

# **Motor Accidents (Compensation) Bill 2014**

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**Serial No. 71**

TREASURER

## **EXPLANATORY STATEMENT**

### **GENERAL OUTLINE**

The primary purpose of this Bill is to amend the *Motor Accidents (Compensation) Act* (MACA) to align it with National Injury Insurance Scheme (NIIS) minimum benchmarks for motor vehicle accidents in the Northern Territory, to provide no fault lifetime care and support for people who are catastrophically injured in a motor vehicle accident.

In May 2013 the Northern Territory Government signed an Intergovernmental Agreement with the Commonwealth for the reform of disability care and support services through the National Disability Insurance Scheme (NDIS). The Intergovernmental Agreement includes the provision that the Northern Territory implement nationally consistent minimum benchmarks, under a NIIS, to provide no fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents before the commencement of an NDIS trial to be conducted in the Barkly region from 1 July 2014.

National minimum benchmarks have been established in relation to eligibility, scope, exclusions, level and range of benefits for motor vehicle accidents. For the Territory to comply with these benchmarks, significant amendments to the definition of eligibility and to the current benefits provided under the MACA are required.

Consistent with the NDIS, the NIIS does not prescribe a level of care to be provided, but requires necessary and reasonable support and standards of care for each claimant.

This amendment Bill provides for increased attendant care and support under the Northern Territory's compulsory Motor Accident Compensation Scheme. The amendments to the MACA will provide for increased benefits for those catastrophically injured in a motor accident from 1 July 2014, and is consistent with the Territory's commitment to the NDIS.

In addition to making the necessary changes to incorporate the NIIS minimum benchmarks, the full range of existing MACA benefits was examined to ensure that they remained fair to claimants and motorists and to address any anomalies and inequities while maintaining the scheme's financial viability.

As a result, other changes have been made that primarily relate to eligibility for MACA benefits that include:

- removing exposure of the MACA scheme to motor racing events, high speed vehicle testing and acts of terrorism, to align with NIIS minimum benchmarks;
- excluding owners and drivers of unregistered vehicles from benefits for accidents occurring on both private and public property;

- bringing the Act into line with the Commonwealth Government's decision on progressive changes to the retirement age; and
- a series of minor amendments and corrections of anomalies.

## **NOTES ON CLAUSES**

### **PART 1 – PRELIMINARY MATTERS**

#### **Clause 1. Short Title**

This clause provides that the Act may be cited as the *Motor Accidents (Compensation) Amendment Act 2014*.

#### **Clause 2. Commencement**

The provisions of the Legislation commence on 1 July 2014.

#### **Clause 3. Act amendment**

This clause provides that this Act will amend the *Motor Accidents (Compensation) Act*.

#### **Clause 4. Section 4 amended**

This clause amends Section 4 to include revised definitions used in the Bill.

The definition of medical practitioner has been repealed as it is no longer necessary. There is a standard definition of medical practitioner in the *Interpretation Act*, which applies across all Northern Territory legislation.

The definition of unregistered has been repealed from this section of the Act. Definitions of registered, unregistered and conditionally registered vehicles have been inserted in section 4DA of the Act.

To correct an anomaly, the definition of spouse for the payment of death benefits now includes financially dependent de facto partners of Aboriginal or Torres Strait Islander persons.

#### **Clause 5. Section 4B amended**

Sub-clause 4B(2) modernises the wording for people not regarded as residents of the Northern Territory.

#### **Clause 6. Section 4C amended**

Sub-clause 4C(2)(a) provides that the relevant American Medical Association Guide prescribed by the regulations will be used to evaluate the level of permanent impairment.

#### **Clause 7. Section 4DA inserted**

This clause defines registered, conditionally registered and unregistered vehicles for the purpose of the Act.

Sub-section 4DA(1) defines an unregistered motor vehicle as a vehicle which is deemed to be unregistered under the *Motor Vehicles Act* or for the purposes of the *Traffic Act*.

Sub-section 4DA(2)(a) provides that an exemption from registration can under certain circumstances be issued by the Registrar of Motor Vehicles, while (2)(b) regards a vehicle being driven with a trader's plate as being registered in accordance with Section 35 of the *Motor Vehicles Act*.

Sub-section 4DA(3) defines a conditionally registered motor vehicle as a vehicle which has been registered subject to a condition or restriction under the *Motor Vehicles Act*.

Sub-section 4DA(4) defines a registered vehicle as a vehicle which is neither unregistered nor conditionally registered.

### **PART 3 – ENTITLEMENT TO BENEFITS**

#### **Clause 8. Section 9, 10 and 11 replaced**

Sections 9, 10 and 11 have been repealed and replaced by separate sections under this Part. Exclusions under Part 3 of the Act apply irrespective of whether the motor accident occurred on public or private property.

#### 9. Exclusion: driver under influence of alcohol or drug

This clause provides for the exclusion to benefits if a person is involved in a motor vehicle accident while driving under the influence of drugs and/or alcohol.

Sub-section (1) outlines that a person is not entitled to benefits if the accident occurred while the person driving the motor vehicle was under the influence of alcohol or drugs.

Sub-section (2) has been modified with relevant limits for concentration of alcohol in an injured person included in the regulations. The alternative sub-clause (2) inserted presumes that alcohol was the contributing factor in the accident unless the contrary can be established. The onus is then placed on the person involved in the accident, rather than the Territory Insurance Office (TIO), to prove that alcohol did not cause the accident.

Sub-section (3) provides that unless it can be proved that drugs and/or alcohol were not the contributing factor, exclusions will apply to the economic benefits of compensation for loss of earning capacity and lump sum compensation for permanent impairment.

#### 9A. Exclusion: criminal conduct contributing to accident

A new section has been inserted to replace the existing section that a person is excluded from certain benefits if they were involved in a motor vehicle accident and the accident was deemed as a result of criminal conduct (such as manslaughter, reckless or criminal negligence and dangerous driving).

Sub-section (1) outlines that an injured person is not entitled to the subject benefits if they are injured in an accident and if the person's injuries, in the opinion of TIO, were caused by criminal conduct.

Sub-section (2) stipulates the benefits to which this section applies: compensation for loss of earning capacity, and lump sum compensation for permanent impairment.

#### 9B. Exclusion: recklessly ignoring risk

A new section has been inserted to replace the existing section and provides that a person is excluded from certain benefits for an injury suffered if a person is involved in a motor vehicle accident and the accident occurred while the injured person was engaged in conduct that created a substantial risk of injury.

Sub-sections (1) and (2) exclude a person from the economic benefits for loss of earnings capacity and lump sum compensation for a permanent impairment, if they were injured in an accident and if injuries were caused by recklessly ignoring the risk.

Sub-section (3) provides that these exclusions to certain benefits for risky behaviour do not apply where situations 11(2) and 11(3) apply (failure to wear seatbelt or safety helmet).

#### 9C. Exclusion: unlicensed driver

A new section has been inserted to replace the existing sub-section which excludes certain benefits if a person is involved in a motor vehicle accident and they were at the time unlicensed to drive the vehicle involved.

Sub-section (2) provides that if the situation in which an unlicensed driver is injured amounted to an emergency, then the exclusion to benefits does not apply.

Sub-section (3) excludes a person from the economic benefits of compensation for loss of earnings and lump sum compensation for a permanent impairment if injured in an accident while driving unlicensed.

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

A new section has been inserted which provides that there is a narrower set of exclusions, relative to section 9E, for an owner or driver of an unregistered vehicle if the accident involved a registered vehicle, which for the purpose of the Act includes a conditionally registered vehicle being used in accordance with the conditions for which it is registered. This exclusion is narrower than the total exclusion in section 9E, to align with the NIIS minimum benchmarks. A three month grace period for unregistered motor vehicles will apply.

Exclusions to the driver (who is also the owner) of the unregistered vehicle will be enforced. There is a specific provision in subsection (1)(d)(i) to remove from the owner the defence of not knowing that the vehicle was unregistered for the categories of vehicles prescribed in the regulations (quad bikes, motor cross bikes, off-road vehicles). In circumstances where the driver is not the owner, and the driver of the unregistered motor vehicle knew or ought to have known that the vehicle was unregistered, then exclusions to benefits will apply. This is on the basis that the drivers or owners of such vehicles are not contributing to the MACA scheme.

Sub-section (2) provides that if it is deemed such a vehicle was being driven in an emergency, then the exclusion to benefits does not apply.

Sub-section (3) provides that all benefits are excluded, other than medical and rehabilitation expenses, interim and long-term attendant care benefits, and cost of providing appliances and special facilities.

#### 9E. Total exclusion: unregistered motor vehicle – other accidents

A new section has been inserted which provides that an owner or driver of an unregistered vehicle is excluded from all benefits for an injury or death sustained as a result of an accident if none of the vehicles

involved in the motor vehicle accident are considered registered for the purpose of this Act. A three month grace period will apply for unregistered vehicles.

Exclusions to the driver (who is also the owner) of the unregistered vehicle will be enforced. In circumstances where the driver is not the owner, and the driver of the unregistered motor vehicle knew or ought to have known that the vehicle was unregistered, then exclusions to benefits will apply. This is on the basis that the drivers or owners of such vehicles are not contributing to the MACA scheme.

Sub-section (2) provides that if it is deemed such a vehicle is being driven as a result of an emergency, then a total exclusion to benefits does not apply.

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

A new section has been inserted which provides that there is a narrower set of exclusions, relative to section 9G, for an owner or driver of a conditionally registered vehicle being driven in breach of the conditions if the accident involved a registered vehicle. Conditionally registered motor vehicles include workplace quad bikes and segways, and they need to comply with the conditions of their registration and be used at the time of the accident only for the purpose for which it is conditionally registered for the owner or driver to be eligible for full MACA benefits.

Sub-section (2) provides that if a conditionally registered vehicle is being driven as a result of an emergency, then the exclusion to benefits does not apply.

Sub-section (3) provides that all benefits are excluded for accidents involving an unregistered vehicle other than medical and rehabilitation expenses, interim and long term attendant care benefits, and appliances and special facilities.

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

A new section has been inserted which provides that an owner or driver is excluded from all benefits for an injury or death sustained as a result of an accident involving a conditionally registered vehicle, which is being driven in breach of its registration conditions, and none of the vehicles involved in the motor vehicle accident are considered registered for the purpose of this Act.

Sub-section (2) provides that if in the opinion of the Office such a vehicle is being driven as a result of an emergency, then a total exclusion to benefits does not apply.

10. Total exclusion: criminal use of vehicle

A new clause has been inserted to replace the existing sub-section which provides that a person is excluded from all benefits sustained as a result of an accident if the vehicle was involved in criminal activity at the time of the accident.

10A. Total exclusion: workers compensation

A new section has been inserted to replace the existing sub-section which provides that a person is excluded from all benefits for an injury or death sustained as a result of an accident if the injury or death is compensable under workers compensation legislation.

#### 10B. Total exclusion: accidents at motor sports events

This section replaces an existing sub-section and extends the exclusion to categories of person and to all benefits for an injury or death sustained as a result of a motor vehicle accident if the motor vehicle was taking part in, or in preparation for, a motor vehicle race, demonstration, competition, trial, or high-speed test. This is consistent with NIIS minimum benchmarks that do not require coverage of injuries arising from organised motor sports.

It is not intended that the scope of this provision apply to third parties injured in an accident in a public place who are not associated with the race, competition, trial or test, nor does it apply to spectators at the motor sports event.

#### 10C. Total exclusion: terrorist acts

This new section provides that no benefits are payable for a person's injury or death as a result of a motor vehicle accident if it is reasonable to characterise the accident as a terrorist act. This is consistent with the NIIS minimum benchmarks which do not include acts of terrorism.

#### 11. Reduction: failure to wear seatbelt or safety helmet

This revised section provides for a 25 per cent reduction to a narrower range of benefits for injuries sustained as a result of a motor vehicle accident, if at the time of the accident the injured person was not wearing a seatbelt or safety helmet as required under the *Traffic Act*.

Sub-section (3) provides that the reduction applies to benefits for loss of earning capacity and lump sum compensation for permanent impairment, lump sum compensation in respect of death, and dependent children benefits. This clause in effect narrows the scope of the reduction to those benefits not related to health and recovery.

#### 11A. Reduction: other insurance

This is a re-arranged clause where sub-sections (1) and (2) provide that if there is a separate insurance policy in place (other than workers compensation) which covers injury or death as a result of a motor accident, then any statutory payments made will be reduced by the amount of the entitlement to insurance/compensation from other policies.

#### 11B. More than one exclusion or deduction

This revised clause provides that if a person suffers an injury or death as a result of a motor vehicle accident, and two or more of the reductions/exclusions apply to the circumstances of the accident, the provisions apply cumulatively.

#### **Clause 9. Section 12 amended**

This clause provides that benefits for an injury suffered as a result of a motor vehicle accident be determined by TIO on a necessary and reasonable basis.

Sub-section 12(1A) provides that TIO may refer to the regulations to determine whether a benefit is necessary and reasonable.

Sub-section 12(3)(b) has been amended to correct a grammatical error.

Sub-section 12(5) replaces the wording of the requirements of TIO in order to determine the injured person's entitlement to benefits.

Sub-section 12(5)(a) provides that TIO can have an injured person examined or treated by either a medical practitioner or any other person nominated by TIO in order to determine the nature and extent of statutory benefits to which an injured person is entitled.

Sub-section 12(5)(b) provides that in order to determine benefits to which an injured person is entitled, the injured person must undergo examination by a medical practitioner as well as being assessed by an attendant care needs assessor who is to be nominated by TIO. Findings by medical practitioners/attendant care assessors are to be provided to TIO for consideration.

Sub-section 12(6) provides that a written authorisation must be obtained from the injured person in order for TIO to obtain relevant information from medical practitioners and any other persons who have examined, assessed or treated the injured person.

Sub-section 12(7) amends the word 'may' to 'must' which removes TIO discretion to suspend payment of statutory benefits if an injured person fails without reasonable excuse to comply with a condition of a treatment plan or rehabilitation program.

Sub-section 12(9) is a new sub-clause that defines an attendant care needs assessor in reference to the Act, as a person approved by TIO to assess a person's need for attendant care services.

## **PART 4 – PAYMENTS IN RESPECT OF INJURY**

### **Clause 10. Part 4, Division 1 heading inserted**

A new heading has been inserted as Division 1, to provide for the different benefits received under certain circumstances.

### **Clause 11. Section 13 amended**

This clause provides that compensation for loss of earning capacity is payable if an eligible person's capacity to earn income from personal exertion, is reduced as a result of an injury suffered in, or as a result of, a motor vehicle accident.

A new sub-section 13(2A) has been inserted to clarify that average weekly earnings for the purpose of calculating loss of earnings capacity is based on Total Employment Earnings in the Territory, rather than Full Time Adult Persons Weekly Ordinary Time Earnings which is used to calculate benefits including death benefits and lump sum compensation for permanent impairment.

Sub-section 13(3) updates a working hour week, for the purpose of calculating loss of earning capacity, from 40 hours to 38 hours, consistent with National legislation.

Sub-section 13(5)(a) provides that payments for loss of earning capacity be tied to the Commonwealth Pension age.

Sub-section 13(7) defines the pension age with reference to the *Social Security Act 1991 (Cth)*.

### **Clause 12. Section 18 amended**

This clause provides that compensation is payable for medical and rehabilitation services required by an eligible person on a necessary and reasonable basis, consistent with the NIIS minimum benchmarks.

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

A new heading has been inserted as Division 2 for attendant care benefits.

Sub-section 18AA provides a new sub-division for attendant care services to people who sustain injuries in, or as a result of, a motor vehicle accident prior to 1 July 2014.

**Clause 14. Section 18A amended**

Clause 14 refers to the payment of benefits to eligible persons for injuries sustained as a result of a motor vehicle accident prior to 1 July 2014, who have not been assessed as eligible for long-term attendant care benefits.

Sub-section 18A(3) has been repealed and replaced, such that pricing for attendant care services is to be determined in accordance with the regulations.

**Clause 15. Section 18B amended**

Clause 14 refers to long-term attendant care services to be provided to eligible persons for injuries sustained as a result of a motor vehicle accident prior to 1 July 2014 and who have been assessed by TIO at a degree of 60 per cent or more permanent impairment.

Sub-section 18B(3) has been repealed and replaced, such that pricing for attendant care services is to be determined in accordance with the regulations.

**Clause 16. Part 4, Division 2, Subdivision 2 and Division 3 heading inserted**

New headings have been inserted as Subdivision 2 and Division 3, to provide for attendant care benefits for an injury suffered on or after 1 July 2014, and other benefits.

18BA. Application of Subdivision

A new sub-division has been inserted which provides for attendant care services to be provided to people who sustain injuries in, or as a result of, a motor vehicle accident, on or after 1 July 2014.

18BB. Eligibility for short-term benefits for attendant care services

This clause provides for short-term attendant care services to be provided to eligible persons for injuries sustained as a result of a motor vehicle accident on or after 1 July 2014. Short-term attendant care services apply where a person does not qualify for interim or long-term attendant care benefits.

Sub-section (2) provides that benefits for short-term attendant care services are payable for up to 12 months post the date of the accident.

18BC. Eligibility for long-term benefits for attendant care services

This clause provides for long-term attendant care services to be provided to eligible persons, for injuries sustained as a result of a motor vehicle accident on or after 1 July 2014, according to the criteria

prescribed by the regulations. These criteria are established by the NIIS minimum benchmarks and comprise spinal cord injuries, brain injuries, amputation, burns and blindness.

Sub-section (2) provides that benefits for long-term attendant care services for eligible persons are payable for their lifetime.

#### 18BD. Eligibility for interim benefits for attendant care services

This clause provides for interim attendant care services to be provided to eligible persons, for injuries sustained as a result of a motor vehicle accident on or after 1 July 2014, as prescribed by the regulations, in certain circumstances pending injury stabilisation.

Sub-section (2) provides that interim attendant care benefits are not payable if an injured person is eligible for long-term attendant care benefits.

Sub-section (3) provides that interim benefits are only payable to an eligible person three years post the date that a person makes a claim. Should the injured person be less than three years of age at the time of the accident, interim attendant care services cease when the person attains six years of age.

Sub-section (4) provides that a decision must be made by TIO as to whether the injured person is eligible for long-term attendant care benefits prior to the expiry of the three year interim attendant care benefit period.

Sub-section (5) provides that an injured person is not eligible for interim benefits more than once for the same impairment.

#### 18BE. Attendant care services for which benefits are payable

This clause provides that benefits for attendant care services are only payable if it is the opinion of TIO that the services are necessary and reasonable, relate to the person's injury, and are provided by a person approved by TIO. This is consistent with the NIIS minimum benchmarks.

Sub-section (2) defines an approved provider as a person or a person of a class approved by the Office in accordance with criteria prescribed by regulation.

#### 18BF. Payment of benefits for attendant care services

This clause provides that payment of benefits for attendant care services will be prescribed by the regulations, with payment made directly to the service provider, consistent with the NIIS minimum benchmarks.

However, in rare circumstance, as approved by TIO, sub-clause (3) provides that benefits can be paid directly to the injured person. This is intended for remote situations where the usual system of paying the provider does not always operate appropriately.

### **Clause 17. Section 18C amended**

This clause provides for benefits paid to family members if a person is injured or dies in a motor vehicle accident, and the accident occurs outside of the Territory.

Sub-section 18C(1)(c) amends the travel distance from 1000 kilometres (km) to 500 km upon which benefits are payable if a family member needs to travel to be near the injured person or attend a deceased

person's funeral.

Sub-section 18C(4) amends the total amount paid to a family member required to travel as a result of a motor vehicle accident to a per claim basis, as there may be more than one claim per motor accident.

Sub-section 18C(5) expands the definition of close family member to include a sibling, grandparent, grandchild, uncle or aunt of the deceased and provides increased support to the injured person or the family by enabling other close relatives to step in when there is no spouse, parent or child of the person injured or killed available to provide support.

#### **Clause 18. Section 19 amended**

This clause provides for an eligible person's entitlements to appliances, modifications and special facilities.

Sub-sections 19(1)(a), 19(1)(b) and 19(1)(c) amend the scheme to provide equipment and special facilities regarded by TIO as necessary and reasonable to those injured in a motor vehicle accident, consistent with the NIIS minimum benchmarks.

### **PART 5 – PAYMENTS IN RESPECT OF DEATH**

#### **Clause 19. Section 20A amended**

This clause sets out the benefits for the spouse, dependent children or dependent parents if a driver has died in, or as a result of, a motor vehicle accident, and the person was driving under the influence of drugs and/or alcohol.

Sub-section 20A(2) has been modified so that relevant limits for concentration of alcohol in the deceased driver will be included in the regulations. If alcohol was involved in the motor vehicle accident, it will be presumed by TIO these were the contributing factor in an accident unless the contrary can be established. The onus is then placed on the evidence relating to the deceased driver, rather than TIO, to prove that drugs and/or alcohol did not cause the accident.

Sub-section 20A(5) provides that the circumstances in which the Office may reduce benefits will be included in the regulations.

Sub-section 20A(6) provides that compensation for the cost of the funeral will not be reduced in instances where drugs and/or alcohol are the contributing factor in the accident.

### **PART 7 – MISCELLANEOUS MATTERS**

#### **Clause 20. Section 31A inserted**

A new section has been inserted which provides that TIO may refuse 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.

#### **Clause 21. Section 33 amended**

This clause provides TIO with the discretion to extend the time for which certain benefits are paid to a person, if the circumstances provide that hardship is likely to be suffered otherwise.

The amendment updates the references to sub-sections as section 18(2A) has previously been abolished and section 18BB has been introduced in this Bill.

## **PART 8 – TRANSITIONAL MATTERS**

### **Clause 22. Section 38 amended**

This clause provides for a right of recovery by TIO, in relation to death or injury arising from a motor vehicle accident under certain circumstances.

Sub-section 38(5A) provides a right of recovery against an organiser of a motor sport event, driver or owner for benefits paid in relation to the death or injury of a person as a result of a motor sport event, test, competition, trial or race. This is a consequence of the exclusion from all benefits as a result of a race, competition, or trial in section 10B of the Act.

### **Clause 23. Part 8 heading replaced**

A new division has been inserted under Part 8 to provide continuity of the Act.

### **Clause 24. Part 9 heading replaced**

Part 9 of the Act has been repealed and replaced with Division 2 under Part 8, Transitional Matters of the Act, to provide continuity of the Act.

### **Clause 25. Part 8, Division 3 inserted**

Section 45 defines commencement to mean the day on which the *Motor Accident (Compensation) Amendment Act 2014* commences, being 1 July 2014.

Sub-section 46(1) provides that exclusions and reductions to benefits on or after 1 July 2014 will be subject to the new clauses as outlined in Part 3 of the Act. For accidents prior to 1 July 2014, sub-section 46(2) provides that exclusions and reductions continue to apply in relation to motor vehicle accidents that were in the legislation before commencement.

Sub-section 47(1) provides that people injured in a motor vehicle accident on or after 1 July 2014 will be subject to the new benefits as outlined in Sections 18 and 19 of the Act. For accidents prior to 1 July 2014, sub-section 47(2) provides that eligible claimants will be entitled to benefits under the scheme prior to these amendments.

### **Clause 26 – Schedule repealed**

The schedule for assessment of permanent impairment has been repealed as it is no longer applicable. The evaluation of permanent impairment in sub-section 4C(2) of the Act is now determined in accordance with the American Medical Association Guides.

### **Clause 27 – Expiry**

This clause provides that this Act expires on the day after it commences.