

Transport Accident Amendment Bill 2013

13 Amendment of section 46A (accident-related impairment)

s. 13

After section 46A(1E) of the Principal Act **insert**—

"(1F) When determining the degree of impairment under this section, section 47(7) or section 47(7A), the Commission must—

- (a) not include impairments resulting from injuries or causes that are unrelated to the transport accident; and
- (b) in the case of a person who has an injury that existed before the transport accident that is aggravated by an injury that was the result of a transport accident—
 - (i) in the case of a spinal injury, use the apportionment methodology set out in Chapter 3.3f of the A.M.A Guides;
 - (ii) in any other case, use the subtraction methodology set out in Chapter 2 of the A.M.A Guides."

14 Amendments relating to guidelines that modify or override the A.M.A Guides

(1) In section 46A(2)(a)(i) of the Principal Act, for "(2A) and (2B)" **substitute** "(2A), (2B) and (2C)".

(2) After section 46A(2B) of the Principal Act **insert**—

"(2C) The Commission may, with the approval of the Minister, make a Guides Modification Document containing guidelines regarding the use and application of the A.M.A Guides for the purposes of this Act including but not limited to guidelines that—

- (a) amend the A.M.A Guides;
- (b) provide for the application or interpretation of the A.M.A Guides, including provision for modified application, or exclusion, of part or all of the A.M.A Guides;
- (c) substitute or replace part or all of the A.M.A Guides.

(2D) A Guides Modification Document made under subsection (2C) must be published in the Government Gazette as soon as practicable after it is approved by the Minister."

The Minister Second Reading Speech Commentary on Amendment 14

Spinal injuries arising from transport accidents have long been assessed according to the American Medical Association's Guides to the Evaluation of Permanent Impairment (fourth edition) (the AMA guides').

A decision of the Supreme Court, *Serwylo v. TAC*, has now changed the way that spinal impairments are assessed. The core of the *Serwylo* case was related to the assessment of multiple fractures. Multiple fractures had previously been assessed with reference to whether they resulted in multiple levels of spine

segment structural compromise, rather than by the simple presence of multiple fractures (of any kind) in an assessment region of the spine.

The outcome of Serwylo is that many scores for spinal injuries which were previously assessed at Category II — 5 per cent whole person impairment are now to be assessed at Category IV in the 20 per cent or 25 per cent range.

The Serwylo decision creates significant inequities among Victorians who are injured in transport accidents whereby some spinal injuries that result in relatively low levels of disability will be compensated substantially more than other injuries, such as brain injuries, that result in more significant disability.

The TAC has reviewed a range of possible solutions to address the consequences of this court decision and notes that guidelines have been implemented in other jurisdictions to regulate how examiners make assessments of multiple spinal fractures.

.Guidelines are in place for the motor accidents authority in NSW which has a set of guidelines that modify the AMA guides and provide extensive guidance about the methodology of assessing impairment, including spinal impairment.

This bill will enable the government to introduce guidelines to address this and any other anomaly that arises in the application of the AMA guides.

Any guidelines issued will be subject to a regulatory impact statement.

ISSUES

This amendment has no relevance with regard to psychiatry.

21 Amendments relating to reimbursement of medical reports

The Commission is not liable to pay as compensation the reasonable costs of medical services that are the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes for examinations made after 1 July 2014 unless the document—

(a) is requested jointly by the Commission and the person who is injured;
and

(b) is provided jointly to the Commission and the person who is injured;
and

(c) is provided by a registered health practitioner within the meaning of the Health Practitioner Regulation National Law.

document includes but is not limited to a medical report.

The Minister Second Reading Speech Commentary on Amendment 21

Currently, the TAC funds the reasonable cost of medical reports obtained by or on behalf of a client, in relation to injuries sustained in a transport accident.

On average, clients attend 8 medical examinations over the course of their claim,

of which, only 2 are commissioned by the TAC. The remaining examinations are commissioned by the client's legal representative in support of legal claims.

To address the need for a client to attend multiple examinations and to minimise the occurrence of a client attending duplicate examinations in relation to the same specialisation, this bill will enable the TAC to reimburse medico-legal report expenses if the medico-legal report is requested jointly by the TAC and the person who is injured.

It is intended that this provision come into operation on 1 July 2014 to inform and assist medical practitioners of this new policy change.

ISSUES: Potential for TAC to veto some IMEs.

Clause 26 Amendments -Common law damages claims for mental injury due to injury or death

A person who is injured as a result of a transport accident may not recover damages from a person indemnified by the Commission if—

- (a) the injury is nervous shock or other mental injury; and
- (b) the person was not directly involved in the accident and did not witness the transport accident; and
- (c) the mental injury or nervous shock was suffered as a result of the injury or death of another person who was directly involved in the transport accident; and
- (d) the transport accident was caused—
 - (i) in the course of the other person referred to in paragraph (c) committing, or intending to commit suicide; or
 - (ii) solely or predominantly by the negligence of the other person referred to in paragraph (c)."

The Minister Second Reading Speech Commentary on Amendment 26

The bill will clarify that the injury or death of a person through suicide, an intention to commit suicide or predominately through their own negligence does not give rise to an action by another person for damages in respect of mental injury (including nervous shock) where the other person was not directly involved in or witnessed the transport accident.

ISSUES: This no fault system now brings in the concept of negligence? What about a child running across a road and being killed?

27 Amendments relating to serious injury applications

the definition of **serious injury**, a person has a severe long-term mental or severe long-term behavioural disturbance or disorder if that person, for a continuous period of at least 3 years—

- (a) has a recognised mental illness or disorder (other than abnormal illness behaviour) as a result of a transport accident; and

(b) displays symptoms and consequent disability that have not responded, or have substantially failed to respond, to known effective clinical treatments provided by a registered mental health professional who is registered under the Health Practitioner Regulation National Law to practice (other than as a student); and

(c) has severely impaired function with symptoms causing clinically significant distress and severe impairment in relationships and social and vocational functioning."

The Minister Second Reading Speech Commentary on Amendment 27

As a community we know much more about mental illness than we did when the TAC scheme was established in 1986 . The government understands that recovering from a transport accident can be a very emotional and challenging time.

This bill introduces clauses that set out clinical criteria of what constitutes a severe long-term mental or severe long-term behavioural disturbance or disorder for the purposes of serious injury.

This provision has been developed in consultation with the Department of Health, including the chief psychiatrist.

The clinical criteria will encourage people who were directly exposed to a transport accident and who have suffered a recognised mental illness or disorder to seek treatment by a registered mental health professional, to improve their chances of getting their life back on track as soon as possible.

ISSUES: There are groups who are not encompassed by this definition, those who have no access to appropriate treatment, do not want treatment and with regard to (c) 'and vocational functioning excludes those out of the workforce, homemakers, retirees and others..