

**Version No. 072**  
**Transport Accident Act 1986**

**Act No. 111/1986**

Version incorporating amendments as at 29 November 2000

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**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—

**"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 "ambulance service" amended by No. 32/1988 s. 4(1)(a).



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S. 3(1) def. of "apprentice" substituted by No. 45/1990 s. 120, amended by No. 80/1997 s. 55(Sch. 1 item 4).

**"apprentice"** means a person who is an apprentice within the meaning of section 3 of the **Vocational Education and Training Act 1990**;

**"child"** in relation to a person includes an adopted child of that person or of the spouse of that person but does not include a child of that person or of a spouse of that person 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 of "degree of impairment" substituted as "degree" by No. 32/1988 s. 4(1)(b), repealed by No. 34/1998 s. 9(a).

**"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—

- (a) is under the age of 16 years; or

- (b) has attained the age of 16 years but is under the age of 25 years and is a full-time student—

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;

**"dependent spouse"** in relation to a person means the spouse of that person if the spouse would, but for the injury or death of that person, be wholly, mainly or in part dependent on that person for economic support;

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

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

**"earner"** means an earner within the meaning of sub-section (2) and, in sections 57 and 58, includes a person who<sup>1</sup>—

S. 3(1) def. of "earner" substituted by Nos 32/1988 s. 4(3), 84/1994 s. 4.

- (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; or
- (c) is or has been a member of an unemployed couple and his or her spouse receives or received the married

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rate of an allowance or benefit specified under paragraph (a) or (b)—

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

**"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 No. 98/1995 s. 65(Sch. 1 item 7).

**"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) an approved mental health service within the meaning of the **Mental Health Act 1986**; 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;

**"injury"**, except in Part 10, means physical or mental injury and includes nervous shock;

**"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 registered medical practitioner (within the meaning of the **Medical Practice Act 1994**) 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).

**"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
- (b) attendance, examination or treatment of any kind by a registered psychologist

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).

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on referral from a medical practitioner;  
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, crutches, artificial members, eyes or teeth, spectacle glasses or hearing aids; 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 or report required by the person or the person's dependants for any purpose relating to the operation of this Act;

**"minor"** means a person who—

- (a) has not attained the age of 18 years;  
and
- (b) is not an earner;

**"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;

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**"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)).

**"nursing service"** means a nursing service rendered by a registered nurse otherwise than at a hospital or as a member of the nursing staff of a hospital;

\* \* \* \* \*

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).

**"owner"**—

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

(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**;

**"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).

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S. 3(1) def. of  
"railway train"  
amended by  
No. 34/1998  
s. 3(b).

**"railway train"** means a railway locomotive, railway carriage or other railway rolling stock but does not include any railway train forming part of an amusement structure within the meaning of the Occupational Health and Safety (Plant) Regulations 1995;

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"—**

- (a) for the purposes of Part 10, has the same meaning as in section 86 of the **Transport 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;

S. 3(1) def. of "recreation vehicle" substituted by No. 127/1986 s. 102(Sch. 4 item 29.1(e)), amended by No. 57/1998 s. 29(1)(b).

\* \* \* \* \*

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—**

- (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 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

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).



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- (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 "rehabilitation service" amended by Nos 127/1986 s. 102(Sch. 4 item 29.1(g)), 84/1994 s. 15.

**"rehabilitation service"—**

- (a) means the provision to or for a person for the purpose of rehabilitation of any aid, treatment, assistance, appliance, apparatus or any other service; and
- (b) without derogating from the generality of paragraph (a), includes the provision to or for a person for the purpose of rehabilitation of attendant care, household help, modifications to a home or a motor vehicle, counselling or transportation costs—

if the provision under paragraph (a) or (b) is of an authorised service in accordance with section 23;

**"self-insurer"** has the same meaning as in the **Accident Compensation Act 1985**;

**"surviving spouse"** in relation to a person who dies as a result of a transport accident, means a dependent spouse of the person;

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

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**"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<sup>2, 3</sup>;

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).

**"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).

**"worker"** has the same meaning as in the **Accident Compensation Act 1985**.

(1A) For the purposes of the definition of "transport accident" in section 3(1) an incident includes an incident<sup>4</sup>—

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 between a pedal cycle and an open or opening door of a motor vehicle.

(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 74G of the **Community Services Act 1970** from attendance at school and is a person in respect of whom a permit or licence has been granted under section 77 of that Act and—

S. 3(2) amended by No. 84/1994 s. 55(1)(b).

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

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

- (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

- (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.

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

(3) In this Act—

S. 3(3)(a)  
amended by  
No. 84/1994  
s. 5(3)(a).

- (a) a reference to an injury or death (not being a reference to the death of a dependent spouse 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<sup>5</sup>; and

S. 3(3)(b)  
amended by  
No. 84/1994  
s. 5(3)(b).

- (b) a reference to a person who is injured or dies (not being a reference to a dependent spouse or dependent child of a deceased person) is a reference to a person who sustains injuries

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that were, or whose death was, as the case may be, caused by a transport accident<sup>6</sup>; and

- (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<sup>7</sup>.
- (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
  - (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 spouse or child of that person; and

**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).**

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(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.

(6) A reference in this Act to the spouse of a person includes a reference to a person of the opposite sex who is not legally married to the first-mentioned person but lives with that person on a permanent and bona fide domestic basis.

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

(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.

#### 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—

S. 4(1)(a)  
amended by  
No. 32/1988  
s. 5(1)(a).

(a) the average weekly earnings during the 12 months preceding the accident or the time when the injury first manifested itself, whichever is the later, if the earner has been employed by the same employer for the whole of that period; or

S. 4(1)(b)  
amended by  
No. 32/1988  
s. 5(1)(b).

(b) the average weekly earnings for the period less than 12 months preceding the accident or the time when the injury first manifested itself, whichever is the later, for the whole of which the earner has been employed by the same employer—

calculated at the earner's ordinary time rate of pay for the earner's normal number of hours per week.

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s. 4

(1A) For the purposes of sub-section (1), if an earner voluntarily (otherwise than by reason of an incapacity resulting from an injury which entitled the earner to compensation)—

**S. 4(1A)**  
inserted by  
No. 32/1988  
s. 5(2).

(a) alters the normal number of hours worked;  
or

(b) alters the nature of the work performed with the result that a change occurs in the earner's ordinary time rate of pay—

any period before the alteration takes effect shall be disregarded in calculating the earner's average weekly earnings.

(1B) For the purposes of sub-section (1), an earner's average weekly earnings shall be calculated by dividing the sum of amounts payable to the earner calculated at the earner's ordinary time rate of pay for the normal number of hours per week by the number of weeks during which the earner actually worked or was on annual, sick or other paid leave.

**S. 4(1B)**  
inserted by  
No. 32/1988  
s. 5(2).

(1C) For the purposes of sub-section (1), the pre-accident weekly earnings of an earner to whom section 3(2)(c) applies shall be calculated as the indexed value (in accordance with movements in average weekly earnings of all employees for Victoria published by the Australian Statistician) of the loss of earnings in respect of which a weekly payment or other payment is being received.

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

(2) If the pre-accident weekly earnings of an earner calculated under sub-section (1) are less than the amount calculated under section 44(2)(b) or (c), 45(2)(b) or (c) or 45(4)(b) or (c) (whichever is applicable), the value of any other payments to the earner by the employer shall be taken into account but not so as to exceed the amount calculated under those sections.

- (3) For the purposes of sub-section (1), if the period for which the earner has been employed by the same employer is less than four weeks, the earner's average weekly earnings may be calculated having regard to the weekly earnings which the earner could reasonably have been expected to have earned in that employment but for the injury at the earner's ordinary time rate of pay for the earner's normal number of hours per week.
- (4) For the purposes of sub-section (1)—
- (a) if an ordinary time rate of pay is fixed for the earner's work under the terms of the earner's employment and in addition a piece rate is payable, the ordinary time rate of pay shall be deemed to be the sum of the ordinary time rate of pay and the average weekly piece rate payment received by the earner during the relevant period under sub-section (1); and
  - (b) if an ordinary time rate of pay is not fixed for the earner's work under the terms of the earner's employment, the ordinary time rate of pay shall be deemed to be the average weekly rate earned by the earner during the relevant period under sub-section (1); and
- (ba) if the normal number of hours per week is fixed in any industrial award applicable to an earner, the earner's normal number of hours per week in that work shall be deemed to be the number so fixed; and
- (c) if a normal number of work hours per week is not fixed for the earner's work under the terms of the earner's employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours

S. 4(4)(ba)  
inserted by  
No. 32/1988  
s. 5(3).

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- worked by the earner during the relevant period under sub-section (1); and
- (d) if the earner is employed by more than one employer at the time of the accident the earner's average weekly earnings shall be calculated—
- (i) if the earner works for one employer for at least the normal number of hours per week fixed in any industrial award applicable to the earner, with reference to that work; or
  - (ii) if there is no applicable industrial award but the earner works for one employer for at least the prescribed number of hours per week, with reference to that work; or
  - (iii) if the earner works for more than one employer for at least the normal number of hours per week fixed in any industrial award applicable to the earner, with reference to the work which yields the higher ordinary time rate of pay; or
  - (iv) if the earner works for one employer for at least the normal number of hours per week fixed in any industrial award applicable to the earner and for another employer for at least the prescribed number of hours per week with reference to the work which yields the higher ordinary time rate of pay; or
  - (v) if there is no applicable industrial award but the earner works for more than one employer for at least the prescribed number of hours per week,
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with reference to the work which yields the higher ordinary time rate of pay; or

- (vi) in any other case, by obtaining the earner's average ordinary time rate of pay for all work carried out by the worker for all the employers and applying that rate to the prescribed number of hours per week or to the total of the earner's normal number of hours per week, whichever is the lesser; and

- (e) if the earner is an earner by reason only of an arrangement to which section 3(2)(b) applies, the earner's average weekly earnings shall be calculated with reference to the weekly earnings that the earner could reasonably have been expected to earn, but for the injury, in employment under that arrangement at the earner's ordinary time rate of pay for the earner's normal number of hours per week.

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

- (5) For the purposes of this section, if at the time of the transport accident, the earner 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 is expressly required to undergo any training, instructions or examination for the purpose of becoming qualified for the occupation to which the contract of service relates—

and, in terms of his or her employment, the earner would have been entitled at subsequent stages to increments in earnings, the earner's pre-accident weekly earnings shall be calculated—

- (d) until the earner attains the age or stage or would, but for the accident, have attained the stage at which the highest rate is payable— as if, at the time of the accident, the earner were being paid at the rate applicable to the age or stage of the earner for the time being; and
- (e) on and after the earner attains the age or stage or would, but for the accident, have attained the stage at which the highest rate is payable—as if, at the time of the accident, the earner were being paid at the rate applicable at that age or stage.

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

- (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 sub-section (1); and
  - (b) 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) or the purposes of sub-section (7), if at the time of the accident the earner is a full-time student at a secondary school, weekly earnings under sub-

section (7)(b) shall be calculated on the basis that the earner will successfully complete the final year of secondary school.

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.

#### 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—

(a) the amount that is the income of that person consisting of earnings, salaries, wages, commissions, fees, bonuses,

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pensions, superannuation allowances, 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 as a partner 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.

#### ***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;
- (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.

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

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**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
  - (b) shall have an official seal; and
  - (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.
- (3) The official seal of the Commission must be kept in such custody as the Commission directs and must not be used except as authorized by the Commission.
- (4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Commission on any document and, until the contrary is proved, must presume that the document was properly sealed.

**10A. *TAC no longer a reorganising body***

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

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

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- (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 sub-section (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;
- (e) to manage claims under the **Accident Compensation Act 1985** as an authorised agent of the Victorian WorkCover Authority as effectively, efficiently and economically as possible;

S. 11(e)  
inserted by  
No. 26/2000  
s. 25(5).

- (f) if appointed as an agent of a self-insurer under section 143A of the **Accident Compensation Act 1985**, to carry out the functions and powers of a self-insurer as effectively, efficiently and economically as possible.

S. 11(f)  
inserted by  
No. 26/2000  
s. 25(5).

**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 sub-section (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;



*Transport Accident Act 1986*

*Act No. 111/1986*

s. 12

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

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

S. 12(1)(jb)  
inserted by  
No. 26/2000  
s. 25(6).

(jb) to act as an authorised agent under section 23 of the **Accident Compensation Act 1985**;

S. 12(1)(jc)  
inserted by  
No. 26/2000  
s. 25(6).

(jc) if appointed, to act as an agent of a self-insurer under section 143A of the **Accident Compensation Act 1985**;

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

(2) In addition to its functions under sub-section (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 sub-section (3) may include—

(a) the provision by the Commission or by any person or body on behalf of the Commission of rehabilitation 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.

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**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.
- (2) Without limiting or derogating from sub-section (1), the Commission may enter into agreements or arrangements and settle or compromise differences or disputes with other persons.
- (3) Without limiting or derogating from sub-section (1) or (2), the Commission, for the purposes of performing its functions under Part 2A—
  - (a) may do all things necessary to be done in connection with the management of its interest in the assigned debt within the meaning of Part 2A; and
  - (b) may exercise such other powers in relation to the assigned debt as the Treasurer could have exercised but for the enactment of the **Transport Accident (Amendment) Act 1992**.
- (4) Without limiting or derogating from sub-section (1), the Commission has power—
  - (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

S. 12(5)  
repealed by  
No. 84/1994  
s. 20,  
~~s. 13~~  
amended by  
No. 32/1988  
s. 6(a).

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

S. 13(3)  
inserted by  
No. 79/1992  
s. 4.

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

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.

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

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

- (a) acting as an authorised agent under section 23 of the **Accident Compensation Act 1985**; and

- (b) acting as an agent of a self-insurer under section 143A of the **Accident Compensation Act 1985**.

#### **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

- (c) in relation to its functions and powers under Part 2A, any specific written directions given by the Treasurer in relation to a matter or class of matter specified in the direction.

- (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.

- (3) If the Treasurer requests the Commission in writing to give the Treasurer information about a matter or class of matters relating to the liquidation of the Societies referred to in Part 2A, the Commission must comply with the request.

S. 14(3)  
inserted by  
No. 79/1992  
s. 5(2).

**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.
- (3) Subject to sub-section (4), the Commission may appoint one of the Directors to be the Chief Executive Officer of the Commission.
- (4) The Minister may direct the Commission—
- (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.

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

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

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

**16. *Terms and conditions of office of Director***

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 16

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

- (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.
- (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;

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

\* \* \* \* \*

- (d) the Director resigns by writing delivered to the Governor in Council;
- (e) the Director is removed from office under sub-section (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).

\* \* \* \* \*

S. 16(5)  
amended by  
Nos 84/1994  
s. 55(1)(c),  
46/1998  
s. 7(Sch. 1).

- (5) A Director is not, in respect of the office of Director, subject to the provisions of the **Public Sector Management and Employment Act 1998**.

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- (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 sub-section (1).
- (4) If a person has been appointed under sub-section (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

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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 sub-section (1).
- (5) If a person has been appointed under sub-section (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 sub-section (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.
- (6) A question arising at a meeting is to be determined by a majority of votes of Directors present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.

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- (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.

**20A. Resolutions without meetings**

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

- (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 sub-section (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 sub-section (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.

**21. Disclosure of interests**

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

- (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 sub-section (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 sub-section (2) in relation to a Director who has made a disclosure under sub-section (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) Sub-section (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**

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- (1) The Commission may, by instrument under its official seal, 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.
- (2) The Commission may, by an instrument under its official seal, delegate to any person any function or power of the Commission under any other Act, other than this power of delegation.
- (3) The Commission may, by instrument under its official seal, 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 sub-section (4), this power of delegation.
- (4) A person to whom a function or power has been delegated under sub-section (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 sub-section (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 sub-section (4) to perform that function or exercise that power has the same force or effect as if it had been done by the Commission.

**S. 22(3)  
amended by  
No. 32/1988  
s. 7(1)(a)(i)(ii).**

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- (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 sub-section (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 sub-section (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 sub-section (4) does not prevent a performance of the function or the exercise of the power by the person by whom the authority was given.
- (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 sub-section (3) or by an authority under sub-section (4) given pursuant to such a delegation to perform the function or exercise the power.
- (10) The giving of an authority under sub-section (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. 22(9)  
amended by  
No. 32/1988  
s. 7(1)(b)(i)(ii).

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—
- (a) services to be rehabilitation services; or
  - (b) persons to provide services for the purposes of paragraph (b) or (c) of section 60(1).

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- (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).

- (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.

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

#### **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.

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- (2) A member of an advisory committee must be paid such allowances and expenses as are determined by the Minister.
  - (3) Payments under sub-section (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 under its official seal any person to be a fund management agent of the Commission; and
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- (b) terminate any such appointment by an instrument under its official seal.
- (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 sub-section (2)(b)—is guilty of an offence against this Act.
- (5) Sub-section (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.



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- (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 sub-section (6) to retain accounting records and sub-section (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.

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- (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<sup>8</sup>; **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;
- (fa) money received by the Commission under Part 2A; **S. 27(2)(fa) inserted by No. 79/1992 s. 6(a).**
- (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;
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S. 27(3)(ea)  
inserted by  
No. 84/2000  
s. 10.

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

S. 27(3)(ha)  
inserted by  
No. 79/1992  
s. 6(b).

- (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;
- (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;
- (ha) amounts that the Commission is required to pay under Part 2A;

S. 27(3)(hb)  
inserted by  
No. 50/1994  
s. 105.

- (hb) any payment which the Commission becomes liable to make under a settlement under section 137A of the **Accident Compensation Act 1985** or under section 38AA or 94A of this Act;

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

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

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

\* \* \* \* \*

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

(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 bank or banks.

(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**<sup>9</sup>.

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

(8) If any money is invested under sub-section (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.

**28. *Borrowing powers***<sup>10</sup>

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

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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.

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

## 29A. *Repayment of capital*

- (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**

- (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.

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

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

\* \* \* \* \*

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

**33. Audit**

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

- (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.

**PART 2A—VICTORIAN GOVERNMENT SECURITY BONDS**

S. 33A  
inserted by  
No. 79/1992  
s. 7.

**33A. Definitions**

In this Part—

**"assigned debt"** means the sum of—

- (a) the amount assigned by depositors to the Treasurer under contracts entered into on or after 20 December 1990 and before the transfer day assigning the right, title and interest of a depositor in the amount that the depositor had on deposit with any of the Societies when the relevant contract was entered into, including any accrued interest (whether credited or uncredited); and
- (b) interest, and amounts in the nature of interest, payable or that may become payable on the whole or any part of the amount referred to in paragraph (a);

**"depositor"** means a depositor as at 24 June 1990 with one of the Societies;

**"issue"** includes create, make, draw, indorse, accept, negotiate or transfer;

**"promissory note"** means—

- (a) bill of exchange, cheque or other negotiable instrument; and
- (b) bond, debenture, inscribed stock or other security; and

(c) any other instrument or security approved by the Governor in Council—

issued by the Treasurer under section 20 of the **Building Societies (Prudential Standards) Act 1990** before the transfer day;

**"transfer day"** means 15 January 1993;

**"Societies"** means the Pyramid Building Society, the Countrywide Building Society and the Geelong Building Society;

**"VicFin"** means the Victorian Public Authorities Finance Agency or, if section 51 of the **Treasury Corporation of Victoria Act 1992** has come into operation, the Treasury Corporation of Victoria.

**33B. *Assets and rights transferred to the Commission***

The following assets and rights of the Treasurer or the State in respect of the Societies are transferred to and vest in the Commission—

- (a) on the transfer day—
  - (i) the right, title and interest of the Treasurer or the State in the assigned debt;
  - (ii) rights relating to the assigned debt under proofs of debt lodged with the liquidator of the Societies by the Treasurer;
- (b) as from a day to be fixed by Order of the Governor in Council published in the Government Gazette, the rights, or such part of the rights as is specified in the Order, being rights under the Deed of Agreement and Indemnity dated 3 August 1990 between Thomas William Roper and the State Bank

S. 33B  
inserted by  
No. 79/1992  
s. 7.



of Victoria, as varied by Deeds of Variation dated 20 August 1990 and 31 December 1990.

S. 33C  
inserted by  
No. 79/1992  
s. 7.

**33C. *Liabilities transferred to the Commission***

The following liabilities of the Treasurer or the State in respect of the Societies become liabilities of the Commission—

- (a) on the transfer day—
  - (i) the liabilities of the Treasurer or the State under promissory notes;
  - (ii) the liability of the Treasurer under contracts entered into between depositors and the Treasurer on or after 20 December 1990 and before the transfer day, as varied by the notice issued to depositors on 22 March 1991 notifying depositors of additional terms;
  - (iii) the obligations of the Capital Works Authority set out in the document signed on behalf of that Authority, the Commission and VicFin dated 10 November 1992;
- (b) as from a day to be fixed by Order of the Governor in Council published in the Government Gazette, the liability or such part of the liability as is specified in the Order, being the liability to the Commonwealth Bank of Australia under the Deed of Agreement and Indemnity dated 3 August 1990 between Thomas William Roper and the State Bank of Victoria, as varied by Deeds of Variation dated 20 August 1990 and 31 December 1990.

**33D. Promissory notes**

- (1) The Commission may, at any time on or before the maturity date of a promissory note, purchase a promissory note at a price not exceeding its face value.
- (2) Despite any rule of law or equity to the contrary, except in the case of fraud, an assignment of the whole or any part of the right, title and interest in a deposit with one of the Societies, executed by a person whose name appears in the records of the Society as the holder of that deposit, to the Treasurer or a person authorised by the Treasurer or to the Commission has effect as an assignment to the Commission at law and in equity of any right, title and interest in the whole or part of that deposit and any interest payable on that deposit or part (as the case may be).
- (3) Any knowledge of the Treasurer, a person authorised by the Treasurer, the Commission or any person employed by or on behalf of the State of Victoria or the Commission of any right, title or interest in a deposit to which sub-section (2) applies of any person other than the person executing an assignment referred to in that sub-section in respect of that deposit or any interest payable on that deposit does not of itself constitute fraud.

S. 33D  
inserted by  
No. 79/1992  
s. 7.

**33E. Instruments**

- (1) An instrument referred to in sub-section (2) continues to have effect according to its tenor on and after the transfer day as if a reference to the Treasurer were a reference to the Commission.

S. 33E  
inserted by  
No. 79/1992  
s. 7.

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- (2) Sub-section (1) applies to—
- (a) the Agreement made on 28 December 1990 between Anthony John Sheehan and State Bank of Victoria; and
  - (b) the Agreement made on 16 January 1991 between Thomas William Roper and National Registries Proprietary Limited.

S. 33F  
inserted by  
No. 79/1992  
s. 7.

**33F. *Guarantee of the Commission's liabilities under this Part***

- (1) The due satisfaction of amounts payable by the Commission as a result of, or in connection with, the operation of section 33C including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction is guaranteed by the Government of Victoria.
- (2) A guarantee under this section may be enforced under Part II of the **Crown Proceedings Act 1958**.

S. 33G  
inserted by  
No. 79/1992  
s. 7.

**33G. *Treasurer may execute guarantee***

The Treasurer, at the request of the Commission, may, on behalf of the Government of Victoria, by instrument on such terms and conditions (including payment of fees) as the Treasurer determines, guarantee, indemnify or otherwise support the payment to the Commission by the liquidator of the Societies of amounts not exceeding an amount specified in the instrument.

S. 33H  
inserted by  
No. 79/1992  
s. 7.

**33H. *Appropriation for guarantees etc.***

- (1) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee, indemnity or other support by or on behalf of the Government of Victoria provided by or given under this Part shall be paid out of the
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Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

- (2) Any sums received or recovered by the Treasurer from the Commission or the Societies or otherwise in respect of sums paid by the Treasurer under a guarantee, indemnity or other support must be paid into the Consolidated Fund.

**33I. *Other rights not affected***

S. 33I  
inserted by  
No. 79/1992  
s. 7.

- (1) Nothing in this Part—
- (a) affects the rights, obligations or liabilities of a party (including the State) to any proceedings whatsoever concerning or relating to the affairs or activities of any of the Societies, whether begun before or after the commencement of section 7 of the **Transport Accident (Amendment) Act 1992**;
- (b) limits or affects any right of any person (including the State) to recover damages or to seek any other relief in any proceedings against any of the Societies or any director, officer, or auditor of any of the Societies or against any other person in respect of conduct concerning or relating to the affairs or activities of any of the Societies.
- (2) In determining, in any proceedings referred to in sub-section (1), the rights, obligations and liabilities of the State or the amount of any loss suffered by the State, regard is not be had to any alteration in those rights, obligations or liabilities or any diminution of that loss that, but for this sub-section, may have occurred by reason of the enactment of section 7 of the **Transport Accident (Amendment) Act 1992**.

**PART 3—COMPENSATION**

**Division 1—Application of Part**

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

**34. *Application of Part***

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***

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

- (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)(ii)  
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.

- (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 sub-section (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.

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

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

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

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**

- (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—

- (a) Part V of the **Country Fire Authority Act 1958**; or
- (b) Division 6 of Part II of the **Education Act 1958**; or

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

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

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

- (c) Part VII of the **Juries Act 1967**; or  
(d) the **Police Assistance Compensation Act 1968**; or  
(e) the **Victoria State Emergency Service Act 1987**; or

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

- (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** or to a law referred to in one of the preceding paragraphs.

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

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

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

- (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)(b)  
amended by  
No. 50/1994  
s. 106(b)(ii).

- (a) resulting from a transport accident; and  
(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

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in respect of the person by the Authority,  
authorised insurer or self-insurer.

- (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
- (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.
- (2) Except as provided in sub-sections (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 sub-section (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

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

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

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

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



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self-insurer must, on application by the Transport Accident Commission, reimburse that Commission for the amount of compensation paid by it to that person.

- (5) Sub-section (4) does not apply if the liability to pay compensation arises in the circumstances referred to in sub-section (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).

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

**38AA. *Settlement between Commission and Victorian WorkCover Authority***

- (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  
inserted by  
No. 67/1992  
s. 67(2).

**38A. *Commission not liable where compensation payable under Accident Compensation Act 1985***

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**.

**39. Certain persons not entitled to certain 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 involving a motor vehicle (other than a recreation vehicle), railway train or tram if—

S. 39(1) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

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

S. 39(1)(a) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.4), substituted by No. 32/1988 s. 9(1)(a).

(i) that occurred in Victoria—a report is not made to a member of the police force whether under section 61 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 of that State or Territory; and

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

(1A) If—

S. 39(1A) inserted by No. 32/1988 s. 9(1)(b).

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

(b) a report of the accident was not made in accordance with sub-section (1)(a); and

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

sub-section (1) does not apply in respect of that person.

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S. 39(2)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

(2) The Commission is not liable to pay compensation under section 47, 48, 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 accident and—

S. 39(2)(a)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

(a) is convicted, in respect of driving the motor vehicle at that time, of an offence under section 318(1) of the **Crimes Act 1958**; or

(b) is convicted of an offence referred to in subsection (4)(e) in relation to the accident.

S. 39(3)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
items 29.2,  
29.5).

(3) The Commission is not liable to pay compensation under section 47, 48, 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 accident and is convicted, in respect of driving the motor vehicle at that time—

S. 39(3)(a)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2),  
substituted by  
No. 127/1986  
s. 102(Sch. 4  
item 29.5),  
amended by  
No. 84/1994  
s. 29.

(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. 39(3)(b)  
substituted by  
No. 127/1986  
s. 102(Sch. 4  
item 29.5),  
amended by  
Nos 32/1988  
s. 9(2)(a)(i),  
84/1994 s. 29.

(b) of an offence under paragraph (b), (f) or (g) of section 49(1) 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 was 0.24 grams or more per 100 millilitres of blood—

unless the person satisfies the Commission that the intoxicating liquor or drug or the concentration of alcohol in the blood, as the case

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may be, did not contribute in any way to the accident.

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

S. 39(4)(a) amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.6), 84/1994 s. 29.

(b) the person was, at the time of the accident, the driver of, or a passenger in, a motor vehicle owned by the person in respect of which a transport accident charge payable in respect of a period including that time had not been paid unless the person satisfies the Commission that he or she owned the motor vehicle jointly with another person and did not know and could not reasonably be expected to have known that the charge had not been paid; or

S. 39(4)(b) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

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

S. 39(4)(c) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(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

S. 39(4)(c)(i) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.6).

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**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 accident, it was suspended or had been cancelled; or

(d) the person—

- (i) was, at the time of the accident, the driver of or a passenger in a motor vehicle being used for or in connexion 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; or

- (e) the person was, at the time of the accident, the driver of a motor vehicle and is convicted of an offence in relation to the accident under section 49(1)(c), (d) or (e) or section 56(2) or (7) of the **Road Safety Act 1986** or under a law that is, in relation to that Act, a corresponding law.

- (5) For the purposes of sub-section (4), a person who drives a motor vehicle at a particular time shall not 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

S. 39(4)(d)(i) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

S. 39(4)(e) amended by Nos 127/1986 s. 102(Sch. 4 items 29.2, 29.6), 84/1994 s. 29, 73/1998 s. 11.

S. 39(5) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.7), substituted by No. 34/1998 s. 7.

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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, the person had a licensed driver (not being the holder of a licence issued on probation) sitting beside him or her.

(6) If—

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

(b) under this section the Commission is not liable to make a payment to that person if he or she is convicted of that charge—

the Commission may withhold that payment—

(c) if the charge is laid within the limitation period after the date of the accident—until the charge is heard or withdrawn; or

(d) if no such charge is laid within the limitation period after the date of the accident—until the expiration of that period.

(7) In sub-section (6), "**the limitation period after the date of the accident**" means—

(a) the period after the accident within which the charge could be laid; or

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

whichever is the shorter.

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(8) If—

S. 39(8)(b)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.8).

- (a) a person is convicted of an offence referred to in this section; and
- (b) the court by which the person was convicted made a finding as to the concentration of alcohol in the person's blood at a particular time—

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

(9) For the purposes of this Act—

S. 39(9)(a)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.9).

- (a) a certificate of a court given under subsection (8) is evidence of the finding of the court as to the concentration of alcohol in a person's blood at a particular time; and

S. 39(9)(b)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.9).

- (b) any finding of the court as to the concentration of alcohol in the blood 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. 39(9)(c)  
amended by  
Nos 127/1986  
s. 102(Sch. 4  
item 29.9),  
32/1988  
s. 9(2)(a)(ii).

- (c) a finding of a concentration of alcohol in the blood 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.

**40. *Compensation in case of driving with blood-alcohol content***

S. 40(1)  
amended by  
Nos 127/1986  
s. 102(Sch. 4  
items 29.2,  
29.10),  
84/1994 s. 29.

- (1) If a person who is injured as a result of a transport accident was driving a motor vehicle at a particular time and is convicted in respect of driving the motor vehicle at that time, of an offence under paragraph (b), (f) or (g) of section 49(1) 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

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was more than 0·05 grams per 100 millilitres of blood, compensation in respect of that person under section 44 or 45—

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

S. 40(1)(a) amended by Nos 127/1986 s. 102(Sch. 4 item 29.10), 32/1988 s. 9(2)(b)(i).

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

S. 40(1)(b) amended by Nos 127/1986 s. 102(Sch. 4 item 29.10), 32/1988 s. 9(2)(b)(ii).

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

S. 40(1)(c) amended by Nos 127/1986 s. 102(Sch. 4 item 29.10), 32/1988 s. 9(2)(b)(iii).

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

(2) If—

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

(b) under this section the Commission is not liable to make a payment to that person if he or she is convicted of that charge—

the Commission may withhold that payment—

(c) if the charge is laid within the limitation period after the date of the accident—until the charge is heard or withdrawn; or



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(d) if no such charge is laid within the limitation period after the date of the accident—until the expiration of that period.

(3) In sub-section (2) "**the limitation period after the date of the accident**" has the same meaning as in section 39.

(4) If—

(a) a person is convicted of an offence referred to in sub-section (1); and

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

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 sub-section (4) is evidence of the finding of the court as to the concentration of alcohol in a person's blood at a particular time; and

(b) any finding of the court as to the concentration of alcohol in the blood 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

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

S. 40(4)(b)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.10).

S. 40(5)(a)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.10).

S. 40(5)(b)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.10).

S. 40(5)(c)  
amended by  
Nos 127/1986  
s. 102(Sch. 4  
item 29.10),  
32/1988  
s. 9(2)(b)(iv).

**41. Motor sport accidents excluded**

(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 that are taking part in, or in a test in preparation for, an organized motor vehicle race or a speed trial if the person is—

S. 41(1) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.11).

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

S. 41(1)(a) amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

(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.

(1A) Sub-section (1) does not apply to an organised motor vehicle race or speed trial—

S. 41(1A) inserted by No. 84/1994 s. 30.

(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

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

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

(2) In sub-section (1) "**speed trial**" has the same meaning as in section 68 of the **Road Safety Act 1986**.

S. 41(2) amended by No. 127/1986 s. 102(Sch. 4 item 29.12).

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

**41A. *Unregistered motor vehicle accidents on private land excluded*<sup>11</sup>**

(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 sub-section (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;

**"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 a transport accident charge was not paid at the time that the transport accident occurred.

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

**41B. *Uninsured motor vehicle accidents on private land*<sup>12</sup>**

(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 sub-section (1)—

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

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

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

**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 spouse of the person is entitled to compensation in respect of the accident in accordance with this Act; and
  - (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 spouse of the person, is not entitled to compensation in accordance with this Act if, under the law of a place outside Victoria—
  - (a) the person, dependant or surviving spouse has been paid or has recovered an amount of compensation or damages; or
  - (b) an award of compensation or judgment for damages has been made, given or entered; or
  - (c) any payment into court has been accepted; or
  - (d) there has been a compromise or settlement of a claim; or
  - (e) a claim for compensation or action for damages is pending.
- (3) If the person, a dependant or a surviving spouse 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—

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- (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 spouse 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.

**43. *Liability for losses in first five days etc.***

- (1) The Commission—
    - (a) 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
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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; and

(b) subject to sub-sections (1A), (1B) and (1C), is not liable to pay the first \$389 (as varied from time to time in accordance with section 61) of the reasonable costs of medical services received because of an injury as a result of a transport accident.

S. 43(1)(b) amended by No. 84/1994 ss 8(1), 55(2)(g).

(1A) The Commission is liable to pay the whole of the reasonable costs of medical services received by a person because of an injury as a result of a transport accident if the person dies as a result of that injury<sup>13</sup>.

S. 43(1A) inserted by No. 84/1994 s. 8(2).

(1B) The Commission is liable to pay the whole of the reasonable costs of medical services received by a person after that person has been an in-patient for 1 day because of an injury as a result of a transport accident<sup>14</sup>.

S. 43(1B) inserted by No. 84/1994 s. 8(2).

(1C) For the purposes of sub-section (1), a claim by a person injured as a result of a transport accident and a claim by any member of the family of that person who is also injured as a result of the same transport accident is to be treated as if it were one claim<sup>15</sup>.

S. 43(1C) inserted by No. 84/1994 s. 8(2).

(1D) In sub-section (1C) "**a member of the family of that person**" means a spouse or a dependent child under the age of 18 years<sup>16</sup>.

S. 43(1D) inserted by No. 84/1994 s. 8(2).

(2) If, by reason of sub-section (1)(a), 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.

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**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 sub-section (3), the amount of the weekly payment is—
  - (a) 80 per centum of the earner's pre-accident weekly earnings; or
  - (b) if the earner has no dependants—\$304; or
  - (c) if the earner has dependants—an amount equal to the sum of—
    - (i) \$304; and
    - (ii) \$85 for one dependant; and
    - (iii) \$27 for each other dependant—

whichever is the greater.

S. 44(2)(b)  
amended by  
No. 84/1994  
s. 55(2)(f).

S. 44(2)(c)(i)  
amended by  
No. 84/1994  
s. 55(2)(f).

S. 44(2)(c)(ii)  
amended by  
No. 84/1994  
s. 55(2)(d).

S. 44(2)(c)(iii)  
amended by  
No. 84/1994  
s. 55(2)(b).

- (3) A weekly payment must not exceed—

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(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 sub-section (3), if the earner is employed the amount of the weekly payment under sub-section (1) is—



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S. 45(2)(b)  
amended by  
No. 84/1994  
s. 55(2)(f).

(a) 85 per centum of the difference between the earner's current weekly earnings and the earner's pre-accident weekly earnings; or

(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—

S. 45(2)(c)(i)  
amended by  
No. 84/1994  
s. 55(2)(f).

(i) \$304; and

S. 45(2)(c)(ii)  
amended by  
No. 84/1994  
s. 55(2)(d).

(ii) \$85 for one dependant; and

S. 45(2)(c)(iii)  
amended by  
No. 84/1994  
s. 55(2)(b).

(iii) \$27 for each other dependant—

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—

S. 45(3)(a)  
amended by  
No. 84/1994  
s. 55(2)(i).

(a) \$621, less the earner's current weekly earnings; or

(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 sub-section (5), if the earner is not employed, the amount of the weekly payment under this section is—

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(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—

(i) \$304; and

S. 45(4)(c)(i)  
amended by  
No. 84/1994  
s. 55(2)(f).

(ii) \$85 for one dependant; and

S. 45(4)(c)(ii)  
amended by  
No. 84/1994  
s. 55(2)(d).

(iii) \$27 for each other dependant—

S. 45(4)(c)(iii)  
amended by  
No. 84/1994  
s. 55(2)(b).

whichever is the greater.

(5) A weekly payment under this section for an earner who is not employed must not exceed—

(a) \$621; or

S. 45(5)(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.

(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 calculated at the earner's ordinary time rate of pay for the earner's normal number of hours per week or, if there is no such ordinary time rate, the actual earnings of the earner during the week;

**"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.

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 sub-section (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**

- (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 sub-section (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.

S. 46(1)  
amended by  
No. 32/1988  
s. 12(1).

**46A. Degree of impairment**

- (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—
  - (a) if the person is not a minor when the accident occurred—
    - (i) 18 months after the accident; or
    - (ii) when the injury stabilizes—  
whichever last occurs; or
  - (b) if the person was a minor when the accident occurred—
    - (i) 18 months after the accident; or
    - (ii) when the injury stabilizes; or

S. 46A  
inserted by  
No. 32/1988  
s. 11,  
amended by  
No. 34/1998  
s. 8 (ILA  
s. 39B(1)).

(iii) when the person attains the age of 18 years—

whichever last occurs.

S. 46A(1A)  
inserted by  
No. 84/2000  
s. 13.

(1A) If the Commission has not made a determination of the degree of impairment of a person injured as a result of a transport accident as at 18 months after a transport accident because it does not appear to the Commission that the person is or is likely to be entitled to an impairment benefit, the person may, before the expiry of the period of 6 years after an injury resulting from the transport accident first manifests itself, apply to the Commission for a determination of the degree of impairment as at the date of the application.

S. 46A(1B)  
inserted by  
No. 84/2000  
s. 13.

(1B) The period of 6 years referred to in sub-section (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

(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.

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—

(i) the A.M.A. Guides; 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.
- (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 sub-section (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—
- $$10 + [0.278 (NAL - 10)]—$$
- where NAL is the percentage of diminution of hearing determined in accordance with sub-section (4).
- (4) For the purposes of this section, the percentage of diminution of hearing—
- (a) shall be determined—

S. 46A(3)  
inserted by  
No. 34/1998  
s. 8.

S. 46A(4)  
inserted by  
No. 34/1998  
s. 8.

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- (i) by a person or class of persons approved; and  
(ii) in the manner approved—  
by the Minister; and
- (b) shall be 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(5)  
inserted by  
No. 34/1998  
s. 8.
- (5) An approval by the Minister for the purposes of sub-section (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(6)  
inserted by  
No. 34/1998  
s. 8.
- (6) For the purposes of determining the degree of psychiatric impairment, the A.M.A. Guides apply as if for Chapter 14 there were substituted the Clinical Guidelines to the Rating of Psychiatric Impairment prepared by the Medical Panel (Psychiatry) Melbourne, Victoria October 1997 and published in the Government Gazette.
- S. 46A(7)  
inserted by  
No. 34/1998  
s. 8.
- (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(8)  
inserted by  
No. 34/1998  
s. 8.
- (8) This section as amended by section 8 of the **Transport Accident (Amendment) Act 1998** 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 the commencement of the **Transport Accident (Amendment) Act 1998**.
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- (9) This section as in force, and the Transport Accident (Impairment) Regulations 1988 as in force, immediately before the commencement of section 8 of the **Transport Accident (Amendment) Act 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 the commencement of the **Transport Accident (Amendment) Act 1998** as if those Regulations formed part of this section.

S. 46A(9)  
inserted by  
No. 34/1998  
s. 8.

**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 sub-sections (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) Sub-section (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.

#### 47. *Impairment benefit—lump sum*

S. 47(1)  
substituted by  
No. 32/1988  
s. 12(2).

- (1) If under section 46A or 47(7A)—
- (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.

S. 47(2)  
substituted by  
No. 32/1988  
s. 12(2),  
amended by  
No. 84/1994  
s. 55(2)(l).

- (2) An impairment benefit under this section must be assessed in accordance with the formula

$$\frac{A - B}{C} \times \$61\,940$$

where—

A is the degree of impairment of the person as a result of the transport accident;

B is 10 per centum;

C is 90 per centum.

(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.

(3A) The Commission must not pay an impairment benefit or interim benefit under this section in respect of a person who is injured as a result of a transport accident before the expiration of 18 months after—

(a) the accident occurred; or

(b) the injury first manifested itself—

whichever last occurs.

(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 sub-section (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.

S. 47(3A)  
inserted by  
No. 32/1988  
s. 12(3).

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S. 47(6)  
amended by  
No. 32/1988  
s. 12(4),  
substituted by  
No. 84/2000  
s. 14(3).

(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—

(a) this section and sections 48 and 54 apply—

(i) on the first occasion that the impairment is 11 percent or more, as if a reference to a degree of impairment suffered as a result of a transport accident were a reference to the degree of impairment suffered as a result of one or more transport accidents;

(ii) in relation to any subsequent transport accident, as if a reference to a degree of impairment suffered as a result of a transport accident were a reference to the degree of impairment suffered as a result all of the transport accidents and as if "B" in the formula in sub-section (2) was equal to the total degree of impairment suffered as a result all of the transport accidents for which compensation has already been made; and

(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.

S. 47(7)  
substituted by  
No. 32/1988  
s. 12(5),  
amended by  
No. 84/1994  
s. 32(1)(b).

(7) The Commission may, on the application of a person who is injured as a result of a transport accident and—

(a) who is or may be entitled to compensation under this Act; or

S. 47(7)(b)  
substituted by  
No. 84/1994  
s. 32(1)(a).

- (b) who is not entitled to compensation under this Act by virtue of section 37, 38 or 38A<sup>17</sup>—

determine the degree of impairment of the person if it is satisfied that—

- (c) the person requires the determination for the purpose of proceedings for the recovery of damages in respect of the injury; and  
(d) the injury has stabilized or has substantially stabilized.

- (7A) If the Commission determines under sub-section (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 sub-section (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(7A)  
inserted by  
No. 32/1988  
s. 12(5).**

- (7B) If the Commission determines under sub-section (7) that<sup>18</sup>—

**S. 47(7B)  
inserted by  
No. 84/1994  
s. 32(2).**

- (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.

S. 47(8)  
amended by  
No. 32/1988  
s. 12(6).

- (8) This section, other than sub-section (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 sub-section unless the person has recovered damages in accordance with Part 6.

#### 48. *Impairment benefit—annuity*

S. 48(1)  
substituted by  
No. 32/1988  
s. 12(7),  
amended by  
No. 84/1994  
s. 55(2)(o).

- (1) The Commission must pay to a person in respect of whom an impairment benefit is assessed under section 47 periodic payments calculated in accordance with the regulations on an amount determined in accordance with the formula

$$\frac{A - B}{C} \times \$144\,500 \times \frac{75 - D}{50} \text{ where—}$$

A is the degree of impairment of the person as a result of the transport accident;

B is 10 per centum;

C is 90 per centum;

D is—

- (a) if the person is 75 years or over—75; or  
(b) if the person is 25 years or under—25;  
or  
(c) if the person is over 25 years and under 75 years—the age of the person in whole years.

- (2) The balance for the time being of the amount determined under sub-section (1) in respect of a person, together with any part of an impairment benefit not paid in accordance with a request under section 47(4)—
- (a) forms part of the Fund; and

(b) on the death of the person does not form part of the estate of the person.

(3) The Commission is not liable to make a payment under this section to a person in respect of any week in which a payment under section 49, 50 or 51 is payable to that person.

S. 48(3)  
inserted by  
No. 84/1994  
s. 33(1).

**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 sub-section (3), the amount of the weekly payment under this section is—

(a) 80 per centum of the earner's pre-accident earning capacity; or

S. 49(2)(a)  
amended by  
No. 84/1994  
s. 33(2)(a).

(b) if the earner has no dependants—\$270; or

S. 49(2)(b)  
amended by  
No. 84/1994  
ss 33(2)(b),  
55(2)(e).

(c) if the earner has dependants—an amount equal to the sum of—

S. 49(2)(c)  
amended by  
No. 84/1994  
s. 32(2)(c).

(i) \$270; and

S. 49(2)(c)(i)  
amended by  
No. 84/1994  
s. 55(2)(e).

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S. 49(2)(c)(ii)  
amended by  
No. 84/1994  
s. 55(2)(c).

(ii) \$76 for one dependant; and

S. 49(2)(c)(iii)  
amended by  
No. 84/1994  
s. 55(2)(a).

(iii) \$25 for each other dependant—

whichever is the greater.

(3) A weekly payment under this section must not exceed—

S. 49(3)(a)  
amended by  
No. 84/1994  
ss 32(2)(d),  
55(2)(h).

(a) \$504; or

S. 49(3)(b)  
amended by  
No. 84/1994  
s. 32(2)(e).

(b) 100 per centum of the earner's pre-accident earning capacity—

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

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capacity as a result of an injury in a transport accident, means the amount calculated in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount the Commission determines as the weekly amount the earner had the capacity to earn before the 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 Income Tax Assessment Act 1936 of the Commonwealth as amended and in force for the time being.

B is the latest average weekly earnings as at 15 June in the preceding financial year of all employees for Victoria published by the Australian Statistician in respect of the December quarter of that financial year.

C is the average weekly earnings of all employees for Victoria last published by the Australian Statistician before 15 June last preceding the accident in respect of the December quarter last preceding that date—

or, if an amount cannot be determined in accordance with that formula, means 60 per centum of average weekly earnings of all employees for Victoria last published by the Australian Statistician in respect of a quarter.



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- (6) For the purpose of the definition of pre-accident earning capacity in sub-section (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 sub-section (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).

#### **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

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(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 sub-section (3), the amount of the weekly payment under this section is—

(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)(a)  
amended by  
No. 84/1994  
s. 33(3)(a).

(b) if the earner has no dependants—\$270, less the earner's post-accident earning capacity;  
or

S. 50(2)(b)  
amended by  
No. 84/1994  
ss 33(3)(b),  
55(2)(e).

(c) if the earner has dependants—an amount equal to the sum of—

S. 50(2)(c)  
amended by  
No. 84/1994  
s. 33(3)(c).

(i) \$270; and

S. 50(2)(c)(i)  
amended by  
No. 84/1994  
s. 55(2)(e).

(ii) \$76 for one dependant; and

S. 50(2)(c)(ii)  
amended by  
No. 84/1994  
s. 55(2)(c).

(iii) \$25 for each other dependant—

S. 50(2)(c)(iii)  
amended by  
No. 84/1994  
s. 55(2)(a).

less the earner's post-accident earning capacity—

whichever is the greater.

(3) A weekly payment under this section must not exceed—

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S. 50(3)(a)  
amended by  
No. 84/1994  
ss 33(3)(d),  
55(2)(h).  
S. 50(3)(b)  
amended by  
Nos 84/1994  
s. 33(3)(e),  
84/2000  
s. 15(4).

- (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 —

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—

S. 50(5) def. of  
"earner"  
amended by  
No. 34/1998  
s. 10.

**"earner"** includes a person injured as a result of 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  
"post-  
accident  
earning  
capacity"  
amended by  
No. 34/1998  
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

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reasonably available to the person having regard to—

- (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.

**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)—

S. 50A  
inserted by  
No. 84/1994  
s. 34.

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that definition applies for the purposes of section 49 and 50 as modified by sub-section (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.

- (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—

S. 51(2)  
amended by  
No. 84/1994  
s. 13(2)(a).

$$A \times \frac{B}{C - D}$$

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.

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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.

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**53. Cessation of loss of earnings payments**

S. 53(1)  
substituted by  
No. 32/1988  
s. 13.

- (1) Weekly payments under section 44, 45, 49, 50 or 51 are not payable to an earner—
- (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 the age of 65 years—
- 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 12 months before attaining that age—

and, but for this sub-section, weekly payments would be payable to the earner, the earner is entitled, subject to this Act, to weekly payments for a period not exceeding 12 months or for periods that, in the aggregate, do not exceed 12 months.

S. 53(1A)  
inserted by  
No. 32/1988  
s. 13.

- (1A) For the purposes of sub-section (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(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—
- (a) to make payments under section 49, 50 or 51 in respect of an injury in relation to any period after the settlement or award of

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- 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—
- (a) is not liable to make payments under section 48, 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
- (b) ceases to be liable to make payments to a person under section 48, 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, 48, 49, 50, 51 and 54 equals \$99 220.
- (4) Sub-section (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
- (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.
- (5) Sub-section (3) does not apply in relation to payments to a person who is injured as a result of a transport accident if—
- S. 53(3)(b) amended by No. 84/1994 s. 55(2)(m).**
- S. 53(4)(a) substituted by No. 84/1994 s. 35(1).**
- S. 53(4)(b) amended by No. 32/1988 s. 13(2).**
- S. 53(5) inserted by No. 84/1994 s. 35(2).**



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- (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*

S. 54(1)  
amended by  
No. 34/1998  
s. 11.

- (1) The Commission is liable to pay in respect of a minor who, as a result of a transport accident—
  - (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.
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**55. Review—after first 18 months**

- (1) The Commission—
  - (a) may review the entitlement of a person to receive an impairment annuity under section 48 once in each period of five years; and
  - (b) if a person receiving an impairment annuity requests that the assessment of the entitlement to the annuity be reviewed, must review that assessment.
- (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) must 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 sub-section (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

S. 55(2)  
substituted by  
No. 32/1988  
s. 14(1),  
amended by  
No. 34/1998  
s. 12(1).

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).

***56. Redemption of payments if less than certain amount***

- (1) If the sum of the impairment annuity under section 48 and 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 Statistician, the Commission must redeem that annuity and payments under that section and pay to the person an amount determined in accordance with the regulations.
- (2) A person to whom a payment is made under this section ceases to be entitled to an annuity under section 48 or benefits under section 49, 50 or 51.

***57. Death benefit for surviving spouse***

- (1) The Commission is liable to pay a death benefit under this section to a surviving spouse of an earner who dies as a result of a transport accident.

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- (2) Subject to sub-section (4), the amount of the death benefit under this section is the amount calculated in accordance with the formula—

**S. 57(2)**  
amended by  
Nos 32/1988  
s. 14(2)(a),  
84/1994  
s. 55(2)(n).

$$\$103\,210 \times \frac{(125 - A)}{100}$$

where A is—

- (a) if at the date of death the earner was 75 or over—75; or
- (b) if at the date of death the earner was 25 or under—25; or
- (c) if at the date of death the earner was over 25 and under 75—the age of the earner at that date in whole years—

less, if the earner has received an impairment benefit under section 47 in respect of the transport accident, the amount of that benefit.

- (3) Subject to sub-section (4), if, at the date of death of the earner, there is more than one surviving spouse, the amount of \$103 210 referred to in sub-section (2) shall, in determining the benefit for each surviving spouse, be taken to be the amount calculated in accordance with the formula—

**S. 57(3)**  
amended by  
Nos 32/1988  
s. 14(2)(b),  
84/1994  
s. 55(2)(n).

$$\$103\,210 \times \frac{B}{B + C}$$

where—

B is the number of years during which the surviving spouse was a dependent spouse of the earner.

C is the sum of the years during which each other surviving spouse of the earner was a dependent spouse of the earner.

- (4) If—
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(a) any dependent children of the earner would have been entitled to a death benefit under section 59 but for the operation of section 59(9); and

(b) a surviving spouse is entitled to a death benefit under this section—

then—

S. 57(4)(c)  
amended by  
No. 84/1994  
s. 55(2)(n).

(c) each such child is entitled to an equal share of an amount calculated in accordance with the formula—

$$\frac{\$103\,210}{S + 1}$$

where—

S is one or, if there is more than one surviving spouse, the number of surviving spouses; and

S. 57(4)(d)  
amended by  
No. 84/1994  
s. 55(2)(n).

(d) the reference in the formula in sub-section (2) and (3) to \$103 210 shall be deemed to be a reference to an amount calculated in accordance with the formula—

$$\$103\,210 - \frac{\$103\,210}{S + 1}$$

where—

S has the same meaning as in paragraph (c).

(5) The Commission is not liable to pay a death benefit under this section to a surviving spouse or dependent child of an earner who dies as a result of a transport accident if the surviving spouse or dependent child receives an award or makes a settlement of damages in respect of the death.

**58. *Surviving spouse—periodical payments***

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(1) The Commission is liable to pay to a surviving spouse of an earner who dies as a result of a transport accident a weekly payment in accordance with this section.

(2) Subject to sub-section (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 spouse has no dependent children—\$304; or

**S. 58(2)(b)  
amended by  
No. 84/1994  
s. 55(2)(f).**

(c) if the surviving spouse has dependent children, an amount equal to the sum of—

(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—

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whichever is the lesser.

- (4) If, at the date of death of the earner, there is more than one surviving spouse, the amount of the weekly payment under this section for each surviving spouse 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 sub-sections (2) and (3).

B is the number of years during which the surviving spouse was a dependent spouse of the earner.

C is the sum of the years during which each other surviving spouse of the earner was a dependent spouse of the earner.

- (5) Weekly payments under this section are not payable to a surviving spouse of an earner—
- (a) after the expiration of five years after the death of the earner; or
  - (b) after the surviving spouse attains the pension age—

S. 58(5)(b)  
substituted by  
No. 84/1994  
s. 13(2)(c).

whichever first occurs but if, at that time, the surviving spouse has a dependent child, weekly payments continue to be payable to the surviving spouse until the surviving spouse ceases to have a dependent child.

- (6) In this section—

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**"dependent child"**, in relation to a surviving spouse 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).

(a) who is dependent on the surviving spouse 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 16 years; or

(ii) has attained the age of 16 years but is under the age of 25 years and is a full-time student—

but does not include a child who has a spouse;

**"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 No. 84/2000 s. 17.

$\frac{A}{52}$

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.

(7) The Commission is not liable to make payments under this section to a surviving spouse 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.



**59. *Surviving children***

- (1) If a person dies as a result of a transport accident and leaves a dependent child whose other parent is not a dependent spouse 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
  - (b) the surviving spouse 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—

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 spouse.
- (3) A weekly payment under sub-section (1) or (2)—
  - (a) is the sum of \$59 for each dependent child, until the child attains the age of 16 years or, if the child is a full-time student, until the child attains the age of 18 years or ceases to be a full-time student, whichever first occurs; and
  - (b) must be paid to the guardian of the child for the benefit of the child.

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(4) The death benefit under sub-section (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).

(a) is payable if, at the time of the death, the child was under 16 or, if a full-time student, under 25; 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).

(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—

S. 59(4)(c)  
amended by  
Nos 45/1994  
s. 42(Sch.  
item 11.1),  
15/1998  
s. 12(1)(a).

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.

(4A) If the Commission determines under sub-section (4) that a death benefit under sub-section (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(4A)  
inserted by  
No. 15/1998  
s. 12(2).

(5) If under sub-section (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.

S. 59(5)  
amended by  
Nos 45/1994  
s. 42(Sch.  
item 11.2),  
15/1998  
s. 12(3)(a)(b).

(6) The education allowance under sub-section (1) or (2)—

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S. 59(6)(a)  
amended by  
No. 84/1994  
s. 55(2)(j).

- (a) is the sum of \$1660 per annum for each dependent child until the child attains the age of 16 years or, if the child is a full-time student, until the child attains the age of 18 years or ceases to be a full-time student, whichever first occurs; and
  - (b) must be paid to the guardian of the child for the benefit of the child.
- (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 spouse of the person; and
  - (b) the child is a dependant of the surviving spouse.
- (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 spouse of the person.
- (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
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transport accident after, or in respect of any period after an award or settlement of damages is made in respect of the death.

(11) If both parents of a child die as a result of the same transport accident and the Commission is liable to pay amounts in accordance with this section, the Commission is not liable to pay amounts that are greater than those it would be liable to pay under this section if only one parent had died as a result of the transport accident.

(12) Sub-section (13) applies if—

(a) the Commission has determined that it is liable to make payments under this section; and

(b) the Tribunal upon a review determines that the Commission is liable to make payments under sections 57 and 58 to the surviving spouse of an earner.

S. 59(12)  
inserted by  
No. 84/2000  
s. 18.

(13) If this sub-section applies—

(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

(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 spouse of the earner.

S. 59(13)  
inserted by  
No. 84/2000  
s. 18.

(14) Sub-sections (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(14)  
inserted by  
No. 84/2000  
s. 18.

**60. *Medical and like benefits***

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(1) In addition to any other compensation paid under this Act, 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(1)(a)  
amended by  
Nos 32/1988  
s. 15(1)(a),  
50/1989  
s. 52(1) (as  
amended by  
No. 91/1989  
s. 7(g)).

(a) the reasonable costs of road accident rescue services, medical services, hospital services, nursing services, rehabilitation services and ambulance services received in Australia because of the accident; and

S. 60(1)(b)  
amended by  
No. 32/1988  
s. 15(1)(b),  
substituted by  
Nos 84/1994  
s. 36, 5/1999  
s. 3.

(b) if the 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, the reasonable costs incurred after the accident in employing, during the first five years after the death or injury, an authorised person to undertake in Australia housekeeping duties or care of the child, but not exceeding 40 hours per week; and

S. 60(1)(c)  
amended by  
No. 32/1988  
s. 15(1)(c),  
substituted by  
Nos 84/1994  
s. 36, 5/1999  
s. 3.

(c) in the case of a person who is injured, the reasonable costs incurred after the accident in employing an authorised person to provide in Australia services of a domestic nature or services relating to nursing and attendance but not exceeding 40 hours per week, less the amount paid under paragraph (b); and

S. 60(1)(ca)  
inserted by  
No. 84/1994  
s. 9(1).

(ca) where death results from the accident, the reasonable costs incurred in Australia of family counselling services provided to family members by a medical practitioner or registered psychologist not exceeding \$1500 in respect of that death<sup>19</sup>; and

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- (d) the reasonable costs incurred in Australia of burial or cremation where death results from the accident. **S. 60(1)(d) amended by No. 32/1988 s. 15(1)(d).**
- (1A) In sub-section (1)(ca), "**family member**" means a spouse, parent, sibling or child of the person who dies as a result of a transport accident<sup>20</sup>. **S. 60(1A) inserted by No. 84/1994 s. 9(2).**
- (2) If a parent or guardian 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 hospital, the Commission is, subject to this Act, liable to pay as compensation, payments in respect of those expenses<sup>21</sup>. **S. 60(2) substituted by No. 84/1994 s. 9(3).**
- (3) If a person who is injured as a result of a transport accident reasonably requires modifications to a vehicle or home because of the injury, the Commission may make payments to the person in respect of such part of the costs of the modifications as, in the circumstances, the Commission considers reasonable. **S. 60(3) inserted by No. 32/1988 s. 15(2).**

**61. Indexation**

- (1) An amount in dollars, other than an amount to which sub-section (2) applies, referred to in section 43(1)(b) or this Division 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— **S. 61(1) amended by No. 32/1988 s. 16(1).**

$$A \times \frac{B}{C}$$

where—

A is the amount referred to in section 43(1)(b) or this Division or the amount of the weekly payment under section 44 or 45.

B is the latest average weekly earnings as at 15 June in the preceding financial year of all employees for Victoria published by the Australian Statistician in respect of the December quarter of that financial year.

C is the average weekly earnings of all employees for Victoria as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

S. 61(2)  
amended by  
Nos 32/1988  
s. 16(2),  
84/1994  
ss 37(1)(a)(b),  
55(2)(j)–(q).

- (2) An amount of \$500 000, \$686 840, \$305 250, \$144 500, \$103 210, \$99 220, \$61 940, \$30 520, \$1500 or \$1660 referred to in this Division or Part 6 and the amount of a periodic payment under section 47(4) or 48(1) shall be varied, in respect of the financial year beginning on 1 July 1987 and each subsequent financial year, in accordance with the formula<sup>22</sup>—

$$D \times \frac{E}{F}$$

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 as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year.

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in

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respect of the December quarter preceding that 15 June.

- (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—
- (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.
- (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 per centum 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 per centum of the weekly earnings (calculated at the earner's ordinary time rate of pay for the earner's normal number of hours before the accident or the time when the injury first manifested itself within the meaning of section 4) to which the worker 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

**S. 61(4)(a)**  
**amended by**  
**No. 32/1988**  
**s. 16(3).**

**S. 61(5)**  
**inserted by**  
**No. 32/1988**  
**s. 16(4).**



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employed in immediately before the accident or the time when the injury first manifested itself (being the position or positions on the basis of which the calculation of the earner's pre-accident weekly earnings within the meaning of section 4 is made).

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 sub-section; 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.

S. 62  
amended by  
No. 32/1988  
s. 17(1).

**62. *General provisions relating to the payment of compensation***

- (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 sustenance fund or other fund (whether

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statutory or otherwise) of the like nature; and

- (b) a child shall be deemed to be a dependant of the earner whether or not the child is also a dependant of a spouse of the earner.
- (2) For the purposes of sections 44, 45, 49 and 50, if an earner and his or her spouse are both entitled to compensation under this Act, a dependant of both the earner and the spouse—
- (a) shall be deemed to be a dependant of either the earner or the spouse but not both; and
  - (b) unless the earner and the spouse otherwise request in writing, shall be deemed to be a dependant of the one of the earner and the spouse whose pre-accident weekly earnings are the lower.

**S. 62(2)  
amended by  
No. 32/1988  
s. 17(2).**

**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***

- (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 member of the police force.

S. 64(1)  
amended by  
Nos 127/1986  
s. 102(Sch. 4  
item 29.2),  
84/2000 s. 21.

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 64

(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—

**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.

- (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  
No. 84/2000  
s. 21.

- (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 member of the police force.

(4) Failure to comply with this section does not affect any right or liability under this Act.

S. 65  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2),  
substituted by  
No. 84/2000  
s. 22.

### 65. Provisions applying to notice under section 64

- (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 sub-section (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 sub-section: 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.

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- (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 sub-section (1).

**67. Form of claim**

- (1) Subject to sub-section (3), a claim for compensation under this Act—
- (a) must be in the prescribed form; and
  - (b) must include or be accompanied by a statutory declaration in the prescribed form; and
  - (c) must be lodged with the Commission.

**S. 67(1)**  
amended by  
**No. 32/1988**  
s. 18(1).

- (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.

- (3) If, in the opinion of the Commission, a claimant's medical condition prevents the claimant from being able to make a statutory declaration in relation to a claim—

**S. 67(3)**  
inserted by  
**No. 32/1988**  
s. 18(2).

- (a) sub-section (1)(b) does not apply to the claim; and
- (b) an officer of the Commission who has been so authorised by the Commission, a person authorised by the claimant or the next-of-kin of the claimant may complete the claim for compensation on behalf of the claimant.

**68. Time for making claim under Part 3**

- (1) A person—

- (a) who is injured; or
- (b) who is a dependant or a surviving spouse 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
- (d) in the case of injury, if no injury manifested itself at the time of the transport accident, after any injury first manifests itself.

S. 68(1)(d)  
substituted by  
No. 84/2000  
s. 24(1).

- (2) If the Commission considers there are reasonable grounds for a delay in making a claim in accordance with sub-section (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.

S. 68(3)  
inserted by  
No. 84/2000  
s. 24(2).

- (3) Despite sub-section (1) but subject to sub-section (2), if—
  - (a) a person who is injured 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
  - (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 within one year of attaining the age of 18 years.

### **69. Time for making claim under Division 1 of Part 10**

*Transport Accident Act 1986*

*Act No. 111/1986*

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- (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.
- (2) A person who is a dependent spouse 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.



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- (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 sub-section (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 sub-section, the Commission must inform that person by notice in writing that it refuses the claim for that payment.

**70. *Decision on eligibility for compensation***

S. 70(1)  
amended by  
No. 84/2000  
s. 25.

- (1) The Commission must within 21 days after receiving a claim for compensation—
- (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.

S. 70(2)  
amended by  
No. 84/2000  
s. 25.

- (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 sub-section (1)(c), whichever last occurs, accept or reject the
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claim or make a reasonable request, or further reasonable request, under sub-section (1)(b).

- (3) If the Commission fails to comply with sub-section (1) or (2)—
  - (a) the Commission shall be deemed to have rejected the claim; and
  - (b) the claimant may apply to the Tribunal, within 28 days after the end of the period specified in sub-section (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 sub-section (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 sub-section (4) another claim may, subject to sections 68 and 69, be made in accordance with this Part.

S. 70(3)(b)  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 95.3).

**71. Medical examinations**

- (1) In order to determine its liability under Part 3 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 under this Part or that Division, to submit from time to time for examination by one or more medical service providers nominated by the Commission.
- (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

S. 71(1)  
amended by  
No. 84/2000  
s. 26(1).

S. 71(3)  
inserted by  
No. 84/2000  
s. 26(2).

(b) the Commission is not liable to pay compensation to the person while the right is suspended.

(3) In sub-section (1), "**medical service provider**" means—

- (a) medical practitioner;
- (b) registered psychologist;
- (c) registered dentist;
- (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

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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 or 45—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—

the Commission must give notice to the person of its decision to discontinue or reduce payments accordingly.

S. 74(3)  
substituted by  
No. 32/1988  
s. 18(3).

- (3) If the Commission gives notice under sub-section (2), the Commission may discontinue or reduce payments to a person if—
- (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**

(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.

S. 76(1)  
amended by  
No. 32/1988  
s. 18(4).

(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.

(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.

S. 76(2A)  
inserted by  
No. 32/1988  
s. 18(5).

(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 3—Reviews**

Pt 4 Div. 3  
(Heading)  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 95.4).

**77. Application to Tribunal**

(1) A person whose interests are affected by a decision of the Commission may, within 12 months after becoming aware of the decision, apply to the Tribunal for review of the decision.

S. 77(1)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 95.5(a)).

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 78

S. 77(2)  
amended by  
No. 34/1998  
s. 13(1),  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 95.5(b)).

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S. 77(2A)  
inserted by  
No. 34/1998  
s. 13(2),  
repealed by  
No. 101/1998  
s. 33.

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S. 77(3)  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 95.5(b)).

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S. 77(4)  
amended by  
No. 52/1998  
s. 311  
(Sch. 1 item  
95.5(c)) (as  
amended by  
No. 101/1998  
s. 22(1)(n)).

(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 the expiration of 28 days after a copy of the application has been served on the Commission.

**78. Commission to reconsider decision**

S. 78(2)  
amended by  
No. 32/1988  
s. 19(1).

- (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.
- (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.

**79. Costs**

(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.

S. 79 amended by No. 32/1988 s. 19(2)(a)(b).

(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) The Commission must give notice in writing to the applicant of a determination to vary or revoke its decision.

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S. 81 repealed by No. 52/1998 s. 311(Sch. 1 item 95.7).

**82. Application of Division**

(1) This Division does not apply to an application to the Tribunal under section 70(3).

S. 82 amended by No. 84/1994 s. 39(1).



s. 82

*Transport Accident Act 1986*

*Act No. 111/1986*

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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).

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**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
  - (b) enures in favour of the owner for the time being of the trailer; and
  - (c) does not insure the owner of a trailer against liability to pay compensation under the **Accident Compensation Act 1985** 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.

S. 86(2)(b)  
amended by  
No. 32/1988  
s. 20(2).

S. 86(2)(c)  
inserted by  
No. 32/1988  
s. 20(2).

**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
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(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 sub-section (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.

### **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

S. 89  
amended by  
No. 34/1998  
s. 14(a).

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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 sub-section (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

(b) a statement made to a member of the police  
force 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 sub-section (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

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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



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*Transport Accident Act 1986*

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- (b) a reference in that section to the driver of a motor car were a reference to the person in charge of a trailer.
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**PART 6—LEGAL RIGHTS OUTSIDE THIS ACT**

**Division 1—Damages in Respect of Death or Serious Injury**

**93. Actions for damages<sup>23</sup>**

(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—

(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.

(3) If—

(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)(a) substituted by No. 32/1988 s. 21(1)(b).

(b) the degree so determined is 30 per centum or more—

S. 93(3)(b) substituted by No. 32/1988 s. 21(1)(b).

the injury is deemed to be a serious injury within the meaning of this section.

(4) If—

(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)(a) substituted by No. 32/1988 s. 21(1)(c).

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 sub-section (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 sub-section (4)(d) unless it is satisfied that the injury is a serious injury.

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 sub-sections (2), (3) and (4) other than damages<sup>24</sup>—

(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 sub-section (11) and

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- 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 sub-section (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 sub-section (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 sub-section (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 sub-section (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—

S. 93(10)(a)  
amended by  
No. 84/1994  
s. 10(2).

- (a) in the case of an award of pecuniary loss damages under sub-section (7), any pecuniary loss suffered in the period of 18 months after the transport accident<sup>25</sup>; 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.

S. 93(11)  
amended by  
No. 32/1988  
s. 21(1)(d),  
substituted by  
No. 84/1994  
s. 10(3).

(11) Damages under sub-section (7) are to be reduced<sup>26</sup>—

- (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

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- (b) in the case of damages for pain and suffering—
- (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, 48 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 sub-section (8) are to be reduced—
- (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<sup>27</sup>.
- (12) Subject to the discretion of the court—
- (a) in proceedings relating to an application for leave of the court under sub-section (4)(d)— costs are to be awarded against a party against whom a decision is made; and

S. 93(11A)  
inserted by  
No. 84/1994  
s. 10(3).

- (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.

S. 93(12A)  
inserted by  
No. 84/1994  
s. 10(4).

(12A) Damages awarded in accordance with sub-section (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 which would have been provided by the deceased person<sup>28</sup>.

- (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 sub-section (13), nothing in that sub-section 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 the date of the award.

S. 93(15)  
amended by  
No. 34/1998  
s. 14(b).

(16) Except as provided by sub-section (15), nothing in that sub-section 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 sub-section (1)—



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S. 93(18)(b)  
amended by  
Nos 32/1988  
s. 21(2),  
84/1994 s. 7.

- (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<sup>29</sup>; or

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<sup>30</sup>.

S. 93(18A)  
inserted by  
No. 84/2000  
s. 29.

- (18A) Despite sub-section (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) Sub-section (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

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matters that are substantive law and are not procedural in nature.

## Division 2—Indemnity by Commission

### 94. Indemnity

(1) The Commission is liable to indemnify—

(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 Nos 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—

S. 94(1)(b) amended by Nos 84/1994 s. 45(a), 104/1997 s. 56(3).

other than liability to pay compensation under the **Accident Compensation Act 1985** or an Act or law referred to in section 37.

(2) Sub-section (1) does not apply—

(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)(a) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 32/1988 s. 21(3).

(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)(aa) inserted by No. 32/1988 s. 21(4).

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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.

S. 94(2)(c)  
inserted by  
No. 26/2000  
s. 28.

S. 94(2A)  
inserted by  
No. 84/2000  
s. 31(1).

(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

(c) in respect of any liability of the owner or driver of a registered motor vehicle or the operator, owner or driver of a railway train or tram or the manager of the railway or tramway on which a railway train or tram is operated, to pay compensation for pain and suffering awarded under section 86 of the **Sentencing Act 1991**.

- (2A) Sub-section (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.
- (3) If judgment is entered against the owner or driver in respect of liability in respect of which the Commission is liable under this section to indemnify the owner or driver, 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.
- (4) A judgment creditor may not recover against the Commission under sub-section (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.

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- (5) Despite sub-section (3)—
- (a) if the owner or driver is or becomes bankrupt and the Commission is required to pay to the trustee in bankruptcy the amount of the liability under sub-section (3), the sum recoverable by the judgment creditor against the Commission must be reduced by the amount so paid; and
  - (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—
- (a) the liability of the owner or driver to the judgment creditor; and
  - (b) the liability (if any) of the Commission to the owner or driver.
- (7) If liability has been incurred to a person by an owner or driver in respect of which the Commission is liable under this section to indemnify the owner or driver and the owner or driver—
- (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 owner or driver or equivalent to the amount of the liability of the Commission under the indemnity, whichever is the lesser.
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S. 94(7A)  
inserted by  
No. 84/2000  
s. 31(2).

- (7A) The entitlement of a person to recover against the Commission under sub-section (7) is not affected by the death of an owner or driver indemnified under that sub-section before any proceedings are commenced.
- (8) Without affecting the generality of sub-section (7), an owner or driver shall be deemed to be unable to be found if the owner or driver cannot be found at the last-known place of residence of the owner or driver.
- (9) A person may not recover against the Commission under sub-section (7) unless—
- (a) the person gave to the Commission within a reasonable time after knowing that the owner or driver could not be found notice in writing of the 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
  - (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 the owner or driver in respect of which the Commission is liable under this section to indemnify the owner or driver; and
  - (b) may take over during such period as it thinks proper the conduct and control on behalf of the owner or driver of any proceedings to

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- enforce the claim or for the settlement of any question arising from it; and
- (c) may defend or conduct such proceedings in the name of the owner or driver and on the owner's or driver's behalf and, if need be may, without the consent of the owner or driver, to the extent of the liability of the Commission but no further or otherwise, admit liability; and
  - (d) subject to this section, must indemnify the owner or driver against all costs and expenses of or incidental to any such proceedings while the Commission retains the conduct and control of them.
- (11) The owner or driver 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 sub-section (10).
- (12) If an owner or driver fails to comply with a requirement under sub-section (11) upon being requested to do so, the Commission may sign all warrants and authorities specified in sub-section (11) on behalf of the owner or driver.
- (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(13)**  
amended by  
**No. 127/1986**  
**s. 102(Sch. 4**  
**item 29.2).**

**94A. *Settlement between Commission and Victorian WorkCover Authority***

**S. 94A**  
inserted by  
**No. 50/1994**  
**s. 108.**

- (1) Where the Commission—

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- (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**, 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.

S. 95  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

**95. *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 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.

**96. Transport accidents involving unidentified or unindemnified vehicles**

S. 96  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2),  
substituted by  
No. 84/1994  
s. 41.

- (1) Where a person is injured or dies as a result of a transport accident involving the driving of an unidentified vehicle or an unindemnified vehicle, a natural person who could have obtained a judgment against the owner or driver of that vehicle 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 that vehicle; 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.
- (2) Damages in respect of a transport accident involving the driving of an unidentified vehicle 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



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- (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.
- (3) If damages are recovered against the Commission under sub-section (1), the Commission may recover in proceedings against the owner or driver of the unidentified vehicle or unindemnified vehicle—
- (a) the amount of any judgment or settlement (including the legal costs of the person who brought the proceedings); and
  - (b) the amount of the Commission's reasonable out of pocket expenses in defending the proceedings.
- (4) It is a defence to proceedings under sub-section (3)—
- (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

S. 96(4)  
substituted by  
No. 84/2000  
s. 32.

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- (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 sub-section (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 by a person who may recover an equivalent sum under sub-section (1).
- (7) If in any proceedings under sub-section (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—
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(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;

**"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 sub-section (1);

S. 96(8) def. of "unindemnified vehicle" amended by No. 34/1998 s. 14(c).

**"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;

**"vehicle"** means a motor vehicle, railway train or tram.

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.

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S. 98 amended by No. 127/1986 s. 102(Sch. 4 item 29.2).

**98. Apportionment of costs**

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

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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.

**99. Owner to give notice**

- (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, the owner as soon as practicable after the accident or, if the owner was not the driver of the motor vehicle, railway train or tram at the time of the accident, as soon as practicable after he or she first becomes aware of the accident, must notify in writing the Commission of the fact of the accident with particulars as to the date, nature and circumstances of the accident and to give all such other information and to take all such steps as the Commission may reasonably require in relation, 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 an accident shall be as soon as practicable given by the owner to the Commission with such particulars as the Commission may require.
- (3) The owner of any motor vehicle, railway train or tram 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

S. 99(1)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

S. 99(3)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

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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 sub-section 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 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 before any arbitrator.

- (4) 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 Commission may recover from the owner such amount by way of damages as is reasonably attributable to the failure.

**100. *Driver of motor vehicle etc. to give notice of accidents***

S. 100(1)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

- (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 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 he or she shall as soon as practicable notify in writing the owner or the Commission of the fact of the accident.
- (2) If the driver 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

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- 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 notice 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
  - (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 sub-section (2)(c)(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.

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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.**

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**102. Unauthorized or intoxicated drivers**

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

(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 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—

(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

(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. 102(2)(a)  
amended by  
No. 34/1998  
s. 14(e).

S. 102(2)(b)  
amended by  
Nos 127/1986  
s. 102(Sch. 4  
item 29.17),  
84/1994 s. 29.

any sum (including costs) paid by the Commission in discharge of the liability of the owner or driver

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in respect of the death or injury is recoverable by the Commission from the driver.

**103. *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 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.

S. 103  
amended by  
No. 32/1988  
s. 23.

**Division 3—General**

**104. *Indemnity by third party***

(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 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(1)  
amended by  
Nos 84/1994  
s. 42(1)(a)–(c),  
34/1998  
s. 15(1)(a)(b).

(2) The liability of a person under sub-section (1) shall not exceed the amount (including the payment of interest) which, but for this Act, the person would be liable to pay—

S. 104(2)  
substituted by  
No. 34/1998  
s. 15(2),  
amended by  
No. 84/2000  
s. 33.

(a) to the injured person in respect of the injury:  
or



S. 104(3)  
inserted by  
No. 84/1994  
s. 42(2).

(b) in the case of the death of the person, to his or her dependents.

(3) Judgment against or settlement by a third party in an action in respect of an injury or death referred to in sub-section (1) 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—

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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 sub-section (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

*Transport Accident Act 1986*

*Act No. 111/1986*

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S. 107(1)(c)  
amended by  
No. 32/1988  
s. 24.

(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

(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

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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 section 86 of the **Sentencing Act 1991** to order an offender to pay compensation for pain and suffering if the compensation would be for pain and suffering to a person—
  - (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 section 86 of the **Sentencing Act 1991**, this section applies to and in respect of any offence referred to in sub-section (1) committed on or after the commencement of section 29 of the **Accident Compensation (Common Law and Benefits) Act 2000**.
- (3) For the purposes of sub-section (1)(a), a person is not to be regarded as having an entitlement to any compensation under this Act if the entitlement

**s. 107A**

*Transport Accident Act 1986*

*Act No. 111/1986*

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would only arise under either or both of sections  
60(1)(ca) and 60(1)(d).

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PART 7—TRANSPORT ACCIDENT CHARGES

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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*

(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.

S. 109(1) amended by Nos 127/1986 s. 102(Sch. 4 item 29.2), 84/1994 s. 43(1).

Penalty against this sub-section: 5 penalty units.

(2) The transport accident charge is payable in advance at the prescribed times or intervals.

(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 for the relevant prescribed period or periods.

S. 109(3) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.14).

(4) If a transport accident charge payable at the prescribed time or interval following the expiry of a prescribed period of 6 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.

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).

(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

S. 109(4A) inserted by No. 17/1993 s. 11(2).

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the amount of stamp duty payable by the Commission in respect of that charge under the **Stamps Act 1958**.

S. 109(4B) inserted by No. 177/1993 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.

(5) In this section—

S. 109(5) def. of "prescribed period" amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.16).

**"prescribed period"** in relation to a transport accident charge applicable to a motor vehicle means—

- (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
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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**

- (1) The amount of the transport accident charge applicable to a motor vehicle is the amount prescribed or determined as prescribed.

S. 110(1)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

- (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(1A)  
inserted by  
No. 32/1988  
s. 26(1).

- (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—

S. 110(2)  
amended by  
No. 32/1988  
s. 26(2)(a)(b).

$$A \times \frac{B}{C}$$

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 sub-sections (2) and (3), the amount as varied is the amount of the relevant transport accident charge.
- (5) Despite sub-section (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—

$$A \times \frac{B}{C} \times \frac{105}{100}$$

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 sub-section (6)(d) (if any).

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).

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.

- (5A) Despite sub-section (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—

**S. 110(5A)**  
inserted by  
**No. 24/2000**  
s. 17(1).

$$A \times \frac{B}{C}$$

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 sub-section (6)(e) (if any)—

less the figure determined by the Treasurer under sub-section (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 sub-section (5A), the Treasurer, by notice published in the Government Gazette on or before 30 June

**S. 110(5B)**  
inserted by  
**No. 24/2000**  
s. 17(1).

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 110

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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(5C)**  
inserted by  
No. 24/2000  
s. 17(1).

(5C) Where an amount is varied in accordance with sub-section (5) or (5A) and sub-section (3), the amount as varied is the amount of the relevant transport accident charge.

**S. 110(6)**  
inserted by  
No. 32/1988  
s. 26(3).

(6) The regulations—

(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 regulations; and

**S. 110(6)(c)**  
amended by  
No. 24/2000  
s. 17(2).

(c) may provide that sub-section (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

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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.

(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(7)  
inserted by  
No. 24/2000  
s. 17(3).

**110A. *Extension of operation of Regulations***

- (1) Unless sooner revoked, the Transport Accident (Charges) Regulations 1986 are revoked on 31 January 2007.
- (2) Section 5 of the **Subordinate Legislation Act 1994** does not apply to the Transport Accident (Charges) Regulations 1986.

S. 110A  
inserted by  
No. 73/1996  
s. 96.

**111. *Interstate vehicles***

- (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

S. 111(1)  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.2).

- (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**

S. 112(1) amended by No. 127/1986 s. 102(Sch. 4 items 29.2, 29.18).

- (1) If a motor vehicle—

S. 112(1)(a) amended by No. 127/1986 s. 102(Sch. 4 item 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)(b) 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**—

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 sub-section (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).

**115. *Agreements in respect of the operation of trains or trams***

S. 115 amended by No. 44/1989 s. 41(Sch. 2 item 42.6), substituted by No. 84/1994 s. 44.

- (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(1) substituted by No. 104/1997 s. 56(6).

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 115

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 sub-section (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 sub-section (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 sub-section (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 sub-section (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 sub-section (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.

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**PART 8—OFFENCES AND PROCEEDINGS**

**116. *Fraud***

- (1) A person must not obtain or attempt to obtain fraudulently any benefit under this Act.
- (2) Without limiting the generality of sub-section (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. 116  
amended by  
No. 32/1988  
s. 27(1).

**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. 117  
amended by  
No. 32/1988  
s. 27(2).

**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. 117A  
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.

S. 117B  
inserted by  
No. 32/1988  
s. 28.



- (2) Without limiting the generality of sub-section (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.

S. 117C  
inserted by  
No. 32/1988  
s. 28,  
substituted by  
No. 84/1994  
s. 46.

**117C. Failure to pay full amount of transport accident charge**

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.

**120. Institution of prosecutions**

- (1) A charge for an offence against this Act may be filed in the name of the Commission by any person employed in the administration of this Act and authorized by the Commission to file charges on behalf of the Commission.

S. 120(1)  
amended by  
No. 57/1989  
s. 3(Sch. item  
203.2(a)(b)).

*Transport Accident Act 1986*

*Act No. 111/1986*

**s. 120**

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- (1A) A charge for an offence against section 109 or 117C may also be filed by an officer of police or an officer of the Roads Corporation of Victoria.
- (2) Any prosecution instituted in the name of the Commission is deemed, in the absence of evidence to the contrary, to have been instituted by the authority of the Commission.
- (3) A person referred to in sub-section (1) may appear on behalf of the Commission in any proceedings for an offence against this Act.
- (4) Despite any law to the contrary, proceedings may be instituted under section 116 or 117 within 2 years after the alleged offence occurred.
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**S. 120(1A)**  
**inserted by**  
**No. 84/1994**  
**s. 43(3).**

**S. 120(4)**  
**inserted by**  
**No. 32/1988**  
**s. 29.**

PART 9—GENERAL

S. 121  
amended by  
No. 127/1986  
s. 102(Sch. 4  
item 29.19),  
repealed by  
No. 84/1994  
s. 47.

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Ss 122, 123  
repealed by  
No. 84/1994  
s. 47.

\* \* \* \* \*

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 statement in writing by the Chief Executive Officer certifying that a copy of a document reproduced by an imaging process by the Commission is a true and complete copy of the original document is evidence, in the absence of evidence to the contrary, for any purpose that the document is a true and complete copy of the original document.

S. 124(2)  
inserted by  
No. 84/1994  
s. 49(2).

**124A. Certificate of Commission**

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.

S. 124A  
inserted by  
No. 32/1988  
s. 30.

**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**

- (1) Subject to sub-section (1A), an assignment of an amount payable under this Act is void as against the Commission.

S. 126(1)  
amended by  
No. 32/1988  
s. 31(1).

- (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(1A)  
amended by  
Nos 32/1988  
s. 31(2),  
84/1994  
s. 55(1)(f).

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 126A

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  
inserted by  
No. 84/1994  
s. 50.

**126A. *Application of legal professional privilege***

- (1) In determining whether legal professional 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.
- (2) The Commission must waive any legal professional privilege that arises by the application of sub-section (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.

**127. *Access to police and other records***

S. 127(2)  
substituted by  
No. 84/1994  
s. 51,  
amended by  
No. 73/1996  
s. 97(e).

- (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.
- (2) The Commission must pay to the Chief Commissioner of Police the reasonable costs of furnishing information to the Commission under sub-section (1) as are specified in a statement given to the Commission from time to time by the Chief Commissioner of Police.

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 127A

(2A) For the purposes of sub-section (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.

S. 127(2A)  
inserted by  
No. 84/1994  
s. 51.

(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.

(3A) In sub-section (3), "employer" includes a former employer at any time during the period of 3 years immediately preceding the transport accident, of the person who is injured or dies in the transport accident.

S. 127(3A)  
inserted by  
No. 84/2000  
s. 36.

(4) In sub-section (3) "**employer**" includes a person who, before the transport accident, had entered into an arrangement (whether or not an enforceable contract) with the person who is injured or dies for the undertaking of employment by the person at a particular time and place.

**127A. Powers of inspection**

S. 127A  
inserted by  
No. 32/1988  
s. 32.

(1) A person employed in the administration of this Act and authorised by the Commission may—

S. 127A(1)  
amended by  
No. 84/1994  
s. 52.

(a) with an interpreter or such other assistance as the person requires, enter, inspect and

*Transport Accident Act 1986*

*Act No. 111/1986*

s. 127B

S. 127A(1)(b)  
amended by  
No. 34/1998  
s. 18.

S. 127A(1)(c)  
amended by  
No. 34/1998  
s. 18.

examine at any reasonable time any premises; and

(b) require a person in or on those premises to give information and produce documents; and

(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 sub-section (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.

S. 127B  
inserted by  
No. 32/1988  
s. 32.

**127B. *Offence to obstruct inspection***

A person must not—

(a) obstruct or hinder a person exercising powers under section 127A; or

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- (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 sub-section (1)(b) applies service shall be deemed to have been effected two days after the date of posting, unless the contrary is proved.
- (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 528, 529 and 530 of the **Companies (Victoria) Code**.

### **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.

### **131. *Secrecy provisions***

- (1) 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, engaged as a member of the staff of the Commission; or
  - (c) 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—

must not, except to the extent necessary to perform duties under this or any other Act, or to perform or exercise such a function or power, either directly or indirectly—

- (d) make a record of, or divulge or communicate to any person, any information—
  - (i) that identifies or could lead to the identification of any person; and

S. 131(1)  
substituted by  
No. 84/1994  
s. 53(1).

(ii) that is or was acquired by the person by reason of being or having been so appointed, engaged or authorised; or

(e) make use of any such information—

for any purpose other than the performance of duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Nothing in sub-section (1) precludes a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceeding under this Act; or

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of duties under this or any other Act or in the performance of a function or the exercise of a power referred to in that sub-section; or

S. 131(2)(b) amended by No. 84/1994 s. 53(2)(a).

(c) producing a document or divulging or communicating information relating to a worker who is or has received compensation under the **Accident Compensation Act 1985** to the Victorian WorkCover Authority, or an authorised insurer or self-insurer within the meaning of that Act;

S. 131(2)(c) amended by No. 84/1994 s. 53(2)(b).

(ca) producing a document or divulging or communicating information to a person who has responsibility for the administration of a welfare, benefit or compensation scheme of a State or Territory or the Commonwealth; or

S. 131(2)(ca) inserted by No. 32/1988 s. 33.

- (d) producing a document or divulging or communicating information to the Australian Statistician; or
- (e) producing a document or divulging or communicating information to any special commission (within the meaning of the **Evidence (Commissions) Act 1982**) where—
  - (i) the Commission has received a request in writing for information from the special commission; and
  - (ii) the Minister has given written approval to the Commission of the communication of that information; and
  - (iii) the Commission has given to that person written approval of the communication of that information; or
- (f) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

### **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;
  - (c) fees for ambulance services, hospital services, medical services, nursing services or rehabilitation services, other than fees for

S. 132(1)(c)  
amended by  
No. 34/1998  
s. 19.

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services which are prescribed by or under the  
**Health Services Act 1988;**

\* \* \* \* \*

S. 132(1)(d)  
repealed by  
No. 34/1998  
s. 9(b).

(e) the methods to be used for determining  
transport accident charges under Part 7;

(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**.

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**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—

- (a) a registered health benefits organisation as defined in the National Health Act 1953 of the Commonwealth; or

S. 134 def. of  
"health fund"  
amended by  
No. 84/1994  
s. 55(1)(h).

- (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;

**"medical practitioner"** means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

**"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;

**"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

S. 134 def. of "medical practitioner" amended by No. 23/1994 s. 118(Sch. 1 item 57.2).

S. 134 def. of "registered motor car" inserted by No. 32/1988 s. 34.

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- (d) a recreation vehicle registered in accordance with the **Transport 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;

**"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 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

S. 134 def. of "therapeutic service" amended by No. 78/1997 s. 97(Sch. item 3.2).



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

S. 135(2)(c)  
amended by  
No. 32/1988  
s. 35.

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s. 135

1982 and before that commencement, if the person was the driver of or passenger in the motor car when the accident occurred.

(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).

(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)(c)  
amended by  
No. 44/1989  
s. 41(Sch. 2  
item 42.9).

(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

S. 135(3)(d)  
amended by  
No. 44/1989  
s. 41(Sch. 2  
item 42.10).

- (e) was not a resident of Victoria and was in a motor car owned by the person—
  - (i) that was not registered in accordance with the **Motor Car Act 1958** or the **Transport 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 Act 1983**.

### **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**;
  - (d) Division 6 of Part II of the **Education Act 1958**;
  - (e) Part VII of the **Juries Act 1967**;
  - (f) the **Police Assistance Compensation Act 1968**;
  - (g) the **Victoria State Emergency Service Act 1981**;
  - (h) the **Emergency Management Act 1986**;
  - (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—

S. 137(1)(i)  
amended by  
No. 84/1994  
s. 55(1)(i).

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 sub-section (1).

- (3) The Commission must not make a payment under sub-section (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 sub-section (2) in respect of an injury or death must not exceed \$20 800.
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- (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 sub-section (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
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- 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 sub-section (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—
- (a) a person who is injured as a result of an accident applies for compensation under section 141 and a charge has been laid or it appears to the Commission that a charge may be laid against the person; and
- (b) under sub-section (1)(a) the Commission is not liable to make a payment to that person if convicted of that charge—
- the Commission may hold that payment—
- (c) where the charge is laid within twelve months of the date of the accident—until the charge is heard or withdrawn; or
- (d) where no such charge is laid within twelve months of the date of the accident—until the expiration of those twelve months.

**140. *No requirement to pay if claim less than \$60***

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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 sub-section (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 sub-section (2), "**earnings**" means such amount as, in the opinion of the Commission, the
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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 sub-section (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 sub-section (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 sub-section (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 as a partner 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—

- (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 spouse***

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 spouse 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 spouse such one of the following amounts as is appropriate:

- (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 spouse during the period used in calculating Y.

C is—

(i) if there is more than one dependent spouse of the deceased person and the sum of the fractions  $\frac{Y}{Z}$  as they are calculated in relation to each dependent spouse 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—

$$B - \frac{NB}{6}$$

where—

B is the amount that would have been payable to that spouse 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***

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(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:

(a) If that child is under the age of sixteen years and there is no dependent spouse of the deceased person—an amount calculated in accordance with the formula—

$$\frac{D - E}{N}; \text{ or}$$

(b) If that child is under the age of sixteen years and there is a dependent spouse of the deceased person—an amount calculated in accordance with the formula—

$$\frac{D - E}{2N}; \text{ or}$$

(c) If that child has attained the age of sixteen years and there is no dependent spouse of the deceased person—an amount calculated in accordance with the formula—

$$\frac{[D - E] \times \frac{A}{V}}{N}; \text{ or}$$

If that child has attained the age of sixteen years and there is a dependent spouse of the deceased person—an amount calculated in accordance with the formula  $\frac{W}{2}$ .

- (2) For the purposes of sub-section (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 sub-
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section (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.

**144. *Amount payable to be reduced in certain cases***

If a dependent spouse 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 spouse 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

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- 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 sub-section (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 sub-section (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 sub-section (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 sub-section (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 sub-section (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
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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 sub-section (1)(g) or sub-section (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 sub-section (1)(g) or sub-section (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 sub-section (1)(g) or sub-section (9)(b) to a person in respect of that accident; and
  - (b) the Commission has made a payment under sub-section (1)(g) or sub-section (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
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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 sub-section (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 sub-section (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.

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- (2) If a person is liable to pay costs or expenses to another person, an amount paid under sub-section (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—

- (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 spouse 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
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of costs referred to in paragraph (a), (b), (c), (d), (e), (f) or (g) of sub-section (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.

- (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 spouse 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 spouse 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 sub-section (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
  - (b) judgment is obtained in proceedings for the benefit of a dependent spouse 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.

- (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 spouse 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 spouse 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
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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.

**153. Right of judgment creditor to recover from insurer**

S. 153  
amended by  
No. 34/1998  
s. 14(f).

(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 sub-section (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—

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- (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

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- (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—
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- (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

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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

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against the first-named person in the proceedings had been taken by or against the person so substituted.

- (2) The Prothonotary, Registrar or other proper officer of any court in which any proceedings referred to in sub-section (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 sub-section (1).

S. 160(2)  
amended by  
No. 57/1989  
s. 3(Sch. item  
203.4).

**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 sub-section (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.
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**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

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with the requirements of this section and the repealed Division.

S. 163(2)  
amended by  
No. 84/1994  
s. 55(1)(i).

- (2) Nothing in sub-section (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.

**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
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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
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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.***

- (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
- (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

S. 168(1)  
amended by  
No. 64/1990  
s. 18(2)(a).

S. 168(1)(b)  
amended by  
No. 19/1989  
s. 16(Sch.  
item 54.1).

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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—

S. 168(2)(a)  
amended by  
No. 19/1989  
s. 16(Sch.  
item 54.2).

(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)(b)  
amended by  
Nos 19/1989  
s. 16(Sch.  
item 54.3),  
64/1990  
s. 18(2)(b).

(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(3)  
amended by  
No. 19/1989  
s. 16(Sch.  
item

(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(4)~~  
amended by  
No. 19/1989  
s. 16(Sch.  
item 54.5).

(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.

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s. 168

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- (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
  - (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.
- (6) Such order must not be made unless the Court is satisfied with respect to—
- (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(5) amended by No. 19/1989 s. 16(Sch. item 54.6(a)).**
- S. 168(5)(b) amended by No. 19/1989 s. 16(Sch. item 54.6(b)(i)(ii)).**
- S. 168(6) amended by No. 19/1989 s. 16(Sch. item 54.7).**
- S. 168(6)(a) amended by No. 64/1990 s. 18(2)(c).**



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S. 168(7)(a)  
amended by  
No. 19/1989  
s. 16(Sch.  
item 54.8).

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- (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 negating 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

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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 negated, 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
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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—

- (c) in respect of the whole or any part of a quarter 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 Statistician—
  - (i) in respect of that quarter; or
  - (ii) if such an amount has not been so published, the last amount so published in respect of a quarter; and
- (d) in respect of the whole or any part of any other quarter—the amount per week that is the average weekly earnings of all employees for Victoria last published by the Australian Statistician before the date of the award in respect of a quarter—

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 sub-section (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).

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Pt 12  
(Heading)  
repealed by  
No. 34/1998  
s. 17(c).

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Ss 178, 179  
repealed by  
No. 34/1998  
s. 17(c).

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S. 180  
amended by  
No. 44/1989  
s. 41(Sch. 2  
item 42.11),  
repealed by  
No. 84/1994  
s. 55(1)(k).

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**S. 181**  
repealed by  
No. 84/1994  
s. 55(1)(k).

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Sch. 1

**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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**NOTES**

**1. General 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.



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## 2. Table of Amendments

This Version 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)

<i>Assent Date:</i>	23.12.87
<i>Commencement Date:</i>	S. 102, Sch. 4 items 29.1 ( <i>except</i> (a), (c), (d)–(f)), 29.2 (in its application to ss 39(2)(3), 40, 41(1) of the <b>Transport Accident Act 1986</b> ), 29.3, 29.5, 29.6 ( <i>except</i> (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 <b>Transport Accident Act 1986</b> ), 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 <b>Transport Accident Act 1986</b> ), 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.
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Transport Accident Act 1986</b>

**Accident Compensation (Amendment) Act 1987, No. 83/1987**

<i>Assent Date:</i>	1.12.87
<i>Commencement Date:</i>	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)
<i>Current State:</i>	All of Act in operation

**Transport Accident (Amendment) Act 1988, No. 32/1988**

<i>Assent Date:</i>	17.5.88
<i>Commencement Date:</i>	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
<i>Current State:</i>	All of Act in operation

**State Superannuation Act 1988, No. 50/1988**

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*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**

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*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<sup>31</sup>**

*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**

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*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<sup>32</sup>**

*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**

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*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**

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*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**

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*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

**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)  
*Current State:* This information relates only to the provision/s  
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### 3. Explanatory Details

<sup>1</sup> 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 23.

<sup>2</sup> S. 3(1) def. of "transport accident": See note 1.

<sup>3</sup> S. 3(1) def. of "transport accident": Section 4(2) of the **Transport Accident (Amendment) Act 1988**, No. 32/1988 provides as follows:

#### 4. Definitions

- (2) The amendments made to the Principal Act by sub-section (1)(c) only apply to incidents occurring after the commencement of that sub-section.

<sup>4</sup> S. 3(1A): See note 1.

<sup>5</sup> S. 3(3)(a): See note 1.

<sup>6</sup> S. 3(3)(b): See note 1.

<sup>7</sup> S. 3(3)(c): See note 1.

<sup>8</sup> S. 27(2)(e): Section 10(2)(3) of the **Miscellaneous Acts (Omnibus Amendments) Act 1995**, No. 100/1995 reads as follows:

#### 10. Amendment of other Acts

- (2) A provision of an Act amended by an item in Schedule 1 continues to apply to or in respect of—
  - (a) moneys borrowed or re-borrowed, loans, advances and financial accommodation



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obtained and financial arrangements entered into or performed and any other thing done under borrowing powers or powers to obtain financial accommodation conferred by the Act before the commencement of this section; and

- (b) moneys borrowed or re-borrowed, loans, advances and financial accommodation obtained and any other thing done under borrowing powers or powers to obtain financial accommodation conferred by the Act after that commencement, pursuant to arrangements entered into before that commencement; and
- (c) the investment of moneys or exercise of powers made before the commencement of that section—

as if this section had not been enacted.

- (3) A guarantee given by or on behalf of the Government or State of Victoria or by the Treasurer and in force under an Act amended by an item in Schedule 1 before the commencement of this section has effect and may be enforced as if the guarantee were a contract made on behalf of the Crown and section 23(1)(a) of the **Crown Proceedings Act 1958** applied accordingly.

<sup>9</sup> S. 27(7): See note 8.

<sup>10</sup> S. 28: See note 8.

<sup>11</sup> S. 41A: See note 1.

<sup>12</sup> S. 41B: See note 1.

<sup>13</sup> S. 43(1A): See note 1.

<sup>14</sup> S. 43(1B): See note 1.

<sup>15</sup> S. 43(1C): See note 1.

<sup>16</sup> S. 43(1D): See note 1.

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<sup>17</sup> S. 47(7)(b): Section 32(3) of the **Transport Accident (General Amendment) Act 1994**, No. 84/1994 reads as follows:

**32. Amendment of section 47**

- (3) Section 47 of the Principal Act as amended by this section applies to the making of determinations in respect of transport accidents whether occurring before, on or after the commencement of this section.

<sup>18</sup> S. 47(7B): See note 17.

<sup>19</sup> S. 60(1)(ca): See note 1.

<sup>20</sup> S. 60(1A): See note 1.

<sup>21</sup> S. 60(2): See note 1.

<sup>22</sup> 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 sub-section (1), the reference in that section to "1 July 1987" is to be construed as a reference to "1 July 1995".

<sup>23</sup> 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—

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**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

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- (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 sub-section (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 sub-section (4)(d) unless it is satisfied that the injury is a serious injury.
- (7) A court must not, in proceedings in accordance with sub-sections (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.

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- (9) A court must not, in proceedings under Part III of the **Wrongs Act 1958** award damages in accordance with sub-section (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 sub-section (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 sub-section (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 sub-section (7)—
  - (i) in respect of pain and suffering damages, of such part of the damages as is equal to the sum of payments by

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- 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 sub-section (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 sub-section (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

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- (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 sub-section (13), nothing in that sub-section 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 sub-section (15), nothing in that sub-section 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;

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"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 sub-section (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.

<sup>24</sup> S. 93(7): See note 1.

<sup>25</sup> S. 93(10)(a): See note 1.

<sup>26</sup> S. 93(11): See note 1.

<sup>27</sup> S. 93(11A)(b): See note 1.

<sup>28</sup> S. 93(12A): See note 1.

<sup>29</sup> S. 93(18)(b): See note 1.

<sup>30</sup> S. 93(18)(c): See note 1.

<sup>31</sup> Table of amendments—**Financial Management (Consequential Amendments) Act 1994**, No. 31/1994: The 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**.



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<sup>32</sup> Table of amendments—**Equal Opportunity Act 1995**, No. 42/1995: The proposed repeal of section 16 sub-sections (3)(c) and (4) by the **Equal Opportunity Act 1995**, No. 42/1995, is not included in this publication due to their earlier repeal by section 23(b) of the **Transport Accident (General Amendment) Act 1994**.