Authorised Version No. 158

Transport Accident Act 1986

No. 111 of 1986

Authorised Version incorporating amendments as at
2 October 2026

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2 October 2026

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to establish a scheme of compensation in respect of persons who are injured or die as a result of transport accidents.

2 Commencement

(1) Sections 1, 2, 3, 152 and 179(5) and Division 3 of Part 10 come into operation on the day on which this Act receives the Royal Assent and the remaining provisions of this Act, except section 181, come into operation on a day or days to be proclaimed.

(2) Section 181 shall be deemed to have come into operation on 20 May 1986.

3 Definitions

(1) In this Act—

administration order has the same meaning as it has in the **Guardianship and Administration Act 2019**;

S. 3(1) def. of *administration order* inserted by No. 49/2018 s. 10, amended by No. 13/2019 s. 221(Sch. 1 item 54).

S. 3(1) def. of *administrator* inserted by No. 49/2018 s. 10, amended by No. 13/2019 s. 221(Sch. 1 item 54).

administrator has the same meaning as it has in the **Guardianship and Administration Act 2019**;

S. 3(1) def. of *ambulance service* amended by No. 32/1988 s. 4(1)(a).

ambulance service means the conveying in Australia of a person by any reasonable means—

(a) for the purpose of receiving medical services or hospital services; or

(b) to the person's place of residence after receiving medical services or hospital services;

S. 3(1) def. of *apprentice* substituted by No. 45/1990 s. 120, amended by Nos 80/1997 s. 55(Sch. 1 item 4), 24/2006 s. 6.1.2(Sch. 7 item 41.1).

apprentice means a person who is an apprentice within the meaning of the **Education and Training Reform Act 2006**;

S. 3(1) def. of *child* substituted by No. 27/2001 s. 4(Sch. 2 item 4.1(b)).

child in relation to a person includes a child of the person or the person's partner or an adopted child of the person or of the person's partner but does not include a child of that person or of the person's partner adopted by another person or persons;

Commission means the Transport Accident Commission established under this Act;

decision includes declaration, determination, direction or order;

* * * * *

S. 3(1) def. of *degree of impairment* substituted as *degree* by No. 32/1988 s. 4(1)(b), repealed by No. 34/1998 s. 9(a).

Department means the Department of Transport and Planning;

S. 3(1) def. of *Department* inserted by No. 49/2019 s. 186(Sch. 4 item 42.1), amended by No. 25/2025 s. 106(Sch. 1 item 47.1(a)).

dependant in relation to a person who is injured or dies means a person who would, but for the injury or death of the first-mentioned person, be wholly, mainly or in part dependent on that person for economic support;

dependent child in relation to a person means a child of that person who, as at the time of death or injury of that person—

(a) is under the age of 18 years; or

(b) has attained the age of 18 years but is under the age of 25 years and is a full-time student or an apprentice—

and would, but for the injury or death of that person, be wholly, mainly or in part dependent on that person for economic support but does not include a child who has a spouse or domestic partner;

S. 3(1) def. of *dependent child* amended by Nos 27/2001 s. 4(Sch. 2 item 4.1(c)), 71/2013 s. 4(1), 49/2018 s. 3(1)(a), 18/2022 s. 20(1).

S. 3(1) def. of *dependent spouse* substituted by No. 84/2000 s. 3(1), substituted as *dependent partner* by No. 27/2001 s. 4(Sch. 2 item 4.1(d)).

dependent partner in relation to a person means the person's partner, if the partner would but for injury or death of that person—

(a) be wholly, mainly or in part dependent on that person for economic support; or

(b) be wholly dependant on the person for the care of the children of the partner or of that person;

S. 3(1) def. of *disability service* inserted by No. 84/2000 s. 3(3)(a), amended by No. 94/2004 s. 3(1)(a).

disability service means the provision to or for a person who is disabled as a result of an injury in a transport accident of any service (other than a rehabilitation service or a hospital service) relating to attendant care, assistance, accommodation support, community access, respite care or household help, the provision of which service is an authorised service in accordance with section 23;

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 4(Sch. 2 item 4.1(a)), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 60.1), amended by No. 4/2009 s. 37(Sch. 1 item 26.1).

domestic partner of a person means—

(a) a person who is in a registered domestic relationship with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *driver* amended by No. 127/1986 s. 102(Sch. 4 item 29.3).

driver in relation to a motor car or motor vehicle, includes a person who is in charge of the motor car or motor vehicle;

earner means an earner within the meaning of subsection (2) and, in sections 57 and 58, includes a person who[1]—

S. 3(1) def. of *earner* substituted by Nos 32/1988 s. 4(3), 84/1994 s. 4, amended by No. 27/2001 s. 4(Sch. 2 item 4.1(e)(i)(ii)).

(a) receives or received the newstart allowance, the job search allowance or the sickness allowance under the Commonwealth Social Security Act 1991; or

(b) receives or received any benefit or allowance under the Commonwealth Social Security Act 1991 which is prescribed for the purposes of this definition—

* * * * *

during a period or periods equal to at least 26 weeks during the 2 years immediately preceding the transport accident;

employer superannuation contribution has the same meaning as it has in section 3 of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 3(1) def. of *employer super-annuation contribution* inserted by No. 60/2007 s. 3(1), amended by No. 67/2013 s. 649(Sch. 9 item 32(1)(a)).

financial year means the period of 12 months commencing on each 1 July and includes the period commencing on the day on which Part 2 comes into operation and ending on 30 June next after that day;

Fund means the Transport Accident Fund;

highway has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

S. 3(1) def. of *highway* amended by No. 127/1986 s. 102(Sch. 4 item 29.1(a)).

S. 3(1) def. of *hospital* substituted by No. 84/1994 s. 12, amended by Nos 98/1995 s. 65(Sch. 1 item 7), 26/2014 s. 455(Sch. item 31), 39/2022 s. 874.

hospital means—

(a) a public hospital, denominational hospital, private hospital or day procedure centre within the meaning of the **Health Services Act 1988**; or

(b) a designated mental health service within the meaning of the **Mental Health and Wellbeing Act 2022**; or

(c) a hospital within the meaning of a law of another State or of a Territory; or

(d) a place within Australia declared by Order of the Governor in Council to be a hospital for the purposes of this Act;

S. 3(1) def. of *hospital service* substituted by No. 84/1994 s. 12.

hospital service includes—

(a) maintenance, attendance and treatment in any hospital; and

(b) the provision by any hospital of—

(i) medical attendance and treatment; and

(ii) nursing attendance; and

(iii) medicines, medical, surgical and other curative materials, appliances or apparatus; and

(iv) any other usual or necessary services provided by a hospital with respect to the treatment of the injury of a person;

S. 3(1) def. of *individual funding agreement* inserted by No. 94/2004 s. 27(1).

individual funding agreement means an agreement made under section 61A;

injury, except in Part 10, means physical or mental injury and includes nervous shock suffered by a person who was directly involved in the transport accident or who witnessed the transport accident or the immediate aftermath of the transport accident;

S. 3(1) def. of *injury* amended by No. 84/2000 s. 3(3)(b).

manage, in relation to a railway or tramway, means responsible for providing access to railway trains or trams to operate on the railway or tramway;

S. 3(1) def. of *manage* inserted by No. 104/1997 s. 56(1).

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) and, in relation to anything done for the purposes of this Act in a place outside Victoria, includes a medical practitioner who is lawfully qualified under a law in force in that place to do that thing;

S. 3(1) def. of *medical practitioner* amended by Nos 32/1988 s. 4(4), 23/1994 s. 118(Sch. 1 item 57.1), 97/2005 s. 182(Sch. 4 item 51.1(a)), 13/2010 s. 51(Sch. item 56.1(a)).

S. 3(1) def. of *medical service* amended by Nos 63/1996 s. 98(Sch. item 4), 34/1998 s. 3(a), 78/1997 s. 97(Sch. item 3.1), 84/2000 s. 3(3)(c), 95/2003 s. 25(1), 94/2004 s. 3(1)(c). 97/2005 s. 182(Sch. 4 item 51.1(b)), 60/2007 s. 3(2), 13/2010 s. 51(Sch. item 56.1(b)), 27/2012 s. 27, 71/2013 s. 5(1).

medical service, except in Part 10, includes—

(a) attendance, examination or treatment of any kind by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor and osteopath or registered podiatrist; and

(aa) attendance, examination or treatment by a registered occupational therapist, where that attendance, examination or treatment is authorised in accordance with section 23; and

(b) attendance, examination or treatment of any kind by a registered psychologist on referral from a medical practitioner; and

(ba) the provision of acupuncture by a person—

(i) registered as a Chinese medicine practitioner in the Division of Acupuncturists under the Health Practitioner Regulation National Law; or

(ii) whose registration is endorsed under section 97 of the Health Practitioner Regulation National Law as being qualified to practise as an acupuncturist; and

(c) the provision, and as may be necessary from time to time (including at the time of an injury) the repair, adjustment or replacement of skiagrams, artificial members, eyes or teeth, spectacle glasses, hearing aids, orthoses or mobility aides; and

(d) the provision by a registered pharmacist on the request of a medical practitioner or registered dentist of medicines or curative apparatus, appliances or materials; and

(e) the provision by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor, registered osteopath or registered podiatrist of any certificate required by the person, the person's dependants or the Commission for any purpose relating to the operation of this Act or any report authorised by the Commission; and

(f) the provision, at the request of a medical practitioner, hospital or provider of a hospital service, of special food or a special food formula; and

(g) the provision, at the request of a medical practitioner, of room temperature control equipment for a person who is unable to adequately regulate his or her own body temperature; and

(h) the provision, at the request of a medical practitioner, of equipment intended to treat or stabilize any injury or condition resulting from a transport accident;

Examples

Examples of equipment referred to in paragraph (h) include life support equipment, ventilators and special lighting.

(i) the provision of anything needed to operate, run, maintain or repair any equipment referred to in paragraph (g) or (h);

Examples

Examples of things referred to in paragraph (i) include electricity, water, lubricating oil and replacement filters and batteries.

Note

Paragraphs (f) to (i) only apply to services provided on or after the date of commencement of section 26 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 179.

S. 3(1) def. of *member of the immediate family* inserted by No. 60/2007 s. 3(3), amended by Nos 49/2018 s. 3(1)(b), 18/2022 s. 20(2).

member of the immediate family of a person means a partner, parent, grandparent, child, grandchild or sibling of the person;

S. 3(1) def. of *midwife* inserted by No. 13/2010 s. 51(Sch. item 56.1(c)).

midwife means a person registered under the Health Practitioner Regulation National Law—

(a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and

(b) in the register of midwives kept for that profession;

minor means a person who—

(a) has not attained the age of 18 years; and

(b) is not an earner;

mobility aides include crutches, wheelchairs and mobility scooters, but does not include motor vehicles;

S. 3(1) def. of *mobility aides* inserted by No. 60/2007 s. 3(3).

motor car means—

(a) a motor car within the meaning of the **Motor Car Act 1958**; and

(b) except in Part 10, a recreation vehicle;

motor vehicle means a motor vehicle within the meaning of section 3(1) of the **Road Safety Act 1986**;

S. 3(1) def. of *motor vehicle* inserted by No. 127/1986 s. 102(Sch. 4 item 29.1(b)).

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 56.1(c)).

nursing service means a nursing or midwifery service rendered by a nurse or midwife, otherwise than at a hospital or as a member of the nursing staff of a hospital;

S. 3(1) def. of *nursing service* substituted by No. 13/2010 s. 51(Sch. item 56.2).

* * * * *

S. 3(1) def. of *owner* amended by No. 127/1986 s. 102(Sch. 4 item 29.1(c)), repealed by No. 57/1998 s. 29(1)(a).

S. 3(1) def. of *owner* inserted by No. 127/1986 s. 102(Sch. 4 item 29.1(d)), repealed by No. 57/1998 s. 29(1)(a).

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S. 3(1) def. of *owner* inserted by No. 57/1998 s. 29(1)(a).

owner—

(a) in relation to a motor car, has the same meaning as in the **Motor Car Act 1958**;

(b) in relation to a motor vehicle, has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

S. 3(1) def. of *partner* inserted by No. 27/2001 s. 4(Sch. 2 item 4.1(a)), amended by No. 1/2018 s. 3.

partner means—

(a) in relation to a person who died before the commencement of section 4 of the **Statute Law Amendment (Relationships) Act 2001**—

(i) the spouse of the person at the time of death; or

(ii) a person of the opposite sex who, though not married to the person, lived with the person at the time of death on a permanent and bona fide domestic basis;

(b) in relation to a person who was injured as a result of a transport accident that occurred before the commencement of section 4 of the **Statute Law Amendment (Relationships) Act 2001** but who did not die before that commencement—

(i) for the purposes of section 62—

(A) the spouse of the person; or

(B) a person of the opposite sex who, though not married to the person, lives with the person on a permanent and bona fide domestic basis;

(ii) for the other purposes of the Act—the spouse or domestic partner of the person;

(c) in relation to any other person—the spouse or domestic partner of the person;

pension age means the age at which a person becomes eligible (subject to satisfying any other requirements) to an age pension under the Commonwealth Social Security Act 1991;

S. 3(1) def. of *pension age* inserted by No. 84/1994 s. 13(1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 170.1).

post acute support means the provision of assistance to, or for, a person who requires support in personal care, mobility, transfers, banking or shopping after being discharged from a hospital;

S. 3(1) def. of *post acute support* inserted by No. 94/2004 s. 15(3).

primary care-giver means a person who provides care and attention to another person on a daily basis for a total of at least 20 hours a week;

S. 3(1) def. of *primary care-giver* inserted by No. 60/2007 s. 3(4).

private health insurer has the same meaning as in the Private Health Insurance Act 2007 of the Commonwealth;

S. 3(1) def. of *private health insurer* inserted by No. 60/2007 s. 3(4).

S. 3(1) def. of *railway train* amended by No. 34/1998 s. 3(b), substituted by No. 107/2004 s. 186.

railway train means a railway locomotive, railway carriage or other railway rolling stock but does not include any of those things that—

(a) form part of powered equipment operated for hire or reward; and

(b) provide entertainment or amusement through movement of the equipment, or part of the equipment, or when passengers travel on, around or along the equipment;

S. 3(1) def. of *reasonable* amended by No. 84/1994 s. 55(1)(a), substituted by No. 60/1996 s. 34.

reasonable, in respect of costs, expenses or fees of a service or provision means reasonable having regard to—

(a) costs, expenses or fees determined by the Commission as a reasonable amount in relation to that service or provision; and

(b) the amount (if any) specified in, or an amount determined in accordance with a method specified in, an Order of the Governor in Council made on the recommendation of the Commission and published in the Government Gazette, as the maximum amount of costs, expenses or fees payable in respect of that service or provision, which maximum amount must not be less than the amount of the fee specified in a Table within the meaning of the Health Insurance Act 1973 of the Commonwealth applicable in respect of a service or provision of that kind provided in Victoria; and

(c) the determination by the Commission of reasonable costs or expenses of, or fees for, the service or provision having regard to—

(i) the service or provision actually rendered; and

(ii) the necessity of the service or provision, or of the incurring of the expense, in the circumstances;

recreation vehicle—

S. 3(1) def. of *recreation vehicle* substituted by No. 127/1986 s. 102(Sch. 4 item 29.1(e)), amended by Nos 57/1998 s. 29(1)(b), 6/2010 s. 203(1) (Sch. 6 item 46.1) (as amended by No. 45/2010 s. 22).

(a) for the purposes of Part 10, has the same meaning as in section 86 of the **Transport (Compliance and Miscellaneous) Act 1983**; and

(b) otherwise, means a motor cycle that is of a class of motor cycle eligible to be registered under the **Road Safety Act 1986** for a fee that is lower than the registration fee for other classes of motor cycle;

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S. 3(1) def. of *registered motor car* repealed by No. 127/1986 s. 102(Sch. 4 item 29.1(f)).

registered motor vehicle means—

S. 3(1) def. of *registered motor vehicle* inserted by No. 127/1986 s. 102(Sch. 4 item 29.1(f)), amended by Nos 84/1994 s. 14, 57/1998 s. 29(1)(c), 84/2000 s. 3(3)(f).

(a) a motor vehicle that is registered in accordance with the **Road Safety Act 1986**; or

(b) a motor vehicle that is not so registered and is not registered under the law of another State or Territory but is usually kept in Victoria and is not exempt from registration in accordance with Part 2 of

the **Road Safety Act 1986** or the regulations made under that Act; or

(ba) a motor vehicle that is not so registered because it is exempt from registration in accordance with Part 2 of the **Road Safety Act 1986** or the regulations made under that Act as a visiting overseas motor vehicle; or

(c) a motor vehicle in respect of which a registration permit granted in accordance with the regulations made under that Act is in force; or

* * * * *

(e) a motor vehicle registered with a Registration Authority in Victoria under the Interstate Road Transport Act 1985 of the Commonwealth or, if that Act is amended, that Act as amended and in force for the time being;

S. 3(1) def. of *registered psychologist* inserted by No. 41/2000 s. 102(Sch. item 7), amended by No. 97/2005 s. 182(Sch. 4 item 51.1(c)), substituted by No. 13/2010 s. 51(Sch. item 56.3).

registered psychologist means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);

rehabilitation service means the provision to or for a person for the purpose of rehabilitation of any aid, treatment, counselling, appliance, apparatus or other service (other than a disability service or a hospital service), the provision of which is an authorised service in accordance with section 23;

S. 3(1) def. of *rehabilitation service* amended by Nos 127/1986 s. 102(Sch. 4 item 29.1(g)), 84/1994 s. 15, substituted by No. 84/2000 s. 3(3)(d), amended by No. 94/2004 s. 3(1)(b).

RTO has the same meaning as it has in the **Education and Training Reform Act 2006**;

S. 3(1) def. of *RTO* inserted by No. 71/2013 s. 6(1).

school has the same meaning as it has in the **Education and Training Reform Act 2006**;

S. 3(1) def. of *school* inserted by No. 60/2007 s. 3(5).

Secretary means Secretary to the Department;

S. 3(1) def. of *Secretary* inserted by No. 49/2019 s. 186(Sch. 4 item 42.1), amended by No. 25/2025 s. 106(Sch. 1 item 47.1(b)).

self-insurer has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 3(1) def. of *self-insurer* amended by No. 67/2013 s. 649(Sch. 9 item 32(1)(b)).

severe injury, except in Part 6, means—

(a) a significant acquired brain injury, paraplegia, quadriplegia, amputation of a limb, or burns to more than 50% of the body; or

(b) any other injury specified by the regulations for the purposes of this definition;

S. 3(1) def. of *severe injury* inserted by No. 94/2004 s. 3(2).

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 4(Sch. 2 item 4.1(a)).

spouse in relation to a person means a person to whom the person is married;

S. 3(1) def. of *supported accom-modation* inserted by No. 60/2007 s. 3(5), amended by Nos 49/2010 s. 233, 22/2012 s. 86, 37/2021 s. 400, 9/2023 s. 261, 45/2026 s. 16.

supported accommodation means—

(a) a residential facility in which residential care is provided under the Aged Care Act 1997 of the Commonwealth;

(b) a supported residential service within the meaning of section 214 of the **Social Services Regulation Act 2021**;

* * * * *

(d) a group home or other residential facility approved by the Commission for the purposes of section 60;

S. 3(1) def. of *supported employment program* inserted by No. 94/2004 s. 14(1).

supported employment program means a program designed to promote and enhance the independence of a person with a severe injury by assisting the person's return to paid employment where the person needs ongoing support to obtain, or to perform and retain, that employment;

S. 3(1) def. of *surviving spouse* substituted as *surviving partner* by No. 27/2001 s. 4(Sch. 2 item 4.1(f)).

surviving partner of a person who dies as a result of a transport accident, means a dependent partner of the person;

S. 3(1) def. of *TAFE institute* inserted by No. 71/2013 s. 6(1).

TAFE institute has the same meaning as it has in the **Education and Training Reform Act 2006**;

Territory means a Territory referred to in section 122 of the Constitution of the Commonwealth;

tram includes tram-motor and tram-car;

transport accident means an incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram[2];

S. 3(1) def. of *transport accident* amended by Nos 127/1986 s. 102(Sch. 4 item 29.3), 32/1988 s. 4(1)(c)(i)(ii), 84/1994 s. 5(1).

transportation costs means costs incurred travelling to or from—

(a) a rehabilitation service; or

(b) an approved program of disability services the provision of which is authorised in accordance with section 23; or

(c) a vocational rehabilitation service; or

(d) a school, university, TAFE institute or RTO by a student, including transportation costs incurred by the student, or a parent or guardian of the student, in travelling to or from the school, university, TAFE institute or RTO where the student is unable to travel to or from the school, university, TAFE institute or RTO by his or her usual pre-transport accident means because of injury sustained by the student in the transport accident;

S. 3(1) def. of *transportation costs* inserted by No. 84/2000 s. 3(3)(e), amended by Nos 94/2004 s. 4(2), 60/2007 s. 3(6), 71/2013 s. 6(2).

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* substituted by No. 52/1998 s. 311(Sch. 1 item 95.1).

S. 3(1) def. of *university* inserted by No. 71/2013 s. 6(1).

university has the same meaning as it has in the **Education and Training Reform Act 2006**;

S. 3(1) def. of *vocational rehabilitation service* inserted by No. 94/2004 s. 4(1), amended by No. 9/2010 s. 140.

vocational rehabilitation service means any of the following services provided by a person who is approved by the Commission as a provider of a vocational rehabilitation service—

(a) initial rehabilitation assessment;

(b) functional assessment;

(c) workplace assessment;

(d) job analysis;

(e) advice concerning job modification;

(f) vocational rehabilitation counselling;

(g) vocational assessment;

(h) advice or assistance concerning job-seeking;

(i) vocational re-education;

(j) advice or assistance in arranging vocational re-education;

(k) return to work planning;

(l) the provision of aids, appliances, apparatus or other material likely to facilitate the return to work of a person after an injury;

(m) modification to a work station or equipment used by a person that is likely to facilitate the return to work of the person after an injury;

(n) any other service authorised by the Commission—

but does not include a disability service, a hospital service or a rehabilitation service;

worker has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 3(1) def. of *worker* amended by No. 67/2013 s. 649(Sch. 9 item 32(1)(c)).

(1A) For the purposes of the definition of ***transport accident*** in section 3(1) an incident includes an incident[3]—

S. 3(1A) inserted by No. 84/1994 s. 5(2).

(a) involving a motor vehicle, a railway train or a tram which is out of control;

(b) involving a collision that occurred—

S. 3(1A)(b) substituted by No. 49/2018 s. 3(2).

(i) between a pedal cycle and a stationary motor vehicle; or

(ii) between a pedal cycle and an open or opening door of a motor vehicle;

(c) involving a collision between a pedal cycle and a motor vehicle while the cyclist is travelling to or from his or her place of employment;

S. 3(1A)(c) inserted by No. 84/2000 s. 4(1), amended by No. 71/2013 s. 7(a).

(d) involving the opening or closing of a door of a bus, tram or railway train.

S. 3(1A)(d) inserted by No. 71/2013 s. 7(b).

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S. 3(1B) inserted by No. 84/2000 s. 3(2), repealed by No. 27/2001 s. 4(Sch. 2 item 4.2(a)).

S. 3(2) amended by Nos 84/1994 s. 55(1)(b), 94/2004 s. 37, 26/2010 s. 37.

(2) A person who is injured or dies in or as a result of a transport accident is an earner for the purposes of this Act if the person is at least 15 years of age or is exempt under section 2.1.5 of the **Education and Training Reform Act 2006** from attendance at school and is a person in respect of whom a permit has been granted under section 16 of the **Child Employment Act 2003** and—

(a) was in full-time or part-time employment as an employed or self-employed person—

(i) at any time during the eight weeks immediately preceding the accident; or

(ii) during a period or periods equal to at least 13 weeks during the year immediately preceding the accident; or

(iii) during a period or periods equal to at least 26 weeks during the two years immediately preceding the accident—

and, at the date of the accident, had not retired permanently from all employment; or

S. 3(2)(b) amended by No. 84/1994 s. 16.

(b) before the accident, had entered into an arrangement (whether or not an enforceable contract)—

(i) with an employer or other person to undertake employment; or

(ii) to commence business as a self-employed person—

at a particular time and place; or

S. 3(2)(c) inserted by No. 84/1994 s. 16, amended by No. 67/2013 s. 649(Sch. 9 item 32(2)).

(c) was receiving a weekly payment or other payment in respect of the loss of earnings under this Act, the **Accident Compensation Act 1985**, the **Workplace Injury Rehabilitation and Compensation Act 2013** or a law referred to in section 37(1).

(2A) The definition of ***injury*** as amended by section 3(3)(b) of the **Transport Accident (Amendment) Act 2000** applies to and in respect of a transport accident which occurs on or after the commencement of that section.

S. 3(2A) inserted by No. 84/2000 s. 3(4).

(3) In this Act—

(a) a reference to an injury or death (not being a reference to the death of a dependent partner or dependent child of a deceased person) is a reference to an injury or death, as the case may be, caused by a transport accident[4]; and

S. 3(3)(a) amended by Nos 84/1994 s. 5(3)(a), 27/2001 s. 4(Sch. 2 item 4.2(b)).

(b) a reference to a person who is injured or dies (not being a reference to a dependent partner or dependent child of a deceased person) is a reference to a person who sustains injuries that were, or whose death was, as the case may be, caused by a transport accident[5]; and

S. 3(3)(b) amended by Nos 84/1994 s. 5(3)(b), 27/2001 s. 4(Sch. 2 item 4.2(b)).

(c) a reference to an injury or death in or as a result of or resulting from a transport accident, or to a person who is injured or dies in or as a result of a transport accident, is a reference to an injury or death directly caused by the driving of a motor vehicle, a railway train or a tram or to a person who sustains injuries that were, or whose death was, directly caused by the driving of a motor vehicle, a railway train or a tram[6].

S. 3(3)(c) amended by No. 127/1986 s. 102(Sch. 4 item 29.3), substituted by No. 84/1994 s. 5(4), amended by No. 73/1996 s. 97(a).

(4) If an injury resulting from a transport accident does not manifest itself at the time of the accident, a reference in this Act to 18 months after the accident is a reference to 18 months after the injury first manifests itself.

(5) For the purposes of this Act—

(a) a reference to damages includes a reference to an amount paid under a compromise or settlement of a claim for damages and,

except in section 93, includes a reference to compensation and to an amount paid under a compromise or settlement of a claim for compensation, whether legal proceedings had been instituted or not but does not include a reference to an amount paid in respect of costs incurred in connexion with legal proceedings; and

S. 3(5)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.2(b)).

(b) damages shall be deemed to have been recovered in respect of a person who is injured or dies when the amount of the damages is paid to or for the benefit of that person or the partner or child of that person; and

(c) a reference to a person who is injured or dies includes, if that person is dead, a reference to the legal personal representative of the person.

S. 3(6) substituted as s. 3(7) by No. 27/2001 s. 4(Sch. 2 item 4.3), re-numbered as 3(6) by No. 11/2002 s. 3(Sch. 1 item 61.1), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 60.2).

(6) For the purposes of the definition of ***domestic partner*** in subsection (1)—

S. 3(6)(a) amended by No. 4/2009 s. 37(Sch. 1 item 26.2(a)).

(a) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and

S. 3(6)(b) amended by No. 4/2009 s. 37(Sch. 1 item 26.2(b)).

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to

be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

(7) The Governor in Council may, by Order published in the Government Gazette, declare any motor vehicle or class of motor vehicles not to be a recreation vehicle or recreation vehicles for the purposes of this Act.

S. 3(7) inserted by No. 57/1998 s. 29(2).

(8) The definition of ***transport accident*** as amended by section 4(1) of the **Transport Accident (Amendment) Act 2000** applies to and in respect of any claim arising out of the transport accident which occurred on 7 February 1997 involving the pedal cycle of Mr Dale Sheppard as if the definition as amended by that section was in force when that transport accident occurred and this Act has effect accordingly.

S. 3(8) inserted by No. 84/2000 s. 4(2).

(9) A reference to the payment of compensation to a person by the Commission in this Act includes a reference to any amount paid in advance in respect of compensation by the Commission to the person under an agreement authorised by this Act.

S. 3(9) inserted by No. 94/2004 s. 27(2).

4 Pre-accident weekly earnings

(1) In this Act, ***pre-accident weekly earnings***, in relation to an earner (other than a self-employed person) who is injured as a result of a transport accident, means the weekly average of the gross earnings received by the earner as an earner during the 12 months immediately before the relevant day, unless subsection (2) applies.

S. 4(1) amended by No. 32/1988 s. 5(1)(a)(b), substituted by No. 94/2004 s. 5(1).

(1A) In this section ***relevant day*** means the day of the accident or the day when the injury first manifested itself, whichever is the later day.

S. 4(1A) inserted by No. 32/1988 s. 5(2), substituted by No. 94/2004 s. 5(1).

S. 4(1B) inserted by No. 32/1988 s. 5(2), repealed by No. 94/2004 s. 5(1).

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S. 4(1BA) inserted by No. 84/2000 s. 5, repealed by No. 94/2004 s. 5(1).

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S. 4(1C) inserted by No. 84/1994 s. 17, amended by No. 73/1996 s. 97(b), repealed by No. 94/2004 s. 5(1).

* * * * *

S. 4(2) substituted by No. 94/2004 s. 5(1).

(2) In the following cases, in this Act ***pre-accident weekly earnings***, in relation to an earner (other than a self-employed person) who is injured as a result of a transport accident, means—

(a) if, on the relevant day, the earner was earning continuously, but had not been earning continuously for at least 12 months, the weekly average of the gross earnings received by the earner as an earner during the period from when the earner started to earn continuously to immediately before the relevant day; or

(b) if subsection (3) applies, the weekly average of the gross earnings received by the earner as an earner during the period from when the change of circumstance referred to in that

subsection occurred to immediately before the relevant day; or

(c) if the earner is an earner by reason of an arrangement to which section 3(2)(b) applies, the average weekly gross earnings that the earner could reasonably have been expected to earn, but for the injury, in employment under that arrangement.

Note

This section, as amended by section 5 of the **Transport Accident (Amendment) Act 2004**, only applies to an earner who was injured in a transport accident that occurs on or after the date of commencement of section 5—see section 185. Section 5 inserted subsections (1), (1A), (2), (2A) and (3).

S. 4(2A) inserted by No. 94/2004 s. 5(1).

(2A) For the purposes of this section, an earner earns continuously if he or she obtains earnings from permanent employment or from a source that, on the relevant day, was likely to continue for a period of at least 6 months to provide earnings to the earner on the same, or a similar, basis to the basis on which the earnings were being provided as at the relevant day.

S. 4(3) substituted by No. 94/2004 s. 5(1).

(3) This subsection applies, if during the 12 months immediately before the relevant day, there was, as a result of any action taken by the earner, a significant change in his or her earnings circumstances that resulted in the earner regularly earning, or becoming entitled to earn, more on a weekly basis than he or she was earning before the change occurred.

Examples

Examples of a change of circumstances to which this subsection would apply include a change of job, a promotion, a move from part-time to full-time employment, or a pay increase arising from the achievement of performance standards. This subsection does not apply to a pay rise applying across an industry.

S. 4(4) amended by No. 32/1988 s. 5(3), repealed by No. 94/2004 s. 5(1).

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S. 4(5) substituted by No. 32/1988 s. 5(4), repealed by No. 94/2004 s. 5(1).

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S. 4(6) repealed by No. 32/1988 s. 5(4).

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(7) If an earner at the time of the accident was a full-time student, the earner's pre-accident weekly earnings for the purposes of this Act—

(a) until the time that the earner would have completed the course of studies in which the earner was a full-time student, shall be calculated in accordance with subsection (1); and

(b) as from the time that the earner would have completed the course of studies in which the earner was a full-time student, shall be the weekly earnings which the earner would have received upon being employed on the completion of the course of studies in which the earner was a full-time student.

(8) For the purposes of subsection (7), if at the time of the accident the earner is a full-time student at a secondary school, weekly earnings under subsection (7)(b) shall be calculated on the basis that the earner will successfully complete the final year of secondary school.

Note

See also section 45(5A).

Note to s. 4 inserted by No. 18/2022 s. 21.

4A Pre-accident weekly earnings—apprentices, trainees etc.

S. 4A inserted by No. 94/2004 s. 6.

(1) This section applies if, at the time an earner was injured in a transport accident, he or she was—

(a) under the age of 21 years; or

(b) an apprentice; or

(c) employed under a contract of service under which he or she was expressly required to undergo any training, instruction or examination for the purpose of becoming qualified for the occupation to which the contract of service related—

and, under the terms of his or her employment, he or she was entitled to increments in earnings as the employment continued.

(2) Despite section 4, in respect of any week after the accident in which the earner is entitled to a payment under this Act the calculation of which depends on the amount of the earner's pre-accident weekly earnings, the payment is to be calculated on the basis that the earner's pre-accident weekly earnings are the weekly earnings that it is likely that he or she would have been entitled to in that week had the accident not occurred and had he or she continued in the employment.

Notes

Note to s. 4A substituted as Notes by No. 18/2022 s. 22.

1 This section only applies to an earner who was injured in a transport accident that occurs on or after the date of commencement of section 6 of the **Transport Accident (Amendment) Act 2004**—see section 185.

2 See also section 45(5A).

S. 5 amended by No. 32/1988 s. 5(5).

5 Pre-accident weekly earnings—self-employed persons

In this Act, ***pre-accident weekly earnings*** in relation to an earner who is a self-employed person who is injured in or dies as a result of a transport accident means the amount assessed by the Commission having regard to the earnings of the person during the three years immediately preceding the accident, costs incurred by the person in obtaining the services of persons in connexion with the business on account of the earner's incapacity and any amounts the earner could have earned from any other occupation.

Note to s. 5 inserted by No. 18/2022 s. 23.

Note

See also section 45(5A).

6 Loss of earnings

(1) In this Act a reference to loss of earnings in relation to a person in the first 18 months after a transport accident is to be taken to be a reference to the loss incurred or likely to be incurred having regard to the loss of earnings which the person has incurred and the likely loss of future earnings which that person will incur by reason of the injury.

(2) In this section—

earnings means such amount as, in the opinion of the Commission, the person concerned would have received by way of income from personal exertion but for the transport accident;

income from personal exertion in relation to a person means—

S. 6(2) def. of *income from personal exertion* amended by Nos 27/2001 s. 4(Sch. 2 item 4.4), 60/2007 s. 4(a)(b).

(a) the amount that is the income of that person consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered; and

(b) the proceeds of any business carried on by that person either alone or in partnership with any other person; and

(c) any amount received as bounty or subsidy in carrying on a business; and

(d) the income from any property where that income forms part of the emoluments of any office or employment of profit held by that person; and

(e) any profit arising from the sale by that person of any property acquired by the person for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme—

but does not include—

(f) interest, unless that person's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to that person for goods supplied or services rendered by the person in the course of the person's business; or

(g) rents or dividends; or

(h) any employer superannuation contribution.

7 Loss of earning capacity

A reference in Part 3 to loss of earning capacity of a person as a result of an injury as a result of a transport accident is a reference to loss of the capacity to earn having regard to—

(a) the nature of the injury; and

(b) the degree of impairment; and

(c) the potential for rehabilitation and the person's ability to undertake rehabilitation; and

(d) the person's training, skills and experience; and

(e) the age of the person.

8 Objects of Act

The objects of this Act are as follows—

(a) to reduce the cost to the Victorian community of compensation for transport accidents;

S. 8(b) amended by No. 84/1994 s. 18.

(b) to provide, in the most socially and economically appropriate manner, suitable and just compensation in respect of persons injured or who die as a result of transport accidents;

(c) to determine claims for compensation speedily and efficiently;

(d) to reduce the incidence of transport accidents;

(e) to provide suitable systems for the effective rehabilitation of persons injured as a result of transport accidents.

9 Act to bind the Crown

This Act binds the Crown not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—The Transport Accident Commission

10 Transport Accident Commission

(1) There is established by this Act a Commission by the name of the Transport Accident Commission.

(2) The Commission—

(a) is a body corporate with perpetual succession; and

S. 10(2)(b) repealed by No. 28/2005 s. 30(1).

* * * * *

(c) may sue and be sued in its corporate name; and

(d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and

(e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing its functions and exercising its powers.

S. 10(3) substituted by No. 28/2005 s. 30(2).

(3) A document is executed by the Commission if the document is signed by—

(a) 2 Directors of the Board of Management of the Commission; or

(b) 1 Director of the Board of Management of the Commission and the person who is designated by the Board of Management of the Commission to be the Secretary to the Board of Management of the Commission.

(4) A person may assume that a document has been duly executed by the Commission if the document appears to have been signed in accordance with subsection (3).

S. 10(4) substituted by No. 28/2005 s. 30(2).

(5) All courts, judges and persons acting judicially must take judicial notice of the signatures on a document which appears to have been signed in accordance with subsection (3).

S. 10(5) inserted by No. 28/2005 s. 30(2).

10A TAC no longer a reorganising body

S. 10A inserted by No. 84/2000 s. 6.

(1) The Commission is by virtue of this section declared not to be a reorganising body.

(2) The Commission is a statutory corporation under this Act and is not subject to the **State Owned Enterprises Act 1992**.

(3) The Order of the Governor in Council made under section 7(1) of the **State Owned Enterprises Act 1992** and published in the Government Gazette on 6 May 1993 is revoked.

(4) This section does not affect the validity, status, operation or effect of any act, matter or thing done by or under the Order revoked under subsection (3).

11 Objectives of the Commission

The objectives of the Commission are as follows—

(a) to manage the transport accident compensation scheme as effectively, efficiently and economically as possible;

(b) to ensure that appropriate compensation is delivered in the most socially and economically appropriate manner and as expeditiously as possible;

(c) to ensure that the transport accident scheme emphasises accident prevention and effective rehabilitation;

(d) to develop such internal management structures and procedures as will enable it to perform its functions and exercise its powers effectively, efficiently and economically;

S. 11(e) inserted by No. 26/2000 s. 25(5), amended by No. 67/2013 s. 649(Sch. 9 item 32(3)).

(e) to manage claims under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** as an authorised agent of the Victorian WorkCover Authority as effectively, efficiently and economically as possible;

S. 11(f) inserted by No. 26/2000 s. 25(5), amended by No. 73/2016 s. 6.

(f) if appointed as an agent of a self-insurer under section 392 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, to carry out the functions and powers of a self-insurer as effectively, efficiently and economically as possible.

12 Functions of the Commission

(1) The functions of the Commission are the following—

(a) to administer the Transport Accident Fund;

(b) to receive and assess, and accept or reject, claims for compensation;

(c) to defend proceedings relating to claims for compensation;

(d) to pay compensation to persons entitled to compensation;

(e) to determine transport accident charges;

(f) to collect and recover transport accident charges;

(g) to provide advice in relation to the transport accident scheme;

(h) to provide funds for the program referred to in subsection (3) and for other rehabilitation programmes for persons injured in transport accidents;

(i) to collect and assess data and statistics in relation to transport accidents;

(j) to provide advice to the Minister in relation to matters specifically referred to the Commission by the Minister and generally in relation to the administration of this Act and the compensation scheme under this Act;

(ja) to commercially exploit knowledge and expertise in compensation schemes and scheme administration;

S. 12(1)(ja) inserted by No. 84/1994 s. 19.

(jb) to act as an authorised agent under section 501 of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 12(1)(jb) inserted by No. 26/2000 s. 25(6), amended by No. 67/2013 s. 649(Sch. 9 item 32(4)(a)).

(jc) if appointed, to act as an agent of a self-insurer under section 392(2) of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 12(1)(jc) inserted by No. 26/2000 s. 25(6), amended by No. 67/2013 s. 649(Sch. 9 item 32(4)(b)).

(k) to carry out such other functions conferred on the Commission by this or any other Act.

(2) In addition to its functions under subsection (1), it is the function of the Commission to promote the prevention of transport accidents and safety in use of transport.

(3) It shall be the duty of the Commission to design and promote, so far as possible, a program designed to secure the early and effective medical and vocational rehabilitation of persons injured as a result of transport accidents to whom or on behalf of whom the Commission is or may become liable to make any payment under this Act.

(4) A program designed under subsection (3) may include—

S. 12(4)(a) amended by No. 60/2007 s. 5.

(a) the provision by the Commission or by any person or body on behalf of the Commission of rehabilitation services or disability services for persons injured as a result of transport accidents; and

(b) the assisting in obtaining of employment for persons injured as a result of transport accidents.

S. 12(5) repealed by No. 84/1994 s. 20.

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S. 13 amended by No. 32/1988 s. 6(a).

13 Powers of the Commission

(1) The Commission has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions and to enable it to achieve its objectives.

S. 13(2) inserted by No. 32/1988 s. 6(b).

(2) Without limiting or derogating from subsection (1), the Commission may enter into agreements or arrangements and settle or compromise differences or disputes with other persons.

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S. 13(3) inserted by No. 79/1992 s. 4, repealed by No. 71/2013 s. 8(1).

(4) Without limiting or derogating from subsection (1), the Commission has power—

S. 13(4) inserted by No. 84/1994 s. 21.

(a) to apply for, obtain and hold intellectual property rights (including patents, copyrights, trade marks and registered designs); and

(b) to enter into agreements or arrangements for the commercial exploitation within or outside Victoria of those intellectual property rights and ancillary services on any terms or conditions as to royalties, lump sum payments or otherwise as the Commission may see fit; and

(c) to enter into agreements or arrangements within or outside Victoria for the provision by the Commission of administration, management or information systems or services.

(5) Without limiting or derogating from subsection (1), the Commission has power to do all things necessary or convenient to be done for or in connection with—

S. 13(5) inserted by No. 26/2000 s. 25(7).

(a) acting as an authorised agent under section 501 of the **Workplace Injury Rehabilitation and Compensation Act 2013**; and

S. 13(5)(a) amended by No. 67/2013 s. 649(Sch. 9 item 32(5)(a)).

(b) acting as an agent of a self-insurer under section 392(2) of the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 13(5)(b) amended by No. 67/2013 s. 649(Sch. 9 item 32(5)(b)).

14 Accountability of the Commission

S. 14(1) amended by No. 79/1992 s. 5(1).

(1) The Commission must perform its functions and exercise its powers subject to—

(a) the general direction and control of the Minister; and

(b) any specific written directions given by the Minister in relation to a matter or class of matters specified in the directions; and

S. 14(1)(c) inserted by No. 79/1992 s. 5(1), repealed by No. 71/2013 s. 8(2).

* * * * *

(2) If the Commission is given a written direction, the Commission—

(a) may cause the direction to be published in the Government Gazette; and

(b) must publish the direction in its next annual report.

S. 14(3) inserted by No. 79/1992 s. 5(2), repealed by No. 71/2013 s. 8(2).

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15 Board of Management

(1) There shall be a Board of Management of the Commission which—

(a) may exercise all the powers of the Commission; and

(b) must give general directions as to the performance of the Commission's functions and the achievement of its objectives; and

(c) must ensure that the Commission is managed and operated in an efficient and economic manner.

(2) The Board is to consist of not less than 4, and not more than 9, Directors appointed by the Governor in Council on the nomination of the Minister.

S. 15(2) substituted by No. 84/1994 s. 22.

(2A) The Governor in Council may appoint one of the Directors to be the Chairperson of the Board.

S. 15(2A) inserted by No. 41/2006 s. 29.

(3) Subject to subsection (4), the Commission may appoint one of the Directors to be the Chief Executive Officer of the Commission.

S. 15(3) inserted by No. 84/1994 s. 22.

(4) The Minister may direct the Commission—

S. 15(4) inserted by No. 84/1994 s. 22.

(a) to appoint a particular Director to be the Chief Executive Officer of the Commission; or

(b) that a person other than a Director is to be the Chief Executive Officer of the Commission.

16 Terms and conditions of office of Director

(1) A Director holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.

S. 16(1) amended by No. 84/1994 s. 23(a).

(2) The Governor in Council may at any time remove a Director from office.

(3) The office of a Director becomes vacant when any of the following occurs—

(a) the term of office expires;

(b) the Director dies;

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S. 16(3)(c) repealed by No. 84/1994 s. 23(b).

S. 16(3)(d) amended by No. 71/2013 s. 9.

(d) the Director resigns by writing delivered to the Minister;

(e) the Director is removed from office under subsection (2);

(f) the Director becomes bankrupt;

(g) the Director is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence;

(h) the Director is wilfully absent from three consecutive meetings in any year of the Board without leave granted by the Minister.

S. 16(4) repealed by No. 84/1994 s. 23(b).

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S. 16(5) amended by Nos 84/1994 s. 55(1)(c), 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 209), 80/2006 s. 26(Sch. item 104).

(5) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a Director in respect of the office of Director.

(6) A Director, other than a Director who is an officer or employee who holds a full-time government office or a full-time office with a statutory corporation, is entitled to be paid—

(a) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(b) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.

(7) An instrument of appointment of a Director may specify other terms and conditions of employment not inconsistent with this Act.

(8) A Director shall not be subject to any action, liability, claim or demand for any matter or thing done or contract entered into by the Commission if the matter or thing is done or contract is entered into in good faith for the purposes of carrying out a power or duty of the Commission under this Act.

17 Acting Chairperson

(1) If the Chairperson is unable, whether by reason of illness or otherwise, to perform the duties of the office or the office of Chairperson is vacant, the Governor in Council may appoint another Director or any other person to act in the place of the Chairperson.

(2) A person while acting in the place of the Chairperson—

(a) has all the powers and may perform all the duties of the Chairperson; and

(b) if that person is not an officer or employee who holds a full-time government office or a full-time office with a statutory corporation, is entitled to be paid—

(i) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(ii) such travelling and other allowances as may be fixed from time to time by the Governor in Council.

(3) The Governor in Council may at any time terminate an appointment under subsection (1).

(4) If a person has been appointed under subsection (1) to act in the place of the Chairperson during a period of inability of the Chairperson and the Chairperson ceases to hold office without having resumed the performance of the duties of the office, the period of appointment of the person so appointed continues until—

(a) the appointment is terminated by the Governor in Council; or

(b) the expiration of the period of 12 months after the date on which the Chairperson ceases to hold office—

whichever first occurs.

18 Acting Directors

(1) If a Director, other than the Chairperson, is unable to perform the duties of the office, the Governor in Council may appoint a person to act in the place of that Director during the period of the inability.

(2) A person appointed under this section must be nominated in the same manner as the Director in whose place the person is to act was nominated under section 15.

(3) A person appointed under this section, while acting in the place of a Director—

(a) has all the powers and may perform all the duties of the Director for whom the person is acting; and

(b) if that person is not an officer or employee who holds a full-time government office or a full-time office with a statutory corporation, is entitled to be paid—

(i) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(ii) such travelling and other allowances as are fixed from time to time by the Governor in Council.

(4) The Governor in Council may at any time terminate an appointment under subsection (1).

(5) If a person has been appointed under subsection (1) to act in the place of a Director during a period of inability and that Director ceases to hold office without having resumed the performance of the duties of the office, the period of appointment of the person so appointed continues until—

(a) the appointment is terminated by the Governor in Council; or

(b) the expiration of the period of 12 months after the date on which the Director for whom that person is acting ceases to hold office—

whichever first occurs.

19 Validity of acts or decisions

An act or decision of the Board is not invalid by reason only—

(a) of a vacancy in the office of a Director; or

(b) of any defect or irregularity in or in connexion with the appointment of a Director; or

(c) in the case of a person appointed to act as a Director, that the occasion for so acting had not arisen or had ceased.

S. 20 substituted by No. 84/1994 s. 24.

20 Proceedings of the Board

(1) Subject to subsection (2), meetings of the Board must be held at such times and places as the Board determines.

(2) The Chairperson may at any time convene a meeting but must do so when requested by a Director.

(3) The Chairperson, or in his or her absence, the acting Chairperson, or in the absence of both the Chairperson and the acting Chairperson, a Director appointed by the Board, is to preside at a meeting of the Board.

(4) A majority of the Directors for the time being constitutes a quorum of the Board.

(5) Subject to the presence of a quorum the Board may act notwithstanding any vacancy in the office of a Director.

S. 20(6) amended by No. 84/2000 s. 7(1).

(6) A question arising at a meeting is to be determined by a majority of votes of Directors able to vote on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.

S. 20(6A) inserted by No. 84/2000 s. 7(2).

(6A) Despite subsection (4), a question is to be taken to have been determined under subsection (6) if the majority is constituted by not less than 3 Directors.

(7) The Board must ensure that minutes are kept of each of its meetings.

(8) Subject to this Act, the Board may regulate its own proceedings.

S. 20A inserted by No. 84/1994 s. 24.

20A Resolutions without meetings

(1) If the Directors for the time being (other than a Director who is absent from Australia when the other Directors sign) sign a document containing a

statement that those Directors are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the Directors do not sign it on the same day, on the day on which the last Director to sign signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the Board, each Director must be advised as soon as practicable and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more Directors, is to be taken to constitute one document.

(4) Subsections (6) and (6A) of section 20 apply in respect of the making of a resolution under this section.

S. 20A(4) inserted by No. 84/2000 s. 7(3).

S. 21 substituted by No. 84/1994 s. 24.

21 Disclosure of interests

(1) If—

(a) a Director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and

(b) the interest could conflict with the proper performance of the Director's duties in relation to the consideration of the matter—

the Director, as soon as practicable after the relevant facts come to the Director's knowledge, must disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Minister or the Board otherwise determines, the Director—

(a) must not be present during any deliberation of the Board in relation to the matter; and

(b) must not take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a Director who has made a disclosure under subsection (1), a Director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—

(a) must not be present during any deliberation of the Board for the purpose of making the determination; and

(b) must not take part in the making by the Board of the determination.

(4) Subsection (1) does not apply in relation to a matter relating to the supply of goods or services to the Director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

22 Delegation

S. 22(1) amended by No. 28/2005 s. 31.

(1) The Commission may, by instrument, delegate to an officer or employee of the Commission any function or power of the Commission under this Act, other than this power of delegation.

S. 22(2) amended by No. 28/2005 s. 31.

(2) The Commission may, by an instrument, delegate to any person any function or power of the Commission under any other Act, other than this power of delegation.

S. 22(3) amended by Nos 32/1988 s. 7(1)(a)(i)(ii), 28/2005 s. 31.

(3) The Commission may, by instrument, delegate to any person any functions or powers of the Commission under Part 5 or Part 7 or, insofar as they relate to its functions and powers under Part 7, its functions or powers under Part 9 including, subject to subsection (4), this power of delegation.

(4) A person to whom a function or power has been delegated under subsection (1), (2) or (3) may, subject to and in accordance with the approval of the Commission given generally or in a particular case, by instrument or, if a body corporate, by instrument under seal, authorize another person to perform the function or exercise the power so delegated.

(5) An authority given by a delegate of the Commission under subsection (4) may be revoked at any time by the delegate by instrument in writing and, where a delegation under which the authority was given is revoked, the authority is revoked.

(6) Any act or thing done in the performance of a function or the exercise of a power by a person authorized by a delegate of the Commission under subsection (4) to perform that function or exercise that power has the same force or effect as if it had been done by the Commission.

(7) Where the performance of a function or the exercise of a power by the Commission is dependent on the opinion, belief or state of mind of the Commission in relation to a matter and that function or power has been delegated under subsection (1), (2) or (3) that function or power may be performed or exercised by the delegate or by a person authorized by the delegate under subsection (4) upon the opinion, belief or state of

mind of the delegate or of the authorized person, as the case may be, in relation to that matter.

(8) The giving of an authority under subsection (4) does not prevent a performance of the function or the exercise of the power by the person by whom the authority was given.

S. 22(9) amended by No. 32/1988 s. 7(1)(b)(i)(ii).

(9) Where a person purports to perform a function or exercise a power under Part 5 or Part 7, or, insofar as it relates to functions and powers under Part 7, under Part 9, it shall be presumed, unless the contrary is established, that the person is duly authorized by a delegation under subsection (3) or by an authority under subsection (4) given pursuant to such a delegation to perform the function or exercise the power.

(10) The giving of an authority under subsection (4) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers to which it relates or as to time or circumstance as is specified in the authority.

S. 23 repealed by No. 44/1989 s. 41(Sch. 2 item 42.1), new s. 23 inserted by No. 84/1994 s. 25.

23 Commission may authorise persons or services

(1) The Commission may authorise—

S. 23(1)(a) amended by No. 84/2000 s. 8.

(a) services to be disability services or rehabilitation services; or

S. 23(1)(aaa) inserted by No. 71/2013 s. 5(2).

(aaa) attendances, examinations or treatments by a registered occupational therapist; or

(aa) services to be approved services for the purposes of individual funding agreements; or

S. 23(1)(aa) inserted by No. 94/2004 s. 27(3).

(ab) a person to provide services for the purposes of section 60A; or

S. 23(1)(ab) inserted by No. 94/2004 s. 24.

(b) persons to provide services for the purposes of section 60(2)(c), 60(2)(ca), 60(2)(d) or 60(2A); or

S. 23(1)(b) amended by Nos 84/2000 s. 19(2), 94/2004 ss 4(3), 16(2), 60/2007 s. 6.

(c) a person as a provider of vocational rehabilitation services.

S. 23(1)(c) inserted by No. 94/2004 s. 4(3).

(2) An authorisation must be given—

(a) before the services are to be provided; and

(b) in writing.

S. 23(2)(b) amended by No. 34/1998 s. 4(a).

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S. 23(2)(c) repealed by No. 34/1998 s. 4(b).

(3) A person whose interests are affected by a decision of the Commission to refuse to authorise a person or service may apply to the Tribunal for review of the decision.

S. 23(3) substituted by No. 52/1998 s. 311(Sch. 1 item 95.2).

S. 23(4) inserted by No. 52/1998 s. 311(Sch. 1 item 95.2), amended by No. 84/2000 s. 9.

(4) An application for review must be made within 12 months after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

24 Advisory committees

(1) The Commission may appoint advisory committees for the purpose of providing advice and information to assist the Commission in the performance of its functions.

(2) A member of an advisory committee must be paid such allowances and expenses as are determined by the Minister.

(3) Payments under subsection (2) shall be paid out of the Fund.

S. 25 amended by Nos 50/1988 s. 93(2)(Sch. 2 Pt 2 item 61), 61/1994 s. 42(2), substituted by No. 84/1994 s. 26.

25 Chief Executive Officer and other staff

(1) There is to be a Chief Executive Officer of the Commission appointed by the Board with the approval of the Minister.

(2) Subject to section 15(4), a Director is eligible to be appointed, or to continue to act, as Chief Executive Officer.

(3) The term of office of the Chief Executive Officer is the term (not exceeding 5 years) specified in the instrument of appointment, and the Chief Executive Officer is eligible for re-appointment.

(4) Subject to this section, the terms and conditions of appointment of the Chief Executive Officer are to be set by the Board with the approval of the Minister.

(5) The Board may engage such other officers and employees as are necessary for the performance of the functions of the Commission.

(6) The terms and conditions of appointment or employment are as determined by the Board.

26 Fund management agents

(1) The Commission may, for the purposes of this Act—

(a) appoint by an instrument any person to be a fund management agent of the Commission; and

S. 26(1)(a) amended by No. 28/2005 s. 31.

(b) terminate any such appointment by an instrument.

S. 26(1)(b) amended by No. 28/2005 s. 31.

(2) A fund management agent shall act as an agent subject to—

(a) such terms and conditions as are specified in the instrument of appointment; and

(b) such directions as are given in writing to the fund management agent by the Commission.

(3) A fund management agent shall be entitled to receive from the Commission such remuneration as is agreed between the Commission and the agent.

(4) A fund management agent who contravenes or fails to comply with—

(a) the terms and conditions specified in the instrument of appointment; or

(b) any direction given to the agent under subsection (2)(b)—

is guilty of an offence against this Act.

(5) Subsection (4) is in addition to and not in derogation from the power of the Commission—

(a) to terminate the appointment of a fund management agent; or

(b) to take any other appropriate proceedings against any person who is or has been a fund management agent.

(6) A fund management agent must keep accounting records relating to transactions and affairs of the agent under this section in the manner and form specified by the Commission and must retain those records for the period specified by the Commission.

(7) For the purposes of this section, the Commission—

(a) may at any time, by notice in writing give a direction to a fund management agent or a person who, in the preceding three years has been a fund management agent, requiring the production at such time and place as are specified in the direction, of such accounting records relating to the transactions and affairs of the agent or of a person while an agent, as are so specified and in such form as is so specified; and

(b) may audit and inspect the accounting records and require the giving of information by fund management agents to the Commission or any person authorized by the Commission.

(8) The requirement under subsection (6) to retain accounting records and subsection (7) apply in respect of a person who has, at any time in the

preceding three years, been a fund management agent.

27 Transport Accident Fund

(1) The Commission shall establish and maintain a Fund to be called the Transport Accident Fund.

(2) The following must be paid into the Fund—

(a) the transport accident charges and additional amounts paid under this Act;

S. 27(2)(a) amended by No. 17/1993 s. 11(1).

* * * * *

S. 27(2)(b) repealed by No. 34/1998 s. 5.

(c) any amount received as a penalty for an offence against this Act or the regulations;

S. 27(2)(c) amended by No. 32/1988 s. 7(2).

(d) any income from the investment of any money credited to the Fund and the proceeds of the sale of any investment;

(e) any money that the Commission borrows;

S. 27(2)(e) amended by No. 100/1995 s. 10(1)(Sch. 1 item 5.1(a)).

(f) any money required or permitted to be paid into the Fund under this or any other Act;

* * * * *

S. 27(2)(fa) inserted by No. 79/1992 s. 6(a), repealed by No. 71/2013 s. 8(3).

(fb) any money received by the Commission in relation to its functions under sections 12(1)(jb) and 12(1)(jc);

S. 27(2)(fb) inserted by No. 26/2000 s. 25(8).

(g) all other money that the Commission receives under or for the purposes of this or any other Act.

(3) The following may be paid out of the Fund—

(a) payments of compensation under this Act or that the Commission is liable to pay under any other Act and payments required by a determination of the Commission or the Tribunal to be paid out of the Fund;

(b) payments of damages that the Commission is liable to pay;

(c) any refund under Part 7 and any payment required or permitted to be paid out of the Fund by or under this or any other Act;

(d) any payment required or authorized to be made or which is for or towards the costs and expenses of or incidental to the performance of the functions or the exercise of the powers of the Commission;

(e) all money required for the repayment of borrowings by the Commission and for the payment of interest payable in respect of the borrowings;

S. 27(3)(ea) inserted by No. 84/2000 s. 10.

(ea) any payment of an amount to the State under section 29A or 29B;

(f) any sum agreed by the Treasurer and the Attorney-General for payment to the Consolidated Fund in respect of court administration expenses relating to proceedings in respect of transport accidents before the commencement of section 34;

S. 27(3)(fa) inserted by No. 46/2005 s. 7.

(fa) payments to the Consolidated Fund of amounts certified by the Treasurer, after consultation with the Minister, representing

the costs incurred, or to be incurred, annually by the Ombudsman in enquiring into or investigating administrative actions (as defined by the **Ombudsman Act 1973**) of the Commission;

(g) any remuneration payable to fund management agents;

(h) any payment whether for the whole or part of the cost of studies or programs approved by the Commission;

* * * * *

S. 27(3)(ha) inserted by No. 79/1992 s. 6(b), repealed by No. 71/2013 s. 8(3).

(hb) any payment which the Commission becomes liable to make under a settlement under section 137A of the **Accident Compensation Act 1985**, section 368 of the **Workplace Injury Rehabilitation and Compensation Act 2013** or under section 38AA or 94A of this Act;

S. 27(3)(hb) inserted by No. 50/1994 s. 105, amended by No. 67/2013 s. 649(Sch. 9 item 32(6)).

(hc) any payment which the Commission is required to make in relation to its functions under sections 12(1)(jb) and 12(1)(jc);

S. 27(3)(hc) inserted by No. 26/2000 s. 25(9).

(i) any other costs and expenses incurred by the Commission under this or any other Act;

(j) any payments required to fulfil any agreement made by the Commission in respect of the payment of the legal costs of a person who has applied for compensation or damages that is not otherwise authorised under this subsection.

S. 27(3)(j) inserted by No. 94/2004 s. 7.

* * * * *

S. 27(4)(5) repealed by No. 34/1998 s. 5.

S. 27(6) amended by No. 11/2001 s. 3(Sch. item 79).

(6) For the purposes of this section, the Commission may open and maintain one or more accounts in the name of the Commission with any authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth.

S. 27(7) amended by No. 100/1995 s. 10(1)(Sch. 1 item 5.1(b)).

(7) The Commission may invest any money standing to the credit of the Fund in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

(8) If any money is invested under subsection (7) in the purchase of any land or the construction or alteration of any buildings, the whole or part of the land or buildings may be used by the Commission in connection with its powers, duties or functions under this Act.

(9) In the performance of its functions, the Commission may for the purposes of and in accordance with any rule of any court in that behalf, execute and lodge with the proper officer of the court a bond conditioned for the payment into court by the Commission of a sum of money in satisfaction of any claim.

S. 28 substituted by No. 100/1995 s. 10(1)(Sch. 1 item 6.1).

28 Borrowing powers

The Commission may obtain financial accommodation subject to and in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

S. 28A inserted by No. 68/1991 s. 11, repealed by No. 61/1994 s. 42(1).

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29 Budget

(1) The Commission, before a date to be fixed by the Minister each year, must submit to the Minister for the Minister's approval an operating budget for the next financial year.

(2) The budget must be in such a form and contain such matters as may be required by the Minister after consultation with the Treasurer.

(3) The Minister may approve the budget or approve the budget subject to any amendment that the Minister requires.

(4) The Commission may submit a revised budget for the remainder of a financial year to the Minister for the Minister's approval.

(5) The Minister may approve a revised budget subject to any amendment that the Minister requires.

29A Repayment of capital

S. 29A inserted by No. 84/1994 s. 27, substituted by No. 84/2000 s. 11.

(1) The capital of the Commission is repayable to the State, at the times and in the amounts, determined by the Treasurer after consultation with the Commission and the Minister.

(2) In making a determination under this section, the Treasurer must have regard to any advice that the Commission has given to the Treasurer in relation to the Commission's affairs.

29B Dividends

S. 29B inserted by No. 84/2000 s. 11.

(1) The Commission must pay to the State a dividend at the time and in the manner determined by the Treasurer after consultation with the Commission and the Minister.

(2) The Treasurer must in determining the dividend policy that applies to the Commission have regard to the solvency margin determined to maintain the long term financial viability of the transport accident scheme.

Ss 30, 31 repealed by No. 31/1994 s. 4(Sch. 2 item 92).

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S. 32 repealed by No. 32/1988 s. 8.

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33 Audit

S. 33(1)–(4) repealed by No. 31/1994 s. 4(Sch. 2 item 92).

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(5) The Commission may engage a registered company auditor to carry out any inspection and audits that the Commission considers are necessary.

Pt 2A (Heading and ss 33A–33I) inserted by No. 79/1992 s. 7, repealed by No. 71/2013 s. 8(4).

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Part 3—Compensation

Division 1—Application of Part

34 Application of Part

S. 34 amended by No. 34/1998 s. 6.

This Part—

(a) applies to and in relation to a transport accident occurring on or after the day on which this section comes into operation; and

(b) does not apply to or in relation to a transport accident occurring before that day.

Division 2—Entitlement to compensation

35 Persons entitled to compensation

(1) A person who is injured as a result of a transport accident is entitled to compensation in accordance with this Act if—

(a) the accident occurred in Victoria; or

(b) the accident occurred in another State or in a Territory and involved a registered motor vehicle and, at the time of the accident, the person was—

S. 35(1)(b) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(i) a resident of Victoria; or

(ii) the driver of, or a passenger in, the registered motor vehicle.

S. 35(1)(b)(ii) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(2) A dependant of a person who dies as a result of a transport accident is entitled to compensation in accordance with this Act if the person who dies was or would, but for the death, have been entitled to compensation in respect of the accident by reason of subsection (1).

(3) The Commission is not liable to pay compensation to a person in accordance with this Act unless the person is entitled to compensation.

S. 36 amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

36 Discretion of Commission to pay compensation

If the Commission is not liable to pay compensation in accordance with this Act in respect of a person who is injured or dies as a result of a transport accident that occurred in another State or in a Territory and involved a registered motor vehicle by reason only that—

(a) the person was not, on the date of the accident, resident in Victoria; and

S. 36(b) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(b) was not the driver of, or a passenger in the registered motor vehicle—

the Commission may pay compensation in accordance with this Act in respect of that person if the Commission is satisfied that that person was, on that date, likely to reside in Victoria for not less than six months immediately after that date.

37 Circumstances where Commission not liable to pay compensation

S. 37(1) amended by No. 84/1994 s. 28(1).

(1) The Commission is not liable to pay compensation in respect of a person who is injured or dies as a result of a transport accident to a person who is, or appears to the Commission to be, entitled to compensation in respect of that injury or death under—

S. 37(1)(a) amended by No. 84/1994 s. 55(1)(d).

(a) Part V of the **Country Fire Authority Act 1958**; or

(b) Part 5.6 of the **Education and Training Reform Act 2006**; or

S. 37(1)(b) amended by No. 24/2006 s. 6.1.2(Sch. 7 item 41.2).

(c) Part 8 of the **Juries Act 2000**; or

S. 37(1)(c) substituted by No. 53/2000 s. 98(1).

(d) the **Police Assistance Compensation Act 1968**; or

(e) the **Victoria State Emergency Service Act 2005**; or

S. 37(1)(e) amended by No. 84/1994 s. 55(1)(e), substituted by No. 51/2005 s. 58(9).

(f) the **Emergency Management Act 1986**; or

(g) a law of the Commonwealth or of another State or of a Territory that corresponds to the **Accident Compensation Act 1985**, the **Workplace Injury Rehabilitation and Compensation Act 2013** or to a law referred to in one of the preceding paragraphs.

S. 37(1)(g) substituted by No. 84/1994 s. 28(1), amended by No. 67/2013 s. 649(Sch. 9 item 32(7)).

* * * * *

S. 37(2) repealed by No. 84/1994 s. 28(2).

38 Compensation in relation to accidents arising in the course of employment

(1) If, under the **Accident Compensation Act 1985**, the Victorian WorkCover Authority, an authorised insurer or self-insurer pays compensation to a person in respect of an injury or death—

S. 38(1) amended by No. 50/1994 s. 106(a)(b)(i)(c).

(a) resulting from a transport accident; and

S. 38(1)(b) amended by No. 50/1994 s. 106(b)(ii).

(b) deemed to have arisen out of or in the course of any employment by reason of section 83(2) (except section 83(2)(a)) of the **Accident Compensation Act 1985** as in force before 1 December 1992—

the Transport Accident Commission, on application by the Victorian WorkCover Authority, authorised insurer or self-insurer, must reimburse the Authority, authorised insurer or self-insurer for the amount of compensation paid in respect of the person by the Authority, authorised insurer or self-insurer.

S. 38(1A) inserted by No. 83/1987 s. 108(1), amended by No. 50/1994 s. 106(a).

(1A) If the Commission is appointed as a delegate of the Victorian WorkCover Authority, the Commission is liable to pay compensation under and in accordance with the **Accident Compensation Act 1985** in respect of an injury or death—

(a) resulting from a transport accident; and

S. 38(1A)(b) amended by No. 50/1994 s. 106(d).

(b) deemed to have arisen out of or in the course of any employment by reason of section 83(2) (except section 83(2)(a)(i)) of that Act as in force before 1 December 1992.

S. 38(2) amended by No. 83/1987 s. 108(2).

(2) Except as provided in subsections (1) or (1A), the Commission is not liable to pay compensation in respect of a person who is injured or dies as a result of a transport accident to a person who is, or appears to the Commission to be, entitled to compensation in respect of that injury or death under the **Accident Compensation Act 1985**.

(3) If—

(a) a person makes a claim for compensation under the **Accident Compensation Act 1985** in relation to a transport accident; and

(b) an order is made under section 109(8) of that Act that weekly payments not commence—

the Transport Accident Commission may pay compensation in accordance with this Act in relation to that person.

(4) If the Transport Accident Commission pays compensation to a person under subsection (3) and a recommendation or determination is later made that the Victorian WorkCover Authority or a self-insurer is liable to pay compensation to that person, the Victorian WorkCover Authority or self-insurer must, on application by the Transport Accident Commission, reimburse that Commission for the amount of compensation paid by it to that person.

S. 38(4) amended by No. 50/1994 s. 106(a).

(5) Subsection (4) does not apply if the liability to pay compensation arises in the circumstances referred to in subsection (1)(a) and (b).

(6) This section does not apply in respect of an injury or death that arises or is deemed to have arisen on or after the commencement of section 67 of the **Accident Compensation (WorkCover) Act 1992**.

S. 38(6) inserted by No. 67/1992 s. 67(1).

38AA Settlement between Commission and Victorian WorkCover Authority

S. 38AA inserted by No. 50/1994 s. 107.

(1) The Commission and the Victorian WorkCover Authority may undertake the settlement of any claim that the Victorian WorkCover Authority may make, or may become entitled to make, against the Commission under section 38(1).

(2) In determining whether to undertake a settlement, the Commission and the Victorian WorkCover Authority may determine the value of any claim or potential claim in any manner they think fit.

S. 38A (Heading) inserted by No. 67/2013 s. 649(Sch. 9 item 32(8)).

S. 38A inserted by No. 67/1992 s. 67(2), amended by No. 67/2013 s. 649(Sch. 9 item 32(9)).

38A Commission not liable where compensation payable under Accident Compensation Act 1985 or Workplace Injury Rehabilitation and Compensation Act 2013

The Commission is not liable to pay compensation in respect of a person who, on or after the commencement of section 67 of the **Accident Compensation (WorkCover) Act 1992**, is injured or dies as a result of a transport accident to a person who is, or appears to the Commission to be, entitled to compensation in respect of that injury or death under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 39 amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.4–29.9), 32/1988 s. 9(1)(a)(b)(2)(a)(i)(ii), 84/1994 s. 29, 34/1998 s. 7, 73/1998 s. 11, substituted by No. 84/2000 s. 12.

39 Circumstances in which a person is not entitled to compensation

(1) The Commission is not liable to pay compensation under this Act in respect of a person who is injured or dies as a result of a transport accident if—

S. 39(1)(a) amended by No. 49/2018 s. 5(1).

(a) in the case of a transport accident involving a motor vehicle or pedal cycle (other than a recreation vehicle)—

S. 39(1)(a)(i) amended by Nos 37/2014 s. 10(Sch. item 170.2(a)), 49/2018 s. 5(2).

(i) that occurred in Victoria—a report is not made to a police officer whether under section 61 or 61A of the **Road Safety Act 1986** or otherwise; or

(ii) that occurred in another State or in a Territory—a report is not made to a member of the police force or police service of that State or Territory; and

S. 39(1)(a)(ii) amended by No. 37/2014 s. 10(Sch. item 170.2(b)).

(b) in the case of a transport accident involving a railway train or a tram, a report of the transport accident is not made to the operator of the railway train or the tram.

(2) Subsection (1) does not apply in respect of a person if—

(a) a person is injured or dies as a result of a transport accident involving a motor vehicle; and

(b) a report of the transport accident was not made in accordance with subsection (1)(a); and

(c) the Commission determines that in all the circumstances the failure should be excused.

(3) The Commission is not liable to pay compensation under this Act (other than under section 60) to a person who is injured in a transport accident if the person—

(a) is convicted of an offence of murder or manslaughter, or an offence against section 5A of the **Crimes Act 1958**, the commission of which involved the use of a motor vehicle; or

S. 39(3)(a) substituted by No. 18/2022 s. 24.

(b) was driving a motor vehicle at the time of the transport accident and is convicted of an offence under section 318(1) or 319(1) of the **Crimes Act 1958** or a corresponding law in respect of driving the motor vehicle at that time.

S. 39(3)(b) amended by Nos 80/2010 s. 3, 71/2013 s. 10(1), substituted by No. 18/2022 s. 24.

S. 39(4) inserted by No. 71/2013 s. 10(2).

(4) For the purposes of this section, the Minister may, by Order published in the Government Gazette, declare a law of another State or a Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of this section.

S. 40 amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.10), 32/1988 s. 9(2)(b)(i)–(iv), 84/1994 s. 29, substituted by No. 84/2000 s. 12.

40 Circumstances in which certain compensation is not payable or is reduced

(1) The Commission is not liable to pay compensation under section 44 or 45 to a person who is injured as a result of a transport accident if—

(a) the person—

(i) was driving a motor vehicle at the time of the transport accident; and

(ii) is convicted, in respect of driving the motor vehicle at that time, of an offence under section 49(1)(a) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law—

unless the person satisfies the Commission that the intoxicating liquor or drug did not contribute in any way to the transport accident; or

S. 40(1)(b) amended by No. 34/2023 s. 59.

(b) the person was, at the time of the transport accident, the driver of, or a passenger in, a motor vehicle owned by the person in respect of which a transport accident charge applicable in respect of a period including that time had not been paid; or

(c) the person was, at the time of the transport accident, the driver of a motor vehicle and—

(i) had never held a licence to drive a motor vehicle of that class under the **Road Safety Act 1986** or a

corresponding previous enactment or under a law that is in relation to the **Road Safety Act 1986** a corresponding law or under a law of another country; or

(ii) held or had held such a licence but, at the time of the transport accident, it was suspended or had been cancelled; or

(iii) in the case of a transport accident occurring on or after the commencement of section 12 of the **Transport Accident (Amendment) Act 2000**, held or had held such a licence but, at the time of the transport accident, it had not been renewed for at least 3 years; or

(d) the person—

(i) was, at the time of the transport accident, the driver of or a passenger in a motor vehicle being used for or in connection with or in the commission of an indictable offence, stealing or attempting to steal a motor vehicle, resisting or preventing the lawful apprehension or detention of that person or any other person or intentionally causing or attempting to cause injury to that person or any other person; and

(ii) is convicted of that offence.

S. 40(2) amended by No. 94/2004 s. 11(5)(a).

(2) The Commission is not liable to pay compensation under section 44, 45, 47, 49, 50 or 51 to a person who is injured in a transport accident if the person—

(a) was driving a motor vehicle at the time of the transport accident; and

S. 40(2)(b) amended by Nos 80/2010 s. 4(1), 43/2012 s. 3(Sch. item 52).

(b) is convicted of an offence in relation to the transport accident under section 49(1)(ba), (c), (ca), (d), (e), (ea) or (eb), 56(2) or 56(7) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law.

S. 40(3) amended by Nos 94/2003 s. 41(1)(b), 94/2004 s. 11(5)(a).

(3) The Commission is not liable to pay compensation under section 47, 49, 50 or 51 to a person who is injured in a transport accident if the person was driving a motor vehicle at the time of the transport accident and is convicted, in respect of driving the motor vehicle at that time—

(a) of an offence under section 49(1)(a) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law; or

S. 40(3)(b) amended by No. 94/2003 s. 41(1)(a).

(b) of an offence under section 49(1)(b), 49(1)(f) or 49(1)(g) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law and the relevant level of concentration of alcohol in the person's blood was 0·24 grams or more per 100 millilitres of blood or in the person's breath was 0·24 grams or more per 210 litres of exhaled air, as the case requires—

unless the person satisfies the Commission that the intoxicating liquor or drug or the concentration of alcohol in the blood or breath, as the case may be, did not contribute in any way to the transport accident.

S. 40(3A) inserted by No. 49/2014 s. 54(1).

(3A) Subsection (3B) applies if a person who is injured in a transport accident was driving a motor vehicle at the time of the transport accident and is convicted, or found guilty, in respect of driving the motor vehicle at that time—

(a) of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of that Act; and

(b) the level of concentration of alcohol in the person's blood was 0·24 grams or more per 100 millilitres of blood or in the person's breath was 0·24 grams or more per 210 litres of exhaled air, as the case requires.

S. 40(3B) inserted by No. 49/2014 s. 54(1).

(3B) The Commission is not liable to pay compensation under section 47, 49, 50 or 51 to the person unless the person satisfies the Commission that the following did not contribute in any way to the transport accident—

(a) the concentration, or presence, of alcohol in his or her blood or breath;

(b) the concentration, or presence, of drugs in his or her blood or oral fluid;

(c) the combination of matters referred to in subparagraphs (a) and (b).

(4) Subsection (5) applies if a person who is injured in a transport accident was driving a motor vehicle at the time of the transport accident and is convicted in respect of driving the motor vehicle at that time—

(a) of an offence under section 49(1)(b), 49(1)(f) or 49(1)(g) of the **Road Safety Act 1986** or under a law that is in relation to that Act, a corresponding law; and

S. 40(4)(b) amended by No. 94/2003 s. 41(2).

(b) the relevant level of concentration of alcohol in the person's blood was more than 0·05 grams per 100 millilitres of blood or in the person's breath was more than

0·05 grams per 210 litres of exhaled air, as the case requires.

S. 40(4A) inserted by No. 80/2010 s. 4(2).

(4A) Subsection (5A) applies if a person who is injured in a transport accident was driving a motor vehicle at the time of the transport accident and is convicted in respect of driving the motor vehicle at the time of an offence under section 49(1)(bb), (h) or (i) of the **Road Safety Act 1986** or under a law that is in relation to that Act a corresponding law.

S. 40(4B) inserted by No. 49/2014 s. 54(2).

(4B) Subsection (5B) applies if a person who is injured in a transport accident was driving a motor vehicle at the time of the transport accident and is convicted, or found guilty, in respect of driving the motor vehicle at the time of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of that Act.

S. 40(5) amended by No. 94/2003 s. 41(3).

(5) The compensation under section 44 or 45 in respect of a person to whom subsection (4) applies—

(a) is reduced by one-third if the concentration was more than 0·05 and less than 0·12; and

(b) is reduced by two-thirds if the concentration was 0·12 or more and less than 0·24; and

(c) is not payable if the concentration was 0·24 or more—

unless the person satisfies the Commission that the concentration of alcohol in the blood or breath of the person did not contribute in any way to the transport accident.

(5A) The compensation under section 44 or 45 in respect of a person to whom subsection (4A) applies is reduced by one-third unless the person satisfies the Commission that the concentration of drugs in the blood of the person did not contribute in any way to the transport accident.

S. 40(5A) inserted by No. 80/2010 s. 4(3).

(5B) The compensation under section 44 or 45 in respect of a person to whom subsection (4B) applies is reduced by, in any case, one third and, if the level of alcohol in the person's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the person's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air, by an additional one third unless the person satisfies the Commission that the following did not contribute in any way to the transport accident—

S. 40(5B) inserted by No. 49/2014 s. 54(3).

(a) the concentration, or presence, of alcohol in his or her blood or breath;

(b) the concentration, or presence, of drugs in his or her blood or oral fluid;

(c) the combination of matters referred to in subparagraphs (a) and (b).

(6) For the purposes of subsection (1), a person who drives a motor vehicle at a particular time is not to be deemed never to have held a licence to drive a motor vehicle of that class if at that time—

(a) the person was—

(i) the holder of a learner permit in respect of a motor vehicle of that class under the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law; or

(ii) participating in a training program accredited under the **Road Safety Act 1986**; and

(b) in the case of a motor vehicle other than a motor cycle or a tractor, the person had a licensed driver (not being the holder of a licence issued on probation) sitting beside him or her.

S. 40A inserted by No. 84/2000 s. 12.

40A General provisions

(1) Subsection (2) applies if—

S. 40A(1)(a) amended by No. 68/2009 s. 97(Sch. item 123.1).

(a) a person who is injured as a result of a transport accident applies for compensation under this Act and a charge-sheet charging an offence has been filed or it appears to the Commission that a charge-sheet charging an offence may be filed against the person; and

(b) the Commission is not liable under section 39 or 40 to make a payment to that person if he or she is convicted of that offence.

(2) The Commission may withhold a payment referred to in subsection (1)—

S. 40A(2)(a) amended by No. 68/2009 s. 97(Sch. item 123.2).

(a) if the charge-sheet is filed within the limitation period after the date of the transport accident, until the charge is heard or withdrawn; or

S. 40A(2)(b) amended by No. 68/2009 s. 97(Sch. item 123.2).

(b) if no such charge-sheet is filed within the limitation period after the date of the transport accident, until the expiration of that period.

(3) In subsection (2), ***the limitation period after the date of the transport accident*** means—

S. 40A(3)(a) amended by No. 68/2009 s. 97(Sch. item 123.3).

(a) the period after the transport accident within which the charge-sheet could be filed; or

(b) the period of two years after the transport accident—

whichever is the shorter.

(4) If—

(a) a person is convicted of an offence referred to in section 39 or 40; and

(b) the court by which the person was convicted made a finding as to the concentration of alcohol in the person's blood or breath at a particular time—

S. 40A(4)(b) amended by No. 94/2003 s. 41(3).

the court must, at the request of the Commission, cause a certificate with particulars of its finding to be given to the Commission.

(5) For the purposes of this Act—

(a) a certificate of a court given under subsection (4) is evidence of the finding of the court as to the concentration of alcohol in a person's blood or breath at a particular time; and

S. 40A(5)(a) amended by No. 94/2003 s. 41(3).

(b) any finding of the court as to the concentration of alcohol in the blood or breath of the person or as to the analysis of a sample of a person's blood or breath is conclusive evidence of the facts so found; and

S. 40A(5)(b) amended by No. 94/2003 s. 41(4).

(c) a finding of a concentration of alcohol in the blood or breath of a person exceeding 0·05 but otherwise unspecified is conclusive evidence that the concentration was more than 0·05 and less than 0·12.

S. 40A(5)(c) amended by No. 94/2003 s. 41(3).

S. 41 (Heading) inserted by No. 49/2018 s. 6(1).

41 Sport accidents excluded

S. 41(1) amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.11), 49/2018 s. 6(2)(a)(b).

(1) The Commission is not liable to pay compensation in accordance with this Act in respect of a person who is injured or dies as a result of a transport accident involving a motor vehicle or motor vehicles, or a pedal cycle or pedal cycles that are taking part in, or in a test in preparation for, an organised race or a speed trial if the person is—

S. 41(1)(a) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 49/2018 s. 6(2)(c).

(a) the driver of, or a passenger in, such a motor vehicle or the rider of such a pedal cycle; or

(b) a spectator at the race, trial or test; or

(c) an official or organizer of the race, trial or test; or

(d) assisting in any way in the holding of the race, trial or test; or

(e) assisting competitors in the race, trial or test.

S. 41(1A) inserted by No. 84/1994 s. 30, amended by No. 49/2018 s. 6(3).

(1A) Subsection (1) does not apply to an organised race or speed trial—

S. 41(1A)(a) amended by No. 73/1996 s. 97(c).

(a) the rules of which require that the race or trial is to be conducted in accordance with the **Road Safety Act 1986** and the regulations applying under that Act; and

(b) in respect of which the Commission has certified in writing, the circumstances and conditions under which subsection (1) does not apply.

(1B) Despite anything to the contrary in subsection (1), the Commission is liable to pay compensation in accordance with this Act to a person—

S. 41(1B) inserted by No. 49/2018 s. 6(4).

(a) who is riding a pedal cycle as part of, or in a test in preparation for, an organised race or speed trial; and

(b) the person is injured or dies as a result of a transport accident involving the driving of an unauthorised vehicle.

(1C) In subsection (1B), ***unauthorised vehicle*** means a vehicle that is not participating in the organised race or speed trial.

S. 41(1C) inserted by No. 49/2018 s. 6(4).

(2) In this section, ***speed trial*** means an organised motor vehicle or pedal cycle event, or any part of such an event, that is a competitive test of speed an object of which is, or requires for its attainment, the travelling over a distance in the shortest possible time, but does not include an event, or any part of an event, in which it is a condition of participation that participants comply with all applicable road laws.

S. 41(2) amended by No. 127/1986 s. 102(Sch. 4 item 29.12), substituted by No. 49/2018 s. 6(5).

41A Unregistered motor vehicle accidents on private land excluded[7]

S. 41A inserted by No. 84/1994 s. 6.

(1) The Commission is not liable to pay compensation in accordance with this Act in respect of a person who is injured or dies as a result of a transport accident involving the driving of an unregistered motor vehicle or unregistered motor vehicles on private land.

(2) In subsection (1)—

private land means any land (whether publicly or privately owned) that—

(a) is not a highway; and

(b) members of the public may not enter or may not remain on without permission;

S. 41A(2) def. of *unregistered motor vehicle* amended by No. 34/2023 s. 60.

unregistered motor vehicle means a motor vehicle which has never been registered under Part 2 of the **Road Safety Act 1986** or a corresponding law of another State or a Territory and in respect of which an applicable transport accident charge was not paid at the time that the transport accident occurred.

S. 41A(3) inserted by No. 49/2018 s. 7.

(3) Despite anything to the contrary in subsection (1), the Commission is not liable to pay compensation in respect of a person who is injured or dies as a result of a transport accident involving a pedal cycle and an unregistered motor vehicle on private land.

S. 41B inserted by No. 84/1994 s. 6.

41B Uninsured motor vehicle accidents on private land[8]

S. 41B(1) amended by No. 73/1996 s. 97(d).

(1) The Commission is not liable to pay compensation in accordance with this Act in respect of the owner of an uninsured motor vehicle who is injured or dies as a result of a transport accident involving the driving of that motor vehicle on private land.

(2) In subsection (1)—

private land has the same meaning as in section 41A(2);

S. 41B(2) def. of *uninsured motor vehicle* amended by No. 34/2023 s. 61.

uninsured motor vehicle means a motor vehicle in respect of which the applicable transport accident charge has not been paid for at least 12 months.

S. 41B(3) inserted by No. 49/2018 s. 8.

(3) Despite anything to the contrary in subsection (1), the Commission is not liable to pay compensation in respect of a person who is injured or dies as a result of a transport accident involving a pedal

cycle and an uninsured motor vehicle on private land, in circumstances where the person is the owner of the motor vehicle.

42 Entitlement to compensation outside Victoria

(1) This section applies where a person is injured or dies as a result of a transport accident if—

(a) the person, a dependant of the person or the surviving partner of the person is entitled to compensation in respect of the accident in accordance with this Act; and

S. 42(1)(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.5).

(b) a person has a right to claim compensation or a right of action in respect of the accident under the law of a place outside Victoria.

(2) The person, or a dependant or a surviving partner of the person, is not entitled to compensation in accordance with this Act if, under the law of a place outside Victoria—

S. 42(2) amended by Nos 27/2001 s. 4(Sch. 2 item 4.5), 95/2003 s. 26.

(a) the person, dependant or surviving partner has been paid or has recovered an amount of compensation or damages; or

S. 42(2)(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.5).

(b) an award of compensation or judgment for damages has been made, given or entered in favour of the person, dependant or surviving spouse; or

S. 42(2)(b) substituted by No. 95/2003 s. 26.

(c) any payment into court has been accepted by the person, dependant or surviving spouse; or

S. 42(2)(c) substituted by No. 95/2003 s. 26.

(d) there has been a compromise or settlement of a claim by the person, dependant or surviving spouse; or

S. 42(2)(d) substituted by No. 95/2003 s. 26.

(e) a claim for compensation in favour of the person, dependant or surviving spouse has been accepted; or

S. 42(2)(e) substituted by No. 95/2003 s. 26.

S. 42(2)(f) inserted by No. 95/2003 s. 26.

(f) the person, dependant or surviving spouse has commenced an action for damages in a court of competent jurisdiction—

unless the Commission is liable under section 94(1) to pay compensation to the person, dependant or surviving spouse under the law of a place outside Victoria.

S. 42(3) amended by No. 27/2001 s. 4(Sch. 2 item 4.5).

(3) If the person, a dependant or a surviving partner of the person—

(a) receives compensation under this Act in respect of a transport accident; and

(b) under the law of a place outside Victoria—

(i) receives compensation or damages; or

(ii) obtains an award of compensation or judgment for damages; or

(iii) payment into court has been accepted; or

(iv) there has been a settlement or compromise of a claim—

in respect of the accident—

the Commission may recover from that person, dependant or surviving partner as a debt due to the Commission the amount of compensation paid under this Act or the amount to which paragraph (b) refers, whichever is the lesser.

(4) If a person claims compensation under this Act in respect of a transport accident, an amount recovered or to be recovered by that person under the law of a place outside Victoria as compensation or damages in respect of a transport accident shall be presumed to be compensation or damages in respect of the same transport accident unless the person proves to the contrary.

(5) If a person who claims or is entitled to claim compensation under this Act in respect of a transport accident claims compensation or commences proceedings outside Victoria for the recovery of damages in respect of that accident, the person must give notice in writing to the Commission.

(6) In this section—

S. 42(6) inserted by No. 71/2013 s. 11.

law of a place outside Victoria means a law of the Commonwealth, another State or a Territory;

proceedings outside Victoria includes proceedings under a law of the Commonwealth.

43 Liability for losses in first five days etc.

(1) The Commission is not liable to pay compensation under this Part to an earner injured as a result of a transport accident in respect of loss of earnings during the first five days after the accident or after the injury first manifests itself, whichever last occurs, in respect of which, or any part of which, the earner suffers any loss of earnings as a result of, or materially contributed to by, the injury.

S. 43(1) amended by No. 84/1994 ss 8(1), 55(2)(g), substituted by No. 1/2018 s. 4(1).

* * * * *

S. 43(1A)(1B) inserted by No. 84/1994 s. 8(2), repealed by No. 1/2018 s. 4(2).

* * * * *

S. 43(1C) inserted by No. 84/1994 s. 8(2), amended by No. 60/2007 s. 7(1), repealed by No. 1/2018 s. 4(2).

S. 43(1D) inserted by No. 84/1994 s. 8(2), amended by No. 27/2001 s. 4(Sch. 2 item 4.5), repealed by No. 60/2007 s. 7(2).

* * * * *

S. 43(2) amended by No. 1/2018 s. 4(3).

(2) If, by reason of subsection (1), the Commission is not liable to make a payment to an earner in respect of loss of earnings, the Commission may make such a payment if it is satisfied that the earner would suffer acute financial hardship if a payment were not made.

Division 3—Benefits

44 Total loss of earnings

(1) The Commission is liable to pay to an earner who is injured as a result of a transport accident and suffers a total loss of earnings as a result of, or materially contributed to by, the injury a weekly payment in respect of loss of earnings during the period of entitlement.

(2) Subject to subsection (3), the amount of the weekly payment is—

(a) 80 per centum of the earner's pre-accident weekly earnings; or

S. 44(2)(ab) inserted by No. 18/2022 s. 25.

(ab) if the earner is receiving a weekly payment under this section in respect of loss of earnings suffered as a result of, or materially contributed to by, an injury resulting from a previous transport accident, 100% of that weekly payment; or

(ac) if the earner is receiving a weekly payment under section 45 in respect of loss of earnings suffered as a result of, or materially contributed to by, an injury resulting from a previous transport accident, 80% of the earner's pre-accident weekly earnings immediately before the previous transport accident; or

S. 44(2)(ac) inserted by No. 18/2022 s. 25.

(b) if the earner has no dependants—$304; or

S. 44(2)(b) amended by No. 84/1994 s. 55(2)(f).

(c) if the earner has dependants—an amount equal to the sum of—

(i) $304; and

S. 44(2)(c)(i) amended by No. 84/1994 s. 55(2)(f).

(ii) $85 for one dependant; and

S. 44(2)(c)(ii) amended by No. 84/1994 s. 55(2)(d).

(iii) $27 for each other dependant—

S. 44(2)(c)(iii) amended by No. 84/1994 s. 55(2)(b).

whichever is the greater.

(3) A weekly payment must not exceed—

(a) $621; or

S. 44(3)(a) amended by No. 84/1994 s. 55(2)(i).

(b) 100 per centum of the earner's pre-accident weekly earnings—

whichever is the lesser.

(4) In this section, ***period of entitlement*** in relation to a person injured as a result of a transport accident means the period during which the person suffers total loss of earnings as a result of, or materially contributed to by, the injury but does not include—

(a) subject to section 43(2), the first five days after the accident or after the injury first manifests itself, whichever last occurs, in respect of which, or any part of which, the earner suffers any loss of earnings as a result of, or materially contributed to by, the injury; or

(b) any period after the first 18 months after the accident.

45 Partial loss of earnings

(1) The Commission is liable to pay to an earner who is injured as a result of a transport accident and suffers a partial loss of earnings as a result of, or materially contributed to by, the injury a weekly payment under this section in respect of loss of earnings during the period of entitlement.

(2) Subject to subsection (3), if the earner is employed the amount of the weekly payment under subsection (1) is—

(a) 85 per centum of the difference between the earner's current weekly earnings and the earner's pre-accident weekly earnings; or

S. 45(2)(b) amended by No. 84/1994 s. 55(2)(f).

(b) if the earner has no dependants—$304, less the earner's actual weekly earnings; or

(c) if the earner has dependants—an amount equal to the sum of—

(i) $304; and

S. 45(2)(c)(i) amended by No. 84/1994 s. 55(2)(f).

(ii) $85 for one dependant; and

S. 45(2)(c)(ii) amended by No. 84/1994 s. 55(2)(d).

(iii) $27 for each other dependant—

S. 45(2)(c)(iii) amended by No. 84/1994 s. 55(2)(b).

less the earner's actual weekly earnings—

whichever is the greater.

(3) A weekly payment under this section for an earner who is employed must not exceed—

(a) $621, less the earner's current weekly earnings; or

S. 45(3)(a) amended by No. 84/1994 s. 55(2)(i).

(b) 100 per centum of the earner's pre-accident weekly earnings, less the earner's actual weekly earnings—

whichever is the lesser.

(4) Subject to subsection (5), if the earner is not employed, the amount of the weekly payment under this section is—

(a) 80 per centum of the earner's pre-accident weekly earnings; or

(b) if the earner has no dependants—$304; or

S. 45(4)(b) amended by No. 84/1994 s. 55(2)(f).

(c) if the earner has dependants—an amount equal to the sum of—

S. 45(4)(c)(i) amended by No. 84/1994 s. 55(2)(f).

(i) $304; and

S. 45(4)(c)(ii) amended by No. 84/1994 s. 55(2)(d).

(ii) $85 for one dependant; and

S. 45(4)(c)(iii) amended by No. 84/1994 s. 55(2)(b).

(iii) $27 for each other dependant—

whichever is the greater.

(5) A weekly payment under this section for an earner who is not employed must not exceed—

S. 45(5)(a) amended by No. 84/1994 s. 55(2)(i).

(a) $621; or

(b) 100 per centum of the earner's pre-accident weekly earnings—

whichever is the lesser.

S. 45(5A) inserted by No. 18/2022 s. 26.

(5A) For the purposes of this section and despite anything to the contrary in section 4, 4A or 5, the pre-accident weekly earnings for an earner who was, immediately before the transport accident, receiving a weekly payment under section 44 or this section in respect of loss of earnings suffered as a result of, or materially contributed to by, an injury resulting from a previous transport accident, are the pre-accident weekly earnings for the earner immediately before the previous transport accident.

(6) In this section—

current weekly earnings in relation to an earner means the earnings of the earner during the week in respect of which a weekly payment is made;

S. 45(6) def. of *current weekly earnings* amended by No. 94/2004 s. 5(2).

period of entitlement in relation to a person injured as a result of a transport accident means the period during which the person suffers a partial loss of earnings as a result of, or materially contributed to by, the injury but does not include—

(a) subject to section 43(2), the first five days after the accident or after the injury first manifests itself, whichever last occurs, in respect of which, or any part of which, the earner suffers any loss of earnings as a result of, or materially contributed to by, the injury; or

(b) any period after the first 18 months after the accident.

45AA Interim payments to self-employed person

S. 45AA inserted by No. 94/2004 s. 8.

(1) This section only applies to an earner who was a self-employed person at the time he or she was injured in a transport accident.

(2) If the person suffers a total loss of earnings that is a result of, or that is materially contributed to by, the injury, the Commission is liable to pay the person 75% of the amount specified for the purposes of section 44(3)(a) until the day on which the first of these events occurs—

(a) the person's period of entitlement (as defined by section 44(4)) ends; or

(b) the expiry of the first 12 weeks of that period of entitlement; or

(c) the Commission determines the amount of the person's pre-accident weekly earnings.

Note

This section only applies to a person who was injured in a transport accident that occurs on or after the date of commencement of section 8 of the **Transport Accident (Amendment) Act 2004**—see section 186.

S. 45AB inserted by No. 94/2004 s. 8.

45AB Interim payments to be reconciled with actual entitlements

(1) This section applies if the Commission makes a payment to a person under section 45AA.

(2) Once the Commission determines the amount of the person's pre-accident weekly earnings, the Commission must then determine the difference between—

(a) the amount that the person has been paid under section 45AA; and

(b) the amount that the person would have been paid under section 44 or 45, during the period in respect of which payments under section 45AA were made, had the amount of the person's pre-accident weekly earnings been determined on the day of the accident.

(3) If the person was paid less than he or she was entitled to under section 44 or 45 for the relevant period, the Commission must pay the amount of the difference to the person as soon as is practicable after determining the amount.

(4) If the person was paid more than he or she was entitled to under section 44 or 45 for the relevant period, the Commission may recover the amount of the difference by way of offset from any future

payments it is required to make to the person under that section.

45AC Seasonal earners may opt to receive loss of earnings payments on seasonal basis

S. 45AC inserted by No. 94/2004 s. 9.

(1) This section applies if a seasonal earner is injured in a transport accident and suffers a loss of earnings as a result of the injury.

(2) For the purposes of this section—

(a) a ***seasonal earner*** is a person who engages in one or more seasonal activities;

(b) ***seasonal activities*** are activities that occur on an annual basis but that only provide employment for most of the people engaged in them for less than 6 months in any 12 month period.

Example

Fruit-picking, skiing instruction, acting in a television series that is only in production for 5 months each year, acting in school holiday plays, operating a whale-watching boat, making Christmas puddings.

(3) For the purposes of sections 44 and 45, a seasonal earner may elect to be compensated under those sections during the period of entitlement on a week to week basis as if a reference in those sections to the earner's pre-accident weekly earnings was a reference in a particular week to the earnings the earner could reasonably have expected to earn in that week had the injury not occurred.

Note

This subsection enables a seasonal earner to elect to receive weekly loss of earnings payments on the same pattern that he or she was accustomed to before the injury, that is, for instance, higher payments in weeks in which he or she would normally have been working full time and no, or lower, payments in weeks when he or she would normally have been unemployed or working part time. If no election

is made the earner will receive the same amount each week based on a weekly average of his or her earnings in the last 12 months (unless another provision of section 44 or 45 applies).

(4) An election under subsection (3)—

(a) must be made in writing and be given to the Commission within 14 days after the earner becomes entitled to receive any payment under section 44 or 45; and

(b) has effect for the remainder of the period of entitlement that applies in respect of the injury; and

(c) cannot be revoked once any payment under section 44 or 45 is made to the earner in accordance with the election.

(5) Despite subsection (4)(a), the Commission may waive the 14 day period referred to in that subsection if, in the opinion of the Commission, it is appropriate to do so in particular circumstances.

Note

This section only applies to a person who was injured in a transport accident that occurs on or after the date of commencement of section 9 of the **Transport Accident (Amendment) Act 2004**—see section 187.

S. 45A inserted by No. 32/1988 s. 10, substituted by No. 84/1994 s. 31.

45A Advice of return to work

(1) If a person who has been receiving compensation under this Act returns to any work (whether as an earner or otherwise), the person must immediately notify the Commission in writing of the return to work.

(2) A person is guilty of an offence if—

(a) the person fails to comply with subsection (1); and

(b) that failure has materially affected a decision concerning the payment of compensation under this Act.

Penalty: 5 penalty units.

46 Review of eligibility at 18 months

S. 46(1) amended by No. 32/1988 s. 12(1).

(1) If it appears to the Commission that a person injured as a result of a transport accident will suffer a loss of earning capacity as a result of the injury 18 months after the accident, the Commission must, at or about that time, review the entitlement of the person to payments in respect of loss of earning capacity.

(2) If a review under subsection (1) of the entitlement of a person injured as a result of a transport accident for compensation has not been completed within 18 months after the accident, the person continues to be entitled to compensation under section 44 or 45, as the case may be, as if the reference in those sections to 18 months were a reference to the date of completion of the review.

46A Degree of impairment

S. 46A inserted by No. 32/1988 s. 11, amended by No. 34/1998 s. 8 (ILA s. 39B(1)).

(1) The Commission must determine the degree of impairment of each person who is injured as a result of a transport accident and appears to the Commission to be or to be likely to be entitled to an impairment benefit, as at—

S. 46A(1)(a) substituted by No. 94/2004 s. 10(1).

(a) if the person was not a minor when the accident occurred—

(i) when the injury stabilises; or

(ii) 3 years after the accident, or 3 years after any injury first manifests itself (as the case may be)—

whichever occurs first; or

S. 46A(1)(b) substituted by No. 94/2004 s. 10(1).

(b) if the person was a minor when the accident occurred or when the injury first manifested itself—

(i) when the person attains the age of 18 years, if the injury has stabilised by that time; or

(ii) in any other case—

(A) when the injury stabilises; or

(B) when the person attains the age of 21 years—

whichever occurs first.

S. 46A(1AA) inserted by No. 94/2004 s. 10(2).

(1AA) Despite subsection (1), the Commission must not determine the degree of impairment within 3 months after the accident.

S. 46A(1AB) inserted by No. 94/2004 s. 10(2).

(1AB) If a person applies to the Commission for a determination of his or her degree of impairment as a result of a transport accident more than 2 years after the day of the accident, or the day when any injury first manifested itself, whichever is the later day, the Commission must, if it is of the opinion that the person is, or is likely to be, entitled to an impairment benefit, determine the person's degree of impairment—

(a) if the injury had stabilised by the date that the application was made, within 12 months after that date; or

(b) in any other case, within—

(i) 12 months after the injury stabilises; or

(ii) 2 years after the date the application was made—

whichever occurs first.

(1AC) If the Commission is of the opinion that a person who applied to the Commission in the circumstances described in subsection (1AB) is, or is likely to be, entitled to an impairment benefit, but the person's injury has not stabilised within 12 months after the application was made, the person may ask the Commission to wait until the injury has stabilised before determining his or her degree of impairment.

S. 46A(1AC) inserted by No. 94/2004 s. 10(2).

(1AD) Despite subsection (1AB)(b), the Commission must comply with any request under subsection (1AC) that is made in writing.

S. 46A(1AD) inserted by No. 94/2004 s. 10(2).

(1A) If the Commission—

S. 46A(1A) inserted by No. 84/2000 s. 13, amended by Nos 94/2004 s. 10(3), 65/2008 s. 3, substituted by No. 80/2010 s. 5(1).

(a) has not made a determination under this section of the degree of impairment of a person injured as a result of a transport accident who has made a claim, other than a claim for payments under section 57, 58 or 59 or a claim for compensation under section 60(2A), (2C) or (2E) within the period of time provided by section 68 that has been accepted by the Commission within the period of 6 years after the later of—

S. 46A(1A)(a) amended by No. 71/2013 s. 12(1).

(i) the date of the transport accident; or

(ii) the date on which the injury to the person resulting from the transport accident first manifests itself; and

(b) within that period of 6 years—

(i) has not advised the person that he or she appears likely to be entitled to an impairment benefit; and

(ii) has not received an application in writing from the person requesting the Commission to carry out an impairment assessment—

the Commission is to be taken to have made a determination that the degree of impairment is 0%.

S. 46A(1B) inserted by No. 84/2000 s. 13.

(1B) The period of 6 years referred to in subsection (1A) applies—

(a) in respect of a transport accident that occurred before the commencement of section 13 of the **Transport Accident (Amendment) Act 2000**, from the commencement of that section; and

S. 46A(1B)(b) amended by No. 80/2010 s. 5(2)(a).

(b) in respect of a transport accident that occurs on or after the commencement of section 13 of the **Transport Accident (Amendment) Act 2000**, from the time that the transport accident occurs; and

S. 46A(1B)(c) inserted by No. 80/2010 s. 5(2)(b).

(c) in the case of an injury to a person who was a minor at the time of the transport accident, from the day on which the person attains the age of 18 years.

S. 46A(1C) inserted by No. 94/2004 s. 10(4).

(1C) If an injury of a person who was not a minor when the accident occurred has not stabilised 3 years after the accident, or 3 years after any injury first manifests itself (as the case may be), the person may ask the Commission—

(a) to determine his or her degree of impairment; or

(b) to wait until the injury has stabilised before determining his or her degree of impairment.

(1D) The Commission must comply with any request under subsection (1C) that is made in writing and, in the case of a request made under subsection (1C)(a), must do so within 12 months after receiving the request.

S. 46A(1D) inserted by No. 94/2004 s. 10(4).

(1E) If a person who is eligible to make a request under subsection (1C) does not make such a request within 90 days after the date he or she becomes eligible to make the request, the Commission must determine the degree of impairment of the person within 12 months after that date.

S. 46A(1E) inserted by No. 94/2004 s. 10(4).

(1F) When determining the degree of impairment under this section, section 47(7) or section 47(7A), the Commission must—

S. 46A(1F) inserted by No. 71/2013 s. 13.

(a) not include impairments resulting from injuries or causes that are unrelated to the transport accident; and

(b) in the case of a person who has an injury that existed before the transport accident that is aggravated by an injury that was the result of a transport accident—

(i) in the case of a spinal injury, use the apportionment methodology set out in Chapter 3.3f of the A.M.A Guides;

(ii) in any other case, use the subtraction methodology set out in Chapter 2 of the A.M.A Guides.

S. 46A(2) inserted by No. 34/1998 s. 8.

(2) In this Part, a reference to the determination of a degree of impairment is a reference to a determination by the Commission—

(a) made in accordance with—

S. 46A(2)(a)(i) amended by Nos 60/2007 s. 8(1)(3), 71/2013 s. 14(1), 18/2016 s. 3(1), 73/2016 s. 7(1).

(i) the A.M.A Guides as applicable subject to this section; or

(ii) methods prescribed for the purposes of this section—

and in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister; and

(b) if the Minister has approved a training course in the application of those Guides or methods, made after an assessment by a medical practitioner who has successfully completed such a training course.

S. 46A(2A) inserted by No. 60/2007 s. 8(2).

(2A) Despite anything to the contrary in the A.M.A Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made based on the person's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the person in respect of the injury.

(2B) The A.M.A Guides apply in respect of an assessment under section 3.3d of Chapter 3 of the A.M.A Guides as if the following were omitted—

S. 46A(2B) inserted by No. 60/2007 s. 8(2).

> "with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment".

(2C) The A.M.A Guides and the Spinal Impairment Guides Modification Document apply in respect of an assessment of impairment under section 3.3 of Chapter 3 of the A.M.A Guides, and if there is any inconsistency between the A.M.A Guides and the Spinal Impairment Guides Modification Document, the Spinal Impairment Guides Modification Document prevails, to the extent of the inconsistency.

S. 46A(2C) inserted by No. 71/2013 s. 14(2), repealed by No. 18/2016 s. 3(2), new s. 46A(2C) inserted by No. 73/2016 s. 7(2).

(2D) The Spinal Impairment Guides Modification Document may be amended, varied or substituted by a subsequent edition of the Spinal Impairment Guides Modification Document published by the Commission in the Government Gazette.

S. 46A(2D) inserted by No. 71/2013 s. 14(2), repealed by No. 18/2016 s. 3(2), new s. 46A(2D) inserted by No. 73/2016 s. 7(2).

(2E) An amendment, variation or substitution of the Spinal Impairment Guides Modification Document under subsection (2D) has effect on the day after the day on which the amendment, variation or substitution (as the case may be) is published in the Government Gazette.

S. 46A(2E) inserted by No. 73/2016 s. 7(2).

S. 46A(3) inserted by No. 34/1998 s. 8.

(3) For the purposes of determining the degree of impairment of the whole person resulting from binaural hearing impairment, the percentage of the diminution of hearing determined in accordance with subsection (4) is to be converted as follows—

(a) if the binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is zero;

(b) if the binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;

(c) if the binaural loss of hearing is more than 10 per cent NAL, the degree of impairment is the percentage equivalent of the number (rounded up to the next whole number) given by the formula—

$$10 + [0{\cdot}278\ (NAL - 10)]$$—

where NAL is the percentage of diminution of hearing determined in accordance with subsection (4).

S. 46A(4) inserted by No. 34/1998 s. 8.

(4) For the purposes of this section, the percentage of diminution of hearing—

S. 46A(4)(a) amended by No. 71/2013 s. 15(a).

(a) must be assessed as a binaural loss of hearing and determined—

(i) by a person or class of persons approved; and

(ii) in the manner approved—

by the Minister; and

(b) must be assessed as a binaural loss of hearing and determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 46A(4)(b) amended by No. 71/2013 s. 15(b).

(5) An approval by the Minister for the purposes of subsection (4)(a)(i) continues in force for the period not exceeding 12 months as is specified by the Minister in the approval unless revoked by the Minister.

S. 46A(5) inserted by No. 34/1998 s. 8.

(6) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".

S. 46A(6) inserted by No. 34/1998 s. 8, substituted by No. 41/2006 s. 30(1).[9]

(6A) The guidelines referred to in subsection (6)—

(a) must be published by the Commission in the Government Gazette;

(b) have effect on the day after the day on which the guidelines are published in the Government Gazette;

(c) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Commission in the Government Gazette.

S. 46A(6A) inserted by No. 41/2006 s. 30(1), amended by Nos 71/2013 s. 14(3), 18/2016 s. 3(3).

(7) In this section—

A.M.A Guides means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition) (other than Chapter 15) as modified by this Act;

S. 46A(7) inserted by No. 34/1998 s. 8, amended by No. 60/2007 s. 8(3)(b), substituted by No. 73/2016 s. 7(3).

Spinal Impairment Guides Modification Document means the Spinal Impairment Guides Modification Document published in the Government Gazette on 6 October 2016.

S. 46A(8) inserted by No. 34/1998 s. 8, repealed by No. 95/2003 s. 27 (as amended by No. 28/2005 s. 32), new s. 46A(8) inserted by No. 94/2004 s. 10(5).

(8) If the Commission is required to assess the degree of impairment of a person whose injury has not stabilised, for the purposes of that assessment—

(a) unless the contrary intention appears in this section, the degree of impairment to be assessed is the degree of current impairment as at the date of the determination of the assessment; and

S. 46A(8)(b) amended by No. 60/2007 s. 8(3)(b).

(b) any reference to permanent impairment in the A.M.A Guides is to be read as a reference to current impairment.

S. 46A(9) inserted by No. 34/1998 s. 8, repealed by No. 95/2003 s. 27 (as amended by No. 28/2005 s. 32), new s. 46A(9) inserted by No. 41/2006 s. 30(2).

(9) Subject to subsection (10), this section as amended by section 30 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of transport accidents on or after the commencement of section 30 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.

S. 46A(10) inserted by No. 41/2006 s. 30(2).

(10) Despite subsection (9), if the first guidelines under this section as amended by section 30 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** are not in force on the commencement of section 30 of that Act, this section as in force before that commencement continues to apply in respect of transport accidents on or after that commencement until the first guidelines are in force.

Note

This section, as amended by section 10 of the **Transport Accident (Amendment) Act 2004** (which amended subsections (1) and (1A) and inserted subsections (1AA)–(1AD), (1C)–(1E) and (8)) applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 10—see section 188.

46AA Changes to methods of determining degree of impairment

S. 46AA inserted by No. 34/1998 s. 8.

(1) The Governor in Council may by Regulations fix the methods to be used for the purpose of determining the degree of impairment in respect of an injury as a result of a transport accident.

(2) Regulations made under this section—

(a) must specify the methods to be used and any modifications of those methods that are to apply;

(b) may for the purposes of paragraph (a) apply, adopt or incorporate, with or without modification any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the Regulations are made;

(c) can only apply for the purpose of determining the degree of impairment of a person who is injured as a result of a transport accident on or after the date that the Regulations are made or on or after a later date specified in the Regulations.

(3) If Regulations are made under this section, section 46A applies in respect of determinations of the degree of impairment to which the Regulations apply as if the provisions of the Regulations were substituted for subsections (2) to (7) of section 46A.

S. 46B inserted by No. 60/1996 s. 35.

46B Assessment of impairment

(1) In determining a degree of impairment of a person, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

(2) Subsection (1) applies to a determination of a degree of impairment under this Act made on or after the commencement of section 35 of the **Accident Compensation (Further Amendment) Act 1996**, other than a determination made by the Administrative Appeals Tribunal in respect of an application for review under section 77 of this Act made before that commencement.

S. 46C inserted by No. 95/2003 s. 28.

46C Rounding of assessments of impairment

(1) Despite anything to the contrary in the A.M.A. Guides, in determining a person's degree of impairment for the purposes of section 46A, 47, 54 or 55, no number determined under the A.M.A. Guides is to be rounded up or down, regardless of whether the number represents an initial, an intermediate, a combined or a final value, unless the rounding is expressly required or permitted by this Act.

(2) A number determined under the A.M.A. Guides must be rounded to the nearest whole percent.

Example:

A final degree of impairment of 9·5% must be rounded to 10%. A final degree of impairment of 8·4% must be rounded to 8%.

Note

Section 180 sets out the transitional provisions that apply to this section.

47 Impairment benefit

S. 47 (Heading) inserted by No. 94/2004 s. 11(1).

(1) If under section 46A or 47(7A)—

S. 47(1) substituted by No. 32/1988 s. 12(2).

(a) the Commission has determined the degree of impairment of a person who is injured as a result of a transport accident; and

(b) the degree so determined is more than 10 per centum—

the Commission must assess an impairment benefit in respect of the person.

Note

Note to s. 47(1) inserted by No. 94/2004 s. 11(2).

This section, as amended by section 11 of the **Transport Accident (Amendment) Act 2004** (which substituted subsection (2) and amended subsection (6)), only applies to a person who was injured in a transport accident that occurs on or after the date of commencement of section 11—see section 189.

(2) The impairment benefit is the amount shown, or the amount calculated in accordance with the formula, in column 2 of the following table that is opposite the person's degree of impairment—

S. 47(2) substituted by No. 32/1988 s. 12(2), amended by No. 84/1994 s. 55(2)(l), substituted by No. 94/2004 s. 11(3).

Degree of impairment	*Impairment benefit*
10% or less	0
11% – 19%	$4 500 + ((D – 10) × $1000)
20% – 49%	$15 000 + ((D – 20) × $1500)
50% – 59%	$60 250 + ((D – 50) × $1750)
60% – 79%	$78 000 + ((D – 60) × $2000)
80% – 89%	$120 000 + ((D – 80) × $4000)
90% – 99%	$164 000 + ((D – 90) × $8000)
100%	$252 000

where "D" is the person's degree of impairment expressed as a number.

S. 47(2A) inserted by No. 94/2004 s. 11(3).

(2A) If a degree of impairment of 11% or more is the result of more than one transport accident, section 48 applies.

(3) The Commission must pay to a person in respect of whom an impairment benefit or interim benefit is assessed under this section—

(a) the amount of that benefit as a lump sum; or

(b) if an interim benefit has been paid, the amount of the impairment benefit less the amount of the interim benefit; or

(c) if the person requests that part only of the benefit be paid as a lump sum, that part as a lump sum.

S. 47(3AA) inserted by No. 84/2000 s. 14(1).

(3AA) The Commission must make any payment under subsection (3) to the person in respect of whom the impairment benefit or interim benefit is assessed without setting off any legal costs.

S. 47(3A) inserted by No. 32/1988 s. 12(3), amended by No. 84/2000 s. 14(2), substituted by No. 94/2004 s. 12(1).

(3A) The Commission may pay an interim benefit under this section at any time to a person who is injured as a result of a transport accident if it is satisfied—

(a) that, given the nature of the person's injuries, the person's permanent impairment is likely to be at least 30%; or

(b) that the person's injuries are substantially stable.

Note

Subsection (3A) applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 12 of the **Transport Accident (Amendment) Act 2004**—
see section 190.

(4) If a person requests that part only of the impairment benefit be paid as a lump sum, the Commission must pay to the person periodic payments calculated in accordance with the regulations on the impairment benefit, less the sum of the part of impairment benefit paid under subsection (3)(c) and any interim benefit paid.

(5) If the amount of an interim benefit paid to a person exceeds the amount of the impairment benefit, the Commission is not entitled to recover the difference from that person.

(6) If as a result of two or more transport accidents, a person has a total degree of impairment that is more than 10 percent suffered as a result of the transport accidents—

S. 47(6) amended by No. 32/1988 s. 12(4), substituted by No. 84/2000 s. 14(3).

* * * * *

S. 47(6)(a) repealed by No. 94/2004 s. 11(4).

(b) section 93(3) does not apply unless the degree of impairment is determined to be 30 percent or more as the result of one of the transport accidents.

(7) Despite sections 46A(1) and 46A(1AA), the Commission may for the purposes of proceedings for the recovery of damages in respect of the injury at any time determine the degree of impairment of a person who is injured as a result of a transport accident and who—

S. 47(7) substituted by No. 32/1988 s. 12(5), amended by No. 84/1994 s. 32(1)(a)(b), substituted by No. 84/2000 s. 14(4), amended by No. 60/2007 s. 9.

S. 47(7)(a) amended by No. 65/2008 s. 4, substituted by No. 71/2013 s. 12(2).

(a) has made a claim, other than a claim for payments under section 57, 58 or 59 or a claim for compensation under section 60(2A), (2C) or (2E) within the period of time provided by section 68 that has been accepted by the Commission; or

S. 47(7)(b) amended by No. 95/2003 s. 29.

(b) is not entitled to compensation under this Act by virtue of section 37, 38, 38A or 42—

if the Commission is satisfied that the injury has stabilised or has substantially stabilised.

S. 47(7A) inserted by No. 32/1988 s. 12(5).

(7A) If the Commission determines under subsection (7)(a) the degree of impairment of a person who is injured as a result of a transport accident, the Commission may make a further determination of the degree of impairment of that person in substitution for the determination under subsection (7) 18 months after the accident occurred or in the case of a minor, when the person attains the age of 18 years.

S. 47(7B) inserted by No. 84/1994 s. 32(2).

(7B) If the Commission determines under subsection (7) that—

(a) the degree of impairment of a person who is injured is not the result of a transport accident; or

(b) the degree of impairment of a person is less than 30 percent; or

(c) the degree of impairment cannot be determined because the injury has not stabilised or has not substantially stabilised—

the person may apply to the Tribunal for review of the decision.

(8) This section, other than subsection (7), continues to apply in respect of a person who is injured in a transport accident, despite the determination of a degree of impairment under that subsection unless the person has recovered damages in accordance with Part 6.

S. 47(8) amended by No. 32/1988 s. 12(6).

48 Impairment benefit where more than one accident involved

S. 48 amended by Nos 32/1988 s. 12(7), 84/1994 ss 33(1), 55(2)(o), substituted by No. 94/2004 s. 13.

(1) In this section, the ***relevant date*** is the date of commencement of section 13 of the **Transport Accident (Amendment) Act 2004**.

(2) This section applies if—

(a) a person is injured as a result of one or more transport accidents; and

(b) the person has a total degree of impairment of 11% or more as a result of that accident, or those accidents; and

(c) the person is injured in a subsequent transport accident, and the person's total degree of impairment is increased by 1% or more as a result of that subsequent accident.

(3) This section also applies if—

(a) a person is injured as a result of one or more transport accidents; and

(b) the person has a total degree of impairment of 1% or more, but less than 11%, as a result of that accident, or those accidents; and

(c) the person is injured in a subsequent transport accident, and the person's total degree of impairment as a result of the transport accidents is increased to 11% or more; and

(d) the person has not previously become entitled to a benefit under this section.

(4) The person is entitled to an impairment benefit under section 47(2), as at the date of determination of the last relevant degree of impairment, as if the total degree of impairment attributable to the initial accident, or accidents, and the subsequent accident resulted from a single accident.

(5) If the person has already been paid an impairment benefit under subsection (4) in respect of an earlier accident, or earlier accidents, the person is entitled to be paid the difference between the amount the person is entitled to in accordance with subsection (4) for his or her current total degree of impairment and the amount that he or she has already been paid as an impairment benefit.

(6) Subsection (4) does not apply in respect of any accident that occurred before the relevant date (except accidents that did not result in a person having a total degree of impairment of 11% or more).

(7) Subsection (8) applies if—

(a) a person has a total degree of impairment of 11% or more as a result of one or more transport accidents that occurred before the relevant date; and

(b) the person is injured in a transport accident that occurs on or after the relevant date, and the person's total degree of impairment as a result of that subsequent accident is increased by 1% or more.

(8) If this subsection applies, the person is entitled to an amount that is the result of the following calculation—

T – N

where—

"**T**" is the amount that would be payable as an impairment benefit under section 47(2), as at the date of determination of the last relevant degree of impairment, as if the person's total degree of impairment attributable to transport accidents resulted from a single accident;

"**N**" is the notional amount that the person would have been entitled to as an impairment benefit under section 47(2) on the relevant date in respect of the total degree of impairment resulting from transport accidents in respect of which he or she received, or was entitled to receive, an impairment benefit under this Act before that date.

(9) If the person has already been paid an impairment benefit under subsection (8) in respect of an earlier accident, or earlier accidents, the person is entitled to be paid the difference between the amount the person is entitled to in accordance with subsection (8) for his or her current total degree of impairment and the amount that he or she has already been paid under that subsection.

(10) A reference in this section to "under this section" is a reference to this section as inserted by section 13 of the **Transport Accident (Amendment) Act 2004**.

(11) This section is to be read as if it were part of section 47, unless the contrary intention appears.

49 Total loss of earning capacity

(1) The Commission is liable to pay to an earner who, as a result of a transport accident—

(a) is injured; and

(b) suffers total loss of earning capacity—

a weekly payment in respect of that loss after the first 18 months after the accident or after the earner ceases to be entitled to payments under section 44 or 45, whichever last occurs, while that loss continues.

(2) Subject to subsection (3), the amount of the weekly payment under this section is—

S. 49(2)(a) amended by No. 84/1994 s. 33(2)(a).

(a) 80 per centum of the earner's pre-accident earning capacity; or

S. 49(2)(b) amended by No. 84/1994 ss 33(2)(b), 55(2)(e).

(b) if the earner has no dependants—$270; or

S. 49(2)(c) amended by No. 84/1994 s. 32(2)(c).

(c) if the earner has dependants—an amount equal to the sum of—

S. 49(2)(c)(i) amended by No. 84/1994 s. 55(2)(e).

(i) $270; and

S. 49(2)(c)(ii) amended by No. 84/1994 s. 55(2)(c).

(ii) $76 for one dependant; and

(iii) $25 for each other dependant—

S. 49(2)(c)(iii) amended by No. 84/1994 s. 55(2)(a).

whichever is the greater.

(3) A weekly payment under this section must not exceed—

(a) $504; or

S. 49(3)(a) amended by No. 84/1994 ss 32(2)(d), 55(2)(h).

(b) 100 per centum of the earner's pre-accident earning capacity—

S. 49(3)(b) amended by No. 84/1994 s. 32(2)(e).

whichever is the lesser.

(4) A person who receives a weekly payment under this section in respect of a transport accident must, within two months after each anniversary of the date on which the person first received a payment under this section in respect of that accident, give the Commission a statement of earnings in the prescribed form with particulars about the person's earnings (if any) in the year preceding that anniversary.

(5) In this section—

earner includes a person injured as a result of a transport accident who, at the time of the accident, was not an earner, but has attained the age of 18 years after the accident;

pre-accident earning capacity in relation to an earner who suffers loss of earning capacity as a result of an injury in a transport accident, means the amount the Commission determines as the weekly amount the earner had the capacity to earn before the transport

S. 49(5) def. of *pre-accident earning capacity* substituted by No. 84/2000 s. 15(1).

accident in employment reasonably available to the earner in view of the earner's training, skills and experience less such amount as the Commission reasonably considers to be the amount of income tax that would have been payable on that weekly amount under the Commonwealth Income Tax Assessment Act 1936.

S. 49(5A) inserted by No. 84/2000 s. 15(2), amended by Nos 44/2014 s. 33(Sch. item 29(1)), 18/2022 s. 27.

(5A) If an amount cannot be determined in accordance with the definition of ***pre-accident earning capacity***, the amount is deemed to be the amount which is equal to 100% of average weekly earnings of all employees for Victoria last published by the Australian Bureau of Statistics.

(6) For the purpose of the definition of pre-accident earning capacity in subsection (5), if at the time of the accident, the earner was an apprentice or was employed under an award containing, or under conditions under which there were, at that time, different rates of pay for earners of different ages, the earner's pre-accident earning capacity shall be calculated—

(a) until the earner attains the age at which the highest rate is payable or 21 years, whichever is the earlier—as if, at the time of the accident, the earner had the capacity to earn at the rate applicable to the age of the earner for the time being; and

(b) on and after the earner attains the age at which the highest rate is payable or 21 years, whichever is the earlier—as if, at the time of the accident, the earner had the capacity to earn at the rate applicable to the highest of those ages or to age 21.

(7) For the purposes of subsection (6), if there is no rate applicable to an earner of or over the age of 21, the amount an earner of or over the age of 21 has the capacity to earn shall be deemed to be 80 per centum of $504.

S. 49(7) amended by No. 84/1994 s. 55(2)(h).

(8) The amount of a weekly payment under this section to which a person is entitled on or after 1 July 2000 in respect of a transport accident that occurred before 1 July 2000 is increased by 4 percent.

S. 49(8) inserted by No. 84/2000 s. 15(3).

(9) An earner's entitlements under this section are not affected by the earner starting or continuing paid employment if—

S. 49(9) inserted by No. 94/2004 s. 14(2).

(a) he or she has a severe injury as a result of a transport accident; and

(b) he or she is participating in a supported employment program in respect of that employment; and

(c) he or she receives $120 per week or less as earnings from that employment.

50 Partial loss of earning capacity

(1) The Commission is liable to pay to an earner who, as a result of a transport accident—

(a) is injured; and

(b) suffers partial loss of earning capacity—

a weekly payment in respect of that loss after the first 18 months after the accident or after the earner ceases to be entitled to payments under section 44 or 45, whichever last occurs, while that loss continues.

(2) Subject to subsection (3), the amount of the weekly payment under this section is—

S. 50(2)(a) amended by No. 84/1994 s. 33(3)(a).

(a) 85 per centum of the difference between the earner's post-accident earning capacity and the earner's pre-accident earning capacity; or

S. 50(2)(b) amended by No. 84/1994 ss 33(3)(b), 55(2)(e).

(b) if the earner has no dependants—$270, less the earner's post-accident earning capacity; or

S. 50(2)(c) amended by No. 84/1994 s. 33(3)(c).

(c) if the earner has dependants—an amount equal to the sum of—

S. 50(2)(c)(i) amended by No. 84/1994 s. 55(2)(e).

(i) $270; and

S. 50(2)(c)(ii) amended by No. 84/1994 s. 55(2)(c).

(ii) $76 for one dependant; and

S. 50(2)(c)(iii) amended by No. 84/1994 s. 55(2)(a).

(iii) $25 for each other dependant—

less the earner's post-accident earning capacity—

whichever is the greater.

(3) A weekly payment under this section must not exceed—

S. 50(3)(a) amended by No. 84/1994 ss 33(3)(d), 55(2)(h).

(a) $504, less the earner's post-accident earning capacity; or

(b) 100 per centum of the earner's pre-accident earning capacity, less the earner's post-accident earning capacity—

S. 50(3)(b) amended by Nos 84/1994 s. 33(3)(e), 84/2000 s. 15(4).

whichever is the lesser.

(4) A person who receives a weekly payment under this section in respect of a transport accident must, within two months after each anniversary of the date on which the person first received a payment under this section in respect of that accident, give the Commission a statement of earnings in the prescribed form with particulars about the person's earnings (if any) in the year preceding that anniversary.

(5) In this section—

earner includes a person injured as a result of a transport accident who, at the time of the accident was not an earner, but has attained the age of 18 years after the accident;

S. 50(5) def. of *earner* amended by Nos 34/1998 s. 10, 60/2007 s. 10.

post-accident earning capacity in relation to an earner who suffers partial loss of earning capacity as a result of an injury as a result of transport accident, means the amount the Commission determines as the weekly amount (less such amount as the Commission reasonably considers to be the amount of income tax that would have been payable on that weekly amount under the Income Tax Assessment Act 1936 of the Commonwealth as amended and in force for the time being) the earner has the capacity to earn, despite the injury, in employment reasonably available to the person having regard to—

S. 50(5) def. of *post-accident earning capacity* amended by No. 34/1998 s. 10.

(a) the nature of the injury and the degree of impairment; and

(b) the potential for rehabilitation and the person's ability to undertake rehabilitation; and

(c) the earner's training, skills and experience; and

(d) the age of the earner;

pre-accident earning capacity has the same meaning as in section 49.

(6) The Commission must not determine the post-accident earning capacity of an earner at an amount greater than the actual weekly earnings of the earner unless the Commission determines that the earner is capable, despite the injury, of employment in respect of which the weekly earnings would be that greater amount.

S. 50(7) inserted by No. 94/2004 s. 14(3).

(7) Despite subsection (5), in the case of an earner who is participating in a supported employment program in respect of any employment and who receives more than $120 per week as earnings from that employment, this section applies as if the earner's post-accident earning capacity was the amount of the earner's earnings less $120.

S. 50A inserted by No. 84/1994 s. 34.

50A Loss of earning capacity—after return to work

(1) If a person who has received a weekly payment under section 49 or 50 in respect of a transport accident—

(a) returns to work; and

(b) subsequently suffers total or partial loss of earning capacity as a result of the same transport accident; and

(c) during the return to work has an earning capacity greater than the amount calculated in accordance with the definition of ***pre-accident earning capacity*** in section 49(5)—

that definition applies for the purposes of section 49 and 50 as modified by subsection (2).

(2) The modifications are—

(a) For the purposes of "A", the relevant amount is the amount of the greater earning capacity;

(b) For the purposes of "B", the relevant date is the later of 15 June in the last preceding financial year or the 15 June next following the date on which the greater earning capacity is demonstrated;

(c) For the purposes of "C", the relevant date is the 15 June next following the date on which the greater earning capacity is demonstrated.

51 Loss of earning capacity—non-earners

(1) The Commission is liable to pay to a person, other than an earner or a minor, who, as a result of a transport accident—

(a) is injured; and

(b) suffers loss of earning capacity—

a weekly payment in respect of that loss after the first 18 months after the accident or after the earner ceases to be entitled to payments under section 44 or 45, whichever last occurs, while that loss continues.

S. 51(2) amended by No. 84/1994 s. 13(2)(a).

(2) The amount of the weekly payment under this section is the amount to which the person would have been entitled under section 49 or 50 if, at the time of the transport accident, the person had been an earner, less an amount calculated in accordance with the formula—

$$A \times \frac{B}{C - D}$$

where—

A is the amount to which the person would have been so entitled.

B is the number of years before the person attains pension age during which the person is reasonably likely not to be employed.

C is the pension age of the person.

D is the age of the person in whole years.

(3) If a person receives a weekly payment under this section, the person is not entitled to receive a payment under section 49 or 50.

S. 51(4) repealed by No. 84/1994 s. 13(2)(b).

* * * * *

(5) A person who receives a weekly payment under this section in respect of a transport accident must, within two months after each anniversary of the date on which the person first received a payment under this section in respect of that accident, give the Commission a statement of earnings in the prescribed form with particulars of the person's earnings (if any) in the year preceding that anniversary.

52 Commission not liable where payments less than certain amount

The Commission is not liable to make payments to a person under section 50 if the difference between the earner's pre-accident earning capacity and post-accident earning capacity within the meaning of that section is less than 10 per centum of the pre-accident earning capacity.

53 Cessation of loss of earnings payments

(1) Weekly payments under section 44, 45, 49, 50, 51 or 54A are not payable to an earner—

S. 53(1) substituted by No. 32/1988 s. 13, amended by Nos 60/2007 s. 11(1), 18/2022 s. 28(b).

(a) if there is a normal retiring age for workers in the occupation in which the earner was employed at the time of the injury—after the earner attains that age; or

(b) in any other case—after the earner attains pension age—

S. 53(1)(b) substituted by No. 73/2016 s. 8.

but if an earner is injured—

(c) after attaining the age mentioned in paragraph (a) or (b), as the case requires; or

(d) not more than 36 months before attaining that age—

S. 53(1)(d) amended by No. 18/2022 s. 28(a).

and, but for this subsection, weekly payments would be payable to the earner, the earner is entitled, subject to this Act, to weekly payments for a period not exceeding 36 months after the injury first manifests itself.

(1A) For the purposes of subsection (1), in determining whether there is a normal retiring age in an occupation, regard may be had to any retiring age in any industry or establishment where that occupation is carried on.

S. 53(1A) inserted by No. 32/1988 s. 13.

S. 53(1B) inserted by No. 32/1988 s. 13.

(1B) A person who is serving a sentence of imprisonment is not entitled to weekly payments under section 44, 45, 49, 50 or 51 in respect of any period during which the person is in prison.

(2) The Commission is not liable—

S. 53(2)(a) amended by No. 60/2007 s. 11(2).

(a) to make payments under section 49, 50, 51 or 54A in respect of an injury in relation to any period after the settlement or award of pecuniary loss damages within the meaning of section 93 in respect of the injury; or

(b) to make payments under section 47, 48 or 54 in respect of an injury after, or in relation to any period after, the settlement or award of pain and suffering damages within the meaning of section 93 in respect of the injury.

(3) The Commission—

S. 53(3)(a) amended by No. 94/2004 s. 11(5)(b).

(a) is not liable to make payments under section 49, 50 or 51 in respect of an injury in relation to any period after the expiration of the period of three years after the injury first manifests itself or, in the case of a person who was a minor when the injury first manifested itself, after the person attains the age of 21; and

S. 53(3)(b) amended by Nos 84/1994 s. 55(2)(m), 94/2004 s. 11(5)(b).

(b) ceases to be liable to make payments to a person under section 49, 50 or 51 in respect of an injury when the sum of the amounts paid by the Commission to the person under sections 44, 45, 49, 50, 51 and 54 equals $99 220.

(4) Subsection (3) does not apply in relation to payments to a person who is injured as a result of a transport accident if—

(a) a determination of the degree of impairment has been made under section 46A, 47(7) or 47(7A) in respect of the injury; and

S. 53(4)(a) substituted by No. 84/1994 s. 35(1).

(b) the person suffers a degree of impairment as a result of the injury that is determined by the Commission as 50 per centum or more.

S. 53(4)(b) amended by No. 32/1988 s. 13(2).

(5) Subsection (3) does not apply in relation to payments to a person who is injured as a result of a transport accident if—

S. 53(5) inserted by No. 84/1994 s. 35(2).

(a) a determination of a degree of impairment has not been made under section 46A or 47(7A) in respect of the injury as at 3 years after the accident; and

(b) the person suffers a degree of impairment as a result of the injury that if it were to be determined by the Commission would be likely to be determined as 50 per centum or more.

54 Minors' additional benefits

(1) The Commission is liable to pay in respect of a minor who, as a result of a transport accident—

S. 54(1) amended by No. 34/1998 s. 11.

(a) is injured; and

(b) suffers a degree of impairment that is more than 10 per centum—

a weekly payment in respect of the impairment after the first 18 months after the accident until the minor attains the age of 18 years or ceases to suffer the impairment, whichever first occurs.

S. 54(2) amended by No. 32/1988 s. 13(3).

(2) The amount of the weekly payment under this section is the amount calculated in accordance with the formula—

$59A

where—

A is the degree of impairment of the minor as a result of the accident.

(3) The Commission may make payments under this section weekly or at such other intervals as the Commission determines in a particular case.

(4) Payments under this section must be paid to a parent or guardian of the minor for the benefit of the minor.

S. 54A inserted by No. 60/2007 s. 12.

54A Safety net income benefit for persons with severe injuries

(1) Subject to this section, the Commission is liable to pay to a person who as a result of a transport accident—

(a) suffers a severe injury and a degree of impairment that is 50 per centum or more which would otherwise entitle the person to payments under section 49, 50 or 51; and

(b) has had his or her employment terminated or can no longer sustain his or her self-employment—

a weekly payment under this section.

(2) The Commission is not liable to make a payment to a person under this section if the person unreasonably refuses to participate in—

(a) a rehabilitation program that is approved by the Commission and provided by a rehabilitation service; or

(b) a vocational rehabilitation program that is approved by the Commission and provided by a vocational rehabilitation service.

(3) Subject to subsection (4), a person's entitlement to a payment under this section ceases if he or she receives a reasonable offer of suitable employment.

(4) If a person to whom this section applies—

(a) takes up a reasonable offer of suitable employment; and

(b) has his or her employment terminated or can no longer sustain his or her self-employment—

the Commission is liable to pay to the person a weekly payment under this section.

(5) A weekly payment under this section must not exceed whichever is the lesser of—

(a) $965; or

(b) an amount equal to 80 per centum of whichever is the greater of the person's pre-termination weekly earnings or the person's pre-accident earnings.

(6) If a person receives a weekly payment under this section, the person is not entitled to receive a payment under section 49, 50, 50A or 51.

(7) In this section—

pre-termination weekly earnings in relation to an earner (other than a self-employed person) has the same meaning as ***pre-accident weekly earnings*** has in section 4(1) except that ***relevant day*** means the day on which the post accident employment was terminated;

pre-termination weekly earnings in relation to an earner who is a self-employed person has the same meaning as ***pre-accident weekly earnings*** has in section 5 except that the relevant period is the period of 12 months immediately preceding the day on which the person can no longer sustain his or her self-employment.

55 Review—after first 18 months

S. 55(1) repealed by No. 94/2004 s. 11(4).

* * * * *

S. 55(2) substituted by No. 32/1988 s. 14(1), amended by No. 34/1998 s. 12(1).

S. 55(2)(b) amended by No. 49/2018 s. 11.

(2) A review of the entitlement of a person who is receiving weekly payments under section 49, 50 or 51—

(a) may be undertaken by the Commission at any time at the request of the person; and

(b) may be undertaken by the Commission at least once in each period of five years; and

(c) must not be undertaken by the Commission more than once in each period of five years unless the person otherwise requests.

(3) If, when the Commission undertakes a review of a person's entitlement under subsection (2), the Commission has not received the statement of earnings required to be provided under section 49, 50 or 51 in respect of any of the last preceding five years, the person is not entitled to receive a weekly payment under that section until—

(a) the person has given the Commission the statement of earnings; and

(b) the Commission has completed the review of the person's entitlement.

(4) When the Commission has completed a review under this section in relation to a person the Commission may take such steps as are necessary to increase, decrease or cease payments to the person under this Part, whether by reviewing its determination of the degree of impairment or of the earning capacity of the person or otherwise.

(5) If an interim payment of compensation has been made under section 72, this section does not apply unless the Commission has made a final decision or determination as to the payment of compensation.

(6) A review of a person's entitlement under this section must be undertaken using the same methods for determining the degree of impairment that were used in making the first determination of the degree of impairment in relation to that entitlement.

S. 55(6) inserted by No. 34/1998 s. 12(2).

(7) Despite subsection (4), if the Commission has reviewed the earning capacity of a person who has returned to work by participating in an approved vocational rehabilitation program and the return to work is unsuccessful, the Commission must—

S. 55(7) inserted by No. 84/2000 s. 16.

(a) restore the entitlement of the person to receive weekly payments; and

(b) take into account earnings received during the period of the return to work.

56 Redemption of payments if less than certain amount

(1) If the amount of the weekly payment in respect of loss of earning capacity under section 49, 50 or 51 to which a person is entitled is at any time less than 5 per centum of average weekly earnings of all employees for Victoria last published by the Australian Bureau of Statistics, the Commission must redeem those payments under that section

S. 56(1) amended by Nos 94/2004 s. 11(5)(c)(i)(ii), 44/2014 s. 33(Sch. item 29(2)).

and pay to the person an amount determined in accordance with the regulations.

S. 56(2) amended by No. 94/2004 s. 11(5)(d).

(2) A person to whom a payment is made under this section ceases to be entitled to benefits under section 49, 50 or 51.

S. 56A inserted by No. 80/2010 s. 6.

56A Redemption of impairment benefit annuity in respect of pre 16/12/2004 transport accidents

(1) This section applies to a person who, immediately before the commencement of section 13 of the **Transport Accident (Amendment) Act 2004**—

(a) was receiving periodic payments in accordance with section 48 as then in force; or

(b) had an accrued entitlement to such payments, regardless of whether or not the person's impairment benefit had been assessed.

(2) Unless the periodic payments are redeemed in accordance with this section or the person accepts an offer made under subsection (4), the person is entitled to continue to receive periodic payments in accordance with section 48 as if sections 11 and 13 of the **Transport Accident (Amendment) Act 2004** had not been enacted.

(3) The Commission must make an offer to each person who is, or on attaining the age of 65, will be, entitled to periodic payments in accordance with section 48 as in force immediately before the commencement of section 13 of the **Transport Accident (Amendment) Act 2004** to redeem those payments and pay to the person an amount determined in accordance with subsection (5).

(4) Until a person to whom an offer is made under subsection (3) accepts the offer, the person continues to be entitled to periodic payments in accordance with subsection (2) as calculated in accordance with this Act and the regulations (if any).

S. 56A(4) amended by No. 18/2022 s. 29.

(5) The amount payable to a person on redemption of periodic payments is the amount determined in accordance with the formula—

A × B

where—

A is the weekly payment of impairment annuity to which the person is or would become entitled under this section;

B is the number of weeks in respect of which the person would be entitled to periodic benefits but for the redemption—

and qualified by adopting a discount rate of 3 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(6) In determining the number of weeks for the purposes of subsection (5), a period of less than one week is to be taken to be a complete week.

57 Death benefit for surviving partner

S. 57 (Heading) inserted by No. 27/2001 s. 4(Sch. 2 item 4.6).

(1) The Commission is liable to pay a death benefit under this section to a surviving partner of a person who dies as a result of a transport accident.

S. 57(1) amended by Nos 84/2000 s. 3(5)(a), 27/2001 s. 4(Sch. 2 item 4.7(a)).

S. 57(2) amended by Nos 32/1988 s. 14(2)(a), 84/1994 s. 55(2)(n), 84/2000 s. 3(5)(b).

(2) Subject to subsection (4), the amount of the death benefit under this section is the amount calculated in accordance with the formula—

$$\$103\ 210 \times \frac{(125 - A)}{100}$$

where A is—

S. 57(2)(a) amended by No. 84/2000 s. 3(5)(b).

(a) if at the date of death the person was 75 or over—75; or

S. 57(2)(b) amended by No. 84/2000 s. 3(5)(b).

(b) if at the date of death the person was 25 or under—25; or

S. 57(2)(c) amended by No. 84/2000 s. 3(5)(b).

(c) if at the date of death the person was over 25 and under 75—the age of the person at that date in whole years—

less, if the person has received an impairment benefit under section 47 in respect of the transport accident, the amount of that benefit.

S. 57(3) amended by Nos 32/1988 s. 14(2)(b), 84/1994 s. 55(2)(n), 84/2000 s. 3(5)(b), 27/2001 s. 4(Sch. 2 item 4.7(a)).

(3) Subject to subsection (4), if, at the date of death of the person, there is more than one surviving partner, the amount of $103 210 referred to in subsection (2) shall, in determining the benefit for each surviving partner, be taken to be the amount calculated in accordance with the formula—

$$\$103\ 210 \times \frac{B}{B + C}$$

where—

B is the number of years during which the surviving partner was a dependent partner of the person.

C is the sum of the years during which each other surviving partner of the person was a dependent partner of the person.

(4) If—

(a) any dependent children of the person would have been entitled to a death benefit under section 59 but for the operation of section 59(9); and

S. 57(4)(a) amended by No. 84/2000 s. 3(5)(b).

(b) a surviving partner is entitled to a death benefit under this section—

S. 57(4)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.7(b)(i)).

then—

(c) each such child is entitled to an equal share of an amount calculated in accordance with the formula—

S. 57(4)(c) amended by Nos 84/1994 s. 55(2)(n), 27/2001 s. 4(Sch. 2 item 4.7(b)(i)(ii)).

$$\frac{\$103\ 210}{S+1}$$

where—

S is one or, if there is more than one surviving partner, the number of surviving partners; and

(d) the reference in the formula in subsection (2) and (3) to $103 210 shall be deemed to be a reference to an amount calculated in accordance with the formula—

S. 57(4)(d) amended by No. 84/1994 s. 55(2)(n).

$$\$103\ 210 - \frac{\$103\ 210}{S+1}$$

where—

S has the same meaning as in paragraph (c).

S. 57(5) amended by Nos 84/2000 s. 3(5)(a), 27/2001 s. 4(Sch. 2 item 4.7(c)).

(5) The Commission is not liable to pay a death benefit under this section to a surviving partner or dependent child of a person who dies as a result of a transport accident if the surviving partner or dependent child receives an award or makes a settlement of damages in respect of the death.

S. 57(6) inserted by No. 18/2022 s. 30.

(6) The Commission is not liable to pay a death benefit under this section to a surviving partner or dependent child of a person who dies as a result of a transport accident (the ***deceased partner or parent***) if the surviving partner or dependent child is convicted of—

(a) an offence of murder or manslaughter, the commission of which involved the killing of the deceased partner or parent and use of a motor vehicle; or

(b) an offence under section 318(1) or 319(1) of the **Crimes Act 1958** or a corresponding law in respect of driving a motor vehicle at that time that caused the death of the deceased partner or parent.

S. 57(7) inserted by No. 18/2022 s. 30.

(7) For the purposes of subsection (6), the Minister may, by Order published in the Government Gazette, declare a law of another State or a Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of that subsection.

S. 58 (Heading) inserted by No. 27/2001 s. 4(Sch. 2 item 4.8).

58 Surviving partner—periodical payments

S. 58(1) amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(1) The Commission is liable to pay to a surviving partner of an earner who dies as a result of a transport accident a weekly payment in accordance with this section.

(2) Subject to subsection (3), the amount of the weekly payment under this section is—

(a) 80 per centum of the earner's assessed earnings; or

(b) if the surviving partner has no dependent children—$304; or

S. 58(2)(b) amended by Nos 84/1994 s. 55(2)(f), 27/2001 s. 4(Sch. 2 item 4.9).

(c) if the surviving partner has dependent children, an amount equal to the sum of—

S. 58(2)(c) amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(i) $304; and

S. 58(2)(c)(i) amended by No. 84/1994 s. 55(2)(f).

(ii) $85 for one dependent child; and

S. 58(2)(c)(ii) amended by No. 84/1994 s. 55(2)(d).

(iii) $27 for each other dependent child—

S. 58(2)(c)(iii) amended by No. 84/1994 s. 55(2)(b).

whichever is the greater.

(3) A weekly payment under this section must not exceed—

(a) $621; or

S. 58(3)(a) amended by No. 84/1994 s. 55(2)(i).

(b) 100 per centum of the earner's assessed earnings—

whichever is the lesser.

S. 58(4) amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(4) If, at the date of death of the earner, there is more than one surviving partner, the amount of the weekly payment under this section for each surviving partner is the amount calculated in accordance with the formula—

$$A \times \frac{B}{B + C}$$

where—

A is the amount of the weekly payment determined under subsections (2) and (3).

B is the number of years during which the surviving partner was a dependent partner of the earner.

C is the sum of the years during which each other surviving partner of the earner was a dependent partner of the earner.

S. 58(5) amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(5) Weekly payments under this section are not payable to a surviving partner of an earner—

(a) after the expiration of five years after the death of the earner; or

S. 58(5)(b) substituted by No. 84/1994 s. 13(2)(c), amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(b) after the surviving partner attains the pension age—

whichever first occurs but if, at that time, the surviving partner has a dependent child, weekly payments continue to be payable to the surviving partner until the surviving partner ceases to have a dependent child.

(6) In this section—

dependent child, in relation to a surviving partner of an earner who dies as a result of a transport accident, means a child—

S. 58(6) def. of *dependent child* substituted by No. 32/1988 s. 14(3), amended by Nos 27/2001 s. 4(Sch. 2 item 4.9), 49/2018 s. 4, 18/2022 s. 31(1).

(a) who is dependent on the surviving partner and is a child (whether or not a dependent child) of the earner or is a dependent of the earner; and

(b) who—

(i) is under the age of 18 years; or

(ii) has attained the age of 18 years but is under the age of 25 years and is a full-time student or an apprentice—

but does not include a child who has a partner;

the earner's assessed earnings means the amount calculated in accordance with the formula—

S. 58(6) def. of *the earner's assessed earnings* amended by Nos 84/2000 s. 17, 60/2007 s. 13.

$$\frac{A}{52}$$

where—

A is the amount determined as the total amount that, but for the transport accident, the earner would have had the capacity to earn in employment reasonably available to the earner in view of the earner's training, skills and experience during the period of twelve months after the death of the earner, but does not include any employer superannuation contribution.

S. 58(7) amended by No. 27/2001 s. 4(Sch. 2 item 4.9).

(7) The Commission is not liable to make payments under this section to a surviving partner of an earner who dies as a result of a transport accident in respect of any period after an award or settlement of damages is made in respect of the death.

S. 58(8) inserted by No. 18/2022 s. 31(2).

(8) The Commission is not liable to make payments under this section to a surviving partner of an earner who dies as a result of a transport accident (the ***deceased partner***) in respect of any period if the surviving partner is convicted of—

(a) an offence of murder or manslaughter, the commission of which involved the killing of the deceased partner and use of a motor vehicle; or

(b) an offence under section 318(1) or 319(1) of the **Crimes Act 1958** or a corresponding law in respect of driving a motor vehicle at that time that caused the death of the deceased partner.

S. 58(9) inserted by No. 18/2022 s. 31(2).

(9) For the purposes of subsection (8), the Minister may, by Order published in the Government Gazette, declare a law of another State or a Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of that subsection.

59 Surviving children

S. 59(1) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(1) If a person dies as a result of a transport accident and leaves a dependent child whose other parent is not a dependent partner of the person or does not wholly, mainly or in part provide economic support for the dependent child or is dead or dies as a result of the same accident, the Commission is liable to pay weekly payments, a death benefit and an education allowance in accordance with this section.

(2) If—

(a) a person dies as a result of a transport accident; and

S. 59(2) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(b) the surviving partner of that person dies after the accident but otherwise than as a result of a transport accident and was, immediately before the death, entitled to compensation under section 58—

S. 59(2)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

the Commission is liable to pay weekly payments and an education allowance in accordance with this section to a dependent child within the meaning of section 58 of the surviving partner.

(3) A weekly payment under subsection (1) or (2)—

(a) is the sum of $59 for each dependent child, until the child attains the age of 18 years; and

S. 59(3)(a) amended by No. 18/2022 s. 32(1)(a).

(b) must be paid to the responsible person for the child for the benefit of the child until the child attains the age of 18 years.

S. 59(3)(b) substituted by No. 18/2022 s. 32(1)(b).

(4) The death benefit under subsection (1) for each dependent child—

S. 59(4) amended by Nos 45/1994 s. 42(Sch. item 11.1), 15/1998 s. 12(1)(b), 18/2022 s. 32(2).

(a) is payable if, at the time of the death, the child was under 18 years of age or, if a full-time student, under 25 years of age; and

(b) is the sum of $103 210 divided by the number of dependent children; and

S. 59(4)(b) amended by No. 84/1994 s. 55(2)(n).

S. 59(4)(c) amended by Nos 45/1994 s. 42(Sch. item 11.1), 15/1998 s. 12(1)(a).

(c) if the child was under 18 at the time of the death, must be paid to a trustee company determined by the Commission to be held on behalf of and for the benefit of the child until he or she attains the age of 18 years—

and, if a dependent child dies before attaining the age of 18 years, the amount standing to the credit of the account for the child must be refunded by the trustee company to the Commission.

S. 59(4A) inserted by No. 15/1998 s. 12(2).

(4A) If the Commission determines under subsection (4) that a death benefit under subsection (1) be paid to State Trustees within the meaning of the **State Trustees (State Owned Company) Act 1994**, State Trustees must accept payment of the amount of the benefit and the acceptance of that amount is a sufficient discharge to the person transferring that amount.

S. 59(5) amended by Nos 45/1994 s. 42(Sch. item 11.2), 15/1998 s. 12(3)(a)(b).

(5) If under subsection (4) the trustee company holds an amount for the benefit of a child, the trustee company may apply the whole or any part of that amount, or the income from that amount, towards the maintenance, education, advancement or benefit of the child.

(6) The education allowance under subsection (1) or (2)—

S. 59(6)(a) amended by Nos 84/1994 s. 55(2)(j), 18/2022 s. 32(3)(a).

(a) is the sum of $1660 per annum for each dependent child until the child attains the age of 18 years; and

S. 59(6)(b) substituted by No. 18/2022 s. 32(3)(b).

(b) must be paid to the responsible person for the child for the benefit of the child until the child attains the age of 18 years.

(7) If a weekly payment or an education allowance is paid to a dependent child of a person who dies as a result of a transport accident because the other parent does not wholly, mainly or in part provide economic support for the dependent child, weekly payments and the education allowance continue to be payable whether or not the other parent at any later time provides any economic support for the dependent child.

(8) The Commission is not liable to pay weekly payments or an education allowance under this section for a child of a person who dies as a result of a transport accident if—

(a) the Commission is liable to make payments under section 57 or 58 to a surviving partner of the person; and

S. 59(8)(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(b) the child is a dependant of the surviving partner.

S. 59(8)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(9) The Commission is not liable to pay a death benefit under this section for a child of a person who dies as a result of a transport accident if the Commission is liable to make payments under section 57 or 58 to a surviving partner of the person.

S. 59(9) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(10) The Commission is not liable to make any payment under this section to or for a dependent child of a person who dies as a result of a transport accident after, or in respect of any period after an award or settlement of damages is made in respect of the death.

S. 59(10A) inserted by No. 18/2022 s. 32(4).

(10A) The Commission is not liable to make any payment under this section to or for a dependent child of a person who dies as a result of a transport accident (the ***deceased parent***) if the dependent child is convicted of—

(a) an offence of murder or manslaughter, the commission of which involved the killing of the deceased parent and use of a motor vehicle; or

(b) an offence under section 318(1) or 319(1) of the **Crimes Act 1958** or a corresponding law in respect of driving a motor vehicle at that time that caused the death of the deceased parent.

S. 59(10B) inserted by No. 18/2022 s. 32(4).

(10B) For the purposes of subsection (8), the Minister may, by Order published in the Government Gazette, declare a law of another State or a Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of that subsection.

S. 59(11) substituted by No. 18/2022 s. 32(5).

(11) To avoid doubt, if both parents of a child die as a result of the same transport accident, the Commission is liable to pay amounts in accordance with this section as if each parent died as a result of a different transport accident.

S. 59(12) inserted by No. 84/2000 s. 18.

(12) Subsection (13) applies if—

(a) the Commission has determined that it is liable to make payments under this section; and

S. 59(12)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(b) the Tribunal upon a review determines that the Commission is liable to make payments under sections 57 and 58 to the surviving partner of an earner.

(13) If this subsection applies—

S. 59(13) inserted by No. 84/2000 s. 18.

(a) State Trustees must, at the request in writing of the Commission, refund to the Commission any lump sum paid to State Trustees on behalf of a dependent child; and

S. 59(13)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.10).

(b) the Commission is entitled to set-off payments made as weekly payments and education allowance under this section against the payments that the Commission is liable to make under sections 57 and 58 to the surviving partner of the earner.

S. 59(14) inserted by No. 84/2000 s. 18.

(14) Subsections (12) and (13) as inserted by section 18 of the **Transport Accident (Amendment) Act 2000** apply to and in respect of a transport accident which occurs on or after the commencement of that section.

S. 59(15) inserted by No. 18/2022 s. 32(6).

(15) A responsible person for a child must without delay notify the Commission of when they stopped having care of a child.

S. 59(16) inserted by No. 18/2022 s. 32(6).

(16) A person who becomes a responsible person for a child must without delay notify the Commission of when they became the responsible person for the child.

S. 59(17) inserted by No. 18/2022 s. 32(6).

(17) In this section—

care, in relation to a child, means the daily care and control of the child, whether or not involving parental responsibility for the child;

parental responsibility, for a child, means all the duties, powers, responsibilities and authority which, by law or custom, parents have in relation to children;

responsible person, for a child, means a person who has care of the child.

60 Medical and like benefits

S. 60(1) amended by Nos 32/1988 s. 15(1)(a)–(d), 50/1989 s. 52(1) (as amended by No. 91/1989 s. 7(g)), 84/1994 ss 9(1), 36, 5/1999 s. 3, substituted by No. 84/2000 s. 19(1).

(1) This section specifies amounts that the Commission is liable to pay as compensation in addition to any other compensation paid under this Act.

S. 60(1A) inserted by No. 84/1994 s. 9(2), substituted by Nos 84/2000 s. 19(1), 95/2003 s. 30.

(1A) The Commission is only liable to pay compensation under this section for the expenses and costs incurred in the following periods—

(a) if the application for compensation is made within 3 years after the date of the transport accident, the period between the date of the accident and the date the application is granted; or

(b) in any other case, the period of 2 years immediately before the application is made.

Note

Subsection (1A) applies in respect of all applications for compensation made on or after 1 January 2001—see section 181(2).

S. 60(2) substituted by Nos 84/1994 s. 9(3), 84/2000 s. 19(1).

(2) The Commission is liable to pay as compensation to a person who is injured or in respect of a person who dies as a result of a transport accident—

(a) the reasonable costs of road accident rescue services, medical services, hospital services, nursing services, disability services, rehabilitation services, transportation costs, vocational rehabilitation services and ambulance services received in Australia because of the transport accident; and

S. 60(2)(a) amended by No. 71/2013 s. 16.

(b) the reasonable costs of attendant care services that would be otherwise payable under paragraph (a) if the injured person had received those services in Australia because of the transport accident, if the injured person receives those services while travelling overseas for a period of not more than 8 weeks in any year; and

(c) if the person, in the 30 days before the transport accident, was engaged in the care of a child and did not receive salary or wages in respect of that care, the reasonable costs incurred after the transport accident in employing, during the first 5 years after the death or injury, an authorised person to undertake in Australia care of the child, but payment is not to be made in respect of more than—

S. 60(2)(c) substituted by No. 94/2004 s. 15(1).

(i) if, at the time of the accident, the person was in full-time paid employment for 35 hours or more per week, a total of 10 hours per week of child care services;

(ii) if, at the time of the accident, the person was in paid employment for less than 35 hours per week, a total of x hours per week of child care services where "x" is—

(A) if the result of the following calculation is less than 40—

10 + (35 – the number of hours per week of paid employment)—

that number; or

(B) in any other case, 40;

(iii) in any other case a total of 40 hours per week of child care services; and

S. 60(2)(ca) inserted by No. 60/2007 s. 14(1).

(ca) if the person, at the time of the transport accident, was the primary care-giver in respect of a disabled or elderly member of the immediate family of the person and did not receive salary or wages in respect of that care, the reasonable costs incurred after the transport accident in employing, during the first 12 weeks after the death or injury, an authorised person to undertake in Australia the primary care of that disabled or elderly member of the immediate family of the person; and

S. 60(2)(d) substituted by No. 94/2004 s. 15(1).

(d) the reasonable costs incurred after the transport accident in employing an authorised person to provide in Australia home services and post acute support during the first 5 years after the death or injury, but payment is not to be made in respect of more than a total of 40 hours per week of such services or support.

Note

Paragraphs (c) and (d) only apply to a person who was injured in a transport accident that occurred on or after the date of commencement of section 15 of the **Transport Accident (Amendment) Act 2004**—see section 192.

(2AAA) If a person is—

S. 60(2AAA) inserted by No. 49/2018 s. 12(1).

(a) entitled to compensation under subsection (2)(b); and

(b) a worker based in Australia who is travelling for the purpose of the worker's employment—

the person is entitled to compensation under subsection (2)(b) for a period of not more than 4 weeks in any year, in addition to the 8-week period set out in subsection (2)(b).

(2AA) If a person is entitled to payments under both subsections (2)(c) and (2)(d), the payments are not to be made for more than a combined total of 40 hours per week of the services or support referred to in those subsections.

S. 60(2AA) inserted by No. 94/2004 s. 15(2).

(2AB) For the purposes of subsection (2)(c), a person who is injured as a result of a transport accident and is—

S. 60(2AB) inserted by No. 94/2004 s. 15(2), substituted by No. 80/2010 s. 7.

(a) a woman who was pregnant at the time of the transport accident; or

(b) a domestic partner of a woman who was pregnant at the time of the transport accident—

is deemed to have been engaged in the care of a child in the 30 days before the transport accident.

(2AC) With respect to subsection (2)(d)—

S. 60(2AC) inserted by No. 94/2004 s. 15(2).

(a) the 5 year limit does not apply to a person who has a severe injury; and

(b) in determining the reasonable cost of home services, the Commission may have regard to the capacity of other members of the person's household to carry out such services.

S. 60(2A) inserted by No. 84/2000 s. 19(1).

(2A) The Commission is liable to pay as compensation in respect of a person who is injured or dies as a result of a transport accident—

S. 60(2A)(a) amended by Nos 94/2004 s. 16(1), 60/2007 s. 14(2), 71/2013 s. 17(1).

(a) where death or severe injury results from the transport accident, the reasonable costs incurred in Australia of family counselling services provided to any member of the immediate family of the person who is injured or dies by a medical practitioner, a registered psychologist or a person who is authorised under section 23 to provide a service for the purposes of this subsection not exceeding $15 000 in respect of that death or severe injury; and

S. 60(2A)(b) amended by No. 71/2013 s. 18(1).

(b) where death results from the transport accident, the reasonable costs incurred in Australia of a funeral, burial, cremation, monument or any other expense declared by Order of the Governor in Council to be a prescribed expense for the purposes of this section, where the total amount of the expenses does not exceed $14 135.

S. 60(2B) inserted by No. 84/2000 s. 19(1), amended by No. 27/2001 s. 4(Sch. 2 item 4.11(a)(i)).

(2B) In this section—

S. 60(2B) def. of *family member* amended by No. 27/2001 s. 4(Sch. 2 item 4.11 (a)(ii)), repealed by No. 60/2007 s. 14(3).

* * * * *

parent of a dependant child includes—

(a) a person who has day to day care and control of the child and with whom the child is ordinarily resident;

(b) a guardian of the child.

S. 60(2B) def. of *parent* inserted by No. 27/2001 s. 4(Sch. 2 item 4.11 (a)(iii)), amended by No. 94/2004 s. 3(3)(a).

* * * * *

S. 60(2B) def. of *severe injury* repealed by No. 94/2004 s. 3(3)(b).

(2BA) The Commission is liable to pay as compensation to an earner who is injured as a result of a transport accident the reasonable costs of travelling to and from work for up to 24 weeks after first returning to work after the accident if the earner is unable, because of the injuries received as a result of the accident, to undertake that travel in the way that he or she usually did before the accident, but the total payment made under this subsection to the earner as a result of the accident is not to exceed $1000.

S. 60(2BA) inserted by No. 94/2004 s. 17(1), amended by No. 71/2013 s. 19(1).

(2BB) For the purposes of subsection (2BA)—

(a) the 24 weeks do not have to be consecutive; and

(b) if more than one attempt to return to work is made after the accident, a claim may be made after any subsequent attempt to return to work.

S. 60(2BB) inserted by No. 71/2013 s. 19(2).

(2C) If a parent of a dependent child injured and admitted to hospital as a result of a transport accident incurs reasonable travelling or accommodation expenses by reason of visiting the dependent child in the hospital, the Commission is, subject to this Act, liable to pay as

S. 60(2C) inserted by No. 84/2000 s. 19(1), amended by No. 27/2001 s. 4(Sch. 2 item 4.11(b)).

compensation, payments in respect of those expenses.

S. 60(2CA) inserted by No. 49/2018 s. 12(2).

(2CA) If a parent of a dependent child injured and admitted to hospital as a result of a transport accident incurs a loss of wages by reason of visiting the dependent child in the hospital, the Commission is, subject to this Act, liable to pay as compensation, payments not exceeding $10 000.

S. 60(2CB) inserted by No. 49/2018 s. 12(2).

(2CB) The Commission is not liable to pay compensation under this section in respect of the first 5 days of loss of wages.

S. 60(2CC) inserted by No. 49/2018 s. 12(2).

(2CC) With respect to subsection (2CA), the Commission must not make a contribution in respect of a day that exceeds one-fifth of the current amount specified in section 44(3)(a).

S. 60(2CD) inserted by No. 49/2018 s. 12(2).

(2CD) If, by reason of subsection (2CB), the Commission is not liable to make a payment to a parent in respect of loss of wages, the Commission may make such a payment if it is satisfied that the parent would suffer acute financial hardship if a payment were not made.

S. 60(2D) inserted by No. 84/2000 s. 19(1), amended by No. 27/2001 s. 4(Sch. 2 item 4.11(c)(i)(ii)), substituted by No. 60/2007 s. 14(4).

(2D) Subsection (2E) applies if—

(a) a person is injured and admitted as an in-patient in a hospital as a result of a transport accident; and

(b) the hospital is located at least 100 kilometres from the normal residence of members of the immediate family of the person referred to in paragraph (a); and

S. 60(2D)(c) amended by No. 71/2013 s. 20(1).

(c) members of the immediate family incur reasonable travelling or accommodation expenses by reason of visiting the person referred to in paragraph (a) in hospital.

(2E) The Commission is, subject to this Act, liable to pay as compensation to the members of the immediate family payments not exceeding $20 000 in total in respect of the expenses referred to in subsection (2D)(c).

S. 60(2E) inserted by No. 60/2007 s. 14(4), amended by Nos 71/2013 s. 20(2), 49/2018 s. 12(3).

(2EA) Subsection (2EB) applies if—

S. 60(2EA) inserted by No. 73/2016 s. 9.

(a) a person dies as a result of a transport accident; and

(b) a funeral, burial or cremation is held in Australia in respect of the person; and

(c) the service is held at least 100 kilometres from the normal residence of the members of the immediate family of the person referred to in paragraph (a); and

(d) members of the immediate family incur reasonable travelling or accommodation expenses in Australia by reason of attending the service referred to in paragraph (b).

(2EB) The Commission is, subject to this Act, liable to pay as compensation to the members of the immediate family payments not exceeding $5000 in total in respect of the expenses referred to in subsection (2EA)(d).

S. 60(2EB) inserted by No. 73/2016 s. 9.

(2F) For the purposes of subsection (2)(a), the Commission is not liable to pay as compensation the reasonable costs of medical services that are the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes unless the document—

S. 60(2F) inserted by No. 71/2013 s. 21(1).

(a) is requested jointly by the Commission and the person who is injured; and

(b) is provided jointly to the Commission and the person who is injured; and

(c) is provided by a registered health practitioner within the meaning of the Health Practitioner Regulation National Law.

S. 60(2G) inserted by No. 71/2013 s. 21(1).

(2G) For the purposes of subsection (2F), a document obtained for medico-legal purposes includes a document obtained for any of the following purposes—

(a) for the purposes of determining the degree of impairment under section 46A, 47(7) or 47(7A);

(b) for the purposes of Part 6 or Division 1 of Part 10;

(c) responding to a decision of the Commission under Parts 3 and 4 or in contemplation of such a decision;

(d) for the purposes of an application under section 77 for a review of a decision, or in contemplation of such an application.

S. 60(2H) inserted by No. 71/2013 s. 21(1).

(2H) For the purposes of subsection (2F), a document is not obtained for medico-legal purposes if the document is obtained from a person's treating medical practitioner.

S. 60(2I) inserted by No. 71/2013 s. 21(1).

(2I) In this section—

document includes but is not limited to a medical report;

treating medical practitioner, in relation to a person who is injured in a transport accident, is a person who has provided medical services to the injured person before being requested to provide a document.

(3) If a person, as a result of his or her transport accident injury, reasonably requires a motor vehicle used by him or her in Australia to be modified, the Commission is liable—

S. 60(3) inserted by No. 32/1988 s. 15(2), substituted by Nos 84/2000 s. 20(1), 94/2004 s. 18.

(a) to pay the reasonable costs of modifying the vehicle; or

(b) if the vehicle is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified motor vehicle selected by the Commission.

(3A) If a person, as a result of his or her transport accident injury, reasonably requires access to a motor vehicle, and he or she does not have access to a motor vehicle, the Commission is liable to contribute a reasonable amount to the purchase cost of a suitable motor vehicle selected by the Commission.

S. 60(3A) inserted by No. 94/2004 s. 18.

(3B) Without limiting the factors the Commission may consider in determining what is a reasonable amount for the purposes of subsections (3)(b) and (3A), the Commission must have regard to any of the following factors that are applicable—

S. 60(3B) inserted by No. 94/2004 s. 18.

(a) the market value now of the motor vehicle used by the person at the time of the accident;

(b) if that vehicle is no longer used by the person, the market value of the vehicle at the time of the accident;

(c) whether the person or, in the case of a minor, his or her parent or guardian, owned, leased or rented the vehicle;

(d) how often the person was using motor vehicles at the time of the accident;

(e) how often the person will, or is likely to, use a motor vehicle in future;

(f) the market value of any other motor vehicle that the person uses.

S. 60(4) inserted by No. 84/2000 s. 20(1), substituted by No. 94/2004 s. 19.

(4) If a person, as a result of his or her transport accident injury, reasonably requires that a home in which he or she resides in Australia be modified, the Commission is liable—

(a) to pay the reasonable costs of modifying the home; or

(b) if for any reason the home cannot be reasonably modified, to contribute a reasonable amount—

(i) to the purchase costs of a semi detachable portable unit; or

(ii) to the costs of relocating the person to another home that is suitable for the person or that is capable of being reasonably modified.

S. 60(4A) inserted by No. 94/2004 s. 19.

(4A) Without limiting the factors the Commission may consider in determining the reasonable costs or amount for the purposes of subsection (4), the Commission must have regard to the following factors—

(a) whether the home in which the person resides is structurally suitable for modification;

(b) the nature of the person's injuries as a result of the accident;

(c) how those injuries restrict, or are likely to restrict, the person's ability—

(i) to enter and leave the home in which the person resides; and

(ii) to move about the home for necessary purposes;

(d) the extent of the modifications that will be needed to address those restrictions or likely restrictions;

(e) any complex, unique or unusual circumstances associated with those modifications;

(f) whether the cost of those modifications is likely to exceed the value of the home in which the person resides.

(4B) If a person moves from a home that has modifications to which the Commission made a contribution, in assessing whether to make a payment in respect of modifications to the person's new home, the Commission must have regard to the appropriateness of that home for modification, having regard to all relevant circumstances, with respect to the modifications that are needed.

S. 60(4B) inserted by No. 94/2004 s. 19.

(5) The Commission must not make a payment or contribution under subsection (3) or (4) which exceeds $10 000 or a greater amount as may be prescribed, unless the person enters into an agreement with the Commission in relation to the ownership of, and maintenance of modifications to, the motor vehicle, home or semi-detachable portable unit.

S. 60(5) inserted by No. 84/2000 s. 20(1), amended by No. 60/2007 s. 14(5).

(6) Without limiting what may be included in an agreement under subsection (5), the agreement must include provisions in respect of—

(a) subsequent modifications;

(b) changes of ownership;

(c) the frequency of modifications and changes of ownership.

S. 60(6) inserted by No. 84/2000 s. 20(1), amended by No. 94/2004 s. 20.

S. 60(7) inserted by No. 95/2003 s. 25(2).

(7) Nothing in this section renders the Commission liable to pay as compensation the cost of the provision to, or for, a person who is injured as a result of a transport accident of any of the following things unless the provision of a particular thing to the person is a medical service, or a hospital service, provided as a result of the injury—

(a) accommodation (including accommodation-related costs such as rent, bonds, rates, accommodation costs levied in accordance with Commonwealth legislation, capital contributions and costs associated with the buying or selling of property, but not including the costs and contributions referred to in subsection (4));

(b) food or household or personal items;

(c) power, water or any other service provided by a utility;

(d) room temperature controls;

(e) any other thing specified by the regulations for the purposes of this subsection.

S. 60(8) inserted by No. 95/2003 s. 25(2).

(8) Subsection (7) does not apply in the case of a person who is under 18 years of age and who, as a result of his or her injury, is unable to reside at the place that he or she resided at before he or she was injured.

S. 60(9) inserted by No. 95/2003 s. 25(2).

(9) Subsection (7) also does not apply to a person—

(a) who receives a hospital service as a result of a transport accident; and

(b) who is then discharged from hospital; and

(c) who then resides in supported accommodation—

S. 60(9)(c) substituted by No. 60/2007 s. 14(6).

during the first 18 months after the person is first discharged from hospital.

Note

Note to s. 60(9) inserted by No. 45/2026 s. 17(1).

See subsection (11A) in relation to contributions to be made by a person towards the cost of supported accommodation after the expiry of the 18 month period referred to in this subsection.

(10) For the purposes of subsection (9)—

S. 60(10) inserted by No. 95/2003 s. 25(2).

(a) a person can only be "first" discharged once from hospital in relation to a particular transport accident; and

(b) it does not matter if, during the relevant period, the person changes accommodation, or does not live continuously in accommodation of the sort listed in subsection (9)(c) (although in this latter case subsection (9) only applies to the person while he or she is living in accommodation of that sort); and

(c) the 18 month period referred to in subsection (9) is to be extended by the addition of any period during which a person is in a hospital receiving a hospital service after he or she is first discharged from hospital.

Note

Subsections (7) to (10) only apply to applications for payment made after the date of commencement of section 25 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**— see section 181(1). Also, those subsections do not apply to people who had been injured in a transport accident before that date until the expiry of 18 months after that date— see section 181(3).

S. 60(11) inserted by No. 94/2004 s. 21.

(11) Subsection (7) also does not apply to a person while the person is receiving respite care as a result of the injury.

S. 60(11A) inserted by No. 60/2007 s. 14(7), amended by No. 71/2013 s. 22(1).

(11A) Despite subsection (7), the Governor in Council may, by Order published in the Government Gazette, fix limits in respect of contributions to be made by a person towards the cost of supported accommodation, which contributions must not exceed $32.50 per day.

S. 60(11B) inserted by No. 60/2007 s. 14(7).

(11B) An Order made under subsection (11A)—

(a) may fix limits that vary according to the type of supported accommodation in which a person is residing;

(b) takes effect on the date that the Order is published in the Government Gazette, or on a later date specified in the Order.

S. 60(11C) inserted by No. 45/2026 s. 17(2).

(11C) The contributions referred to in subsection (11A) are not payable by a person in respect of the 18 month period referred to in subsection (9) or, if that period is extended under subsection (10), that extended period.

S. 60(12) inserted by No. 94/2004 s. 22.

(12) The Commission must not make a payment under subsection (2) of more than $5000 for any equipment or item of the sort described in paragraph (g), (h) or (i) of the definition of ***medical service*** in section 3(1) unless the injured person enters into an agreement with the Commission in relation to the equipment or item.

S. 60(13) inserted by No. 94/2004 s. 22.

(13) Without limiting what may be included in an agreement under subsection (12), the agreement must include provisions in respect of—

(a) the ownership, operation and maintenance of the equipment or item; and

(b) changes of ownership of the equipment or item.

60A Post hospital support payments

S. 60A inserted by No. 94/2004 s. 23.

(1) This section applies if—

(a) for an injury resulting from a transport accident, a person receives hospital services as an inpatient or for day surgery; and

(b) the hospital services were received at least 3 years after the transport accident occurred; and

(c) while in hospital, or while recovering from the treatment he or she received in the hospital, the person—

(i) suffers a loss of wages; or

(ii) needs assistance with child care, home services or post-acute support.

(2) The Commission is liable to pay as compensation to the person—

(a) a contribution for the loss of wages;

(b) a reasonable contribution for the child care, home services or post-acute support required by the person in Australia, but only if those services are provided by a person authorised for the purposes of this section under section 23.

(3) With respect to subsection (2)(a), the Commission must not make a contribution in respect of a day that exceeds one fifth of the current amount specified in section 44(3)(a).

(4) The Commission is only liable to pay a total of $3500 to a person under this section in respect of the injuries sustained in one transport accident.

(5) With respect to the injuries sustained in one transport accident, the limit in subsection (4) applies as at the date a hospital service referred to in subsection (1) is first received in respect of the injuries.

S. 60B inserted by No. 94/2004 s. 25.

60B Travel allowance payment agreements

(1) This section applies if—

(a) a person receives a severe injury as a result of a transport accident; and

(b) the person is entitled to receive compensation for transportation costs or for the costs of ambulance services for the purposes of travelling to or from a medical service; and

(c) the person is not a party to an individual funding agreement that covers some or all of those costs.

(2) The Commission may enter into an agreement with the person under which provision is made for the payment of the compensation to the person by way of allowance.

(3) Without limiting what may be included in an agreement, an agreement may provide for payments—

(a) to be made for periods of time, or classes of cases, rather than on the basis of individual trips; or

(b) to be made in advance, despite anything to the contrary in section 27.

(4) While a person is a party to an agreement under this section, he or she is not entitled to any additional compensation under section 60 in respect of the matters covered by the agreement.

61 Indexation

S. 61(1) amended by Nos 32/1988 s. 16(1), 84/2000 s. 15(5), 44/2014 s. 33(Sch. item 29(3)), 1/2018 s. 5(1).

(1) An amount in dollars, other than an amount to which subsection (2) applies, referred to in this Division or calculated under section 49(5) and the amount of a weekly payment under section 44 or 45 shall be varied, in respect of the financial year beginning on 1 July 1987 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount referred to in this Division or calculated under section 49(5) or the amount of the weekly payment under section 44 or 45.

B is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

C is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in B last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

S. 61(2) amended by Nos 32/1988 s. 16(2), 84/1994 ss 37(1)(a)(b), 55(2)(j)–(q), 84/2000 s. 20(2), 94/2004 ss 11(5)(e), 14(4),17(2), 71/2013 ss 17(2), 18(2), 44/2014 s. 33(Sch. item 29(4)), 18/2016 s. 4, 49/2018 s. 13.

(2) An amount of $500 000, $686 840, $305 250, $144 500, $103 210, $99 220, $61 940, $30 520, $20 000, $15 000, $14 135, $5000, $120, $1500, $1660, $1000 or $32.50 referred to in this Division or Part 6 and the amount of a periodic payment under section 47(4) shall be varied, in respect of the financial year beginning on 1 July 1987 and each subsequent financial year, in accordance with the formula[10]—

$$D \times \frac{E}{F}$$

where—

D is the amount referred to in this Division or Part 6 or the amount of the periodic payment.

E is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

F is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in E last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

S. 61(2A) inserted by No. 60/2007 s. 15(1), amended by No. 44/2014 s. 33(Sch. item 29(5)).

(2A) An amount shown, or calculated in accordance with a formula set out in, the table in section 47(2) must be varied, in respect of the financial year beginning on 1 July 2005 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount shown, or calculated in accordance with a formula set out in, the table in section 47(2).

E is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

F is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in E last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

(2B) An amount calculated in accordance with section 54A must be varied, in respect of the financial year beginning on 1 July 2008 and each subsequent financial year, in accordance with the formula—

S. 61(2B) inserted by No. 60/2007 s. 15(2), amended by No. 44/2014 s. 33(Sch. item 29(6)).

$$D \times \frac{E}{F}$$

where—

D is the amount calculated in accordance with section 54A.

E is the average weekly total earnings of all employees in original terms in Victoria for the most recent reference period in the preceding calendar year last published by the

Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

F is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in E last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

S. 61(2C) inserted by No. 60/2007 s. 15(2), amended by No. 44/2014 s. 33(Sch. item 29(7)).

(2C) The amount of $965 referred to in section 54A(5)(a) must be varied, in respect of the financial year beginning on 1 July 2008 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount of $965 referred to in section 54A(5)(a).

E is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

F is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in E last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

(2D) The amount of $5000 referred to in section 60(2A)(a) must be varied, in respect of the financial year beginning on 1 July 2008 and each subsequent financial year, in accordance with the formula—

S. 61(2D) inserted by No. 60/2007 s. 15(2), amended by No. 44/2014 s. 33(Sch. item 29(8)).

$$D \times \frac{E}{F}$$

where—

D is the amount of $5000 referred to in section 60(2A)(a).

E is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

F is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in E last published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

(3) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount shall be deemed to have been calculated in accordance with this section if the calculation is made—

(a) if the amount is less than $1000, to the nearest whole $1; or

(b) if the amount is $1000 or more, to the nearest whole $10.

(4) Where an amount is varied in accordance with this section—

S. 61(4)(a) amended by No. 32/1988 s. 16(3).

(a) this Division (including this section) or Part 6 has effect as if a reference to the amount were a reference to the amount as so varied; and

(b) payments of compensation calculated with reference to the amount must be varied accordingly.

S. 61(5) inserted by No. 32/1988 s. 16(4), substituted by No. 94/2004 s. 5(3).

(5) An increase in the amount of a weekly payment under section 44 or 45 by reason of this section takes effect even if it increases the amount of the weekly payment to more than 100% of pre-accident weekly earnings, but does not take effect to the extent (if any) to which it increases the amount of the weekly payments to more than 100% of the current weekly earnings to which the earner would be entitled if he or she were employed in the same position or positions (if it or they can be identified) as he or she was employed in immediately before the accident, or the time when the injury first manifested itself.

Note

Subsection (5), as substituted by section 5 of the **Transport Accident (Amendment) Act 2004**, only applies to an earner who was injured in a transport accident that occurs on or after the date of commencement of section 5—see section 185.

S. 61(6) inserted by No. 84/1994 s. 38.

(6) If the variation of an amount to which this section applies by operation of this section has the effect of reducing the amount—

(a) the variation is deemed not to have taken effect, except for the purposes of the application of this subsection; and

(b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year that

variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

(7) The Governor in Council may, on the recommendation of the Commission, by order published in the Government Gazette, declare that this section does not apply to any amount fixed by Order made under section 60(11A) in respect of a specified financial year.

S. 61(7) inserted by No. 94/2004 s. 28, amended by Nos 71/2013 s. 22(2), 1/2018 s. 5(2).

61A Individual funding agreements

S. 61A inserted by No. 94/2004 s. 26.

(1) This section applies if—

(a) a person has a severe injury as a result of a transport accident; and

(b) the person is entitled to receive compensation under this Act for approved services.

(2) The Commission may enter into an agreement with the person under which provision is made for the payment of the compensation to the person by way of periodic payments that represent a reasonable estimate of the person's likely costs or expenditure in the relevant period in relation to the approved services covered by the agreement.

(3) The purpose of the agreement is to promote the person's autonomy in acquiring approved services.

(4) For the purposes of this section, ***approved services*** are any of the following services for which the Commission is liable to pay compensation under section 60, and any equivalent services for which the Commission is liable to pay compensation under section 145—

(a) medical services other than—

(i) attendance, examination or treatment of any kind by a medical practitioner or a registered dentist; and

(ii) any medical service described in paragraphs (c) to (h) of the definition of "medical service" in section 3(1);

(b) nursing services, disability services authorised under section 23, child care services, home services and post acute support services;

(c) transportation costs;

(d) ambulance services for the purposes of travelling to or from a medical service to which paragraph (a) applies;

S. 61A(4)(e) amended by No. 71/2013 s. 23.

(e) rehabilitation services authorised under section 23, other than the provision of any aid, appliance or apparatus for the purpose of rehabilitation that is more than $1000 or any other amount fixed by the Governor in Council by Order published in the Government Gazette for the purposes of this paragraph.

S. 61B inserted by No. 94/2004 s. 26.

61B Contents of individual funding agreements

(1) Without limiting what may be included in an individual funding agreement, the agreement must—

(a) provide for how long it remains in force;

(b) specify what approved services it covers;

(c) specify how and when payments under the agreement are to be made;

(d) require the reporting of specified information to enable the monitoring of the agreement;

(e) set out any other obligations of the parties under the agreement;

(f) provide for how the agreement may be amended;

(g) provide for how the agreement may be renewed;

(h) provide for how the agreement may be suspended or terminated, and in the case of termination, set out any obligations that are to apply to the parties as a result of the termination;

(i) specify that it is governed by the law of Victoria;

(j) provide for the recovery of—

(i) overpayments made under the agreement; and

(ii) payments made under the agreement that were not applied in accordance with the agreement;

(k) set out a dispute resolution mechanism;

(l) provide for any other matter that is required for the purposes of this subsection by the Governor in Council by order published in the Government Gazette.

(2) Without limiting what may be included in an individual funding agreement, an agreement may provide for payments to be made in advance, despite anything to the contrary in section 27.

61C Other provisions concerning individual funding agreements

S. 61C inserted by No. 94/2004 s. 26.

(1) While a person is a party to an individual funding agreement, he or she is not entitled to any compensation under section 60 or 145 (as the case may be) in respect of the approved services

covered by the agreement other than the compensation provided under the agreement.

(2) Subsection (1) applies even if amendments to section 60 or 145 in respect of the approved services take effect while the agreement is in force and the effect of those amendments is to increase the compensation payable with respect to those services.

(3) An individual funding agreement does not have to cover all the approved services to which the person is entitled to compensation under this Act.

(4) The Commission must not make a payment under an individual funding agreement in respect of an approved service covered by the agreement—

(a) that is more, in the opinion of the Commission, than the reasonable cost of that service; or

(b) that is in respect of a period of more than 60 days.

(5) The termination of an individual funding agreement does not affect any entitlement of the person who was a party to the agreement to compensation under this Act for an approved service in respect of any period that is after the date the agreement ended.

S. 61D inserted by No. 94/2004 s. 26.

61D Agreements where person has a legal disability

(1) This section applies if—

(a) the Commission is authorised to enter into an agreement with a person under this Act; and

(b) the injured person is under a legal disability that prevents the person from entering into agreements on his or her own behalf; and

(c) the agreement is signed by a person who is authorised by law to enter into the agreement on behalf of the injured person.

Examples

Examples of authorised people may include a person who has been appointed to be the injured person's guardian; a person who has been appointed as the attorney of the injured person under a general non-enduring power of attorney or an enduring power of attorney; in the case of a minor, the injured person's parent.

Examples to s. 61D(1) amended by No. 57/2014 s. 162.

(2) A reference in this Act to the injured person includes a reference to the person who signed the agreement if the context requires or permits.

(3) The Commission may include in the agreement provisions dealing with what is to happen if the person who signed the agreement ceases to be the injured person's representative.

(4) The Commission may enter into a separate agreement with the injured person's representative imposing obligations on the representative in relation to the agreement with the injured person.

62 General provisions relating to the payment of compensation

S. 62 amended by No. 32/1988 s. 17(1).

(1) In respect of the payment of compensation under this Part—

(a) regard shall not be had to any sum paid or payable—

(i) under any contract of assurance or insurance (including a contract made with any friendly or other benefit society or association or any trade union); or

(ii) out of any relief, superannuation or sustenation fund or other fund (whether statutory or otherwise) of the like nature; and

S. 62(1)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.12).

(b) a child shall be deemed to be a dependant of the earner whether or not the child is also a dependant of a partner of the earner.

S. 62(2) amended by Nos 32/1988 s. 17(2), 27/2001 s. 4(Sch. 2 item 4.12).

(2) For the purposes of sections 44, 45, 49 and 50, if an earner and his or her partner are both entitled to compensation under this Act, a dependant of both the earner and the partner—

S. 62(2)(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.12).

(a) shall be deemed to be a dependant of either the earner or the partner but not both; and

S. 62(2)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.12).

(b) unless the earner and the partner otherwise request in writing, shall be deemed to be a dependant of the one of the earner and the partner whose pre-accident weekly earnings are the lower.

Pt 3 Div. 4 (Heading and s. 62A) inserted by No. 49/2018 s. 14.

Division 4—Professional administration costs

S. 62A inserted by No. 49/2018 s. 14.

62A Professional administration costs

The Commission is liable to pay professional administration costs in circumstances where—

(a) a person is injured as a result of a transport accident; and

(b) by reason of such injury the person is entitled to compensation under this Part; and

(c) an administration order is or has been made in respect of the person; and

(d) the administrator carries on a business of, or including, the administration of estates; and

(e) by reason of the order, compensation is paid to the administrator on behalf of the person; and

(f) the administrator incurs professional administration costs in respect of the compensation referred to in paragraph (e).

Part 4—Claims procedure

Division 1—Application of Part

63 Application of Part

(1) This Part applies to and with respect to claims for compensation under Part 3 or Part 10.

(2) If, before the commencement of section 133, a person had made an application under and in accordance with the **Motor Accidents Act 1973** to the Motor Accidents Board, the application has effect as a claim made to the Commission under this Part in so far as the application is outstanding.

Division 2—Claims under this Act

64 Notice of accident

S. 64(1) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 84/2000 s. 21, 37/2014 s. 10(Sch. item 170.3).

(1) A person who is the driver of a motor vehicle, other than a recreation vehicle, involved in a transport accident—

(a) as a result of which a person is or may have been injured or dies; and

(b) in respect of which a person may be entitled to compensation in accordance with this Act—

must, if requested by a notice served by the Commission, make a report in the prescribed form within 28 days of receiving the notice, whether or not a report has been made to a police officer.

S. 64(2) amended by Nos 44/1989 s. 41(Sch. 2 item 42.2), 104/1997 s. 56(2)(a)(b), 30/2000 s. 40.

(2) Any person who operates a railway train or a tram in Victoria and the person who manages a railway or tramway in Victoria must make a report in the prescribed form to the Commission within 28 days after becoming aware that a railway train or tram operated by it or on a railway or tramway managed by it (as the case requires) has been involved in a transport accident—

(a) as a result of which a person is or may have been injured or dies; and

(b) in respect of which a person may be entitled to compensation in accordance with this Act.

(3) If a recreation vehicle is involved in a transport accident—

S. 64(3) amended by Nos 84/2000 s. 21, 37/2014 s. 10(Sch. item 170.3).

(a) as a result of which a person is or may have been injured or dies; and

(b) in respect of which a person may be entitled to compensation in accordance with this Act—

the person who—

(c) if the driver of the recreation vehicle was 15 or over—is the driver; or

(d) if the driver of the recreation vehicle was under 15—is the owner or, if the owner was under 15, is the parent or guardian of the owner—

must, if requested by a notice served by the Commission, make a report in the prescribed form within 28 days of receiving the notice, whether or not a report has been made to a police officer.

(4) Failure to comply with this section does not affect any right or liability under this Act.

65 Provisions applying to notice under section 64

S. 65 amended by No. 127/1986 s. 102(Sch. 4 item 29.2), substituted by No. 84/2000 s. 22.

(1) A notice under section 64(1) or 64(3) may be served—

(a) personally; or

(b) by post addressed to the driver at the last known place of residence or business.

(2) The notice must state that if the person on whom the notice is served does not make the report under section 64 within the specified period, a penalty of $50 is payable to the Commission.

(3) If the Commission is satisfied that there is a good reason for the report not being made, the Commission must by further notice served in accordance with subsection (1) at any time within 28 days after the notice under section 64 was served, withdraw the first notice.

(4) If a notice under section 64 is withdrawn after the penalty has been paid, the Commission must refund the amount of the penalty.

(5) A person must not fail to comply with a notice under section 64 that has not been withdrawn.

Penalty applying to this subsection: 1½ penalty units.

S. 66 substituted by No. 84/2000 s. 22.

66 Payment of penalty

(1) If the penalty specified in a notice under section 64(1) or 64(3) is paid—

(a) within 14 days after the expiry of the period specified in the notice; or

(b) if the Commission so allows, at any time before service of a summons in respect of the failure to comply with the notice—

no further proceedings may be taken against the person in respect of the failure to make a report.

(2) Nothing in this Part prejudices the institution or prosecution of proceedings for an offence under section 65(5), if the penalty specified in a notice under section 64(1) or 64(3) has not been paid within the period specified in subsection (1).

67 Form of claim

(1) A claim for compensation under this Act—

S. 67(1) amended by Nos 32/1988 s. 18(1), 71/2013 s. 12(3).

(a) must be in a form approved by the Commission; and

S. 67(1)(a) substituted by No. 80/2010 s. 8.

* * * * *

S. 67(1)(b) repealed by No. 84/2000 s. 23(1).

(c) must be lodged with the Commission.

* * * * *

S. 67(1A) inserted by No. 84/2000 s. 23(2), repealed by No. 71/2013 s. 12(4).

(2) A defect, omission or irregularity in a claim for compensation does not affect the validity of the claim and the claim must be dealt with in accordance with this Act unless the defect, omission or irregularity relates to information which is not within the knowledge of the Commission.

* * * * *

S. 67(3) inserted by No. 32/1988 s. 18(2), repealed by No. 84/2000 s. 23(1).

S. 67A inserted by No. 71/2013 s. 24.

67A Authority to release information

(1) A person who makes a claim for compensation under this Act must, as soon as is practicable after being requested to do so by the Commission, sign an authority to release relevant medical or other information to the Commission for the purpose of processing, assessing or otherwise managing the claim.

(2) An authority to release information must be in a form approved by the Commission.

(3) An authority to release information has effect and cannot be revoked until a claim is finally determined.

(4) A person may sign more than one authority to release information.

68 Time for making claim under Part 3

(1) A person—

(a) who is injured; or

S. 68(1)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.12).

(b) who is a dependant or a surviving partner of a person who dies—

as a result of a transport accident to which Part 3 applies may make a claim for compensation under that Part within one year—

(c) after the accident or death; or

S. 68(1)(d) substituted by No. 84/2000 s. 24(1).

(d) in the case of injury, if no injury manifested itself at the time of the transport accident, after any injury first manifests itself.

(2) If the Commission considers there are reasonable grounds for a delay in making a claim in accordance with subsection (1), the Commission may accept a claim for compensation under Part 3 at such later time before the expiration of three years after the transport accident or death or after the injury first manifested itself, as the Commission approves.

(3) Despite subsection (1) but subject to subsection (2), if—

S. 68(3) inserted by No. 84/2000 s. 24(2), amended by No. 80/2010 s. 9.

(a) a person who is injured or who is a dependent child of a person who dies as a result of a transport accident to which Part 3 applies was not 18 years of age at the time of the transport accident; and

S. 68(3)(a) amended by No. 71/2013 s. 4(2).

(b) a claim for compensation by or on behalf of that person has not been made under that Part—

the person may make a claim for compensation under that Part before attaining the age of 21 years or within 3 years after the transport accident, whichever is the later.

69 Time for making claim under Division 1 of Part 10

(1) A person who is injured as the result of an accident to which Division 1 of Part 10 applies may make a claim to the Commission—

(a) for payment of compensation under section 141 at any time within the period of six years after the date of the accident; and

(b) for payment of costs or expenses under section 145 at any time within that period or where, in respect of that period, the Motor Accidents Board or the Commission has, in

respect of that injury, made any payment under the **Motor Accidents Act 1973** or this Act or under an agreement made under that Act or this Act, within the period of six years after the costs or expenses were incurred.

S. 69(2) amended by No. 27/2001 s. 4(Sch. 2 item 4.12).

(2) A person who is a dependent partner or dependent child of a deceased person who died as the result of an accident to which Division 1 of Part 10 applies may make a claim to the Commission for a payment under section 142 or 143 at any time within the period of six years after the death of the deceased person.

(3) A person who has incurred expenses referred to in section 145(3) may make a claim to the Commission at any time within the period of six months after the expenses were incurred for payment of those expenses under that section.

(4) If a person dies as the result of an accident to which Division 1 of Part 10 applies, a person who has paid or is liable to pay costs or expenses referred to in section 145 may make a claim to the Commission at any time within the period of six years after the death of the deceased person for payment of costs or expenses under that section that the person has paid or is liable to pay.

(5) The Commission may refuse to make any payment under section 141 to a person injured as a result of an accident to which Division 1 of Part 10 applies in respect of so much of a deprivation or impairment of earning capacity as relates to any period ending more than three months before the date on which the Commission is furnished with such medical evidence relating to the injury as the Commission may reasonably require.

(6) If the Commission determines pursuant to subsection (5) to refuse to make payment under section 141 to a person injured as a result of an accident in respect of so much of a deprivation or impairment of earning capacity as relates to any such period as is mentioned in that subsection, the Commission must inform that person by notice in writing that it refuses the claim for that payment.

70 Decision on eligibility for compensation

(1) The Commission must within 21 days after receiving a claim for compensation—

S. 70(1) amended by No. 84/2000 s. 25.

(a) accept or reject liability to pay compensation; or

(b) make a reasonable request to the claimant to provide further information in relation to the claim or submit to a medical examination; or

(c) make a reasonable request to another person to provide information in relation to the claim and advise the claimant of the request.

(2) The Commission must, within 14 days after receiving further information sought by it in relation to a claim or the result of a medical examination or within 21 days after receiving the claim or making a request under subsection (1)(c), whichever last occurs, accept or reject the claim or make a reasonable request, or further reasonable request, under subsection (1)(b).

S. 70(2) amended by No. 84/2000 s. 25.

(3) If the Commission fails to comply with subsection (1) or (2)—

(a) the Commission shall be deemed to have rejected the claim; and

S. 70(3)(b) substituted by No. 52/1998 s. 311(Sch. 1 item 95.3), amended by No. 95/2003 s. 31.

(b) the claimant may apply to the Tribunal, within 12 months after the end of the period specified in subsection (1) or (2) (as the case requires), for review of the rejection.

(4) If a person fails without reasonable cause to comply with a request under subsection (1)(b) or (2) within 28 days after the request is made or such longer period as the Commission allows in any particular case, the claim lapses.

(5) If a claim lapses by reason of subsection (4) another claim may, subject to sections 68 and 69, be made in accordance with this Part.

71 Medical examinations

S. 71(1) amended by No. 84/2000 s. 26(1), substituted by No. 71/2013 s. 21(2).

(1) In order to determine its liability under Part 3, Part 6 or Division 1 of Part 10, the Commission may require a person who was injured as a result of a transport accident and makes a claim for, or receives compensation or damages under Part 3, this Part, Part 6 or Division 1 of Part 10, to submit from time to time for examination by one or more medical service providers nominated by the Commission.

S. 71(1A) inserted by No. 94/2004 s. 10(6).

(1A) Subsection (1) also applies to a person if the Commission is required to make a determination of the person's degree of impairment as a result of a transport accident.

Note

Subsection (1A) applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 10 of the **Transport Accident (Amendment) Act 2004**—see section 188.

(2) If a person refuses or fails without reasonable excuse to comply with a request to submit for examination in accordance with this section—

(a) the person's right (if any) to compensation under this Act is suspended until the examination takes place; and

(b) the Commission is not liable to pay compensation to the person while the right is suspended.

(3) In subsection (1), ***medical service provider*** means—

S. 71(3) inserted by No. 84/2000 s. 26(2).

(a) medical practitioner;

(b) registered psychologist;

(c) registered dentist;

(ca) registered occupational therapist;

S. 71(3)(ca) inserted by No. 71/2013 s. 5(3).

(d) registered optometrist;

(e) registered physiotherapist;

(f) registered chiropractor;

(g) registered osteopath;

(h) registered podiatrist.

72 Interim payments

(1) If in respect of a claim, the Commission determines that compensation is or may be payable under Part 3 or Division 1 of Part 10, but is unable presently to ascertain the total amount of the compensation, the Commission may make an interim payment of the whole or any part of the compensation.

(2) The making of an interim payment does not preclude the Commission from making, in respect of the same claim, a further interim decision or a final decision or prejudice the rights of the Commission or claimant in respect of any such further or final decision.

73 Time of payment

(1) The Commission may, except as otherwise provided in this Act, pay compensation it is liable to pay under this Act at such times as the Commission determines, whether or not the compensation is determined as a weekly payment.

(2) The Commission must give notice to a person to whom it is liable to pay compensation of the times at which payments will be made.

74 Cessation or review of liability to pay compensation in certain circumstances

(1) If the Commission becomes aware that it is making payments of compensation in respect of a transport accident to a person who is not and never has been entitled to payments in respect of that accident, the Commission must give notice to the person to that effect and cease the payments.

(2) If the Commission considers it is not liable to continue payments of compensation in respect of a transport accident—

(a) in the case of payments in respect of any injury—

(i) under section 44, 45 or 60 in respect of the first 18 months after the accident; or

(ii) under Division 1 of Part 10—

because the person no longer has the injury or no longer has it by reason of the transport accident; or

(b) in the case of payments under section 44, 45, 49, 50 or 51—because the Commission reasonably believes that the person has not accepted a reasonable offer of suitable employment or a reasonable offer of employment which offers increased earnings or has not accepted a reasonable offer of rehabilitation or of vocational rehabilitation services—

S. 74(2)(b) amended by Nos 94/2004 s. 4(4), 71/2013 s. 25.

the Commission must give notice to the person of its decision to discontinue or reduce payments accordingly.

(3) If the Commission gives notice under subsection (2), the Commission may discontinue or reduce payments to a person if—

S. 74(3) substituted by No. 32/1988 s. 18(3).

(a) the person does not apply to the Tribunal within 28 days after receiving the notice; or

(b) the person does so apply and the Commission, within 28 days after receiving a copy of the application, reconsiders the decision in accordance with section 78 and confirms the decision.

(4) If—

(a) a person who is injured as a result of a transport accident commences or resumes employment as an employed or self-employed person; or

(b) the actual weekly earnings of such a person increase—

the Commission may discontinue or reduce a weekly payment made to the person under section 44 or 45.

75 Overpayments

(1) If, by reason of anything done or omitted to be done by a person claiming compensation, the Commission pays to the person an amount of compensation that exceeds the amount due to the person, or that is an amount the Commission is not liable to pay, the person is liable to refund that amount to the Commission.

(2) The Commission may recover any amount a person is liable to refund to it as a debt due to the Commission.

76 Proof of entitlement

S. 76(1) amended by No. 32/1988 s. 18(4).

(1) A person receiving or claiming to be entitled to receive compensation under Part 3 during the first 18 months after the transport accident or under Division 1 of Part 10 must give to the Commission such further information relating to the person's entitlement to compensation as the Commission reasonably requests from time to time.

(2) A person claiming to be entitled to receive compensation under Part 3 during the first 18 months after the transport accident or under Division 1 of Part 10 bears the onus of proving the entitlement.

S. 76(2A) inserted by No. 32/1988 s. 18(5).

(2A) A person who is injured as a result of a transport accident is not entitled to receive compensation under Part 3 in respect of the first 18 months after the accident if the injury is an aggravation of an injury or condition suffered by the person before the accident unless the person proves that the earlier injury or condition was aggravated by the transport accident.

(3) A reference in this section to the first 18 months includes a reference to any period after the first 18 months during which the person continues to be entitled to compensation by reason of section 46(2).

Division 2A—Private health insurers and administrators

Pt 4 Div. 2A (Heading) substituted by No. 49/2018 s. 15.

Pt 4 Div. 2A (Heading and s. 76A) inserted by No. 60/2007 s. 16.

76A Commission may reimburse private health insurer

S. 76A inserted by No. 60/2007 s. 16.

(1) Subject to this section, a private health insurer may apply to the Commission to be reimbursed in respect of the payment by the private health insurer of the costs of any hospital services, medical services or nursing services provided to a person in respect of a transport accident.

(2) An application by a private health insurer under this section must be made within the period of 12 months after whichever occurs later—

(a) the hospital services, medical services or nursing services being provided to the person; or

(b) a finding by the Tribunal that the Commission is liable under this Act to pay compensation to the person in respect of the costs of the hospital services, medical services or nursing services provided to the person.

(3) If the Commission accepts liability, or has been found by the Tribunal to be liable, under this Act to pay compensation for the hospital services, medical services or nursing services provided to the person, the Commission must pay to the private health insurer an amount determined by the Commission to be the reasonable cost of those hospital services, medical services or nursing services.

S. 76B inserted by No. 49/2018 s. 16.

76B Commission may pay professional administration costs to administrator

(1) An administrator who carries on a business of, or including, the administration of estates may apply to the Commission to be paid in respect of the administrator's professional administration costs as referred to in section 62A, as approved by VCAT or a court, or a tribunal or court of the Commonwealth, another State or a Territory, in respect of compensation paid under Part 3.

(2) This section continues to apply in respect of a person who is injured as a result of a transport accident unless the person has recovered damages and the amount of damages included an amount in respect of professional administration costs.

Pt 4 Div. 3 (Heading) substituted by No. 52/1998 s. 311(Sch. 1 item 95.4).

Division 3—Reviews

77 Application to Tribunal

S. 77(1) amended by Nos 52/1998 s. 311(Sch. 1 item 95.5(a)), 62/2014 s. 58(1).

(1) A person whose interests are affected by a decision of the Commission may apply to the Tribunal for review of the decision.

(1A) An application under subsection (1) must be made by the later of—

(a) 12 months after the person becomes aware of the decision; or

(b) if the decision has been the subject of an application for a pre-issue review under the Protocols, 3 months after the Commission notifies the person in accordance with the Protocols of its decision on the application.

S. 77(1A) inserted by No. 62/2014 s. 58(2).

(2) Subsection (1) does not apply with respect to a decision of the Commission concerning the payment or non-payment of an interim benefit under section 47(3A).

S. 77(2) amended by No. 34/1998 s. 13(1), repealed by No. 52/1998 s. 311(Sch. 1 item 95.5(b)), new s. 77(2) inserted by No. 94/2004 s. 12(2).

* * * * *

S. 77(2A) inserted by No. 34/1998 s. 13(2), repealed by No. 101/1998 s. 33.

(3) If any dispute arises in relation to an individual funding agreement or a proposed individual funding agreement, a party (or a proposed party) to the agreement may apply to the Tribunal for a resolution of the dispute within 3 months after the dispute arises.

S. 77(3) repealed by No. 52/1998 s. 311(Sch. 1 item 95.5(b)), new s. 77(3) inserted by No. 94/2004 s. 29.

S. 77(4) amended by Nos 52/1998 s. 311 (Sch. 1 item 95.5(c)) (as amended by No. 101/1998 s. 22(1)(n)), 84/2000 s. 27(1).

(4) The Tribunal may fix a date for the hearing of an application but must not commence any proceedings in relation to the application until—

(a) notice is received under section 80 (2) that the Commission has re-affirmed the decision; or

(b) the Commission is deemed by section 80(3) to have re-affirmed the decision; or

(c) an application is made under section 78(5).

S. 77(5) inserted by No. 62/2014 s. 58(3).

(5) In this section—

Protocols means the No Fault Dispute Resolution Protocols agreed between the Commission, the Law Institute of Victoria and the Australian Lawyers Alliance on 1 March 2005 as amended from time to time.

78 Commission to reconsider decision

S. 78(1) amended by No. 84/2000 s. 27(2).

(1) The Commission must, within 28 days after receiving a copy of an application under section 77 for review of a decision of the Commission, reconsider the decision or give the applicant a notice under subsection (2).

S. 78(2) amended by No. 32/1988 s. 19(1).

(2) For the purposes of reconsidering a decision, the Commission may, by notice given to the applicant, require the applicant to give further and better particulars about the reasons for the application to the Tribunal and such further information relating to the claim as the Commission requires.

S. 78(3) inserted by No. 84/2000 s. 27(3).

(3) An applicant must comply with a notice under subsection (2) within 90 days of being given the notice.

S. 78(4) inserted by No. 84/2000 s. 27(3).

(4) The Commission must hold a conference or conclude the review within 28 days of receiving the particulars and information required under subsection (2).

(5) If the Commission has not received the particulars and information required under subsection (2) within 180 days of giving the notice, the Commission may apply to the Tribunal to have the proceedings dismissed or struck out.

S. 78(5) inserted by No. 84/2000 s. 27(3).

79 Costs

S. 79 amended by No. 32/1988 s. 19(2)(a)(b).

(1) If an applicant fails, without reasonable excuse, to give the further and better particulars or further information requested by the Commission or fails to give those particulars or that information within a reasonable time, the Tribunal may take the failure into account when making an order for costs in respect of the proceedings.

(2) The Tribunal may make such orders as to costs in respect of a proceeding under this Act as it thinks just, including an order requiring a representative of a party who appeared before the Tribunal to pay costs.

S. 79(2) inserted by No. 32/1988 s. 19(2)(c), amended by No. 52/1998 s. 311(Sch. 1 item 95.6).

(3) This section is subject to sections 112 to 115 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 79(3) inserted by No. 84/2000 s. 27(4).

80 Commission may vary decision

(1) If, after reconsidering its decision, the Commission determines that the decision should be varied or revoked, it may vary or revoke the decision accordingly.

(2) Within 14 days of holding a conference or concluding the review under section 78(4), the Commission must give notice in writing to the applicant and the Tribunal that it has determined to—

S. 80(2) substituted by No. 84/2000 s. 27(5).

(a) re-affirm the decision; or

(b) vary or revoke the decision as specified in the notice.

S. 80(3) inserted by No. 84/2000 s. 27(5).

(3) If the Commission fails to comply with section 78(2) or 78(4) or fails to give notice under subsection (2), the Commission is deemed to have determined to re-affirm the decision.

S. 81 repealed by No. 52/1998 s. 311(Sch. 1 item 95.7).

* * * * *

S. 82 amended by No. 84/1994 s. 39(1).

82 Application of Division

(1) This Division does not apply to an application to the Tribunal under section 70(3).

S. 82(2) inserted by No. 84/1994 s. 39(2).

(2) This Division (other than sections 78 and 80) applies to an application to the Tribunal under section 47(7B).

S. 83 repealed by No. 52/1998 s. 311(Sch. 1 item 95.7).

* * * * *

Part 5—Trailers

84 Definitions

In this Part—

insured trailer means a trailer to which a contract of insurance under this Part applies;

trailer means a trailer within the meaning of the **Road Safety Act 1986** or a trailer within the meaning of, and registered or about to be registered in Victoria under, the Interstate Road Transport Act 1985 of the Commonwealth or, if that Act is amended, that Act as amended and in force for the time being.

S. 84 def. of *trailer* amended by No. 32/1988 s. 20(1).

85 Survival of actions

Without affecting the survival of any cause of action on the death of any person, in the case of the death of the owner or person in charge of a trailer—

(a) a reference in this Part to liability incurred by the owner or person in respect of the death of or bodily injury to a person includes a reference to liability in respect of the death or bodily injury under any cause of action surviving against the estate of the owner or person; and

(b) a reference in this Part to a judgment against the owner or person includes a reference to a judgment against the personal representative of the owner or person; and

(c) a reference in this Part to a judgment debtor includes a reference to the owner or person or to the estate of the owner or person.

86 Insurance in respect of trailers

(1) The Commission may enter into a contract of insurance in the prescribed form with the owner of a trailer insuring the owner, and any other person in charge of the trailer at any time, against liability that may be incurred in respect of the death of or injury to any person caused by or arising out of the use of the trailer in Victoria or in any other State or in a Territory.

(2) A contract of insurance under this Part—

(a) remains in force for the period for which the registration of the trailer remains in force; and

S. 86(2)(b) amended by No. 32/1988 s. 20(2).

(b) enures in favour of the owner for the time being of the trailer; and

S. 86(2)(c) inserted by No. 32/1988 s. 20(2), amended by No. 67/2013 s. 649(Sch. 9 item 32(10)).

(c) does not insure the owner of a trailer against liability to pay compensation under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** or under an enactment of another State or of a Territory relating to workers compensation.

(3) A person who, for the purpose of effecting a contract of insurance under this Part, knowingly makes a false statement is liable to a penalty not exceeding 4 penalty units but the contract of insurance is not avoided by the making of the statement.

87 Rights to recover against Commission

(1) If judgment against the owner of or person in charge of a trailer to which a contract of insurance under this section relates has been entered in respect of the death of or bodily injury to any person caused by or arising out of the use of that

trailer, the judgment creditor may recover against the Commission a sum equivalent to the amount (including costs) unpaid in respect of the judgment or the amount to which the liability of the Commission is limited under the contract of insurance, whichever is the smaller amount but—

(a) in the event of the judgment debtor being or becoming bankrupt and the Commission being required to pay to the trustee in bankruptcy the amount of the liability, the sum recoverable by the judgment creditor against the Commission is reduced by the amount so paid; and

(b) if execution of any such judgment is stayed pending appeal the judgment creditor may not recover against the Commission until the expiration of the period for which execution of the judgment is stayed.

(2) The payment by the Commission of the sum referred to in subsection (1), to the extent of the payment, is a discharge of—

(a) the liability of the judgment debtor to the judgment creditor; and

(b) the liability (if any) of the Commission to the judgment debtor.

88 Provision where owner etc. of trailer cannot be found

(1) Where—

(a) liability has been incurred by the owner or person in charge of any trailer in respect of the death of or bodily injury to any person caused by or arising out of the use of a trailer to which a contract of insurance under this Part relates; and

(b) the owner or person cannot after strict inquiry and search be found—

any person who could have obtained a judgment in respect of the death or bodily injury against the owner or person if he or she could be found may recover against the Commission a sum equivalent to the amount for which he or she could have obtained a judgment against the owner or person or the amount to which the liability of the Commission is limited under the contract of insurance, whichever is the smaller amount but the person shall not so recover unless—

(c) within a reasonable time after he or she knew that the owner or person could not be found, he or she gave to the Commission notice in writing of intention to make the claim setting out his or her full name and address, the date and place of the accident, the general nature of the injuries received and a short statement of the circumstances of the accident; or

(d) the claimant satisfies the court that the Commission has not been materially prejudiced in its defence to the claim by any failure by the claimant to give the notice at the proper time or by any omission or any insufficiency or defect in the claim.

(2) The inquiry and search made for the owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

S. 89 amended by No. 34/1998 s. 14(a).

89 Apportionment of costs

If a judgment for damages is obtained against the owner of a trailer in respect of the death of or bodily injury to any person caused by or arising out of the use of the trailer in Victoria as well as in respect of some other loss or damage the court shall (for the purpose of fixing the liability of the

Commission) as part of the judgment adjudge what portion of the amount of the judgment is in respect of such death or bodily injury and shall direct what portion of and in what manner any costs awarded as part of such judgment shall be apportioned to the portion of the amount awarded in respect of such death or bodily injury.

90 Notice of accidents etc.

(1) If an accident occurs—

(a) that involves an insured trailer; and

(b) as a result of which a person is injured or dies—

the owner or person in charge of the trailer, as soon as practicable after the accident or, in the case of an owner who was not in charge of the trailer, as soon as practicable after the owner becomes aware of the accident—

(c) must give notice in writing to the Commission of the accident and particulars of the date, nature and circumstances of the accident and such other information as the Commission reasonably requires; and

(d) in the case of a person (other than the owner) in charge of the trailer at the time of the accident, must give notice in writing to the owner of the fact of the accident; and

(e) must give notice in writing to the Commission of each claim made or action brought against him or her or, to his or her knowledge, against any other person in respect of the accident; and

(f) must not, without the written consent of the Commission—

(i) enter upon or incur expenses of litigation as to any matter or thing to which the contract of insurance relates; or

(ii) make any offer, promise, payment or settlement or any admission of liability.

(2) Nothing in subsection (1)(f) extends to—

(a) an admission made at the time of the accident and reasonably attributable to mental stress occasioned by the circumstances; or

S. 90(2)(b) amended by No. 37/2014 s. 10(Sch. item 170.3)).

(b) a statement made to a police officer acting in the course of duty in hearing or receiving any such statement; or

(c) a statement made or evidence given in the course of proceedings in any court or before any arbitrator.

(3) If the owner or person in charge of an insured trailer fails to comply with subsection (1), the Commission may recover from that person such amount by way of damages as is attributable to that failure.

91 Persons in charge of trailers

(1) If the death of or bodily injury to any person is caused by or arises out of the use of an insured trailer that was at the time of the accident out of which such death or injury arose under the charge of a person without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner then—

(a) the person who was in charge of the trailer is not entitled to recover from the Commission any sum on account of any moneys (including costs) paid or payable by that person in respect of liability in respect of the death or bodily injury; and

(b) any sum paid by the Commission in discharge of the liability of that person is recoverable by the Commission from that person.

(2) If the death of or bodily injury to any person is caused by or arises out of the use of an insured trailer and the person in charge of the trailer at the time of the accident out of which the death or bodily injury arose is convicted in relation to the circumstances of the accident—

(a) of a serious indictable offence within the meaning of section 325 of the **Crimes Act 1958** with respect to that death or bodily injury; or

(b) of an offence under section 49(1)(a) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law—

S. 91(2)(b) amended by Nos 127/1986 s. 102(Sch. 4 item 29.13), 84/1994 s. 29.

any sum (including costs) paid by the Commission in discharge of the liability of the owner or person in respect of the death or bodily injury is recoverable by the Commission from that person.

92 Agreements by next friends etc.

If a minor or a person under a legal disability is or appears to be entitled to recover damages for bodily injury caused by or arising out of the use of an insured trailer, section 168 applies as if—

(a) a reference in that section to a motor car were a reference to an insured trailer; and

(b) a reference in that section to the driver of a motor car were a reference to the person in charge of a trailer.

Part 6—Legal rights outside this Act

Division 1—Damages in respect of death or serious injury

93 Actions for damages[11]

(1) A person shall not recover any damages in any proceedings in respect of the injury or death of a person as a result of a transport accident occurring on or after the commencement of section 34 except in accordance with this section.

(1A) For the avoidance of doubt, it is hereby declared that the effect of subsection (1) is that any person, whether or not a natural person, cannot recover any damages in any proceedings to which that subsection applies unless the person is a natural person in which case the natural person can only bring proceedings in accordance with this section to recover damages in respect of the injury sustained by him or her or the death of a person specified in subsection (1).

S. 93(1A) inserted by No. 65/2008 s. 5.

(1B) For the avoidance of doubt, nothing in subsection (1) or (1A) is to be taken to prevent a legal personal representative (not being a natural person) of a person who dies as a result of a transport accident recovering damages in any proceedings in respect of that death.

S. 93(1B) inserted by No. 80/2010 s. 10.

(2) A person who is injured as a result of a transport accident may recover damages in respect of the injury if—

(a) the Commission has determined the degree of impairment of the person under section 46A, 47(7) or 47(7A); and

S. 93(2)(a) substituted by No. 32/1988 s. 21(1)(a).

(b) the injury is a serious injury.

S. 93(2A) inserted by No. 71/2013 s. 26, repealed by No. 18/2016 s. 5.

* * * * *

(3) If—

S. 93(3)(a) substituted by No. 32/1988 s. 21(1)(b).

(a) under section 46A, 47(7) or 47(7A), the Commission has determined the degree of impairment of a person who is injured as a result of a transport accident; and

S. 93(3)(b) substituted by No. 32/1988 s. 21(1)(b).

(b) the degree so determined is 30 per centum or more—

the injury is deemed to be a serious injury within the meaning of this section.

(4) If—

S. 93(4)(a) substituted by No. 32/1988 s. 21(1)(c).

(a) under section 46A, 47(7) or 47(7A), the Commission has determined the degree of impairment of a person who is injured as a result of a transport accident; and

S. 93(4)(b) substituted by No. 32/1988 s. 21(1)(c).

(b) the degree so determined is less than 30 per centum—

the person may not bring proceedings for the recovery of damages in respect of the injury unless—

(c) the Commission—

(i) is satisfied that the injury is a serious injury; and

(ii) issues to the person a certificate in writing consenting to the bringing of the proceedings; or

(d) a court, on the application of the person, gives leave to bring the proceedings.

(5) A copy of an application under subsection (4)(d) must be served on the Commission and on each person against whom the applicant claims to have a cause of action.

S. 93(5) substituted by No. 57/1989 s. 3(Sch. item 203.1).

(6) A court must not give leave under subsection (4)(d) unless it is satisfied that the injury is a serious injury.

(6A) Despite anything to the contrary in any other Act, a party may in proceedings under this section when adducing evidence on the question of whether any person was at the time of the transport accident under the influence of intoxicating liquor or any other drug, use the analysis or the results of the analysis of a blood sample or breath analysis lawfully taken under the **Road Safety Act 1986** at or after the time of the transport accident.

S. 93(6A) inserted by No. 84/2000 s. 28.

(6B) A party must not adduce material referred to in subsection (6A) in evidence in proceedings under this section unless—

S. 93(6B) inserted by No. 84/2000 s. 28.

(a) the party provides to all other parties in the proceedings, copies of the document or documents which form the evidence at least 6 weeks before the commencement of the trial of the proceedings; and

(b) if notice is given to that party by another party at least 2 weeks before the commencement of the trial of the proceedings, the party causes the person who supplied the information contained in the document or documents to attend the trial of the proceedings for the purpose of cross-examination.

S. 93(6C) inserted by No. 84/2000 s. 28.

(6C) Subsections (6A) and (6B) as inserted by section 28 of the **Transport Accident (Amendment) Act 2000** apply to and in respect of a transport accident which occurs on or after the commencement of that section.

S. 93(7) substituted by No. 84/1994 s. 10(1).

(7) Damages of any kind in respect of an injury cannot be recovered in proceedings in accordance with subsections (2), (3) and (4) other than damages[12]—

(a) for pecuniary loss but only if—

(i) the assessment of damages before any reduction in respect of the person's responsibility for the injury is more than $30 520 but less than $686 840, in which case the amount that can be recovered is that amount so assessed as reduced first under subsection (11) and secondly in respect of the person's responsibility for the injury; or

(ii) the assessment of damages before any reduction in respect of the person's responsibility for the injury is more than $686 840, in which case the amount that can be recovered is $686 840 as reduced first under subsection (11) and secondly in respect of the person's responsibility for the injury;

(b) for pain and suffering but only if—

(i) the assessment of damages before any reduction in respect of the person's responsibility for the injury is more than $30 520 but less than $305 250, in which case the amount that can be recovered is that amount so assessed as reduced first under subsection (11) and

secondly in respect of the person's responsibility for the injury; or

(ii) the assessment of damages before any reduction in respect of the person's responsibility for the injury is more than $305 250, in which case the amount that can be recovered is $305 250 as reduced first under subsection (11) and secondly in respect of the person's responsibility for the injury.

(8) A person may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a person as a result of a transport accident.

(9) A court must not, in proceedings under Part III of the **Wrongs Act 1958** award damages in accordance with subsection (8) in respect of the death of a person in excess of $500 000.

(10) Damages awarded to a person under this section shall not include damages in respect of—

(a) in the case of an award of pecuniary loss damages under subsection (7), any pecuniary loss suffered in the period of 18 months after the transport accident[13]; or

S. 93(10)(a) amended by No. 84/1994 s. 10(2).

(b) any loss suffered or that may be suffered as a result of the incurring of costs or expenses of a kind referred to in section 60; or

(ba) any loss suffered or that may be suffered as a result of the incurring of professional administration costs, as referred to in section 62A;

S. 93(10)(ba) inserted by No. 49/2018 s. 17.

(c) the value of services of a domestic nature or services relating to nursing and attendance—

(i) which have been or are to be provided by another person to the person in whose favour the award is made; and

(ii) for which the person in whose favour the award is made has not paid and is not and will not be liable to pay.

S. 93(11) amended by No. 32/1988 s. 21(1)(d), substituted by No. 84/1994 s. 10(3).

(11) Damages under subsection (7) are to be reduced[14]—

(a) in the case of damages for pecuniary loss—

(i) if the person was entitled to compensation under this Act, by the amount of compensation paid in respect of the injury under sections 49, 50 and 51; or

(ii) if the person was not entitled to compensation under this Act because of section 37, by the amount of any compensation paid in respect of lost earnings other than earnings lost in the first 18 months after the transport accident; and

(b) in the case of damages for pain and suffering—

S. 93(11)(b)(i) amended by No. 94/2004 s. 11(5)(f).

(i) if the person was entitled to compensation under this Act, by the amount of compensation paid in respect of the injury under sections 47 and 54; or

(ii) if the person was not entitled to compensation under this Act because of section 37, by the amount of any compensation paid otherwise than in

respect of lost earnings or other pecuniary loss.

(11A) Damages under subsection (8) are to be reduced—

S. 93(11A) inserted by No. 84/1994 s. 10(3).

(a) if compensation was payable in respect of the death under this Act, by the amount of compensation paid under sections 57, 58 and 59; or

(b) if compensation was not payable in respect of the death under this Act because of section 37, by the amount of any compensation paid in respect of the loss of expectation of financial support (other than of the kind to which section 60 applies) under any compensation scheme specified in section 37[15].

(12) Subject to the discretion of the court—

(a) in proceedings relating to an application for leave of the court under subsection (4)(d)—costs are to be awarded against a party against whom a decision is made; and

(b) in proceedings for the recovery of damages in accordance with this section—

(i) if no liability to pay damages is established, costs are to be awarded against the claimant; and

(ii) if damages are assessed but cannot be awarded under this section, each party bears its own costs; and

(iii) if damages are awarded, costs are to be awarded against the defendant.

(12A) Damages awarded in accordance with subsection (8) in respect of the death of a person must not include damages in respect of services in the nature of housekeeping or the care of a child

S. 93(12A) inserted by No. 84/1994 s. 10(4).

which would have been provided by the deceased person[16].

(13) Where an award of damages in accordance with this section is to include compensation, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future—

the present value of the future loss must be qualified by adopting a discount rate of 6 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(14) Except as provided by subsection (13), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

S. 93(15) amended by No. 34/1998 s. 14(b).

(15) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be payable, on an amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to the date of the award.

(16) Except as provided by subsection (15), nothing in that subsection affects any other law relating to the payment of interest on an amount of damages, other than special damages.

(17) In this section—

pain and suffering damages means damages for pain and suffering, loss of amenities of life or loss of enjoyment of life;

pecuniary loss damages means damages for loss of earnings, loss of earning capacity, loss of value of services or any other pecuniary loss or damage;

serious injury means—

(a) serious long-term impairment or loss of a body function; or

(b) permanent serious disfigurement; or

(c) severe long-term mental or severe long-term behavioural disturbance or disorder; or

(d) loss of a foetus.

* * * * *

S. 93(17A) inserted by No. 71/2013 s. 27, repealed by No. 18/2016 s. 6.

(18) Nothing in subsection (1)—

(a) affects a right to compensation under this Act or an Act or enactment referred to in section 37 or 38; or

(b) applies to the recovery of damages in respect of a transport accident involving an organized motor vehicle race or speed trial or a test in preparation for such a race or trial by a person who, by reason of section 41, is not entitled to compensation in accordance with this Act in respect of that accident[17]; or

S. 93(18)(b) amended by Nos 32/1988 s. 21(2), 84/1994 s. 7.

S. 93(18)(c) inserted by No. 84/1994 s. 7.

(c) applies to the recovery of damages in respect of a transport accident to which section 41A or 41B applies by a person who, by reason of that section, is not entitled to compensation in accordance with this Act in respect of that accident[18].

S. 93(18A) inserted by No. 84/2000 s. 29.

(18A) Despite subsection (18), if an award of damages under this section includes an amount for the future cost of services of a kind set out in section 60 if provided in Australia, the Commission is released from any further liability for compensation under that section.

S. 93(18B) inserted by No. 84/2000 s. 29.

(18B) Subsection (18A) as inserted by section 29 of the **Transport Accident (Amendment) Act 2000** applies to and in respect of a transport accident which occurs on or after the commencement of that section.

S. 93(19) inserted by No. 84/1994 s. 40.

(19) Notwithstanding anything to the contrary in this Act, for the purposes of the **Limitation of Actions Act 1958**, the cause of action in respect of an injury arises on the day of the transport accident or on the day on which the injury first manifests itself.

S. 93(20) inserted by No. 84/1994 s. 40.

(20) For the avoidance of doubt it is hereby declared that all the provisions of this section contain matters that are substantive law and are not procedural in nature.

S. 93A inserted by No. 80/2010 s. 11.

93A Abolition of per quod servitium amisit

Proceedings cannot be brought in respect of the loss of the services of a person—

(a) who is injured or dies as a result of a transport accident; or

(b) whose injury or death is caused by, or arises out of, the use of a motor vehicle.

93D Directions[19]

S. 93D inserted by No. 84/2000 s. 30.

(1) For the purposes of section 93, the Minister may issue directions for or with respect to procedures under that section.

(2) The directions must be published in the Government Gazette.

(3) The directions may include directions about the provision of information by affidavit and the attending of conferences.

(4) A person to whom a direction under this section applies, and the legal representatives and agents of such a person, must comply with the direction.

Division 2—Indemnity by Commission

94 Indemnity

(1) The Commission is liable to indemnify—

S. 94(1) amended by No. 67/2013 s. 649(Sch. 9 item 32(11)).

(a) the owner or driver of a registered motor vehicle in respect of any liability in respect of an injury or death of a person caused by or arising out of the use of the motor vehicle in Victoria or in another State or in a Territory; and

S. 94(1)(a) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(b) the operator, owner or driver of a railway train or tram, and the manager of the railway or tramway on which a railway train or tram is operated, in respect of any liability in respect of an injury or death caused by or arising out of the use of the railway train or tram in Victoria; and

S. 94(1)(b) amended by Nos 84/1994 s. 45(a), 104/1997 s. 56(3), 18/2022 s. 33(1).

S. 94(1)(c) inserted by No. 18/2022 s. 33(2).

(c) any person in respect of any liability for an injury or death of a pedal cyclist caused by or arising out of a collision in Victoria between a pedal cycle being ridden by the pedal cyclist and a door of a registered motor vehicle being opened, or that has been opened, by the person—

other than liability to pay compensation under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** or an Act or law referred to in section 37.

(2) Subsection (1) does not apply—

S. 94(2)(a) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 32/1988 s. 21(3).

(a) in respect of any period in respect of which the transport accident charge applicable to the motor vehicle for that period has not been paid; or

S. 94(2)(aa) inserted by No. 32/1988 s. 21(4).

(aa) in respect of the period commencing when the transport accident charge applicable to the motor vehicle was due to be paid and ending when that transport accident charge was paid; or

S. 94(2)(b) amended by Nos 44/1989 s. 41(Sch. 2 item 42.3), 84/1994 s. 45(b)(i)(ii), 104/1997 s. 56(4), 26/2000 s. 28.

(b) in respect of a railway train or tram during any period in respect of which an agreement under section 115 in respect of the railway train or tram is not in force; or

S. 94(2)(c) inserted by No. 26/2000 s. 28, amended by Nos 54/2000 s. 25(6), 18/2022 s. 33(3).

(c) in respect of any liability of an indemnified person to pay compensation for a matter for which compensation is awarded under Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**.

(2A) Subsection (1) does not apply in respect of any liability in respect of a transport accident involving an organised motor vehicle race or speed trial or a test in preparation for such a race or trial to which section 41(1) applies.

S. 94(2A) inserted by No. 84/2000 s. 31(1).

(2B) With respect to subsection (2)(aa), subsection (1) does apply in respect of any period when the charge was unpaid if the charge was subsequently paid within 28 days after it was due to be paid.

S. 94(2B) inserted by No. 94/2004 s. 30.

(3) If judgment is entered against an indemnified person in respect of liability in respect of which the Commission is liable under this section to indemnify the indemnified person, the judgment creditor may recover against the Commission a sum equivalent to the amount (including costs) unpaid in respect of the judgment or the amount of the liability of the Commission under the indemnity, whichever is the lesser.

S. 94(3) amended by No. 18/2022 s. 33(4).

(4) A judgment creditor may not recover against the Commission under subsection (3) unless the judgment creditor gave to the Commission before, or within a reasonable time after the judgment is entered, notice in writing of the intention to make the claim and a short statement of the circumstances giving rise to the claim.

(5) Despite subsection (3)—

(a) if an indemnified person is or becomes bankrupt and the Commission is required to pay to the trustee in bankruptcy the amount of the liability under subsection (3), the sum recoverable by the judgment creditor against the Commission must be reduced by the amount so paid; and

S. 94(5)(a) amended by No. 18/2022 s. 33(5).

(b) if execution of any such judgment is stayed pending appeal, the judgment creditor may not recover an amount against the Commission until the expiration of the period for which execution of the judgment is stayed.

(6) The payment by the Commission of the sum recoverable by the judgment creditor, to the extent of the payment, is a discharge of—

S. 94(6)(a) amended by No. 18/2022 s. 33(6).

(a) the liability of the indemnified person to the judgment creditor; and

S. 94(6)(b) amended by No. 18/2022 s. 33(6).

(b) the liability (if any) of the Commission to the indemnified person.

S. 94(7) amended by No. 18/2022 s. 33(7).

(7) If liability has been incurred to a person by an indemnified person and the indemnified person—

(a) cannot be identified; or

(b) is dead or cannot be found or, in the case of a corporation, has been wound up—

the person may recover against the Commission a sum equivalent to the amount for which the person could have obtained a judgment against the indemnified person or equivalent to the amount of the liability of the Commission under the indemnity, whichever is the lesser.

S. 94(7A) inserted by No. 84/2000 s. 31(2), amended by No. 18/2022 s. 33(8).

(7A) The entitlement of a person to recover against the Commission under subsection (7) is not affected by the death of an indemnified person indemnified under that subsection before any proceedings are commenced.

(8) Without affecting the generality of subsection (7), an indemnified person shall be deemed to be unable to be found if the indemnified person cannot be found at the last-known place of residence of the indemnified person.

S. 94(8) amended by No. 18/2022 s. 33(9).

(9) A person may not recover against the Commission under subsection (7) unless—

(a) the person gave to the Commission within a reasonable time after knowing that the indemnified person could not be found notice in writing of the intention to make the claim, setting out their full name and address, the date and place of the accident, the general nature of the injuries received and a short statement of the circumstances of the accident; or

S. 94(9)(a) amended by No. 18/2022 s. 33(10).

(b) the person satisfies the court before which the claim is heard that the Commission has not been materially prejudiced in its defence to the claim by any failure by the person to give such notice at the proper time or by any omission from or any insufficiency or defect in the notice.

(10) The Commission—

(a) may undertake the settlement of any claim against an indemnified person; and

S. 94(10)(a) amended by No. 18/2022 s. 33(11)(a).

(b) may take over during such period as it thinks proper the conduct and control on behalf of the indemnified person of any proceedings to enforce the claim or for the settlement of any question arising from it; and

S. 94(10)(b) amended by No. 18/2022 s. 33(11)(b).

(c) may defend or conduct such proceedings in the name of an indemnified person and on an indemnified person's behalf and, if need be may, without the consent of the indemnified

S. 94(10)(c) amended by No. 18/2022 s. 33(11)(c).

person, to the extent of the liability of the Commission but no further or otherwise, admit liability; and

S. 94(10)(d) amended by No. 18/2022 s. 33(11)(b).

(d) subject to this section, must indemnify the indemnified person against all costs and expenses of or incidental to any such proceedings while the Commission retains the conduct and control of them.

S. 94(11) amended by No. 18/2022 s. 33(12).

(11) An indemnified person must sign all warrants and authorities that the Commission requires for the purpose of enabling the Commission to have the conduct and control of proceedings under subsection (10).

S. 94(12) amended by No. 18/2022 s. 33(13).

(12) If an indemnified person fails to comply with a requirement under subsection (11) upon being requested to do so, the Commission may sign all warrants and authorities specified in subsection (11) on behalf of the indemnified person.

S. 94(13) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(13) A reference in this section to the driver of a motor vehicle, railway train or tram is a reference to a person who drives the motor vehicle, railway train or tram whether with or without the authority of the owner.

S. 94(14) inserted by No. 18/2022 s. 33(14).

(14) In this section—

indemnified person means a person who the Commission is liable to indemnify under subsection (1).

S. 94A inserted by No. 50/1994 s. 108.

94A Settlement between Commission and Victorian WorkCover Authority

S. 94A(1) amended by No. 67/2013 s. 649(Sch. 9 item 32(12)).

(1) Where the Commission—

(a) is liable to indemnify an owner or driver under section 94; or

(b) may become liable to indemnify a person under section 94—

and that owner or driver is liable or that person may become liable to indemnify the Victorian WorkCover Authority, an employer or an authorised insurer under section 138 of the **Accident Compensation Act 1985** or section 369 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, the Commission and the Authority—

(c) may undertake the settlement of any claim against that owner or driver;

(d) may undertake the settlement of any potential claim against that person.

(2) In determining whether to settle any claim, the Commission and the Victorian WorkCover Authority may determine the value of any claim for indemnity or any potential claim for indemnity in any manner they think fit.

95 Survival of actions

S. 95 amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

Without affecting the survival of any cause of action on the death of any person, in the case of the death of the owner or driver of a motor vehicle, railway train or tram—

(a) any reference in this Division to liability incurred by the owner or driver in respect of the death of or injury to any person includes a reference to liability in respect of the death or injury under any cause of action surviving against the estate of the owner or driver; and

(b) any reference in this Division to a judgment against the owner or driver includes a reference to a judgment against the personal representative of the owner or driver; and

(c) any reference in this Division to a judgment debtor includes a reference to the owner or driver or to the estate of the owner or driver.

S. 96 amended by No. 127/1986 s. 102(Sch. 4 item 29.2), substituted by No. 84/1994 s. 41.

96 Transport accidents involving unidentified or unindemnified vehicles

S. 96(1) amended by No. 49/2018 s. 9(1), substituted by No. 18/2022 s. 34(1).

(1) This section applies if a person is injured or dies as a result of a transport accident involving—

(a) the driving of an unidentified vehicle or an unindemnified vehicle; or

(b) a collision between a pedal cycle and a stationary unidentified vehicle or unindemnified vehicle that is not a collision with—

(i) an open door of a stationary unidentified vehicle or unindemnified vehicle; or

(ii) a door of a stationary unidentified vehicle or unindemnified vehicle that is being opened; or

(c) a collision in Victoria between a pedal cycle and—

(i) an open door of an unidentified vehicle or unindemnified vehicle; or

(ii) a door of an unidentified vehicle or unindemnified vehicle that is being opened.

S. 96(1A) inserted by No. 18/2022 s. 34(1).

(1A) A natural person who could have obtained a judgment against the owner or driver of the unidentified vehicle or unindemnified vehicle in the case of a transport accident mentioned in

subsection (1)(a) or (b), or against the person who opened or was opening the door of the unidentified vehicle or unindemnified vehicle in the case of a transport accident mentioned in subsection (1)(c), may recover in proceedings against the Commission a sum equivalent to the lesser of—

(a) the amount for which the person could have obtained judgment against the owner or driver of the unidentified vehicle or unindemnified vehicle, or the person who opened or was opening the door of the unidentified vehicle or unindemnified vehicle (as the case requires); or

(b) the amount for which the Commission would have been liable if that vehicle had been identified and subject to the indemnity under section 94.

S. 96(2) amended by Nos 49/2018 s. 9(2), 18/2022 s. 34(2).

(2) Damages in respect of a relevant transport accident can only be recovered if—

(a) the person, within a reasonable time after he or she knew that the vehicle was an unidentified vehicle, gave the Commission notice in writing of intention to make the claim, setting out—

(i) the full name and residential address of the person who died or was injured and, as appropriate, the full name and residential address of the person seeking to recover damages; and

(ii) the date and place of the accident; and

(iii) the general nature of the injuries; and

(iv) a short statement of the circumstances of the accident; or

(b) where notice is not given as required by paragraph (a), the person satisfies the court that the Commission has not been materially prejudiced in its defence to the proceedings for the recovery of damages by any failure of the person to give the notice at the proper time or by any omission or insufficiency or defect in the notice.

S. 96(3) substituted by No. 18/2022 s. 34(3).

(3) If damages are recovered against the Commission under subsection (1A), the Commission may recover in proceedings against a relevant person—

(a) the amount of any judgment or settlement (including the legal costs of the person who commenced the proceedings); and

(b) the amount of the Commission's reasonable out of pocket expenses in defending the proceedings.

S. 96(3A) inserted by No. 18/2022 s. 34(3).

(3A) For the purposes of subsection (3), a relevant person is—

(a) if the proceedings in which damages are recovered relate to a transport accident mentioned in subsection (1)(a) or (b)—the owner or driver of the unidentified vehicle or unindemnified vehicle; and

(b) if the proceedings in which damages are recovered relate to a transport accident mentioned in subsection (1)(c)—the person who opened or was opening the door of the unidentified vehicle or unindemnified vehicle, but only if the person was the owner or driver of the unidentified vehicle or unindemnified vehicle.

(4) It is a defence to proceedings under subsection (3)—

S. 96(4) substituted by No. 84/2000 s. 32.

(a) in the case of the owner of an unindemnified vehicle, that the vehicle being an unindemnified vehicle was not the result of any default of the owner;

(b) in the case of the driver of an unindemnified vehicle—

(i) that judgment could not have been obtained against the driver but for this section; or

(ii) that the driver had reasonable grounds for believing that he or she had the authority of the owner to drive the vehicle and that the vehicle was not an unindemnified vehicle.

(5) A defence under subsection (4) is not available to a driver convicted in relation to the accident of a drink driving offence.

(6) Damages in respect of personal injury or death must not be recovered against the owner or driver of an unidentified vehicle or an unindemnified vehicle, or against a person who opened or was opening the door of the unidentified vehicle or unindemnified vehicle, by a person who may recover an equivalent sum under subsection (1A).

S. 96(6) amended by No. 18/2022 s. 34(4).

(7) If in any proceedings under subsection (3), the court is satisfied that—

(a) the amount of a settlement was unreasonable because it was manifestly excessive, the Commission may only recover the amount which in the opinion of the court was reasonable; or

(b) the amount of a verdict was manifestly excessive and that the Commission unreasonably failed to appeal it, the Commission may only recover the amount which in the opinion of the court should have been awarded;

(c) in its management of the proceedings the Commission unreasonably failed to make use of information provided or a defence suggested by the owner or driver, the Commission may only recover the amount which in the opinion of the court is reasonable.

(8) In this section—

drink driving offence means—

(a) an offence under section 49(1)(a) of the **Road Safety Act 1986**; or

(b) a serious indictable offence within the meaning of section 325 of the **Crimes Act 1958** to which the consumption of alcohol or a drug was a significant contributing factor;

S. 96(8) def. of *relevant transport accident* inserted by No. 18/2022 s. 34(5).

relevant transport accident means a transport accident mentioned in subsection (1)(a), (b) or (c).

unidentified vehicle means a vehicle the identity of which cannot be established as at the date of an accident, and which remains unidentified at least until the commencement of proceedings under subsection (1);

unindemnified vehicle means a vehicle in respect of which there is no indemnity under section 94 and no corresponding indemnity under the law of another State or a Territory;

S. 96(8) def. of *unindemnified vehicle* amended by No. 34/1998 s. 14(c).

vehicle means a motor vehicle, railway train or tram.

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S. 96(9) repealed by No. 34/1998 s. 14(d).

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S. 97 amended by No. 127/1986 s. 102(Sch. 4 item 29.2), repealed by No. 84/1994 s. 41.

98 Apportionment of costs

S. 98 amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

If a judgment for damages is obtained against the owner or driver of a motor vehicle, railway train or tram in respect of the death of or injury to any person caused by or arising out of the use of the motor vehicle, railway train or tram in Victoria as well as in respect of some other loss or damage, the court shall (for the purpose of fixing the liability of the Commission) as part of the judgment adjudge what portion of the amount of the judgment is in respect of such death or injury and shall direct what portion of and in what manner any costs awarded as part of the judgment shall be apportioned to the portion of the amount awarded in respect of the death or injury.

S. 99 (Heading) inserted by No. 18/2022 s. 35(1).

99 Indemnified person to give notice

S. 99(1) amended by No. 127/1986 s. 102(Sch. 4 item 29.2), substituted by No. 18/2022 s. 35(2).

(1) On the happening of a transport accident affecting a motor vehicle, railway train or tram to which an indemnity under section 94 applies and resulting in the death of or injury to any person, an indemnified person must—

(a) notify in writing the Commission of the fact of the accident with particulars as to the date, nature and circumstances of the accident; and

(b) give to the Commission any other information, and take any steps, that the Commission may reasonably require in order for the Commission to perform its functions under this Act.

S. 99(1A) inserted by No. 18/2022 s. 35(2).

(1A) An indemnified person must comply with subsection (1) whether or not any claim has been made against them on account of the accident.

S. 99(1B) inserted by No. 18/2022 s. 35(2).

(1B) An indemnified person must comply with subsection (1)—

(a) in the case of an owner of the motor vehicle, railway train or tram who was the driver of the motor vehicle, railway train or tram, and who the Commission is liable to indemnify under section 94(1)(a) or (b)—as soon as practicable after the accident; and

(b) in the case of an owner of the motor vehicle, railway train or tram who was not the driver of the motor vehicle, railway train or tram, and who the Commission is liable to indemnify under section 94(1)(a) or (b)—as soon as practicable after they first become aware of the accident; and

(c) in the case of a person who the Commission is liable to indemnify under section 94(1)(c)—as soon as practicable after the accident.

(2) Notice of every claim made or action brought against the indemnified person or to the knowledge of the indemnified person made or brought against any other person on account of an accident shall be as soon as practicable given by the indemnified person to the Commission with such particulars as the Commission may require.

S. 99(2) amended by No. 18/2022 s. 35(3).

(3) An indemnified person shall not without the written consent of the Commission enter upon or incur the expenses of litigation as to any matter or thing in respect of which an indemnity under section 94 applies nor shall he or she without such consent make any offer, promise, payment or settlement or any admission of liability as to any such matter but nothing in this subsection shall extend to any admission made at the time of the occurrence out of which the death or injury arose and reasonably attributable to mental stress occasioned by the circumstances or to any statement made to any police officer acting in the course of duty in hearing or receiving a statement or to any statement made or evidence given in or in the course of any proceedings in any court before any arbitrator.

S. 99(3) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 37/2014 s. 10(Sch. item 170.3), 18/2022 s. 35(4).

(4) If an indemnified person without reasonable cause fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter the Commission may recover from the indemnified person such amount by way of damages as is reasonably attributable to the failure.

S. 99(4) amended by No. 18/2022 s. 35(5).

S. 99(5) inserted by No. 18/2022 s. 35(6).

(5) In this section—

indemnified person means a person who the Commission is liable to indemnify under section 94(1).

S. 100 (Heading) inserted by No. 18/2022 s. 36(1).

100 Driver of motor vehicle etc. and other persons to give notice of accidents

S. 100(1) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 18/2022 s. 36(2).

(1) If, at the time of the happening of any accident affecting a motor vehicle, railway train or tram to which an indemnity under section 94(1)(a) or (b) applies and resulting in the death of or injury to any person, the driver of the motor vehicle, railway train or tram is not the owner, the driver must, as soon as practicable, notify in writing the owner or the Commission of the fact of the accident.

S. 100(1A) inserted by No. 18/2022 s. 36(3).

(1A) If, at the time of the happening of any accident affecting a motor vehicle, to which an indemnity under section 94(1)(c) applies and resulting in the death of or injury to any person, the person who caused the death or injury must, as soon as practicable, notify in writing the owner of the motor vehicle or the Commission of the fact of the accident.

S. 100(2) amended by No. 18/2022 s. 36(4).

(2) If a driver to whom subsection (1) applies or a person to whom subsection (1A) applies, after the notice in writing in that behalf by the Commission without reasonable cause—

(a) fails to furnish the Commission with particulars as to the date, nature and circumstances of the accident, and to give all such information and to take all such steps as the Commission may reasonably require, whether or not any claim has actually been made against such person on account of the accident; or

(b) fails to give as soon as practicable to the Commission notice of every claim made or action brought against him or her, with such particulars as the Commission may require; or

S. 100(2)(b) amended by No. 11/2002 s. 3(Sch. 1 item 61.2).

(c) without the written consent of the Commission—

(i) enters upon or incurs the expense of litigation as to any matter or thing in respect of which the indemnity under section 94 applies; or

(ii) makes any offer, promise, payment or settlement or any admission of liability as to any such matter—

the Commission is entitled to recover from him or her such amount by way of damages as is reasonably attributable to the failure to comply with the requirements of this section.

(3) Nothing in subsection (2)(c)(ii) extends to any statement made to any police officer acting in the course of duty in hearing or receiving a statement or to any statements made or evidence given in or in the course of any proceedings in any court or before any arbitrator.

S. 100(3) amended by No. 37/2014 s. 10(Sch. item 170.3).

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S. 101 amended by No. 127/1986 s. 102(Sch. 4 item 29.2), repealed by No. 32/1988 s. 22.

102 Unauthorized or intoxicated drivers

(1) If the death of or injury to any person is caused by or arises out of the use of a motor vehicle, railway train or tram and that motor vehicle, railway train or tram was at the time of the occurrence out of

S. 102(1) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

which the death or injury arose driven by a person without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner—

(a) the driver is not entitled to recover from the Commission any sum on account of any moneys (including costs) paid or payable by the driver in respect of liability in respect of the death or injury; and

(b) any sum paid by the Commission in discharge of the liability of the driver is recoverable by the Commission from the driver.

S. 102(2) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(2) If the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle, railway train or tram in relation to which an indemnity under section 94 applies and the driver of the motor vehicle, railway train or tram at the time of the occurrence out of which the death or injury arose is convicted in relation to the circumstances of the occurrence—

S. 102(2)(a) amended by No. 34/1998 s. 14(e).

(a) of a serious indictable offence within the meaning of section 325 of the **Crimes Act 1958** with respect to that death or injury; or

S. 102(2)(b) amended by Nos 127/1986 s. 102(Sch. 4 item 29.17), 84/1994 s. 29.

(b) of an offence under section 49(1)(a) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law—

any sum (including costs) paid by the Commission in discharge of the liability of the owner or driver in respect of the death or injury is recoverable by the Commission from the driver.

103 Agreements by next friends etc.

S. 103 amended by No. 32/1988 s. 23.

If a minor or a person under a legal disability is or appears to be entitled to recover damages for bodily injury caused by or arising out of the use of a motor car, section 168 applies as if a reference in that section to a motor car included a reference to a motor vehicle, a railway train or a tram.

Division 3—General

104 Indemnity by third party

S. 104(1) amended by Nos 84/1994 s. 42(1)(a)–(c), 34/1998 s. 15(1)(a)(b), 94/2004 s. 31(a).

(1) If an injury or death arising out of a transport accident in respect of which the Commission has made payments under this Act arose under circumstances which, regardless of section 93, would have created a legal liability in Victoria or elsewhere in a person (other than a person who is entitled to be indemnified under section 94) to pay damages in respect of any loss suffered by reason of the injury or death, the Commission is entitled to be indemnified by the first-mentioned person for such proportion of the amount of the liability of the Commission to make payments under this Act in respect of the injury or death as is appropriate to the degree to which the injury or death was attributable to the act, default or negligence of the first-mentioned person.

S. 104(2) substituted by No. 34/1998 s. 15(2), amended by Nos 84/2000 s. 33, 65/2008 s. 6.

(2) The liability of a person under subsection (1) shall not exceed the amount (including the payment of interest) which, but for this Act and Parts VB, VBA and X of the **Wrongs Act 1958**, the person would be liable to pay—

(a) to the injured person in respect of the injury: or

(b) in the case of the death of the person, to his or her dependents.

S. 104(3) inserted by No. 84/1994 s. 42(2), amended by No. 94/2004 s. 31(b).

(3) Judgment against or settlement by a third party in an action in respect of an injury or death referred to in subsection (1), whether by consent or otherwise and irrespective of whether the Commission has taken over proceedings in accordance with section 107, does not eliminate or diminish the right of indemnity given by this section, except to the extent provided in this section.

105 Amounts to be repaid to Commission where damages recovered

(1) If—

(a) the Commission has paid an amount under Division 1 of Part 10 in respect of an injury or death resulting from an accident; or

(b) the Motor Accidents Board, before the commencement of this section, paid an amount under the **Motor Accidents Act 1973**, the **Accident Compensation Act 1985** or under section 8(2A) or (2B) of the **Workers Compensation Act 1958** in respect of an injury or death resulting from an accident—

and a person recovers damages from a person who—

(c) is not entitled to be indemnified in respect of the payment of those damages under a contract of insurance complying with Division 1 of Part V of the **Motor Car Act 1958** as in force immediately before the commencement of section 34; and

(d) is not a person with whom an agreement under section 70, 71, 72, 73 or 74 of the **Motor Accidents Act 1973** was in force at the time of the accident—

the first-mentioned person is liable to pay to the Commission the amount paid by the Commission or the Motor Accidents Board or, if the amount of the damages recovered is less than the amount paid by the Commission or the Motor Accidents Board, the amount of the damages.

(2) In subsection (1), ***damages*** does not include an amount of compensation paid under the provisions of section 98 of the **Accident Compensation Act 1985** or section 11 of the **Workers Compensation Act 1958** or of a law that is, in relation to those provisions, a corresponding law.

106 Contributory negligence

If damages recoverable by a person in respect of an injury or death as a result of an accident to which Division 1 of Part 10 applies were reduced or an amount recoverable by a person by way of indemnity in respect of an injury or death was reduced by reason that the person who was injured or died was partly responsible for the injury or death, the amount payable to the Commission under section 105 is reduced by the amount that bears, in relation to the amount paid by the Commission, the same proportion as the amount by which the damages recovered were, or the amount recovered by way of indemnity was, reduced bears to the damages or amount by way of indemnity that would have been recovered if the person who was injured or died had not been partly responsible for the injury or death.

107 Commission may take proceedings

(1) If—

(a) the Commission has paid an amount under this Act in respect of an injury or death; and

(b) a person (other than the Commission) who appears to be liable or who it appears would have been liable, but for section 93, to pay damages or an amount by way of indemnity in respect of the injury or death is not entitled to be indemnified against that liability under an indemnity to which section 94 applies; and

S. 107(1)(c) amended by No. 32/1988 s. 24.

(c) proceedings against that person for the purpose of recovering such damages or amount have not been instituted or have been instituted but have been discontinued or have not been properly prosecuted—

the Commission may take over the conduct of the proceedings.

(2) The Commission is liable to pay all costs of or incidental to proceedings referred to in subsection (1), being costs payable by the plaintiff in those proceedings but not including costs unreasonably incurred by the plaintiff.

(3) If, in accordance with this section, the Commission takes over the conduct of proceedings that have been instituted in the name of a person—

(a) the Commission may—

(i) settle the proceedings either with or without obtaining judgment in the proceedings; and

(ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce the judgment; and

(b) that person shall sign any document relevant to the proceedings, including the settlement of the proceedings, that the Commission requires the person to sign and, if the person

fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that that document be signed on behalf of the person by another person appointed by the Commission for that purpose.

107A Compensation for pain and suffering

S. 107A inserted by No. 26/2000 s. 29.

(1) A court must not exercise the powers conferred by Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991** to make a compensation order within the meaning of that Subdivision if the compensation would be for a matter—

S. 107A(1) amended by No. 54/2000 s. 25(7)(a)(b).

(a) arising from an injury or death in respect of which it appears to the court that the person has an entitlement to any compensation under this Act; and

(b) arising from an event that constitutes an offence only against the **Road Safety Act 1986** or any regulations made under any of that Act.

(2) Notwithstanding anything to the contrary in Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**, this section applies to and in respect of any offence referred to in subsection (1) committed on or after the commencement of section 29 of the **Accident Compensation (Common Law and Benefits) Act 2000**.

S. 107A(2) amended by No. 54/2000 s. 25(8).

(3) For the purposes of subsection (1)(a), a person is not to be regarded as having an entitlement to any compensation under this Act if the entitlement would only arise under either or both of sections 60(1)(ca) and 60(1)(d).

Part 7—Transport accident charges

* * * * *

S. 108 amended by No. 127/1986 s. 102(Sch. 4 item 29.2), repealed by No. 34/1998 s. 16.

109 Transport accident charge

S. 109(1) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 84/1994 s. 43(1).

(1) The owner of a registered motor vehicle must in respect of each prescribed period pay to the Commission the transport accident charge applicable to that motor vehicle for that period.

Penalty against this subsection: 5 penalty units.

(2) The transport accident charge is payable in advance at the prescribed times or intervals.

S. 109(3) amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.14), 34/2023 s. 62.

(3) The registration of a motor vehicle must not be made or renewed and a registration permit under the regulations made under Part 2 of the **Road Safety Act 1986** must not be granted and a special plate or mark must not be issued under the regulations made under Part 2 of that Act unless the owner has paid the transport accident charge applicable to the motor vehicle for the relevant prescribed period or periods.

S. 109(4) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.15), substituted by Nos 32/1988 s. 25, 84/1994 s. 43(2), amended by No. 68/2017 s. 121.

(4) If a transport accident charge payable at the prescribed time or interval following the expiry of a prescribed period of 3 months or more is paid within 28 days after that prescribed time or interval, the charge is deemed for the purposes of this Act to have been paid at the prescribed time or interval.

(4A) The Commission may require the owner of a registered motor vehicle to pay, together with the transport accident charge applicable to the vehicle in respect of a period beginning on or after 1 July 1993, an additional amount not exceeding the amount of stamp duty payable by the Commission in respect of that charge under the **Stamps Act 1958**.

S. 109(4A) inserted by No. 17/1993 s. 11(2).

(4B) If the Commission requires the payment of an additional amount in respect of a transport accident charge, the charge is deemed not to have been paid until the additional amount has been paid.

S. 109(4B) inserted by No. 17/1993 s. 11(2).

(5) In this section—

prescribed period in relation to a transport accident charge applicable to a motor vehicle means—

S. 109(5) def. of *prescribed period* amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.16).

(a) the period prescribed by the regulations in relation to motor vehicles of that class; or

(b) if a period has not been so prescribed—

(i) the period of 12 months commencing on the date, or the anniversary of the date, of the registration of the motor vehicle; or

(ii) in the case of the granting of a registration permit under the regulations made under Part 2 of the **Road Safety Act 1986**, the period of the permit;

S. 109(5) def. of *prescribed times or intervals* amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.16).

prescribed times or intervals in relation to the payment of a transport accident charge applicable to a motor vehicle means—

(a) the times or intervals prescribed by the regulations in relation to motor vehicles of that class; or

(b) if times or intervals have not been so prescribed, at or before the time of registration or renewal of the registration of the motor vehicle or the granting of a registration permit under the regulations made under Part 2 of the **Road Safety Act 1986**.

110 Rates of charges

S. 110(1) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(1) The amount of the transport accident charge applicable to a motor vehicle is the amount prescribed or determined as prescribed.

S. 110(1AA) inserted by No. 84/2000 s. 34(1).

(1AA) In this section ***prescribed*** means prescribed by a charges order made under this section after the commencement of section 34 of the **Transport Accident (Amendment) Act 2000**.

S. 110(1A) inserted by No. 32/1988 s. 26(1).

(1A) The Commission may determine that the transport accident charge applicable to a motor vehicle that is usually kept outside Victoria is a specified amount that is less than the amount prescribed or determined as prescribed if circumstances or conditions determined by the Commission apply.

S. 110(2) amended by No. 32/1988 s. 26(2)(a)(b).

(2) The amount of a transport accident charge prescribed or determined as prescribed shall be varied, in respect of the financial year beginning on 1 July 1987 and each subsequent financial year in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the transport accident charge in force immediately before the beginning of that financial year.

B is the all groups consumer price index for Melbourne as at 31 March in the preceding financial year published by the Australian Statistician in respect of the December quarter of that financial year.

C is the all groups consumer price index for Melbourne as at 31 March in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 31 March.

(3) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount shall be deemed to have been calculated in accordance with this section if the calculation is made, to the nearest whole $1.

(4) Where an amount is varied in accordance with subsections (2) and (3), the amount as varied is the amount of the relevant transport accident charge.

(5) Despite subsection (2), the amount of a transport accident charge prescribed or determined as prescribed shall be varied, in respect of the financial year beginning on 1 July 2000, in accordance with the formula—

$$A \times \frac{B}{C} \times \frac{105}{100}$$

S. 110(5) amended by No. 127/1986 s. 102(Sch. 4 item 29.2), repealed by No. 34/1998 s. 17(a), new s. 110(5) inserted by No. 24/2000 s. 17(1).

where—

A is the amount of the transport accident charge in force immediately before 1 July 2000.

B is the lower of—

(a) the all groups consumer price index for Melbourne as at 31 March 2000 published by the Australian Statistician in respect of the December quarter of the financial year 1999/2000; and

(b) the figure prescribed under subsection (6)(d) (if any).

C is the all groups consumer price index for Melbourne as at 31 March 1999 published by the Australian Statistician in respect of the December quarter preceding that 31 March.

S. 110(5A) inserted by No. 24/2000 s. 17(1).

(5A) Despite subsection (2), the amount of a transport accident charge prescribed or determined as prescribed shall be varied, in respect of the financial year beginning on 1 July 2001, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the transport accident charge in force immediately before 1 July 2001.

B is the lower of—

(a) the all groups consumer price index for Melbourne as at 31 March 2001 published by the Australian Statistician in respect of the December quarter of the financial year 2000/2001; and

(b) the figure prescribed under subsection (6)(e) (if any)—

less the figure determined by the Treasurer under subsection (5B).

C is the all groups consumer price index for Melbourne as at 31 March 2000 published by the Australian Statistician in respect of the December quarter preceding that 31 March.

(5B) For the purposes of item B in the formula in subsection (5A), the Treasurer, by notice published in the Government Gazette on or before 30 June 2001, must determine a figure that, in his or her opinion, represents the amount of the all groups consumer price index for Melbourne as at 31 March 2001 published by the Australian Statistician in respect of the December quarter of the financial year 2000/2001 that is attributable to GST.

S. 110(5B) inserted by No. 24/2000 s. 17(1).

(5C) Where an amount is varied in accordance with subsection (5) or (5A) and subsection (3), the amount as varied is the amount of the relevant transport accident charge.

S. 110(5C) inserted by No. 24/2000 s. 17(1).

(6) The charges order—

S. 110(6) inserted by No. 32/1988 s. 26(3), amended by No. 84/2000 s. 34(2).

(a) may prescribe the amount, or a method of determining the amount, of the transport accident charge applicable to a motor vehicle; and

(b) may, under paragraph (a), prescribe an amount that is greater or less than an amount previously prescribed by the charges order; and

S. 110(6)(b) amended by No. 84/2000 s. 34(2).

S. 110(6)(c) amended by No. 24/2000 s. 17(2).

(c) may provide that subsection (2) does not apply in respect of a specified financial year; and

S. 110(6)(d) inserted by No. 24/2000 s. 17(2).

(d) may prescribe a figure that is less than the all groups consumer price index for Melbourne as at 31 March 2000 published by the Australian Statistician in respect of the December quarter of the financial year 1999/2000 for the purposes of determining the variation of the amount of a transport accident charge in respect of the financial year beginning on 1 July 2000; and

S. 110(6)(e) inserted by No. 24/2000 s. 17(2).

(e) may prescribe a figure that is less than the all groups consumer price index for Melbourne as at 31 March 2001 published by the Australian Statistician in respect of the December quarter of the financial year 2000/2001 for the purposes of determining the variation of the amount of a transport accident charge in respect of the financial year beginning on 1 July 2001.

S. 110(7) inserted by No. 24/2000 s. 17(3).

(7) In this section—

GST has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act.

S. 110(8) inserted by No. 84/2000 s. 34(3).

(8) The Governor in Council may on the recommendation of the Commission by Order in Council make a charges order.

(9) A charges order—

S. 110(9) inserted by No. 84/2000 s. 34(3).

(a) must be published in the Government Gazette;

(b) takes effect on and from the date on which it is published or any later date of commencement as may be specified in the order.

(10) A charges order may—

S. 110(10) inserted by No. 84/2000 s. 34(3).

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind;

(c) specify different methods of calculation whether by reference to formulas, scales, tables or other means;

(d) apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method whether as formulated, issued, prescribed or published at the time the order is made;

(e) authorise any specified person or body to determine or apply a specified matter or thing.

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S. 110A inserted by No. 73/1996 s. 96, repealed by No. 84/2000 s. 35(1).

111 Interstate vehicles

S. 111(1) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(1) Section 109 does not apply to the owner of a motor vehicle—

(a) which is temporarily in Victoria; and

(b) which is registered—

(i) in another State or in a Territory declared by Order of the Governor in Council published in the Government Gazette to be a relevant State or Territory for the purposes of this section; or

(ii) with a Registration Authority in another State or in a Territory under the Interstate Road Transport Act 1985 of the Commonwealth or, if that Act is amended, that Act as amended and in force for the time being—

if, while the motor vehicle is in Victoria, the owner and any driver of the motor vehicle are insured under a contract of insurance in accordance with the law of that State or Territory against liability in respect of the death of or injury to any person caused by or arising out of the use of the motor vehicle in Victoria.

S. 111(2) amended by No. 127/1986 s. 102(Sch. 4 item 29.2), repealed by No. 34/1998 s. 17(b).

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S. 111(3) repealed by No. 34/1998 s. 17(b).

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112 Motor vehicles under control of manufacturers

(1) If a motor vehicle—

S. 112(1) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.18).

(a) is not registered or the subject of a registration permit granted under the regulations made under Part 2 of the **Road Safety Act 1986**; and

S. 112(1)(a) amended by No. 127/1986 s. 102(Sch. 4 item 29.18).

(b) is in the possession or under the control of a person to whom a special plate or mark has been assigned under the regulations made under Part 2 of the **Road Safety Act 1986**—

S. 112(1)(b) amended by No. 127/1986 s. 102(Sch. 4 item 29.18).

section 109 applies as if the person were the owner and as if the issuing of a special plate or mark to the person were registration of the motor vehicle.

(2) For the purposes of subsection (1), a motor vehicle is under the control of a person if it is being lawfully used by an agent or an employee of an agent of that person.

S. 112(2) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

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S. 113 amended by No. 44/1989 s. 41(Sch. 2 item 42.4 (a)–(c)), repealed by No. 104/1997 s. 56(5).

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S. 114 repealed by No. 44/1989 s. 41(Sch. 2 item 42.5).

S. 115 amended by No. 44/1989 s. 41(Sch. 2 item 42.6), substituted by No. 84/1994 s. 44.

115 Agreements in respect of the operation of trains or trams

S. 115(1) substituted by No. 104/1997 s. 56(6).

(1) The Commission may enter into an agreement with the manager of a railway or tramway in relation to the payment of charges for the purposes of this Act in respect of the operation of railway trains or trams on that railway or tramway.

S. 115(2) substituted by No. 104/1997 s. 56(6).

(2) A person must not provide access to a railway or tramway to the owner or operator of a railway train or a tram if there is not in force an agreement under subsection (1) in relation to that railway or tramway.

S. 115(2A) inserted by No. 104/1997 s. 56(6).

(2A) A person who is seeking to enter into an agreement with the Commission under subsection (1), or who has entered into such an agreement, must furnish to the Commission any documents and other information that the Commission may reasonably require in order to enable it to determine the amount of charges payable for the purposes of this Act in respect of the operation of railway trains or trams on a railway or tramway.

S. 115(3) amended by No. 104/1997 s. 56(7).

(3) A person who contravenes subsection (2) or (2A) is guilty of an offence against this Act.

S. 115(4) inserted by No. 104/1997 s. 56(8).

(4) An agreement under section 113 or subsection (1) in force immediately before the commencement of section 56 of the **Rail Corporations (Amendment) Act 1997** continues in force with respect to a railway or tramway until—

(a) an agreement is made under subsection (1) with the manager of that railway or tramway; or

(b) the date on which it expires under the terms of the agreement—

whichever is the sooner, despite the commencement of that section and despite anything to the contrary in the agreement.

Part 8—Offences and proceedings

S. 116 amended by No. 32/1988 s. 27(1).

116 Fraud

(1) A person must not obtain or attempt to obtain fraudulently any benefit under this Act.

(2) Without limiting the generality of subsection (1), a person must not obtain or attempt to obtain fraudulently any benefit under this Act for any other person, or assist any other person to obtain fraudulently any benefit under this Act.

Penalty: 100 penalty units or imprisonment for two years.

S. 117 amended by No. 32/1988 s. 27(2).

117 False information

A person must not provide false or misleading information in or in connexion with any application, return or other information provided under this Act.

Penalty: 20 penalty units or imprisonment for one month.

S. 117A inserted by No. 32/1988 s. 28.

117A Refunding money to Commission

If a person is convicted of an offence against section 116 or 117, any payments of compensation made by the Commission as a result of or partly as a result of the commission of the offence may be recovered as a debt due from the person to the Commission together with interest at the prescribed rate calculated from the date on which payments were made until the debt is paid.

S. 117B inserted by No. 32/1988 s. 28.

117B Obtaining benefits that are not payable

(1) A person must not obtain or attempt to obtain a benefit under this Act that the person knows is not payable.

(2) Without limiting the generality of subsection (1), a person must not obtain or attempt to obtain for another person or assist another person to obtain a benefit that the first-mentioned person knows is not payable to that other person.

117C Failure to pay full amount of transport accident charge

S. 117C inserted by No. 32/1988 s. 28, substituted by No. 84/1994 s. 46.

The owner of a registered motor vehicle must not pay as the transport accident charge an amount that the owner knows is less than the transport accident charge applicable to the motor vehicle in accordance with this Act and the regulations.

Penalty: 15 penalty units.

118 Obstructing officers

A person must not obstruct or hinder a person acting in the administration of this Act or the regulations.

Penalty: 15 penalty units.

119 General penalty

A person who is guilty of an offence against a provision of this Act for which a specific penalty is not prescribed is liable to a penalty not exceeding 10 penalty units for a first offence and not exceeding 20 penalty units for a second or subsequent offence against that provision.

S. 120 (Heading) inserted by No. 18/2022 s. 37(1).

120 Commencement of prosecutions

S. 120(1) amended by Nos 57/1989 s. 3(Sch. item 203.2(a)(b)), 68/2009 s. 97(Sch. item 123.4), substituted by No. 18/2022 s. 37(2).

(1) A charge-sheet charging an offence against—

(a) this Act; or

(b) the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act—

may be filed by the Commission or by any person authorised by the Commission to file charge-sheets on behalf of the Commission.

S. 120(1A) inserted by No. 84/1994 s. 43(3), amended by Nos 68/2009 s. 97(Sch. item 123.5), 37/2014 s. 10(Sch. item 170.4), 49/2019 s. 186(Sch. 4 item 42.2).

(1A) A charge-sheet charging an offence against section 109 or 117C may also be filed by a police officer or the Secretary or an employee in the Department who is authorised to do so by the Secretary.

S. 120(2) amended by No. 18/2022 s. 37(3).

(2) Any prosecution commenced in the name of the Commission is deemed, in the absence of evidence to the contrary, to have been commenced by the authority of the Commission.

S. 120(3) amended by No. 18/2022 s. 37(4).

(3) A person referred to in subsection (1) may appear on behalf of the Commission in any proceedings for an offence referred to in that subsection.

(4) Despite any law to the contrary, proceedings may be commenced under section 116, 117 or 117C within 3 years after the alleged offence occurred.

S. 120(4) inserted by No. 32/1988 s. 29, substituted by No. 71/2013 s. 28, amended by No. 18/2022 s. 37(5).

Part 9—General

S. 121 (Heading) substituted by No. 60/2007 s. 17(1).

S. 121 amended by No. 127/1986 s. 102(Sch. 4 item 29.19), repealed by No. 84/1994 s. 47, new s. 121 inserted by No. 94/2004 s. 32, amended by No. 60/2007 s. 17(2).

121 Agreements with providers of ambulance services, hospital services or road accident rescue services

The Commission may enter into an agreement with a person or body who provides one or more ambulance services, hospital services or road accident rescue services under which provision is made for the Commission to meet its obligations in respect of such services under section 60 by making payments in respect of classes or groups of cases or claims, rather than on an individual basis.

Ss 122, 123 repealed by No. 84/1994 s. 47.

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S. 123A inserted by No. 84/1994 s. 48.

123A Service provider not Commission employee

A person who provides relevant services to persons injured as a result of transport accidents is not by reason only of receiving payment for those services directly from the Commission to be taken to be an employee of the Commission.

S. 124 amended by No. 84/1994 s. 49(1).

124 Statement of Commission prima facie evidence of certain matters

(1) A statement in writing by the Chief Executive Officer of the Commission of the amount of payments made by the Commission under this Act in respect of an injury or death or of the amount of payments that it expects to make in respect of an injury or death is prima facie evidence of the amounts so paid or of the liability of the Commission to make such payments.

(2) A document that has written on it, or that is accompanied by, a statement signed by the Chief Executive Officer certifying that the document is a copy of all, or a specified part, of a specified original document is to be admitted in any proceeding as if it were the original document, or the part of the original document, as the case may be.

S. 124(2) inserted by No. 84/1994 s. 49(2), substituted by No. 94/2004 s. 33.

(3) Subsection (2) only applies if the document looks as if it has been produced by a mechanical or electronic process.

S. 124(3) inserted by No. 94/2004 s. 33.

(4) Subsection (2) does not apply if it is established that the document is not a true copy of the original document.

S. 124(4) inserted by No. 94/2004 s. 33.

124A Certificate of Commission

S. 124A inserted by No. 32/1988 s. 30.

A certificate purporting to be issued by the Commission certifying that—

(a) a person named in the certificate was liable to pay a transport accident charge; or

(b) a person has paid a transport accident charge specified in the certificate; or

(c) a person has not paid a transport accident charge specified in the certificate—

is admissible in evidence, and in the absence of evidence to the contrary, is proof of the matters so certified.

125 Payment after death of person entitled

If a person injured as a result of a transport accident dies after the Commission has determined the amount of a payment or benefit under section 47 to which the person was entitled immediately before the death but before the payment is made, the Commission is liable to make the payment to the legal personal representative of the person.

126 Assignment and attachment

S. 126(1) amended by No. 32/1988 s. 31(1).

(1) Subject to subsection (1A), an assignment of an amount payable under this Act is void as against the Commission.

S. 126(1A) amended by Nos 32/1988 s. 31(2), 84/1994 s. 55(1)(f).

(1A) The Commission, in accordance with the written request of a claimant, may on behalf of the claimant, pay an amount payable by the Commission to the claimant to an employer of the claimant or to an officer employed in the Commonwealth Department for the time being administering the Social Security Act 1991 of the Commonwealth.

S. 126(2) amended by No. 84/1994 s. 55(1)(g).

(2) Except as provided by the Family Law Act 1975 of the Commonwealth or by the **Maintenance Act 1965**, an amount payable by the Commission under Part 3 or Division 1 of Part 10 is not subject to attachment.

S. 126A (Heading) amended by No. 69/2009 s. 54(Sch. Pt 1 item 59.1).

S. 126A inserted by No. 84/1994 s. 50.

126A Application of legal professional privilege and client legal privilege

S. 126A(1) amended by No. 69/2009 s. 54(Sch. Pt 1 item 59.2).

(1) In determining whether legal professional privilege or client legal privilege attaches to a document held by the Commission, the fact that a purpose for which the document was created was the performance of a function or the exercise of a power under this Act other than the purpose of anticipated legal proceedings must be disregarded.

S. 126A(2) amended by No. 69/2009 s. 54(Sch. Pt 1 item 59.2).

(2) The Commission must waive any legal professional privilege or client legal privilege that arises by the application of subsection (1) if it is satisfied that any relevant legal proceedings have

been concluded or that the time within which to bring any relevant legal proceedings has expired.

126B Use of documents relating to claims

S. 126B inserted by No. 80/2010 s. 12.

Despite anything to the contrary in any Act (other than the **Charter of Human Rights and Responsibilities**) or at common law, a document produced or served or information acquired in respect of a proceeding or claim for compensation, damages, indemnity or other payment under, or in accordance with, this Act, whether before, on or after the commencement of section 12 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010**, may be used in, and for the purposes of, any other proceeding or claim for compensation, damages, indemnity or other payment under, or in accordance with, this Act.

126C Disclosure of information collected or received by the Secretary to the Department

S. 126C (Heading) amended by Nos 49/2019 s. 186(Sch. 4 item 42.3), 25/2025 s. 106(Sch. 1 item 47.2).

S. 126C inserted by No. 55/2013 s. 12.

(1) If requested to do so by the Commission, the Secretary to the Department or a relevant person may disclose relevant information to the Commission to enable the Commission—

S. 126C(1) amended by Nos 49/2019 s. 186(Sch. 4 item 42.4), 25/2025 s. 106(Sch. 1 item 47.3).

(a) to determine whether a person is entitled to claim for compensation under this Act;

(b) to carry out its functions in relation to any claim for damages or claim for indemnity referred to in Part 6 or any investigation relating to a transport accident;

(c) to ascertain whether a transport accident charge has been paid;

(d) to disseminate road safety information to persons to whom a driver licence or learner permit has been issued under the **Road Safety Act 1986**;

(e) to build statistical models that identify crash risk factors, compensation cost factors and the likelihood of injury or crashes for a road user or vehicle.

(2) In this section—

relevant information has the same meaning as it has in section 90I of the **Road Safety Act 1986**;

relevant person has the same meaning as it has in section 90I of the **Road Safety Act 1986**.

127 Access to police and other records

(1) The Chief Commissioner of Police must furnish to the Commission any information relating to a transport accident in the possession or under the control of the Chief Commissioner that the Commission requests.

S. 127(2) substituted by No. 84/1994 s. 51, amended by No. 73/1996 s. 97(e).

(2) The Commission must pay to the Chief Commissioner of Police the reasonable costs of furnishing information to the Commission under subsection (1) as are specified in a statement given to the Commission from time to time by the Chief Commissioner of Police.

S. 127(2A) inserted by No. 84/1994 s. 51.

(2A) For the purposes of subsection (2), ***reasonable costs*** means the costs incurred by the Chief Commissioner of Police in addition to the costs otherwise incurred in the performance of routine report taking and investigation functions.

(3) An employer of a person who is injured or dies as a result of a transport accident must furnish to the Commission such documents and other information as the Commission reasonably requires, including particulars about any payments made or to be made to the person as an employee or as payment for services rendered or to be rendered.

Penalty: 10 penalty units for a first offence and 20 penalty units for a second or subsequent offence.

* * * * *

S. 127(3A) inserted by No. 84/2000 s. 36, repealed by No. 71/2013 s. 29.

S. 127(4) substituted by No. 71/2013 s. 29.

(4) In subsection (3), ***employer*** includes a person who, at any time after the date which is 3 years immediately preceding the transport accident (including after the transport accident)—

(a) is an employer of the person who is injured or dies in the transport accident;

(b) enters into an arrangement with a person who is injured or dies in the transport accident, or a person acting on their behalf, for the undertaking of work by the person at a particular time and place, whether or not the arrangement—

(i) is an enforceable contract; or

(ii) provides for any reward for work done; or

(iii) specifies that the person is an employee or otherwise;

(c) acts on behalf of a person who is injured or dies in the transport accident in relation to entering into an agreement specified in paragraph (b).

S. 127A inserted by No. 32/1988 s. 32.

127A Powers of inspection

S. 127A(1) amended by No. 84/1994 s. 52.

(1) A person employed in the administration of this Act and authorised by the Commission may—

(a) with an interpreter or such other assistance as the person requires, enter, inspect and examine at any reasonable time any premises; and

S. 127A(1)(b) amended by No. 34/1998 s. 18.

(b) require a person in or on those premises to give information and produce documents; and

S. 127A(1)(c) amended by No. 34/1998 s. 18.

(c) inspect, examine and make extracts from, or copies of, any documents in or on those premises; and

(d) exercise such other powers as are necessary—

for the purpose of determining whether the provisions of this Act are being contravened or generally of enforcing the provisions of this Act.

(2) If a person exercising powers under subsection (1) uses the assistance of an interpreter—

(a) a request for information made on behalf of that person by the interpreter shall be deemed to have been made by that person; and

(b) any answer given to the interpreter shall be deemed to have been given to that person.

(3) The Commission must give to each officer authorised for the purposes of this section a certificate of the authority.

(4) An authorised officer must produce the certificate of authority if requested to do so when exercising powers under this section.

127B Offence to obstruct inspection

S. 127B inserted by No. 32/1988 s. 32.

A person must not—

(a) obstruct or hinder a person exercising powers under section 127A; or

(b) without reasonable excuse, refuse or fail to comply with a requirement made by a person exercising powers under section 127A; or

(c) assault, intimidate or threaten, or attempt to assault, intimidate or threaten a person exercising powers under section 127A.

Penalty: 25 penalty units or imprisonment for six months.

128 Signature

(1) A document or copy of a document bearing the written, stamped or printed signature of the Chief Executive Officer of the Commission is until the contrary is proved, deemed to have been duly signed by the Chief Executive Officer.

(2) Judicial notice must be taken of the signature of the Chief Executive Officer and of the fact that that person holds or has held the office of Chief Executive Officer of the Commission.

129 Service of documents by Commission

(1) Any certificate, notice, form or other document required or authorized by this Act or the regulations to be served or given by the Commission shall be deemed to have been duly served or given—

(a) if delivered personally to, or left at the last known place of abode or business in or out of the State of the person on or to whom the notice or document is to be served or given; or

(b) if sent by pre-paid letter post, addressed to the person on or to whom the notice or document is to be served or given at the last known place of business or abode in or out of the State.

(2) If subsection (1)(b) applies service shall be deemed to have been effected two days after the date of posting, unless the contrary is proved.

S. 129(3) amended by No. 44/2001 s. 3(Sch. item 114).

(3) The provisions of this section are in addition to, and not in derogation from any other provisions of this Act or the provisions of sections 109X and 601CX of the Corporations Act.

130 Service of documents on Commission

Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Commission for the purposes of this Act may be served by being lodged at the office of the Commission with a person employed in the administration of this Act and authorized in writing by the Commission to accept service of documents on behalf of the Commission.

S. 131 amended by Nos 32/1988 s. 33, 84/1994 s. 53, 94/2004 s. 34, 60/2007 s. 18, 67/2013 s. 649(Sch. 9 item 32(13)), 67/2014 s. 147(Sch. 2 item 37), substituted by No. 18/2022 s. 38.

131 Secrecy provision

(1) A specified person, except in accordance with this section, must not—

(a) make a record of, or disclose to a person, restricted information; or

(b) use restricted information.

Penalty: 10 penalty units.

(2) A specified person may make a record of, disclose restricted information to a person or use restricted information—

(a) for the purpose of performing a function or duty, or exercising a power, under this Act or another Act; or

(b) if authorised to do so under another Act or law; or

(c) for the purpose of, or in connection with, a legal proceeding; or

(d) in the course of a proceeding before a court or tribunal.

(3) A specified person may disclose restricted information if—

(a) the person to whom the restricted information relates consents to the disclosure; or

(b) the information is in the public domain.

(4) A specified person who is authorised by the Commission to do so may disclose restricted information to—

(a) the Victorian WorkCover Authority, or an authorised insurer or self-insurer within the meaning of that Act if the restricted information relates to a person who is a worker who is or has received compensation under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013**; or

(b) the NDIA if the restricted information relates to a person who is a participant within the meaning of the NDIS Act; or

(c) a private health insurer that has made an application under section 76A, if that information relates to the application; or

(d) a person who has responsibility for the administration of a welfare, benefit or compensation scheme of a State or a Territory or the Commonwealth; or

(e) a regulatory body as authorised by section 131A; or

(f) a law enforcement agency if the specified person believes, on reasonable grounds, that the disclosure of the information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare; or

(g) a law enforcement agency if the specified person believes, on reasonable grounds, that the information is relevant to the investigation of the commission of—

(i) an offence against this Act, or a law of Victoria relating to the payment of a benefit or compensation, that involves fraud or dishonesty; or

(ii) an offence against a law of the Commonwealth or another State or a Territory relating to the payment of a benefit or compensation that involves fraud or dishonesty; or

(h) a coroner if the information is relevant to—

(i) an investigation of a death by the coroner under Part 4 of the **Coroners Act 2008**; or

(ii) an inquest into a death that the coroner is holding under the **Coroners Act 2008**; or

(i) the Australian Statistician, but only in a way that does not identify the person to whom the restricted information relates; or

(j) a public entity or entity established by a law of the Commonwealth, or another State or a Territory, that is prescribed for the purposes of this paragraph in the circumstances that are prescribed for the purposes of this paragraph.

(5) In this section—

law enforcement agency means—

(a) Victoria Police or the police force or police service of the Commonwealth or of any other State or Territory; or

(b) any other body or person responsible for the performance of functions or activities directed to—

(i) the prevention, detection, investigation, prosecution or punishment of offences against the laws of Victoria, the Commonwealth or any other State or Territory; or

(ii) the enforcement of infringement penalties (by whatever name they are known in the relevant jurisdiction) issued under a law of Victoria, the Commonwealth or any other State or Territory; or

(iii) the enforcement of the orders of a court; or

(c) a body or person authorised by a law of Victoria, the Commonwealth or any other State or Territory to enforce a warrant;

NDIA has the same meaning as ***Agency*** has in the NDIS Act;

NDIS Act means the National Disability Insurance Scheme Act 2013 of the Commonwealth;

public entity has the same meaning as in the **Public Administration Act 2004**;

restricted information means information—

(a) that identifies or could lead to the identification of any person; and

(b) that is or was acquired by the person by reason of being or having been a specified person;

specified person means a person—

(a) who is, or has at any time been, appointed for the purposes of this Act; or

(b) who is, or has at any time been employed or engaged by the Commission; or

(c) who is, or has at any time been, authorised to perform or exercise any function or power of, or any function or power on behalf of, the Commission under this or any other Act.

S. 131A inserted by No. 94/2004 s. 35.

131A Commission may refer misconduct etc. to appropriate body and suspend payment

(1) This section applies if—

(a) a service is provided to a person who was injured in a transport accident and the provision of the service is wholly or partially funded by the Commission (whether directly or indirectly); and

(b) the Commission is concerned about—

(i) the adequacy, appropriateness or frequency of the service as provided by the service provider; or

(ii) the competence with which the service was provided by the service provider; and

(c) the conduct of the trade or profession of the service provider is regulated by a regulatory body that has a statutory power to investigate the conduct that the Commission is concerned about.

(2) The Commission—

(a) may refer the conduct of the service provider to that regulatory body; and

(b) may provide to that body any information it has concerning the provision of the service or the service provider that is necessary to enable the Commission's concerns to be effectively investigated—

if the person to whom the service was provided has consented in writing to the referral and to the disclosure of the information, or if, in the opinion of the Commission, that consent will not be reasonably provided.

(3) The Commission may also, by written notice to the service provider, suspend the payment of costs by it for any services provided by the provider (whether before or after the referral).

(4) If the regulatory body advises the Commission in writing within 6 months after the referral that it intends to take any form of disciplinary or legal action against the service provider as a result of the referral, the suspension continues until that body advises the Commission in writing that it

intends to take no further action against the service provider as a result of the referral.

(5) In any other case, the suspension continues until—

(a) the regulatory body advises the Commission in writing that it intends to take no further action in respect of the referral; or

(b) the expiry of 6 months—

whichever occurs first.

(6) If a debt was suspended under this section and the suspension ends and the debt still exists, the debt is to be treated as if it first fell due 7 days after the day the suspension ends.

132 Regulations

(1) The Governor in Council may make regulations for or with respect to prescribing any one or more of the following—

(a) forms to be used for the purposes of this Act;

(b) fees for the purposes of this Act;

S. 132(1)(c) amended by No. 34/1998 s. 19.

(c) fees for ambulance services, hospital services, medical services, nursing services or rehabilitation services, other than fees for services which are prescribed by or under the **Health Services Act 1988**;

S. 132(1)(d) repealed by No. 34/1998 s. 9(b), new s. 132(1)(d) inserted by No. 94/2004 s. 27(4).

(d) individual funding agreements, including the form of those agreements and additional matters and details that are to be included in those agreements;

S. 132(1)(e) repealed by No. 84/2000 s. 35(2).

* * * * *

(f) the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act;

* * * * *

S. 132(1)(g) repealed by No. 52/1998 s. 311(Sch. 1 item 95.8(a)).

(h) any matter which is authorized or required to be prescribed for carrying out or giving effect to this Act.

* * * * *

S. 132(2) substituted by No. 127/1986 s. 102(Sch. 4 item 29.20), repealed by No. 84/1994 s. 47.

(3) Regulations made under this Act—

(a) may be of general or of specially limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may apply, adopt or incorporate, with or without modification any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and

(d) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.

S. 132(4) repealed by No. 52/1998 s. 311(Sch. 1 item 95.8(b)).

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S. 132(5) inserted by No. 84/1994 s. 54, repealed by No. 34/1998 s. 9(b).

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S. 132A inserted by No. 73/1998 s. 12.

132A Transitional provisions

The amendment made to section 39(4)(e) of this Act by section 11 of the **Road Safety (Further Amendment) Act 1998** only applies to and in relation to a transport accident occurring on or after the day on which that section of that Act comes into operation.

S. 132B inserted by No. 26/2000 s. 33.

132B Supreme Court-limitation of jurisdiction

It is the intention of section 107A as inserted by section 29 of the **Accident Compensation (Common Law and Benefits) Act 2000** to alter or vary section 85 of the **Constitution Act 1975**.

S. 132C inserted by No. 54/2000 s. 27.

132C Supreme Court—limitation of jurisdiction

It is the intention of section 107A, as amended by section 25 of the **Victims of Crime Assistance (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 132D inserted by No. 80/2010 s. 13.

132D Supreme Court—limitation of jurisdiction

It is the intention of section 93A as inserted by section 11 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

Part 10—Accidents before commencement of section 34

Division 1—Motor accident benefits

133 Application of Division

This Division applies to and with respect to accidents that occurred before the date on which section 34 comes into operation.

134 Definitions

In this Division—

accident includes an incident caused by or arising out of the use, in any other State or in a Territory, of a motor car;

authorised insurer means a person who has at any time been an authorised insurer within the meaning of Division 1 of Part V of the **Motor Car Act 1958** and includes the Commission as the successor in law of the person who was, immediately before the commencement of section 34, such an authorised insurer;

Board means the Motor Accidents Board established under the repealed Act;

employee and ***employer*** have the same meanings as in Division 2 of Part VI of the Income Tax Assessment Act 1936 of the Commonwealth as amended and in force for the time being;

health fund means—

S. 134 def. of *health fund* amended by No. 84/1994 s. 55(1)(h).

(a) a registered health benefits organisation as defined in the National Health Act 1953 of the Commonwealth; or

(b) a fund which provides insurance against the cost of an ambulance service;

income includes an amount of salary or wages but does not include an amount paid or payable by the Board under the repealed Act or the Commission under this Division;

injury means bodily injury;

S. 134 def. of *medical practitioner* amended by No. 23/1994 s. 118(Sch. 1 item 57.2), substituted as def. of *registered medical practitioner* by No. 97/2005 s. 182(Sch. 4 item 51.2), repealed by No. 60/2007 s. 21(a).

* * * * *

medical service includes—

(a) attendance, examination or treatment by a medical practitioner; and

(b) the provision to a person by a medical practitioner of a certificate required for the purposes of this Division or the repealed Act;

S. 134 def. of *registered medical practitioner* inserted by No. 60/2007 s. 21(b), substituted by No. 13/2010 s. 51(Sch. item 56.4).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

registered motor car means—

(a) a motor car that is registered in accordance with the **Motor Car Act 1958**; or

(b) a motor car that is not so registered but is usually kept in Victoria and is not exempt from the operation of all or any of the provisions of Part II of that Act; or

(c) a motor car in respect of which a permit granted under section 11A or 19 of that Act is in force; or

(d) a recreation vehicle registered in accordance with the **Transport (Compliance and Miscellaneous) Act 1983**; or

(e) a motor vehicle registered with a Registration Authority in Victoria under the Interstate Road Transport Act 1985 of the Commonwealth or, if that Act is amended, that Act as amended and in force for the time being;

S. 134 def. of *registered motor car* inserted by No. 32/1988 s. 34, amended by No. 6/2010 s. 203(1) (Sch. 6 item 46.2) (as amended by No. 45/2010 s. 22).

repealed Act means the **Motor Accidents Act 1973**;

therapeutic service includes—

(a) attendance, examination or treatment by a registered dentist, registered optician, registered masseur or registered podiatrist; and

(b) the provision and the repair, adjustment or replacement (as may from time to time become necessary) of skiagrams crutches artificial members eyes or teeth or spectacle glasses or hearing

S. 134 def. of *therapeutic service* amended by No. 78/1997 s. 97(Sch. item 3.2).

aids including (without limiting the generality of the foregoing) the repair or replacement of crutches artificial members eyes or teeth or spectacle glasses or hearing aids destroyed or damaged at the time of the accident causing injury to the person for whom the repair or replacement is provided; and

(c) the provision to or for a person otherwise than as a patient in a hospital of medical or surgical aids to rehabilitation or treatment or assistance for or with respect to his or her rehabilitation or of curative appliances or apparatus; and

(d) the provision, otherwise than pursuant to a prescription of a medical practitioner, by a registered pharmaceutical chemist of medicines or curative appliances or materials; and

(e) the provision to a person by a registered dentist, registered optician, registered masseur or registered podiatrist of a certificate required by the person by reason of the injury resulting from the accident.

135 Compensation under this Division

(1) The Commission is liable to make payments under this Division in respect of a person to whom or in relation to whom this Division applies.

(2) This Division applies to and in relation to—

(a) a person resident in Victoria who sustained injuries that were, or whose death was, caused by or arose out of the use in Victoria

of a motor car before the commencement of section 34; and

(b) a person who sustained injuries that were, or whose death was, caused by or arose out of the use in Victoria before that commencement—

(i) of a registered motor car; or

(ii) of a motor car the identity of which cannot be established; and

(c) a person who sustained injuries that were, or whose death was, caused by or arose out of the use in another State or in a Territory of a registered motor car on or after 15 December 1982 and before that commencement, if the person was the driver of or passenger in the motor car when the accident occurred.

S. 135(2)(c) amended by No. 32/1988 s. 35.

(3) This Division does not apply to or in relation to a person who is injured or dies as the result of an accident if, when the accident occurred the person—

(a) was in or on a railway train operated by the Public Transport Corporation and there was not in force at that time an agreement referred to in section 71 of the repealed Act relating to that railway train made between the Board and the Corporation; or

S. 135(3)(a) amended by No. 44/1989 s. 41(Sch. 2 item 42.7).

(b) was in or on a railway train operated by a person other than the Public Transport Corporation and there was not in force at that time an agreement referred to in section 72 of the repealed Act relating to that railway train made between the Board and that other person; or

S. 135(3)(b) amended by No. 44/1989 s. 41(Sch. 2 item 42.8).

S. 135(3)(c) amended by No. 44/1989 s. 41(Sch. 2 item 42.9).

(c) was in or on a tram or motor car operated by the Public Transport Corporation and there was not in force at that time an agreement referred to in section 73 of the repealed Act made between the Board and that Corporation; or

S. 135(3)(d) amended by No. 44/1989 s. 41(Sch. 2 item 42.10).

(d) was in or on a tram operated by a person other than the Public Transport Corporation and there was not in force at that time an agreement referred to in section 74 of the repealed Act relating to that tram made between the Board and that other person; or

(e) was not a resident of Victoria and was in a motor car owned by the person—

S. 135(3)(e)(i) amended by No. 6/2010 s. 203(1) (Sch. 6 item 46.3) (as amended by No. 45/2010 s. 22).

(i) that was not registered in accordance with the **Motor Car Act 1958** or the **Transport (Compliance and Miscellaneous) Act 1983**; and

(ii) that was required to be registered in another State or in a Territory or in any country outside Australia and was not so registered.

(4) In this section ***registered motor car*** means—

(a) a motor car—

(i) that was registered in accordance with the **Motor Car Act 1958**; or

(ii) was not so registered but was required to be so registered and was not exempt from the operation of all or any of the provisions of Part II of that Act; or

(iii) in respect of which a permit granted under section 11A or 19 of that Act was in force; or

(b) a recreation vehicle registered in accordance with the **Transport (Compliance and Miscellaneous) Act 1983**.

S. 135(4)(b) amended by No. 6/2010 s. 203(1) (Sch. 6 item 46.4) (as amended by No. 45/2010 s. 22).

(5) In this section ***Public Transport Corporation*** has the same meaning as ***former Corporation*** has in the **Transport (Compliance and Miscellaneous) Act 1983**.

S. 135(5) inserted by No. 54/2001 s. 37, amended by No. 6/2010 s. 203(1) (Sch. 6 item 46.5) (as amended by No. 45/2010 s. 22).

136 Payment to persons not resident in Victoria

Where the Commission is not liable to make payments under this Division in respect of a person who is injured or dies by reason only of that person not being resident in Victoria, the Commission may, if it appears to the Commission that that person was, on the date of the accident from which the injury or death resulted, likely to reside in Victoria for a period of not less than six months immediately after that date, make payments under this Division in respect of that person.

137 Payments where other compensation applies

(1) If a person is or appears to be entitled to compensation in respect of an injury or death under—

(a) the **Accident Compensation Act 1985**;

(b) the **Workers Compensation Act 1958**;

(c) section 68 of the **Country Fire Authority Act 1958**;

S. 137(1)(d) amended by No. 24/2006 s. 6.1.2(Sch. 7 item 41.3).

(d) Part 5.6 of the **Education and Training Reform Act 2006**;

S. 137(1)(e) substituted by No. 53/2000 s. 98(2).

(e) Part 8 of the **Juries Act 2000**;

(f) the **Police Assistance Compensation Act 1968**;

(g) the **Victoria State Emergency Service Act 1981**;

(h) the **Emergency Management Act 1986**;

S. 137(1)(i) amended by No. 84/1994 s. 55(1)(i).

(i) the Compensation (Commonwealth Government Employees) Act 1971 of the Commonwealth of Australia as amended and in force from time to time; or

(j) another law of the Commonwealth or under a law of another State or of a Territory that is, in relation to a law referred to in a preceding paragraph a corresponding law—

the Commission is not liable to make payments under this Division to that person in respect of that injury or death.

(2) The Commission may, if it so determines, make payments under this Division to or in respect of a person who is or appears to be entitled to compensation under an Act or law referred to in subsection (1).

(3) The Commission must not make a payment under subsection (2) to or in respect of a person who is or appears to be entitled to compensation in respect of an injury or death under the **Workers Compensation Act 1958** unless—

(a) the Commission has determined the amount of its liability under section 8 of that Act; and

(b) the Commission deducts that amount from the payment; and

(c) the sum of the amount and the payment does not exceed $20 800.

138 Payments where person entitled to accident compensation

(1) The Commission must not make a payment under this Division to or in respect of a person who is or appears to be entitled to compensation in respect of an injury or death under the **Accident Compensation Act 1985** except under section 145 or as provided in this section.

(2) If the Transport Accident Commission is liable to make payments to the Accident Compensation Commission or an employer under section 137 of the **Accident Compensation Act 1985** in respect of an amount of compensation paid to a person by the Accident Compensation Commission or an employer, the Transport Accident Commission may, if it so determines, after it has satisfied that liability, make payment (the total of which does not exceed $20 800) to the person of compensation for deprivation or impairment of earning capacity.

(3) The sum of amounts paid by the Commission under subsection (2) in respect of an injury or death must not exceed $20 800.

(4) If the Commission receives notice that a claim for compensation under the **Accident Compensation Act 1985** in respect of an injury is rejected, the Commission may, if it so determines, make payments to the person (the total of which does not exceed $20 800) of compensation for deprivation or impairment of earning capacity.

(5) The Commission may make payments under subsection (4) notwithstanding that an application may be made in respect of the rejection of the claim but shall not make payments under that subsection after the claim is accepted.

139 Commission not liable for payments in certain circumstances

(1) The Commission is not liable to make any payment of compensation under section 141 to a person who is injured as the result of an accident that occurred—

(a) while that person was driving a motor car at a time when—

(i) the person was under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor car; or

(ii) the percentage of alcohol in the blood expressed in grams per 100 millilitres of blood was more than ·05 per centum—

if the person is convicted of so driving; or

(b) while that person was driving a motor car if the person has never held a licence to drive a motor car of that class under the **Motor Car Act 1958** or a corresponding previous

enactment or under a law that is in relation to the **Motor Car Act 1958** a corresponding law or under a law of another country; or

(c) while that person was driving a motor car if the person's licence under the **Motor Car Act 1958** to drive the motor car or, where the person does not hold such a licence but holds a licence under a law that is in relation to that Act, a corresponding law or under a law of another country, that licence, is suspended or cancelled; or

(d) while that person was in an uninsured motor car owned by the person; or

(e) while that person was using a motor car for or in connexion with or in the commission of an indictable offence, stealing or attempting to steal a motor car, resisting or preventing the lawful apprehension or detention of himself or herself or any other person or intentionally inflicting or attempting to inflict injury to himself or herself or another person; or

(f) while that person was in a motor car in a place other than a highway and taking part in a race or other competition or trial or testing the motor car in preparation for a race competition or trial.

(2) For the purposes of subsection (1)—

(a) a person who drives a motor car other than a motor cycle at a particular time shall not be deemed never to have held a licence to drive a motor car of that class if at that time the person was the holder of a learner driver's permit in respect of a motor car of that class under the **Motor Car Act 1958** or under a law that is, in relation to that Act, a

corresponding law and, in the case of a motor car other than a motor cycle, had a licensed driver (not being the holder of a licence issued on probation) sitting beside him or her; and

(b) a person who drives a motor cycle at a particular time shall not be deemed never to have held a licence to drive a motor cycle if at that time he or she was the holder of a motor cycle learner's permit under the **Motor Car Act 1958** or under a law that is in relation to that Act a corresponding law.

(3) If, by reason only of the operation of subsection (1)(a)(ii), the Commission is not liable to make a payment to a person the Commission is liable to make the payment if that person is able to satisfy the Commission that the percentage of alcohol in the blood did not contribute in any way to the accident.

(4) If—

S. 139(4)(a) amended by No. 68/2009 s. 97(Sch. item 123.6).

(a) a person who is injured as a result of an accident applies for compensation under section 141 and a charge-sheet charging an offence has been filed or it appears to the Commission that a charge-sheet charging an offence may be filed against the person; and

S. 139(4)(b) amended by No. 68/2009 s. 97(Sch. item 123.7).

(b) under subsection (1)(a) the Commission is not liable to make a payment to that person if convicted of that offence—

the Commission may hold that payment—

S. 139(4)(c) amended by No. 68/2009 s. 97(Sch. item 123.8).

(c) where the charge-sheet is filed within twelve months of the date of the accident—until the charge is heard or withdrawn; or

(d) where no such charge-sheet is filed within twelve months of the date of the accident—until the expiration of those twelve months.

S. 139(4)(d) amended by No. 68/2009 s. 97(Sch. item 123.8).

140 No requirement to pay if claim less than $60

The Commission is not liable to make any payment of compensation under section 141 to a person in respect of an injury or death where the amount of compensation to which that person would, but for this section, be entitled to receive under that section in respect of that injury or death is less than $60.

141 Compensation for deprivation or impairment of earning capacity

(1) If a person injured as a result of an accident suffers deprivation or impairment of earning capacity by reason of the injury and, before the commencement of this section, made an application under the repealed Act or makes an application under Part 4 for a payment under this section or the corresponding provision of the repealed Act in respect of that deprivation or impairment, the Commission must, subject to this Act, pay to that person—

(a) such amount as, in the opinion of the Commission, will adequately compensate that person for the deprivation or impairment of earning capacity suffered; or

(b) $20 800—

whichever is the lesser.

(2) The Commission must, for the purposes of determining under subsection (1)(a) an adequate amount of compensation in relation to any person, have regard to the loss of earnings which that

person has incurred and the likely loss of future earnings which that person will incur by reason of the injury.

(3) In subsection (2), ***earnings*** means such amount as, in the opinion of the Commission, the person concerned would have received by way of income from personal exertion but for the injury less such amount as the Commission reasonably considers to be the amount of income tax that would have been payable on those earnings under the Income Tax Assessment Act 1936 of the Commonwealth as amended and in force for the time being.

(4) In determining for the purposes of subsection (1) the extent to which the earning capacity of any person has been impaired by reason of an injury, the Commission shall have regard to all relevant matters and in particular to—

(a) the nature of the injury; and

(b) the nature of the trade, business, profession or vocation in which that person is engaged or is likely to be engaged; and

(c) medical evidence relating to the injury.

(5) The Commission must in every case take into account in reduction of the sum assessed by it under subsection (1)(a) the aggregate amount of any benefits or other payments (not including an award of damages recovered in any court) which—

(a) the person concerned has received or is entitled to receive by reason of the injury; and

(b) are, in the opinion of the Commission, payable by way of compensation to that person for the deprivation or impairment of earning capacity suffered.

(6) In subsection (3) ***income from personal exertion*** in relation to any person means the amount that is the income of that person consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by that person either alone or in partnership with any other person, any amount received as bounty or subsidy in carrying on a business, the income from any property where that income forms part of the emoluments of any office or employment of profit held by that person, and any profit arising from the sale by that person of any property acquired by that person for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include—

S. 141(6) amended by No. 27/2001 s. 4(Sch. 2 item 4.13).

(a) interest, unless that person's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to that person for goods supplied or services rendered by that person in the course of that person's business; or

(b) rents or dividends.

142 Payment to dependent partner

S. 142 (Heading) inserted by No. 27/2001 s. 4(Sch. 2 item 4.14).

If a person dies as a result of an accident within the period of two years after the date of the accident and a dependent partner of that deceased person before the commencement of this section made an application under the repealed Act or makes a claim under Part 4 for a payment under this section or the corresponding provision of the repealed Act, the Commission must, subject to this Act, pay to that dependent partner such one of the following amounts as is appropriate:

S. 142 amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

S. 142(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(a) If there are no dependent children of the deceased person—an amount calculated in accordance with the formula—

$$\frac{[D - E] \times \frac{Y}{Z}}{C}$$

where—

D is the amount that would have been payable (or that would but for the operation of section 139 have been payable) to the deceased person under section 141 had that deceased person—

(i) survived the accident for at least a period of two years; and

(ii) suffered by reason of the accident, in the opinion of the Commission, a deprivation of earning capacity (if any) throughout that period of two years.

E is the amount of any payment made to the deceased person prior to death pursuant to section 141.

Y is the income of the deceased person during whichever of the following periods the Commission selects—

(i) the period of twelve months or such shorter period as the Commission determines ending on the date on which the deceased person died; or

(ii) the period of twelve months ending on the 30 June last before the date on which the deceased person died.

Z is the aggregate of the income of the deceased person and the dependent partner during the period used in calculating Y.

C is—

(i) if there is more than one dependent partner of the deceased person and the sum of the fractions $\frac{Y}{Z}$ as they are calculated in relation to each dependent partner is greater than one, that sum; or

(ii) one; and

(b) If there are dependent children of the deceased person—an amount calculated in accordance with the formula—

S. 142(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

$$B - \frac{NB}{6}$$

where—

B is the amount that would have been payable to that partner pursuant to paragraph (a) had there been no dependent children of the deceased person.

N is the total number of dependent children of the deceased person or, where there are more than three such children, the number 3.

143 Payment to dependent child

(1) If a person dies as a result of an accident within the period of two years after the date of the accident and a dependent child of that deceased person before the commencement of this section

made an application under the repealed Act or makes a claim under Part 4 for a payment under this section or the corresponding provision of the repealed Act, the Commission must, subject to this Act, pay to the dependent child such one of the following amounts as is appropriate:

S. 143(1)(a) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(a) If that child is under the age of sixteen years and there is no dependent partner of the deceased person—an amount calculated in accordance with the formula—

$$\frac{D - E}{N}$$; or

S. 143(1)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(b) If that child is under the age of sixteen years and there is a dependent partner of the deceased person—an amount calculated in accordance with the formula—

$$\frac{D - E}{2N}$$; or

S. 143(1)(c) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(c) If that child has attained the age of sixteen years and there is no dependent partner of the deceased person—an amount calculated in accordance with the formula—

$$\frac{[D - E] \times \frac{A}{V}}{N}$$; or

S. 143(1)(d) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(d) If that child has attained the age of sixteen years and there is a dependent partner of the deceased person—an amount calculated in accordance with the formula $\frac{W}{2}$.

(2) For the purposes of subsection (1)—

(a) D is the amount that would have been payable (or that would but for the operation of section 139 have been payable) to the deceased person under section 141 had that deceased person—

(i) survived the accident for at least a period of two years; and

(ii) suffered by reason of the accident, in the opinion of the Commission, a deprivation of earning capacity (if any) throughout that period of two years; and

(b) E is the amount of any payment made to the deceased person prior to death pursuant to section 141; and

(c) N is the number of dependent children of the deceased person or, where there are less than three such children the number 3; and

(d) A is the income of the deceased person during whichever of the following periods the Commission selects—

(i) the period of twelve months or such shorter period as the Commission determines ending on the date on which the deceased person died; or

(ii) the period of twelve months ending on the 30 June last before the date on which the deceased person died; and

(e) V is the aggregate of the income of the deceased person and the dependent child during the period used in calculating A; and

(f) W is the amount that would have been payable to the dependent child under subsection (1)(c) had there been no dependent spouse of the deceased person.

(3) If the Commission determines to make a payment under this section to a dependent child of a deceased person, the payment may be made to the child or to such person on behalf of the child as the Commission determines.

S. 144 amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

144 Amount payable to be reduced in certain cases

If a dependent partner or a dependent child of a deceased person makes an application under section 142 or 143, the amount payable in respect of the application must be reduced by any amount which has already been awarded to the dependent partner or dependent child in respect of the death of the deceased person in a judgment or order for damages made in proceedings under Part III of the **Wrongs Act 1958**.

145 Payments in respect of expenses other than loss of income

(1) If a person injured as a result of an accident incurs costs or expenses by reason of the injury and before the commencement of this section made an application under the repealed Act or makes a claim under Part 4 for payments under this section or the corresponding provision of the repealed Act in respect of those costs or expenses, the Commission must, subject to this Act, make payments to that person in respect of—

(a) the reasonable costs of hospital services provided in Victoria, by reason of the injury, in respect of that person by a hospital in respect of which, at the time those services were provided, there was not in force an

agreement made under section 66 of the repealed Act or section 122 of this Act; and

(b) the reasonable costs of ambulance services provided in Victoria, by reason of the injury, in respect of that person by a person in respect of whom, at the time those services were provided, there was not in force an agreement made under section 67 of the repealed Act or section 122 of this Act; and

(c) the reasonable costs of medical services provided in Victoria, by reason of the injury, in respect of that person by a medical practitioner in respect of whom, at the time those services were provided, there was not in force an agreement or arrangement made under section 68 of the repealed Act or section 122 of this Act; and

(d) nursing services provided in Victoria, by reason of the injury, in respect of the person injured by a person in respect of whom, at the time those services were provided, there was not in force an agreement or arrangement made under section 68A of the repealed Act or section 122 of this Act; and

(e) therapeutic services provided in Victoria, by reason of the injury, in respect of the person injured, by a person in respect of whom, at the time those services were provided, there was not in force an agreement or arrangement made under section 68A of the repealed Act or section 122 of this Act; and

(f) the reasonable costs incurred of obtaining from a registered pharmaceutical chemist in Victoria medicines or curative appliances or materials prescribed by a medical practitioner by reason of the injury for the person injured; and

(g) household help or child care where that person, during the period of one month preceding the accident, was engaged mainly in housekeeping duties or the care of a child and did not receive salary or wages in respect of those duties or that care—

(i) the reasonable costs incurred after the date of the accident in employing another person to undertake those duties or that care provided that such reasonable costs exceed $20; or

(ii) $2000—

whichever is the lesser; and

(h) such other reasonable costs or expenses incurred in the Commonwealth by that person by reason of the injury as the Commission thinks fit to take into account.

(2) If a person who dies in an accident incurs costs or expenses of any kind described in subsection (1) by reason of the accident and the legal personal representative of the person before the commencement of this section made an application under the repealed Act or makes a claim under Part 4 for payments under this section or the corresponding provision of the repealed Act in respect of those costs or expenses, the Commission must, subject to this Act, make such payments to the applicant in respect of those costs or expenses as would be payable under subsection (1).

(3) Where a parent or guardian of any child injured and admitted to hospital as a result of an accident incurs reasonable travelling or accommodation expenses by reason of visiting that child in hospital and before the commencement of this section made an application under the repealed

Act or makes a claim under Part 4 for payments under this section or the corresponding provision of the repealed Act in respect of those expenses, the Commission must, subject to this Act, make payments to that person in respect of such expenses.

(4) The Commission is not liable under subsection (3) to make payments exceeding $500 in total to the parents or guardians of any child in respect of any particular accident.

(5) The Commission is not liable under subsection (3) to make any payment to the parent or guardian of any child injured and admitted to hospital as a result of an accident if the Commission is not liable to make any payment to or on behalf of that child in respect of an injury suffered in that accident.

(6) In this section ***child*** means any person who has not attained the age of sixteen years.

(7) The Commission must not make payments under this section in respect of an accident that occurred more than five years before the appointed day within the meaning of the **Accident Compensation Act 1985** except in respect of costs incurred within five years after the date of the accident.

(8) The Commission must not make payments under this section in respect of more than 80 per centum of the reasonable costs or expenses referred to in subsection (1)(a), (b), (c), (d), (e), (g) or (h) if the services in respect of which they were incurred were provided before the appointed day within the meaning of the **Accident Compensation Act 1985**.

(9) If a person dies as a result of an accident and a person incurs costs or expenses by reason of the death and before the commencement of this section made an application under the repealed Act or makes a claim under Part 4 for payments under this section or the corresponding provision of the repealed Act in respect of those costs or expenses, the Commission must, subject to this Act, make payments to that person in respect of—

(a) the reasonable costs incurred in the Commonwealth of the burial or cremation of the deceased person; and

(b) household help or child care where the deceased person, during the period of one month preceding the accident, was engaged mainly in housekeeping duties or the care of a child and did not receive salary or wages in respect of those duties or that care—

(i) the reasonable costs incurred after the date of the accident in employing another person to undertake those duties or that care provided that such reasonable costs exceed $20; or

(ii) $2000—

whichever is the lesser.

(10) The reasonable costs of burial or cremation of a person who dies as a result of an accident shall not exceed such amount or amounts (if any) as are fixed for the purposes of this section by order or successive orders of the Governor in Council published in the Government Gazette.

(11) Where a person who dies as a result of an accident dies more than 80 kilometres from the person's usual place of residence, the Commission must make a payment with respect to that part of the cost incurred in the Commonwealth of

transporting the body to the burial or cremation that relates to transporting the body from the place of death to 80 kilometres from that residence.

(12) If the Commission has determined to make a payment under section 141, 142 or 143 to or in relation to a person who is injured or who dies as a result of an accident—

(a) the Commission is not liable to make any payment under subsection (1)(g) or subsection (9)(b) to any person in respect of that accident; and

(b) if the Commission has prior to making that determination made any payment under subsection (1)(g) or subsection (9)(b) to any person in respect of that accident the amount of the payment made under section 141, 142 or 143 shall be reduced by the amount of that payment.

(13) If—

(a) the Commission has determined to make a payment under section 141, 142 or 143 to or in relation to a person who is injured or who dies as a result of an accident the Commission may also make a payment under subsection (1)(g) or subsection (9)(b) to a person in respect of that accident; and

(b) the Commission has made a payment under subsection (1)(g) or subsection (9)(b) to a person in respect of an accident it may determine to make a payment under section 141, 142 or 143 in respect of that accident which is not reduced by the amount of that payment.

(14) If a person who is injured or who dies in an accident incurs costs or expenses in respect of the provision of services or the supply of goods in any other State or Territory by any person, hospital or other body, the Commission must, subject to this Act, if—

(a) the services or goods are of such a kind as is described in the foregoing provisions of this section; and

(b) the person, hospital or other body that provided those services or supplied those goods is by law qualified to provide those services or supply those goods in that place—

make such payments to that person in respect of those services or goods as would be payable by the Commission under this section if those services were provided or those goods were supplied in Victoria.

(15) The Commission may refuse to make a payment under this section to a person who incurs costs or expenses as a result of an accident in respect of so much of the costs or expenses as relates to any period ending more than three months prior to the date on which the Commission is furnished with such evidence relating to the costs and expenses as the Commission may reasonably require.

(16) Where the Commission determines pursuant to subsection (15) to refuse to make a payment under this section to a person who applies under this Division for payments under this section, the Commission must inform that person by notice in writing that it refuses the application for that payment.

(17) An application may be made to the Tribunal for review of a refusal of the Commission of which notice is given under subsection (16).

146 Discretion of Commission where applicant not resident in Victoria

(1) If a person who is injured or dies in an accident incurs costs or expenses in respect of the provision of services or the supply of goods in any other State or in a Territory by any person, hospital or other body and makes an application under section 145 for payments in respect of those costs or expenses, if the person applying—

(a) is or appears to be entitled to compensation in respect of the costs or expenses from any health fund; and

(b) is not a resident of Victoria—

the Commission is not liable to make payments under section 145 to that person in respect of the costs or expenses.

(2) The Commission may, if it so determines, make payments under section 145 to or in respect of a person who is not a resident of Victoria and who is or who appears to be entitled to compensation from a health fund.

147 Payment of costs and expenses

(1) The Commission may pay an amount payable by it under section 145 in respect of costs or expenses for services to the person who paid the costs or expenses or, if the costs or expenses have not been paid, to the person who provided the services or to such other person as the Commission determines.

(2) If a person is liable to pay costs or expenses to another person, an amount paid under subsection (1) to the second-mentioned person is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

148 Payments due at time of death

Subject to section 149, if the Commission has determined—

(a) to make a payment under section 141 to a person injured as a result of an accident; and

(b) to make that payment by instalments—

and that person dies at a time when the Commission is holding the whole or any part of that payment on behalf of that person, that payment or that part of the payment, as the case requires—

S. 148(c) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(c) if that person died as a result of the accident within the period of two years after the date of the accident leaving a dependent partner or dependent child, and subject to paragraph (d), is deemed for the purposes of this Division and any Act not to have been payable to that person as from immediately prior to the death of that person and is deemed for the purposes of sections 142 and 143 not to have been made to the deceased person prior to the death; and

(d) in any other case, and in the case referred to in paragraph (c) if that payment or part of the payment is greater than the total of the amounts payable to the dependants of that person under section 142 or 143, insofar as it is greater than that total, is deemed for the purposes of this Division and any Act to form part of the estate of that person.

149 Payment in event of death

(1) If, at the time of the death of a person an amount, not exceeding $1000, was payable by the Commission to that person or would have been so payable if an application had been made, the Commission may without requiring the production of probate or letters of administration pay the whole or any part of that amount to a person who satisfies the Commission that he or she is entitled to the property of the deceased person under the will or under the law relating to the disposition of property of deceased persons or that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the estate.

(2) If the Commission pays an amount under subsection (1) it is discharged from further liability in respect of the payment of that amount.

150 Proceedings for damages

(1) A person injured as a result of an accident to which this Division applies may not, in proceedings to recover damages in respect of that accident, seek to recover damages from an insured person or a nominal defendant in respect of a deprivation or impairment of earning capacity arising by reason of that injury if before the date of commencement of the hearing of the proceedings the person was entitled to make a claim under the repealed Act or section 141 in respect of that deprivation or impairment of earning capacity and did not make such a claim before that date.

(2) A person injured as a result of an accident may not, in proceedings to recover damages in respect of that accident seek to recover damages from an insured person or a nominal defendant in respect of costs referred to in paragraph (a), (b), (c), (d),

(e), (f) or (g) of subsection (1) of section 145 and incurred by reason of that injury if, before the date of commencement of the hearing of the proceedings, the person was entitled to make an application under the repealed Act or a claim under Part 4 in respect of those costs and did not make such an application or claim before that date.

S. 150(3) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(3) Despite anything in any Act or rule of law to the contrary, a judgment or order for damages in respect of the death of a person as a result of an accident awarded in proceedings under Part III of the **Wrongs Act 1958** for the benefit of the dependent partner or dependent child of the deceased person must be reduced, if the person liable to pay the damages is an insured person or a nominal defendant, by the sum of amounts paid by the Commission under this Division and the Board under the repealed Act to the partner or to the child or a person on behalf of the child in respect of the death of the deceased person.

(4) If damages recoverable independently of this Division are subject to a reduction mentioned in section 26(1) of the **Wrongs Act 1958**, the reduction must be calculated after the reduction under subsection (3) (if any) has been made.

(5) If—

(a) judgment is obtained in proceedings to recover damages in respect of the injury of a person resulting from an accident; or

S. 150(5)(b) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(b) judgment is obtained in proceedings for the benefit of a dependent partner or dependent child of a deceased person in respect of the death of the deceased person resulting from an accident; or

(c) whether or not proceedings are instituted, a compromise or settlement is made of a claim for damages in respect of the injury or death of a person resulting from an accident—

the Commission is not, after the date on which the judgment was obtained or the compromise or settlement was made, liable to make any payment in respect of that injury or death to a person to whom damages are awarded or an amount is paid under the compromise or settlement.

S. 150(6) amended by No. 27/2001 s. 4(Sch. 2 item 4.15).

(6) The Commission must, at the request of a person who is, or whom it is satisfied may be, a party to proceedings to recover damages for the benefit of a dependent partner or dependent child of a deceased person who died as a result of an accident, state, by notice in writing given to that first-mentioned person, the amount it or the Board has paid to the dependent partner or dependent child under the repealed Act or this Division by reason of the death of the deceased person.

(7) In this section, ***insured person*** in relation to proceedings to recover damages means a person who—

(a) was entitled at the time of the accident, under a contract of insurance complying with the requirements of Division 1 of Part V of the **Motor Car Act 1958**, to be indemnified in respect of the payment of those damages; or

(b) is a person with whom an agreement made under section 70, 71, 72, 73 or 74 of the repealed Act was in force at the time of the accident giving rise to the proceedings to recover damages.

Division 2—Third party insurance

151 Application of Division

This Division applies to and with respect to transport accidents that occurred before the commencement of section 34.

152 Definitions

(1) In this Division and Division 3—

authorized insurer means a body corporate approved under the repealed Division as an authorized insurer at any time before the commencement of this section and includes the Commission as the successor in law of the body corporate so approved immediately before that commencement in its capacity as authorized insurer;

contract of insurance under the repealed Division means a contract of insurance with an authorized insurer and complying with the requirements of the repealed Division;

Incorporated Nominal Defendant means—

(a) the Incorporated Nominal Defendant appointed pursuant to section 53(1)(a) of the repealed Division and includes any Deputy Incorporated Nominal Defendant appointed pursuant to section 53(1)(aa) of the repealed Division and any nominal defendant named by the Minister pursuant to section 53(1)(c) of the repealed Division and the Commission as the successor in law of the Incorporated Nominal Defendant; or

(b) in relation to proceedings brought after the commencement of this section—the Commission;

policy of insurance includes a cover note which is binding on the insurer;

repealed Division means Division 1 of Part V of the **Motor Car Act 1958** as in force at any time before the commencement of this section;

uninsured motor car means any motor car in relation to which the owner was required to enter into a contract of insurance under the repealed Division and in relation to which there was not in force a contract of insurance under the repealed Division.

S. 152(2) amended by No. 57/1989 s. 3(Sch. item 203.3(a)(b)).

(2) Any reference in this Division or Division 3 to an action brought or a judgment entered or obtained or a judgment creditor or judgment debtor or execution of a judgment includes a reference to a complaint laid, an order made by the Magistrates' Court, the person in whose favour the order is made, the person against whom the order is made and execution of such order.

(3) Without affecting the survival of any cause of action on the death of any person, in the case of the death of the owner or driver of a motor car—

(a) any reference in this Division to liability incurred by the owner or driver in respect of the death of or bodily injury to any person includes a reference to liability in respect of the death or bodily injury under any cause of action surviving against the estate of such owner or driver; and

(b) any reference in this Division to a judgment against the owner or driver includes a reference to a judgment against the personal representative of the owner or driver; and

(c) any reference in this Division to a judgment debtor includes a reference to the owner or driver or to the estate of the owner or driver.

S. 153 amended by No. 34/1998 s. 14(f).

153 Right of judgment creditor to recover from insurer

(1) If—

(a) judgment against the owner or driver of a motor car to which a contract of insurance under the repealed Division relates has been entered in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor car; and

(b) the judgment debtor is insured under the contract of insurance against liability in respect of such death or bodily injury—

the judgment creditor may recover against the authorized insurer a sum equivalent to the amount (including costs) unpaid in respect of the judgment or the amount to which the liability of the authorized insurer is limited under the contract of insurance, whichever is the smaller amount but—

(c) in the event of the judgment debtor being or becoming bankrupt and the authorized insurer being required to pay to the trustee in bankruptcy, the amount of the liability the sum recoverable by the judgment creditor against the authorized insurer must be reduced by the amount so paid; and

(d) if execution of any such judgment is stayed pending appeal the judgment creditor may not recover against the authorized insurer until the expiration of the period for which execution of such judgment is stayed.

(2) The payment by the authorized insurer of the sum referred to in subsection (1), to the extent of such payment, is a discharge of—

(a) the liability of the judgment debtor to the judgment creditor; and

(b) the liability (if any) of the authorized insurer to the judgment debtor.

154 Provision for case where owner or driver cannot be found

(1) If—

(a) liability has been incurred by the owner or driver of a motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor car to which a contract of insurance under the repealed Division relates; and

(b) the owner or driver is insured under the contract of insurance against the liability; and

(c) the owner or driver cannot after strict inquiry and search be found—

any person who could have obtained a judgment in respect of the death or bodily injury against the owner or driver if he or she could be found may recover against the authorized insurer a sum equivalent to the amount for which he or she could have obtained a judgment against the owner or driver or the amount to which the liability of the authorized insurer is limited under the contract of insurance, whichever is the smaller amount but the person shall not so recover unless—

(d) within a reasonable time after he or she knew that the owner or driver could not be found he or she gave to the authorized insurer notice in writing of intention to make the

claim setting out his or her full name and place of abode, the date and place of the accident, the general nature of the injuries received and a short statement of the circumstances of the accident; or

(e) the claimant satisfies the court before which the claim is tried that the authorized insurer has not been materially prejudiced in the defence to the claim by any failure by the claimant to give the notice at the proper time or by any omission from or any insufficiency or defect in the notice.

(2) The inquiry and search made for such owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

155 Provision for case where identity of car cannot be ascertained

(1) If the death of or bodily injury to any person is caused by or arises out of the use of a motor car but the identity of the motor car cannot be established, any person who could have obtained a judgment against the owner or driver of the motor car in respect of the death or bodily injury may obtain against the Incorporated Nominal Defendant the judgment which in the circumstances he or she could have obtained against the owner or driver of the motor car but no such judgment may be obtained unless—

(a) the person within a reasonable time after he or she knew that the identity of the motor car could not be established gave to the Incorporated Nominal Defendant notice in writing of intention to make the claim setting out his or her full name and place of abode, the date and place of the accident, the

general nature of the injuries received and a short statement of the circumstances of the accident; or

(b) the claimant satisfies the court before which the claim is tried that the Incorporated Nominal Defendant has not been materially prejudiced in its defence to the claim by any failure by the claimant to give the notice at the proper time or by any omission from or any insufficiency or defect in the notice.

(2) The Incorporated Nominal Defendant is not liable to satisfy any judgment obtained against it but the judgment and the costs of the Incorporated Nominal Defendant must be paid by authorized insurers at the date of the occurrence out of which the claim arose in proportions determined by the Minister.

156 Special provisions in relation to uninsured motor cars

(1) If—

(a) judgment against the owner or driver of an uninsured motor car has been entered in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor car; and

(b) had there been in force a contract of insurance under the repealed Division relating to that motor car, the judgment debtor would have been insured against liability in respect of the death or bodily injury; and

(c) the judgment debtor does not satisfy the judgment in full within one month after it has been entered—

the judgment creditor may obtain judgment against the Incorporated Nominal Defendant for a sum equivalent to the amount (including costs) unpaid in respect of the first-mentioned judgment or the amount to which the liability of an authorized insurer might have been limited had there been in force a contract of insurance under the repealed Division relating to such motor car, whichever is the smaller amount but if execution of the first-mentioned judgment is stayed pending appeal the time during which such execution is so stayed shall be excluded in calculating the said period of one month.

(2) The Incorporated Nominal Defendant is not liable to satisfy any judgment obtained against it but the judgment and the costs of the Incorporated Nominal Defendant must be paid by authorized insurers at the date of the occurrence out of which the claim arose in proportions determined by the Minister.

(3) The sum paid to satisfy the judgment obtained against the Incorporated Nominal Defendant and costs are recoverable by the Incorporated Nominal Defendant against the owner or driver of the motor car but—

(a) it is a good defence in any action against the owner of the motor car if he or she establishes to the satisfaction of the court that the fact that the motor car was an uninsured motor car was not due to his or her own default; and

(b) if the owner of the motor car is the judgment debtor no sum is so recoverable against the driver of the motor car unless judgment could have been obtained against the driver in respect of the death or bodily injury; and

(c) it is a good defence in any action against the driver of the motor car if he or she establishes to the satisfaction of the court that at the time of the occurrence out of which the death or bodily injury arose he or she had or had reasonable grounds for believing that he or she had the authority of the owner to drive the motor car and that he or she had reasonable grounds for believing and did in fact believe that the motor car was a motor car in relation to which there was in force a contract of insurance under the repealed Division; and

(d) the sum so paid and the costs are recoverable by the Incorporated Nominal Defendant against, and such defences are not available to, the driver (whether or not he or she is the owner) of the motor car if the driver is convicted of having, at the time of the occurrence out of which the death or bodily injury arose, been under the influence of intoxicating liquor whilst driving the motor car.

(4) Any amount recovered by the Incorporated Nominal Defendant against the owner or driver of the motor car must be paid to the authorized insurers in the same proportions as the insurers paid to satisfy the judgment and including the costs of the Incorporated Nominal Defendant.

157 Where owner or driver of uninsured motor car cannot be found

(1) If—

(a) liability has been incurred by the owner or driver of any uninsured motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor car; and

(b) the liability is one against which such owner or driver had there been in force a contract of insurance under the repealed Division relating to such motor car would have been insured; and

(c) the owner or driver cannot after strict inquiry and search be found—

any person who could have obtained a judgment in respect of the death or bodily injury against the owner or driver if he or she could be found may obtain judgment against the Incorporated Nominal Defendant for a sum equivalent to the amount for which he or she could have obtained a judgment against the owner or driver or the amount to which the liability of an authorized insurer might have been limited had there been in force a contract of insurance under the repealed Division relating to the motor car, whichever is the smaller amount but the person shall not so recover unless—

(d) within a reasonable time after he or she knew that the owner or driver could not be found he or she gave to the Incorporated Nominal Defendant notice in writing of intention to make the claim setting out his or her full name and place of abode, the date and place of the accident, the general nature of the injuries received and a short statement of the circumstances of the accident; or

(e) the claimant satisfies the court before which the claim is tried that the Incorporated Nominal Defendant has not been materially prejudiced in his or her defence to the claim by any failure by the claimant to give such notice at the proper time or by any omission from or any insufficiency or defect in the notice.

(2) The inquiry and search made for the owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

(3) The Incorporated Nominal Defendant is not liable to satisfy any judgment obtained against it but the judgment and the costs of the Incorporated Nominal Defendant must be paid by authorized insurers at the date of the occurrence out of which the claim arose in proportions determined by the Minister.

158 Appointment of Incorporated Nominal Defendant as Administrator ad litem

(1) If—

(a) the death of or bodily injury to any person is caused by or arises out of the use of a motor car; and

(b) the owner or driver of the motor car is dead; and

(c) a cause of action in relation to the death or bodily injury survives against the estate of the deceased owner or driver; and

(d) no legal representation of that estate has been granted in Victoria—

a person wishing to obtain a judgment in respect of that cause of action may, with the consent of the Incorporated Nominal Defendant, file in the Office of the Registrar of Probates a Notice of

Appointment of the Incorporated Nominal Defendant as the Administrator ad litem of the estate of the deceased owner or driver.

(2) A Notice of Appointment under this section—

(a) must be in or to the effect of the form prescribed; and

(b) must be filed not less than three months or more than six years after the date upon which the cause of action arose; and

(c) must be accompanied by—

(i) an affidavit, in or to the effect of the form prescribed, by or on behalf of the person filing the notice; and

(ii) an affidavit setting forth that up to the morning of the filing of the Notice of Appointment no application for probate or administration of the estate of the deceased owner or driver has been made or granted; and

(iii) the consent, in or to the effect of the form prescribed, of the Incorporated Nominal Defendant.

(3) Upon the filing of a Notice of Appointment under this section the Incorporated Nominal Defendant, for the purposes only of any proceedings in respect of the cause of action aforesaid, is the Administrator ad litem of the estate of the deceased owner or driver.

(4) The court has the same powers in relation to an Administrator ad litem appointed under this section (including the power to determine the appointment) as it has in relation to an Administrator ad litem appointed by the court.

159 Notice of certain accidents affecting uninsured motor cars

(1) On the happening of any accident affecting an uninsured motor car and resulting in the death of or bodily injury to any person it is the duty of—

(a) the driver of the uninsured motor car as soon as practicable after the accident; or

(b) (if the owner of the motor car was not the driver) the owner as soon as practicable after he or she first becomes aware of the accident—

to notify in writing the Commission of the fact of the accident with particulars as to the date nature and circumstances of it.

(2) The owner or driver of any motor car who fails to notify the Commission is liable to a penalty of not more than 4 penalty units.

(3) It is a good defence in any proceedings under this section against the driver if the driver establishes to the satisfaction of the court that he or she did not know that the motor car was an uninsured motor car.

160 Power to substitute person for nominal defendant

(1) When during any proceedings instituted in any court any person (other than the Incorporated Nominal Defendant) is a party as a nominal defendant named by the Minister and that person dies or for any other reason becomes in the opinion of the Minister incapable of continuing as a party the Minister may by writing name another person to be substituted for the first-named person in the proceedings and the proceedings shall continue in the same manner and in all respects as if the person so substituted had originally been joined as a party and as if all steps taken by and against the first-named person in the proceedings

had been taken by or against the person so substituted.

S. 160(2) amended by No. 57/1989 s. 3(Sch. item 203.4).

(2) The Prothonotary, Registrar or other proper officer of any court in which any proceedings referred to in subsection (1) are continuing must on any such writing under the hand of the Minister being filed in the court make all such alterations to any writ, summons or other documents filed in such proceedings as are necessary to give effect to subsection (1).

161 Apportionment of costs

If a judgment for damages is obtained against the owner or driver of a motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor car in Victoria as well as in respect of some other loss or damage the court (for the purpose of fixing the liability of any authorized insurer) must as part of the judgment, adjudge what portion of the amount of the judgment is in respect of the death or bodily injury and must direct what portion of and in what manner any costs awarded as part of the judgment shall be apportioned to the portion of the amount awarded in respect of such death or bodily injury.

162 Owner to give authorized insurer notice of accidents

(1) On the happening of any accident affecting a motor car and resulting in the death of or bodily injury to any person it is the duty of the owner as soon as practicable after the accident or, if the owner was not the driver of the motor car at the time of the accident, as soon as practicable after he or she first becomes aware of the accident to notify in writing the authorized insurer of the fact of the accident with particulars as to the date, nature and circumstances and to give all such other information and to take all such steps as the authorized insurer may reasonably require

whether or not any claim has actually been made against the owner on account of the accident.

(2) Notice of every claim made or action brought against the owner or to the knowledge of the owner made or brought against any other person on account of the accident must as soon as practicable be given by the owner to the authorized insurer with such particulars as the authorized insurer may require.

(3) The owner of any motor car must not without the written consent of the authorized insurer enter upon or incur the expenses of litigation as to any matter or thing in respect of which he or she is insured under a contract of insurance under the repealed Division, nor shall he or she without that consent make any offer, promise, payment or settlement or any admission of liability as to any such matter.

(4) Nothing in subsection (3) extends to any admission made at the time of the occurrence out of which the death or bodily injury arose and reasonably attributable to mental stress occasioned by the circumstances or to any statement made to any member of the police force acting in the course of duty in hearing or receiving a statement or to any statement made or evidence given in or in the course of any proceedings in any court or before any arbitrator.

(5) If the owner without reasonable cause fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter, the authorized insurer is entitled to recover from him or her such amount by way of damages as is reasonably attributable to any such failure.

163 Notice by driver

(1) If a driver of a motor car—

(a) to which a contract of insurance under the repealed Division related; and

(b) which is involved in an accident—

after receiving notice in writing from the authorized insurer without reasonable cause—

(c) fails to furnish the authorized insurer with particulars in accordance with the notice as to the date, nature and circumstances of the accident, and to give all such information and to take all such steps as the authorized insurer may reasonably require, whether or not any claim has actually been made against such person on account of the accident; or

(d) fails to give as soon as practicable to the authorized insurer, in accordance with the notice, notice of every claim made or action brought against him or her, with such particulars as the authorized insurer may require; or

(e) without the written consent of the authorized insurer—

(i) enters upon or incurs the expense of litigation as to any matter or thing in respect of which he or she is indemnified under the contract of insurance; or

(ii) makes any offer, promise, payment or settlement or any admission of liability as to any such matter—

the authorized insurer is entitled to recover from him or her such amount by way of damages as is reasonably attributable to the failure to comply

with the requirements of this section and the repealed Division.

(2) Nothing in subsection (1)(e)(ii) extends to any statement made to any member of the police force acting in the course of duty in hearing or receiving a statement or to any statements made or evidence given in or in the course of any proceedings in any court or before any arbitrator.

S. 163(2) amended by No. 84/1994 s. 55(1)(j).

164 Authorized insurer empowered to settle claims etc.

(1) For the purposes of any contract of insurance under the repealed Division, the authorized insurer—

(a) may undertake the settlement of any claim against the owner or against any driver insured under the contract of insurance; and

(b) may take over during such period as it thinks proper the conduct and control on behalf of the owner or such driver of any proceedings taken or had to enforce such claim or for the settlement of any question arising with reference to the claim; and

(c) may defend or conduct the proceedings in the name of the owner or driver and on his or her behalf and if need be may without the consent of the owner or driver to the extent of the liability of the authorized insurer but no further or otherwise admit liability; and

(d) subject to this Division must indemnify the owner or driver against all costs and expenses of or incidental to any such proceedings while the insurer retains the conduct and control of the proceedings.

(2) The owner or such driver must sign all such warrants and authorities as the insurer requires for the purpose of enabling the authorized insurer to have the conduct and control of any such proceedings.

165 Rights against unauthorized or intoxicated drivers

(1) If the death of or bodily injury to any person is caused by or arises out of the use, before the commencement of this section, of a motor car to which a contract of insurance under the repealed Division related and that motor car was at the time of the occurrence out of which the death or injury arose driven by a person without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner then—

(a) the driver is not entitled to recover from the authorized insurer any sum on account of any moneys (including costs) paid or payable by the driver in respect of liability in respect of such death or bodily injury; and

(b) any sum paid by the authorized insurer in discharge of the liability of the driver is recoverable by the authorized insurer from the driver.

(2) If the death of or bodily injury to any person is caused by or arises out of the use of a motor car to which a contract of insurance under the repealed Division relates and the driver of the motor car at the time of the occurrence out of which the death or bodily injury arose is convicted in relation to the circumstances of the occurrence—

(a) of a serious indictable offence within the meaning of section 325 of the **Crimes Act 1958** with respect to that death or bodily injury; or

(b) of the offence referred to in section 80B(1) of the **Motor Car Act 1958**—

any sum (including costs) paid by the authorized insurer in discharge of the liability of the owner or driver of the motor car in respect of the death or bodily injury is recoverable by the authorized insurer from the driver.

166 Provision for action to recover certain amounts

If—

(a) the recovery by or against any authorized insurer or by the Incorporated Nominal Defendant of any sum or amount or the obtaining of judgment against the Incorporated Nominal Defendant is authorized by the repealed Division or by this Division; or

(b) the payment by any authorized insurer of any sum or amount is directed by the repealed Division or by this Division—

that sum or amount may be recovered and that judgment obtained by action brought in any court of competent jurisdiction.

167 Provision for stay of proceedings

If—

(a) an action for the recovery of damages in respect of bodily injury caused by or arising out of the use of a motor car has been brought in any court by any person against the owner or driver of the motor car or the authorized insurer of the motor car or the Incorporated Nominal Defendant; and

(b) the court is satisfied that there has (whether before or after the action has been brought) been a refusal or neglect without reasonable cause to allow a medical examination or

medical examinations of the person after a request on reasonable terms by the owner, driver or authorized insurer or the Incorporated Nominal Defendant that the person should be examined, for the purpose of the ascertainment of the nature and extent of the bodily injury sustained by the person, by a legally qualified medical practitioner nominated by the owner, driver or authorized insurer or the Incorporated Nominal Defendant (as the case may be)—

the court may make an order on such terms as seem proper that all further proceedings in such action shall be stayed, and they shall be stayed accordingly.

168 Agreements by next friends etc.

S. 168(1) amended by No. 64/1990 s. 18(2)(a).

(1) If any person being a minor or a person under a legal disability is or appears to be entitled to recover damages for bodily injury caused by or arising out of the use of a motor car and any parent or guardian or next friend of the person or any person standing in loco parentis to the person or the Public Trustee (as the case may be) believes that the amount of compensation offered or tendered by or on behalf of the owner or driver of the motor car, the authorized insurer of the motor car or the Incorporated Nominal Defendant (as the case may be) in respect of the bodily injury is reasonable and adequate having regard to—

(a) the bodily injury sustained; and

S. 168(1)(b) amended by No. 19/1989 s. 16(Sch. item 54.1).

(b) the probability or otherwise of the minor or other person under a legal disability succeeding in any proceeding in recovering damages against the owner, driver or authorized insurer or the Incorporated Nominal Defendant—

the parent or guardian or next friend or person standing in loco parentis or the Public Trustee (as the case may be) is entitled in the name and on behalf of the minor or other person under a legal disability to enter into an agreement in writing with the owner or driver or authorized insurer or the Incorporated Nominal Defendant to accept the amount of compensation so offered or tendered.

(2) Every such agreement—

(a) may be lodged with the registrar or deputy registrar of the County Court at the sittings nearest or most convenient to the place of residence of the minor or other person under a legal disability; and

S. 168(2)(a) amended by No. 19/1989 s. 16(Sch. item 54.2).

(b) if so lodged must be accompanied by an affidavit made by the parent, guardian, next friend, person standing in loco parentis, Public Trustee (as the case may be) who entered into the agreement verifying the facts upon which the agreement is based and be supported by such affidavits as are required by the rules made pursuant to this section or by the County Court.

S. 168(2)(b) amended by Nos 19/1989 s. 16(Sch. item 54.3), 64/1990 s. 18(2)(b).

(3) As soon as may be after lodgment of any such agreement the registrar or deputy registrar shall submit it to the County Court.

S. 168(3) amended by No. 19/1989 s. 16(Sch. item 54.4 (a)(b)).

(4) Such an agreement does not have any force or effect until it has been lodged and approved by order of the County Court pursuant to this section and any agreement so lodged which is with the consent of the parties approved in an amended form shall be deemed to have been lodged in the amended form.

S. 168(4) amended by No. 19/1989 s. 16(Sch. item 54.5).

S. 168(5) amended by No. 19/1989 s. 16(Sch. item 54.6(a)).

(5) Every such order shall inter alia make such provisions as the Court thinks proper for—

(a) the payment into court of the whole or part of the compensation agreed to be paid; and

S. 168(5)(b) amended by No. 19/1989 s. 16(Sch. item 54.6(b)(i)(ii)).

(b) the allotment, investment, payment out of court or other application of the compensation (including moneys arising from investment) for the benefit of such minor or other person under a legal disability but the County Court may at any subsequent time (whether by way of variation of a former order or not) make such further order with respect to the allotment, investment, payment out of court or other application of the compensation (including moneys arising from investment) as appears to the Court to be proper having regard to the then existing circumstances.

S. 168(6) amended by No. 19/1989 s. 16(Sch. item 54.7).

(6) Such order must not be made unless the Court is satisfied with respect to—

S. 168(6)(a) amended by No. 64/1990 s. 18(2)(c).

(a) the right of the parent, guardian, next friend or other person standing in loco parentis or of the Public Trustee to act for the minor or person under a legal disability; and

(b) the reasonableness and adequacy in the circumstances of the amount of compensation; and

(c) the genuineness of the agreement.

(7) When an order approving any agreement is made, the order—

S. 168(7)(a) amended by No. 19/1989 s. 16(Sch. item 54.8).

(a) must be recorded without fee by the registrar or deputy registrar in a special register; and

(b) is enforceable in all respects as if the same were a judgment of the County Court.

(8) When such order has been complied with by such owner, driver or authorized insurer or the Incorporated Nominal Defendant such owner, driver or authorized insurer or the Incorporated Nominal Defendant (as the case may be) shall be released and discharged from all liability to the minor or person under a legal disability (as the case may be) in respect of the bodily injury.

(9) The judges of the County Court may make rules for the purposes of carrying this section into effect.

(10) Nothing in the **County Court Act 1958** shall be deemed to limit the operation of this section.

(11) Nothing in this section shall apply in any case where any action has been commenced by or on behalf of any minor or person under a legal disability for the recovery of damages for bodily injury caused by or arising out of the use of a motor car in Victoria.

169 Agreements negativing provisions of Division to be void

(1) Any provision, stipulation, covenant or condition in any agreement (whether made before or after the commencement of this section) which negatives, limits or modifies or purports to negative, limit or modify the operation of the provisions of the repealed Division or this Division or of any contract of insurance under the repealed Division is void and of no effect.

(2) Where there was in force a contract of insurance under the repealed Division relating to a motor car then in any action brought against the owner or driver of the motor car or against any authorized insurer in respect of an accident resulting in the

death of or bodily injury to any person being at the time of the accident a passenger for reward in the motor car, it is not a defence that the contract of carriage had negatived, limited or modified the liability of the owner or driver of the motor car.

170 Offences

Any person who contravenes or fails to comply with any of the provisions of this Division, where no other penalty is expressly provided for the contravention or failure, is liable to a penalty of not more than 2 penalty units.

171 Regulations

The Governor in Council may make regulations for or with respect to—

(a) applications and notices under this Division; and

(b) any other matter or thing required or permitted by this Division to be prescribed or necessary to be prescribed to give effect to this Division.

Division 3—Awarding of damages

172 Application

This Division applies to and in respect of an award of damages made after the commencement of this section relating to the death of or bodily injury to any person caused by or arising out of the use of a motor car if the whole or part of the award of damages is payable by the Commission, an authorised insurer, the Incorporated Nominal Defendant or the owner or driver of an uninsured motor car.

173 Discount rate applicable to certain awards of damages

(1) Where an award of damages to which this Division applies is to include compensation, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future—

the present value of the future loss must be qualified by adopting a discount rate of 6 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(2) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

174 Maximum amount of damages for provision of certain services

(1) Where an award of damages to which this Division applies is to include compensation for the value of services of a domestic nature or services relating to nursing and attendance—

(a) which have been or are to be provided by another person to the person in whose favour the award is made; and

(b) for which the person in whose favour the award is made has not paid and is not liable to pay—

and the services provided or to be provided are for not less than 40 hours per week, the amount of the compensation must not exceed—

S. 174(1)(c) amended by No. 44/2014 s. 33(Sch. item 29(9)(a)).

(c) in respect of the whole or any part of a reference period occurring between the date of the injury in relation to which the award is made and the date of the award—the amount per week that is the average weekly earnings of all employees for Victoria published by the Australian Bureau of Statistics—

S. 174(1)(c)(i) amended by No. 44/2014 s. 33(Sch. item 29(9)(a)(i)).

(i) in respect of that reference period; or

S. 174(1)(c)(ii) amended by No. 44/2014 s. 33(Sch. item 29(9)(a)(i)).

(ii) if such an amount has not been so published, the last amount so published in respect of a reference period; and

S. 174(1)(d) amended by No. 44/2014 s. 33(Sch. item 29(9)(b)).

(d) in respect of the whole or any part of any other reference period—the amount per week that is the average weekly earnings of all employees for Victoria last published by the Australian Bureau of Statistics before the date of the award in respect of a reference period—

and, if the services provided or to be provided are for less than 40 hours per week, the amount of the compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with paragraph (c) or (d), as the case may be.

(2) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1).

175 Payment of interest

(1) A court must not, in relation to an award of damages to which this Division applies, order the payment of interest, and no interest shall be payable, on an amount of damages, other than special damages in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to the date of the award.

(2) Except as provided by this section, nothing in this section affects any other law relating to the payment of interest on an amount of damages, other than special damages.

Pt 11 (Heading and ss 176, 177) repealed by No. 34/1998 s. 17(c), new Pt 11 (Heading and ss 176–182) inserted by No. 95/2003 s. 32.

Part 11—Savings and transitional provisions—amending Acts

Division 1—Transport Accident (Amendment) Act 1998

New s. 176 inserted by No. 95/2003 s. 32.

176 Definition of *amending Act*

In this Division, ***amending Act*** means the **Transport Accident (Amendment) Act 1998**.

New s. 177 inserted by No. 95/2003 s. 32.

177 Section 46A (Degree of impairment)

(1) Section 46A, as amended by section 8 of the amending Act, applies for the purpose of determining the degree of impairment in respect of an injury as a result of a transport accident on or after 19 May 1998.

(2) Section 46A, as in force, and the Transport Accident (Impairment) Regulations 1988 as in force, immediately before 19 May 1998, continue to apply for the purpose of determining the degree of impairment in respect of an injury as a result of a transport accident before 19 May 1998 as if those Regulations formed part of section 46A.

Note

19 May 1998 is the date of commencement of section 8 of the **Transport Accident (Amendment) Act 1998**.

Division 2—Accident Compensation and Transport Accident Acts (Amendment) Act 2003

178 Definitions

New s. 178 inserted by No. 95/2003 s. 32.

In this Division—

amending Act means the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**;

commencement date means the day after the day on which the amending Act receives the Royal Assent.

179 Section 3 (Definition of *medical service*)

New s. 179 inserted by No. 95/2003 s. 32.

The definition of ***medical service*** in section 3(1), as amended by section 25(1) of the amending Act, only applies to services provided on or after the date of commencement of section 25.

180 Section 46C (Rounding of assessments of impairment)

New s. 180 inserted by No. 95/2003 s. 32.

(1) Section 46C applies to any determination of the degree of impairment in respect of an injury (including any determination of the degree of impairment in respect of an injury referred to in section 177(1)) made on or after the date of commencement of section 28.

(2) If—

(a) a determination of a degree of impairment had been made before the date of commencement of section 28 of the amending Act; and

(b) no number determined under the A.M.A. Guides was rounded up or down in the making of the determination—

in reviewing the determination, the Commission or a court or tribunal (as the case may be) must not round up or down any number determined under the A.M.A. Guides.

(3) Subsection (2) applies regardless of whether or not an application for review, or an appeal, had been lodged in respect of the determination before that date of commencement, and regardless of whether or not the fact that there was no rounding in determining the number was one of the grounds on which an application for review, or an appeal, was based.

(4) Despite subsection (2), the Commission or a court or tribunal may round a final value determined under the A.M.A. Guides to the nearest whole percent.

New s. 181 inserted by No. 95/2003 s. 32.

181 Section 60 (Medical and like benefits)

(1) Section 60, as amended by section 25(2) of the amending Act, only applies to applications for payment made after the commencement date.

(2) Section 60(1A), as substituted by section 31 of the amending Act, applies in respect of all applications for compensation made on or after 1 January 2001.

(3) This Act continues to apply to a person who was injured in a transport accident before the commencement date for 18 months after the commencement date as if it had not been amended by section 25(2) of the amending Act.

182 Section 70 (Decision on eligibility for compensation)

S. 182 inserted by No. 95/2003 s. 32.

Section 70(3)(b), as amended by section 31 of the amending Act, applies to all claims—

(a) that are in existence on the commencement date; or

(b) that are made on or after the commencement date;

(c) that lapsed before the commencement date, but in respect of which an application for a review could have been made to the Tribunal had section 70(3)(b), as amended by section 31, been in force at the end of the period specified in section 70(1) or 70(2) (as the case requires).

Division 3—Transport Accident (Amendment) Act 2004

Pt 11 Div. 3 (Heading and ss 183–192) inserted by No. 94/2004 s. 36.

183 Definitions

S. 183 inserted by No. 94/2004 s. 36.

In this Division—

amending Act means the **Transport Accident (Amendment) Act 2004**;

commencement date means the day after the day on which the amending Act receives the Royal Assent.

184 Changes that apply to all claims

S. 184 inserted by No. 94/2004 s. 36.

This Act, as amended by sections 2–4, 7, 14, 15(1), 15(2) and 16–37 of the amending Act, applies with respect to all transport accidents, regardless of when they occurred, and to all applications in respect of such accidents, regardless of when the applications were made.

S. 185 inserted by No. 94/2004 s. 36.

185 Sections 4 and 4A (Pre-accident weekly earnings)

(1) Section 4, as amended by section 5 of the amending Act, and section 4A, as inserted by section 6 of the amending Act, only apply to earners who are injured in a transport accident that occurred on or after the date of commencement of section 5 or 6 (as the case may be).

(2) Section 61(5), as substituted by section 5 of the amending Act, only applies to an earner who was injured in a transport accident that occurs on or after the date of commencement of section 5.

S. 186 inserted by No. 94/2004 s. 36.

186 Sections 45AA and 45AB (Interim payments to self-employed person)

Sections 45AA and 45AB, as inserted by section 8 of the amending Act, only apply to a person who is injured in a transport accident that occurred on or after the date of commencement of section 8.

S. 187 inserted by No. 94/2004 s. 36.

187 Section 45AC (Loss of earnings payments to seasonal earners)

Section 45AC, as inserted by section 9 of the amending Act, only applies to a person who is injured in a transport accident that occurred on or after the date of commencement of section 9.

S. 188 inserted by No. 94/2004 s. 36.

188 Section 46A (Degree of impairment)

Section 46A, as amended by section 10 of the amending Act, and section 71(1A), as inserted by section 10 of the amending Act, applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 10.

S. 189 inserted by No. 94/2004 s. 36.

189 Section 47 (Impairment benefits)

Section 47, as amended by section 11 of the amending Act, only applies to a person who was injured in a transport accident that occurs on or after the date of commencement of section 11.

190 Section 47(3A) (Interim payment of lump sum impairment benefits)

S. 190 inserted by No. 94/2004 s. 36.

Section 47(3A), as inserted by section 12 of the amending Act, applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 12.

191 Section 48—Savings provisions concerning impairment benefits paid as an annuity

S. 191 inserted by No. 94/2004 s. 36.

(1) This section applies to a person who, immediately before the commencement of section 13 of the amending Act—

(a) was receiving periodic payments in accordance with section 48; or

(b) had an accrued entitlement to such payments, regardless of whether or not the person's impairment benefit had been assessed.

(2) The person is entitled to continue to receive periodic payments in accordance with section 48 as if sections 11 and 13 of the amending Act had not been enacted.

(3) For the purposes of this section, the Governor in Council may make regulations for or with respect to payments under section 48 as if that section had not been repealed.

192 Application of amendments to section 60

S. 192 (Heading) substituted by No. 60/2007 s. 19(1).

S. 192 inserted by No. 94/2004 s. 36, amended by No. 60/2007 s. 19(2) (ILA s. 39B(1)).

(1) Sections 60(2)(c) and 60(2)(d), as amended by section 15 of the amending Act, only apply to a person who is injured in a transport accident that occurred on or after the date of commencement of section 15.

S. 192(2) inserted by No. 60/2007 s. 19(2).

(2) Despite section 184, sections 60(2AA), 60(2AB) and 60(2AC), as inserted by section 15 of the amending Act, only apply to a person who is injured in a transport accident that occurred on or after the date of commencement of section 15 of the amending Act.

Pt 11 Div. 4 (Heading and ss 193–195) inserted by No. 60/2007 s. 20.

Division 4—Transport Accident and Accident Compensation Acts Amendment Act 2007

S. 193 inserted by No. 60/2007 s. 20.

193 Changes that apply to all claims

This Act, as amended by sections 3(2), 3(3), 3(5), 3(6), 5, 8, 9, 10, 11, 12, 14(2), 14(3), 14(4) and 15(2) of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, applies with respect to all transport accidents, regardless of when they occurred, and to all applications, regardless of when the applications were made.

S. 194 inserted by No. 60/2007 s. 20.

194 Changes that only apply to claims made on or after the commencement date

This Act, as amended by sections 3(4), 6, 7 and 14(1) of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, only applies to applications in respect of transport accidents that occur on or after the day after the day on which the **Transport Accident and Accident Compensation Acts Amendment Act 2007** receives the Royal Assent.

195 Application of amendments to section 6

S. 195 inserted by No. 60/2007 s. 20.

(1) Subject to subsection (2), section 6 as amended by section 4 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** applies in respect of any payment of weekly payments and pre-accident weekly earnings made on or after the commencement of section 4 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** regardless of when the transport accident occurred or the application was made.

(2) If an application for review has been made to the Tribunal under section 77 before the commencement of section 4 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, the application is to be determined as if section 6 had not been amended by section 4 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**.

Division 5—Compensation and Superannuation Legislation Amendment Act 2008

Pt 11 Div. 5 (Heading and ss 196–198) inserted by No. 65/2008 s. 7.

196 Sections 46A (Degree of impairment) and 47 (Impairment benefit)

S 196 inserted by No. 65/2008 s. 7.

(1) Subject to subsections (2) and (3), section 46A, as amended by section 3 of the **Compensation and Superannuation Legislation Amendment Act 2008**, and section 47, as amended by section 4 of the **Compensation and Superannuation Legislation Amendment Act 2008**, apply in respect of any determination of the degree of impairment of a person injured as a result of a

transport accident irrespective of when the injury occurred.

(2) Despite subsection (1), sections 46A and 47, as in force before the commencement of sections 3 and 4 of the **Compensation and Superannuation Legislation Amendment Act 2008**, continue to apply in respect of any determination of the degree of impairment of a person injured as a result of a transport accident in respect of which an application for a determination of the degree of impairment has been made before that commencement.

(3) Despite subsection (1), the amendment of section 46A by section 3 of the **Compensation and Superannuation Legislation Amendment Act 2008** and section 47 by section 4 of the **Compensation and Superannuation Legislation Amendment Act 2008** does not affect the rights of the parties in the proceedings known as *Byrne v Transport Accident Commission [2008] VSC 92*.

S 197 inserted by No. 65/2008 s. 7.

197 Section 93 (Actions for damages)

(1) Subject to subsections (2) and (3), section 93, as amended by section 5 of the **Compensation and Superannuation Legislation Amendment Act 2008**, applies in respect of any proceedings to which section 93 applies irrespective of when the injury or death occurred.

(2) Despite subsection (1), section 93, as in force before the commencement of section 5 of the **Compensation and Superannuation Legislation Amendment Act 2008**, continues to apply in respect of any proceedings lodged before that commencement.

(3) Despite subsection (1), the amendment of section 93 by section 5 of the **Compensation and Superannuation Legislation Amendment Act 2008** does not affect the rights of the parties in the proceedings known as *Martino Developments Pty Ltd (ACN 005 477 690) v John Doughty* (No. 6941 of 2006) in the Supreme Court of Victoria (Common Law Division).

198 Section 104 (Indemnity by third party)

S 198 inserted by No. 65/2008 s. 7.

Section 104, as amended by section 6 of the **Compensation and Superannuation Legislation Amendment Act 2008**, applies in respect of any right of indemnity, regardless of when that right came into existence, unless before the commencement of that section—

(a) the amount of the indemnity has been determined; or

(b) judgment for damages has been given or entered; or

(c) there has been a settlement or compromise of the claim in respect of which the right of indemnity arose.

Division 6—Transport Accident and Accident Compensation Legislation Amendment Act 2010

Pt 11 Div. 6 (Heading and ss 199–205) inserted by No. 80/2010 s. 14.

199 Definitions

S. 199 inserted by No. 80/2010 s. 14.

(1) In this Division—

amending Act means the **Transport Accident and Accident Compensation Legislation Amendment Act 2010**;

amending provision means a provision of the amending Act specified in a section of this Division;

commencement date means the date on which the amending provision comes into operation.

(2) Nothing in this Division limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

S. 200 inserted by No. 80/2010 s. 14.

200 Section 39 (No entitlement to compensation)

Section 39, as amended by section 3 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 201 inserted by No. 80/2010 s. 14.

201 Section 40 (Compensation not payable)

Section 40, as amended by section 4 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 202 inserted by No. 80/2010 s. 14.

202 Section 46A (Degree of impairment)

Section 46A as amended by section 5 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 203 inserted by No. 80/2010 s. 14.

203 Section 60 (Medical and like benefits)

Section 60, as amended by section 7 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 204 inserted by No. 80/2010 s. 14.

204 Section 68 (Time for making claims)

Section 68, as amended by section 9 of the amending Act applies in respect of claims made on or after the commencement date relating to a transport accident whenever it occurred.

205 Section 93 (Actions for damages)

S. 205 inserted by No. 80/2010 s. 14.

Section 93, as amended by section 10 of the amending Act, applies to proceedings commenced on or after the commencement date relating to a transport accident whenever it occurred.

Division 7—Transport Accident Amendment Act 2013

Pt 11 Div. 7 (Heading and ss 206–226) inserted by No. 71/2013 s. 30.

206 Definitions

S. 206 inserted by No. 71/2013 s. 30.

In this Division—

amending Act means the **Transport Accident Amendment Act 2013**;

amending provision means a provision of the amending Act specified in a section of this Division;

commencement date means the date on which the amending provision comes into operation.

207 Amendments relating to the extension of time for making a dependency claim for dependents under 18

S. 207 inserted by No. 71/2013 s. 30.

This Act, as amended by section 4 of the amending Act, applies in respect of a claim for compensation lodged on or after the commencement date.

208 Amendments relating to inclusion of occupational therapy as medical services

S. 208 inserted by No. 71/2013 s. 30.

This Act, as amended by section 5 of the amending Act, applies in respect of a request for occupational therapy services made on or after the commencement date.

S. 209 inserted by No. 71/2013 s. 30.

209 Amendment relating to the definition of *transportation costs*

This Act, as amended by section 6 of the amending Act, applies in respect of a request for reimbursement of transportation costs made on or after the commencement date.

S. 210 inserted by No. 71/2013 s. 30.

210 Amendment relating to incidents involving train, tram or bus doors

This Act, as amended by section 7 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 211 inserted by No. 71/2013 s. 30.

211 Amendment of section 39 (corresponding law)

This Act, as amended by section 10 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 212 inserted by No. 71/2013 s. 30.

212 Amendments of section 42 (definitions of *law of a place outside Victoria* and *proceedings outside Victoria*)

This Act, as amended by section 11 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 213 inserted by No. 71/2013 s. 30.

213 Amendments regarding person making a claim in their own right for common law damages for injury

This Act, as amended by section 12 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

214 Amendment of section 46A (accident-related impairment)

S. 214 inserted by No. 71/2013 s. 30.

This Act, as amended by section 13 of the amending Act, applies in respect of any determination of the degree of impairment of a person injured as a result of a transport accident that occurred on or after 19 May 1998, regardless of when the injury occurred.

215 Amendment of section 46A (diminution of hearing)

S. 215 inserted by No. 71/2013 s. 30.

This Act, as amended by section 15 of the amending Act, applies in respect of a determination of the degree of impairment of a person injured as a result of a transport accident made on or after the commencement date, regardless of when the transport accident occurred.

216 Amendment of section 60 (vocational rehabilitation services)

S. 216 inserted by No. 71/2013 s. 30.

This Act, as amended by section 16 of the amending Act, applies in respect of all applications, regardless of when the applications were made.

217 Amendment of section 60 (increase of family counselling cap)

S. 217 inserted by No. 71/2013 s. 30.

This Act, as amended by section 17 of the amending Act, applies in respect of a claim made on or after the commencement date.

218 Amendment of section 60 (funeral, burial and cremation expenses)

S. 218 inserted by No. 71/2013 s. 30.

This Act, as amended by section 18 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 219 inserted by No. 71/2013 s. 30.

219 Amendment of section 60 (extension of period to claim for travel expenses to 24 weeks)

This Act, as amended by section 19 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

S. 220 inserted by No. 71/2013 s. 30.

220 Amendment of section 60 (travel expenses)

This Act, as amended by section 20 of the amending Act, applies in respect of a request for compensation under section 60(2E), regardless of when the claim was lodged.

S. 221 inserted by No. 71/2013 s. 30.

221 Amendments relating to reimbursement of medical reports

This Act, as amended by section 21 of the amending Act, applies in respect of an examination made on or after 1 July 2014, in circumstances where the examination is made for the purposes of the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes.

S. 222 inserted by No. 71/2013 s. 30.

222 Amendment of section 61A (individual funding agreements)

This Act, as amended by section 23 of the amending Act, applies in respect of all claims, regardless of when the claim is made.

S. 223 inserted by No. 71/2013 s. 30.

223 Amendment of section 74 (cessation or review of liability to pay compensation in certain circumstances)

This Act, as amended by section 25 of the amending Act, applies in respect of all claims, regardless of when the claim is made.

224 Amendment to section 93 (common law damages claims for mental injury due to injury or death of tortfeasor)

S. 224 inserted by No. 71/2013 s. 30.

(1) Subject to subsection (2), this Act, as amended by section 26 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

(2) This Act, as amended by section 26 of the amending Act, does not apply to a person who, as at the commencement date—

(a) has been issued a certificate under section 93(4)(c)(ii); or

(b) has been granted leave under section 93(4)(d).

225 Serious injury applications

S. 225 inserted by No. 71/2013 s. 30.

This Act, as amended by section 27 of the amending Act, applies in respect of an application made on or after 16 October 2013—

(a) for a certificate under section 93(4)(c)(ii); or

(b) for leave under section 93(4)(d).

226 Amendment of section 120 (increasing the time limit for certain criminal prosecutions)

S. 226 inserted by No. 71/2013 s. 30.

This Act, as amended by section 28 of the amending Act, applies to an offence against section 116, 117 or 117C that is alleged to have been committed on or after the commencement date.

Pt 11 Div. 8 (Heading and ss 227–227C) inserted by No. 18/2016 s. 7.

Division 8—Transport Accident Amendment Act 2016

S. 227 inserted by No. 18/2016 s. 7.

227 Definition

In this Division, ***amending Act*** means the **Transport Accident Amendment Act 2016**.

S. 227A inserted by No. 18/2016 s. 7.

227A Amendment of section 61 (Indexation)

This Act, as amended by section 4 of the amending Act, applies to all claims, regardless of when the claim was made.

S. 227B inserted by No. 18/2016 s. 7.

227B Repeal of section 93(2A)

This Act, as amended by section 5 of the amending Act, applies to all transport accidents, regardless of when the accident occurred.

S. 227C inserted by No. 18/2016 s. 7.

227C Repeal of section 93(17A)

This Act, as amended by section 6 of the amending Act, applies to an application made on or after 16 October 2013—

(a) for a certificate under section 93(4)(c)(ii); or

(b) for leave under section 93(4)(d).

Pt 11 Div. 9 (Heading and s. 228) inserted by No. 62/2014 s. 59.

Division 9—Courts Legislation Miscellaneous Amendments Act 2014

S. 228 inserted by No. 62/2014 s. 59.

228 Application to Tribunal

(1) Section 77(1) as amended by the amending Act and section 77(1A) as inserted by the amending Act apply to—

(a) a decision of which a person becomes aware on or after the commencement day; and

(b) a decision of which a person became aware within 12 months before the commencement day, unless the person had applied for review of the decision under section 77(1) before the commencement day.

(2) In this section—

amending Act means the **Courts Legislation Miscellaneous Amendments Act 2014**;

commencement day means the day on which section 59 of the amending Act comes into operation.

Division 10—Compensation Legislation Amendment Act 2016

Pt 11 Div. 10 (Heading and ss 229, 230) inserted by No. 73/2016 s. 10.

229 Amendment of section 46A (Degree of impairment)

S. 229 inserted by No. 73/2016 s. 10.

(1) For the purposes of making an assessment of impairment under section 3.3 of Chapter 3 of the A.M.A Guides, this Act, as amended by section 7 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

(2) In this section—

amending Act means the **Compensation Legislation Amendment Act 2016**;

commencement date means the day on which section 7 of the amending Act comes into operation.

S. 230 inserted by No. 73/2016 s. 10.

230 Amendment of section 60 (medical and like benefits—travel and accommodation expenses for attending funeral)

(1) This Act, as amended by section 9 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

(2) In this section—

amending Act means the **Compensation Legislation Amendment Act 2016**;

commencement day means the day on which section 9 of the amending Act comes into operation.

Pt 11 Div. 11 (Heading and s. 231) inserted by No. 1/2018 s. 6.

Division 11—Compensation Legislation Amendment Act 2018

S. 231 inserted by No. 1/2018 s. 6.

231 Amendment of section 43 (medical excess)

(1) This Act, as amended by Part 2 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

(2) In this section—

amending Act means the **Compensation Legislation Amendment Act 2018**;

commencement date means the day on which Part 2 of the amending Act comes into operation.

Division 12—Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017

Pt 11 Div. 12 (Heading and s. 232) inserted by No. 68/2017 s. 122.

232 Amendment of section 109 (transport accident charge)

S. 232 inserted by No. 68/2017 s. 122.

Section 109, as amended by section 121 of the **Transport Legislation Amendment (Road, Safety, Rail and Other Matters) Act 2017**, applies to all transport accidents, regardless of when the accident occurred.

Division 13—Treasury and Finance Legislation Amendment Act 2018

Pt 11 Div. 13 (Heading and s. 233) inserted by No. 49/2018 s. 18.

233 Amendment of section

S. 233 inserted by No. 49/2018 s. 18.

(1) In this Division—

amending Act means the **Treasury and Finance Legislation Amendment Act 2018**;

commencement date means the day on which the amending Act comes into operation.

(2) This Act, as amended by sections 3(1), 4, 5 6, 9(2), 12(2) and 17 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

(3) Subject to subsection (4), this Act, as amended by sections 3(2), 7, 8 and 9(1) of the amending Act, applies in respect of a collision between a pedal cyclist and stationary motor vehicle that occurred on or after 9 July 2014.

(4) Section 68(2) applies in respect of a collision between a pedal cyclist and stationary motor vehicle that occurred between 9 July 2014 and the commencement date as if the transport accident occurred on the commencement date.

(5) This Act, as amended by section 11 of the amending Act, applies in respect of a claim for weekly payments under section 49, 50 or 51, regardless of when the transport accident occurred.

(6) This Act, as amended by section 12(1) of the amending Act, applies to a request for compensation made under section 60(2)(b) after the commencement date, regardless of when the transport accident occurred.

(7) This Act, as amended by section 12(3) of the amending Act, applies in respect of a claim for compensation made under section 60(2E) on or after the commencement date.

(8) This Act, as amended by sections 10, 14 and 16 of the amending Act, applies in respect of requests for payment of costs incurred after the commencement date, regardless of when the transport accident occurred.

Pt 11 Div. 14 (Heading and s. 234) inserted by No. 18/2022 s. 39.

Division 14—Road Safety Legislation Amendment Act 2022

S. 234 inserted by No. 18/2022 s. 39.

234 Commencement of prosecutions

(1) Section 120, as amended by section 37 of the amending Act, does not apply in respect of an offence referred to in that section committed before the commencement of section 37 of the amending Act.

(2) In this section—

amending Act means the **Road Safety Legislation Amendment Act 2022**.

Division 15—Workplace Legislation Amendment (Accident Compensation and Other Matters) Act 2026

Pt 11 Div. 15 (Heading and s. 235) inserted by No. 45/2026 s. 18.

235 Supported accommodation

S. 235 inserted by No. 45/2026 s. 18.

(1) The definition of ***supported accommodation***, as amended by Part 4 of the amending Act, applies and is taken to have always applied in respect of a liability for compensation payable under section 60 to a person who resides in supported accommodation on or after 1 July 2024.

(2) In this section—

amending Act means the **Workplace Legislation Amendment (Accident Compensation and Other Matters) Act 2026**.

* * * * *

Pt 12 (Heading and ss 178–181) amended by Nos 44/1989 s. 41(Sch. 2 item 42.11), 84/1994 s. 55(1)(k), repealed by No. 34/1998 s. 17(c).

Schedules

Sch. 1 repealed by No. 84/1994 s. 47.

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Sch. 2 amended by No. 44/1989 s. 41(Sch. 2 item 42.12), repealed by No. 84/1994 s. 55(1)(l).

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Transport Accident Act 1986** was assented to on 16 December 1986 and came into operation as follows:

Sections 1–3, 152, 179(5), Part 10 Division 3 on 16 December 1986: section 2(1); section 181 on 20 May 1986: section 2(2); sections 4–9, Part 2 (*except* section 12(2) and section 23) on 23 December 1986: Government Gazette 23 December 1986 page 4777; Parts 3–9 (*except* section 121), Part 10 Divisions 1, 2 (*except* section 152), Part 11, sections 178, 179(1)–(4), 180(3) on 1 January 1987: Government Gazette 23 December 1986 page 4777; sections 121, 180(2) on 1 February 1987: Government Gazette 28 January 1987 page 180; section 12(2) on 13 May 1987: Government Gazette 13 May 1987 page 1133; rest of Act (sections 23, 180(1)) was never proclaimed, repealed by Act No. 44/1989.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Transport Accident Act 1986** by Acts and subordinate instruments.

Road Safety Act 1986, No. 127/1986 (as amended by Nos 78/1987, 53/1989, 84/1994)

Assent Date:	23.12.87
Commencement Date:	S. 102, Sch. 4 items 29.1 (*except* (a), (c), (d)–(f)), 29.2 (in its application to ss 39(2)(3), 40, 41(1) of the **Transport Accident Act 1986**), 29.3, 29.5, 29.6 (*except* (b)), 29.8–29.13, 29.17 on 1.3.87: Government Gazette 25.2.87 p. 445; Sch. 4 items 29.2 (in its application to s. 39(4)(5) of the **Transport Accident Act 1986**), 29.6(b), 29.7 on 1.5.87: Government Gazette 25.2.87 p. 445; Sch. 4 items 29.1(f), 29.2 (in its application to ss 35(1)(b), 36, 39(1), 64(1), 65(1), 94(1)(a)(2)(a)(13), 95, 96(1)(2)(a), 97(1)(3), 98, 99(1)(3), 100(1), 101(1), 102(1)(2), 108(1), 109(1)(3)–(5), 110(1)(5), 111(1)(2), 112(1)(2) of the **Transport Accident Act 1986**), 29.4, 29.14–29.16, 29.18 on 1.7.87: Special Gazette (No. 27) 25.6.87 p. 1; Sch. 4 items 29.1(a)(c)–(e), 29.19, 29.20 on 1.3.88: Government Gazette 30.12.87 p. 3540; Sch. 4 item 29.21 never proclaimed, repealed by No. 84/1994 s. 61
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation (Amendment) Act 1987, No. 83/1987

Assent Date:	1.12.87
Commencement Date:	S. 6(2) on 30.7.85: s. 2(2); s. 45(1) on 1.1.88: s. 2(3); rest of Act on 1.12.87: s. 2(1)
Current State:	All of Act in operation

Transport Accident (Amendment) Act 1988, No. 32/1988

Assent Date:	17.5.88
Commencement Date:	Ss 4(3), 35 on 16.12.86: s. 2(2); ss 34, 36, 37 on 1.3.88: s. 2(3); rest of Act on 24.5.88: Special Gazette (No. 37) 24.5.88 p. 1
Current State:	All of Act in operation

State Superannuation Act 1988, No. 50/1988

Assent Date:	24.5.88
Commencement Date:	S. 93(3) on 1.7.87: s. 2(1); s. 93(4) on 27.11.87: s. 2(2); Pt 1 and Pt 6 Div. 2, s. 91 on 1.1.88: s. 2(3); rest of Act on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State:	All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date:	16.5.89
Commencement Date:	1.8.89: Government Gazette 26.7.89 p. 1858
Current State:	All of Act in operation

Transport (Amendment) Act 1989, No. 44/1989

Assent Date:	6.6.89
Commencement Date:	Ss 16, 39(3), Sch. 2 items 42.1, 42.11, 42.12 on 6.6.89: s. 2(1); s. 39(2) on 16.12.86: s. 2(3); s. 42(1) on 1.11.89: s. 2(4); s. 42(2) on 1.11.89: s. 2(5); s. 42(3) on 11.11.89: s. 2(6); rest of Act on 1.7.89: s. 2(1)
Current State:	All of Act in operation

Fire Authorities Act 1989, No. 50/1989 (as amended by No. 91/1989)

Assent Date:	14.6.89
Commencement Date:	S. 52 on 31.7.90: Special Gazette (No. 38) 31.7.90 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date:	14.6.89
Commencement Date:	S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State:	All of Act in operation

Vocational Education and Training Act 1990, No. 45/1990

Assent Date:	19.6.90
Commencement Date:	S. 120 on 1.7.91: Government Gazette 19.12.90 p. 3745 and Special Gazette (No. 9) 31.1.91 p. 3
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Courts (Amendment) Act 1990, No. 64/1990

Assent Date:	20.11.90
Commencement Date:	S. 19 on 20.9.89: s. 2(2); rest of Act (*except* ss 13, 14) on 1.1.91: Government Gazette 19.12.90 p. 3750; s. 13 on 1.6.91: Government Gazette 15.5.91 p. 1274; s. 14 on 18.11.91: Government Gazette 13.11.91 p. 3083
Current State:	All of Act in operation

State Insurance Office (Sale) Act 1991, No. 68/1991

Assent Date:	19.11.91
Commencement Date:	20.11.91: Government Gazette 20.11.91 p. 3146
Current State:	All of Act in operation

Accident Compensation (WorkCover) Act 1992, No. 67/1992

Assent Date:	19.11.92
Commencement Date:	Ss 1–3 on 19.11.92: s. 2(2); ss 26, 49 on 1.7.93: s. 2(3); s. 63(2) on 29.10.92: s. 2(4); rest of Act (*except* s. 36(1)) on 1.12.92: s. 2(1); s. 36(1) was never proclaimed, repealed by No. 50/1993 s. 111(1)(a), s. 42 repealed by No. 50/1993 s. 111(1)(b)
Current State:	All of Act in operation

Transport Accident (Amendment) Act 1992, No. 79/1992

Assent Date:	24.11.92
Commencement Date:	Ss 1–3, 9(1)(3)–(5) on 24.11.92: s. 2(1); s. 10 on 1.7.92: s. 2(2); rest of Act on 15.1.93: s. 2(3)
Current State:	All of Act in operation

Stamps (Amendment) Act 1993, No. 17/1993

Assent Date:	18.5.93
Commencement Date:	S. 12 on 24.11.92: s. 2(2); s. 13(2) on 7.6.88: s. 2(3); rest of Act on 18.5.93: s. 2(1)
Current State:	All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date:	17.5.94
Commencement Date:	S. 118(Sch. 1 item 57) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994[20]

Assent Date:	31.5.94
Commencement Date:	S. 4(Sch. 2 item 92) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date:	7.6.94
Commencement Date:	S. 42(Sch. item 11) on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation (Amendment) Act 1994, No. 50/1994

Assent Date:	15.6.94
Commencement Date:	S. 107 on 15.6.94: s 2(1); s. 106 on 1.12.92: s. 2(2)(b); ss 105, 108 on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Victorian Funds Management Corporation Act 1994, No. 61/1994

Assent Date:	15.6.94
Commencement Date:	S. 42 on 19.7.94: Special Gazette (No. 50) 19.7.94 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident (General Amendment) Act 1994, No. 84/1994

Assent Date:	29.11.94
Commencement Date:	Pt 1 (ss 1–3) on 29.11.94: s. 2(1); Pt 2 (ss 4–11) on 1.1.95: s. 2(2); s. 38 on 1.7.93: s. 2(3); s. 40 on 1.1.87: s. 2(4); ss 12–14, 16–19, 21, 27, 28(1), 32, 34, 35, 39, 47–55 on 18.12.94: ss 20, 22–24, 26, 29–31, 33, 37, 41–46 on 1.1.95: Special Gazette (No. 96) 13.12.94 pp 1, 2; ss 15, 25, 28(2), 36 on 29.5.95: s. 2(6)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Equal Opportunity Act 1995, No. 42/1995[21]

Assent Date:	14.6.95
Commencement Date:	S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 42 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Mental Health (Amendment) Act 1995, No. 98/1995

Assent Date:	5.12.95
Commencement Date:	S. 65(Sch. 1 item 7) on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date:	5.12.95
Commencement Date:	S. 10(1)(Sch. 1 items 5, 6) on 30.4.96: Special Gazette (No. 45) 30.4.96 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation (Further Amendment) Act 1996, No. 60/1996

Assent Date:	17.12.96
Commencement Date:	S. 35 on 14.11.96: s. 2(3); s. 34 on 23.1.97: Government Gazette 23.1.97 p. 146
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Chiropractors Registration Act 1996, No. 63/1996

Assent Date:	17.12.96
Commencement Date:	S. 98 on 1.7.97 s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Miscellaneous Acts (Further Omnibus Amendments) Act 1996, No. 73/1996

Assent Date:	17.12.96
Commencement Date:	Ss 96, 97 on 17.12.96: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Podiatrists Registration Act 1997, No. 78/1997

Assent Date:	25.11.97
Commencement Date:	S. 97(Sch. item 3) on 1.12.98: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Vocational Education and Training (Training Framework) Act 1997, No. 80/1997

Assent Date:	25.11.97
Commencement Date:	S. 55(Sch. 1 item 4) on 1.1.98: Government Gazette 18.12.97 p. 3614
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date:	16.12.97
Commencement Date:	S. 56 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

State Trustees (Amendment) Act 1998, No. 15/1998

Assent Date:	28.4.98
Commencement Date:	S. 12 on 1.8.98: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident (Amendment) Act 1998, No. 34/1998

Assent Date:	19.5.98
Commencement Date:	S. 13 on 9.4.98: s. 2(2); ss 1–12, 14–19 on 19.5.98: s. 2(1)
Current State:	All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date:	26.5.98
Commencement Date:	S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998 (as amended by No. 101/1998)

Assent Date:	2.6.98
Commencement Date:	S. 311(Sch. 1 item 95) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Safety (Amendment) Act 1998, No. 57/1998

Assent Date:	13.10.98
Commencement Date:	S. 29 on 1.5.99: Government Gazette 18.3.99 p. 665
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Safety (Further Amendment) Act 1998, No. 73/1998

Assent Date:	4.11.98
Commencement Date:	Ss 11, 12 on 1.5.99: Government Gazette 18.3.99 p. 665
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date:	1.12.98
Commencement Date:	S. 33 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident (Further Amendment) Act 1999, No. 5/1999

Assent Date:	28.4.99
Commencement Date:	28.4.99
Current State:	All of Act in operation

National Taxation Reform (Further Consequential Provisions) Act 2000, No. 24/2000

Assent Date:	16.5.00
Commencement Date:	S. 17 on 17.5.00: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation (Common Law and Benefits) Act 2000, No. 26/2000

Assent Date:	30.5.00
Commencement Date:	S. 28 on 1.7.97: s. 2(3); s. 29 on 13.4.00: s. 2(6); s. 33 on 31.5.00: Special Gazette (No. 75) 30.5.00 p. 1; s. 25(5)–(9) on 1.7.00: Special Gazette (No. 92) 27.6.00 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport (Amendment) Act 2000, No. 30/2000

Assent Date:	30.5.00
Commencement Date:	31.5.00: s. 2
Current State:	All of Act in operation

Psychologists Registration Act 2000, No. 41/2000

Assent Date:	6.6.00
Commencement Date:	S. 102(Sch. item 7) on 1.6.01: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Juries Act 2000, No. 53/2000

Assent Date:	12.9.00
Commencement Date:	S. 98 on 1.8.01: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000

Assent Date:	12.9.00
Commencement Date:	Ss 25(6)–(8), 27 on 1.1.01: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident (Amendment) Act 2000, No. 84/2000

Assent Date:	28.11.00
Commencement Date:	S. 15(3) on 1.7.00: s. 2(2); ss 6, 9, 10, 11, 13, 14(3), 15(4), 17, 18, 21, 22, 24, 25, 26, 27(4), 29, 31, 32, 33, 36 on 29.11.00: s. 2(1); ss 3(1)(2)(5), 4 on 7.12.00; ss 3(3)(a)(b)(d)–(f)(4), 5, 7, 8, 15(1)(2)(5), 19, 20, 23(2), 28 on 1.1.01: Government Gazette 7.12.00 p. 2865; ss 12, 14(1)(2)(4), 16, 30 on 1.3.01: Government Gazette 1.3.01 p. 303; ss 34, 35 on 1.7.01: Government Gazette 31.5.01 p. 1076; ss 3(3)(c), 27(1)–(3)(5) on 1.8.01: Government Gazette 5.7.01 p. 1512; s. 23(1) on 1.7.02: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date:	8.5.01
Commencement Date:	S. 3(Sch. item 79) on 1.6.01: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date:	12.6.01
Commencement Date:	S. 4(Sch. 2 item 4) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date:	27.6.01
Commencement Date:	S. 3(Sch. item 114) on 15.7.01: s. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport (Further Amendment) Act 2001, No. 54/2001

Assent Date:	2.10.01
Commencement Date:	S. 37 on 30.6.03: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date:	23.4.02
Commencement Date:	S. 3(Sch. 1 item 61) on 24.4.02: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Safety (Amendment) Act 2003, No. 94/2003

Assent Date:	25.11.03
Commencement Date:	S. 41 on 26.11.03: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation and Transport Accident Acts (Amendment) Act 2003, No. 95/2003 (as amended by No. 28/2005)

Assent Date:	2.12.03
Commencement Date:	Ss 25–32 on 3.12.03: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident (Amendment) Act 2004, No. 94/2004

Assent Date:	7.12.04
Commencement Date:	Ss 3, 4, 7, 16, 18–22, 25–37 on 8.12.04: s. 2(1); ss 11–13 on 16.12.04; ss 5, 6, 8, 9, 14, 15, 17 on 1.1.05; ss 10, 23, 24 on 1.3.05: Government Gazette 16.12.04 p. 3381
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Occupational Health and Safety Act 2004, No. 107/2004

Assent Date:	21.12.04
Commencement Date:	S. 186 on 1.7.05: s. 3(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Public Administration Act 2004, No. 108/2004

Assent Date:	21.12.04
Commencement Date:	S. 117(1)(Sch. 3 item 209) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation (Amendment) Act 2005, No. 28/2005

Assent Date:	21.6.05
Commencement Date:	Pt 5 Div. 1 (ss 30, 31) on 22.6.05: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation and Transport Accident Acts (Ombudsman) Act 2005, No. 46/2005

Assent Date:	23.8.05
Commencement Date:	S. 7 on 24.8.05: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Victoria State Emergency Service Act 2005, No. 51/2005

Assent Date:	24.8.05
Commencement Date:	S. 58(9) on 1.11.05: Government Gazette 20.10.05 p. 2308
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Health Professions Registration Act 2005, No. 97/2005

Assent Date:	7.12.05
Commencement Date:	S. 182(Sch. 4 item 51) on 1.7.07: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Education and Training Reform Act 2006, No. 24/2006

Assent Date:	16.5.06
Commencement Date:	S. 6.1.2(Sch. 7 item 41) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation and Other Legislation (Amendment) Act 2006, No. 41/2006

Assent Date:	25.7.06
Commencement Date:	Ss 29, 30 on 26.7.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date:	10.10.06
Commencement Date:	S. 26(Sch. item 104) on 11.10.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident and Accident Compensation Acts Amendment Act 2007, No. 60/2007

Assent Date:	27.11.07
Commencement Date:	S. 19 on 1.1.05: s. 2(2); s. 15(1) on 1.7.05: s. 2(3); ss 3(1), 4, 8, 13, 20 on 19.9.07: s. 2(4); ss 3(2)–(6), 5–7, 9–12, 14, 15(2), 16–18, 21 on 28.11.07: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Relationships Act 2008, No. 12/2008

Assent Date:	15.4.08
Commencement Date:	S. 73(1)(Sch. 1 item 60) on 1.12.08: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Compensation and Superannuation Legislation Amendment Act 2008, No. 65/2008

Assent Date:	18.11.08
Commencement Date:	Ss 3, 4 on 11.9.08: s. 2(2); ss 5–7 on 19.11.08: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date:	10.2.09
Commencement Date:	S. 37(Sch. 1 item 26) on 1.12.09: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date:	24.11.09
Commencement Date:	S. 97(Sch. item 123) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date:	24.11.09
Commencement Date:	S. 54(Sch. Pt 1 item 59) on 1.1.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date:	2.3.10
Commencement Date:	S. 203(1)(Sch. 6 item 46) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Accident Compensation Amendment Act 2010, No. 9/2010

Assent Date:	23.3.10
Commencement Date:	S. 140 on 1.7.10: s. 2(8)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date:	30.3.10
Commencement Date:	S. 51(Sch. item 56) on 1.7.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Child Employment Amendment Act 2010, No. 26/2010

Assent Date:	8.6.10
Commencement Date:	S. 37 on 31.12.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Supported Residential Services (Private Proprietors) Act 2010, No. 49/2010

Assent Date:	24.8.10
Commencement Date:	S. 233 on 1.7.12: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident and Accident Compensation Legislation Amendment Act 2010, No. 80/2010

Assent Date:	19.10.10
Commencement Date:	Ss 3–5, 7, 9–14 on 20.10.10: s. 2(1); ss 6, 8 on 1.7.11: s. 2(9)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Disability Amendment Act 2012, No. 22/2012

Assent Date:	8.5.12
Commencement Date:	S. 86 on 1.7.12: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Health Professions Registration (Repeal) Act 2012, No. 27/2012

Assent Date:	29.5.12
Commencement Date:	S. 27 on 1.7.12: s. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Statute Law Revision Act 2012, No. 43/2012

Assent Date:	27.6.12
Commencement Date:	S. 3(Sch. item 52) on 28.6.12: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013

Assent Date:	24.9.13
Commencement Date:	S. 12 on 1.1.14: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date:	12.11.13
Commencement Date:	S. 649(Sch. 9 item 32) on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident Amendment Act 2013, No. 71/2013

Assent Date:	19.11.13
Commencement Date:	S. 27 on 16.10.13: s. 2(2); ss 4–26, 28–30 on 20.11.13: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Mental Health Act 2014, No. 26/2014

Assent Date:	8.4.14
Commencement Date:	S. 455(Sch. item 31) on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 170) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date:	27.6.14
Commencement Date:	S. 33(Sch. item 29) on 30.6.14: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Safety Amendment Act 2014, No. 49/2014

Assent Date:	1.7.14
Commencement Date:	S. 54 on 1.8.15: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Powers of Attorney Act 2014, No. 57/2014

Assent Date:	26.8.14
Commencement Date:	S. 162 on 1.9.15: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014

Assent Date:	9.9.14
Commencement Date:	Ss 58, 59 on 10.9.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Inquiries Act 2014, No. 67/2014

Assent Date:	23.9.14
Commencement Date:	S. 147(Sch. 2 item 37) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Accident Amendment Act 2016, No. 18/2016

Assent Date:	19.4.16
Commencement Date:	S. 6 on 16.10.13: s. 2(3); ss 4, 5 on 20.11.13: s. 2(2); ss 3, 7 on 20.4.16: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Compensation Legislation Amendment Act 2016, No. 73/2016

Assent Date:	13.12.16
Commencement Date:	Ss 6, 7, 9, 10 on 14.12.16: s. 2(1); s. 8 on 1.7.17: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017, No. 68/2017

Assent Date:	19.12.17
Commencement Date:	Ss 121, 122 on 1.1.18: Special Gazette (No. 443) 19.12.17 p. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Compensation Legislation Amendment Act 2018, No. 1/2018

Assent Date:	13.2.18
Commencement Date:	Ss 3–6 on 14.2.18: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Treasury and Finance Legislation Amendment Act 2018, No. 49/2018

Assent Date:	25.9.18
Commencement Date:	Ss 3–18 on 26.9.18: s. 2
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date:	4.6.19
Commencement Date:	S. 221(Sch. 1 item 54) on 1.3.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Legislation Amendment Act 2019, No. 49/2019

Assent Date:	3.12.19
Commencement Date:	S. 186(Sch. 4 item 42) on 1.1.20: Special Gazette (No. 514) 10.12.19 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Social Services Regulation Act 2021, No. 37/2021 (as amended by No. 40/2022)

Assent Date:	21.9.21
Commencement Date:	S. 400 on 1.7.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Road Safety Legislation Amendment Act 2022, No. 18/2022

Assent Date:	24.5.22
Commencement Date:	Ss 20–39 on 6.7.22: Special Gazette (No. 346) 5.7.22 p. 1
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Mental Health and Wellbeing Act 2022, No. 39/2022

Assent Date:	6.9.22
Commencement Date:	S. 874 on 1.9.23: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Disability and Social Services Regulation Amendment Act 2023, No. 9/2023

Assent Date:	23.5.23
Commencement Date:	S. 261 on 1.7.24: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Transport Legislation Amendment Act 2023, No. 34/2023

Assent Date:	21.11.23
Commencement Date:	Ss 59–62 on 22.11.23: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Roads and Ports Legislation Amendment (Road Safety and Other Matters) Act 2025, No. 25/2025

Assent Date:	5.8.25
Commencement Date:	S. 106(Sch. 1 item 47) on 6.8.25: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

Workplace Legislation Amendment (Accident Compensation and Other Matters) Act 2026, No. 45/2026

Assent Date:	1.10.26
Commencement Date:	Ss 16–18 on 2.10.26: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Transport Accident Act 1986**

3 Explanatory details

[1] S. 3(1) def. of ***earner***: Section 11 of the **Transport Accident (General Amendment) Act 1994**, No. 84/1994 reads as follows:

11 Application

(1) The Principal Act as amended by this Part applies to and in respect of a transport accident which occurs on or after 1 January 1995.

(2) The Principal Act as in force before 1 January 1995 continues to apply to and in respect of a transport accident which occurred before 1 January 1995.

Now see endnote 11.

[2] S. 3(1) def. of ***transport accident***: See note 1.

[3] S. 3(1A): See note 1.

[4] S. 3(3)(a): See note 1.

[5] S. 3(3)(b): See note 1.

[6] S. 3(3)(c): See note 1.

[7] S. 41A: See note 1.

[8] S. 41B: See note 1.

[9] S. 46A(6): The amendment proposed by section 8(3)(a) of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, No. 60/2007 is not included in this publication as the expression to be substituted was not in this section.

[10] S. 61(2): Section 37(2) of the **Transport Accident (General Amendment) Act 1994**, No. 84/1994 reads as follows:

37 Amendment of section 61

(2) For the purposes of the amendment of section 61(2) of the Principal Act by subsection (1), the reference in that section to "1 July 1987" is to be construed as a reference to "1 July 1995".

[11] S. 93: Section 93 in force before 1 January 1995 reads as follows:

93 Actions for damages

(1) A person shall not recover any damages in any proceedings in respect of the injury or death of a person as a result of a transport accident occurring on or after the commencement of section 34 except in accordance with this section.

(2) A person who is injured as a result of a transport accident may recover damages in respect of the injury if—

S. 93(2)(a) substituted by No. 32/1988 s. 21(1)(a).

(a) the Commission has determined the degree of impairment of the person under section 46A, 47(7) or 47(7A); and

(b) the injury is a serious injury.

(3) If—

S. 93(3)(a) substituted by No. 32/1988 s. 21(1)(b).

(a) under section 46A, 47(7) or 47(7A), the Commission has determined the degree of impairment of a person who is injured as a result of a transport accident; and

S. 93(3)(b) substituted by No. 32/1988 s. 21(1)(b).

(b) the degree so determined is 30 per centum or more—

the injury is deemed to be a serious injury within the meaning of this section.

(4) If—

S. 93(4)(a) substituted by No. 32/1988 s. 21(1)(c).

(a) under section 46A, 47(7) or 47(7A), the Commission has determined the degree of impairment of a person who is injured as a result of a transport accident; and

S. 93(4)(b) substituted by No. 32/1988 s. 21(1)(c).

(b) the degree so determined is less than 30 per centum—

the person may not bring proceedings for the recovery of damages in respect of the injury unless—

(c) the Commission—

(i) is satisfied that the injury is a serious injury; and

(ii) issues to the person a certificate in writing consenting to the bringing of the proceedings; or

(d) a court, on the application of the person, gives leave to bring the proceedings.

S. 93(5) substituted by No. 57/1989 s. 3(Sch. item 203.1).

(5) A copy of an application under subsection (4)(d) must be served on the Commission and on each person against whom the applicant claims to have a cause of action.

(6) A court must not give leave under subsection (4)(d) unless it is satisfied that the injury is a serious injury.

(7) A court must not, in proceedings in accordance with subsections (2), (3) and (4), award to a person in respect of an injury—

(a) pecuniary loss damages—

(i) if the total pecuniary loss damages assessed, before any reduction in respect of the person's responsibility for the injury, is less than $20 000; or

(ii) in excess of $450 000; or

(b) pain and suffering damages—

(i) if the total pain and suffering damages assessed, before any reduction in respect of the person's responsibility for the injury, is less than $20 000; or

(ii) in excess of $200 000; or

(c) damages of any other kind.

(8) A person may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a person as a result of a transport accident.

(9) A court must not, in proceedings under Part III of the **Wrongs Act 1958** award damages in accordance with subsection (8) in respect of the death of a person in excess of $500 000.

(10) Damages awarded to a person under this section shall not include damages in respect of—

(a) in the case of an award of pecuniary loss damages under subsection (7), any pecuniary loss suffered before the entitlement of the person to compensation under this Act was reviewed under section 46; or

(b) any loss suffered or that may be suffered as a result of the incurring of costs or expenses of a kind referred to in section 60; or

(c) the value of services of a domestic nature or services relating to nursing and attendance—

(i) which have been or are to be provided by another person to the person in whose favour the award is made; and

(ii) for which the person in whose favour the award is made has not paid and is not and will not be liable to pay.

(11) If damages are awarded in accordance with subsection (7) or (9) in respect of the injury or death of a person, the court shall order the payment to the Commission—

S. 93(11)(a) substituted by No. 32/1988 s. 21(1)(d).

(a) in the case of damages awarded under subsection (7)—

(i) in respect of pain and suffering damages, of such part of the damages as is equal to the sum of payments by the Commission under sections 47 and 48 in respect of the injury; or

(ii) in respect of pecuniary loss damages, of such part of the damages as is equal to the sum of payments by the Commission under sections 49, 50 and 51 in respect of the injury; or

(b) in the case of damages awarded in accordance with subsection (9), of such part of the damages as is equal to the sum of payments made by the Commission under this Act in respect of that death.

(12) Subject to the discretion of the court—

(a) in proceedings relating to an application for leave of the court under subsection (4)(d)— costs are to be awarded against a party against whom a decision is made; and

(b) in proceedings for the recovery of damages in accordance with this section—

(i) if no liability to pay damages is established, costs are to be awarded against the claimant; and

(ii) if damages are assessed but cannot be awarded under this section, each party bears its own costs; and

(iii) if damages are awarded, costs are to be awarded against the defendant.

(13) Where an award of damages in accordance with this section is to include compensation, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future—

the present value of the future loss must be qualified by adopting a discount rate of 6 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(14) Except as provided by subsection (13), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

(15) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be payable, on an amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to date of the award.

(16) Except as provided by subsection (15), nothing in that subsection affects any other law relating to the payment of interest on an amount of damages, other than special damages.

(17) In this section—

pain and suffering damages means damages for pain and suffering, loss of amenities of life or loss of enjoyment of life;

pecuniary loss damages means damages for loss of earnings, loss of earning capacity, loss of value of services or any other pecuniary loss or damage;

serious injury means—

(a) serious long-term impairment or loss of a body function; or

(b) permanent serious disfigurement; or

(c) severe long-term mental or severe long-term behavioural disturbance or disorder; or

(d) loss of a foetus.

(18) Nothing in subsection (1)—

(a) affects a right to compensation under this Act or an Act or enactment referred to in section 37 or 38; or

S. 93(18)(b) amended by No. 32/1988 s. 21(2).

(b) applies to the recovery of damages in respect of a transport accident involving an organized motor vehicle race or speed trial or a test in preparation for such a race or trial by a person who, by reason of section 41, is not entitled to compensation in accordance with this Act in respect of that accident.

[12] S. 93(7): See note 1.

[13] S. 93(10)(a): See note 1.

[14] S. 93(11): See note 1.

[15] S. 93(11A)(b): See note 1.

[16] S. 93(12A): See note 1.

[17] S. 93(18)(b): See note 1.

[18] S. 93(18)(c): See note 1.

[19] S. 93D: Sections 93A to 93C were never part of this Act.

[20] Table of Amendments—**Financial Management (Consequential Amendments) Act 1994**, No. 31/1994: The proposed repeal of section 32 by section 4 (Schedule 2 item 92) of the **Financial Management (Consequential Amendments) Act 1994**, No. 31/1994 was not included in this publication due to its earlier repeal by section 8 of the **Accident Compensation (Amendment) Act 1988**.

[21] Table of Amendments—**Equal Opportunity Act 1995**, No. 42/1995: The proposed repeal of section 16(3)(c) and (4) by the **Equal Opportunity Act 1995**, No. 42/1995 was not included in this publication due to their earlier repeal by section 23(b) of the **Transport Accident (General Amendment) Act 1994**.