

PARLIAMENT OF VICTORIA

Transport Accident Amendment Bill 2013

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Transport Accident Amendment Bill 2013

A Bill for an Act to make amendments to the **Transport Accident Act 1986** to further improve the operation of that Act and for other purposes.

The Parliament of Victoria enacts:

1 Purpose

The main purpose of this Act is to make amendments to the **Transport Accident Act 1986** to further improve the operation of that Act.

5

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on the day after the day on which it receives the Royal Assent.

(2) Section 27 is taken to have come into operation on 16 October 2013.

10

See Act No.
111/1986.
Reprint No. 12
as at 1 July
2011 and
amending
Act Nos.
49/2010,
22/2012,
27/2012,
43/2012,
30/2013 and
55/2013.
LawToday:
www.
legislation.
vic.gov.au

3 Principal Act

In this Act, the **Transport Accident Act 1986** is called the Principal Act.

4 Amendments relating to the extension of time for making a dependency claim for dependants under 18

- (1) In section 3(1) of the Principal Act, in the definition of *dependent child*, after "that person who" **insert** ", as at the time of death or injury of that person".
- (2) In section 68(3)(a) of the Principal Act, after "is injured" **insert** "or who is a dependent child of a person who dies".

5 Amendments relating to inclusion of occupational therapy as medical services

- (1) In section 3(1) of the Principal Act, in the definition of *medical service*, after paragraph (a) **insert**—
- "(aa) attendance, examination or treatment by a registered occupational therapist, where that attendance, examination or treatment is authorised in accordance with section 23; and".

(2) After section 23(1)(a) of the Principal Act
insert—

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

(3) After section 71(3)(c) of the Principal Act
insert—

"(ca) registered occupational therapist;".

**6 Amendment relating to the definition of
*transportation costs***

(1) In section 3(1) of the Principal Act **insert** the
following definitions—

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

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

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

(2) In section 3(1) of the Principal Act, for
paragraph (d) of the definition of ***transportation
costs*** **substitute—**

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

7 Amendment relating to incidents involving tram, train or bus doors

In section 3(1A) of the Principal Act—

(a) in paragraph (c), for "employment."
substitute "employment;"

(b) after paragraph (c) **insert**—

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

8 Amendments relating to the repeal of Part 2A

(1) Section 13(3) of the Principal Act is **repealed**.

(2) Sections 14(1)(c) and 14(3) of the Principal Act are **repealed**.

(3) Sections 27(2)(fa) and 27(3)(ha) of the Principal Act are **repealed**.

(4) Part 2A of the Principal Act is **repealed**.

9 Amendment relating to Director's resignation

In section 16(3)(d) of the Principal Act, for "Governor in Council" **substitute** "Minister".

10 Amendment of section 39 (corresponding law)

(1) In section 39(3)(b) of the Principal Act, after "**Crimes Act 1958**" **insert** "or a corresponding law".

(2) After section 39(3) of the Principal Act **insert**—

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

11 Amendments of section 42 (definitions of law of a place outside Victoria and proceedings outside Victoria)

After section 42(5) of the Principal Act **insert**—

"(6) In this section—

law of a place outside Victoria means a law of the Commonwealth, another State or a Territory;

proceedings outside Victoria includes proceedings under a law of the Commonwealth."

12 Amendments regarding person making a claim in their own right for common law damages for injury

(1) In section 46A(1A)(a) of the Principal Act, after "a transport accident" **insert** "who has made a claim, other than a claim for payments under section 57, 58 or 59 or a claim for compensation under section 60(2A), (2C) or (2E) within the period of time provided by section 68 that has been accepted by the Commission".

(2) For section 47(7)(a) of the Principal Act **substitute**—

"(a) has made a claim, other than a claim for payments under section 57, 58 or 59 or a claim for compensation under section 60(2A), (2C) or (2E) within the period of time provided by section 68 that has been accepted by the Commission; or".

(3) In section 67(1) of the Principal Act, for "Subject to subsection (3), a" **substitute** "A".

(4) Section 67(1A) of the Principal Act is **repealed**.

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

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

5 "(1F) When determining the degree of
 impairment under this section, section 47(7)
 or section 47(7A), the Commission must—

10 (a) not include impairments resulting from
 injuries or causes that are unrelated to
 the transport accident; and

15 (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;

20 (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**

25 (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—

30 "(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—

- 5
- (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.
- 10
- (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."
- 15
- (3) In section 46A(6A) of the Principal Act, for "subsection (6)" **substitute** "subsections (2C) and (6)".

15 Amendment of section 46A (diminution of hearing)

In section 46A(4) of the Principal Act—

- 20
- (a) in paragraph (a), for "shall be" **substitute** "must be assessed as a binaural loss of hearing and";
 - (b) in paragraph (b), for "shall be" **substitute** "must be assessed as a binaural loss of hearing and".
- 25

16 Amendment of section 60 (vocational rehabilitation services)

In section 60(2)(a) of the Principal Act, after "transportation costs" **insert** ", vocational rehabilitation services".

17 Amendment of section 60 (increase of family counselling cap)

(1) In section 60(2A)(a) of the Principal Act, for "\$5000" **substitute** "\$15 000".

(2) In section 61(2) of the Principal Act, after "\$30 520," **insert** "\$15 000,".

18 Amendment of section 60 (funeral, burial and cremation expenses)

(1) In section 60(2A)(b) of the Principal Act, for "burial or cremation" **substitute** "a funeral, burial, cremation, monument or any other expense declared by Order of the Governor in Council to be a prescribed expense for the purposes of this section, where the total amount of the expenses does not exceed \$14 135".

(2) In section 61(2) of the Principal Act, before "\$5000" **insert** "\$14 135,".

19 Amendment of section 60 (extension of period to claim for travel expenses to 24 weeks)

(1) In section 60(2BA) of the Principal Act, for "12 weeks" **substitute** "24 weeks".

(2) After section 60(2BA) of the Principal Act **insert**—

"(2BB) For the purposes of subsection (2BA)—

(a) the 24 weeks do not have to be consecutive; and

(b) if more than one attempt to return to work is made after the accident, a claim may be made after any subsequent attempt to return to work.".

20 Amendment of section 60 (travel expenses)

- (1) In section 60(2D)(c) of the Principal Act, after "paragraph (a)" **insert** "in hospital".
- (2) In section 60(2E) of the Principal Act, for "\$5000" **substitute** "\$10 000".

21 Amendments relating to reimbursement of medical reports

- (1) After section 60(2E) of the Principal Act **insert**—

"(2F) For the purposes of subsection (2)(a), the Commission is not liable to pay as compensation the reasonable costs of medical services that are the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes unless the document—

- (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.

(2G) For the purposes of subsection (2F), a document obtained for medico-legal purposes includes a document obtained for any of the following purposes—

- (a) for the purposes of determining the degree of impairment under section 46A, 47(7) or 47(7A);
- (b) for the purposes of Part 6 or Division 1 of Part 10;

- 5
- (c) responding to a decision of the Commission under Parts 3 and 4 or in contemplation of such a decision;
- (d) for the purposes of an application under section 77 for a review of a decision, or in contemplation of such an application.
- 10
- (2H) For the purposes of subsection (2F), a document is not obtained for medico-legal purposes if the document is obtained from a person's treating medical practitioner.
- (2I) In this section—
- document* includes but is not limited to a medical report;
- 15
- treating medical practitioner*, in relation to a person who is injured in a transport accident, is a person who has provided medical services to the injured person before being requested to provide a document."
- 20
- (2) For section 71(1) of the Principal Act **substitute**—
- 25
- "(1) In order to determine its liability under Part 3, Part 6 or Division 1 of Part 10, the Commission may require a person who was injured as a result of a transport accident and makes a claim for, or receives compensation or damages under Part 3, this Part, Part 6 or Division 1 of Part 10, to submit from time to time for examination by one or more medical service providers nominated by the Commission."
- 30

22 Amendments relating to the indexation of client contribution towards daily living expenses when living in shared supported accommodation

- 5 (1) In section 60(11A) of the Principal Act, after "supported accommodation" **insert** ", which contributions must not exceed \$32.50 per day".
- (2) In section 61(7) of the Principal Act, after "section 43(1)(b)" **insert** "or fixed by Order made under section 60(11A)".

10 **23 Amendment of section 61A (individual funding agreements)**

In section 61A(4)(e) of the Principal Act, for "\$200 or any other amount specified by the regulations" **substitute** "\$1000 or any other amount fixed by the Governor in Council by Order published in the Government Gazette".

24 Amendments relating to authority to release information

After section 67 of the Principal Act **insert**—

20 **"67A Authority to release information**

- 25 (1) A person who makes a claim for compensation under this Act must, as soon as is practicable after being requested to do so by the Commission, sign an authority to release relevant medical or other information to the Commission for the purpose of processing, assessing or otherwise managing the claim.
- 30 (2) An authority to release information must be in a form approved by the Commission.
- (3) An authority to release information has effect and cannot be revoked until a claim is finally determined.

(4) A person may sign more than one authority to release information."

25 Amendment of section 74 (cessation or review of liability to pay compensation in certain circumstances)

In section 74(2)(b) of the Principal Act, for "44 or 45" substitute "44, 45, 49, 50 or 51".

26 Amendment of section 93 (common law damages claims for mental injury due to injury or death of tortfeasor)

After section 93(2) of the Principal Act insert—

"(2A) A person who is injured as a result of a transport accident may not recover damages from a person indemnified by the Commission under section 94(1) or from the Commission in respect of a vehicle to which section 96 applies 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)."

27 Amendments relating to serious injury applications

After section 93(17) of the Principal Act **insert**—

"(17A) For the purposes of paragraph (c) of 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."

28 Amendment of section 120 (increasing the time limit for certain criminal prosecutions)

For section 120(4) of the Principal Act
substitute—

"(4) Despite any law to the contrary, proceedings may be instituted under section 116, 117 or 117C within 3 years after the alleged offence occurred."

29 Amendments relating to employment enquiries under section 127

For sections 127(3A) and (4) of the Principal Act
substitute—

"(4) In subsection (3), *employer* includes a person who, at any time after the date which is 3 years immediately preceding the transport accident (including after the transport accident)—

(a) is an employer of the person who is injured or dies in the transport accident;

(b) enters into an arrangement with a person who is injured or dies in the transport accident, or a person acting on their behalf, for the undertaking of work by the person at a particular time and place, whether or not the arrangement—

(i) is an enforceable contract; or

(ii) provides for any reward for work done; or

(iii) specifies that the person is an employee or otherwise;

(c) acts on behalf of a person who is injured or dies in the transport accident in relation to entering into an agreement specified in paragraph (b)."

30 New Division 7 of Part 11 inserted

In Part 11 of the Principal Act, after Division 6 insert—

"Division 7—Transport Accident Amendment Act 2013

206 Definitions

In this Division—

amending Act means the **Transport Accident Amendment Act 2013**;

amending provision means a provision of the amending Act specified in a section of this Division;

commencement date means the date on which the amending provision comes into operation.

207 Amendments relating to the extension of time for making a dependency claim for dependents under 18

This Act, as amended by section 4 of the amending Act, applies in respect of a claim for compensation lodged on or after the commencement date.

208 Amendments relating to inclusion of occupational therapy as medical services

This Act, as amended by section 5 of the amending Act, applies in respect of a request for occupational therapy services made on or after the commencement date.

**209 Amendment relating to the definition of
*transportation costs***

This Act, as amended by section 6 of the
amending Act, applies in respect of a request
for reimbursement of transportation costs
made on or after the commencement date.

**210 Amendment relating to incidents
involving train, tram or bus doors**

This Act, as amended by section 7 of the
amending Act, applies in respect of a
transport accident that occurs on or after the
commencement date.

**211 Amendment of section 39 (corresponding
law)**

This Act, as amended by section 10 of the
amending Act, applies in respect of a
transport accident that occurs on or after the
commencement date.

**212 Amendments of section 42 (definitions of
*law of a place outside Victoria and
proceedings outside Victoria*)**

This Act, as amended by section 11 of the
amending Act, applies in respect of a
transport accident that occurs on or after the
commencement date.

**213 Amendments regarding person making a
claim in their own right for common law
damages for injury**

This Act, as amended by section 12 of the
amending Act, applies in respect of a
transport accident that occurs on or after the
commencement date.

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

This Act, as amended by section 13 of the amending Act, applies in respect of any determination of the degree of impairment of a person injured as a result of a transport accident that occurred on or after 19 May 1998, regardless of when the injury occurred.

215 Amendment of section 46A (diminution of hearing)

This Act, as amended by section 15 of the amending Act, applies in respect of a determination of the degree of impairment of a person injured as a result of a transport accident made on or after the commencement date, regardless of when the transport accident occurred.

216 Amendment of section 60 (vocational rehabilitation services)

This Act, as amended by section 16 of the amending Act, applies in respect of all applications, regardless of when the applications were made.

217 Amendment of section 60 (increase of family counselling cap)

This Act, as amended by section 17 of the amending Act, applies in respect of a claim made on or after the commencement date.

218 Amendment of section 60 (funeral, burial and cremation expenses)

This Act, as amended by section 18 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

219 Amendment of section 60 (extension of period to claim for travel expenses to 24 weeks)

This Act, as amended by section 19 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.

220 Amendment of section 60 (travel expenses)

This Act, as amended by section 20 of the amending Act, applies in respect of a request for compensation under section 60(2E), regardless of when the claim was lodged.

221 Amendments relating to reimbursement of medical reports

This Act, as amended by section 21 of the amending Act, applies in respect of an examination made on or after 1 July 2014, in circumstances where the examination is made for the purposes of the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes.

222 Amendment of section 61A (individual funding agreements)

This Act, as amended by section 23 of the amending Act, applies in respect of all claims, regardless of when the claim is made.

223 Amendment of section 74 (cessation or review of liability to pay compensation in certain circumstances)

This Act, as amended by section 25 of the amending Act, applies in respect of all claims, regardless of when the claim is made.

224 Amendment to section 93 (common law damages claims for mental injury due to injury or death of tortfeasor)

- 5 (1) Subject to subsection (2), this Act, as amended by section 26 of the amending Act, applies in respect of a transport accident that occurs on or after the commencement date.
- 10 (2) This Act, as amended by section 26 of the amending Act, does not apply to a person who, as at the commencement date—
- (a) has been issued a certificate under section 93(4)(c)(ii); or
 - (b) has been granted leave under section 93(4)(d).

15 **225 Serious injury applications**

This Act, as amended by section 27 of the amending Act, applies in respect of an application made on or after 16 October 2013—

- 20 (a) for a certificate under section 93(4)(c)(ii); or
- (b) for leave under section 93(4)(d).

25 **226 Amendment of section 120 (increasing the time limit for certain criminal prosecutions)**

30 This Act, as amended by section 28 of the amending Act, applies to an offence against section 116, 117 or 117C that is alleged to have been committed on or after the commencement date."

31 Repeal of amending Act

This Act is **repealed** on the first anniversary of the day after the day on which all of its provisions have come into operation.

Note

The repeal of this amending Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

5

ENDNOTES

By Authority. Government Printer for the State of Victoria.
