

**TRANSPORT ACCIDENTS COMPENSATION ACT 1987**  
**No. 101**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

**PART 1—PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Transport accidents
5. Persons deemed to be employees
6. Earners
7. Non-earners
8. Construction of certain references—earners referred to in s. 6 (1) (b) and (c)
9. Earnings
10. Act to bind Crown

**PART 2—FUNCTIONS OF THE GIO**

11. Administration of scheme for transport accidents compensation
12. General functions of the GIO
13. Miscellaneous functions of the GIO
14. Liability of the GIO

**PART 3—THE TRANSPORT ACCIDENTS COMPENSATION FUND**

**DIVISION 1—*General***

15. Transport Accidents Compensation Fund
16. Payments into the Fund
17. Payments out of the Fund
18. Investment

**DIVISION 2—*Amounts of contributions***

19. Establishment of the Contributions Advisory Committee
20. Actuary's recommendation concerning contributions
21. Contributions Advisory Committee's recommendation concerning contributions

*Transport Accidents Compensation 1987*

---

- 22. Matters to be considered in making recommendations
- 23. Determination by the Minister of contributions

*DIVISION 3—Payment of contributions*

- 24. Contributions in respect of motor vehicles
- 25. Payment of contributions in respect of motor vehicles etc. to the GIO
- 26. Contributions from public authorities
- 27. Contributions in respect of Commonwealth motor vehicles
- 28. Contributions from other transport operators
- 29. Provisions of agreements under ss. 26, 27 and 28
- 30. Other contributions

**PART 4—ELIGIBILITY FOR BENEFITS***DIVISION 1—General*

- 31. Injured person's benefits—generally
- 32. Dependant's benefits—generally
- 33. Persons in respect of whom benefits are payable
- 34. Total exclusion from benefits—failure to report accident
- 35. Total exclusions from benefits—conviction for serious crime etc.
- 36. Partial exclusions from benefits
- 37. Reduction of benefits—contributory negligence
- 38. Reduction of benefits—driving etc. with prescribed concentration of alcohol, not wearing seat belt etc.
- 39. Payment of benefits—prisoners

*DIVISION 2—Relationships to other benefits*

- 40. Abolition of certain rights to damages or compensation
- 41. Election between alternative sources of compensation
- 42. Forfeiture and assignment of certain rights
- 43. Indemnification of certain owners and drivers
- 44. Set off in event of double compensation
- 45. Set off of benefits in respect of sick leave and other leave
- 46. Certain payments not to affect benefits under this Act

**PART 5—BENEFITS—INJURED PERSONS***DIVISION 1—Hospital, medical and associated services and pharmaceutical supplies*

- 47. Payment of hospital, medical and associated services
- 48. Pharmaceutical supplies
- 49. Liability for amounts less than the prescribed amount

*DIVISION 2—Compensation for loss of earning capacity**Subdivision 1—Entitlement to compensation*

- 50. Entitlement to compensation for loss of earning capacity—earners
- 51. Entitlement to compensation for loss of earning capacity—non-earners

*Transport Accidents Compensation 1987*

---

*Subdivision 2—Assessment of loss of earning capacity—earners*

- 52. Loss of earning capacity—employees
- 53. Normal weekly earnings—employees
- 54. Assumed weekly earnings—employees
- 55. Loss of earning capacity—self-employed persons
- 56. Normal weekly earnings—self-employed persons
- 57. Assumed weekly earnings—self-employed persons
- 58. Amount of earnings during period of incapacity
- 59. Assumed earnings during period of incapacity
- 60. Notice and effect of certain determinations under s. 59
- 61. Loss of earning capacity—earnings derived as employee and self-employed person

*Subdivision 3—Long-term incapacity—earners*

- 62. Determination or redetermination of earner's loss of earning capacity
- 63. Application for assessment of compensation on basis of potential for advancement
- 64. Circumstances in which assessment may be made
- 65. Basis of assessment
- 66. Making of assessment
- 67. Effect of assessment

*Subdivision 4—Assessment of loss of earning capacity—non-earners*

- 68. Loss of earning capacity—non-earners
- 69. Notional earning capacity—non-earners
- 70. Amount of earnings during period of incapacity
- 71. Assumed earnings during period of incapacity
- 72. Notice and effect of certain determinations under s. 71
- 73. Further assessment of loss of earning capacity—non-earners
- 74. Application for assessment of compensation on basis of potential for advancement
- 75. Circumstances in which assessment may be made
- 76. Basis of assessment
- 77. Making of assessment
- 78. Effect of assessment

*Subdivision 5—Amount and payment of compensation*

- 79. Amount of compensation—loss of earning capacity
- 80. Amount of compensation—replacement services
- 81. Amount of compensation—equivalent earnings as an employee
- 82. Maximum amount of compensation
- 83. Periods for which compensation is not payable
- 84. Payment of compensation to persons under 16 years of age
- 85. Payment of compensation—unconscious persons
- 86. Termination of payments

*Subdivision 6—Permanent incapacity*

- 87. Assessment of permanent incapacity

*Subdivision 7—Miscellaneous*

- 88. Postponement of assessment of certain claims
- 89. Continuance of compensation after commencement of certain business undertakings

---

*Transport Accidents Compensation 1987*

---

**DIVISION 3—*Rehabilitation***

- 90. Provision for rehabilitation services
- 91. Rehabilitation services to be provided promptly
- 92. Functions of the GIO relating to rehabilitation—generally
- 93. Prosthetic etc. devices and aids and appliances
- 94. Vocational training and retraining

**DIVISION 4—*Support services and independent living***

- 95. GIO to promote support services etc.
- 96. Provision of short term household services
- 97. Provision of household services after 4 weeks from date of accident
- 98. Provision of attendant care services
- 99. Maximum amount of compensation for voluntary household and attendant care services
- 100. Compensation for loss of earnings—emergency family support
- 101. Travelling and accommodation expenses—emergency family support
- 102. Mobility allowance

**DIVISION 5—*Compensation for permanent impairment***

- 103. Entitlement to compensation for permanent impairment
- 104. Duty to mitigate
- 105. Amount of compensation
- 106. Assessment of degree of permanent impairment
- 107. Minimum level of impairment
- 108. Total impairment
- 109. Time at which determination may be made
- 110. Increase in degree of impairment after assessment
- 111. Payment of compensation—deceased and unconscious persons

**DIVISION 6—*Additional benefits for person suffering a permanent or long-term physical impairment***

- 112. Application of Division
- 113. Modifications to places of work
- 114. Placement programmes
- 115. Advice and assistance
- 116. Acquisition of a home
- 117. Modifications to the home
- 118. Provision of public housing
- 119. Institutional accommodation
- 120. Hostels
- 121. Purchase of vehicle
- 122. Modifications to vehicle

**PART 6—BENEFITS—DEPENDANTS OF DECEASED PERSONS****DIVISION 1—*Preliminary***

- 123. Interpretation
- 124. Presumption as to dependence of children



*Transport Accidents Compensation 1987*

---

DIVISION 2—*Funeral expenses*

125. Funeral expenses

DIVISION 3—*Lump sum payments*

126. Lump sum payments  
127. Set off of lump sum paid for permanent impairment

DIVISION 4—*Periodic compensation for surviving spouse*

128. Determination of earning capacity  
129. Actual earnings of surviving spouse  
130. Assumed earnings of surviving spouse  
131. Notice and effect of certain determinations under s. 130  
132. Periodic compensation for spouses of earners—generally  
133. Periodic compensation for spouses of earners who undertake long-term child-care  
134. Periodic compensation for spouses of earners—health, age, etc. factors

DIVISION 5—*Periodic compensation for prescribed children*

135. Periodic compensation for prescribed children

DIVISION 6—*Replacement household services*

136. Provision of short time replacement household services  
137. Provision of replacement household services after 4 weeks from date of death  
138. Maximum amount of compensation for voluntary replacement household services

DIVISION 7—*Miscellaneous*

139. Limitations on amount of compensation  
140. Set off of benefits provided to injured person before death  
141. Deaths in rapid succession  
142. Termination of payments  
143. Lump sum payment on remarriage etc. of surviving spouse

PART 7—BENEFITS—MISCELLANEOUS MATTERS

DIVISION 1—*General*

144. Non-assignability of benefits  
145. Effect of pre-accident impairment  
146. Effect of post-accident impairment  
147. Effect of overseas residence—injured persons  
148. Effect of overseas residence—dependants of deceased persons  
149. Effect of overseas residence—exemptions

DIVISION 2—*Indexation of amounts of benefits*

150. Interpretation  
151. Adjustment of amounts of benefits according to award rate of pay index  
152. Rounding off  
153. Publication of adjusted amounts

---

*Transport Accidents Compensation 1987*

---

**PART 8—MAKING AND ASSESSMENT OF CLAIMS FOR BENEFITS AND  
ADMINISTRATION OF PROVISION OF BENEFITS****DIVISION 1—General**

154. Interpretation

**DIVISION 2—Making of claims**

155. Making of claims—generally

156. Time for making of claims

157. Advice and assistance to claimants

**DIVISION 3—Assessment (including medical assessment) of claims**

158. Investigation and assessment of claims

159. Employment information

160. Medical examination

161. Effect of failure etc. to undergo medical examination

**DIVISION 4—Determination and payment of claims**

162. Determination of claims

163. Manner of payment of benefits

164. Deduction of income tax

165. Withholding of certain payments

166. Payment of periodic compensation

167. Payment of lump sums

168. Payment or provision of other benefits

169. Payment of benefits in respect of minors etc.

170. Effect of failure or refusal to make determination

171. Notice of determinations

172. Interim determinations

**DIVISION 5—Miscellaneous**

173. Claims manual

174. False application

175. Periodic review of benefits

176. Redemptions

177. Notification of change in circumstances

178. Termination of benefits

179. Overpayments

**PART 9—MEDICAL REVIEW PANELS**

180. Establishment of Medical Review Panels

181. Remuneration of members

182. Functions of Medical Review Panels

**PART 10—APPEALS****DIVISION 1—General**

183. Interpretation

184. Appeals

*Transport Accidents Compensation 1987*

---

185. Time for making appeals

*DIVISION 2—Appeals—other than appeals relating to medical assessment*

186. Making of appeal  
187. Reconsideration by GIO of its determination  
188. Hearing of appeal  
189. Determination of appeals  
190. Effect of determination  
191. Orders as to costs  
192. Functions etc conferred without derogation from other functions  
193. Appeals on questions of law

*DIVISION 3—Appeals relating to medical assessment*

194. Making of appeal  
195. Hearing of appeal  
196. Medical certificates  
197. Medical examination  
198. Rights of appearance and representation  
199. Chairperson and votes of members  
200. Determination of appeal  
201. Record of determination  
202. Costs  
203. Regulations with respect to Medical Review Panels

**PART 11—TRANSCOVER REVIEW COMMITTEE**

204. Establishment of the Review Committee  
205. Functions and powers of the Review Committee  
206. Annual report of the Review Committee

**PART 12—MISCELLANEOUS**

207. Report of transport accident by owner and driver etc.  
208. Provision of interpreters  
209. Driving of certain motor vehicles on public streets etc. prohibited  
210. Recovery from owner or driver  
211. Disclosure of information  
212. Service of documents on the GIO  
213. Service of documents on other persons  
214. Authentication of certain documents  
215. Certificate evidence—prescribed concentration of alcohol  
216. Proof of certain matters not required  
217. Offences and penalty  
218. Proceedings  
219. Offences by corporations  
220. Liability

*Transport Accidents Compensation 1987*

---

221. Regulations

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE  
OF THE CONTRIBUTIONS ADVISORY COMMITTEE

SCHEDULE 2—PROVISIONS RELATING TO THE CONSTITUTION AND  
PROCEDURE OF THE REVIEW COMMITTEE

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# **TRANSPORT ACCIDENTS COMPENSATION ACT 1987 No. 101**

NEW SOUTH WALES



## **Act No. 101, 1987**

An Act to enable the provision of benefits to a person who suffers bodily injury which is caused by or arises out of a transport accident and to the dependants of a person whose death is caused by or arises out of a transport accident. [Assented to 12 June 1987]

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See also Miscellaneous Acts (Transport Accidents Compensation) Amendment Act 1987.

*Transport Accidents Compensation 1987*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1  
PRELIMINARY

**Short title**

1. This Act may be cited as the "Transport Accidents Compensation Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on 1 July 1987.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“average weekly earnings” means the amount of \$430;

“bodily injury” includes—

(a) pre-natal injury;

(b) injury resulting from nervous shock; and

(c) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses;

“claimant” means a person by or on whose behalf a claim for benefits under this Act is made;

“Contributions Advisory Committee” means the Transport Accidents Contributions Advisory Committee established under section 19;

“de facto partner” means—

(a) in relation to a man—

(i) a woman who is living with the man as his wife on a bona fide domestic basis although not married to him; or

- (ii) if the man's death is caused by or arises out of a transport accident, a woman who, immediately before the date of the man's death, was living with the man as his wife on a bona fide domestic basis although not married to him; and

(b) in relation to a woman—

- (i) a man who is living with the woman as her husband on a bona fide domestic basis although not married to her; or
- (ii) if the woman's death is caused by or arises out of a transport accident, a man who, immediately before the date of the woman's death, was living with the woman as her husband on a bona fide domestic basis although not married to her;

“deceased person” means a person whose death is caused by or arises out of a transport accident;

“dependant”, in relation to a deceased person, means a household family member or a member of the family of the deceased person who, at the date of death of the deceased person, was financially, or through the provision of household services, or in some other significant and continuing way, dependent upon, or interdependent with, the deceased person, in whole or in part;

“driver” means any person driving a motor vehicle and includes any person riding a motor cycle;

“financial year” means year ending on 30 June;

“GIO” means the Government Insurance Office of New South Wales established under the Government Insurance Act 1927;

“household family member” in relation to an injured person or a deceased person, means a member of the family of the injured person or the deceased person who is a member of the same household as the injured person or was a member of the same household as the deceased person, as the case requires;

“incapacity” means incapacity for work;

“injured person” means a person who suffers a bodily injury which is caused by or arises out of a transport accident;

“long-term incapacity”, in relation to a person who is incapacitated as the result of a transport accident, means total or partial incapacity for the whole or any part of each of not less than 104 weeks, whether consecutive or not, within the period of 3 years after the date of the accident;

*Transport Accidents Compensation 1987*

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“Medical Review Panel” means a Medical Review Panel established under section 180;

“member of the family”, in relation to an injured person or a deceased person, means the spouse, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister of the injured person or the deceased person;

“motor vehicle” means a motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include a vehicle used on a railway or tramway;

“permanent impairment”, in relation to a person, means any reduction of the person’s unaided functional capability, considered as a whole, by reason of a medical condition, whether of a physical or psychological character and whether of traumatic origin or of gradual onset, being a reduction that is not likely to abate with the passage of time;

“potential for advancement”, in relation to a person who is incapacitated as the result of a transport accident, means the earnings the person could reasonably have expected to have earned over the period, or the likely period, of the person’s incapacity had the accident not occurred;

“public street” has the same meaning as in the Motor Traffic Act 1909;

“regulations” means the regulations made under this Act;

“rehabilitation”, in relation to an injured person, means the process of restoring or attempting to restore the person, through the combined and co-ordinated use of medical, social, educational and vocational measures, to the maximum level of function of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living;

“Review Committee” means the TransCover Review Committee established under section 204;

“self-employed person” includes—

(a) a person—

(i) who practises a profession; or



*Transport Accidents Compensation 1987*

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- (ii) who carries on or engages in a business or other remunerative activity,

whether alone or as a partner with another person and whether on a full-time, part-time or casual basis; and

- (b) a person of a class or description of persons prescribed to be self-employed persons for the purposes of this definition;

“spouse” includes a de facto partner;

“State” means a State of the Commonwealth and includes a Territory of the Commonwealth;

“the Fund” means the Transport Accidents Compensation Fund established under section 15;

“unaided functional capability”, in relation to a person, includes so much of the person’s functional capability as may have been gained by surgery or other medical treatment or by pharmaceutical treatment or other treatment which the person has undergone or is undergoing, but does not include any capability gained by the provision of a wheelchair or crutches or any prosthetic or other aid or appliance to the person or by modifications to the person’s environment or otherwise.

(2) A reference in this Act to loss of earning capacity includes a reference to impairment of earning capacity.

(3) A reference in this Act (Division 2 of Part 5 excepted) to compensation for loss of earning capacity includes a reference to compensation assessed on the basis of potential for advancement.

(4) A reference in this Act to the Workers Compensation Act 1987 is, in respect of anything done or occurring before the date of commencement of that Act, a reference to the Workers’ Compensation Act 1926.

(5) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(6) For the purposes of this Act, a deceased person shall be deemed to have been convicted of an offence if any circumstances exists in respect of the deceased person which, but for the deceased person’s death, would have been likely to have resulted in the conviction of the deceased person for the offence or the proving of the offence against the deceased person.

*Transport Accidents Compensation 1987*

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**Transport accidents**

**4. (1)** In this Act, a reference to a transport accident is a reference to an accident caused by or arising out of the use of—

(a) a motor vehicle—

(i) which is registered, or required to be registered, under the Motor Traffic Act 1909, the Transport Act 1930 or the Recreation Vehicles Act 1983; or

(ii) registered in New South Wales under the Interstate Road Transport Act 1985 of the Commonwealth,

not being a motor vehicle engaged, at the time of the accident, in a sporting activity conducted otherwise than on a public street on which, at the time the activity is conducted, other motor vehicles, not so engaged, were being driven;

(b) a motor vehicle which is not registered as referred to in paragraph (a) (whether or not it is required to be so registered) on a public street in New South Wales, not being a motor vehicle engaged, at the time of the accident, in a sporting activity conducted otherwise than on a public street on which, at the time the activity is conducted, other motor vehicles, not so engaged, were being driven;

(c) a motor vehicle on a public street in New South Wales the identity of which motor vehicle cannot, after due inquiry and search, be established;

(d) any form of transportation or conveyance operated by the Urban Transit Authority or the State Rail Authority; or

(e) a water ferry or water taxi or any other form of public transport in New South Wales, not including air transport,

and includes a reference to an accident of a class or description of accidents prescribed to be a transport accident for the purposes of this subsection, but does not include a reference to an accident of a class or description of accidents prescribed not to be a transport accident for the purposes of this subsection.

**(2)** In this Act, a reference to a transport accident, in relation to a person, is a reference to the transport accident which caused or out of which arose the bodily injury suffered by the person.

**Persons deemed to be employees**

**5. (1)** For the purposes of this Act, “employee” includes—

- (a) a Minister of State of the Commonwealth, of a State or of another country;
- (b) a member of the Parliament of the Commonwealth or of a State or of the legislature of a Territory or of another country;
- (c) a person holding office (including judicial office) under, or employed by, the Commonwealth, a State, the administration of a Territory or the government of another country, not being an office declared by the regulations to be an office in relation to which this Act does not apply;
- (d) a member of a police force;
- (e) a member of the Defence Force; and
- (f) a director of a company.

**(2)** For the purposes of this Act, a person referred to in the definition of “employee” in subsection (1) shall—

- (a) if the person is a Minister of State of the Commonwealth;
- (b) if the person is a member of the Parliament of the Commonwealth;
- (c) if the person is a member of the Commonwealth Police Force or the police force of a Territory;
- (d) if the person is a member of the Defence Force; or
- (e) if the person holds office under the Commonwealth,

be deemed to be in the employment of the Commonwealth.

**(3)** For the purposes of this Act, a person referred to in the definition of “employee” in subsection (1) (not being a person referred to in subsection (2) or (4)) shall be deemed to be in the employment of, or of the government or administration of, the State, Territory or country concerned.

**(4)** For the purposes of this Act, a director of a company shall be deemed to be in the employment of the company.

*Transport Accidents Compensation 1987*

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**Earners**

6. (1) Except as provided by subsection (2), a person is an earner for the purposes of this Act if the person is a person—

- (a) who was in full-time employment or part-time employment (whether as an employee or a self-employed person)—
  - (i) at any time during the period of 8 weeks immediately preceding the date of the transport accident;
  - (ii) for the whole or any part of any of not less than 13 weeks during the period of 52 weeks immediately preceding the date of the accident; or
  - (iii) for the whole or any part of any of not less than 26 weeks during the period of 104 weeks immediately preceding the date of the accident;
- (b) who had, on or before the date of the accident, made firm arrangements (whether or not those arrangements comprised an enforceable contract) to enter into employment on or after the date of the accident as an employee with a particular employer or as a self-employed person in a profession, business or other remunerative activity commencing at a particular time and place; or
- (c) who—
  - (i) has been incapacitated as the result of the accident for the whole or any part of not less than 24 weeks, whether consecutive or not, after the date of the accident; and
  - (ii) having regard to the person's level of education, training and language skills, the person's place of residence and any other relevant matters, would reasonably be expected, but for the accident, to have entered into employment before the expiration of the period of 2 years after the date of the accident.

(2) A person is not an earner for the purposes of this Act if the person had, at the date of the transport accident, ceased permanently to be an employee or a self-employed person, or both, as the case may require.

**Non-earners**

7. A person is a non-earner for the purposes of this Act if—

- (a) the person is a person to whom section 6 (2) applies; or
- (b) the person is otherwise not an earner for the purposes of this Act.

*Transport Accidents Compensation 1987*

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**Construction of certain references—earners referred to in s. 6 (1) (b) and (c)**

8. A reference in this Act to the date of a transport accident as the result of which a person is incapacitated for work shall—

- (a) in determining the earning capacity of an earner to whom section 6 (1) (b) applies—be read as a reference to the date on which the earner would, but for the accident, have entered into employment in accordance with the firm arrangements referred to in that paragraph; and
- (b) in determining the earning capacity of an earner to whom section 6 (1) (c) applies—be read as a reference to the date on which the earner would, but for the accident, have been likely to have entered into employment.

**Earnings**

9. (1) In this Act, a reference to earnings in relation to—

- (a) an employee, is a reference to income derived from personal exertion in the capacity of an employee, calculated at the employee's ordinary time rate of pay determined in such manner (if any) as may be prescribed for the employee's normal number of hours per week determined in such manner (if any) as may be prescribed, not including—
  - (i) any prescribed allowance received by the employee from his or her employer; or
  - (ii) benefits not in the form of monetary payments, such as—
    - (A) the value to the employee of living accommodation provided by the employer without charge or at a reduced charge;
    - (B) the value to the employee of food so provided; and
    - (C) the value to the employee of a car, including running expenses, provided by the employer in so far as the car is used by the employee for private purposes; and
- (b) a self-employed person, includes a reference to the net income derived from personal exertion by the person for his or her benefit after payment of expenses necessarily incurred in deriving that income.

(2) In subsection (1), a reference to income is a reference to income before payment of income tax.

*Transport Accidents Compensation 1987*

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(3) Subsection (1) applies whether the reference to earnings is qualified by other words, such as in the expression “weekly earnings” or “normal weekly earnings”, but does not apply to the reference to earnings in the expression “average weekly earnings”.

**Act to bind Crown**

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

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**PART 2****FUNCTIONS OF THE GIO****Administration of scheme for transport accidents compensation**

**11.** The GIO, through the insurance funds administration business division, shall have the responsibility for implementing and administering the scheme for transport accidents compensation embodied in this Act.

**General functions of the GIO**

**12. (1)** The GIO shall—

- (a) publicise and disseminate information concerning the scheme for transport accidents compensation embodied in this Act;
- (b) ensure that advice and assistance is given to persons claiming or entitled to benefits under this Act as to those benefits and the availability of other relevant entitlements;
- (c) formulate and review policies for the implementation and administration of this Act and the scheme referred to in paragraph (a);
- (d) advise the Minister as to the administration, efficiency and effectiveness of the scheme referred to in paragraph (a);
- (e) receive and assess claims for benefits under this Act;
- (f) administer the provision of benefits under this Act;
- (g) review the continuing entitlement of persons to benefits under this Act;

- (h) if benefits under this Act are provided by persons other than the GIO, liaise with those persons and co-ordinate the provision of those benefits by those persons; and
- (i) conduct and make arrangements for the conduct by other persons of research and the collection of statistics and other information of relevance to the administration of this Act and the scheme referred to in paragraph (a).

(2) The GIO may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions under this Act.

(3) A function of the GIO relating to the provision to a person of a benefit under this Act (other than the payment of compensation) may be exercised by the GIO in any of the following ways:

- (a) by the provision of the benefit by the GIO;
- (b) by the provision of the benefit partly by the GIO and partly by another person or persons;
- (c) by the provision of the benefit by another person or persons at the cost or partly at the cost of the GIO or in accordance with other arrangements made between the other person or persons and the GIO;
- (d) by the payment of money to or on behalf of the person in order to enable the person to meet the cost of the provision of the benefit by another person or persons.

(4) In the exercise of a function referred to in subsection (3), the GIO—

- (a) may liaise and co-operate with and negotiate and enter into agreements with persons or bodies involved in the provision or financing, or both, of benefits of the same or a similar nature to the benefits under this Act; and
- (b) may specify the principles or standards, or both, in accordance with which any such benefit is to be provided.

*Transport Accidents Compensation 1987*

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**Miscellaneous functions of the GIO****13. The GIO—**

- (a) may devise and, if practicable and with the approval of the Minister, institute schemes whereby a person who is incapacitated as the result of a transport accident and who resumes employment for a substantial part of the working week is entitled to receive compensation of an amount in excess of 80 per cent of the person's loss of earning capacity during the period of incapacity;
- (b) may negotiate and enter into agreements with employers and insurers and their organisations and representatives with respect to the payment of claims from workers relating to transport accidents arising out of or in the course of workers' employment;
- (c) may negotiate and enter into agreements with persons or bodies exercising similar functions to those of the GIO on behalf of the Commonwealth or in another State—
  - (i) for the purpose of recoupment or exchange of benefits; or
  - (ii) in order to give effect to any other form of co-operation necessary for the efficient administration of this Act; and
- (d) publicise and disseminate information concerning, and otherwise promote matters relating to, accident prevention and safety.

**Liability of the GIO**

**14.** The GIO shall not be personally liable to pay any amount payable in satisfaction of a claim for benefits under this Act, any judgment recovered against it or the amount of any costs or expenses incurred in relation to any such claim or to the proceedings in which the judgment was obtained, but every such amount shall be paid out of the Fund.

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**PART 3****THE TRANSPORT ACCIDENTS COMPENSATION FUND****DIVISION 1—General****Transport Accidents Compensation Fund**

**15. (1)** The GIO shall establish and administer a fund, to be called the "Transport Accidents Compensation Fund".



*Transport Accidents Compensation 1987*

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(2) The Fund shall be a fund administered within the insurance funds administration business division.

**Payments into the Fund**

**16. (1)** There shall be paid into the Fund—

- (a) amounts paid to the GIO under section 25, 26 or 28 or under any regulations made for the purposes of section 30;
- (b) any money appropriated by Parliament for the purposes of the Fund;
- (c) penalties recovered for offences against this Act;
- (d) the interest from time to time accruing from the investment of the Fund; and
- (e) such other amounts, if any, as may be prescribed.

(2) There may be paid into the Fund money, other than money referred to in subsection (1), which may lawfully be paid into the Fund.

**Payments out of the Fund**

**17. (1)** There shall be paid out of the Fund—

- (a) benefits payable under this Act;
- (b) all charges, costs and expenses incurred by the GIO in the exercise of its functions under this Act;
- (c) all charges, costs and expenses incurred by any person in providing, at the request of the GIO, any benefit under this Act; and
- (d) an amount determined each year by the Minister in respect of the cost of—
  - (i) the remuneration, fees and allowances of such number of District Court judges and their staff; and
  - (ii) the provision of facilities and items for the use of those judges and their staff,

as the Minister may determine.

(2) There may be paid out of the Fund all other amounts required or authorised by this Act or the regulations to be paid out of the Fund.

(3) An amount referred to in subsection (1) (d) shall be paid into the Consolidated Fund.

*Transport Accidents Compensation 1987*

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**Investment**

**18.** Any money in the Fund which is not immediately required for the purposes of the Fund may be invested by the GIO or any prescribed person—

- (a) in any manner in which trustees are for the time being authorised to invest trust funds; or
- (b) in any manner approved by the Minister.

*DIVISION 2—Amounts of contributions***Establishment of the Contributions Advisory Committee**

**19. (1)** There is established by this section a committee, to be known as the “Transport Accidents Contributions Advisory Committee”, which shall consist of the Government Actuary and not less than 2, nor more than 4, persons appointed by the Minister.

**(2)** Schedule 1 has effect with respect to the constitution and procedure of the Contributions Advisory Committee.

**Actuary's recommendation concerning contributions**

**20. (1)** The GIO shall, before 28 February in each year, obtain from an actuary determined by the GIO, a recommendation concerning amounts of contributions to be paid in accordance with this Act in respect of motor vehicles for the year commencing on the following 1 July.

**(2)** The GIO shall furnish a copy of the actuary's report to the Contributions Advisory Committee as soon as practicable after its receipt.

**Contributions Advisory Committee's recommendation concerning contributions**

**21.** The Contributions Advisory Committee shall, before 31 March in each year, after considering the actuary's recommendation under section 20, make a recommendation to the Minister concerning amounts of contributions to be paid in accordance with this Act in respect of motor vehicles for the year commencing on the following 1 July.

**Matters to be considered in making recommendations**

22. The actuary and the Contributions Advisory Committee, in making their recommendations under sections 20 and 21, shall have regard to the following principles:

- (a) that the amounts of contributions should be such that over a 5 year period they would be estimated to produce, at the end of the fifth year, a fund equal to 50 per cent of the projected costs of claims and expenses in the sixth year;
- (b) that the amounts of contributions should be such that in any year the ratio of the projected fund to the projected costs of claims and expenses should be not less than 37.5 per cent;
- (c) that the amounts of contributions should take account of contribution rate relativities determined by the Minister with regard to—
  - (i) types of motor vehicles;
  - (ii) the ownership of motor vehicles;
  - (iii) the places at which motor vehicles are usually garaged; and
  - (iv) such other matters as the Minister may consider relevant.

**Determination by the Minister of contributions**

23. (1) After considering the Contributions Advisory Committee's recommendation, the Minister shall, before 30 April next following the date of the recommendation, determine the amounts of contribution to be paid in accordance with this Act in respect of motor vehicles for the year commencing on the following 1 July.

(2) The Minister's determination shall have effect on and from 1 July next following the date of the determination.

(3) Notice of the Minister's determination and of the recommendation of the Contributions Advisory Committee shall be published in the Gazette.

*Transport Accidents Compensation 1987*

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**DIVISION 3—*Payment of contributions*****Contributions in respect of motor vehicles**

24. (1) A person who applies for the registration or the renewal of registration of a motor vehicle shall, at the time at which the application is made, pay to the Commissioner for Motor Transport the amount determined by the Minister in respect of the motor vehicle by way of contribution to the Fund.

(2) A person who applies for the issue of a trader's plate shall, at the time at which the application is made, pay to the Commissioner for Motor Transport the amount determined by the Minister by way of contribution to the Fund.

(3) The registration or the renewal of registration of a motor vehicle shall not be granted and a trader's plate shall not be issued by the Commissioner for Motor Transport until the amount under subsection (1) or (2), as the case requires, has been paid.

(4) In this section—

“registration”, in relation to a motor vehicle, means registration under the Motor Traffic Act 1909, the Transport Act 1930 or the Recreation Vehicles Act 1983;

“trader's plate” means a special number plate issued to a manufacturer or repairer of or dealer in motor vehicles in accordance with the regulations under the Motor Traffic Act 1909.

**Payment of contributions in respect of motor vehicles etc. to the GIO**

25. The Commissioner for Motor Transport shall, at such time or times as may be agreed upon by the Commissioner and the GIO, pay to the GIO amounts received by the Commissioner under section 24 (1) or (2).

**Contributions from public authorities**

26. (1) The GIO shall enter into an agreement with a public authority for the payment of contributions to the Fund for the purposes of this Act with respect to the forms of transportation or conveyance operated by the public authority.

(2) If there is no agreement in force between the GIO and a public authority, the public authority shall pay to the GIO by way of contribution to the Fund for the purposes of this Act, such amounts at such times as may be determined by the Minister.

(3) In this section, “public authority” means—

- (a) the State Rail Authority; or
- (b) the Urban Transit Authority.

#### **Contributions in respect of Commonwealth motor vehicles**

27. The GIO shall enter into an agreement with the Commonwealth, or a person or body on behalf of the Commonwealth, for the payment of contributions to the Fund for the purposes of this Act with respect to motor vehicles registered in accordance with a law of the Commonwealth and which are operated in New South Wales.

#### **Contributions from other transport operators**

28. (1) The GIO shall enter into an agreement with a person (not being a public authority within the meaning of section 26) which operates or proposes to operate a water ferry or water taxi or other form of public transport (not including air transport) for the payment of contributions to the Fund for the purposes of this Act with respect to the forms of transportation or conveyance operated by the person.

(2) A person (not being a public authority within the meaning of section 26) shall not operate a water ferry, water taxi or other form of public transport (not including air transport) in New South Wales when there is not in force an agreement between the person and the GIO for the payment of contributions to the Fund for the purposes of this Act with respect to the forms of transportation or conveyance operated by the person.

#### **Provisions of agreements under ss. 26, 27 and 28**

29. An agreement under section 26, 27 or 28 with a party shall make provision for the payment to the GIO on a pay-as-you-go basis of the cost of benefits under this Act provided by the GIO in respect of transport accidents involving the party, together with an equitable share of the administrative and other costs of the GIO in exercising its functions under this Act.

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*Transport Accidents Compensation 1987*

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**Other contributions****30. The regulations—**

- (a) may require the payment of amounts by way of contribution to the Fund by persons and public authorities who own or operate, or register or license or otherwise control or regulate the use of, vehicles or other forms of transportation or conveyance, not being persons or public authorities referred to in section 24, 26, 27 or 28;
- (b) may specify the circumstances in which those amounts shall be paid;
- (c) may determine, by reference to such matters, if any, as may be prescribed, the amount of those contributions;
- (d) may provide for the payment or remission of those amounts to the GIO; and
- (e) may provide for the granting of exemptions from the payment of those amounts.

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**PART 4****ELIGIBILITY FOR BENEFITS****DIVISION 1—General****Injured person's benefits—generally**

**31. (1)** If an injured person is able to prove, in accordance with the civil law, that another person is (in the capacity of the owner or driver of a motor vehicle or other form of transportation or conveyance to which this Act applies) liable, in whole or in part, for the bodily injury suffered by the injured person, the injured person is entitled to benefits under this Act.

**(2)** Section 149 of the Workers Compensation Act 1987 does not operate so as to disentitle an injured person from benefits under this Act.

*Transport Accidents Compensation 1987*

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**Dependant's benefits—generally**

32. (1) If the dependant of a person, being a person whose death is caused by or arises out of a transport accident within 3 years after the date of the accident, is able to prove, in accordance with the civil law, that another person is (in the capacity of the owner or driver of a motor vehicle or other form of transportation or conveyance to which this Act applies) liable, in whole or in part, for the death of the deceased person, the dependant is entitled to benefits under this Act.

(2) Section 149 of the Workers Compensation Act 1987 does not operate so as to disentitle a dependant of a deceased person from benefits under this Act.

**Persons in respect of whom benefits are payable**

33. (1) A benefit under this Act is payable only in respect of the death of or bodily injury to—

- (a) a person resident in New South Wales whose death or injury was caused by or arose out of a transport accident in New South Wales;
- (b) a person not resident in New South Wales whose death or injury was caused by or arose out of a transport accident in New South Wales, being a transport accident caused by or arising out of the use of a vehicle or other form of transportation or conveyance to which section 4 (1) (a), (c), (d) or (e) applies;
- (c) a person resident in New South Wales whose death or injury was caused by or arose out of a transport accident occurring in Australia, but outside New South Wales, being a transport accident caused by or arising out of the use of a vehicle or other form of transportation or conveyance to which section 4 (1) (a) or (d) applies; or
- (d) a person of a class of persons prescribed for the purposes of this subsection.

(2) For the purposes of subsection (1), a person whose death or bodily injury was caused by or arose out of a transport accident shall be treated as being resident in New South Wales if, at the date of the accident, the person—

- (a) had his or her principal place of residence in New South Wales; or
- (b) had intended to establish, within 6 months after that date, his or her principal place of residence in New South Wales.

*Transport Accidents Compensation 1987*

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(3) For the purposes of subsection (1), an Australian citizen whose death or bodily injury was caused by or arose out of a transport accident and whose principal place of residence at the date of the accident was outside Australia shall be treated as being resident—

- (a) in the State in which he or she had his or her last principal place of residence; or
- (b) if, in the case of a child, there is no State in which he or she had his or her last principal place of residence, in the State in which the parent or parents with whom the child ordinarily resided or resides had his, her or their last principal place of residence.

**Total exclusion from benefits—failure to report accident**

34. (1) A benefit under this Act in respect of a transport accident shall not be provided to an injured person or a dependant of a deceased person if—

- (a) in the case of a transport accident involving a motor vehicle—a report of the accident is not made by any person to a member of the police force (whether under section 8 of the Motor Traffic Act 1909 or otherwise); or
- (b) in the case of any other transport accident—a report of the accident is not made by any person to the operator of the form of transportation or conveyance concerned,

within 28 days after the date of the accident.

(2) If, because of injuries received in a transport accident, a person is unable to make a report of the accident within the 28 day period, the report may be made within 28 days after the date on which the person might reasonably be expected to have been able to make the report.

(3) Notwithstanding subsection (1) or (2), the GIO may provide a benefit under this Act to an injured person or a dependant of a deceased person if a report of the accident is made within 90 days after the relevant date determined under subsection (1) or (2) and the GIO is satisfied that sufficient cause existed to justify the delay in making the report.



*Transport Accidents Compensation 1987*

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**Total exclusions from benefits—conviction for serious crime etc.**

**35. (1)** A benefit under this Act in respect of a transport accident shall not be provided to an injured person or a dependant of a deceased person if the injured person or deceased person has, in respect of the accident, been convicted of any of the following offences or against whom any of the following offences is proven:

- (a) the crime of murder or manslaughter in respect of the death of another person which was caused by or arose out of the accident;
- (b) an offence under section 52A of the Crimes Act 1900 or section 4 of the Motor Traffic Act 1909 in respect of the accident, if the accident has resulted in the death of another person;
- (c) an offence (other than an offence under paragraph (a) or (b)) involving an intention to inflict serious violence or an intention to inflict substantial damage to property.

**(2)** A reference in subsection (1) to an offence under a provision of an Act includes a reference to an offence under a provision of a law of another State which corresponds to that provision.

**(3)** A benefit under this Act shall not be provided in respect of—

- (a) the suicide of a person; or
- (b) a bodily injury which is self inflicted.

**(4)** A benefit under this Act shall not be provided to the dependant of a person whose death or bodily injury was caused by or arose out of a transport accident if the person's death or bodily injury was wilfully caused by the dependant.

**Partial exclusions from benefits**

**36. (1)** A benefit under this Act (other than a benefit under Division 1 or 3 of Part 5) in respect of a transport accident shall not be provided to an injured person or a dependant of a deceased person if the injured person or deceased person has been convicted of any of the following offences or against whom any of the following offences is proven:

- (a) an offence under section 4E (6) or (7), 4F (7) or (7A) or 5AC (1) or (2) of the Motor Traffic Act 1909 in respect of the accident; or

*Transport Accidents Compensation 1987*

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- (b) an offence under section 4E (1G) of the Motor Traffic Act 1909 of driving or occupying the driving seat of a motor vehicle at the time of the accident while there was present in the person's blood the high range prescribed concentration of alcohol within the meaning of that Act, unless the injured person or dependant satisfies the GIO that the high range prescribed concentration of alcohol did not contribute in any way to the accident.

(2) A benefit under this Act (other than a benefit under Division 1 or 3 of Part 5) in respect of a transport accident shall not be provided to an injured person or the dependant of a deceased person if the injured person or deceased person was, at the time of the accident, the driver of or a passenger in a motor vehicle and has been convicted of any of the following offences or against whom any of the following offences is proven:

- (a) an indictable offence (other than an offence referred to in section 35 (1)) in respect of the accident;
- (b) the offence of stealing or attempting to steal a motor vehicle involved in the accident;
- (c) the offence of resisting or preventing the lawful apprehension or detention of that person or any other person in respect of the accident.

(3) A benefit under this Act (other than a benefit under Division 1 or 3 of Part 5) in respect of a transport accident shall not be provided to an injured person or a dependant of a deceased person if the injured person or deceased person was, at the time of the accident, the driver of a motor vehicle and—

- (a) had never held a licence to drive a motor vehicle of that class under the Motor Traffic Act 1909 or a law of another State or another country which corresponds to that Act; or
- (b) held or had held such a licence but, at the time of the accident, the licence was suspended or had been cancelled.

(4) For the purposes of subsection (3), 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, the person was the holder of a learner driver's permit in respect of a motor vehicle of that class under the Motor Traffic Act 1909 or under a law of another State which corresponds to that Act and, in the case of a motor vehicle other than a motor cycle, had a licensed driver (not being the holder of a licence issued on probation) sitting beside him or her.

**Reduction of benefits—contributory negligence**

37. (1) The doctrine of contributory negligence, as amended by Part III of the Law Reform (Miscellaneous Provisions) Act 1965, applies in relation to a claim for benefits under this Act.

(2) The application of that doctrine does not require the making of a determination or the recording of any finding of the total damages which would have been recoverable if the claimant had not been at fault.

(3) Even though an injured person may be found, by his or her negligence, to have contributed to the transport accident, that finding shall not apply so as to reduce any benefits to which the injured person may be entitled, other than compensation for loss of earning capacity or compensation in respect of a permanent impairment.

**Reduction of benefits—driving etc. with prescribed concentration of alcohol, not wearing seat belt etc.**

38. (1) A benefit under this Act, being compensation for loss of earning capacity, compensation in respect of a permanent impairment or a benefit under Part 6, payable to an injured person or a dependant of a deceased person in respect of a transport accident (not taking into account any reduction under section 37) shall be reduced—

(a) if—

- (i) the injured person or deceased person has been convicted of an offence under section 4E (1E) of the Motor Traffic Act 1909 of driving or occupying the driving seat of a motor vehicle at the time of the accident while there was present in the person's blood a low range prescribed concentration of alcohol within the meaning of that Act—by one-third;
- (ii) the injured person or deceased person has been convicted of an offence under section 4E (1D) of the Motor Traffic Act 1909 of driving or occupying the driving seat of a motor vehicle at the time of the accident while being the holder of a learner's permit or first-year provisional licence and while there was present in the person's blood the special range prescribed concentration of alcohol within the meaning of that Act—by one-third; or

*Transport Accidents Compensation 1987*

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- (iii) the injured person or deceased person has been convicted of an offence under section 4E (1F) of the Motor Traffic Act 1909 of driving or occupying the driving seat of a motor vehicle at the time of the accident while there was present in the person's blood the middle range prescribed concentration of alcohol within the meaning of that Act—by two-thirds,

unless the injured person or dependant satisfies the GIO that the presence of the relevant prescribed concentration of alcohol did not contribute in any way to the accident;

- (b) if the injured person or deceased person has been convicted of an offence under—

- (i) section 4E (1L) of the Motor Traffic Act 1909 of occupying the seat next to the holder of a learner's permit who was driving the motor vehicle at the time of the accident while there was present in the person's blood a concentration of alcohol of 0.05 grammes or more in 100 millilitres of the blood;
- (ii) section 5 (2) of the Motor Traffic Act 1909 of driving or occupying the driving seat of a motor vehicle at the time of the accident while under the influence of alcohol or any other drug; or
- (iii) section 9A of the General Traffic Act 1900 of driving or riding a vehicle at the time of the accident while under the influence of alcohol or any other drug.

to such extent as is just and equitable on the presumption that the injured person or deceased person was negligent in failing to take sufficient care for his or her own safety, unless the injured person or dependant satisfies the GIO that the concentration of alcohol in the person's blood or the alcohol or other drug, as the case requires, did not contribute in any way to the accident;

- (c) if—

- (i) the injured person (not being a minor) or the deceased person was, at the time of the accident, a voluntary passenger in or on a motor vehicle; and

*Transport Accidents Compensation 1987*

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- (ii) the driver's ability to drive the motor vehicle was impaired as a consequence of the consumption of alcohol or any other drug and the injured person or the deceased person was aware, or ought to have been aware of the impairment,

to such extent as is just and equitable on the presumption that the injured person or deceased person was negligent in failing to take sufficient care for his or her own safety; and

- (d) if the injured person (not being a minor) or the deceased person was, contrary to the requirements of the Motor Traffic Regulations 1935, not wearing a seat belt at the time of the accident—by 15 per cent or, in the case of an injured person, such greater percentage as the GIO thinks just and equitable having regard to the extent to which the proper use of a seat belt would have reduced or lessened the severity of the injury.

- (2) Nothing in this section limits section 37.

**Payment of benefits—prisoners**

39. A benefit under this Act to which a person would otherwise be entitled shall not be payable to or paid to a person during any period for which the person is imprisoned pursuant to a conviction or sentence for a crime.

**DIVISION 2—*Relationships to other benefits*****Abolition of certain rights to damages or compensation**

40. (1) No right to or claim for damages or compensation or any other benefit (pecuniary or non-pecuniary) shall lie, otherwise than as provided by this Act, against any person for or in respect of the death of or bodily injury to a person caused by or arising out of a transport accident occurring on or after 1 July 1987.

(2) Nothing in subsection (1) applies to or in respect of a right to or claim for damages or compensation under—

- (a) the Workers Compensation Act 1987;
- (b) an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940;
- (c) the Crimes Act 1900 by way of compensation for an injury;
- (d) a superannuation scheme;

*Transport Accidents Compensation 1987*

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- (e) an insurance policy; or
- (f) a scheme which is, or the provisions of an instrument which are, prescribed for the purposes of this subsection.

**Election between alternative sources of compensation**

41. (1) Subject to subsection (2), a person is not precluded from making a claim for benefits under this Act by reason of the fact that the person is entitled to make, or has made, a claim for damages or compensation under any other Act or law (including a law of another State).

(2) If a person is entitled to damages or compensation under any other Act or law (including a law of another State but not including the Workers Compensation Act 1987) in respect of the death of or bodily injury to a person caused by or arising out of a transport accident, the person shall not, except as provided by subsections (3) and (4), be entitled to make a claim for any benefits under this Act in respect of that death or bodily injury—

- (a) after the recovery under any other such Act or law of a lump sum awarded by way of—
  - (i) verdict;
  - (ii) redemption of entitlement to periodic payments; or
  - (iii) final settlement of a claim (not including an amount under a provision of any other such Act or law which corresponds to section 66 of the Workers Compensation Act 1987); or
- (b) after the expiration of a period of 3 months from—
  - (i) the date of the accident; or
  - (ii) if the onset of symptoms relating to the bodily injury suffered by the deceased person or the injured person as a result of the accident is first observed by a medical practitioner within 3 years after the date of the accident, the date of the first such observation of the symptoms,

whichever first occurs.

(3) A person who has not recovered a lump sum as referred to in subsection (2) (a) may apply to the GIO at any time for an extension of the period referred to in subsection (2) (b).

*Transport Accidents Compensation 1987*

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- (4) If an application is made to the GIO under subsection (3), the GIO—
- (a) shall grant the application if a competent tribunal has determined that the applicant is not entitled to a lump sum referred to in subsection (2) (a) and no such lump sum has been awarded to the applicant; and
  - (b) may grant the application if, in the opinion of the GIO, refusal to grant the application would cause the applicant undue hardship.

**Forfeiture and assignment of certain rights**

**42. (1)** A person who has made a claim for benefits under this Act in respect of the death of or bodily injury to a person caused by or arising out of a transport accident—

- (a) shall not enforce or attempt to enforce any other right or entitlement to, or accept any payment of, damages or compensation in respect of that death or bodily injury;
- (b) shall be deemed to have assigned to the GIO a right or entitlement referred to in paragraph (a); and
- (c) shall, in the event that the firstmentioned person enforces or attempts to enforce a right or entitlement referred to in paragraph (a) or accepts any payment of damages or compensation so referred to, be disqualified from any right or entitlement or further right or entitlement to those benefits.

(2) The GIO may do all such things as may be necessary to enforce or attempt to enforce a right or entitlement which is deemed to have been assigned to the GIO as referred to in subsection (1) (b).

(3) This section does not apply to a right or entitlement to compensation under the Workers Compensation Act 1987.

**Indemnification of certain owners and drivers**

**43.** The GIO shall indemnify the owner or driver, or both, as the case requires, of—

- (a) a motor vehicle to which section 4 (1) (a) applies;
- (b) a form of transportation or conveyance to which section 4 (1) (d) applies; or

*Transport Accidents Compensation 1987*

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- (c) a vehicle of a class or description of vehicles, transportation of a class or description of transportation or a conveyance of a class or description of conveyances, prescribed for the purposes of this section,

against any liability arising under the law of another State in respect of the death of or bodily injury to any other person caused by or arising out of the use of the motor vehicle, vehicle or form of transportation or conveyance.

**Set off in event of double compensation**

**44. (1)** If a person who is entitled to benefits under this Act in respect of the death of or bodily injury to a person caused by or arising out of a transport accident has recovered or has been paid damages or compensation under any other Act or law (including a law of another State but not including the Workers Compensation Act 1987) in respect of that death or bodily injury, the amount of those damages or of that compensation shall be set off against the amount of those benefits.

(2) If an amount of damages or compensation to be set off under subsection (1) in relation to a person is greater than the amount of benefits under this Act to which the person is entitled as at the date on which the application for those benefits was made, the GIO shall set off the amount of the damages or compensation in such a way as to avoid unnecessary hardship to the person.

(3) An amount of damages or compensation to be set off under subsection (1) shall not include damages or compensation for loss of earnings in respect of—

- (a) any period for which compensation for loss of earning capacity is not payable under this Act; or
- (b) any other period, to the extent to which those damages exceed or that compensation exceeds compensation for loss of earning capacity payable under this Act for the same period.

**Set off of benefits in respect of sick leave and other leave**

**45. (1)** If a person who is entitled to compensation for loss of earning capacity under this Act elects to take sick leave or other leave during the whole or any part of the period of incapacity, any amount received in respect of that leave shall be set off against the amount of that compensation.



*Transport Accidents Compensation 1987*

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(2) An amount received in respect of sick leave or other leave to be set off under subsection (1) shall not include an amount in respect of—

- (a) any period for which compensation for loss of earning capacity is not payable under this Act; or
- (b) any other period, to the extent to which the amount exceeds compensation for loss of earning capacity payable under this Act for the same period.

**Certain payments not to affect benefits under this Act**

46. The benefits under this Act to which a person may be entitled shall not be reduced or otherwise affected by any entitlement to or payment of—

- (a) an ex gratia payment;
  - (b) an accident insurance payment;
  - (c) a retirement benefit or superannuation or similar benefit;
  - (d) a pension or benefit payable under an Act of the Commonwealth; or
  - (e) an amount, payment or benefit of a class or description of amounts, payments or benefits prescribed for the purposes of this section.
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**PART 5**

**BENEFITS—INJURED PERSONS**

**DIVISION 1—*Hospital, medical and associated services and pharmaceutical supplies***

**Payment of hospital, medical and associated services**

47. (1) The GIO shall pay to the provider of the service the reasonable costs of hospital services, medical services, dental services, nursing services, ambulance services and associated services provided to an injured person or a deceased person as a consequence of a transport accident.

(2) In this section, “associated services” includes physiotherapy, occupational therapy, home nursing, chiropractic services and speech therapy and any services prescribed for the purposes of this section.

*Transport Accidents Compensation 1987*

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**Pharmaceutical supplies**

48. An injured person is entitled to be provided by the GIO with, or paid by the GIO the cost of, any necessary pharmaceutical supplies required by the person as a result of the transport accident.

**Liability for amounts less than the prescribed amount**

49. (1) If the total cost of benefits under this Division (other than hospital services and ambulance services) in respect of an injured person or a deceased person is—

- (a) the prescribed amount or less—the GIO is not liable for the cost of those benefits; or
- (b) more than the prescribed amount—the GIO is liable only for that part of the cost of those benefits which is more than the prescribed amount.

(2) In this section, “the prescribed amount” means the amount prescribed for the purposes of this section or, if an amount is not prescribed, the amount of \$100.

*DIVISION 2—Compensation for loss of earning capacity**Subdivision 1—Entitlement to compensation***Entitlement to compensation for loss of earning capacity—earners**

50. An earner who is incapacitated as the result of a transport accident and who is entitled to benefits under this Act is entitled to compensation, determined in accordance with this Act, for loss of earning capacity.

**Entitlement to compensation for loss of earning capacity—non-earners**

51. A non-earner—

- (a) who is incapacitated as the result of a transport accident;
- (b) whose incapacity is long-term incapacity; and
- (c) who is entitled to benefits under this Act,

is entitled to compensation, determined in accordance with this Act, for loss of earning capacity for such period of incapacity as occurs after the person’s incapacity becomes long-term incapacity and is not otherwise entitled to compensation for loss of earning capacity.

*Transport Accidents Compensation 1987*

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*Subdivision 2—Assessment of loss of earning capacity—earners***Loss of earning capacity—employees**

52. The GIO shall determine the loss of earning capacity of an employee who is incapacitated as the result of a transport accident by determining the difference between the employee's earning capacity at the date of the accident and the employee's earning capacity after the date of the accident and during the period of incapacity.

**Normal weekly earnings—employees**

53. (1) Except as provided by section 54, the earning capacity of an employee at the date of a transport accident is the amount which fairly and reasonably represents the employee's weekly earnings at the date of the accident.

(2) In determining the amount referred to in subsection (1), the GIO shall take into consideration—

- (a) having regard to the period of employment of the employee before the date of the accident—
  - (i) the earnings of the employee for the week preceding that date;
  - (ii) the weekly earnings of the employee during the period of 8 weeks preceding that date;
  - (iii) the weekly earnings of the employee during the period of 52 weeks preceding that date; or
  - (iv) the weekly earnings of the employee during the period of 104 weeks preceding that date,as the case may require;
- (b) the employee's work history; and
- (c) such other matters as the GIO considers relevant.

**Assumed weekly earnings—employees**

54. If, in relation to an employee who is incapacitated as the result of a transport accident, it is apparent, having regard to any one or more of the following, namely:

- (a) the seasonal nature of the employee's employment;

*Transport Accidents Compensation 1987*

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- (b) the making, on or before the date, of firm arrangements (whether or not those arrangements comprised an enforceable contract) to enter into employment, to leave employment, to undertake new or different employment or to vary the hours of employment;
- (c) a contractual entitlement, at the date of the accident, of the employee to significant wage or salary variations (other than normal variations designed to take account of wage or salary movements or changes in the cost of living) payable on or after the date of the accident in respect of his or her employment,

that the amount which, in accordance with section 53, would fairly and reasonably represent the employee's normal weekly earnings at the date of the accident is substantially more or substantially less than the employee's earning capacity would have been during the period of incapacity but for the accident, the earning capacity of the employee at the date of the accident shall be the amount which fairly and reasonably represents what the employee's weekly earnings would have been during the period of incapacity but for the accident.

**Loss of earning capacity—self-employed persons**

**55. (1)** Subject to subsection (2), the GIO shall determine the loss of earning capacity of a self-employed person who is incapacitated as the result of a transport accident in accordance with such one or more of the following bases as is appropriate in the circumstances, namely:

- (a) the difference between the self-employed person's earning capacity at the date of the accident and the self-employed person's earning capacity after the date of the accident and during the period of incapacity for work;
- (b) the weekly cost of providing services to replace the self-employed person in his or her employment during the period of incapacity;
- (c) the weekly earnings that the self-employed person could, but for the accident, have derived if, during the period of incapacity, the person exercised similar skills and responsibilities, as an employee, to those which he or she exercised as a self-employed person.

**(2)** If the self-employed person is incapacitated for a period which does not exceed 13 weeks or, at the date on which the GIO makes its determination under subsection (1), is not likely to exceed 13 weeks, the GIO shall make its determination in accordance with the basis set out in paragraph (b) of that subsection unless there are good reasons for making its determination on another basis set out in that subsection.

*Transport Accidents Compensation 1987*

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**Normal weekly earnings—self-employed persons**

**56. (1)** Except as provided by section 57, the earning capacity of a self-employed person at the date of a transport accident is the amount which fairly and reasonably represents the self-employed person's normal weekly earnings at the date of the accident.

**(2)** In determining the amount referred to in subsection (1), the GIO shall take into consideration—

- (a) having regard to the period of self-employment of the person before the date of the accident—
  - (i) the weekly earnings of the self-employed person during the period of 52 weeks preceding the accident or, where that period of self-employment is less than 52 weeks, the lesser period; or
  - (ii) the weekly earnings of the self-employed person during any one or more of the 4 financial years completed before the date of the accident,

as the case may require;

- (b) the self-employed person's work history; and
- (c) such other matters as the GIO considers relevant.

**Assumed weekly earnings—self-employed persons**

**57.** If, in relation to a self-employed person who is incapacitated as the result of a transport accident, it is apparent, having regard to any one or more of the following, namely:

- (a) the seasonal nature of the self-employed person's employment;
- (b) the making, on or before the date of the accident, of firm arrangements (whether or not those arrangements comprised an enforceable contract) to enter into employment, to leave employment, to undertake new or different employment or to vary the hours of employment;
- (c) a contractual arrangement, in force at the date of the accident, which, but for the accident, would have resulted in significant variations in earnings on or after the date of the accident,

*Transport Accidents Compensation 1987*

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that the amount which, in accordance with section 56, would fairly and reasonably represent the self-employed person's normal weekly earnings at the date of the accident is significantly more or significantly less than the self-employed person's earning capacity would have been during the period of incapacity but for the accident, the earning capacity of the self-employed person at the date of the accident shall be the amount which fairly and reasonably represents what the self-employed person's weekly earnings would have been during the period of incapacity but for the accident.

**Amount of earnings during period of incapacity**

**58.** Except as provided by section 59, the earning capacity of an earner during the period of incapacity is—

- (a) if, during that period, the earner is not in receipt of earnings—nil; or
- (b) if, during that period, the earner is in receipt of earnings—the actual earnings of the earner assessed from time to time during that period on a weekly basis.

**Assumed earnings during period of incapacity**

**59. (1)** If—

- (a) an earner who is incapacitated as the result of a transport accident is capable of undertaking employment of a kind for which the earner could reasonably be expected to apply and which is reasonably available to the earner having regard to the nature and extent of the disability caused by the accident, the earner's level of education, training and language skills, the earner's place of residence and any other relevant matters; or
- (b) an earner, without sufficient reason—
  - (i) has declined to undertake vocational training or rehabilitation or to enable an assessment to be made of his or her employment prospects;
  - (ii) has failed to take reasonable measures to obtain employment of a kind which is reasonably available to the earner having regard to the matters referred to in paragraph (a); or
  - (iii) has refused an offer of suitable employment.

the earning capacity of the earner during the period of incapacity shall be the amount which fairly represents the earnings which could be derived by the earner, assessed from time to time during that period on a weekly basis.

(2) If it appears to the GIO that an earner's period of incapacity is likely to be less than 6 months, the GIO may exclude the application of this section from any determination of the earner's earning capacity during the period of incapacity.

**Notice and effect of certain determinations under s. 59**

**60. (1)** If an amount determined under section 59 in relation to an earner is greater than the amount determined under section 58 in relation to the earner, the GIO shall give notice to the earner of the amount determined under section 59.

(2) An amount determined under section 59 in relation to an earner of which notice has been given to the earner under subsection (1) shall, except as provided by subsection (3), be used, after the expiration of 8 weeks from the date of the notice, to the exclusion of any other amount in determining the loss of earning capacity of the earner.

(3) The GIO may specify, in a notice to an earner under subsection (1), that an amount determined under section 59 in relation to the earner shall be used—

- (a) if the earner has furnished information to the GIO knowing it to be false in any material particular or has acted fraudulently—immediately; or
- (b) if there are other special circumstances—after the expiration of 1 week from the date of the notice,

to the exclusion of any other amount, in determining the loss of earning capacity of the earner, and the amount so determined shall be used accordingly.

(4) A notice to which subsection (3) applies shall include the reasons which justify the use of the amount determined under section 59 before the expiration of 8 weeks from the date of the notice.

**Loss of earning capacity—earnings derived as employee and self-employed person**

**61.** The GIO, in relation to an earner who is incapacitated as the result of a transport accident, being an earner who, at any time within the period of 2 years preceding the date of the accident, derived earnings as an employee and as a self-employed person, shall determine the earner's loss of earning capacity in accordance with such of the provisions of this Division as may be appropriate.

*Transport Accidents Compensation 1987*

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*Subdivision 3—Long-term incapacity—earners***Determination or redetermination of earner's loss of earning capacity**

**62. (1)** The GIO, as soon as practicable after the date on which an earner's incapacity becomes long-term incapacity, shall—

- (a) if, before that date, the earner had not suffered a loss of earning capacity as a result of the transport accident, determine the earner's loss of earning capacity; or
- (b) if, before that date, the earner had suffered a loss of earning capacity as a result of the transport accident, redetermine the earner's loss of earning capacity,

at that date.

**(2)** For the purpose of determining or redetermining an earner's loss of earning capacity under subsection (1) at the date on which the earner's incapacity becomes long-term incapacity—

- (a) the earning capacity of the earner shall be not less than if, at that date, the earner is aged—
  - (i) 16 or 17 years—30 per cent;
  - (ii) 18, 19 or 20 years—40 per cent; or
  - (iii) 21 years or more—50 per cent,of average weekly earnings per week; and
- (b) the earning capacity of the earner after that date and during the period of incapacity for work shall be determined in accordance with section 58 or 59 as if the references in those sections to the date of the transport accident were references to the date on which the earner's incapacity becomes long-term incapacity.

**(3)** Without limiting section 175, if, at the date at which an earner's incapacity becomes long-term incapacity, the earner has not attained the age of 21 years, the GIO shall, during the continued incapacity of the earner, make a determination or redetermination, as the case may require, of the earner's loss of earning capacity on each anniversary of that date until the earner attains the age of 21 years.

**(4)** Compensation in respect of a determination or redetermination of an earner's loss of earning capacity under this section shall not be payable in respect of any period occurring before the date to which the determination or redetermination applies.



**Application for assessment of compensation on basis of potential for advancement****63. (1) An earner—**

- (a) who has sustained long-term incapacity as the result of a transport accident;
- (b) who has a disability, arising from the accident, which has, or is likely to have, a continuing effect on his or her earning capacity; and
- (c) who has, so far as is reasonably practicable, participated in vocational training or rehabilitation programmes provided by or through the GIO,

may, before the expiration of 3 years after the date of the accident or before the expiration of 1 year after the date on which the earner's incapacity becomes long-term incapacity, whichever is the later, make an application to the GIO for an assessment of compensation on the basis of potential for advancement.

(2) An earner to whom subsection (1) applies may make an application to the GIO for an assessment of compensation on the basis of potential for advancement after the expiration of the period referred to in that subsection if there are special circumstances relating to the earner which justify the making of the application.

**Circumstances in which assessment may be made**

**64.** The GIO shall not make an assessment of compensation on the basis of potential for advancement in respect of an application made to it under section 63 by an earner unless the compensation so assessed is likely to be significantly greater for any one or more of the years of the earner's likely incapacity than that assessed for loss of the earner's earning capacity.

**Basis of assessment**

**65. (1)** In making an assessment of compensation on the basis of potential for advancement in respect of an earner who is incapacitated as the result of a transport accident, the GIO shall take into consideration—

- (a) the earner's age, education, training, skills and abilities at the date of the accident;
- (b) the earner's work history as at that date;

*Transport Accidents Compensation 1987*

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- (c) the likelihood that, had the accident not occurred, the earner would have undertaken training or education which would have increased his or her earning capacity;
- (d) the earner's prospects for promotion or other forms of career, business or professional advancement, whether in the same employment as, or different employment from, that engaged in by the earner as at that date;
- (e) the likelihood that, had the accident not occurred, the earner would have varied the nature of his or her employment or the extent of his or her involvement in the workforce, whether temporarily or permanently; and
- (f) other matters indicating or tending to indicate that, had the accident not occurred, the earner's earnings or earning capacity would have increased or decreased materially, whether temporarily or permanently.

(2) The GIO shall take the matters referred to in subsection (1) (c), (d), (e) and (f) into consideration only if they are likely to have an effect or to occur within the period of 10 years after the date of the accident.

**Making of assessment**

**66.** If the GIO assesses an amount by way of compensation on the basis of potential for advancement in respect of an earner, the GIO shall specify, in its assessment, the likely earnings of the earner as from the date of the application for—

- (a) the balance of the calendar year in which the application is made; and
- (b) each succeeding calendar year during the likely period of incapacity.

**Effect of assessment**

**67.** If the GIO assesses an amount by way of compensation on the basis of potential for advancement in respect of an earner, the amount so assessed shall be used on and from the date of the assessment in place of any other basis provided for by this Division for determining the earner's loss of earning capacity and compensation for loss of earning capacity shall be payable to the earner accordingly.

*Transport Accidents Compensation 1987*

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*Subdivision 4—Assessment of loss of earning capacity—non-earners***Loss of earning capacity—non-earners**

**68.** The GIO, in relation to a non-earner—

- (a) who is incapacitated as the result of a transport accident; and
- (b) whose incapacity is long-term incapacity,

shall determine the non-earner's loss of earning capacity by determining the difference between the non-earner's notional earning capacity at the date in relation to which an assessment of compensation for loss of earning capacity is made and the non-earner's earning capacity after that date and during the period of incapacity.

**Notional earning capacity—non-earners**

**69.** The notional earning capacity of a non-earner is, if, at the date in relation to which an assessment of compensation for loss of earning capacity is made, the non-earner is aged—

- (a) 16 or 17 years—30 per cent;
- (b) 18, 19 or 20 years—40 per cent; or
- (c) 21 years or more—50 per cent,

of average weekly earnings per week.

**Amount of earnings during period of incapacity**

**70.** Except as provided by section 71, the earning capacity of a non-earner during the period of incapacity is—

- (a) if, during that period, the non-earner is not in receipt of earnings—nil; or
- (b) if, during that period, the non-earner is in receipt of earnings—the actual earnings of the non-earner assessed from time to time during that period on a weekly basis.

*Transport Accidents Compensation 1987*

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**Assumed earnings during period of incapacity****71. If—**

- (a) a non-earner who is incapacitated as the result of a transport accident is capable of undertaking employment of a kind for which the non-earner could reasonably be expected to apply and which is reasonably available to the non-earner having regard to the nature and extent of the disability caused by the accident, the non-earner's level of education, training and language skills, the non-earner's place of residence and any other matters which the GIO considers relevant; or
- (b) a non-earner, without sufficient reason—
  - (i) has declined to undertake vocational training or rehabilitation or to enable an assessment to be made of his or her employment prospects;
  - (ii) has failed to take reasonable measures to obtain employment of a kind which is reasonably available to the non-earner having regard to the matters referred to in paragraph (a); or
  - (iii) has refused an offer of suitable employment,

the earning capacity of the non-earner during the period of incapacity shall be the amount which fairly represents the earnings which could be derived by the non-earner, assessed from time to time during that period on a weekly basis.

**Notice and effect of certain determinations under s. 71**

**72. (1)** If an amount determined under section 71 in relation to a non-earner is greater than the amount determined under section 70 in relation to the non-earner, the GIO shall give notice to the non-earner of the amount determined under section 71.

**(2)** An amount determined under section 71 in relation to a non-earner of which notice has been given to the non-earner under subsection (1) shall, except as provided by subsection (3), be used, after the expiration of 8 weeks from the date of the notice, to the exclusion of any other amount, in determining the loss of earning capacity of the non-earner.

(3) The GIO may specify, in a notice to a non-earner under subsection (1), that an amount determined under section 71 in relation to the non-earner shall be used—

- (a) if the non-earner has furnished information to the GIO knowing it to be false in any material particular or has acted fraudulently—immediately; or
- (b) if there are other special circumstances—after the expiration of 1 week from the date of the notice,

to the exclusion of any other amount in determining the loss of earning capacity of the non-earner, and the amount so determined shall be used accordingly.

(4) A notice to which subsection (3) applies shall include the reasons which justify the use of the amount determined under section 71 before the expiration of 8 weeks from the date of the notice.

**Further assessment of loss of earning capacity—non-earners**

73. (1) Without limiting section 175, if, at the date at which a non-earner's incapacity becomes long-term incapacity, the non-earner has not attained the age of 21 years, the GIO shall, during the continued incapacity of the non-earner, make a determination or redetermination, as the case may require, of the non-earner's loss of earning capacity on each anniversary of that date until the non-earner attains the age of 21 years.

(2) Compensation in respect of a determination or redetermination of a non-earner's loss of earning capacity under this section shall not be payable in respect of any period occurring before the date to which the determination or redetermination applies.

**Application for assessment of compensation on basis of potential for advancement**

74. (1) A non-earner—

- (a) who has sustained long-term incapacity as the result of a transport accident;
- (b) who has a disability, arising from the accident, which has, or is likely to have, a continuing effect on his or her earning capacity; and
- (c) who has, so far as is reasonably practicable, participated in vocational training or rehabilitation programmes provided by or through the GIO,

*Transport Accidents Compensation 1987*

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may, before the expiration of 3 years after the date of the accident or before the expiration of 1 year after the date on which the non-earner's incapacity becomes long-term incapacity, whichever is the later, make an application to the GIO for an assessment of compensation on the basis of potential for advancement.

(2) A non-earner to whom subsection (1) applies may make an application to the GIO for an assessment of compensation on the basis of potential for advancement after the expiration of the time prescribed by that subsection if there are special circumstances relating to the non-earner which justify the making of the application.

**Circumstances in which assessment may be made**

75. The GIO shall not make an assessment of compensation on the basis of potential for advancement in respect of an application made to it under section 74 by a non-earner unless the compensation so assessed is likely to be significantly greater for any one or more of the years of the non-earner's likely incapacity than that assessed for loss of the non-earner's earning capacity.

**Basis of assessment**

76. (1) In making an assessment of compensation on the basis of potential for advancement in respect of a non-earner who is incapacitated as the result of a transport accident, the GIO shall take into consideration—

- (a) the non-earner's age, education, training, skills and abilities at the date of the accident;
- (b) the non-earner's work history, if any, as at that date;
- (c) the likelihood that, had the accident not occurred, the non-earner would have undertaken training or education which would have increased his or her earning capacity;
- (d) the non-earner's prospects for career, business or professional advancement; and
- (e) other matters indicating or tending to indicate that, had the accident not occurred, the non-earner's earning capacity would have increased or decreased materially, whether temporarily or permanently.

(2) The GIO shall take the matters referred to in subsection (1) (c), (d) and (e) into consideration only if they are likely to have an effect or to occur within the period of 10 years after the date of the accident.

**Making of assessment**

77. If the GIO assesses an amount by way of compensation on the basis of potential for advancement in respect of a non-earner, the GIO shall specify, in its assessment, the likely earnings of the non-earner as from the date of the application for—

- (a) the balance of the calendar year in which the application is made; and
- (b) each succeeding calendar year during the likely period of incapacity.

**Effect of assessment**

78. If the GIO assesses an amount by way of compensation on the basis of potential for advancement in respect of a non-earner, the amount so assessed shall be used on and from the date of the assessment in place of any other basis provided for by this Division for determining the non-earner's loss of earning capacity and compensation for loss of earning capacity shall be payable to the non-earner accordingly.

*Subdivision 5—Amount and payment of compensation***Amount of compensation—loss of earning capacity**

79. Except as provided by sections 80 and 81, the amount of compensation to which a person who is incapacitated as the result of a transport accident is entitled during the period of incapacity is an amount equal to 80 per cent of the person's loss of earning capacity, as determined from time to time.

**Amount of compensation—replacement services**

80. If, in respect of a self-employed person who is incapacitated as the result of a transport accident, the GIO has determined the person's loss of earning capacity in accordance with the basis set out in section 55 (1) (b), the amount of compensation to which the person is entitled during the period of incapacity is an amount equal to 80 per cent of the weekly cost (including incidental costs) of providing services to replace the self-employed person in his or her employment, as determined from time to time.

*Transport Accidents Compensation 1987*

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**Amount of compensation—equivalent earnings as an employee**

81. If, in respect of a self-employed person who is incapacitated as the result of a transport accident, the GIO has determined the person's loss of earning capacity in accordance with the basis set out in section 55 (1) (c), the amount of compensation to which the person is entitled during the period of incapacity is an amount equal to 80 per cent of the weekly earnings that the self-employed person could, but for the accident, have derived if, during the period of incapacity, the person exercised similar skills and responsibilities, as an employee, to those which he or she exercised as a self-employed person, as determined from time to time.

**Maximum amount of compensation**

82. Notwithstanding sections 79, 80 and 81, the maximum amount of compensation which is payable under this Division to an injured person shall not exceed, during the period of incapacity, \$500 per week less the injured person's earning capacity after the date of the accident and during the period of incapacity.

**Periods for which compensation is not payable**

83. (1) Compensation for loss of earning capacity of an earner who is incapacitated as the result of a transport accident and who was, at any time during the period of 8 weeks preceding the date of the accident, engaged in employment shall not be paid or payable to the earner in respect of—

- (a) if there is only one period of incapacity—the first 5 working days of that period; or
- (b) if there is more than one period of incapacity—the first 5 working days of the first such period.

(2) Compensation for loss of earning capacity of an earner who is incapacitated as the result of a transport accident and who was not, at any time during the period of 8 weeks preceding the date of the accident, engaged in employment shall not be paid or payable to the earner in respect of—

- (a) if there is only one period of incapacity—the first 4 weeks of that period; or
- (b) if there is more than one period of incapacity—the first 4 weeks of the first such period.



*Transport Accidents Compensation 1987*

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**(3)** Notwithstanding subsections (1) and (2), if—

- (a) an earner who is incapacitated as the result of a transport accident is an earner to whom section 6 (1) (b) or (c) applies; and
- (b) the earner would have entered into employment after the date on which compensation for loss of earning capacity would, but for this subsection, be payable,

that compensation shall not be paid or payable to the earner before the first 5 working days after the day on which the earner would have entered, or would have been likely to have entered, into employment.

**Payment of compensation to persons under 16 years of age**

**84. (1)** Compensation for loss of earning capacity of a person who has not attained the age of 16 years at the date of a transport accident shall not be payable until the person attains the age of 16 years.

**(2)** Nothing in subsection (1) prevents the payment of compensation to a person referred to in that subsection if, at the date of the transport accident as a result of which the person was incapacitated, the person was engaged in full-time employment.

**Payment of compensation—unconscious persons**

**85. (1)** If an injured person—

- (a) is permanently unconscious or otherwise totally and permanently unaware of the bodily injury suffered as a result of the transport accident; and
- (b) does not have a dependent spouse or a dependent child or children,

compensation for loss of earning capacity shall not be paid or payable to the person or any other person on behalf of the person.

**(2)** If an injured person—

- (a) is permanently unconscious or otherwise totally and permanently unaware of the bodily injury suffered as a result of the transport accident; and
- (b) has a dependent spouse or a dependent child or children, or both,

*Transport Accidents Compensation 1987*

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compensation payable for loss of earning capacity shall be paid to a person as trustee for the injured person and may, at the sole discretion of the trustee, having regard to any possibility that the injured person will recover consciousness or develop awareness, be applied to the support and maintenance of the spouse, child or children, as the case may be.

**Termination of payments**

**86.** Payments by way of compensation for loss of earning capacity shall cease to be paid by the GIO to a person—

- (a) on the termination of the person's incapacity;
- (b) on the death of the person;
- (c) in the case of an earner—on the date on which the earner would have permanently left the workforce;
- (d) upon attaining the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Social Security Act 1947 of the Commonwealth, as amended and in force for the time being; or
- (e) in the case of an earner who had attained the age of 65 years when the incapacity in respect of which the compensation is payable commenced—on the expiration of a period of 2 years after the commencement of the incapacity,

whichever first occurs.

*Subdivision 6—Permanent incapacity***Assessment of permanent incapacity**

**87. (1)** If—

- (a) a person has sustained a permanent disability as the result of a transport accident;
- (b) the person's medical condition in relation to the disability has stabilised;
- (c) all practicable steps have been taken towards the person's rehabilitation;
- (d) the person has suffered a loss of earning capacity which is likely to continue indefinitely; and

*Transport Accidents Compensation 1987*

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- (e) the extent of the loss of earning capacity is unlikely to vary substantially having regard to such changes in economic conditions and employment opportunities as are reasonably foreseeable,

the GIO may, at the request or with the consent of the person, make an assessment, in accordance with this Division, of the person's permanent loss of earning capacity and compensation in respect of the loss so assessed shall be payable to the person accordingly.

(2) Except as provided by subsections (3) and (4), an assessment under subsection (1) is final and may not be varied.

(3) If, at any time after an assessment of a person's permanent loss of earning capacity has been made under subsection (1)—

- (a) the person's earning capacity is significantly reduced by reason of—
  - (i) a deterioration in the person's physical condition; or
  - (ii) the loss of or a change in the person's employment; and
- (b) the substantial reduction in earning capacity occurs as the consequence of a disability caused by or arising out of the transport accident as a result of which the person was incapacitated,

the GIO shall set aside the assessment and make a further assessment, in accordance with this Division, of the person's loss of earning capacity.

(4) If the GIO has, under subsection (3), set aside an assessment in respect of a person, it may, at any time, make a further assessment under subsection (1) of the person's permanent loss of earning capacity.

*Subdivision 7—Miscellaneous***Postponement of assessment of certain claims**

88. (1) If, with the approval of the GIO, a person in respect of whom a claim for compensation for loss of earning capacity has been made enters into or resumes employment, the GIO may postpone assessment of the claim.

(2) If the period of employment of a person referred to in subsection (1) does not exceed the period prescribed for the purposes of this subsection, the GIO shall, on the termination of the person's employment, assess and determine the claim referred to in that subsection.

*Transport Accidents Compensation 1987*

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**Continuance of compensation after commencement of certain business undertakings**

89. If a person to whom compensation for loss of earning capacity is payable commences and conducts, with the approval of the GIO, a business undertaking, that compensation shall continue to be payable after the date on which the person commences the business undertaking for the period prescribed for the purposes of this section.

**DIVISION 3—Rehabilitation****Provision of rehabilitation services**

90. The GIO shall do all such things as may be necessary to provide for and to meet the cost of providing for the rehabilitation of injured persons, including the necessary and reasonable costs and expenses of travel and accommodation incurred by those persons in order to obtain rehabilitation services.

**Rehabilitation services to be provided promptly**

91. In the provision of rehabilitation services, the GIO shall, so far as is practicable, ensure that those services are provided to an injured person as soon as possible after the date of the transport accident.

**Functions of the GIO relating to rehabilitation—generally**

92. (1) The GIO shall employ or provide funds for the employment of rehabilitation counsellors.

(2) The GIO shall distribute information to and provide courses of instruction and training for medical practitioners and other persons associated with the rehabilitation of injured persons.

(3) The GIO may give assistance or make grants to persons or bodies to undertake research into or promote training in rehabilitation and to enable the provision of rehabilitation services.

(4) The GIO may develop and implement policies and practices that will enable the decentralisation of rehabilitation services.

**Prosthetic etc. devices and aids and appliances**

93. (1) The GIO shall provide such prosthetic or other devices and such crutches, wheelchairs or other aids or appliances as may be necessary to an injured person and shall service and otherwise maintain, and from time to time replace, any such device, aid or appliance to such extent as may be necessary and reasonable in the circumstances.

(2) The GIO may approve the provision, servicing, maintenance or replacement, by a person other than the GIO, of a device, aid or appliance referred to in subsection (1) to or in respect of an injured person.

**Vocational training and retraining**

94. The GIO shall, so far as it is practicable to do so, provide a course of vocational training or instruction to an injured person, or to a spouse who was substantially dependent upon a person whose death has been caused by or has arisen out of a transport accident, for the purpose of enabling the person for whom the course is provided to undertake employment whether as an employee or as a self-employed person.

*DIVISION 4—Support services and independent living***GIO to promote support services etc.**

95. Subject to this Division, the GIO shall do all such things as may be necessary to provide and to meet the cost of providing household services, attendant care and other benefits to which this Division applies to injured persons and to the household family members of those persons.

**Provision of short term household services****96. (1) If—**

(a) an injured person performed, before the date of the transport accident, substantial household services—

(i) for himself or herself; or

(ii) for his or her household family members,

or both;

(b) the capacity of the person to perform, after the date of the accident, any such household services has been significantly impaired by reason of the accident; and

*Transport Accidents Compensation 1987*

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- (c) the performance of any such household services by another person is necessary for the maintenance and preservation of the household,

the GIO shall approve of the performance of those services by another person during the period of 4 weeks from the date of the accident.

(2) In determining, for the purposes of subsection (1), the extent to which the provision of household services is necessary for the maintenance and preservation of the household of an injured person, the GIO shall have regard to—

- (a) the extent to which household services were provided by the person before the date of the transport accident and the extent to which the person is able to provide those services after that date;
- (b) the number of household family members, their ages and their need for household services;
- (c) the extent to which household services were provided by other household family members before the date of the accident;
- (d) the extent to which other household family members or other family members might reasonably be expected to provide household services for themselves and for the person after the date of the accident;
- (e) the need to avoid substantial disruption to the employment or other activities of the household family members; and
- (f) such other matters as the GIO considers relevant.

(3) Nothing in subsection (2) shall be construed as preventing the GIO from approving, under subsection (1), of the performance of household services by a household family member of the injured person or the making of such payments in relation to the performance of those services as may be appropriate.

(4) If any household services have been performed on a voluntary basis and the performance of those services has, after the date on which those services have been performed, been approved under subsection (1), the GIO shall pay to the person who performed those services such amount in respect of the performance of those services as may be determined by the GIO.

**Provision of household services after 4 weeks from date of accident**

97. The GIO shall, after the expiration of a period of 4 weeks from the date of a transport accident, review an approval given under section 96 in respect of the injured person and any payments made by the GIO in consequence of the approval, having regard to—

- (a) the nature and extent of any benefit provided under this Act or any other Act or law to the injured person or to any other person by reason of the accident;
- (b) if the injured person's spouse is a member of that person's household, the earnings and any other income of the spouse;
- (c) the financial and other resources available to household family members to meet their need for household services; and
- (d) such other matters as the GIO considers relevant.

**Provision of attendant care services**

98. (1) In this section, "attendant care services", in relation to an injured person, means services (other than medical services or nursing care) which are required to provide for the essential and regular personal care of the person.

(2) The GIO shall, where an injured person, by reason of a transport accident, is unable to provide adequately for his or her personal care, approve of the provision to the person of attendant care services.

(3) In determining, for the purposes of subsection (2), whether attendant care services should be provided to a person, the GIO shall have regard to—

- (a) the nature and extent of the person's injury and the degree to which that injury impairs the person's ability to provide for his or her personal care;
- (b) the extent to which such medical services and nursing care as may be received by the person provide for the essential and regular personal care of the person;
- (c) if the person so desires, the extent to which it is reasonable to meet the person's desire to live outside an institutional environment;
- (d) the extent to which attendant care services are necessary to enable the person to undertake or continue employment;
- (e) any assessment made, at the request of the GIO, by persons having expertise in the rehabilitation of injured persons;

*Transport Accidents Compensation 1987*

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- (f) any standard developed or applied by any government department or public authority in respect of the need of disabled persons for attendant care services;
- (g) the extent to which any relative of the person might reasonably be expected to provide attendant care services to the person; and
- (h) such other matters as the GIO considers relevant.

(4) Nothing in subsection (3) shall be construed as preventing the GIO from approving, under subsection (2), of the provision of attendant care services by a household family member of the injured person or by a relative of the injured person or the making of such payments in relation to the performance of those services as may be appropriate.

(5) If any attendant care services have been provided on a voluntary basis and the performance of those services has, after the date on which those services have been provided, been approved under subsection (2), the GIO shall pay to the person who provided those services such amount in respect of the performance of those services as may be determined by the GIO.

**Maximum amount of compensation for voluntary household and attendant care services**

99. (1) The amount of a payment under section 96, 97 or 98 in respect of household services or attendant care services which are voluntarily provided shall not exceed—

- (a) if those services are not less than 40 hours per week—80 per cent of average weekly earnings per week; or
- (b) if those services are less than 40 hours per week—the amount calculated at an hourly rate of one-fortieth of 80 per cent of average weekly earnings per week.

(2) An amount under section 96, 97 or 98 shall be paid to the person who provides the service.

**Compensation for loss of earnings—emergency family support**

100. (1) If it is necessary for the spouse or a parent or child of an injured person to attend the person continuously, whether in a hospital or elsewhere, the spouse, parent or child, as the case may be, shall be entitled to compensation of 80 per cent of the loss of earnings for the period of the attendance, but not exceeding a period of 4 weeks, assessed, and subject to the provisions of this Act, as if the spouse, parent or child had been incapacitated as a result of the transport accident.



(2) The maximum amount of compensation which is payable under this section shall not exceed \$500 per week, less the person's weekly earnings during the 4 week period.

**Travelling and accommodation expenses—emergency family support**

101. (1) If expenses have necessarily been incurred by the spouse or a parent or child of an injured person in respect of travel and accommodation within Australia for the purpose of attending the person to provide care and support, the spouse, parent or child, as the case may be, shall be entitled to reimbursement of such of those expenses as have been reasonably incurred, except as provided by subsection (2), during the period of 4 weeks from the date of the transport accident.

(2) The GIO may, where there are exceptional circumstances and the continued presence of the spouse, parent or child is necessary for the recovery or well-being of the injured person, extend the period referred to in subsection (1).

**Mobility allowance**

102. (1) If an injured person who does not have access to suitable private transport is unable, by reason of a transport accident, to use public transport without the assistance of another person and the injured person is not receiving any other comparable transport assistance, the injured person is entitled to payment by the GIO of a mobility allowance of the prescribed amount per week.

(2) An injured person is not entitled to payment of a mobility allowance under subsection (1) during the period of 6 months after the date of the transport accident unless there are exceptional circumstances which justify the making of the payment.

(3) In this section, the "prescribed amount" means the amount prescribed for the purposes of this section or, if an amount is not prescribed, the amount of \$30.

*DIVISION 5—Compensation for permanent impairment*

**Entitlement to compensation for permanent impairment**

103. Subject to this Act, a person who suffers a permanent impairment as the result of a transport accident is entitled to compensation by way of a lump sum payment, determined in accordance with this Act, in respect of the impairment.

*Transport Accidents Compensation 1987*

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**Duty to mitigate**

**104.** The GIO, in assessing the degree of permanent impairment of a person, shall have regard to any unreasonable refusal by the person to undertake rehabilitation or to undergo medical treatment where the undertaking of rehabilitation or the undergoing of medical treatment by the person may have reduced the degree of permanent impairment.

**Amount of compensation**

**105. (1)** In this section, “assessed amount of compensation”, in relation to a person who suffers a permanent impairment as the result of a transport accident, means the amount payable to the person under subsection (2).

**(2)** Subject to subsection (3), the amount of compensation payable to a person who suffers a permanent impairment as the result of a transport accident is such percentage determined by the GIO of \$120,000 as is equal to the degree of permanent impairment of the person.

**(3)** The amount of compensation payable to a person who suffers a permanent impairment as the result of a transport accident is, if, at the date of the accident, the age of the person was—

- (a) 25 years or less—100 per cent of the assessed amount of compensation;
- (b) more than 25 years but less than 65 years—100 per cent, less 1 per cent for each year by which the age of the person exceeded 25 years as at that date, of the assessed amount of compensation; and
- (c) 65 years or more—60 per cent of the assessed amount of compensation.

**Assessment of degree of permanent impairment**

**106. (1)** The regulations may make provision for or with respect to the basis on which the degree of a permanent impairment shall be assessed.

**(2)** Regulations made for the purposes of subsection (1) may provide for the adoption, wholly or in part and with or without modification, of—

- (a) the publication entitled “Guides to the Evaluation of Permanent Impairment” published by the American Medical Association;
- (b) any adaptation of the publication referred to in paragraph (a) by any government department or instrumentality within Australia;

*Transport Accidents Compensation 1987*

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- (c) the publication entitled "Guide to the Assessment of Rates of Veterans' Pensions" prepared by the Commonwealth Repatriation Commission; or
- (d) any other standard or set of criteria for assessing the degree of a permanent impairment published by any person other than the GIO.

**Minimum level of impairment**

**107.** Notwithstanding section 105, if the GIO assesses the degree of permanent impairment of a person as being 4 per cent or less, no compensation in respect of the impairment shall be payable to the person.

**Total impairment**

**108.** Notwithstanding section 105, if the GIO assesses the degree of permanent impairment of a person as being 90 per cent or more, the person shall be entitled to the maximum amount of compensation payable under that section in respect of that person.

**Time at which determination may be made**

**109. (1)** Except as provided by subsections (2) and (3), the GIO shall not make an assessment of the degree of permanent impairment of an injured person before the expiration of a period of 12 months after the date of the transport accident.

**(2)** The GIO shall make an assessment of permanent impairment in respect of a person before the expiration of the period referred to in subsection (1) if, before the expiration of that period, the person's impairment is stable and permanent.

**(3) If—**

- (a) a claim for compensation in respect of a permanent impairment is made by or on behalf of an injured person;
- (b) the person has suffered a permanent impairment as a result of the transport accident; and
- (c) the GIO is unable, at the time at which the claim is made, to make a final assessment of the degree of the impairment,

the GIO shall make an interim assessment of the degree of the impairment and an interim payment of compensation in respect of the impairment.

*Transport Accidents Compensation 1987*

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**Increase in degree of impairment after assessment**

**110.** If, after an assessment of the degree of permanent impairment of a person has been made by the GIO under section 109, the degree of permanent impairment of the person increases, the GIO shall make a further assessment of the degree of permanent impairment and, in the event that the GIO determines that there has been such an increase, the person shall be entitled to further compensation, determined in accordance with this Act, in respect of the increase.

**Payment of compensation—deceased and unconscious persons**

**111. (1)** Compensation in respect of a permanent impairment suffered by a person as the result of a transport accident shall not be paid or payable—

- (a) if the person dies before the person's degree of permanent impairment has been assessed by the GIO or before an amount determined as compensation in respect of the impairment has been paid—to any other person; or
- (b) if the person—
  - (i) is permanently unconscious or otherwise totally and permanently unaware of his or her impairment; and
  - (ii) does not have a dependent spouse or a dependent child or children,

to the person or any other person on behalf of the person.

**(2)** If a person who has suffered a permanent impairment as the result of a transport accident—

- (a) is permanently unconscious or otherwise totally and permanently unaware of his or her impairment; and
- (b) has a dependent spouse or a dependent child or children, or both,

compensation payable in respect of the impairment shall be paid to a person as trustee for the disabled person and may, at the sole discretion of the trustee, having regard to any possibility that the disabled person will recover consciousness or develop awareness, be applied to the support and maintenance of the spouse, child or children, as the case may be.

*Transport Accidents Compensation 1987*

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**DIVISION 6—*Additional benefits for persons suffering a permanent or long-term physical impairment*****Application of Division**

**112.** This Division applies to an injured person who, as a result of a transport accident, has suffered a permanent or long-term physical impairment of a kind which severely impairs the person's mobility, ability to live independently within a home or ability to undertake reasonable employment.

**Modifications to places of work**

**113. (1)** If an injured person is employed after the date of the transport accident or continues in, or resumes, employment after that date, the GIO may, having regard to the resources available to the GIO, approve of reasonable modifications to the person's place of work for the purpose of enabling the person to gain access to the place of work or facilitating the performance by the person of work or for other purposes.

**(2)** In determining what modifications are reasonable for the purposes of subsection (1), the GIO shall have regard to—

- (a) the cost of the modifications;
- (b) the benefit of the modifications to the employer and other persons employed by the employer;
- (c) the likely duration of the employment by the employer of the injured person;
- (d) any modifications the employer is prepared to make at the employer's own cost; and
- (e) any other matters it considers relevant.

**(3)** The GIO may, on such terms and conditions as may be agreed between the GIO and the employer, meet the whole or part of the cost of any modifications approved under subsection (1).

**Placement programmes**

**114. (1)** The GIO may develop programmes and practices to encourage the employment, resumption of employment or continued employment of injured persons.

*Transport Accidents Compensation 1987*

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- (2) Without limiting the generality of subsection (1), the GIO may—
- (a) provide financial and other incentives to encourage the employment, resumption of employment or continued employment of injured persons;
  - (b) indemnify an employer in respect of the whole or part of the premiums payable under any contract of insurance undertaken by the employer in pursuance of the Workers Compensation Act 1987; or
  - (c) if an employer is a self-insurer within the meaning of that Act, make such undertakings in relation to any liability or any contingent liability of the employer under that Act as the GIO thinks fit.

**Advice and assistance**

**115. (1)** The GIO may, at the request of an injured person, provide the person or arrange for the person to be provided with advice, including financial advice, and assistance in order to facilitate the person's rehabilitation.

(2) If an injured person has, as a consequence of the transport accident, no reasonable expectation of being able to obtain finance, or to make satisfactory financial arrangements, for the conduct or proposed conduct of a business undertaking, the GIO may, on such terms and conditions as it thinks fit, lend money for, or guarantee any loan for, the conduct or proposed conduct of the business.

**Acquisition of a home**

**116.** If an injured person has, as a result of a transport accident, no reasonable expectation of being able to obtain finance, or to make satisfactory financial arrangements, for the purchase of a home, or of a home suitable to the person's needs, the GIO may, having regard to the resources available to the GIO, on such terms and conditions as it thinks fit, lend money for, or guarantee any loan for, any such purchase.

**Modifications to the home**

**117. (1)** The GIO may, at the request of an injured person, approve of reasonable and necessary modifications to the person's home.

*Transport Accidents Compensation 1987*

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(2) In determining, for the purposes of subsection (1), whether any modifications to the home of an injured person are reasonable and necessary, the GIO shall have regard to—

- (a) the cost of any such modifications;
- (b) any difficulty faced by the person—
  - (i) in gaining access to;
  - (ii) in enjoying reasonable freedom of movement within; or
  - (iii) in living independently within,the person's home;
- (c) the likely duration of the person's residence in the home; and
- (d) such other matters as the GIO considers relevant.

(3) The GIO may, under subsection (1), approve of modifications to a person's home notwithstanding that the person is not the owner or sole or absolute owner of the home, but no such approval shall be given without the consent of the owner or any joint owner, mortgagee or other interested person, as the case requires.

(4) The GIO may, on such terms and conditions as may be agreed between the GIO and the injured person and, as the case requires, the owner, a joint owner, a mortgagee or any other interested person, meet the cost of any modifications approved under subsection (1) or such part of the cost as it thinks fit.

(5) Without limiting the generality of subsection (4), terms and conditions referred to in that subsection—

- (a) may include undertakings by the injured person or, as the case requires, by the owner, a joint owner, a mortgagee or another interested person—
  - (i) with respect to the duration of residence of the injured person in the home; and
  - (ii) for repayment of the cost of any modifications or such part of the cost as may have been met by the GIO, in the event of a breach of an undertaking with respect to the matter referred to in subparagraph (i) or in the event of any other specified contingency; and

*Transport Accidents Compensation 1987*

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- (b) may provide for the giving of security, whether by way of a charge on the land in or upon which the home exists or otherwise, to the GIO in respect of the performance of any such undertaking.

(6) The GIO may, if there are special circumstances, give a second or subsequent approval under this section in respect of the same home or give an approval under this section in respect of any subsequent home of the same person.

**Provision of public housing**

118. The GIO may negotiate and enter into agreements with the Director of Housing and public authorities for the provision of housing to injured persons.

**Institutional accommodation**

119. (1) If it is reasonably necessary, due to the injuries sustained by an injured person as the result of a transport accident, for the person to be provided, during a particular period or for an indefinite period, with appropriate institutional accommodation (apart from accommodation in a hospital), the GIO may provide accommodation of that nature to the person.

(2) A person who is provided with institutional accommodation under this section, other than a person of a prescribed class or description, shall pay such amount as may be prescribed as fairly representing the element of board.

**Hostels**

120. The GIO may establish and maintain hostels for injured persons or contribute to the cost of establishing and maintaining any such hostels.

**Purchase of vehicle**

121. If an injured person has, as a consequence of a transport accident, no reasonable expectation of being able to obtain finance, or to make satisfactory financial arrangements, for the purchase of a motor vehicle or of a motor vehicle suitable to the person's needs, the GIO may, having regard to the resources available to the GIO, on such terms and conditions as it thinks fit, lend money for, or guarantee any loan for, the purchase of, or meet the whole or part of the cost of, a suitable motor vehicle.



**Modifications to vehicle**

**122. (1)** The GIO may approve of reasonable and necessary modifications to a motor vehicle used or to be used by an injured person for the purpose of adapting the vehicle to the functional capability of the person.

**(2)** In determining, for the purposes of subsection (1), whether any modifications to a motor vehicle used or to be used by an injured person are reasonable and necessary, the GIO may have regard to—

- (a) the cost of any such modifications;
- (b) any difficulty faced by the person—
  - (i) in driving or operating;
  - (ii) in gaining access to; or
  - (iii) in enjoying reasonable freedom and safety of movement within, the vehicle;
- (c) any alternative means of transport available to the person; and
- (d) such other matters as the GIO considers relevant.

**(3)** The GIO may, under subsection (1), approve of modifications to a motor vehicle used or to be used by an injured person notwithstanding that the person is not the owner or sole or absolute owner of the vehicle, but no such approval shall be given without the consent of the owner or any joint owner or other interested person, as the case requires.

**(4)** The GIO may, if there are special circumstances, give a second or subsequent approval under this section in respect of the same vehicle or give an approval under this section in respect of any subsequent vehicle of the same person.

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*Transport Accidents Compensation 1987*

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## PART 6

## BENEFITS—DEPENDANTS OF DECEASED PERSONS

DIVISION 1—*Preliminary***Interpretation****123. In this Part—**

“earning capacity”, in relation to the surviving spouse of a deceased person, means the earning capacity of that surviving spouse determined in accordance with Division 4;

“prescribed child”, in relation to a deceased person, means—

- (a) for the purpose of determining the entitlement to compensation under this Part in respect of a child—a child of the deceased person or a child in relation to whom the deceased person stood in loco parentis and—
  - (i) who, except as provided by subparagraph (ii), had not attained the age of 16 years as at the date of death of the deceased person; or
  - (ii) who, if the child, at the date of death of the deceased person, was a full-time student or was physically handicapped or mentally handicapped, had not attained the age of 21 years as at that date,

but does not include such a child who, as at that date, was married or was the de facto partner of another person; and

- (b) for the purpose of determining the entitlement to compensation under this Part in respect of a spouse—a child of the deceased person to whom paragraph (a) (subparagraph (ii) excepted) applies.

**Presumption as to dependence of children**

**124.** If a prescribed child was a member of the household of a deceased person at the date of death of the deceased person, the dependence of the child on the deceased person shall, for the purposes of this Part, be presumed until the contrary is shown.

*Transport Accidents Compensation 1987*

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DIVISION 2—*Funeral expenses***Funeral expenses**

125. The GIO shall pay the reasonable funeral expenses of a person whose death is caused by or arises out of a transport accident within 3 years after the date of the accident.

DIVISION 3—*Lump sum payments***Lump sum payments**

126. (1) Subject to subsections (5) and (6), the persons who, at the date of death of a deceased person, were the dependent members of the family of the deceased person shall be entitled to claim payment from the GIO of a lump sum, to be apportioned between them, which shall not exceed \$80,000.

(2) The amount of the lump sum payable by the GIO shall, if the claimant is or the claimants include the dependent spouse of the deceased person or a prescribed child of the deceased person who was dependent on the deceased person, be the maximum amount payable under subsection (1).

(3) If there is more than one claimant under subsection (1), the GIO shall, subject to subsections (4) and (6), apportion the lump sum between the claimants having regard to the degree of dependence upon, or interdependence with, the deceased person on the part of each claimant at the date of death of the deceased person.

(4) If the deceased person is survived by—

(a) a dependent spouse or prescribed children who were dependent on the deceased person, or both; and

(b) other dependent members of the family of the deceased person,

the portion of the lump sum payable to the members referred to in paragraph (b) shall not exceed one-third unless, in the opinion of the GIO, there are exceptional circumstances which justify payment of a higher proportion.

(5) If the deceased person is not survived by a dependent spouse or prescribed children who were dependent on the deceased person, or both, but is survived by another dependent member of the family of the deceased person, that member shall not be entitled to payment of any amount by the GIO unless the GIO is satisfied that there was a substantial degree of dependence upon, or interdependence with, the deceased person on the part of that member.

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*Transport Accidents Compensation 1987*

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(6) If there is more than one dependent member to whom subsection (5) applies, the GIO shall apportion any amount payable by the GIO between the members having regard to the degree of dependence upon, or interdependence with, the deceased person on the part of each member at the date of death of the deceased person.

(7) Unless there are special circumstances, a lump sum shall be paid as soon as practicable after the dependants have been identified.

(8) If, after a lump sum is paid, a further dependant is identified, and there are satisfactory reasons why the further dependant had not been identified at the time of payment, the GIO may pay to that dependant such amount as would have been payable if that dependant's existence had been known at the time of payment.

**Set off of lump sum paid for permanent impairment**

127. A lump sum payable to the dependent members of the family of a person whose death was caused by or arose out of a transport accident shall be reduced by the amount of any lump sum paid before death in respect of a permanent impairment suffered by the person as a result of the accident.

*DIVISION 4—Periodic compensation for surviving spouse*

**Determination of earning capacity**

128. The GIO shall determine the earning capacity of the surviving spouse of a deceased person in accordance with section 129 or 130.

**Actual earnings of surviving spouse**

129. Except as provided by section 130, the earning capacity of the surviving spouse of a deceased person is—

- (a) if the surviving spouse is not in receipt of earnings—nil; or
- (b) if the surviving spouse is in receipt of earnings—the actual earnings of the surviving spouse assessed from time to time on a weekly basis.

**Assumed earnings of surviving spouse**

130. If—

*Transport Accidents Compensation 1987*

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- (a) the surviving spouse of a deceased person is capable of undertaking employment of a kind for which the surviving spouse could reasonably be expected to apply and which is reasonably available to the surviving spouse having regard to—
  - (i) whether or not the surviving spouse has the care and control of a prescribed child; and
  - (ii) such other matters as the GIO considers relevant; or
- (b) the surviving spouse—
  - (i) has declined to undertake vocational training or to enable an assessment to be made of his or her employment prospects;
  - (ii) has failed to take reasonable measures to obtain employment of a kind which is reasonably available to the surviving spouse having regard to the matters referred to in paragraph (a); or
  - (iii) has refused an offer of suitable employment,

the earning capacity of the surviving spouse shall be the amount which fairly represents the weekly earnings which could be derived by the surviving spouse.

**Notice and effect of certain determinations under s. 130**

**131. (1)** If an amount determined under section 130 in relation to the surviving spouse of a deceased person is greater than the amount determined under section 129 in relation to the surviving spouse, the GIO shall give notice to the surviving spouse of the amount determined under section 130.

**(2)** An amount determined under section 130 in relation to a surviving spouse of which notice has been given to the surviving spouse under subsection (1) shall, except as provided by subsection (3), be used, after the expiration of 8 weeks from the date of the notice, to the exclusion of any other amount, in determining the earning capacity of the surviving spouse.

**(3)** The GIO may specify, in a notice to a surviving spouse under subsection (1), that an amount determined under section 130 in relation to the surviving spouse shall be used—

- (a) if the surviving spouse has furnished information to the GIO knowing it to be false in any material particular or has acted fraudulently—immediately; or
- (b) if there are other special circumstances—after the expiration of 1 week from the date of the notice,

*Transport Accidents Compensation 1987*

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to the exclusion of any other amount, in determining the earning capacity of the surviving spouse, and the amount so determined shall be used accordingly.

(4) A notice to which subsection (3) applies shall include the reasons which justify the use of the amount determined under section 130 before the expiration of 8 weeks from the date of the notice.

**Periodic compensation for spouses of earners—generally**

132. (1) The surviving spouse of a deceased person who was an earner, being a surviving spouse who—

- (a) was a dependant of the deceased person; and
- (b) has the care and control of a prescribed child,

shall, irrespective of any earnings of the surviving spouse but subject to section 139, be entitled to compensation at the rate of—

- (c) 50 per cent of the earnings of the deceased person at the date of the transport accident, determined in accordance with section 53 or 56, as the case requires, per week; or
- (d) 50 per cent of average weekly earnings per week,

whichever is the lesser.

(2) Compensation payable under subsection (1) to a surviving spouse shall continue to be so payable until—

- (a) the expiration of the period of 5 years after the date of death of the deceased person;
- (b) the youngest prescribed child in the care and control of the surviving spouse attains the age of 16 years; or
- (c) the surviving spouse does not have the care and control of a prescribed child,

whichever first occurs.

*Transport Accidents Compensation 1987*

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**Periodic compensation for spouses of earners who undertake long-term child-care**

**133. (1)** If, at any time after the expiration of the period of 5 years from the date of death of a deceased person who was an earner, a surviving spouse of the deceased person (being a surviving spouse who was a dependant of the deceased person) has, at that time, by reason of having the care and control of a prescribed child, a combined income and earning capacity (if any) (the resulting amount in this section being referred to as "the prescribed amount") which is less than the lesser of—

- (a) 50 per cent of the earnings of the deceased person at the date of the transport accident, determined in accordance with section 53 or 56, as the case requires, per week; or
- (b) 50 per cent of average weekly earnings per week,

the spouse shall, subject to section 139, be entitled to compensation of such amount per week as is equal to—

- (c) the difference between the prescribed amount and the amount determined in accordance with paragraph (a); or
- (d) 50 per cent of average weekly earnings per week,

whichever is the lesser.

**(2)** Compensation payable under subsection (1) to a surviving spouse shall continue to be so payable until—

- (a) the youngest prescribed child in the care and control of the surviving spouse attains the age of 16 years; or
- (b) the surviving spouse does not have the care and control of a prescribed child,

whichever first occurs.

**Periodic compensation for spouses of earners—health, age, etc. factors**

**134. (1)** If, at any time before the expiration of the period of 5 years from the date of death of a deceased person who was an earner, the earning capacity of a surviving spouse of the deceased person, being a surviving spouse who was a dependant of the deceased person, is substantially impaired—

- (a) by reason of the poor health, including any physical or mental impairment, of the spouse, if that poor health was evident as at that date or within the period of 6 months after that date;

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*Transport Accidents Compensation 1987*

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- (b) by reason that the spouse has attained the age of 50 years and lacks marketable work skills; or
- (c) by reason of the need to care for an aged or disabled member of his or her family or of the deceased person's family, if that care was undertaken as at that date,

the surviving spouse shall, irrespective of any earnings of the surviving spouse, be entitled to compensation at the rate of—

- (d) 50 per cent of the earnings of the deceased at the date of the transport accident, determined in accordance with section 53 or 56, as the case requires, per week; or
- (e) 50 per cent of average weekly earnings per week,

whichever is the lesser.

(2) Compensation payable under subsection (1) to a surviving spouse shall continue to be so payable only while the grounds which gave rise to the entitlement continue to apply.

*DIVISION 5—Periodic compensation for prescribed children*

**Periodic compensation for prescribed children**

**135. (1)** Subject to subsection (2) and section 139, a prescribed child of a deceased person who was dependent on the deceased person shall be entitled to compensation at the rate of 8 per cent of average weekly earnings per week.

(2) If compensation under this Part is payable only to the prescribed children of a deceased person, the maximum amount of compensation payable to those children shall not exceed 32 per cent of average weekly earnings per week and shall, except in so far as the GIO otherwise determines, be apportioned equally between those children.

(3) Compensation payable under subsection (1) to a prescribed child shall continue to be so payable until the child—

- (a) attains the age of—
  - (i) in the case of a child other than a child to whom subparagraph (ii) applies—16 years; or
  - (ii) in the case of a child who, at the date of death of the deceased person, was a full-time student or is physically handicapped or mentally handicapped—21 years;



*Transport Accidents Compensation 1987*

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- (b) marries or enters into a de facto relationship;
- (c) becomes self-supporting; or
- (d) dies,

whichever first occurs.

(4) The entitlement of a prescribed child to compensation payable under subsection (1) shall not be affected by—

- (a) any earnings of the child from part-time employment not in excess of the prescribed amount per week; or
- (b) the marriage of or entry into a de facto relationship by the surviving parent of the child who has the care and control of the child.

(5) In subsection (4) (a), the “prescribed amount” means the amount prescribed for the purposes of subsection (4) or, if an amount is not prescribed, the amount of \$30.

DIVISION 6—*Replacement household services*

**Provision of short term replacement household services**

**136. (1)** The dependent household family members of a deceased person who, before the date of the transport accident, performed substantial household services for those members as household family members shall, to such extent, if any, as the GIO shall determine to be necessary for the maintenance and preservation of the household, be entitled to replacement household services during the period of 4 weeks from the date of death of the deceased person.

(2) In making a determination for the purposes of subsection (1), the GIO shall have regard to—

- (a) the nature and extent of the household services provided by the deceased person before the date of the transport accident;
- (b) the number of dependent household family members of the deceased person, the ages of those members and their need for household services;
- (c) the extent to which other household family members of the deceased person, whether dependent members or not, or other persons have provided or could reasonably be expected to provide household services after that date;

*Transport Accidents Compensation 1987*

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- (d) any relationship formed with another person by the surviving spouse of the deceased person;
- (e) any special factors affecting the need of the dependent household family members of the deceased person for household services; and
- (f) such other matters as the GIO considers relevant.

**Provision of replacement household services after 4 weeks from date of death**

**137. (1)** The GIO shall, after the expiration of the period of 4 weeks from the date of death of a deceased person, review a determination made under section 136 and shall, in addition to the matters specified in section 136 (2), have regard to—

- (a) the benefits provided under this Act to household family members of the deceased person as a consequence of the death of the deceased person;
- (b) the earnings and other income of the surviving spouse of the deceased person; and
- (c) the resources, financial or otherwise, available to the household family members of the deceased person to meet the need for household services.

**(2)** Except as provided by subsection (3), replacement household services shall not be provided to the dependent household family members of a deceased person after the expiration of the period of 2 years from the date of death of the deceased person.

**(3)** If replacement household services have been provided under this section to the surviving spouse of a deceased person at any time within the period of 2 years from the date of death of the deceased person and the termination of those household services on the expiration of that period would cause special hardship to the surviving spouse, the GIO may continue to provide replacement household services for a further period not exceeding 3 years.

**Maximum amount of compensation for voluntary replacement household services**

**138. (1)** The amount of a payment under section 136 or 137 in respect of replacement household services which are voluntarily provided shall not exceed—

- (a) if those services are not less than 40 hours per week—80 per cent of average weekly earnings per week; or

*Transport Accidents Compensation 1987*

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- (b) if those services are less than 40 hours per week—the amount calculated at an hourly rate of one-fortieth of 80 per cent of average weekly earnings per week.

(2) An amount under section 136 or 137 shall be paid to the person who provides the service.

**DIVISION 7—Miscellaneous****Limitations on amount of compensation**

**139. (1)** If compensation under this Part is payable to the surviving spouse of a deceased person in accordance with section 132 or 133 and to one or more prescribed children of the deceased person who was or were dependent on the deceased person in accordance with section 135, the maximum combined amount of compensation payable to the spouse and the child or those children shall not exceed—

- (a) 75 per cent of the earnings of the deceased person at the date of the transport accident, determined in accordance with section 53 or 56, as the case requires, per week; or
- (b) 75 per cent of average weekly earnings per week,

whichever is the lesser.

(2) If compensation under this Part is payable to the surviving spouse of a deceased person in accordance with section 134, the maximum amount of compensation payable to the spouse shall not exceed—

- (a) 50 per cent of the earnings of the deceased person at the date of the transport accident, determined in accordance with section 53 or 56, as the case requires, per week; or
- (b) 50 per cent of average weekly earnings per week,

whichever is the lesser.

(3) If the amount of compensation which would otherwise be payable under this Part to the dependants of a deceased person is reduced in accordance with this section, the GIO shall determine the extent to which the reduction shall be apportioned between those dependants.

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*Transport Accidents Compensation 1987*

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**Set off of benefits provided to injured person before death**

**140.** The benefits provided under this Act to an injured person whose death is caused by or arises out of a transport accident within 3 years after the date of the accident shall not, except as provided by section 127, be set off against any benefits which may be provided under this Act to the dependants of the person.

**Deaths in rapid succession**

**141.** A person who would, but for this section, be entitled to benefits under this Act in respect of the death of a person caused by or arising out of a transport accident shall not be entitled to any such benefits unless the person survives the deceased person for a period of not less than 30 days.

**Termination of payments**

**142.** Compensation payable under this Part to the surviving spouse of a deceased person shall cease to be paid by the GIO to the surviving spouse—

- (a) on the marriage or remarriage of the surviving spouse;
- (b) on the entry into a de facto relationship by the surviving spouse;
- (c) on the death of the surviving spouse;
- (d) in the case of a deceased person who was an earner—on the date on which the deceased person, had he or she not died, would have permanently left the workforce; or
- (e) on the surviving spouse attaining the age at which he or she would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Social Security Act 1947 of the Commonwealth as amended and in force for the time being.

whichever first occurs.

**Lump sum payment on remarriage etc of surviving spouse**

**143. (1)** If the surviving spouse of a deceased person to whom compensation under this Part is being paid marries, remarries or enters into a de facto relationship—

- (a) within 4 years of the date of death of the deceased person; or
- (b) more than 1 year before the youngest prescribed child of whom the surviving spouse has the care and control attains the age of 16 years,

*Transport Accidents Compensation 1987*

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the surviving spouse shall be entitled to a lump sum payment equal to 12 months' instalments of the compensation which the surviving spouse could have expected to receive under this Part had he or she not married, remarried or entered into a de facto relationship.

(2) If the surviving spouse of a deceased person to whom compensation under this Part is being paid marries, remarries or enters into a de facto relationship—

- (a) within the fifth year after the date of death of the deceased person;  
or
- (b) within 1 year before the youngest prescribed child of whom the surviving spouse has the care and control attains the age of 16 years,

the surviving spouse shall be entitled to a lump sum payment equal to the compensation which the surviving spouse could have expected to receive under this Part had he or she not married, remarried or entered into a de facto relationship.

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PART 7

BENEFITS—MISCELLANEOUS MATTERS

DIVISION 1—*General*

**Non-assignability of benefits**

**144.** A benefit to which a person is entitled under this Act may not be assigned by that person or on that person's behalf to another person.

**Effect of pre-accident impairment**

**145.** The amount of a benefit payable under this Act to a person who is incapacitated as the result of a transport accident and who had, before the date of the accident, an impairment which did not substantially affect the earning capacity of the person as at that date shall be reduced to the extent to which the impairment, but for the accident, would or would have been likely to have affected the earning capacity or earning potential of the person after that date.

*Transport Accidents Compensation 1987*

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**Effect of post-accident impairment**

**146.** The amount of a benefit payable under this Act to a person who is incapacitated as the result of a transport accident shall not be reduced and payment of the benefit shall not be terminated by reason of the occurrence of an event, not caused by or arising out of the accident, which causes further impairment or incapacity to the person.

**Effect of overseas residence—injured persons**

**147. (1)** If an injured person who is resident outside Australia at the date of the transport accident leaves Australia or an injured person takes up residence after that date outside Australia—

- (a) an entitlement to compensation for loss of earning capacity payable to the person in accordance with an assessment under section 87 of permanent incapacity; or
- (b) an entitlement to compensation for a permanent impairment suffered by the person,

shall not be affected thereby, but the person shall cease to be entitled to the provision of any other benefits under this Act.

**(2)** The GIO, in such circumstances as the GIO considers appropriate, is entitled to redeem, in whole or in part, by the payment of a lump sum, any entitlement to compensation referred to in subsection (1) (a).

**Effect of overseas residence—dependants of deceased persons**

**148. (1)** If a dependant of a deceased person is resident at the date of death of the deceased person, or takes up residence after that date, outside Australia—

- (a) the residence of the dependant outside Australia shall not affect the payment to the dependant of any amount under section 125, 126, 132, 134 or 135; and
- (b) the dependant shall not be entitled to the payment or further payment, as the case may require, of any amount under section 133, 136, 137 or 143.

**(2)** The GIO, in such circumstances as the GIO considers appropriate, is entitled to redeem, in whole or in part, by the payment of a lump sum, any entitlement to compensation under section 132 or 135 of any such dependant.

**Effect of overseas residence—exemptions**

**149.** Sections 147 and 148 do not operate to prevent the provision of any benefit under this Act to a person who is an Australian resident and who, because of the terms of employment of the person or the parent or guardian of the person, is compelled to reside outside Australia.

**DIVISION 2—*Indexation of amounts of benefits*****Interpretation**

**150.** In this Division—

“adjustable amount” means each of the amounts of money specified in the definition of “average weekly earnings” in section 3 (1), section 49, 82, 100, 102, 105, 126 or 135 (without regard to any adjustment under this Division);

“adjustable date” means 1 April or 1 October in each year;

“base index number” means 220;

“latest index number”, in relation to an adjustable date, means—

(a) where—

(i) the adjustment date is 1 April in any year—the index number, relating to adult males in New South Wales, for the preceding month of December; or

(ii) the adjustment date is 1 October in any year—the index number, relating to adult males in New South Wales, for the preceding month of June,

shown in the first preliminary table to the award rates of pay indexes, Australia, being the table entitled “Wage and salary earners: indexes of weekly award rates of pay States and Territories”, published by the Australian Statistician; or

(b) where there is, under paragraph (a), no latest index number in relation to an adjustment date—such number as may be prescribed by the regulations in respect of that date.

*Transport Accidents Compensation 1987*

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**Adjustment of amounts of benefits according to award rate of pay index**

**151. (1)** On and from each adjustment date and until immediately before the next following adjustment date, a reference in this Act to an adjustable amount shall be construed as a reference to an amount calculated as follows:

$$\text{Adjustable amount} \times \frac{\text{latest index number}}{\text{base index number}}$$

**(2)** On and from each adjustment date and until immediately before the next adjustment date, any periodic payment of compensation under Part 5 or 6 shall be adjusted by the same percentage as the adjustable amount referred to in the definition of "average weekly earnings" in section 3 (1) is adjusted during the period between those dates.

**Rounding off**

**152. (1)** If a reference to an adjustable amount (being \$120,000 or \$80,000) as construed in accordance with section 151 would, but for this section—

- (a) be expressed as including an amount in cents—that amount in cents shall be disregarded; or
- (b) be expressed as including a whole number of dollars that is not divisible by 50 without remainder—that number of dollars shall be reckoned as the next higher whole number of dollars that is divisible by 50 without remainder.

**(2)** If a reference to any other adjustable amount as construed in accordance with section 151 would, but for this section, be expressed as including an amount in cents that is not a whole number of cents divisible by 10 without remainder, that amount—

- (a) shall be disregarded if it is less than 5 cents;
- (b) shall, if it is a whole number of cents divisible by 5 without remainder, be reckoned as the next higher whole number of cents that is divisible by 10 without remainder; or
- (c) shall, if it is not referred to in paragraph (a) or (b), be reckoned as the nearest whole number of cents that is divisible by 10 without remainder.

**(3)** Subsection (2) applies to the rounding off of a periodic payment of compensation under Part 5 or 6 which is adjusted under section 151 (2).



**Publication of adjusted amounts**

**153.** On or before each adjustment date, the GIO shall, by notice published in the Gazette, declare that amount at which each adjustable amount is to be construed in accordance with this Division on and from that adjustment date until immediately before the next following adjustment date.

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**PART 8****MAKING AND ASSESSMENT OF CLAIMS FOR BENEFITS AND  
ADMINISTRATION OF PROVISION OF BENEFITS****DIVISION 1—General****Interpretation**

**154.** In this Part, a reference to a claim for benefits under this Act includes, in relation to a person who is in receipt of benefits under this Act, a reference to a claim for an increase in or variation of those benefits or for additional benefits under this Act.

**DIVISION 2—Making of claims****Making of claims—generally**

**155. (1)** A person who is entitled to or who is in receipt of benefits under this Act, the GIO on behalf of such a person, or, subject to the regulations, any other person on behalf of such a person, may make a claim for benefits under this Act.

**(2)** It shall not be necessary in a claim for benefits under this Act to quantify the amount of benefits sought.

**(3)** If a claim is made by or on behalf of a person who is in receipt of benefits under this Act for an increase in or variation of those benefits or for additional benefits under this Act, the claim shall not affect the payment or provision of the benefits received by the person before the making of the claim.

**(4)** The regulations may make provision for or with respect to the form and manner in which claims may be made.

*Transport Accidents Compensation 1987*

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**Time for making of claims**

**156. (1)** Except as provided by subsections (3) and (4), a claim for benefits under this Act shall be made within 3 years after—

(a) except as provided by paragraphs (b) and (c)—

(i) the date of the transport accident to which the claim relates; or

(ii) if the onset of symptoms relating to the bodily injury suffered by the injured person as a result of the accident is first observed by a medical practitioner within 3 years after the date of the accident, the date of the first such observation of the symptoms;

(b) if the claim is made in respect of the death of a person, the date of death; or

(c) if the claimant was a minor at the date of the transport accident, the date on which the claimant attains the age of 18 years.

**(2)** If a claim is made more than 6 months after the date determined under subsection (1), the claimant shall provide a full and satisfactory explanation for the delay in making the claim.

**(3)** A claim may, with the leave of the District Court, be made at any time after the expiration of 3 years after the date determined under subsection (1) if the claimant has a reasonable excuse for failing to make the claim within the period referred to in that subsection.

**(4)** If, within the period determined under subsection (1) or (3), a claim has been made for benefits under this Act by or on behalf of a person as the result of a transport accident, a claim by or on behalf of the person for an increase in or reduction or variation of those benefits or for any other benefits under this Act to which the person may be entitled as a result of the accident may be made at any time.

**(5)** The Limitation Act 1969 does not apply to or in respect of a claim for benefits under this Act.

**Advice and assistance to claimants**

**157.** The GIO shall advise and assist persons in the preparation and making of claims for benefits under this Act and shall endeavour to ensure that those persons are informed of and receive their full entitlement to all benefits under this Act to which they may from time to time be entitled.

*Transport Accidents Compensation 1987*

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**DIVISION 3—Assessment (including medical assessment) of claims****Investigation and assessment of claims**

**158. (1)** On receipt of a claim for benefits under this Act, the GIO—

(a) shall, so far as is practicable, arrange for the investigation and assessment of the claim by a sole assessing officer who, subject to the regulations, may do all such things as are necessary to investigate, assess and determine the claim; and

(b) shall ensure that the claim is not dealt with in an adversary manner.

(2) Without limiting the generality of subsection (1) (a), the GIO or an assessing officer referred to in that paragraph may require the claimant to furnish such information, in addition to the information furnished in or with the claim, or to produce such books, documents or records as the GIO or the assessing officer, as the case may, specifies, or to do both.

**Employment information**

**159. (1)** The GIO or an assessing officer referred to in section 158 (1) (a) may, by notice in writing, require the employer, or a person who at any time has been the employer, of a claimant to furnish, within such period after the date of the notice as is specified in the notice, being a period of not less than 7 days, such information relating to the employment of the claimant with the employer as is specified in the notice, or to produce such books, documents or records relating to the claimant as are so specified, or to do both.

(2) A person who receives a notice under subsection (1) shall comply with the notice within the period specified in the notice.

**Medical examination**

**160. (1)** The GIO may require a person by or on whose behalf a claim for benefits under this Act has been made to undergo a medical examination by one or more medical practitioners nominated by the GIO.

(2) The GIO may not require a person referred to in subsection (1) to undergo a medical examination that is unreasonable, unnecessarily repetitious or dangerous.

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*Transport Accidents Compensation 1987*

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(3) If the GIO, as a consequence or partly as a consequence of a medical examination under this section of a person, is of the opinion that the person is not entitled to the benefits under this Act which have been claimed by or on behalf of the person or is entitled to lesser benefits than those which have been claimed or that the benefits received by a person should be reduced or terminated, the GIO shall furnish to the person a copy of the report of the medical examination.

(4) If an assessment is made by a medical practitioner of the degree of permanent impairment suffered by a person, the person shall furnish a copy of the medical practitioner's report to the GIO.

**Effect of failure etc to undergo medical examination**

**161.** If a person fails or refuses, without reasonable excuse, to comply with a request to undergo an examination in accordance with section 160—

- (a) the person's entitlement (if any) to benefits under this Act is suspended until the examination takes place; and
- (b) the GIO is not liable to provide any such benefits to the person while the right is suspended.

*DIVISION 4—Determination and payment of claims*

**Determination of claims**

**162.** The GIO, in relation to a claim, shall determine—

- (a) the extent (if any) of entitlement to benefits under this Act; or
- (b) in the case of a claim for a variation in the benefits under this Act received by a person, whether the variation should be allowed, unconditionally or subject to conditions, or refused.

**Manner of payment of benefits**

**163. (1)** Benefits payable under this Act shall be paid—

- (a) except where the payment is of compensation for loss of earning capacity or for household services or attendant care, by cheque; or
- (b) in any case, by means of direct credit to an account maintained with a prescribed financial institution by the person to whom the benefits are payable (either alone or jointly or in common with another person).

*Transport Accidents Compensation 1987*

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(2) Payment by cheque shall be made by means of a letter containing the cheque sent by post to the address of the person to whom the benefits are payable.

(3) A payment of benefits by post shall be deemed to have been made when the letter is posted, but the liability to make the payment is not satisfied until the person to whom the benefits are payable receives the payment.

**Deduction of income tax**

**164.** The GIO shall deduct amounts by way of income tax from benefits payable under this Act and forward any amounts so deducted to the Commissioner of Taxation.

**Withholding of certain payments**

**165. (1)** If a charge has been laid, or it appears to the GIO that a charge may be laid, against a claimant for an offence referred to in section 35, the GIO may withhold the provision of benefits under this Act—

- (a) if the charge is laid within the limitation period after the date of the transport accident—until the charge is heard or withdrawn; or
- (b) if no such charge is laid within the limitation period after the date of the transport accident—until the expiration of that period.

(2) In subsection (1), “the limitation period after the date of the transport accident” means—

- (a) the period after the accident within which the charge could be laid;  
or
- (b) the period of 2 years after the accident,

whichever is the shorter.

**Payment of periodic compensation**

**166.** If a person is entitled to periodic payments of compensation under this Act, the GIO shall make those payments to the person—

- (a) unless the GIO has made a determination under paragraph (b), fortnightly in arrears; or
- (b) at such periodic intervals as may be determined by the GIO in any particular case or class of cases.

*Transport Accidents Compensation 1987*

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**Payment of lump sums**

**167. (1)** If the GIO determines that a person is entitled to the payment of a lump sum under this Act, the lump sum shall be paid to the person within 30 days after the date of the determination or the date of any assessment required to be made as a consequence of the determination, whichever is the later.

**(2)** If a lump sum referred to in subsection (1) is not paid within the period so referred to, interest shall, on and from the expiration of that period until the date of payment, be payable on the lump sum at such rate as may be prescribed for the purposes of this subsection.

**Payment or provision of other benefits**

**168.** Subject to sections 166 and 167, if the GIO determines that a person is entitled to benefits under this Act or to an increase in or variation of those benefits or to additional benefits under this Act, those benefits or that increase or variation shall, as soon as practicable after the determination, be paid or provided to or varied in respect of the person by or on whose behalf the claim was made in accordance with the determination.

**Payment of benefits in respect of minors etc.**

**169.** If a person to whom a benefit under section 103 or 126 is to be paid is, at the time at which the payment is to be made, a minor or other person lacking legal capacity, the payment shall be made to another person as trustee for that person (until, in the case of a minor, the minor attains the age of 18 years) and may, at the sole discretion of the trustee, be applied to the maintenance, education or advancement in life of that person.

**Effect of failure or refusal to make determination**

**170.** If the GIO has failed or refused to determine—

- (a) the entitlement of a claimant to benefits under this Act; or
- (b) in the case of a claim for a variation in benefits under this Act, whether the variation should be allowed, unconditionally or subject to conditions, or refused,

within such period after the date on which the claim was made as is prescribed for the purposes of this section, the GIO shall—

*Transport Accidents Compensation 1987*

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- (c) for the purposes of section 162, be deemed to have determined, as at the expiration of that period, that the claimant is not entitled to any benefits under this Act or that the variation be refused, as the case requires; and
- (d) for the purposes of section 185, be deemed to have given notification of the determination to the claimant on the expiration of that period.

**Notice of determinations**

**171. (1)** The GIO shall give notice of a determination under section 162 to the claimant in respect of whose claim the determination was made within 14 days after the date of the determination.

**(2)** If a claim has been allowed in part or has not been allowed or a claim for a variation has not been approved in the terms sought by the claimant, the GIO shall include in the notice given under subsection (1) of a determination—

- (a) a statement setting out its findings on material questions of fact;
- (b) a summary of the evidence on which those findings were based; and
- (c) the reasons for the determination.

**Interim determinations**

**172. (1)** The GIO may make an interim determination in respect of a claim for benefits under this Act and may pay or provide those benefits to the person by or on whose behalf the claim was made in accordance with the interim determination.

**(2)** If the amount of benefits paid to a person pursuant to an interim determination is greater than or less than the amount of those benefits payable in accordance with a determination under section 162, the GIO shall make such adjustments as are necessary to give effect to its determination or shall take such steps as may be necessary to recover the amount of any overpayment, as the case may require.

**(3)** Nothing in subsection (2) requires the GIO to take steps to recover the amount of any overpayment referred to in that subsection if the person to whom the amount has been paid—

- (a) has acted in good faith;
- (b) has complied with all such reasonable requirements as may have been made of the person by the GIO; and

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*Transport Accidents Compensation 1987*

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- (c) would suffer hardship if he or she were required to repay that amount.

**DIVISION 5—Miscellaneous****Claims manual**

173. The GIO shall prepare and publish a detailed claims manual for use by its staff and by members of the public.

**False application**

174. A person shall not make a claim for benefits under this Act knowing that it is false in any material particular.

**Periodic review of benefits**

175. (1) The GIO shall, in relation to each person who is in receipt of benefits under this Act, review, for the purpose of ensuring that the person receives the full extent of the person's entitlement to benefits under this Act, at such intervals as may be determined by the GIO, all matters relating to the continuation, increase, reduction or variation of those benefits and the extent of the entitlement to and provision to the person of any other benefits under this Act.

(2) In the exercise of its functions under subsection (1), the GIO shall have and may exercise in relation to a person who is in receipt of benefits under this Act the same functions as are conferred on the GIO in relation to a person by or on whose behalf a claim for benefits under this Act is made.

(3) If—

- (a) in the exercise of its functions under subsection (1) the GIO determines that a person has been paid compensation in excess of that to which the person is entitled; and
- (b) the person is entitled to further payments of compensation after the date of the determination,

the GIO may make such adjustments to those further payments as may be necessary to recover the amount of the excess compensation and as will cause the person to suffer as little hardship as possible in the circumstances of the case.



*Transport Accidents Compensation 1987*

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**Redemptions**

**176. (1)** The GIO shall not be entitled to redeem, wholly or in part, by the payment of a lump sum, any liability to make periodic payments in respect of benefits under this Act, except in accordance with this section.

**(2)** If the GIO is of the opinion that the amount of the periodic payments it is liable to make to a person in respect of benefits under this Act is so small as to inconvenience unnecessarily or burden the due administration of the Fund, the GIO may, with the consent of the person, redeem, by payment of a lump sum, its liability to make those periodic payments.

**(3)** On the application of a person who has been assessed, under section 87, to have a permanent loss of earning capacity, the GIO, if it is satisfied that the applicant would suffer hardship if it were not to do so, may redeem, by payment of a lump sum, its liability to make periodic payments of compensation in respect of the loss so assessed.

**(4)** If—

- (a)** a person has been paid a lump sum under subsection (2) or (3) in respect of compensation for loss of earning capacity; and
- (b)** the person's capacity for work is, after the date of the payment, significantly reduced,

the person shall be entitled to make an application in accordance with this Act for payment of compensation for loss of earning capacity in respect of the period during which the person's capacity for work is significantly reduced.

**(5)** The GIO, in determining an application from a person referred to in subsection (4), shall deduct from any compensation to be paid to the person an amount or amounts which make appropriate allowance in respect of the lump sum paid to the person.

**(6)** Nothing in this section affects section 147 (2) or section 148 (2).

**Notification of change in circumstances**

**177. (1)** A person who is in receipt of benefits under this Act shall, as soon as practicable after the occurrence of any change in the person's circumstances which affects the amount, nature or extent of the benefits under this Act to which the person is entitled or otherwise affects the person's entitlement to benefits under this Act, notify the GIO of the change.

*Transport Accidents Compensation 1987*

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(2) If a person to whom subsection (1) applies fails to notify the GIO as referred to in that subsection, the GIO may, by notice in writing given to the person, call upon the person to show cause, within 7 days after the date of the notice, why the payment or provision of benefits under this Act should not be suspended or terminated in whole or in part.

(3) If a person to whom a notice is given under subsection (2) fails to show cause as referred to in that subsection, the GIO may suspend or terminate the payment or provision of benefits under this Act to the person in whole or in part.

**Termination of benefits**

**178.** If a person who is in receipt of benefits under this Act ceases to be entitled to those benefits, the GIO shall thereupon terminate the provision of those benefits to the person.

**Overpayments**

**179. (1)** If, by reason of anything done or omitted to be done by a person by or on whose behalf a claim for benefits under this Act has been made, the GIO pays to the person an amount which exceeds the amount due to the person, or that is an amount the GIO is not liable to pay, the person is liable to refund that amount to the GIO.

(2) The GIO may recover any amount a person is liable to refund to it as a debt due to the GIO.

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**PART 9****MEDICAL REVIEW PANELS****Establishment of Medical Review Panels**

**180. (1)** There shall be established such number of Medical Review Panels as are necessary for the purposes of this Act.

(2) A Medical Review Panel shall be established in respect of any particular matter, or class of matters, by 2 or 3 medical practitioners appointed by the Secretary of the Department of Health or by such person as may be prescribed, one of whom shall be appointed as chairperson.

(3) Subject to the regulations, a medical practitioner is not qualified to be appointed as a member of a Medical Review Panel unless the medical practitioner has, in the opinion of the Secretary of the Department of Health or by such person as may be prescribed, qualifications and experience relevant to the matters to be determined by the Medical Review Panel.

(4) The regulations may make provision with respect to the qualifications of medical practitioners for appointment to a Medical Review Panel.

#### **Remuneration of members**

181. (1) The regulations may make provision with respect to the remuneration and expenses payable to members of Medical Review Panels.

(2) The remuneration and expenses of members of Medical Review Panels shall, subject to the regulations, be paid out of the Fund.

#### **Functions of Medical Review Panels**

182. A Medical Review Panel shall have and may exercise the functions conferred or imposed on it by or under this Act.

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## **PART 10**

### **APPEALS**

#### **DIVISION 1—General**

#### **Interpretation**

183. In this Part—

“appeal” means an appeal under section 184;

“District Court” means the District Court of New South Wales;

“medical assessment”, in relation to a person, means an assessment as to—

- (a) the person’s medical condition;
- (b) the person’s medical fitness for employment; or
- (c) the person’s degree of permanent impairment.

*Transport Accidents Compensation 1987*

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**Appeals**

**184. (1)** A person who is aggrieved by a determination of the GIO, or a failure or refusal of the GIO to make such a determination, which affects the amount, nature or extent of the benefits under this Act to which the person is entitled or otherwise affects the person's entitlement to benefits under this Act, may appeal in accordance with this Part.

(2) An appeal, except in so far as it relates to medical assessment, shall be made to the District Court.

(3) An appeal, in so far as it relates to medical assessment, shall be made to a Medical Review Panel.

**Time for making appeals**

**185. (1)** Except as provided by subsection (2), an appeal against a determination of the GIO shall be made within the period of 60 days after the date on which notification of the determination is given to the person aggrieved by the determination.

(2) Subject to subsection (3), an appeal may, with the leave of the District Court, be made at any time after the expiration of the period referred to in subsection (1), if the Court is of the opinion that there are sufficient grounds for allowing the appeal to be so made.

(3) If the GIO fails to give notification of a determination of the GIO to a person affected by the determination, the person may appeal against the determination at any time.

*DIVISION 2—Appeals—other than appeals relating to medical assessment***Making of appeal**

**186. (1)** An appeal which may be made to the District Court shall be made in accordance with the rules of the District Court.

(2) The notice of appeal shall specify the grounds of the appeal.

(3) The District Court may fix a date for the hearing of the appeal but shall not proceed with the appeal until the expiration of 28 days after service of a copy of the notice of appeal on the GIO.

**Reconsideration by GIO of its determination**

187. (1) The GIO shall, within 28 days after service of a copy of a notice of appeal on it, reconsider the determination the subject of the appeal or, in the case of a failure or refusal to make a determination, consider whether a determination should be made.

(2) For the purposes of subsection (1), the GIO may, by notice to the appellant, require the appellant to give further and better particulars of the grounds of the appeal.

(3) If an appellant fails, without reasonable excuse, to give the further and better particulars requested by the GIO or fails to give them within a reasonable time, the District Court may take the failure into account when making an order for costs in respect of the proceedings.

(4) If, after reconsidering a determination or considering whether a determination should be made, as the case requires, the GIO decides that the determination should be varied or revoked or that a determination should be made, it may vary, revoke or make the determination accordingly.

(5) The GIO shall give notice in writing to the appellant of a decision under subsection (4).

**Hearing of appeal**

188. (1) Unless an appellant withdraws an appeal, the District Court may proceed to hear it after the expiration of the period of 28 days after a copy of the notice of appeal was served on the GIO.

(2) For the purpose of hearing and disposing of an appeal, the District Court shall have all the functions and discretions which the GIO had in respect of the matter the subject of the appeal.

(3) An appeal shall be by way of a new hearing, but fresh evidence or evidence in addition to, or in substitution for, the evidence given on the making of the determination the subject of the appeal shall not, except with the leave of the District Court, be given on the appeal.

**Determination of appeals**

189. (1) The District Court—

- (a) if it finds that the GIO has failed or refused to make, within the time prescribed for the purposes of section 170, a determination under section 162 with respect to an appellant's claim—may determine an appeal by remitting any matter to the GIO for determination; or

*Transport Accidents Compensation 1987*

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- (b) may in any case determine an appeal by making any determination the GIO might have made under section 162 in respect of the appellant's claim for benefits under this Act that was the subject of the appeal.

(2) The District Court may, in determining an appeal in the manner provided by subsection (1) (a)—

- (a) give such directions, if any, as it thinks fit to the GIO; or
- (b) if it thinks fit, make any determination which the GIO might have made under section 172,

or both.

**Effect of determination**

**190.** A determination of the District Court, being a determination which the GIO might have made under Part 8, shall (except for the purposes of section 184) operate as a determination made under that Part by the GIO and shall be given effect to accordingly.

**Orders as to costs**

**191. (1)** If, on the determination of an appeal, the District Court makes an order as to costs and those costs are taxed, they shall not be taxed on a scale higher than the highest scale applicable to an action in the District Court in which the subject-matter of the action does not exceed the prescribed amount.

**(2)** If, on an appeal, the District Court orders or determines the provision of benefits under this Act to the appellant of an amount or to an extent which is not greater than that determined by the GIO, the District Court shall not make an order for costs in favour of the appellant.

**(3)** In subsection (1), the "prescribed amount" means the amount prescribed for the purposes of that subsection or, if an amount is not prescribed, the amount of \$8,000.

**Functions etc. conferred without derogation from other functions**

**192.** The functions and discretions conferred on the District Court by this Part are in addition to and not in derogation from any other functions and discretions of the District Court.

**Appeals on questions of law**

**193.** A party to an appeal may, subject to and in accordance with the rules of the Supreme Court, appeal to the Supreme Court against an order or determination of the District Court on a question of law.

**DIVISION 3—*Appeals relating to medical assessment*****Making of appeal**

**194.** An appeal which may be made to a Medical Review Panel shall be made in accordance with the regulations.

**Hearing of appeal**

**195. (1)** The hearing of an appeal by a Medical Review Panel shall be conducted with as little formality and technicality, and with as much expedition, as fairness to the parties to the appeal, the requirements of this Act and the regulations and as the proper consideration of the appeal permit.

**(2)** In determining an appeal, a Medical Review Panel is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and as the proper consideration of the appeal permits.

**(3)** Subject to this Part and the regulations, the procedure for the conduct and hearing of an appeal shall be as determined by the Medical Review Panel.

**Medical certificates**

**196.** Copies of all medical certificates obtained by a party to an appeal and which are relevant to the appeal shall be provided by the party to the Medical Review Panel before the hearing of the appeal.

**Medical examination**

**197. (1)** A Medical Review Panel may require an appellant to submit himself or herself for medical examination by the Panel or by a medical practitioner or medical practitioners nominated by the Panel.

**(2)** If the appeal relates to the appellant's degree of permanent impairment, the Medical Review Panel may require the appellant to submit himself or herself for medical examination in order that the degree of permanent impairment may be assessed in accordance with the basis prescribed for the purpose of section 106.

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*Transport Accidents Compensation 1987*

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(3) If an appellant, on being required to do so, fails or refuses to submit himself or herself for medical examination or in any way obstructs the examination, the hearing of the appeal shall be adjourned until the examination has taken place.

**Rights of appearance and representation**

198. A person having any matter before a Medical Review Panel is entitled to appear before the Panel but is not entitled to be represented by a barrister or a solicitor.

**Chairperson and votes of members**

199. At an appeal before a Medical Review Panel—

- (a) the person appointed as chairperson of the Panel shall preside;
- (b) questions arising for determination shall be determined by a majority of the votes of the members of the Panel present and voting; and
- (c) the chairperson of the Panel shall have, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

**Determination of appeal**

200. The determination of an appeal by a Medical Review Panel, in so far as it relates to medical assessment, is final and any decision, proceeding, step or other matter involved in the giving or making of the determination—

- (a) shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, quashed or called in question by any court or tribunal; and
- (b) shall not be made the subject of any proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.

**Record of determination**

201. A determination of medical assessment by a Medical Review Panel shall be recorded in the form of a certificate signed by the chairperson of the Panel and a copy of the certificate shall be given to each party to the appeal.



**Costs**

**202.** A Medical Review Panel has no power to make an order as to costs.

**Regulations with respect to Medical Review Panels**

**203.** The regulations may make provision for or with respect to—

- (a) the making of appeals to Medical Review Panels;
  - (b) the conduct and hearing of appeals by Medical Review Panels;
  - (c) the attendance and re-imbursement of witnesses before Medical Review Panels;
  - (d) the recording of proceedings before and of determinations of Medical Review Panels; and
  - (e) the provision of staff and equipment for Medical Review Panels.
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**PART 11****TRANSCOVER REVIEW COMMITTEE****Establishment of the Review Committee**

**204. (1)** There is established by this section a committee, to be known as the “TransCover Review Committee”, which shall consist of persons appointed by the Minister.

**(2)** Schedule 2 has effect with respect to the constitution and procedure of the Review Committee.

**Functions and powers of the Review Committee**

**205. (1)** The function of the Review Committee shall be to advise the Minister concerning any matter relating to transport accident compensation.

**(2)** The Review Committee may investigate, and make recommendations to the Minister concerning—

- (a) the operation of this Act and any other relevant legislation;
- (b) the general efficiency of the GIO in dealing with claims made under this Act by injured persons and others and with entitlements to benefits under this Act;

*Transport Accidents Compensation 1987*

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- (c) the content, manner of formulation and execution of the policy of the GIO with respect to—
  - (i) the assessment and payment of claims;
  - (ii) the periodic or other review of the entitlements of claimants, or the benefits afforded to persons, under this Act; or
  - (iii) administrative practices or staffing matters or any other matters; and
- (d) the investment policies and performance of the GIO.

(3) It shall be the duty of the GIO and the officers and employees of the GIO to co-operate with, and to provide every reasonable assistance to, the Review Committee in the exercise of the Committee's functions and, without limiting the generality of the foregoing, to provide such information, and afford such access to claims records or other documents, as the Committee or any member of the Committee may in that behalf reasonably require.

(4) Any advice or recommendation of the Review Committee under this section shall be reduced to writing and may be tendered to the Minister at any time.

**Annual report of the Review Committee**

**206. (1)** The Review Committee shall report as soon as practicable after the end of each financial year to the Minister.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receipt of the report.

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**PART 12****MISCELLANEOUS****Report of transport accident by owner and driver etc.**

**207. (1)** The owner of a motor vehicle involved in a transport accident which has resulted in the death of or bodily injury to a person shall—

- (a) if the owner was the driver of the motor vehicle at the time of the accident—as soon as practicable after the accident; or

*Transport Accidents Compensation 1987*

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- (b) if the owner was not the driver of the motor vehicle at that time—  
as soon as practicable after the owner becomes aware of the accident,

give written particulars to the GIO of the date, nature and circumstances of the accident.

(2) The driver (not being the owner) of a motor vehicle involved in a transport accident which has resulted in the death of or bodily injury to a person shall, as soon as practicable after the accident, give written particulars to the GIO and the owner of the motor vehicle of the date, nature and circumstances of the accident.

(3) The owner or driver, or both of them, shall give such further information, in addition to the particulars referred to in subsection (1) and (2), and do such things, as the GIO may reasonably require, whether or not a claim has been made for benefits under this Act.

(4) Neither the owner or the driver shall, without the written consent of the GIO, make any offer, promise, payment or settlement or any admission of liability in respect of the death or bodily injury.

(5) It is sufficient compliance with any requirement of this section as to the giving of particulars by the owner or the driver if the particulars are given by some other person on the owner's or driver's behalf.

(6) Any particulars given under this section shall not be subject to discovery and shall not be admissible in evidence in any proceedings (whether or not for an offence against this or any other Act) except proceedings for failure to comply with or observe the requirements of this section.

(7) This section shall not apply in any case where—

- (a) the person suffering the death or bodily injury was the owner of the motor vehicle; and  
(b) the motor vehicle was at the time of the occurrence being driven by the owner.

**Provision of interpreters**

**208. (1)** A person who is unable to communicate adequately in English but who is able to communicate adequately in another language shall, in relation to any matter before the GIO or a Medical Review Panel, be entitled to be assisted by a competent interpreter.

*Transport Accidents Compensation 1987*

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(2) The cost of any assistance provided under subsection (1) by an interpreter from an interpreter service approved, for the time being, by the Ethnic Affairs Commission of New South Wales, shall be met by the GIO.

**Driving of certain motor vehicles on public streets etc. prohibited**

**209. (1)** A person shall not use, or cause, permit or suffer any other person to use, a motor vehicle upon a public street, being—

- (a) a motor vehicle in respect of which the amount determined by the Minister by way of contribution to the Fund has not been paid to the Commissioner for Motor Transport; or
- (b) a motor vehicle which is not subject to an agreement in force under section 27.

(2) This section does not apply to motor vehicles referred to in subsection (1) (b) during the period of any exemption from the operation of this section granted in respect of those vehicles by the Minister.

(3) It shall be a sufficient defence in any proceedings for a contravention of subsection (1) if the defendant proves to the satisfaction of the court that at the time the motor vehicle was used upon the public street the defendant had reasonable grounds for believing and did in fact believe that—

- (a) the amount determined by the Minister by way of contribution to the Fund had been paid to the Commissioner for Motor Transport; or
- (b) the motor vehicle was subject to an agreement in force under section 27 or subject to an exemption under subsection (2),

as the case requires.

**Recovery from owner or driver**

**210. (1)** Any amount (whether by way of benefits under this Act or otherwise) paid by the GIO in respect of a motor vehicle in relation to which, at the date of the transport accident, a contribution required to be paid under Division 3 of Part 3 had not been paid may be recovered by the GIO as a debt from the person who, at that date, was the owner of the motor vehicle or, if at the date of the accident some other person was driving the motor vehicle, from the owner and the driver jointly or from either of them severally.

*Transport Accidents Compensation 1987*

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(2) It is a sufficient defence in proceedings under this section against the owner (whether jointly or severally with the driver) if the owner establishes to the satisfaction of the court that, at the time of the transport accident, some other person was driving the motor vehicle without the owner's authority.

(3) It is a sufficient defence in proceedings under this section against the driver (whether jointly or severally with the owner) if the driver establishes to the satisfaction of the court that, at the time of the transport accident—

- (a) the driver was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing and did in fact believe that the driver had that authority; and
- (b) the driver had reasonable grounds for believing and did in fact believe that the requisite contribution had been paid.

**Disclosure of information**

**211.** A person shall not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the GIO) unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act (or any such other Act);
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

**Service of documents on the GIO**

**212. (1)** A document may be served on the GIO by leaving it at, or by sending it by post in a prepaid letter addressed to, the GIO at an address prescribed for the purposes of this section.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the GIO in a manner not provided for by subsection (1).

*Transport Accidents Compensation 1987*

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**Service of documents on other persons**

**213. (1)** If by or under this Act a notice or other document is required to be, or may be, given to or served on a person other than the GIO, that notice or other document may be given to or served on—

(a) an individual—

- (i) by delivering it to the individual personally;
- (ii) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the individual at that place of residence; or

(b) a corporation—

- (i) by delivering it to a person who is or apparently is concerned in the management of the corporation;
- (ii) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the corporation at that registered office.

**(2)** A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be deemed to have been given or served on its being so delivered or left or, if it is sent by post, shall, in the absence of evidence to the contrary, be *prima facie* deemed to have been given or served when it would have been delivered in the ordinary course of post.

**Authentication of certain documents**

**214.** Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the GIO may be sufficiently authenticated without the seal of the GIO if signed by the managing director of the GIO or by any officer or employee of the GIO authorised to do so by the managing director.

**Certificate evidence—prescribed concentration of alcohol**

**215. (1)** A court which has convicted a person of an offence referred to in section 36 (1) or 38 (1) and has made a finding as to the percentage of alcohol in the person's blood at the time of the offence shall, at the request of the GIO, cause a certificate with particulars of its finding to be given to the GIO.

**(2)** For the purposes of this Act—

- (a) a certificate of a court given under subsection (1) is evidence of the finding of the court as to the percentage of alcohol in a person's blood at a particular time; and
- (b) any finding of the court as to the percentage 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 percentage of alcohol in the blood of a person exceeding 0.05 grammes of alcohol in 100 millilitres of blood but otherwise unspecified is conclusive evidence that the percentage was more than 0.05 grammes of alcohol in 100 millilitres of blood and less than 0.1 grammes of alcohol in 100 millilitres of blood.

**Proof of certain matters not required**

**216.** In any legal proceedings, no proof shall be required (until evidence is given to the contrary) of—

- (a) the constitution of the GIO, the Contributions Advisory Committee, a Medical Review Panel or the Review Committee;
- (b) any resolution of the GIO, the Contributions Advisory Committee, a Medical Review Panel or the Review Committee;
- (c) the appointment of, or the holding of office by, any member of the GIO, the Contributions Advisory Committee, a Medical Review Panel or the Review Committee; or
- (d) the presence or nature of a quorum at any meeting of the GIO, the Contributions Advisory Committee, a Medical Review Panel or the Review Committee.

**Offences and penalty**

**217. (1)** A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

*Transport Accidents Compensation 1987*

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(2) Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding \$5,000.

**Proceedings**

218. All proceedings for offences against this Act or the regulations shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

**Offences by corporations**

219. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability of a corporation for an offence committed by the corporation against this Act or the regulations.

**Liability**

220. No proceedings shall lie or be allowed by or in favour of any person against—

- (a) the Crown, the Minister, the GIO, a member of the GIO, a member of the staff of the GIO, a member of a Medical Review Panel, a member of the Contributions Advisory Committee or a member of the Review Committee; or
- (b) any person acting under the direction of the Minister, the GIO, a Medical Review Panel, the Contributions Advisory Committee or the Review Committee,

in the execution or intended execution of this Act in respect of anything done in good faith under and for the purposes of this Act.



**Regulations**

**221. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** A regulation may impose a penalty not exceeding \$5,000.

**(3)** A provision of a regulation may—

- (a)** apply generally or be limited in its application by reference to specified exceptions or factors;
- (b)** apply differently according to different factors of a specified kind; or
- (c)** authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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**SCHEDULE 1**

(Sec. 19)

**PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE  
CONTRIBUTIONS ADVISORY COMMITTEE**

**PART 1****THE MEMBERS OF THE CONTRIBUTIONS ADVISORY COMMITTEE****Interpretation**

1. In this Schedule—

“appointed member” means a member other than the Government Actuary;

“member” means a member of the Contributions Advisory Committee.

**Appointed members**

2. (1) The members of the Contributions Advisory Committee appointed by the Minister shall be—

- (a)** 1 or 2 members of the Institute of Actuaries nominated by that Institute; and
- (b)** 1 or 2 members of the Institute of Chartered Accountants nominated by that Institute.

*Transport Accidents Compensation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE  
CONTRIBUTIONS ADVISORY COMMITTEE—*continued*

(2) For the purposes of subclause (1), the Minister may require a body responsible for nominating a person for appointment as an appointed member to furnish a list of so many nominees as the Minister may specify, from which the Minister may select the nominee or nominees to be appointed.

(3) In default by the nominating body in complying with the requirement, the Minister may appoint such person or persons as the Minister may think fit.

**Age of members**

3. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of a member.

**Chairperson**

4. (1) The Government Actuary shall be the Chairperson of the Contributions Advisory Committee.

(2) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

**Term of office**

5. Subject to this Act, an appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the instrument of the member's appointment, but is eligible (if otherwise qualified) for reappointment.

**Alternative members**

6. (1) The Minister may appoint a person to be an alternative member.

(2) The alternative member for the Government Actuary shall be the Deputy Government Actuary or such other senior member of the office of the Government Actuary as the Government Actuary may nominate.

(3) The alternative members for appointed members shall be appointed by the Minister after consultation with the respective Institutes responsible for nominating those members.

(4) The provisions of this Schedule shall, with any necessary modifications, apply to and in respect of alternative members in the same way as they apply to members.

(5) An alternative member may act in the office of the member for whom he or she is the alternative member during the illness or absence of that member and while so acting, shall have and may exercise all the functions and entitlements of that member and shall be deemed to be that member.

**Remuneration**

7. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the appointed member.

*Transport Accidents Compensation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE  
CONTRIBUTIONS ADVISORY COMMITTEE—*continued***Filling of vacancy in office of appointed member**

8. If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

9. (1) An appointed member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 3 consecutive meetings of the Contributions Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Contributions Advisory Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Contributions Advisory Committee for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) attains the age of 70 years;
- (h) is removed from office by the Minister for reasons appearing to the Minister to be sufficient; or
- (i) ceases to hold the qualifications or office necessary for his or her membership.

(2) The Minister may remove an appointed member from office.

**Liability of members etc.**

10. No matter or thing done by the Contributions Advisory Committee, any member or any person acting under the direction of the Contributions Advisory Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

*Transport Accidents Compensation 1987*

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SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE  
CONTRIBUTIONS ADVISORY COMMITTEE—*continued*

## PART 2

## THE PROCEDURE OF THE CONTRIBUTIONS ADVISORY COMMITTEE

**General procedure**

11. The procedure for the calling of meetings of the Contributions Advisory Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Contributions Advisory Committee.

**Quorum**

12. (1) If there are 2 or 3 appointed members, the quorum for a meeting of the Contributions Advisory Committee is 2 members.

(2) If there are 4 appointed members, the quorum for a meeting of the Contributions Advisory Committee is 3 members.

**Presiding member**

13. (1) The Government Actuary or, in the absence of the Government Actuary, the person appointed as the alternative member for the Government Actuary or, in the absence of both, an appointed member elected for the purpose by the appointed members present at a meeting, shall preside at a meeting of the Contributions Advisory Committee.

(2) The presiding member at any meeting of the Contributions Advisory Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

14. A decision supported by a majority of the votes cast at a meeting of the Contributions Advisory Committee at which a quorum is present shall be the decision of the Contributions Advisory Committee.

**Minutes**

15. The Contributions Advisory Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Contributions Advisory Committee.

**Proof of certain matters not required**

16. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Contributions Advisory Committee;
- (b) any resolution of the Contributions Advisory Committee;
- (c) the appointment of, or the holding of any qualifications or office by, any member of the Contributions Advisory Committee; or
- (d) the presence or nature of a quorum at any meeting of the Contributions Advisory Committee.

*Transport Accidents Compensation 1987*

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE  
CONTRIBUTIONS ADVISORY COMMITTEE—*continued*

**First meeting of the Contributions Advisory Committee**

17. The Minister shall call the first meeting of the Contributions Advisory Committee in such manner as the Minister thinks fit.

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SCHEDULE 2

(Sec. 204 (2))

PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF  
THE REVIEW COMMITTEE

**Members of Review Committee**

1. (1) The Review Committee shall consist of such number of part-time members as shall be determined by the Minister.

(2) The members of the Review Committee shall be appointed by the Minister and shall comprise experts in the field of accident compensation and representatives from groups or organisations with a recognised interest in that field.

**Procedure at meetings of Review Committee**

2. (1) The procedure for the calling of meetings of the Review Committee and for the conduct of business at those meetings shall, subject to this Schedule, be as determined by the Review Committee.

(2) The Minister shall call the first meeting of the Review Committee in such manner as the Minister thinks fit.

(3) One half of the members of the Review Committee for the time being shall constitute a quorum for the purpose of meetings of the Review Committee.

(4) The person acting as Chairperson at any meeting of the Review Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

(5) A decision supported by a majority of the votes cast at a meeting of the Review Committee at which a quorum is present shall be the decision of the Review Committee.

**Chairperson of the Review Committee**

3. (1) Of the members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister, be appointed as Chairperson of the Review Committee.

(2) The Minister may at any time remove a member from the office of Chairperson.

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*Transport Accidents Compensation 1987*

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**SCHEDULE 2—continued****PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF  
THE REVIEW COMMITTEE—continued**

(3) A person who is a member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Minister under subclause (2);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Acting members and acting Chairperson**

4. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

(2) The Minister may, from time to time, appoint a member to act in the office of the Chairperson during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson.

(3) The Minister may remove any person from any office to which the person was appointed under subclause (1) or (2).

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be.

**Remuneration**

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Filling of vacancy in office of Chairperson or member**

6. In the event of the office of the Chairperson or any member becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

7. (1) A member shall be deemed to have vacated office if the member—

- (a) dies;

*Transport Accidents Compensation 1987*

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SCHEDULE 2—*continued*PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF  
THE REVIEW COMMITTEE—*continued*

- (b) absents himself or herself from 4 consecutive meetings of the Review Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
  - (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
  - (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
  - (f) resigns the office by instrument in writing addressed to the Minister; or
  - (g) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member from office.