



TASMANIA

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**MOTOR ACCIDENTS (LIABILITIES AND COMPENSATION)  
AMENDMENT ACT 1991**

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**No. 6 of 1991**

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**MOTOR ACCIDENTS (LIABILITIES AND  
COMPENSATION) AMENDMENT ACT 1991**

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**No. 6 of 1991**

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**AN ACT to amend the *Motor Accidents (Liabilities and Compensation) Act 1973***

**[Royal Assent 28 June 1991]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**Short title**

**1**—This Act may be cited as the *Motor Accidents (Liabilities and Compensation) Amendment Act 1991*.

**Commencement**

**2**—This Act commences on the day on which it receives the Royal Assent.

**Principal Act**

3—In this Act—

“the Principal Act” means the *Motor Accidents (Liabilities and Compensation) Act 1973\**;

“the Principal Regulations” means the *Motor Accidents (Liabilities and Compensation) Regulations 1980*.

**Application of this Act**

4—The amendments made to the Principal Act and the Principal Regulations by this Act apply in respect of accidents which occur on or after the day on which this Act received the Royal Assent.

**Section 2 amended (Interpretation)**

5—Section 2 (1) of the Principal Act is amended as follows:—

(a) by inserting after the definition of “Commonwealth Pension” the following definition:—

“daily care” has the meaning assigned to that expression by section 27A (1);

(b) by omitting the definition of “medical benefit” and substituting the following definition:—

“medical benefit” means a scheduled benefit payable pursuant to regulations made for the purpose of section 23 (4) (a);

**Section 23 amended (Liability to pay scheduled benefits)**

6—Section 23 (4) of the Principal Act is amended by omitting from paragraph (a) “and the limit on the amount of benefits so payable” and substituting “and the limit (except in respect of a person requiring daily care) on the amount of benefits so payable”.

\* No. 71 of 1973. For this Act as amended to 1 January 1980 see the continuing Reprint of Statutes. Subsequently amended by No. 10 of 1982, Nos. 29 and 90 of 1984, Nos. 45 and 51 of 1985, Nos. 4 and 10 of 1986 and Nos. 32 and 39 of 1988.

**Section 24 amended (Exclusion from scheduled benefits)**

7—Section 24 (4) of the Principal Act is amended by omitting “scheduled benefits under Part II of Schedule 1” and substituting “scheduled benefits”.

**Sections 27 and 28 substituted**

8—Sections 27 and 28 of the Principal Act are repealed and the following sections are substituted:—

**Scheduled benefits in relation to liability for damages**

27—(1) Except as provided by subsection (2), if a liability has been incurred for the payment of damages to a person in respect of a death or bodily injury the payment to that person of a scheduled benefit in respect of that death or bodily injury shall, so far as it extends, be taken to be a payment in or towards the discharge of that liability, and the amount of those damages shall be reduced accordingly.

(2) Subsection (1) does not apply in respect of medical benefits paid in accordance with section 27A (5).

(3) Except as provided by section 27A (5), if—

(a) a judgment is obtained for the payment of damages to a person in respect of death or bodily injury; or

(b) a person has accepted money paid into Court in satisfaction of a claim in respect of death or bodily injury—

the Board is not required to make any further payments to that person by way of scheduled benefits in respect of that death or bodily injury except to the extent that the judgment remains unsatisfied.

(4) Subsections (1) and (3) do not affect the right to scheduled benefits of any person other than the person to whom or for whose benefit the damages referred to in those subsections are to be paid, and the right of any such other person to scheduled benefits and the amount of those benefits shall be determined as if the judgment under which the damages referred to in subsections (1) and (3) are payable had not been obtained.

**People requiring daily care**

27A—(1) In this section “daily care”, in respect of a person, means that the person will need treatment, therapy, nursing services, assistance, supervision, services for rehabilitation or other care for at least 2 hours a day for an indefinite period.

(2) This section applies where—

- (a) a liability has been incurred for the payment of damages to a person in respect of bodily injury; and
- (b) as a result of that injury medical benefits are payable by the Board to that person.

(3) If a Court is satisfied at the time of giving judgment in respect of a liability referred to in subsection (2) that the person to whom any damages are to be paid will require daily care as a result of suffering the bodily injury giving rise to the damages, the Court—

- (a) shall, as part of its judgment, certify that the person will require daily care; and
- (b) shall not include in the damages any amount in respect of the daily care that person will require as a result of the bodily injury after the date of the judgment.

(4) If—

- (a) a person makes a payment into Court in respect of a claim arising from a liability referred to in subsection (2); and
- (b) the person making the payment gives notice to the person making the claim that the payment is made on the basis that, because of the bodily injury giving rise to the claim, the person making the claim will require daily care; and
- (c) the person making the claim accepts the payment—

the person making the claim shall be taken for the purposes of this Act to require daily care.

(5) If—

- (a) a Court certifies in accordance with subsection (3) (a) that a person will require daily care; or

(b) a person accepts a payment into Court in accordance with subsection (4) (c)—

the Board shall pay that person the medical benefits referred to in subsection (2) (b) for so long as the person needs those medical benefits because of the bodily injury giving rise to the liability referred to in subsection (2) (a).

### **Board may require examination**

27B—(1) In this section—

“**consultant**” means a person who—

- (a) is normally resident in a State or Territory of the Commonwealth; and
- (b) is entitled in accordance with the laws of that State or Territory to practise as a medical practitioner, a dentist, a neuro-psychologist, an occupational therapist, a physiotherapist or a psychologist in that State or Territory—

and includes a person trained or skilled in the rehabilitation of injured people;

“**examination**” means—

- (a) an examination of an injured person by a consultant; or
- (b) an examination of any accommodation or facilities used by or available to an injured person.

(2) This section applies where—

- (a) a person has suffered bodily injury; and
- (b) the bodily injury has resulted in or could result in the Board being required to pay scheduled benefits.

(3) If the right to, or the amount of any—

- (a) scheduled benefits; or
- (b) damages—

payable in respect of an injury referred to in subsection (2) depends upon a determination by the Board or a judgment by a Court the Board may require an examination to be carried out.

(4) If the Board has required an examination to be carried out and—

- (a) the injured person unreasonably refuses or fails to be examined by a consultant in accordance with the requirement; or
- (b) a person caring for the injured person unreasonably refuses or fails to give a consultant reasonable access to the injured person to carry out an examination in accordance with the requirement; or
- (c) access to any accommodation or facilities required to be examined in accordance with the requirement is unreasonably refused or failed to be given—

the Board is not required to pay scheduled benefits in respect of the injured person, and proceedings in any Court relating to the injury to the injured person may be stayed on the application of the Board, in either case for so long as the refusal or failure continues.

#### **Determination as to right to scheduled benefits**

28—(1) Except as provided by this section, the right of a person to, and the amount of any scheduled benefit shall be determined by the Board.

(2) A person aggrieved—

- (a) by a determination under subsection (1); or
- (b) by a refusal or failure of the Board to make a payment by way of a scheduled benefit—

may refer the matter to the Tribunal.

(3) The Board may, at any time, refer any matter to the Tribunal affecting—

- (a) the right of a person to a scheduled benefit; or
- (b) the amount of any scheduled benefit.

(4) The Tribunal shall make such determination on a matter referred to it as it considers proper in the circumstances.

(5) A determination under subsection (4) binds—

- (a) the Board; and
- (b) any other party to the reference to the Board.



(6) A person aggrieved by a determination made by the Tribunal under subsection (5) may appeal to the Supreme Court which may confirm, vary or rescind the determination.

(7) A determination of the Tribunal varied by the Supreme Court under subsection (6) has effect, as varied, as a determination by the Tribunal.

(8) Regulations made for the purpose of this section may—

- (a) prescribe the manner in which any determination by the Board or the Tribunal is to be made; and
- (b) prescribe the manner in which a matter shall be referred to the Tribunal and the time in which it can be so referred; and
- (c) make provision with respect to—
  - (i) the exercise of rights of infants in relation to references to the Tribunal and the determinations on such references; and
  - (ii) fixing the amount of costs to be paid by a party to a reference to the Tribunal; and
  - (iii) the enforcement of orders of the Tribunal for the payment of costs; and
  - (iv) the discontinuance or dismissal of a reference to the Tribunal for want of prosecution.

### **Amendment of the Principal Regulations**

9—Part II of Schedule 2 to the Principal Regulations is amended as follows:—

- (a) by inserting in clause 1 after subclause (1) the following subclause:—

(1A) Subject to this Part, where as a result of suffering bodily injury in an accident a person requires daily care there is payable in addition to the benefits payable pursuant to subclause (1) the reasonable value of all treatment reasonably required by and gratuitously provided to him or her within the Commonwealth as a result of the injury.

- (b) by omitting from clause 2 “The total amount payable under this Part” and substituting “Except in respect of medical benefits payable to a person requiring daily care, the total amount payable under this Part”.