

Serial 108
Motor Accidents (Compensation) Commission Bill 2014
Mr Giles

A Bill for an Act to provide for the Motor Accidents (Compensation)
Commission and Motor Accidents (Compensation) Fund, and for related
purposes

NORTHERN TERRITORY OF AUSTRALIA

MOTOR ACCIDENTS (COMPENSATION) COMMISSION ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to provide for the Motor Accidents (Compensation) Commission and Motor Accidents (Compensation) Fund, and for related purposes

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Motor Accidents (Compensation) Commission Act 2014*.

2 Commencement

This Act commences on the commencement of section 46 of the *Territory Insurance Office (Sale) Act*.

3 Definitions

In this Act:

Associate Commissioner means an Associate Motor Accidents (Compensation) Commissioner appointed under section 6(1)(b).

Commission means the Motor Accidents (Compensation) Commission continued by section 5(1).

Commissioner means the Motor Accidents (Compensation) Commissioner appointed under section 6(1)(a).

Determination means a determination made under section 25.

Fund means the Motor Accidents (Compensation) Fund continued by section 16.

MAC business means the part of the Commission's business that relates to administering the MAC scheme and managing the Fund.

MAC scheme means the scheme of compensation established by the *Motor Accidents (Compensation) Act*.

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

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

Note for section 4

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 Motor Accident (Compensation) Commission

5 **Motor Accidents (Compensation) Commission**

- (1) The Territory Insurance Office (established by section 4 of the *Territory Insurance Office Act*) continues as the same corporate entity under the name of the Motor Accidents (Compensation) Commission.
- (2) The Commission:
 - (a) is a body corporate with perpetual succession; and
 - (b) may own and deal with property; and
 - (c) may sue and be sued.
- (3) The Commission is constituted:
 - (a) by the Commissioner and any Associate Commissioners; or
 - (b) if there is no Commissioner or Associate Commissioner (and no persons have been appointed to act in those positions) – by the Chief Executive Officer.

6 Motor Accidents (Compensation) Commissioner and Associate Commissioners

- (1) The Minister may, by *Gazette* notice, appoint:
 - (a) a person to be the Motor Accidents (Compensation) Commissioner; and
 - (b) a person to be an Associate Motor Accidents (Compensation) Commissioner.
- (2) The Commissioner and any Associate Commissioners hold office on the conditions (including remuneration, expenses and allowances) determined by the Minister.

7 Functions of the Commission

The Commission has the following functions:

- (a) to administer the MAC scheme in accordance with the *Motor Accidents (Compensation) Act*;
- (b) to manage the Fund;
- (c) to promote road safety;
- (d) to perform any other function conferred on it under an Act.

8 Powers of Commission

For the performance of its functions, the Commission has all the powers of an individual.

9 Delegation

- (1) The Commission may delegate any of its powers and functions under this or any other Act to:
 - (a) the Commissioner or an Associate Commissioner; or
 - (b) a Chief Executive Officer (as defined in section 3(1) of the *Public Sector Employment and Management Act*) or a public sector employee; or
 - (c) a statutory corporation; or
 - (d) with the approval of the Minister, any other person (a ***non-government delegate***).

- (2) A delegation under subsection (1)(d) must be made by written contract between the Commission and the delegate (a **delegation contract**).
- (3) The Commission must not enter into a delegation contract unless the terms of the contract have been approved by the Minister.
- (4) A non-government delegate may do one or more of the following if doing so is permitted by the delegation contract:
 - (a) sub-delegate a power or function delegated to the non-government delegate by the delegation contract, other than this power of sub-delegation;
 - (b) enter into contracts or other arrangements as the Commission's agent.
- (5) A contract made under section 9 of the *Territory Insurance Office (Sale) Act 2014* is taken to be a contract under subsection (2) making a delegation under subsection (1)(d).

10 Ministerial direction

- (1) In exercising its powers and performing its functions, the Commission is subject to the direction of the Minister.
- (2) The Commission must include in its annual report for a financial year details of each direction given during the year.

11 Business or trading names

The Commission may use and operate under one or more business or trading names approved by the Minister.

12 Common seal

- (1) The Commission must have a common seal.
- (2) The seal must not be used except with the authority of the Commission.
- (3) A document purporting to bear the common seal of the Commission is taken to have been duly executed by the Commission, in the absence of evidence to the contrary.

13 Proceedings of Commission when constituted by more than one member

- (1) This section applies if the Commission is constituted by 2 or more persons.

- (2) The Commissioner is the chairperson of the Commission.
- (3) The Commission may conduct its proceedings (including meetings) in the way it considers appropriate.

14 Staff and facilities

- (1) The Chief Executive Officer must provide the Commission with staff and facilities to enable it to:
 - (a) properly carry on the MAC business; and
 - (b) properly perform its other functions.
- (2) The Chief Executive Officer may charge the Commission the reasonable cost of providing staff and facilities for the purpose mentioned in subsection (1)(a).
- (3) Amounts charged under subsection (2) are to be paid out of the Fund.

15 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as the Commissioner or an Associate Commissioner.
- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Commission in the exercise of a power or performance of a function under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory or the Commission would, apart from those subsections, have for the act or omission.
- (4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Part 3 Motor Accidents (Compensation) Fund

16 Motor Accidents (Compensation) Fund

- (1) The Motor Accidents (Compensation) Fund (established by section 22B of the *Territory Insurance Office Act*) is continued.

- (2) The assets of the Fund:
 - (a) are the property of the Territory; and
 - (b) are held by the Commission on behalf of the Territory.
- (3) To avoid doubt:
 - (a) a trust is not created in relation to the Fund; and
 - (b) the Commission is not a trustee in relation to the Fund.

17 Amounts paid into and out of the Fund

- (1) The Commission must pay into the Fund:
 - (a) amounts paid to the Commission under section 46 of the *Motor Vehicles Act*; and
 - (b) earnings from the investment of the Fund; and
 - (c) other amounts received by the Commission for the MAC scheme.
- (2) The Commission may pay amounts out of the Fund only for the following purposes:
 - (a) payment of benefits under the *Motor Accident (Compensation) Act*;
 - (b) administration of the MAC Scheme;
 - (c) management of the Fund;
 - (d) payment of amounts payable by the Commission under a MAC management agreement;
 - (e) discharge of any other liabilities in relation to the MAC business;
 - (f) payment of amounts required to be paid out of the Fund under section 14(3), 18, 19 or 20;
 - (g) promotion of road safety.
- (3) In this section:

MAC management agreement means a contract as mentioned in section 9(2) under which the Commission has delegated powers and functions in relation to the MAC business.

18 Reimbursement of cost of public health services

- (1) After the end of each financial year the Minister must determine the amount (if any) that the Minister considers should be paid to reimburse the Territory for the cost of providing public health services to MAC claimants during that financial year.
- (2) The Commission must pay the fee out of the Fund to the Central Holding Authority within 2 months after the Minister notifies the Commission of the amount.
- (3) In this section:

MAC claimant means a person who is entitled to compensation under section 18 of the *Motor Accidents (Compensation) Act*.

public health services means medical and rehabilitation services provided by the Public Health System that would have been compensable under section 18 of the *Motor Accidents (Compensation) Act* had the services been provided by a person who is not part of the Public Health System.

Public Health System, see section 11 of the *Health Services Act*.

19 Prudential supervision fee

- (1) After the end of each financial year the Treasurer may charge the Commission a prudential supervision fee for the financial year of an amount determined in accordance with the Determinations.
- (2) The Commission must pay the fee out of the Fund to the Central Holding Authority within 2 months after the Treasurer notifies the Commission of the amount.

20 Payment of surplus to Territory

- (1) If the Minister is satisfied that the amount in the Fund is in excess of that required as adequate provision for conducting the MAC business, the Minister may direct the Commission to pay all or part of the excess to the Territory.
- (2) The Commission must pay the amount out of the Fund to the Central Holding Authority by the date stated in the direction.
- (3) The Minister must table a copy of a direction given under subsection (1) in the Legislative Assembly within 6 sitting days after giving the direction.

Part 4 Management matters

21 Financial records

- (1) The Commission must keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and audited.
- (2) The Commission must keep the records for 7 years after the transactions covered by them are completed.

22 Annual report and audit

- (1) For each financial year the Commission must prepare an annual report of the Commission's operations during the year.
- (2) The Commission must give the report to the Minister within 4 months after the end of the year or any longer period allowed by the Minister.
- (3) The annual report must:
 - (a) conform to the requirements of similar reports under the Corporations Act 2001; and
 - (b) include separate reports for the MAC business and the Commission as a whole; and
 - (c) include all information that is required by the Minister to enable an informed assessment of the Commission's operations.
- (4) Section 10(1) to (3) of the *Financial Management Act* applies in relation to the Commission as if it were a Government Business Division and the Commissioner were the Accountable Officer.
- (5) The Minister must table the annual report, the financial statement prepared in accordance with section 10 of the *Financial Management Act* and Auditor-General's report in the Legislative Assembly within 6 sitting days after the Minister receives the last of them.

23 *Financial Management Act* does not apply

The *Financial Management Act* does not apply in relation to the Commission or the Fund (except as mentioned in section 22(4)).

24 Provision of information to Minister

- (1) The Commission must give to the Minister information within its possession or control when requested by the Minister to do so.
- (2) If the Commission considers that any of the information should be treated as confidential, it must advise the Minister of that opinion and the reasons for it.

25 Treasurer's Determinations

- (1) The Treasurer may make determinations not inconsistent with this Act about any of the following:
 - (a) prudential standards that:
 - (i) must be applied by the Commission in relation to the MAC business; or
 - (ii) relate to the performance of the Commission's functions in relation to the MAC business;
 - (b) monitoring and enforcement of those prudential standards (including the appointment of persons for those purposes);
 - (c) standards about the governance of the Commission;
 - (d) the prudential supervision fee under section 19.
- (2) In making a Determination, the Treasurer must consult with, and have regard to any comments made by, the Commission.
- (3) The Treasurer must, by notice in the *Gazette*, notify the making of a Determination.
- (4) A Determination must not commence before its notification under subsection (3).
- (5) A Determination may apply, adopt or incorporate any or all of the provisions of an instrument as in force or existing from time to time.

26 Assumptions when dealing with Commission

Sections 52 (other than section 52(1)(d)) and 53 of the *Government Owned Corporations Act* apply to the Commission as if it were a Government owned corporation.

27 Guarantee

- (1) All liabilities of the Commission in relation to the MAC business are guaranteed by the Territory.

Part 6 Transitional matters for Motor Accidents (Compensation) Commission Act 2014

Division 1 Winding up of insurance business

30 Residual assets and liabilities etc.

- (1) The Commission has the function of winding up the residual insurance business.
- (2) Except to the extent that the Corporations Act 2001 expressly binds the Crown, the Commission, in performing a function or exercising a power under this section, is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.
- (3) In this section:

residual insurance business means so much (if any) of TIO's insurance business as was not included in the sale of the insurance business (as defined in section 3 of the *Territory Insurance Office (Sale) Act*).

TIO's insurance business means the insurance business (as defined in section 3 of the *Territory Insurance Office (Sale) Act*) as carried on by TIO immediately before the insurance sale date (as defined in that section).

Division 2 Winding up of banking business

31 Definitions

In this Division:

banking sale date, see section 3 of the *Territory Insurance Office (Sale) Act*.

full banking business means:

- (a) if the banking sale date was before the commencement of this Act – the TIO insurance business; or
- (b) otherwise – the business carried on by the Commission under section 32).

MACC banking business means the business carried on by the Commission under section 32 or 33.

residual banking business means so much of the full banking business as was not included in the sale of the banking business (as defined in section 3 of the *Territory Insurance Office (Sale) Act*).

residual deposit means a deposit held by the Commission as part of the residual banking business.

TIO's banking business means the banking business (as defined in section 3 of the *Territory Insurance Office (Sale) Act*) as carried on by TIO immediately before the banking sale date.

32 Commission to carry on banking business prior to sale

- (1) This section applies if this Act commences before the banking sale date.
- (2) Until the banking sale date the Commission has the function of carrying on what was TIO's banking business.

33 Commission to wind up residual banking business

- (1) If this Act commences before the banking sale date, this section does not apply until the banking sale date.
- (2) The Commission has the following functions:
 - (a) carrying on the residual banking business until all residual deposits have been repaid;
 - (b) winding up the residual banking business.

34 Assets and liabilities of MACC banking business

- (1) The moneys of, and all debts and other moneys owing to, the Commission in relation to the MACC banking business:
 - (a) are the property of the Territory; and
 - (b) are held, and may be recovered, by the Commission on behalf of the Territory.
- (2) The Commission must not use those moneys for any purpose other than the carrying on of the MACC banking business.
- (3) Within 3 months after the last residual deposit is repaid to the depositor the Commission must pay the moneys standing to the credit of the account to the Central Holding Authority.

35 Guarantee by Territory

- (1) The Territory guarantees the repayment of, and the interest payable on:
 - (a) if this Act commences before the banking sale date – each deposit held by the Commission in carrying on what was TIO's banking business under section 32; and
 - (b) in any event, on and after the banking sale date – each residual deposit.
- (2) Any amount payable under the guarantee is payable from the Central Holding Authority, which is appropriated accordingly.
- (3) This section expires on 31 March 2015.

36 Annual report

In addition to the reports required under section 22(3)(b), the Commission's annual report must include a separate report for the MACC banking business.

37 Treasurer's Determinations

- (1) Under section 25, the Treasurer may also make determinations about prudential standards that:
 - (a) must be applied by the Commission in relation to the MACC banking business; or
 - (b) relate to the performance of the Commission's functions in relation to the MACC banking business.
- (2) For each financial year during which the Commission carries on the MACC banking business the Treasurer may charge the Commission a prudential supervision fee in respect of that business of an amount determined in accordance with the Determinations.

38 Application of Corporations Act 2001

Except to the extent that the Corporations Act 2001 expressly binds the Crown, the Commission, in carrying on the MACC banking business, is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

39 Reference to TIO include Commission

A reference in any of the following to the Territory Insurance Office is taken to be a reference to the Commission:

- (a) sections 50(1), (3), (4) and (5), 51(a), 54(1), (2), (3) and (4) and 73(1)(a) and (2)(a) and (b) of the *Agents Licensing Act*;
- (b) section 110(6)(d)(ii) and (8)(d)(ii) of the *Associations Act*;
- (c) section 37(1) of the *Batchelor Institute of Indigenous Tertiary Education Act*;
- (d) section 32(1) of the *Charles Darwin University Act*;
- (e) sections 4(1)(h), 23(2), 27(1) and 28(1) and (2) of the *Commercial and Private Agents Licensing Act*;
- (f) section 5 of the *Criminal Property Forfeiture Act*, definition **financial institution**, paragraph (d);
- (g) regulation 11(1)(a) and (b) of the *Education (College and School Councils) Regulations*;
- (h) section 3 of the *Gaming Machine Act*, definition **financial institution**, paragraph (f);
- (i) section 68(2) of the *Law of Property Act*, definition **bank**;
- (j) section 3 of the *Local Government Act*, definition **authorised deposit account**;
- (k) section 25(1) of the *Menzies School of Health Research Act*;
- (l) sections 14(1) and (2), 16(2) and 27(1) and (4) of the *Public Trustee Act*;
- (m) section 23(b) of the *Salvation Army (Northern Territory) Property Trust Act*;
- (n) section 39(1) of the *Superannuation Act*;
- (o) section 35(1) of the *Unit Titles Act*.

Division 3 General matters

40 Definitions

In this Division:

TIO means the Territory Insurance Office mentioned in section 5(1).

TIO Act means the *Territory Insurance Office Act* repealed by section 46 of the *Territory Insurance Office (Sale) Act*.

41 Annual report

In the first annual report and financial statements prepared under section 22, the Commission must include a report on the operation of, and financial statements for, TIO for the period after the end of the period covered by TIO's last annual report under the TIO Act.

42 Treasurer's determinations

A Determination that was in force under section 33A of the TIO Act immediately before the commencement of this Act continues as a Determination under section 25.

43 Continuation of ongoing matters

- (1) Anything done or omitted to be done by, to, or in relation to, TIO before the commencement of this Act that is of ongoing effect is to be taken, after that commencement, to have been done or omitted to be done by, to, or in relation to, the Commission.
- (2) If the thing was done for the purpose of a particular provision of the TIO Act, it is to be taken to have been done for the purposes of the equivalent provision in this Act.