

Act No. 101

TRANSPORT ACCIDENTS COMPENSATION BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Miscellaneous Acts (Transport Accidents Compensation) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to introduce a new transport accidents compensation scheme to replace the current system of third party common law actions. The new scheme will apply to accidents involving public transport vehicles as well as other motor vehicle accidents. It will apply to transport accidents occurring on or after 1 July 1987.

A person, to be entitled to benefits under the new scheme, is required to prove that the owner or driver of a vehicle is at fault.

The benefits to be provided under the new scheme include—

(a) in the case of an injured person—

- (i) periodic compensation for loss of earnings;
- (ii) payment of hospital and medical and related expenses;
- (iii) compensation by way of lump sum for permanent impairment;
- (iv) provision of rehabilitation services; and
- (v) provision of support services; and

(b) in the case of the dependants of a deceased person—

- (i) payment of funeral expenses;
- (ii) lump sum compensation to be shared between the dependants;
- (iii) periodic compensation for a dependent spouse or child; and

Transport Accidents Compensation 1987

(iv) provision of support services.

The new scheme is to be administered by the funds administration division of the Government Insurance Office of New South Wales.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on 1 July 1987.

Clause 3 provides for the interpretation of the proposed Act. Among the expressions defined in the clause, "average weekly earnings" are determined to be \$430 per week (subject to indexation). "Long-term incapacity" means total or partial incapacity for work 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 transport accident.

Clause 4 specifies the transport accidents to which the proposed Act applies. Generally speaking, they are—

- (a) accidents, wherever occurring, involving vehicles which are, or are required to be, registered in New South Wales;
- (b) accidents involving motor vehicles on public streets in New South Wales;
- (c) accidents involving public transport operated by the Urban Transit Authority or the State Rail Authority; and
- (d) accidents involving other forms of public transport in New South Wales, such as ferries and water taxis (but not including air transport).

Clause 5 deems certain people, such as parliamentarians, judges, members of the police force or the Defence Force and company directors to be "employees" for the purposes of the proposed Act.

Clause 6 specifies those persons who are "earners" for the purposes of the proposed Act.

Clause 7 specifies those persons who are "non-earners" for the purposes of the proposed Act.

Clause 8 is an interpretation provision to indicate the means of applying certain provisions of the proposed Act to persons who, while not in receipt of earnings at the date of a transport accident, are nevertheless classified as earners because of firm arrangements made by them to enter into work or because of their future prospects of employment.

Transport Accidents Compensation 1987

Clause 9 defines "earnings" for the purposes of the proposed Act. In relation to employees, earnings comprise income calculated at the ordinary time rate of pay for the normal number of hours per week and excludes certain allowances and benefits. In relation to self-employed persons, earnings comprise net income derived from personal exertion.

Clause 10 provides that the proposed Act binds the Crown.

PART 2—FUNCTIONS OF THE GIO

Clause 11 confers responsibility for the administration of the scheme for transport accidents compensation embodied in the proposed Act on the GIO, through its insurance funds administration business division.

Clauses 12 and 13 confer a variety of functions of a general nature on the GIO for the purpose of administering the scheme.

Clause 14 provides that the GIO is not personally liable for claims made against it under the proposed Act but shall pay those claims out of the Transport Accidents Compensation Fund.

PART 3—THE TRANSPORT ACCIDENTS COMPENSATION FUND

DIVISION 1—*General*

Clause 15 requires the GIO to establish and administer the Fund.

Clause 16 specifies the amounts which are to be paid into the Fund (mainly contributions in respect of motor vehicles and public transportation).

Clause 17 provides for the payment of amounts out of the Fund (mainly in the provision of the benefits available under the proposed Act).

Clause 18 enables the investment of money in the Fund.

DIVISION 2—*Amounts of contributions*

Clause 19 establishes the Transport Accidents Contributions Advisory Committee, comprising the Government Actuary and not less than 2, nor more than 4, persons appointed by the Minister.

Clause 20 requires the GIO to obtain a recommendation each year from an actuary, to facilitate the determination of the amounts of contributions to be paid in respect of motor vehicles, and to furnish a copy of the recommendation to the Contributions Advisory Committee.

Clause 21 requires the Contributions Advisory Committee, after considering the actuary's report, to make a recommendation to the Minister as to the amounts of contributions.

Clause 22 sets out the matters to which the actuary and the Contributions Advisory Committee are to have regard in making their recommendations.

Transport Accidents Compensation 1987

Clause 23 requires the Minister, before 1 July in each year, to determine the amounts of contributions to be paid in respect of motor vehicles for the year commencing on that day.

DIVISION 3—Payment of contributions

Clause 24 requires a contribution determined by the Minister to be paid at the time of registration or renewal of registration of a motor vehicle and prohibits registration if the contribution is not paid.

Clause 25 requires the Commissioner for Motor Transport to pay to the GIO amounts of contributions collected by the Commissioner on registration.

Clause 26 requires the GIO to enter into an agreement with the Urban Transit Authority and the State Rail Authority for the payment by those authorities of contributions into the Fund.

Clause 27 requires the GIO to enter into an agreement with the Commonwealth for the purpose of obtaining contributions with respect to Commonwealth motor vehicles operated in New South Wales.

Clause 28 requires the GIO to enter into agreements with other operators of public transport for the payment by those operators of contributions into the Fund. Such an operator is prevented from providing public transport if an appropriate agreement is not in force.

Clause 29 requires an agreement under clause 26, 27 or 28 to make provision for the payment to the GIO on a pay-as-you-go basis of the cost of benefits provided under the proposed Act in respect of transport accidents involving the person with whom the agreement is made.

Clause 30 enables the making of regulations requiring the payment of contributions from other persons.

PART 4—ELIGIBILITY FOR BENEFITS

DIVISION 1—General

Clause 31 provides that a person injured in a transport accident who is able to prove fault is entitled to benefits under the proposed Act.

Clause 32 provides that the dependants of a person killed in a transport accident who are able to prove fault are entitled to benefits under the proposed Act.

Clause 33 specifies the classes of persons in relation to whom benefits are payable as a consequence of a transport accident. They are—

- (a) New South Wales residents who are killed or injured in New South Wales;
- (b) non-New South Wales residents who are killed or injured in New South Wales (but not in respect of a motor vehicle which is not registered in New South Wales); and

Transport Accidents Compensation 1987

- (c) New South Wales residents who are killed or injured in Australia (but outside New South Wales) by a New South Wales registered motor vehicle or a form of public transport operated by the Urban Transit Authority or State Rail Authority.

The clause also sets out the requirements for residency.

Clause 34 provides for a total exclusion from benefits under the proposed Act if a report of the transport accident is not made, in the case of a motor vehicle accident, to the police or, in any other case, to the operator of the form of transportation concerned, within 28 days after the date of the accident or 28 days after the date on which a person might reasonably be expected to have been able to make the report. An extension of time of up to 90 days may be permitted by the GIO if sufficient cause is shown.

Clause 35 provides for a total exclusion from benefits under the proposed Act if the deceased person or injured person is convicted, in relation to the transport accident, of murder or manslaughter or culpable or negligent driving where the accident has resulted in the death of a person or any other serious crime of violence. Benefits are also excluded in the case of suicide and self-inflicted injury.

Clause 36 provides for an exclusion from benefits under the proposed Act (other than hospital, medical and associated benefits and rehabilitation benefits) in various circumstances. They are—

- (a) conviction of offences under the Motor Traffic Act 1909, being—
 - (i) section 4E (6)—refuse breath test;
 - (ii) section 4E (7) (a)—refuse breath analysis;
 - (iii) section 4E (7) (b)—alter concentration of alcohol in blood;
 - (iv) section 4F (7)—refusal of car driver to give blood sample at hospital;
 - (v) section 4F (7A)—refusal of passenger or pedestrian to give blood sample at hospital;
 - (vi) section 5AC (1)—refuse assessment for drugs;
 - (vii) section 5AC (2) (a)—refuse to give sample of blood or urine;
 - (viii) section 5AC (2) (b)—alter concentration of drug;
- (b) conviction of offence under section 4E (1G) of the Motor Traffic Act 1909—driving with a prescribed concentration of alcohol of 0.15 or more, unless the alcohol can be shown not to have contributed to the accident;
- (c) conviction, as the driver of or a passenger in a motor vehicle, of—
 - (i) an indictable offence (other than one referred to in clause 35);
 - (ii) stealing or attempting to steal a motor vehicle involved in the accident;
 - (iii) resisting or preventing lawful apprehension or detention of any person involved in the accident; and
- (d) being a person who has never been licensed as a driver or whose licence, at the time of the accident, was suspended or cancelled.

Transport Accidents Compensation 1987

Clause 37 makes it clear that the doctrine of contributory negligence applies in relation to a claim for benefits under the proposed Act.

Clause 38 provides for the reduction of certain benefits (compensation for loss of earning capacity, compensation in respect of a permanent impairment or a benefit payable on the death of a person). The reductions are—

- (a) on conviction of offences under the Motor Traffic Act 1909, being—
 - (i) section 4E (1E)—prescribed concentration of alcohol between 0.05 and 0.08—a reduction of one-third;
 - (ii) section 4E (1D)—learner or provisional driver with prescribed concentration of alcohol between 0.02 and 0.05—a reduction of one-third; and
 - (iii) section 4E (1F)—prescribed concentration of alcohol between 0.08 and 0.15—a reduction of two-thirds,

unless the alcohol can be shown not to have contributed to the accident;

- (b) on conviction of offences under—
 - (i) section 4E (1L) of the Motor Traffic Act 1909—passenger with prescribed concentration of alcohol of 0.05 or more accompanying learner;
 - (ii) section 5 (2) of the Motor Traffic Act 1909—driving under the influence of alcohol or another drug,

to such extent as is just and equitable, unless the alcohol or other drug can be shown not to have contributed to the accident;

- (c) if the person (not being a minor) was a voluntary passenger in a motor vehicle driven by a person under the influence of alcohol or another drug—to such extent as is just and equitable; and
- (d) if the person (not being a minor) was not wearing a seat belt—by a minimum of 15 per cent.

Clause 39 provides that benefits shall not be payable to persons who are prisoners.

DIVISION 2—Relationship to other benefits

Clause 40 abolishes all other rights to damages or compensation in respect of transport accidents, except damages or compensation under—

- (a) the Workers Compensation Act;
- (b) awards or industrial agreements;
- (c) criminal injuries compensation legislation;
- (d) superannuation schemes and insurance policies.

Clause 41 requires an election to be made where alternative sources of compensation are available under other statutory schemes (other than the Workers Compensation Act).

Transport Accidents Compensation 1987

Clause 42 provides for the forfeiture and assignment to the GIO of rights to alternative sources of compensation under other statutory schemes (other than the Workers Compensation Act) if a claim for benefits is made under the proposed Act.

Clause 43 requires the GIO to indemnify certain persons against liability arising under inter-State laws in respect of transport accidents.

Clause 44 requires a claimant for benefits under the proposed Act to set off the amount of damages or compensation received from an alternative source of compensation under other statutory schemes.

Clause 45 requires sick leave and other leave benefits taken during a period of incapacity for work which has been caused by a transport accident to be set off against any compensation payable under the proposed Act for loss of earning capacity.

Clause 46 lists a number of payments (such as accident insurance payments and superannuation benefits) which are not to affect benefits provided under the proposed Act.

PART 5—BENEFITS—INJURED PERSONS

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

Clause 47 requires the GIO to pay the reasonable cost of hospital, medical and associated services provided to persons who are injured in transport accidents.

Clause 48 is a similar provision with respect to pharmaceutical supplies.

Clause 49 provides that the recipient of benefits under the proposed Division (other than hospital services and ambulance services) is liable to pay the first \$100 of the cost of those benefits.

DIVISION 2—Compensation for loss of earning capacity

Subdivision 1—Entitlement to compensation

Clause 50 provides that an earner who is incapacitated for work as the result of a transport accident is entitled to compensation for loss of earning capacity.

Clause 51 provides that a non-earner who is incapacitated for work as the result of a transport accident is entitled to compensation for loss of earning capacity only after the incapacity becomes long-term incapacity.

Subdivision 2—Assessment of loss of earning capacity—earners

Clause 52 provides that the loss of earning capacity of an employee is the difference between the employee's pre-accident earning capacity and the employee's post-accident earning capacity.

Clause 53 provides that, generally, the pre-accident earning capacity of an employee is the amount which fairly and reasonably represents the employee's weekly earnings at the date of the accident.

Transport Accidents Compensation 1987

Clause 54 provides for the means of determining the pre-accident earning capacity of employees who are seasonal workers or people who have entered into arrangements (contractual or otherwise) for future remuneration.

Clause 55 provides that the loss of earning capacity of a self-employed person is such of the following as is appropriate:

- (a) the difference between the person's pre-accident earning capacity and the person's post-accident earning capacity;
- (b) the cost of replacement services;
- (c) the earnings which the person could have derived if the person had performed his or her pre-accident work as an employee.

For persons who are incapacitated for not more than 13 weeks, the basis set out in paragraph (b) is generally to apply.

Clause 56 provides that, generally, the pre-accident earning capacity of a self-employed person is the amount which fairly and reasonably represents the person's normal weekly earnings at the date of the accident.

Clause 57 provides the means for determining the pre-accident earning capacity of self-employed persons who are seasonal workers or people who have entered into arrangements (contractual or otherwise) for future remuneration.

Clause 58 provides that, generally, the post-accident earning capacity of an earner (an employee or self-employed person) is determined by the earner's actual post-accident earnings.

Clause 59 enables an assumption to be made as to an earner's post-accident earning capacity if the earner is capable of undertaking more remunerative post-accident employment which is reasonably available.

Clause 60 specifies the circumstances in which an amount determined under proposed section 59 may be used in place of an amount determined under proposed section 58 and the procedure to be followed before the proposed section 59 amount may be applied.

Clause 61 enables the application of the appropriate provisions to determine the loss of earning capacity of a person who has derived pre-accident earnings as an employee and as a self-employed person.

Subdivision 3—Long-term incapacity—earners

Clause 62 requires the GIO to make a determination or redetermination of an earner's loss of earning capacity where the earner's incapacity for work becomes long-term incapacity. Minimum amounts of compensation, calculated as percentages of average weekly earnings, are prescribed according to the earner's age at that time.

Clause 63 enables an earner who has sustained long-term incapacity and who has a continuing disability as a result of a transport accident to apply to the GIO for an assessment of compensation on the basis of potential for advancement.

Clause 64 prevents the making of an assessment unless the amount of compensation is likely to be significantly greater than that otherwise assessed for loss of earning capacity.

Transport Accidents Compensation 1987

Clause 65 specifies the matters to be considered in making an assessment of compensation on the basis of potential for advancement.

Clause 66 requires an assessment to be made of the likely earnings in each year of an earner in respect of whom an assessment of compensation on the basis of potential for advancement is made.

Clause 67 provides for an assessment of compensation on the basis of an earner's potential for advancement to be substituted for any other assessment of the earner's loss of earning capacity.

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

Clause 68 requires the GIO to make a determination of a non-earner's loss of earning capacity where the non-earner's incapacity for work becomes long-term incapacity. The loss of earning capacity is the difference between the non-earner's notional earning capacity at the date in relation to which the assessment is made and the non-earner's earning capacity after that date and during the period of incapacity.

Clause 69 provides that the notional earning capacity of a non-earner is calculated as a percentage of average weekly earnings according to the non-earner's age.

Clause 70 provides that, generally, the earning capacity of a non-earner during incapacity is the actual earnings, if any, of the non-earner.

Clause 71 enables an assumption to be made as to a non-earner's earning capacity if the non-earner is capable of undertaking more remunerative employment which is reasonably available.

Clause 72 specifies the circumstances in which an amount determined under proposed section 71 may be used in place of an amount determined under proposed section 70 and the procedure to be followed before the proposed section 71 amount can be applied.

Clause 73 requires the GIO, in relation to a non-earner whose incapacity is long-term incapacity and who is under 21 years, to make annual determinations of the non-earner's loss of earning capacity until the non-earner attains the age of 21 years.

Clause 74 enables a non-earner who has sustained long-term incapacity and who has a continuing disability as a result of a transport accident to apply to the GIO for an assessment of compensation on the basis of potential for advancement.

Clause 75 prevents the making of an assessment unless the amount of compensation is likely to be significantly greater than that otherwise assessed for loss of earning capacity.

Clause 76 specifies the matters to be considered in making an assessment of compensation on the basis of potential for advancement.

Clause 77 requires an assessment to be made of the likely earnings in each year of a non-earner in respect of whom an assessment of compensation on the basis of potential for advancement is made.

Clause 78 provides for an assessment of compensation on the basis of a non-earner's potential for advancement to be substituted for any other assessment of the non-earner's loss of earning capacity.

Transport Accidents Compensation 1987

Subdivision 5—Amount and payment of compensation

Clause 79 provides, subject to clauses 80 and 81, for compensation to be paid of an amount equal to 80 per cent of a person's loss of earning capacity.

Clause 80 provides for compensation to be paid of an amount equal to 80 per cent of the cost of replacement services for an incapacitated, self-employed person where compensation has been assessed on the basis of the cost of replacement services.

Clause 81 provides for compensation to be paid of an amount equal to 80 per cent of the earnings as an employee which could be derived by a self-employed person where compensation has been assessed on that basis.

Clause 82 provides that, in any event, compensation for loss of earning capacity shall not exceed \$500 per week (subject to indexation) less the injured person's earning capacity after the date of the transport accident and during the period of incapacity.

Clause 83 provides that compensation for loss of earning capacity shall not be paid for the first 5 working days in any period of incapacity or, in the case of an earner who was not engaged in employment during the 8 weeks preceding the date of the transport accident, for the first 4 weeks in any period of incapacity.

Clause 84 prevents the payment of compensation for loss of earning capacity to persons who are under 16 years.

Clause 85 makes provision for the payment of compensation for loss of earning capacity in respect of people who are permanently unconscious or otherwise permanently unaware of their injuries.

Clause 86 specifies the circumstances in which payments of compensation for loss of earning capacity shall cease.

Subdivision 6—Permanent incapacity

Clause 87 specifies the circumstances in which the GIO may make an assessment of a person's permanent loss of earning capacity and the circumstances in which any such assessment may be set aside and a further assessment made.

Subdivision 7—Miscellaneous

Clause 88 specifies the circumstances in which the GIO may postpone assessment of a claim for compensation for loss of earning capacity.

Clause 89 enables compensation for loss of earning capacity to continue to be paid, in limited circumstances, if the person to whom the compensation is paid commences a business undertaking.

DIVISION 3—Rehabilitation

Clause 90 requires the GIO to provide for the rehabilitation of injured persons.

Clause 91 requires rehabilitation services to be provided promptly.

Transport Accidents Compensation 1987

Clause 92 confers general functions on the GIO with respect to the provision of rehabilitation, including the employment of rehabilitation counsellors, the distribution of information and the training of persons.

Clause 93 requires the GIO to provide prosthetic devices, crutches, wheelchairs and other aids to injured persons.

Clause 94 requires the GIO, where practicable, to provide vocational training or instruction to injured persons and to the dependent spouses of deceased persons.

DIVISION 4—Support services and independent living

Clause 95 requires the GIO to ensure the provision of household services, attendant care and similar benefits to injured persons and the household family members of those persons.

Clause 96 enables the provision of household services and specifies the circumstances in which those services may be provided during the period of 4 weeks following a transport accident.

Clause 97 enables the provision of household services after the period of 4 weeks following a transport accident.

Clause 98 enables the provision of attendant care services and specifies the circumstances in which those services may be provided.

Clause 99 specifies the maximum amount payable for household services and attendant care services which are voluntarily provided by a person to an injured person.

Clause 100 enables the payment of compensation, for the period of 4 weeks following a transport accident, to a spouse, parent or child of an injured person who is required to attend the person continuously (in hospital or elsewhere). The compensation is to be assessed as if the spouse, parent or child were incapacitated as a result of the accident.

Clause 101 enables the reimbursement of travel and accommodation expenses in Australia, incurred within the period of 4 weeks following a transport accident, by the spouse, parent or child of an injured person who attends the person to provide care and support.

Clause 102 enables the payment of a mobility allowance to an injured person who does not have access to suitable private transport and is unable to use public transport without the assistance of another person.

DIVISION 5—Compensation for permanent impairment

Clause 103 states that a person who suffers a permanent impairment (as defined in clause 3 (1)) as a result of a transport accident is entitled to a lump sum benefit.

Clause 104 allows the GIO to take into account, for the purpose of assessing a person's entitlement under this Division, a person's refusal to undergo treatment to ameliorate an impairment.

Clause 105 states the basis of calculation of an entitlement under this Division.

Transport Accidents Compensation 1987

Clause 106 enables regulations to be made with respect to the assessment of a person's permanent impairment.

Clause 107 precludes any entitlement under this Division in respect of a permanent impairment assessed at 4 per cent or less.

Clause 108 provides that a permanent impairment assessed at 90 per cent or more shall be regarded as total.

Clause 109 provides that an assessment of permanent impairment shall not be made until after the expiration of 12 months from the time of the accident by which the impairment was occasioned.

Clause 110 provides for subsequent reassessment of a permanent impairment which has already been assessed and allows further compensation to be paid in the event of an assessed increase in that impairment.

Clause 111 precludes payment of a benefit under this Division to a person—

- (a) who dies before an assessment of permanent impairment is made or before the benefit is paid; or
- (b) who, by reason of permanent unconsciousness or otherwise, is unaware of the impairment and who has no dependent spouse or dependent children.

The clause also provides for the payment of a benefit to a trustee, on behalf of a dependent spouse or children, in certain cases.

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

Clause 112 describes the class of injured persons to which this Division applies, namely, those suffering from a permanent or long-term impairment.

Clause 113 authorises the GIO to meet the whole or part of the costs of approved modifications to the person's workplace for the purpose of helping the person to gain access to the workplace, or perform his or her work, while suffering from an impairment.

Clause 114 authorises the GIO to develop programmes and practices for the rehabilitation, in employment, of injured persons. These may include financial and other incentives and provision, or part provision, of appropriate insurance cover.

Clause 115 authorises the GIO to provide counselling and other services, and financial assistance, to injured persons.

Clause 116 authorises the GIO to provide finance to an injured person for the purchase of a home.

Clause 117 authorises the GIO to meet the whole or part of the costs of approved modifications to an injured person's home.

Clause 118 authorises the GIO to negotiate with the Director of Housing and other public authorities for the provision of housing to injured persons.

Clause 119 authorises the GIO to provide institutional accommodation to an injured person requiring it.

Transport Accidents Compensation 1987

Clause 120 authorises the GIO to establish and maintain, or to contribute to the costs of, hostels for injured persons.

Clause 121 authorises the GIO to provide financial assistance to an injured person for the purchase of a motor vehicle.

Clause 122 authorises the GIO to meet the whole or part of the costs of modifications to a motor vehicle used by an injured person.

PART 6—BENEFITS—DEPENDANTS OF DECEASED PERSONS

DIVISION 1—Preliminary

Clause 123 defines the terms “earning capacity” and “prescribed child” for the purposes of proposed Part 6.

Clause 124 requires that a prescribed child who was a member of the household of a deceased person at the date of death shall be presumed to have been dependant on the deceased.

DIVISION 2—Funeral expenses

Clause 125 declares that the GIO is to pay the reasonable funeral expenses of a transport accident victim who dies within 3 years of the accident.

DIVISION 3—Lump sum payments

Clause 126 provides for the payment from the GIO of a lump sum not exceeding \$80,000 to dependent members of the family of a deceased person. The sum is to be apportioned if more than one dependant claims.

Clause 127 requires any lump sum paid before death in respect of permanent injury of the deceased to be deducted from a lump sum paid under proposed section 126.

DIVISION 4—Periodic compensation for surviving spouse

Clause 128 requires the GIO to determine the earning capacity of the surviving spouse of a deceased person.

Clause 129 provides that the earning capacity of the surviving spouse shall, except as provided by clause 130, be the actual earnings assessed from time to time on a weekly basis.

Clause 130 provides that, where the surviving spouse is capable of earning an income or does not co-operate in obtaining employment, the earnings which could be derived by the surviving spouse (the “assumed earnings”) shall be treated as the earning capacity of the surviving spouse.

Clause 131 specifies when assumed earnings are to be used instead of actual earnings in determining the earning capacity of the surviving spouse.

Transport Accidents Compensation 1987

Clause 132 sets out the rate at which periodic compensation is payable for the initial period to the surviving spouse of a deceased person who was an earner if the surviving spouse was a dependant of the deceased and has family care responsibilities.

Clause 133 sets out the rate at which compensation is payable to the surviving spouse after the expiration of 5 years from the death of a deceased person who was an earner if the surviving spouse continues to have family care responsibilities.

Clause 134 sets out the rate at which compensation is payable during the initial 5 years to the surviving spouse of a deceased person who was an earner while the surviving spouse's earning capacity is substantially impaired for reasons of poor health, age or need to exercise family care responsibilities.

DIVISION 5—Periodic compensation for prescribed children

Clause 135 sets out the rate at which, and the period for which, compensation is payable to a prescribed child of a deceased person who was dependent on the deceased person.

DIVISION 6—Replacement household services

Clause 136 provides that household services may be provided to dependent household family members of a person who dies in a transport accident for 4 weeks from the date of death.

Clause 137 provides that those household services may, in certain circumstances, be provided for up to 2 years after the date of death.

Clause 138 fixes the maximum rate of payment for household services provided under proposed section 136 or 137.

DIVISION 7—Miscellaneous

Clause 139 places an upper limit on the amount of compensation which may be payable under proposed section 132 or 133 and proposed section 135 or under proposed section 134 as well as for apportionment between the persons to whom it is payable.

Clause 140 prevents benefits provided to an injured person who dies within 3 years of the transport accident causing the injury from being set off against dependants' benefits, except under clause 127.

Clause 141 requires a person to survive the deceased by 30 days before receiving benefits under the proposed Part.

Clause 142 provides for the termination of payment of compensation to the surviving spouse of a deceased person on the occurrence of specified events such as marriage or remarriage or death.

Clause 143 makes provision for the payment of a lump sum to the surviving spouse of a deceased person if the spouse marries, remarries or enters into a de facto relationship within specified periods of time.

Transport Accidents Compensation 1987

PART 7—BENEFITS—MISCELLANEOUS MATTERS

DIVISION 1—*General*

Clause 144 prevents the assignment of benefits.

Clause 145 enables any pre-accident impairment to be taken into consideration in assessing a person's entitlement to benefits.

Clause 146 provides that a post-accident impairment, not related to a transport accident, shall not be taken into consideration in assessing a person's entitlement to benefits.

Clause 147 regulates the provision of benefits to, and the entitlement to benefits of, persons who resume or take up overseas residence after the date of a transport accident.

Clause 148 regulates the provision of benefits to, and the entitlement to benefits of, the dependants of deceased persons who resume or take up overseas residence after the date of death of the deceased person.

Clause 149 preserves the entitlement to benefits of persons who, because of the terms of their employment, are compelled to live outside Australia.

DIVISION 2—*Indexation of amounts of benefits*

Clause 150 is an interpretation provision for the purposes of the proposed Division.

Clause 151 specifies the basis on which amounts of benefits under the proposed Act are to be indexed by reference to the award rates of pay indexes of the Australian Statistician.

Clause 152 enables, in the adjustment of an amount under the proposed Division, the rounding off of large amounts to the nearest 50 dollars and of small amounts to the nearest 10 cents.

Clause 153 requires the publication of adjusted amounts in the Gazette.

PART 8—MAKING AND ASSESSMENT OF CLAIMS FOR BENEFITS AND
ADMINISTRATION OF PROVISION OF BENEFITS

DIVISION 1—*General*

Clause 154 is an interpretation provision for the purposes of the proposed Part. It states that a reference to a claim for benefits includes a reference to a claim, by a person already in receipt of benefits, for a variation of the benefits or for additional benefits.

DIVISION 2—*Making of claims*

Clause 155 describes the persons who may claim benefits under the proposed Act and further provides that—

- (a) it is not necessary to quantify the benefits claimed; and

Transport Accidents Compensation 1987

(b) a further claim made by a person already in receipt of benefits will not affect the benefits being received.

Clause 156 limits the time within which a claim for benefits may be made to the period of 3 years following an accident or the first onset of symptoms of an injury. The period may be extended by the District Court on sufficient cause shown as to why the claim was made out of time. A claim for variation of existing benefits and for additional benefits may, however, be made at any time.

Clause 157 requires the GIO to advise and assist persons in the preparation and making of claims for benefits.

DIVISION 3—Assessment (including medical assessment) of claims

Clause 158 provides for the assessment of a claim by an assessing officer who, under supervision by the GIO, is to assess the claim impartially.

Clause 159 empowers the GIO to obtain relevant information from a claimant's employer.

Clause 160 empowers the GIO to require a claimant to undergo a medical examination.

Clause 161 suspends a person's rights to benefits in the event that the person fails or refuses to undergo a medical examination.

DIVISION 4—Determination and payment of claims

Clause 162 empowers the GIO to determine a claimant's entitlement to benefits.

Clause 163 states the manner in which benefits are to be paid.

Clause 164 authorises the GIO to deduct appropriate income tax from payable benefits.

Clause 165 allows the GIO to withhold payment of a benefit to a claimant who has been or is about to be charged with an offence under proposed section 35.

Clause 166 provides that benefits are generally payable fortnightly in arrears, unless the GIO otherwise determines.

Clause 167 prescribes the time within which any lump sum benefit is payable, and provides for the payment of interest on lump sums paid after that time.

Clause 168 states that, in addition to complying with the requirements of proposed sections 166 and 167, the GIO is obliged to meet a claim for variation of existing benefits or for additional benefits as soon as practicable after the claim is determined.

Clause 169 provides for the payment of benefits to a trustee in cases where the claimant is a minor or otherwise lacks legal capacity.

Clause 170 provides that, if the GIO has not determined a claim within a time prescribed by the regulations, it shall be regarded as having disallowed the claim and as having notified the claimant accordingly.

Clause 171 requires the GIO to notify a claimant of its determination of a claim.

Transport Accidents Compensation 1987

Clause 172 allows the GIO to make an interim determination of a claim and to pay benefits pending a final determination. After the final determination, appropriate adjustments may be made in respect of any discrepancy between the benefits so far paid and the benefits finally determined to be payable. Any such adjustment that would require a refund of benefits may be waived in cases of hardship.

DIVISION 5—*Miscellaneous*

Clause 173 requires the GIO to prepare and publish a claims manual for the benefit of its staff and the public.

Clause 174 prohibits the making of a fraudulent claim for benefits.

Clause 175 requires the GIO to review periodically the entitlements of persons in receipt of benefits.

Clause 176 provides for the redemption by the GIO, by a lump sum payment, of its obligations to make periodic payments of benefits to any person, and sets forth the circumstances in which such a redemption may be effected.

Clause 177 requires a person in receipt of benefits to notify the GIO of any change in the person's circumstances which affects the person's entitlement to benefits.

Clause 178 empowers the GIO to stop payment of benefits to a person who has ceased to be entitled to them.

Clause 179 allows the GIO to recover, as a debt, the amount of any overpayment made to a person if the overpayment was occasioned by the person's act or omission.

PART 9—MEDICAL REVIEW PANELS

Clause 180 provides for the establishment of Medical Review Panels which shall consist of 2 or 3 medical practitioners having qualifications and experience relevant to the matters to be determined by them.

Clause 181 empowers the making of regulations relating to the remuneration and expenses payable to members of Medical Review Panels, which expenses are to be paid out of the Fund.

Clause 182 declares that Medical Review Panels have the functions conferred or imposed on them by the proposed Act and regulations to be made under it.

PART 10—APPEALS

DIVISION 1—*General*

Clause 183 is an interpretation provision for proposed Part 10 and defines the term "medical assessment" and certain other terms used in the proposed Part.

Clause 184 gives a right of appeal to a person against decisions or inactivity of the GIO relating to the amount, nature or extent of benefits to which the person may be entitled under the proposed Act. Appeals relating to medical assessment lie to a Medical Review Panel and other appeals to the District Court.

Transport Accidents Compensation 1987

Clause 185 fixes the time within which appeals may be made. In general an appeal will have to be made within 60 days of receipt of notice of the decision of the GIO to which it relates. The District Court may extend the time for making appeals in any appropriate cases.

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

Clause 186 requires an appeal to be made in accordance with the District Court rules if made to that Court. A copy of the notice of appeal must be served on the GIO at least 28 days before the commencement of the hearing of the appeal.

Clause 187 compels the GIO to review the decision or inactivity which is the subject of an appeal to the District Court within 28 days after service of the copy of the notice of appeal on it. The GIO may rectify the matter which gave rise to the appeal or may require the appellant to provide further information to assist the review.

Clause 188 gives the District Court, in dealing with an appeal, all the functions of the GIO in dealing with a claim. The appeal is to be conducted as a rehearing but new evidence may not be introduced without leave of the Court.

Clause 189 provides that the District Court may remit questions raised on appeal to the GIO for determination if the GIO has not complied with its obligation to review the matter. The Court may also determine an appeal by making any determination the GIO might have made under proposed section 162 or 172.

Clause 190 declares that determinations made by the District Court which the GIO might have made under proposed Part 8 shall generally have the same effect as if they were made by the GIO.

Clause 191 places a limit on the amount of costs which are to be allowed on taxation where the District Court orders payment of costs in relation to an appeal. The appellant will not be entitled to any order for costs if the benefits awarded the appellant by the Court do not exceed those determined by the GIO.

Clause 192 provides that the District Court, in dealing with an appeal, is not restricted to exercising only the functions conferred on it by proposed Part 10.

Clause 193 enables an appeal to the Supreme Court on a question of law from a decision of the District Court relating to an appeal.

DIVISION 3—Appeals relating to medical assessment

Clause 194 requires appeals to a Medical Review Panel to be made in accordance with regulations made under the proposed Act.

Clause 195 provides that appeals to a Medical Review Panel are to be conducted without formality and that the rules of evidence do not apply. A Medical Review Panel may, to a large extent, determine its own procedures for dealing with an appeal.

Clause 196 states that copies of medical certificates relevant to an appeal are to be provided to the Medical Review Panel before the appeal is heard.

Transport Accidents Compensation 1987

Clause 197 empowers a Medical Review Panel to require an appellant to submit to a medical examination. If the appellant refuses to be examined, the appeal is to be adjourned.

Clause 198 declares that a person is not entitled to be legally represented before a Medical Review Panel.

Clause 199 provides for the chairperson of a Medical Review Panel to preside at the hearing of an appeal and for decisions to be those of the majority of the members.

Clause 200 declares that the determination of an appeal by a Medical Review Panel relating to medical assessment is to be final and not subject to further appeal or process.

Clause 201 requires a determination of medical assessment by a Medical Review Panel to be certified by the chairperson of the Panel and given to the parties to the appeal.

Clause 202 prevents a Medical Review Panel from ordering the payment of costs.

Clause 203 empowers the making of regulations under the proposed Act with respect to the hearing of appeals by, and administrative arrangements for, Medical Review Panels.

PART 11—TRANSCOVER REVIEW COMMITTEE

Clause 204 establishes the TransCover Review Committee and gives effect to proposed Schedule 2 to the proposed Act which provides for the constitution and procedure of the Review Committee.

Clause 205 states the function of the Review Committee as advising the Minister concerning any matter relating to transport accident compensation. The Review Committee may investigate, and make recommendations to the Minister concerning, the operation of the proposed Act and the performance of the GIO with respect to its functions under the proposed Act.

Clause 206 requires the Review Committee to make an annual report to the Minister which is to be laid before both Houses of Parliament.

PART 12—MISCELLANEOUS

Clause 207 requires the owner of a motor vehicle which has been involved in an accident resulting in the death of or bodily injury to a person to give written particulars of the accident to the GIO. The clause also empowers the GIO to obtain further information from the owner or driver of the vehicle.

Clause 208 affords a person the right to have an interpreter, if required, in any matter before the GIO or a Medical Review Panel.

Clause 209 prohibits the driving of a motor vehicle upon a public street if a contribution to the Fund has not been paid in respect of the vehicle.

Clause 210 empowers the GIO to recover, from the owner of a motor vehicle in respect of which a contribution has not been paid to the Fund, the amount of any benefit or other payment made by the GIO in connection with an accident in which the vehicle was involved.

Transport Accidents Compensation 1987

Clause 211 prohibits the disclosure of information obtained by a person in connection with the administration or execution of the proposed Act, except in certain specified circumstances.

Clause 212 provides for the manner of service of documents on the GIO for the purposes of the proposed Act.

Clause 213 provides for the manner of service of documents on persons other than the GIO for the purposes of the proposed Act.

Clause 214 provides for the authentication of documents executed by or on behalf of the GIO.

Clause 215 enables the GIO to require a court to supply it with a certificate as to the finding, in proceedings before the court, of a person's blood alcohol content. The certificate is conclusive evidence of the matter certified.

Clause 216 states certain presumptions that may be made in any legal proceedings. The presumptions relate to the constitution and proceedings of the GIO and other bodies concerned in the administration of the proposed Act.

Clause 217 provides that a person who contravenes or fails to comply with a provision of the proposed Act is guilty of an offence and (unless otherwise stated in the proposed Act) liable to a penalty not exceeding \$5,000.

Clause 218 provides that an offence against the proposed Act may be dealt with summarily by a Local Court.

Clause 219 provides that a director or manager of a corporation who authorises or permits a contravention of the proposed Act by the corporation is to be regarded as having contravened the proposed Act in the same manner.

Clause 220 affords immunity from liability to persons (including the Crown, the Minister and the GIO) acting in good faith for the purposes of the proposed Act.

Clause 221 enables the Governor to make regulations in aid of the proposed Act.

Schedule 1 enacts provisions relating to the members and procedure of the Contributions Advisory Committee.

Schedule 2 enacts provisions relating to the constitution and procedure of the Review Committee.
