal of sections 15 and 16
13. Amendment of section 17 (Compensation for loss of limb or other permanent impairment)
14. Repeal and substitution of sections 18 to 19
 18. Medical and rehabilitation expenses
 - 18A. Short-term benefits for attendant care services
 - 18B. Long-term benefits for attendant care services
 - 18C. Emergency travel benefit
 19. Cost of providing appliances, special facilities etc.
15. Repeal and substitution of section 20
 20. Definition
 - 20A. Reduction of benefits in certain cases

16. Amendment of section 22 (Lump sum compensation in respect of death)
17. New Part VA
 - PART VA – COMMUTATION OF BENEFITS
 25. Commutation of benefits
18. Amendment of section 27 (Designated person's decision and referral to Board)
19. Repeal and substitution of section 28
 28. Motor Accidents (Compensation) Appeal Tribunal
20. Repeal and substitution of section 38
 38. Indemnification of the Office for statutory benefits
21. Repeal of sections 40A and 41
22. New Part VIII
 - PART VIII – TRANSITIONAL MATTERS FOR *MOTOR ACCIDENTS (COMPENSATION) AMENDMENT ACT 2007*
 43. Transitional provisions



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

AN ACT

to amend the *Motor Accidents (Compensation) Act*

[Assented to [] 2007]
[Second reading [] 2007]

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 2007*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3. Act amended

This Act amends the *Motor Accidents (Compensation) Act*.

4. Amendment of section 4 (Interpretation)

- (1) Section 4(1), definitions "accident", "attendant care services", "average weekly earnings", "dependent child", "discounted present values", "motor vehicle", "permanent impairment", "resident of the Territory" and "Territory motor vehicle"

omit

Motor Accidents (Compensation) Amendment Act 2007

(2) Section 4(1)

insert (in alphabetical order)

"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;

"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;

"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);

Motor Accidents (Compensation) Amendment Act 2007

"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;

"nursing care" means care provided by a nurse registered under the *Health Practitioners Act*, or the corresponding law of another jurisdiction, who is authorised under the terms of registration to provide nursing services otherwise than as a member of the nursing staff of a hospital or other institution;

"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;

"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;

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

Motor Accidents (Compensation) Amendment Act 2007

- (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 Part V of the *Work Health Act* or the corresponding legislation of another jurisdiction.

5. New sections 4A to 4D

After section 4

insert

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 Board.

(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.

6. Repeal and substitution of section 5

Section 5

repeal, substitute

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.

7. Amendment of section 6 (Office to indemnify certain persons)

(1) Section 6(1)

omit, substitute

(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) Section 6(3)

omit, substitute

(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.

(3) After section 6(5)

insert

(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.

8. Repeal and substitution of sections 7 and 8

Sections 7 and 8

repeal, substitute

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. Repeal and substitution of sections 9 and 10

Sections 9 and 10

repeal, substitute

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 Board'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 Board 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 Board'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

Motor Accidents (Compensation) Amendment Act 2007

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;

Motor Accidents (Compensation) Amendment Act 2007

- (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 Board, 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 Board, 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

Motor Accidents (Compensation) Amendment Act 2007

- (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.

10. Amendment of section 12 (Rights to benefits to be determined by Board)

Section 12(2) to (6)

omit, substitute

(2) In the exercise of its power to make determinations under subsection (1), the Board may, on the advice of a medical practitioner, determine a treatment plan or a rehabilitation program for an injured person.

(3) The Board may determine a treatment plan or rehabilitation program for an injured person:

- (a) on application by the injured person; or
- (b) on the Board'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 Board 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 Board;
- (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 Board 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 Board 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.

11. Amendment of section 13 (Compensation for loss of earning capacity)

(1) Section 13(1)

omit, substitute

(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 Board, reduced as a result of an injury suffered in, or as a result of, the motor accident.

(2) Section 13(5)

omit, substitute

(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.

12. Repeal of sections 15 and 16

Sections 15 and 16

repeal

13. Amendment of section 17 (Compensation for loss of limb or other permanent impairment)

(1) Section 17(1)

omit, substitute

(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 Board, is at least 5%.

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

(2) After section 17(3)

insert

(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.

14. Repeal and substitution of sections 18 to 19

Sections 18 to 19

repeal, substitute

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 Board 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 Board 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 Board may extend the period of one year if, after considering the advice of a medical practitioner, the Board 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 Board 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 Board 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 Board, 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:

Motor Accidents (Compensation) Amendment Act 2007

- (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 Board 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 Board, require modification; and
 - (c) the reasonable cost of special facilities and equipment the Board 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.

15. Repeal and substitution of section 20

Section 20

repeal, substitute

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

(3) The Board 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 Board 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.

16. Amendment of section 22 (Lump sum compensation in respect of death)

- (1) Section 22(1)

omit, insert

(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) Section 22(3)

omit

subsection (1)(b)(i)

substitute

subsection (1)(b)

- (3) After section 22(3)

insert

(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.

17. New Part VA

After section 24

insert

PART VA – 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.

18. Amendment of section 27 (Designated person's decision and referral to Board)

Section 27(6)

omit, substitute

(6) The designated person and the Board are each required to give reasons for their decisions under this Act.

19. Repeal and substitution of section 28

Section 28

repeal, substitute

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.

20. Repeal and substitution of section 38

Section 38

repeal, substitute

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

Motor Accidents (Compensation) Amendment Act 2007

- (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

Motor Accidents (Compensation) Amendment Act 2007

- (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.

21. Repeal of sections 40A and 41

Sections 40A and 41

repeal

22. New Part VIII

After section 42

insert

PART VIII – 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.

Motor Accidents (Compensation) Amendment Act 2007

- (3) However:
 - (a) the amendments to Part VI 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.