

Serial 71
Motor Accidents (Compensation) Amendment Bill 2014
Mr Tollner

A Bill for an Act to amend the *Motor Accidents (Compensation) Act*

NORTHERN TERRITORY OF AUSTRALIA

MOTOR ACCIDENTS (COMPENSATION) AMENDMENT ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to amend the *Motor Accidents (Compensation) Act*

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

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 2014*.

2 Commencement

This Act commences on 1 July 2014.

3 Act amended

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

4 Section 4 amended

(1) Section 4, definitions *medical practitioner* and *unregistered omit*

(2) Section 4

insert (in alphabetical order)

conditionally registered, see section 4DA(3).

registered, see section 4DA(4).

unregistered, see section 4DA(1).

(3) Section 4, definition *spouse*, paragraph (e)(i)

omit

or (c)

insert

, (c) or (d)

5 Section 4B amended

Section 4B(2)

omit, insert

(2) However, a person is not to be regarded as a resident of the Territory if:

(a) the person is, at the relevant time, not living in the Territory and either:

(i) the person has been living outside the Territory for a continuous period of 6 months or more; or

(ii) the person's primary dwelling house or primary employment is not in the Territory; or

(b) the person has left the Territory with the intention of no longer residing in the Territory.

6 Section 4C amended

Section 4C(2)(a)

omit, insert

(a) in accordance with the edition of the American Medical Association Guides to the Evaluation of Permanent Impairment prescribed by regulation as modified by regulation; and

7 Section 4DA inserted

After section 4D

insert

4DA Registered, conditionally registered and unregistered motor vehicles

- (1) A motor vehicle is ***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*.
- (2) However, a motor vehicle is not to be regarded as unregistered if:
 - (a) an exemption from registration issued by the Registrar of Motor Vehicles under the *Motor Vehicles Act* is in force for the vehicle; or
 - (b) the motor vehicle is being driven while bearing a trader's plate in accordance with section 35 of the *Motor Vehicles Act*.
- (3) A motor vehicle is ***conditionally registered*** if it is registered under the *Motor Vehicles Act* or the corresponding law of another jurisdiction subject to any condition or restriction.
- (4) A motor vehicle is ***registered*** if it is not unregistered or conditionally registered.

8 Sections 9, 10 and 11 replaced

Sections 9, 10 and 11

repeal, insert

9 Exclusion: driver under influence of alcohol or drug

- (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

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- (b) the person was under the influence of alcohol or a drug to such an extent that the person:
 - (i) was, by driving a motor vehicle, committing an offence against relevant laws regulating road traffic; or
 - (ii) would have been committing such an offence if the person had been driving the motor vehicle in a public street or public place; and
 - (c) the influence of the alcohol or drug contributed, in the Office's opinion, to the accident.
- (2) The Office must presume that the influence of alcohol contributed to the accident if the circumstances prescribed in the regulations exist in relation to the person, unless the contrary is established.
 - (3) The benefits to which this section applies are:
 - (a) compensation for loss of earning capacity; and
 - (b) lump sum compensation for a permanent impairment.

9A Exclusion: criminal conduct contributing to accident

- (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 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.
- (2) The benefits to which this section applies are:
 - (a) compensation for loss of earning capacity; and
 - (b) lump sum compensation for a permanent impairment.

9B Exclusion: recklessly ignoring risk

- (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 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.
- (2) The benefits to which this section applies are:
 - (a) compensation for loss of earning capacity; and
 - (b) lump sum compensation for a permanent impairment.
- (3) This section does not apply in relation to conduct mentioned in section 11(1)(c).

9C Exclusion: unlicensed driver

- (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 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.

(2) However, subsection (1) does not apply if, in the opinion of the Office, the circumstances in which the vehicle was being driven amounted to an emergency.

(3) The benefits to which this section applies are:

(a) compensation for loss of earning capacity; and

(b) lump sum compensation for a permanent impairment.

9D Exclusion: unregistered motor vehicle – accident with registered or conditionally registered motor vehicle

(1) A person is not entitled to benefits to which this section applies for an injury or death 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 unregistered and had been unregistered for a period of at least 3 months; and

(c) the injured person was the owner or driver of the motor vehicle; and

(d) if the injured person was the driver of the motor vehicle:

(i) the motor vehicle was of a kind prescribed by regulation; or

(ii) otherwise – the driver knew, or ought to have known, the vehicle was unregistered; and

(e) the accident involved another motor vehicle that was either:

(i) a registered motor vehicle that, at the time of the accident, was being driven; or

(ii) a conditionally registered motor vehicle that, at the time of the accident, was being driven in compliance with the conditions or restrictions on which the vehicle was registered.

(2) However, subsection (1) does not apply if, in the opinion of the Office, the circumstances in which the vehicle was being driven amounted to an emergency.

(3) The benefits to which this section applies are all benefits payable under this Act other than those payable under sections 18, 18BC, 18BD and 19.

9E Total exclusion: unregistered motor vehicle – other accidents

- (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:
- (a) the accident occurred while the injured person was in a motor vehicle; and
 - (b) the motor vehicle was unregistered and had been unregistered for a period of at least 3 months; and
 - (c) the injured person was the owner or driver of the motor vehicle; and
 - (d) if the injured person was the driver of the motor vehicle:
 - (i) the motor vehicle was of a kind prescribed by regulation; or
 - (ii) otherwise – the driver knew, or ought to have known, the vehicle was unregistered; and
 - (e) section 9D does not apply.
- (2) However, subsection (1) does not apply if, in the opinion of the Office, the circumstances in which the vehicle was being driven amounted to an emergency.

9F Exclusion: conditionally registered motor vehicle – accident with registered or conditionally registered motor vehicle

- (1) A person is not entitled to benefits to which this section applies for an injury or death 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 conditionally registered; and
 - (c) the injured person:
 - (i) was the owner of the conditionally registered motor vehicle; or
 - (ii) was the driver of the conditionally registered motor vehicle and knew, or ought to have known, that the vehicle was conditionally registered; and
 - (d) the vehicle was driven in breach of the conditions or restrictions on which the vehicle was registered; and

-
- (e) the accident involved another motor vehicle that was either:
 - (i) a registered motor vehicle that, at the time of the accident, was being driven; or
 - (ii) a conditionally registered motor vehicle that, at the time of the accident, was being driven in compliance with the conditions or restrictions on which the vehicle was registered.
 - (2) However, subsection (1) does not apply if, in the opinion of the Office, the circumstances in which the vehicle was being driven amounted to an emergency.
 - (3) The benefits to which this section applies are all benefits payable under this Act other than those payable under sections 18, 18BC, 18BD and 19.

9G Total exclusion: conditionally registered motor vehicle – other accidents

- (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:
 - (a) the accident occurred while the injured person was in a motor vehicle; and
 - (b) the motor vehicle was conditionally registered; and
 - (c) the injured person:
 - (i) was the owner of the conditionally registered motor vehicle; or
 - (ii) was the driver of the conditionally registered motor vehicle and knew, or ought to have known, that the vehicle was conditionally registered; and
 - (d) the vehicle was driven in breach of the conditions or restrictions on which the vehicle was registered; and
 - (e) section 9F does not apply.
- (2) However, subsection (1) does not apply if, in the opinion of the Office, the circumstances in which the vehicle was being driven amounted to an emergency.

10 Total exclusion: criminal use of vehicle

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 another 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.

10A Total exclusion: workers compensation

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.

10B Total exclusion: accidents at motor sports events

- (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 a motor vehicle involved in the accident was taking part in a motor sport event, and at the time of the motor accident the injured person was:
 - (a) the driver of, or a passenger in, the motor vehicle; or
 - (b) an official or organiser of the event; or
 - (c) assisting in any way in the holding of the event; or
 - (d) assisting participants in the event; or

(e) otherwise associated with the holding of the event.

(2) In this section:

motor sport event means a race, competition, demonstration, trial, high speed test or similar event involving motor vehicles (whether formally organised or not), and any preparations for the event.

10C Total exclusion: terrorist acts

(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, having regard to the nature of the accident and the context in which the accident occurred, it is reasonable to characterise the accident as a terrorist act.

(2) In this section:

terrorist act, see section 5 of the *Terrorism (Emergency Powers) Act*.

11 Reduction: failure to wear seatbelt or safety helmet

(1) This section applies 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).

Note for subsection (1)

This provision applies only to an illegal failure to wear a seat belt or a safety helmet. It does not apply 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) The benefits to which this section applies that are payable to, or in relation to, the person are reduced by 25% of the amount otherwise payable.

(3) The benefits to which this section applies are:

- (a) compensation for loss of earning capacity; and
- (b) lump sum compensation for a permanent impairment; and
- (c) compensation under sections 22 and 23 for a death or dependency.

11A Reduction: other insurance

- (1) This section applies 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).
- (2) 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.

11B More than one exclusion or reduction

If 2 or more of the exclusions or reductions under this Part apply in relation to an injury or death, those provisions apply cumulatively.

9 Section 12 amended

- (1) After section 12(1)
insert
- (1A) The regulations may provide for the manner in which the Office determines whether a benefit is necessary or reasonable.
- (2) Section 12(3)(b)
omit
Offices
insert
Office's
- (3) Section 12(5)
omit
either or both
insert
any

-
- (4) Section 12(5)(a), after "medical practitioner"
insert
or other person
- (5) Section 12(5)(b)
omit, insert
- (ab) require the injured person to be assessed by an attendant care needs assessor nominated by the Office;
- (b) require a medical practitioner, attendant care needs assessor or other person who has examined, assessed or treated the person to provide it with details and results of any such examination, assessment or treatment and any other information prescribed by regulation;
- (c) require the injured person to provide it with any other information prescribed by regulation.
- (6) Section 12(6), after "examined"
insert
, assessed
- (7) Section 12(7)
omit
may
insert
must
- (8) After section 12(8)
insert
- (9) In this section:

attendant care needs assessor means a person, or a person of a class, approved by the Office to assess a person's need for attendant care services.

10 Part 4, Division 1 heading inserted

Before section 13

insert

Division 1 General benefits

11 Section 13 amended

(1) After section 13(2)

insert

(2A) For subsection (2), the definition *average weekly earnings* in section 4 does not apply.

(2) Section 13(3)

omit (all references)

40

insert

38

(3) Section 13(5)(a)

omit

attaining the age of 65 years

insert

the day the person reaches pension age

(4) After section 13(6)

insert

(7) In this section:

pension age, see section 23(1) of the *Social Security Act 1991* (Cth).

12 Section 18 amended

Section 18(1), after "services"

insert

that are necessary and

13 Part 4, Division 2 heading, Subdivision 1 heading and section 18AA inserted

After section 18

insert

Division 2 Attendant care services

Subdivision 1 Injuries received prior to 1 July 2014

18AA Application of Subdivision

This Subdivision does not apply to injuries suffered on or after 1 July 2014.

14 Section 18A amended

Section 18A(3)

omit, insert

- (3) Benefits payable under this section are to be determined in accordance with the regulations.

15 Section 18B amended

Section 18B(3)

omit, insert

- (3) Benefits payable under this section are to be determined in accordance with the regulations.

16 Part 4, Division 2, Subdivision 2 and Division 3 heading inserted

After section 18B

insert

Subdivision 2 Injuries received on or after 1 July 2014

18BA Application of Subdivision

This Subdivision applies in relation to an injury suffered on or after 1 July 2014.

18BB Eligibility for 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 interim or long-term attendant care services.
- (2) Benefits are payable for a period of up to 1 year after the date of the motor accident.

18BC Eligibility for 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 an impairment as a result of an 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 criteria prescribed by regulation for this section are satisfied.
- (2) Benefits under this section are payable for life.

18BD Eligibility for interim 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 an 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 criteria prescribed by regulation for this section are satisfied.
- (2) However, benefits under this section are not payable if benefits are payable under section 18BC.
- (3) Benefits under this section cease to be payable:
 - (a) if the injured person was less than 3 years of age at the date of the accident – when the person attains 6 years of age; or
 - (b) otherwise – 3 years after the date the injured person makes a claim under this Act.
- (4) The Office must determine whether an injured person in receipt of benefits under this section is eligible for benefits under section 18BC prior to the expiry of the period in subsection (3).
- (5) A person cannot be eligible for interim benefits for attendant care services more than once for the same impairment.

18BE Attendant care services for which benefits are payable

- (1) Benefits are only payable under this Subdivision for attendant care services that:
 - (a) are provided in Australia; and
 - (b) in the opinion of the Office:
 - (i) are necessary and reasonable in the circumstances; and
 - (ii) relate to the person's injury; and
 - (c) are of a standard the Office considers appropriate; and
 - (d) are provided by:
 - (i) an approved provider; or

-
- (ii) if the Office determines that special circumstances exist, a person approved by the Office in writing.

(2) In this section:

approved provider means a person, or a person of a class, approved by the Office in accordance with criteria prescribed by regulation to provide attendant care services.

18BF Payment of benefits for attendant care services

- (1) Benefits for attendant care services under this Subdivision are to be determined in accordance with the regulations.
- (2) A benefit for attendant care services under this Subdivision must be paid directly to the provider of the attendant care services.
- (3) However, if the Office considers it appropriate, all or part of a benefit may be paid to the injured person in a manner determined by the Office.

Division 3 Other benefits

17 Section 18C amended

- (1) Section 18C(1)(c)

omit

1 000 km

insert

500 km

- (2) Section 18C(4)

omit

motor accident

insert

claim

-
- (3) Section 18C(5)

omit, insert

- (5) In this section:

close family member means:

- (a) a spouse, parent or child of the person injured or killed in, or as a result of, the motor accident; or
- (b) if the person injured or killed in, or as a result of, the motor accident does not have a spouse, parent or child – a sibling, grandparent, grandchild, uncle or aunt of the person.

18 Section 19 amended

- (1) Section 19(1)(a), after "appliances"

insert

that are necessary and reasonably

- (2) Section 19(1)(b), after "making"

insert

necessary and reasonable

- (3) Section 19(1)(c), after "necessary"

insert

and reasonable

19 Section 20A amended

- (1) Section 20A(2)

omit, insert

- (2) The Office must presume that the influence of alcohol contributed to the accident if the circumstances prescribed in the regulations exist in relation to the person, unless the contrary is established.

(2) After section 20A(4)

insert

(5) If the Office determines that benefits are to be reduced under this section, the Office must reduce the benefits in accordance with the regulations.

(6) Benefits payable under section 22(1)(a) must not be reduced under this section.

20 Section 31A inserted

After section 31

insert

31A Refusal of driver's claim

The Office may refuse to consider a claim in respect of an accident made by the driver of a motor vehicle if the driver did not report the motor accident in accordance with regulation 19(2) of the *Traffic Regulations*, unless, in the opinion of the Office, the driver had a reasonable excuse for not doing so.

21 Section 33 amended

Section 33

omit

18(2A) or 18A

insert

18A or 18BB

22 Section 38 amended

After section 38(5)

insert

(5A) 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 an accident involving a motor vehicle that was taking part in a motor sport event (as defined in section 10B) if the indemnifier:

(a) was an organiser of the motor sport event, or the driver or owner of the motor vehicle involved in the accident; and

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- (b) the indemnifier would, assuming this Act had never existed, have been liable in damages, in tort or contract, for the death or injury.

23 Part 8 heading replaced

Part 8, heading

repeal, insert

Part 8 Transitional matters

Division 1 Motor Accidents (Compensation) Amendment Act 2007

24 Part 9 heading replaced

Part 9, heading

repeal, insert

Division 2 Territory Insurance Office and Other Legislation Amendment Act 2010

25 Part 8, Division 3 inserted

After section 44

insert

Division 3 Motor Accidents (Compensation) Amendment Act 2014

45 Definitions

In this Division:

commencement means the day on which the *Motor Accidents (Compensation) Amendment Act 2014* commences.

46 Application of Part 3

- (1) Part 3, as amended by the *Motor Accidents (Compensation) Amendment Act 2014*, applies only in relation to motor accidents that occurred after commencement.

- (2) Part 3, as in force before commencement, continues to apply in relation to a motor accident that occurred before commencement.

47 Application of sections 18 and 19

- (1) Sections 18 and 19, as amended by the *Motor Accidents (Compensation) Amendment Act 2014*, apply only in relation to motor accidents that occurred after commencement.
- (2) Sections 18 and 19, as in force before commencement, continue to apply in relation to a motor accident that occurred before commencement.

26 Schedule repealed

Schedule

repeal

27 Expiry of Act

This Act expires on the day after it commences.