



Australian Capital Territory

Road Transport (Third-Party Insurance) Amendment Act 2012

A2012-48

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Australian Capital Territory

Road Transport (Third-Party Insurance) Amendment Act 2012

A2012-48

An Act to amend the *Road Transport (Third-Party Insurance) Act 2008*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Road Transport (Third-Party Insurance) Amendment Act 2012*.

2 Commencement

This Act commences on 1 January 2013.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Road Transport (Third-Party Insurance) Act 2008*.

Note This Act also amends the *Civil Law (Wrongs) Act 2002* (see sch 1).

4 Section 27 heading

substitute

27 CTP policy not affected by errors etc

5 New section 27 (2) and (3)

insert

- (2) The validity of a CTP policy is not affected by payment of an incorrect CTP premium for the policy.
- (3) A licensed insurer who has been paid an incorrect CTP premium may recover any outstanding amount as a debt owing to the insurer.

Note An amount owing under a law to a person may be recovered as a debt owing to the person in a court of competent jurisdiction (see Legislation Act, s 177).

6 Sections 37 and 38

substitute

37 What is a CTP premium?

In this Act:

CTP premium, for a CTP policy, means—

- (a) the insurance premium approved under this part for the CTP policy; or
- (b) another premium worked out by the insurer in accordance with the CTP premium guidelines.

38 What premium licensed insurer may charge

A licensed insurer may charge a premium for a CTP policy only if the premium is—

- (a) approved under this part; or
- (b) worked out in accordance with the CTP premium guidelines.

**7 Entitlement to early payment—injured person to give forms to insurer within 28 days
Section 72 (1) (c)**

omit

28 days after the motor accident

substitute

the end of the relevant period

8 New section 72 (3)

insert

(3) In this section:

legal disability—see section 98 (5).

relevant period means—

- (a) if the person is under a legal disability—28 days after the person's legal disability ends; or
- (b) in any other case—28 days after the motor accident.

9 Section 72 heading

substitute

72 Entitlement to early payment—injured person to give forms to insurer within 30 working days

10 Section 72 (1) (c)

omit

28 days

substitute

30 working days

11 Section 72 (1) (c) (ii)

omit

12 New section 72 (1A)

insert

- (1A) However, the documents mentioned in subsection (1) (c) may be given to the insurer of a person identified in the police report mentioned in subsection (1) (c) (iii) as being at fault in the motor accident within 30 working days if the injured person—
- (a) is not insured; and
 - (b) is not wholly or mainly at fault in the motor accident.

**13 What kinds of expenses must be paid by insurer?
Section 73 (1)**

omit

person's

14 New section 75A

in part 3.2, insert

75A Early payment guidelines

- (1) The CTP regulator may make guidelines (the *early payment guidelines*) for an insurer to comply with in relation to making early payments for medical expenses under this chapter.
- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

15 **What is *rehabilitation*?**
Section 123 (a)

omit

; or

substitute

; and

16 **Cost of rehabilitation services—mediation**
Section 133 (2) (b)

omit

claimant

substitute

respondent

17 **Procedures before compulsory conference**
Section 139 (1) (d), new note

insert

Note If a form is approved under s 276 for this provision, the form must be used.

18 **Section 139 (3), definition of *certificate of readiness***

after

a certificate

insert

under this Act

19 Section 139 (3), definition of *certificate of readiness*, paragraph (a)

substitute

- (a) the party is in all respects ready for the compulsory conference;
and

**20 Mandatory final offers
Section 141 (5)**

omit

pain and suffering

substitute

non-economic loss

**21 Timing of mandatory final offers
Section 143 (1) (a), note**

substitute

Note A compulsory conference may be dispensed with by court order (see s 137).

**22 Working out costs for mandatory final offers
Section 144 (3)**

substitute

- (3) If a mandatory final offer is for \$30 000 or less, and is accepted—
- (a) for a claimant who was a child at the time of the motor accident or holds a Commonwealth concession card when the offer is accepted—costs (including disbursements) must not exceed \$5 000; or
- (b) in any other case—costs must be \$0.

**23 Working out costs for mandatory final offers
New section 144 (4) and (5)**

insert

- (4) In this section, a reference to an amount in relation to a mandatory final offer does not include any amount for non-economic loss.
- (5) In this section:

Commonwealth concession card means any of the following cards:

- (a) a current health care card issued under the *Social Security Act 1991* (Cwlth);
- (b) a current pensioner concession card issued under the *Social Security Act 1991* (Cwlth);
- (c) a current pensioner concession card issued in relation to a pension under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth);
- (d) a current gold card;
- (e) a card prescribed by regulation.

gold card means a card known as the Repatriation Health Card—For All Conditions that evidences a person's eligibility, under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth), to be provided with treatment for all injuries or diseases.

**24 Court proceedings not to begin if mandatory final offer open
Section 145 (5)**

before

costs

insert

interest or

**25 Time limit—no compulsory conference
Section 148 (1), note 1**

substitute

Note 1 A compulsory conference may be dispensed with by court order (see s 137).

26 Section 148 (3) (b), note

substitute

Note A compulsory conference may be dispensed with by court order (see s 137).

27 Sections 155 and 156

omit

pain and suffering

substitute

non-economic loss

28 Section 155 (2) (a)

before

if the amount

insert

for a claimant other than a claimant mentioned in paragraph (aa)—

29 New section 155 (2) (aa)

insert

- (aa) for a claimant who was a child at the time of the motor accident or holds a Commonwealth concession card when the damages are awarded—costs not exceeding \$5 000 may be awarded;

30 Section 155 (5), new definition of *Commonwealth concession card*

insert

Commonwealth concession card—see section 144 (5).

31 New section 156A

in part 4.9, insert

156A Costs—awards of damages over \$50 000

- (1) This section applies if a court awards more than \$50 000 in damages in a proceeding (other than an appellate proceeding) based on a motor accident claim.

Note *Damages* does not include damages for non-economic loss (see s (5)).

- (2) If the amount of damages is equal to or more than a mandatory final offer made by the claimant, the claimant may apply to the court for an order that the respondent pay the claimant's costs on a party and party basis up to the day the offer was made, and on an indemnity basis from that day.
- (3) If the amount of damages is less than a mandatory final offer made by the respondent, the respondent may apply to the court for an order that—
 - (a) the respondent pay the claimant's costs on a party and party basis up to the day the offer was made; and
 - (b) the claimant pay the respondent's costs on an indemnity basis from that day.
- (4) Also, the court may make an award of costs on an indemnity basis to compensate a party for costs resulting from a failure by another party to comply with a procedural obligation under this part.
- (5) In this section:
damages does not include an amount for non-economic loss.

32 **New part 4.9A**

insert

Part 4.9A **Damages for non-economic loss**

Note The *Civil Law (Wrongs) Act 2002*, pt 7.1 also applies to the award of damages for motor accident claims (see that Act, s 93).

156B **Meaning of *non-economic loss***

In this Act:

non-economic loss includes the following:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement.

156C **Guidelines to assist determining non-economic loss**

- (1) The CTP regulator may make guidelines (the *non-economic loss guidelines*) setting out information to assist courts in deciding the appropriate level of damages for non-economic loss in motor accident claims.
- (2) A court must have regard to the non-economic loss guidelines when awarding damages, but is not bound by the guidelines.
- (3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

33 Section 275

substitute

275 Review of Act

- (1) The Minister must review the operation of this Act every 3 years after the commencement of the *Road Transport (Third-Party Insurance) Amendment Act 2012*.
- (2) The Minister must present a report on the review to the Legislative Assembly within 3 months after the review is started.

34 Dictionary, new definition of *non-economic loss*

insert

non-economic loss—see section 156B.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Civil Law (Wrongs) Act 2002

[1.1] Section 99, new note

insert

Note Damages for non-economic loss for injuries caused by motor accidents are subject to limitations under the *Road Transport (Third-Party Insurance) Act 2008*, pt 4.9A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 February 2011.

2 Notification

Notified under the Legislation Act on 5 September 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport (Third-Party Insurance) Amendment Bill 2012, which originated in the Legislative Assembly as the Road Transport (Third-Party Insurance) Amendment Bill 2011 and was passed by the Assembly on 24 August 2012.

Clerk of the Legislative Assembly

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