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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (THIRD-PARTY INSURANCE)  
AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

**Presented by  
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Treasurer**

## Road Transport (Third-Party Insurance) Amendment Bill 2011

### Overview

The Road Transport (Third-Party Insurance) Amendment Bill 2011 introduces amendments to the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act) that are intended to further facilitate the objectives of the CTP Act.

The objectives of the CTP Act are set out in section 5A of the Act as follows:

1. to promote and encourage the rehabilitation of people injured in a motor crash;
2. to encourage speedy resolution of motor crash claims;
3. to continue to improve compulsory third party insurance in the ACT;
4. to keep the costs of insurance at an affordable level;
5. to promote competition for CTP premiums;
6. to promote measures directed at eliminating or reducing causes of motor crashes and mitigating their results;
7. to provide for the licensing and supervision of CTP insurers; and
8. to establish and keep a register of motor accident claims to help the administration of the scheme and the detection of fraud.

The key goal of the Act is to get injured people to access medical diagnosis, treatment and health services as soon as possible to facilitate quicker return to health and a reduced propensity to develop long term injuries. In other words, injuries treated now are better than injuries treated tomorrow.

These amendments are designed to establish a modern, evidence based statutory entitlement process in substitution for non-economic loss damages (NEL damages, commonly known as general damages) in the case of relatively minor injuries. It will also assist in the shift towards transparency under the CTP Act, in particular, the awarding of damages for motor crash claims.

NEL damages are now a largely outdated measure, arising in the common law at a time in history when an injured party was unlikely to have the medical and rehabilitation facilities available to recover from an injury sustained in an accident. Now that the focus is on early treatment, and given the availability of modern diagnostic, treatment facilities and technologies, the majority of claimants (who suffer relatively minor injuries) are able to fully recover. They no longer have to rely on NEL damages as a substitute for treatment and recovery.

These amendments will enable scheme funds to be redirected from NEL to diagnosis, treatment and recovery for the purpose, as far as is possible, of returning motor crash victims to health and wellbeing.

### **Access to the Common Law**

All persons injured in a motor crash will continue to have access to the common law. The proposed amendments do not put a bar on any claimant's access as a whole to common law compensation under the CTP Act. Moreover, the amendments will not affect a claimant's ability to take their claim to court. What these proposed amendments do is facilitate the objectives of the CTP Act by improving the scheme; through facilitating the speedy resolution of relatively minor personal injury claims, encouraging the rehabilitation of all claimants, the affordability of premiums and competition in the ACT CTP market.

In a fault-based common law system of compulsory insurance access to compensation is an opportunity, not an entitlement. Claimants are able to access common law damages as compensation once liability has been established. As a compulsory statutory insurance scheme, it is necessary to ensure that the cost of insurance is reasonable and justifiable. This is because compulsory statutory insurance schemes compel people to purchase insurance but are justified as necessary where they are required in the public interest, in the case of CTP, to ensure that funds are available to compensate those who are injured negligently in a motor crash. Third party insurance is compulsory all over Australia. In summary, the costs of compensating claimants under the CTP scheme should be consistent with the objectives of the scheme, i.e. the treatment and rehabilitation of people who are injured in a motor crash.

The key components of a compulsory statutory scheme of insurance are:

- that the community must be insured – ie motorists are given no choice but to pay a CTP premium on registration of their vehicle(s);
- an insurance product must be offered by a licensed insurer for that purpose – in this case insurers are licensed as CTP insurers under the CTP Act;
- the insurance product is the policy which is defined in the legislation, in this case the CTP Act. This provides the insured with insurance cover where they are at fault in a motor crash that causes personal injury to another involved in the motor crash.

Compulsory insurance schemes ensure that where someone in the community is injured or suffers loss caused by someone else, there is an affordable scheme that is able to provide compensation to those who claim against the scheme. CTP is a statutory form of insurance that is built around tort law. Without it, people would be forced to establish a claim for compensation under the *Civil Law (Wrongs) Act 2002* directly against at-fault drivers, who in many cases will not have the financial capacity to provide that compensation.

The need for third party insurance to be compulsory has long been recognised in Australia: it follows that as a compulsory statutory form of insurance, Governments must be able to decide where the boundaries of compensation under that insurance lie. There is no other way to ensure that the scheme is sustainable in the long term.

In considering common law rights and the reasonableness of any restrictions or controls that are put around damages, it must be remembered that compulsory third party insurance is exactly that. It is a compulsory scheme of insurance that creates by statute, the specific opportunity for members of the community to seek compensation

under the common law if they are injured in a motor crash and not at fault with the certainty that there are funds available to compensate them.

It therefore stands that in a system of compulsory statutory insurance there are only ever four stakeholders:

- 1.) those who must pay premiums;
- 2.) those who are injured in a motor crash;
- 3.) those who insure/underwrite the cost of insurance; and
- 4.) those who regulate the scheme.

Other participants, such as the legal profession and medical providers are merely service providers within the scheme.

Moreover, the CTP Act provides additional benefits to those that are injured in a motor crash as the legislation requires insurers to make early payments for medical expenses available under Part 3.2 of the Act before liability is determined in a claim. Additionally, it compels the provision and payment of medical expenses and rehabilitation services where liability is admitted by the CTP insurer. Discretion is also allowed under the legislation for insurers to provide these services without there being an admission of liability. In these circumstances liability is not to be inferred from such payments being made.

In imposing a threshold in relation to the most arbitrary and subjective common law head of damage, the proposed amendments do not affect the ability for all claimants to access compensation for economic losses, such as medical and rehabilitation expenses and loss of past or future earnings. In fact, the legislation is designed to ensure that all claimants are able to receive all necessary and appropriate medical and rehabilitation treatment before their claims are settled or decided by a court. This is because there can be no doubt that the chances of the fullest possible recovery from an injury are significantly improved the earlier treatment is commenced.

The treatment of an injury does not have to wait until that injury has stabilised. In fact, delaying that treatment would be prejudicial to the fullest possible recovery. The proposed amendments do not alter this and in fact build upon the emphasis on ensuring the greatest possible opportunity for claimants to get better.

## **Detail**

### **Clauses 1 - 3**

These clauses set out the name of the Act, the commencement date and the legislation amended by the Act.

Specifically, the Act is to commence on the seventh day after its notification.

### **Clauses 4 – 5**

These clauses amend s27 of the CTP Act to clarify the existing provision. The CTP Act provides that a CTP policy is not affected by an error of the Road Transport Authority (RTA) or licensed insurer.

This amendment makes it clear that, in addition, the payment of an incorrect CTP premium does not affect the validity of a CTP policy. The amendment also gives CTP insurers the power to recover any outstanding premium owing as a debt to the insurers. As CTP premiums are paid by ACT motorists to the RTA, this provision is necessary to give the CTP insurers the ability to recover any outstanding premium owing, directly from ACT motorists, thus avoiding additional administrative burdens on the RTA.

#### **Clause 6**

This clause amends sections 37 and 38 in relation to the CTP premium. It is in anticipation of the making of revised CTP premium guidelines which will provide for the process of working out (calculating) the CTP premium.

#### **Clauses 7 – 11**

These clauses make technical amendments to the nomenclature of provisions of the CTP Act.

#### **Clause 12 – 14**

These clauses make minor technical and consequential changes to s139 of the CTP Act in relation to the compulsory conference procedures.

Specifically, clauses 12 and 14 clarify the existing law with regard to the certificate of readiness as part of the compulsory conference procedures in s139 of the CTP Act.

The procedures under the CTP Act are designed to ensure that the compulsory conference does not occur until all relevant information has been disclosed to both parties under part 4.3 of the Act. The intention this is to mandate full and open disclosure between the parties given this is a compulsory statutory insurance scheme. Accordingly, holding a compulsory conference prior to this would be premature. While the parties are free to and may settle a claim at any stage, full and open disclosure is one of the key principles in the CTP Act. Further, as all the information will have been disclosed prior to the compulsory conference, the claim will be ready for litigation in accordance with the intentions of the Act, should it not be settled at the compulsory conference (ie there should be few circumstances in which new information arises, such as the deterioration of an injury).

The amendments in clauses 12 and 14 make it clear that the certificate of readiness is a term used for the purposes of the CTP Act. The local legal profession had asked for clarification of the procedures in light of the forms already used in the Supreme Court of the ACT. Further, the provision will be amended to specify that the certificate may be an approved form under the CTP Act. This will mean that parties whose lawyer is required to sign the certificate of readiness under s139 (1) (d) because they legally represent that party in a claim, must ensure that the approved form under the CTP Act is used.

Clause 13 requires the respondent to give a claimant a statement setting out their agreement or otherwise in relation to whether the claimant meets the requirements for NEL damages under the Act. This will be a procedural requirement for the compulsory conference and is in line with the objectives of the CTP Act.

As the compulsory conference is the last procedural step prior to commencing court proceedings in a claim (ie all material that is relevant for the proceedings has already been disclosed by both parties) it is appropriate that the parties have turned their minds as to whether the claimant, should the respondent be liable, meets the requirements for NEL damages under part 4.9B (4.11).

This provision is not intended to prevent a party from disputing whether the requirements for NEL damages have been met later in the claim where new information or deterioration of an injury becomes known. This is facilitated, in appropriate circumstances, by the continuous disclosure provisions under part 4.3.

The provisions that establish the framework for NEL damages are found in clause 22. The subsequent medical assessment provisions in that part will only become applicable if there is a dispute about whether the claimant's degree of permanent impairment has met the required threshold. It is intended that a dispute will only arise if the disagreement between the parties cannot be resolved through the ordinary course of negotiations.

### **Clause 15**

This clause is a consequential change because non-economic loss is now defined in the CTP Act in the new Part 4.9B (4.11) inserted under clause 22.

### **Clauses 16 – 20**

These clauses make technical corrections applying to some of the notes in the CTP Act in line with the provisions referred to by those notes.

Specifically, clause 17 clarifies the intention of s144 in line with the original intention of this provision, making it clear that the amount of the settlement used to work out the legal costs in small claims is not to include NEL damages. This is consistent with the objectives of the CTP Act as outlined in the Explanatory Statement for the CTP Act (refer to Part 6, section 27 of the Explanatory Statement).

### **Clause 21**

This clause removes sections 155 & 156 of the CTP Act from their current location in the CTP Act and replaces them under a new part 4.9D (4.13). This reflects the insertion of new parts 4.9A – 4.9C (4.10 – 4.12).

### **Clause 22**

This clause inserts new parts 4.9A – 4.9C in the CTP Act and part 4.9D which relocates the existing s155 and 156 of the CTP Act (see clause 21). (See clauses 23-25; these parts are renumbered as 4.10 – 4.13 respectively. A reference to part 4.9A will mean a reference to 4.10 as it appears in the CTP Act and vice versa, same as for 4.9B/4.11, 4.9C/4.12 and 4.9D/4.13.) Parts 4.9A – 4.9B (4.10 – 4.11) create the damages framework to apply to CTP claims with respect to economic loss and NEL damages.

### **Damages for economic loss – new part 4.9A (4.10)**

Sections 155 and 155A have been modelled on s126 and 127 respectively of the NSW *Motor Accidents Compensation Act 1999* (MACA).

The new s155 will apply to future economic loss in relation to loss of earnings. Specifically, it mandates the “vicissitudes of life” principle that applies to the amount of damages a claimant is to receive for future loss of earnings. Further, this provision under subsection (3) will serve to enhance the transparency of a decision that determines the amount for future loss of earnings.

Whilst future loss of earnings is a subjective exercise based on the circumstances of the particular claimant, an award of damages by the court serves as a general guide to the expectations of other claimants as to what they may receive. This is important in the context of settlement negotiations between the parties such that the parties are better able to arrive at a reasonable settlement offer or mandatory final offer under Part 4.8 of the CTP Act.

New section 155A applies to the broader head of future economic loss damages, being defined as including an award for:

- loss of earnings;
- loss of expectation of financial support;
- the value of future services of a domestic nature or services relative to nursing and attendance; or
- a liability to incur expenditure in the future. This last head of future economic loss is designed to take into account future expenses that may be necessary in particular cases, for example future medical expenses.

This section will operate to apply a discount rate of 5% to lump sum amounts for future economic loss to work out the present value for that amount. The effect of this will be to modify the discount rate applied by the High Court in *Todorovic v Waller* (1981) 150 CLR 402 (*Todorovic*) in relation to motor vehicle claims.

These provisions increase the transparency and clarity around damages awards in relation to economic loss as defined in this part. Increased transparency in this area will mean increased certainty in damages awards that can be expected to lead to the speedier resolution of claims, facilitate settlement negotiations and assist in monitoring the administration of the CTP scheme.

Specifically, in relation to the discount rate, a rate of 3% is already applied under the common law principle in *Todorovic*. What the proposed amendment in s155A seeks to do is increase that rate by 2% to 5%, in line with other CTP jurisdictions. NSW and Queensland already apply a 5% discount rate. As this is a concept that is already applied to damages awards in the ACT, the increase is justifiable in the context of the CTP scheme which facilitates the earlier recovery of claimants. In particular, the early payment of medical expenses prior to any determination of liability under Chapter 3 of the CTP Act and the discretionary, (and in cases where liability has already been admitted, mandatory) payment of medical and rehabilitation expenses under Part 4.6 of the CTP Act.

#### Damages for non-economic loss (NEL) – new part 4.9B (4.11)

This part inserts a new framework applying to damages for non-economic loss.

Sections 155B and 155C set out the definitions for this part. Section 155D makes it clear that nothing in this part is to prevent the parties from settling a motor accident claim at any time. Whilst the CTP Act sets out mandatory procedural requirements,

such as the compulsory conference, nothing precludes the parties from informally settling a claim.

Section 155E is to make it clear that even in a case where the threshold applied under s155F is met; this does not preclude a decision against NEL damages in cases where it would be appropriate not to award them. Whilst not detracting from the objectives of the CTP Act, this provision allows flexibility in decision making. However, it does not operate so as to allow an award for damages in circumstances where the threshold has not been met.

#### Division 4.9B.2 (4.11.2)

Section 155F is the operative provision of the new part, establishing that damages are not payable unless the required degree of permanent impairment threshold is met.

There are two options available for meeting the threshold:

- firstly, a claimant will meet the threshold if their degree of physical permanent impairment is 15% or more — this assessment is not to include psychological or psychiatric injuries; or
- secondly, a claimant will meet the threshold if their degree of permanent impairment only in relation to psychological or psychiatric injury is 15% or more.

Importantly, psychological and psychiatric injuries are not to be aggregated with other (physical) injuries in order to work out the degree of permanent impairment.

As previously stated, the amendments proposed in this part will not affect a claimant's ability to access the courts or common law generally. These amendments are about ensuring that the premium dollar that ACT motorists are compelled to pay is being spent on returning claimants to health. It is the intention of the proposed permanent impairment threshold that those claimants with minor injuries are encouraged to use the early medical and rehabilitation services that are already provided under the CTP Act rather than relying on lump sums. High claims costs for minor injury claims cannot be justified in a compulsory statutory insurance scheme that requires all ACT motorists to pay a premium that reflects those high costs. In particular, where those high costs are not being spent on the health and rehabilitation of claimants under the scheme. All claimants are still able to receive amounts for medical and rehabilitation, economic loss and other heads of damages. The proposed amendments are consistent with the objectives of the Act by encouraging the rehabilitation of all claimants, improving the scheme in line with the experience of other jurisdictions (primarily NSW for the medical assessment mechanism) and ensuring premiums are affordable.

#### Division 4.9B.3 (4.11.3)

This division sets up the procedures for undertaking medical assessments in order to work out the degree of permanent impairment of an injured motor accident claimant.

In particular s155G determines when the medical assessment process will be invoked. Under s155G, medical assessments will only be required if there is a dispute between the parties such that they cannot agree on whether the degree of permanent impairment of the claimant is above or below the threshold under s155F. It is intended by this provision that a dispute becomes a dispute under this part where it cannot be resolved through the ordinary course of negotiations between the parties.



Unless the parties have agreed that the threshold under s155F has been met or a medical assessment certificate states that the threshold has been met, then a claimant will not be able to receive NEL damages (as a portion of their settlement or court awarded damages).

Under s155H, if a medical assessment is required, an application must be made to the CTP regulator, who is then responsible for allocating the application to a medical assessor. This will be done in accordance with the approved application form and the medical assessment procedural guidelines. An application may be made by either party or by the court.

In the case of an application by either party, s155H (1) (a) requires the application to be in accordance with the medical assessment procedural guidelines. (Refer to s155P for the medical assessment procedural guidelines.)

In the case of an application from the court, refer to the power of the court to reject a medical assessment certificate in certain circumstances under s155K. Specifically, the court is only able to reject a medical assessment if it would cause substantial injustice to the claimant. These circumstances should only arise in limited claims as a medical assessment certificate will only ever be issued as final and conclusive proof of the degree of permanent impairment of the claimant. This medical assessment will have been peer reviewed (see s155J (4)).

The parties themselves are also able to apply for a further assessment in cases where the claimant's injuries deteriorate or new information comes to light under s155H (2).

Subsections 155H (2)-(3) set out the two grounds on which a further assessment may be made. The CTP regulator must be satisfied that one of the two grounds has been met if the application is to be allocated for a further assessment. The first ground is based on whether the injury has deteriorated since the last medical assessment. The second ground is based on whether additional information has become available that was not available under both party's obligations in part 4.3 (Obligations to give documents and information).

In both cases, the effect must be such that the deterioration or additional information would be material ie it would cause the degree of permanent impairment of the injured claimant to meet the threshold in s155F. This test of materiality is used because the critical feature of this process is whether or not the threshold has been met, after which, the injured person is entitled to NEL damages. Once NEL damages are payable, whether by agreement between the parties or following a medical assessment, it will then be a decision for the parties or the court as to the amount of NEL in a particular claim.

Subsections 155H (4)-(5) allow the CTP regulator to allocate an application to more than one medical assessor in cases where the injuries suffered by the claimant require more than one medical assessor. Each of the assessors that are allocated an assessment will issue an assessment that will be referred to a single medical assessor to make a combined medical assessment of the total degree of the permanent impairment of the claimant as a whole (see s155I (3)).

Section 155I describes how the degree of permanent impairment is to be assessed. Specifically, subsection (1) sets out that an assessment must be made in accordance with impairment guidelines and expressed as a percentage of the person as a whole. This later requirement emphasises the fact that an assessment of the permanent impairment of the injured claimant is to be an assessment of the person as a whole. Additionally, any impairment that existed before the motor accident must be disregarded by the medical assessor under subsection (2). Subsection (2) also makes it clear that psychological or psychiatric injuries are not to be aggregated with other injuries when making a medical assessment.

Under subsection (3), an injury can only be assessed by the medical assessor if they are satisfied that the claimant's impairment has become permanent. Permanency is to be dealt with under the impairment guidelines as this is a medical concept. If litigation is on foot and a medical assessment cannot be made because the injury is not permanent subsection (5) allows the court to adjourn proceedings until the assessment has been made.

Section 155J sets out the requirements once a medical assessment has been made. A medical assessor is required to give the CTP regulator a medical assessment certificate in relation to a medical assessment which must set out the reasons for any findings of the assessor for the matters certified. All certificates will go through a peer review process before they become final and conclusive proof of the matters certified in the certificate. This applies to both single medical assessments and the combined medical assessment. The medical assessment procedural guidelines will set out the process for peer review.

Section 155K provides that the court may reject a medical assessment certificate if it is satisfied that admitting a matter in the certificate would cause a party to the proceeding substantial injustice. In such a case, the court may either refer the matter to the CTP regulator for allocation for another medical assessment or make its own assessment in accordance with s155I. If the court asks the CTP regulator to allocate the assessment then proceedings on foot may be adjourned until a new medical assessment certificate is issued.

As indicated above, these circumstances should only arise in limited claims as a medical assessment certificate will only ever be issued as final and conclusive proof of the degree of permanent impairment of the claimant where it has been peer reviewed (see s155J(4)). The parties are also able to apply for a further assessment in cases where the claimant's injuries deteriorate or new information comes to light under s155H (2).

If proceedings are already under way, and an impairment dispute arises in circumstances where a medical assessment has not already been made, there is nothing to prevent the parties from making an application under s155H (1) (a).

Section 155L requires the injured person to attend a medical assessment if one has been allocated by the CTP regulator. These provisions will ensure the efficacy of the medical assessment mechanisms introduced by this part so that claims are proceeded with quickly and without unnecessary delays.

#### Division 4.9B.4 (4.11.4)

This division relates to other matters as part of the medical assessment mechanism.

Section 155M allows the CTP regulator to make guidelines that can assist the courts. Consequently parties when negotiating an early settlement or at the compulsory conference stage can decide what an appropriate level of NEL damages are for claimants with similar injury profiles.

Section 155N gives the CTP regulator the power to appoint a suitably qualified person as a medical assessor for this Act. In particular, appointments made by the CTP regulator will stipulate the areas that a medical assessor is qualified to assess under this part.

Section 155O allows for the making of medical assessment procedural guidelines. These will set out the procedural requirements for the medical assessment process including the things mentioned in subsection (1) (a)-(e).

Section 155P states the impairment guidelines to be used for the purposes of a medical assessment. The impairment guidelines to be used are the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA 5). If however, impairment guidelines are made (as a notifiable instrument) by the CTP regulator, then these are the guidelines to be used in assessing the degree of permanent impairment of an injured claimant and will be available on the ACT legislation register website at [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

Section 155Q provides for the payment of costs for an injured person's medical assessment.

Section 155R makes it clear that the medical assessor, in making a medical assessment, is independent and not influenced by the ACT Government or the CTP regulator. The only direction a medical assessor will receive is the allocation of a medical assessment in relation to specified injuries and the assessor must comply with the CTP Act.

Section 155S makes it clear that a medical assessor is not civilly liable in relation to anything done or omitted if done honestly or without recklessness in the exercise of their functions under the CTP Act.

#### Interest – new part 4.9C (4.12)

This part inserts a provision, s156, which provides that interest will not be payable in relation to damages in a motor accident claim unless the circumstances set out in this section are met.

- Firstly, interest will be payable if the respondent has not made an offer, or revised offer, of settlement despite having the relevant information and reasonable opportunity to do so.
- Secondly, interest will be payable if the CTP insurer does not comply with its obligations under part 4.6 where liability has been admitted and a police officer attended the motor crash (or it was officially reported to the police). Importantly, an insurers obligations as the respondent are to pay medical expenses under s122 and provide rehabilitation services under s127 (noting that the obligation under s127 also arises where liability is admitted).

- Thirdly, interest will be payable if the respondent has made a mandatory final offer (MFO), or other settlement offer in writing and the damages awarded by a court are 20% higher than the offer and that offer is not reasonable based on the information available to the respondent. Noting that subsection (2) makes it clear that an offer is not unreasonable if the respondent was not able to make a reasonable assessment of the claimant's entitlement to damages.

This provision applies the restriction on interest payments to all heads of damage. It is designed to operate as a disincentive to insurers where they do not comply with their obligations under the CTP Act. A restriction on interest payments is appropriate within the CTP framework given the key procedural elements of the CTP scheme focus on achieving an early resolution of claims and earlier treatment and rehabilitation for injured claimants. In this context the Act is designed to put claimants on the road to recovery almost immediately after being injured in a motor crash and as such interest payments (made necessary in a litigious framework where delays are the norm) are no longer required.

This provision is based on s137 (4) of the NSW MACA. The NSW legislation goes further in restricting the payment of interest under s137 (2) and s137 (3), such that it will never be payable in relation to certain heads of damages: being attendant care and NEL damages. However, the provision in the CTP Act is intended to allow for the payment of interest in certain circumstances as specified in that section, which will apply to all heads of damage.

#### Costs – new part 4.9D (4.13)

Refer to clause 21, sections 156A and 156B reflect a restructure of the provisions of the CTP Act in light of the above new parts 4.9A – 4.9C (4.10 – 4.12). These sections have merely been relocated under this Bill and do not reflect a change in the law.

#### **Clause 23 - 25**

These clauses renumber parts of the CTP Act to reflect the new parts inserted in the Act.

#### **Clause 26**

This clause amends the heading of s157 to reflect the new numbering of that part of the CTP Act.

#### **Clauses 27**

This clause inserts a review clause to replace the existing three year review. The review has been set at five years from the commencement of the *Road Transport (Third-Party Insurance) Amendment Act 2011* and is to be a review of the Act as a whole. In light of the timing of these amendments it is considered that a review in five years will enable sufficient time for these most recent amendments to have taken effect.

#### **Clause 28**

This clause inserts the transitional provision that applies under s88 of the Legislation Act 2001. This will mean that claims in relation to a person injured in a motor crash occurring prior to these amendments will be dealt with under the law applying prior to the *Road Transport (Third-Party Insurance) Amendment Act 2011* being enacted.

### **Clauses 29 - 37**

These clauses reflect the new numbering of the parts in the CTP Act and the new definitions under part 4.9B (4.11).

### **Schedule 1**

#### **Part 1.1, clauses 1.1 – 1.2**

These clauses cross reference the new provisions (part 4.10 and part 4.11) that have been inserted in the CTP Act with the provisions relating to damages under the *Civil Law (Wrongs) Act 2002*.

#### **Part 1.2, clause 1.3**

This clause inserts a new section 27A in the *Road Transport (Third-Party Insurance) Regulation 2008*. Medical assessors that are appointed under the CTP legislation must be qualified to apply the impairment guidelines under the CTP Act and meet the same standard of practice (skill, expertise and training) as medical assessors that are appointed under the NSW MACA legislation, the NSW *Workplace Injury Management and Workers Compensation Act 1998* (NSW) and South Australia's *Workers Rehabilitation and Compensation Act 1986* (SA).

This clause also specifies the place where the AMA 5 (impairment guidelines) can be accessed.

#### **Part 1.2, clause 1.4 – 1.7**

These clauses merely reflect the relocation and renumbering of parts of the CTP Act and certain provisions made necessary by the enactment of the *Road Transport (Third-Party Insurance) Amendment Act 2011*.