

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Road Transport (Third-Party Insurance) Amendment Bill 2011

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(As presented)

(Treasurer)

Road Transport (Third-Party Insurance) Amendment Bill 2011

A Bill for

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:

J2009-447

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Road Transport (Third-Party Insurance) Amendment*
3 *Act 2011*.

4 **2 Commencement**

5 This Act commences on the 7th day after its notification day.

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

8 **3 Legislation amended**

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

11 *Note* This Act also amends the following legislation (see sch 1):

- 12 • *Civil Law (Wrongs) Act 2002*
- 13 • *Road Transport (Third-Party Insurance) Regulation 2008*.

14 **4 Section 27 heading**

15 *substitute*

16 **27 CTP policy not affected by errors etc**

17 **5 New section 27 (2) and (3)**

18 *insert*

19 (2) The validity of a CTP policy is not affected by payment of an
20 incorrect CTP premium for the policy.

21 (3) A licensed insurer who has been paid an incorrect CTP premium
22 may recover any outstanding amount as a debt owing to the insurer.

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

1 **6 Sections 37 and 38**

2 *substitute*

3 **37 What is a CTP premium?**

4 In this Act:

5 **CTP premium**, for a CTP policy, means—

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

10 **38 What premium licensed insurer may charge**

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

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

15 **7 What kinds of expenses must be paid by insurer?**
16 **Section 73 (2), note 1**

17 *omit*

18 4.11

19 *substitute*

20 4.16

1 **8 Respondent to pay injured person's medical expenses**
2 **Section 122 (3), note 1**

3 *omit*

4 4.11

5 *substitute*

6 4.16

7 **9 What is *rehabilitation*?**
8 **Section 123 (a)**

9 *omit*

10 ; or

11 *substitute*

12 ; and

13 **10 Respondent to pay for rehabilitation services**
14 **Section 132, note 1**

15 *omit*

16 4.11

17 *substitute*

18 4.16

19 **11 Cost of rehabilitation services—mediation**
20 **Section 133 (2) (b)**

21 *omit*

22 claimant

23 *substitute*

24 respondent

1 **12 Procedures before compulsory conference**
2 **Section 139 (1) (d), new note**

3 *insert*

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

6 **13 New section 139 (1A)**

7 *insert*

8 (1A) If the claim includes a claim for damages for non-economic loss, the
9 respondent must give a statement to the claimant about whether the
10 respondent agrees that the degree of permanent impairment of the
11 injured person caused by the motor accident is more than the
12 impairment threshold that applies under division 4.9B.2.

13 **14 Section 139 (3), definition of *certificate of readiness***

14 *after*

15 a certificate

16 *insert*

17 under this Act

18 **15 Mandatory final offers**
19 **Section 141 (5)**

20 *omit*

21 pain and suffering

22 *substitute*

23 non-economic loss

1 **16** **Timing of mandatory final offers**
2 **Section 143 (1) (a), note**

3 *substitute*

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

6 **17** **Working out costs for mandatory final offers**
7 **New section 144 (4)**

8 *insert*

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

11 **18** **Court proceedings not to begin if mandatory final offer**
12 **open**
13 **Section 145 (5)**

14 *before*

15 costs

16 *insert*

17 interest or

18 **19** **Time limit—no compulsory conference**
19 **Section 148 (1), note 1**

20 *substitute*

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

23 **20** **Section 148 (3) (b), note**

24 *substitute*

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

21 Sections 155 and 156*omit***22 New parts 4.9A to 4.9D***insert***Part 4.9A Damages for 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).

155 Damages for future economic loss—claimant’s prospects and adjustments

- (1) In a court proceeding based on a motor accident claim, the court may award damages for future economic loss in relation to loss of earnings only if satisfied that the assumptions about future earning capacity or other events on which the damages are to be based reflect the claimant’s most likely future circumstances were it not for the injury.
- (2) If the court decides the amount of an award of damages for future economic loss in relation to loss of earnings, the court must adjust the damages that would be payable if the assumptions were correct by the possibility, calculated as a percentage, of the events occurring were it not for the injury.
- (3) If the court awards damages for future economic loss in relation to loss of earnings, the court must state—
 - (a) the assumptions and evidence on which the damages are based; and
 - (b) the percentage by which the court has adjusted the damages.

- 1 (4) In this section:
- 2 *loss of earnings* means loss of prospective earnings or the
- 3 deprivation or impairment of prospective earning capacity.
- 4 **155A Damages for future economic loss—discount rates**
- 5 (1) This section applies if an award of damages in relation to a motor
- 6 accident claim is to include a lump sum for future economic loss in
- 7 relation to—
- 8 (a) loss of earnings; or
- 9 (b) loss of expectation of financial support; or
- 10 (c) the value of future services of a domestic nature or services
- 11 relating to nursing and attendance; or
- 12 (d) a liability to incur expenditure in the future.
- 13 (2) The present value of the future economic loss is worked out by
- 14 discounting the future economic loss in accordance with—
- 15 (a) a discount rate of the percentage prescribed by regulation; or
- 16 (b) if no percentage is prescribed—a discount rate of 5%.
- 17 (3) Except as provided in this section, nothing in this section affects any
- 18 other laws in relation to discounting amounts awarded as damages.
- 19 (4) In this section:
- 20 *loss of earnings*—see section 155 (4).

1 **Part 4.9B** **Damages for non-economic loss**

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

4 **Division 4.9B.1 Preliminary**

5 **155B Meaning of *non-economic loss***

6 In this Act:

7 *non-economic loss* includes the following:

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

12 **155C Definitions—pt 4.9B**

13 In this part:

14 *combined medical assessment* means an assessment of the degree of
15 permanent impairment of an injured person made by a medical
16 assessor under this part that combines assessments made by 2 or
17 more medical assessors in relation to the injured person.

18 *impairment dispute* means a disagreement between the parties to a
19 motor accident claim about whether the degree of permanent
20 impairment of an injured person caused by the motor accident is
21 more than the impairment threshold that applies under
22 division 4.9B.2.

23 *impairment guidelines*—see section 155P.

24 *medical assessment* means an assessment of the degree of
25 permanent impairment of an injured person made by a medical
26 assessor under this part.

1 *medical assessment certificate* means a certificate about the matters
2 referred to a medical assessor for medical assessment.

3 *medical assessor* means a person appointed under section 155N.

4 **155D Parties may settle claim at any time**

5 Nothing in this part prevents the parties to a motor accident claim
6 from settling the claim at any time.

7 **155E Court need not award damages for non-economic loss**

8 Nothing in this part requires a court to award damages for
9 non-economic loss if the court considers that it is not appropriate to
10 award the damages.

11 **Division 4.9B.2 Impairment thresholds for damages**
12 **for non-economic loss**

13 **155F Impairment thresholds for damages for non-economic**
14 **loss**

15 Damages for non-economic loss for a motor accident claim in
16 relation to an injured person are not payable unless—

17 (a) the degree of permanent impairment of the injured person
18 caused by the motor accident, excluding any psychological or
19 psychiatric injury, is 15% or more; or

20 (b) the degree of permanent impairment of the injured person
21 caused by the motor accident in relation to a psychological or
22 psychiatric injury only is 15% or more.

23 *Note* For how the degree of permanent impairment of an injured person is
24 assessed, see s 155I.

1 Division 4.9B.3 Medical assessments

2 155G Medical assessment required if impairment dispute

3 If there is an impairment dispute in relation to an injured person,
4 damages for non-economic loss are not payable unless a medical
5 assessment has been made of the degree of permanent impairment.

6 *Note* Also, damages for non-economic loss are not payable unless the degree
7 of permanent impairment is more than the impairment threshold that
8 applies under div 4.9B.2 (see s 155F).

9 155H Allocation of impairment disputes for medical 10 assessment

11 (1) The CTP regulator must allocate the impairment dispute to a
12 medical assessor for a medical assessment—

13 (a) on application by a party made at any stage in a claim and in
14 accordance with the requirements (if any) in the medical
15 assessment procedural guidelines; or

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

18 (b) on request of a court under section 155K.

19 (2) However, if a medical assessment has already been made in relation
20 to the impairment dispute, an application by a party may only be
21 made on the grounds that—

22 (a) the injury has deteriorated since the last assessment and the
23 deterioration could have a material effect on the outcome of a
24 previous assessment; or

25 **Example—material effect**

26 a deterioration of an injury that increases the degree of permanent
27 impairment of the injured person (other than because of a psychological or
28 psychiatric injury) to 15% or more

1 *Note* An example is part of the Act, is not exhaustive and may extend,
2 but does not limit, the meaning of the provision in which it
3 appears (see Legislation Act, s 126 and s 132).

- 4 (b) there is additional information about the injury that—
- 5 (i) was not available to be given under part 4.3 (Obligations
6 to give documents and information); and
- 7 (ii) could have a material effect on the outcome of the
8 previous assessment.
- 9 (3) If, on application mentioned in subsection (2), the CTP regulator is
10 satisfied that there are grounds for another medical assessment, the
11 CTP regulator must allocate the impairment dispute to a medical
12 assessor for medical assessment.
- 13 (4) If the CTP regulator considers that medical assessments by more
14 than 1 medical assessor are needed to determine the degree of
15 permanent impairment of an injured person, the CTP regulator may
16 allocate the impairment dispute to 2 or more medical assessors.
- 17 **Example—2 or more medical assessments needed**
18 An injured person has multiple injuries caused by a motor accident. The CTP
19 regulator considers that more than 1 medical assessor needs to undertake a
20 medical assessment in relation to the injured person because no single medical
21 assessor has the relevant qualifications to undertake an assessment in relation to
22 all the injuries.
- 23 (5) The CTP regulator must allocate each medical assessment made
24 under subsection (4) to a medical assessor to make a combined
25 medical assessment.

26 **155I Assessment of degree of permanent impairment**

- 27 (1) An assessment of the degree of permanent impairment of an injured
28 person must be—
- 29 (a) made in accordance with the impairment guidelines; and
30 (b) expressed as a percentage of the person as a whole.

-
- 1 (2) In assessing the degree of permanent impairment, the medical
2 assessor must disregard—
- 3 (a) any impairment that existed before the motor accident; and
- 4 (b) unless the only injury being assessed is a psychiatric or
5 psychological injury—any impairment resulting from a
6 psychiatric or psychological injury.
- 7 (3) A combined medical assessment made by a medical assessor must—
- 8 (a) assess the injured person's total degree of permanent
9 impairment resulting from all injuries to which the medical
10 assessments allocated to the medical assessor under
11 section 155H (5) relate; and
- 12 (b) be based on the matters in medical assessment certificates for
13 the medical assessments.
- 14 (4) A medical assessor may refuse to make a medical assessment if the
15 medical assessor is not satisfied that the injured person's impairment
16 has become permanent.
- 17 (5) If a medical assessor refuses to make a medical assessment, and a
18 court proceeding based on the motor accident claim has been
19 started, the court may adjourn the proceeding until an assessment
20 has been made.

21 **155J Medical assessment certificates**

- 22 (1) On making a medical assessment, including a combined medical
23 assessment, for an impairment dispute, a medical assessor must give
24 the CTP regulator a medical assessment certificate.
- 25 (2) The medical assessment certificate must set out the reasons for any
26 findings by the medical assessor in relation to any matter stated in
27 the certificate.

- 1 (3) The CTP regulator must allocate the medical assessment certificate
2 to another medical assessor (the *peer review assessor*) to review the
3 certificate to ensure it is not incorrect in a material respect.
- 4 (4) A medical assessment certificate is conclusive proof in a proceeding
5 of the matters certified if the peer review assessor for the certificate
6 is satisfied that the certificate is not incorrect in a material respect.
- 7 (5) If a medical assessor makes an error in a medical assessment
8 certificate the assessor may give a replacement certificate to correct
9 the error.
- 10 (6) A medical assessment certificate for a further medical assessment
11 prevails over a medical assessment certificate for the previous
12 medical assessment to the extent of any inconsistency.

13 **155K Court may reject medical assessment certificates**

- 14 (1) This section applies if a medical assessment certificate in relation to
15 an impairment dispute has been given in a court proceeding based
16 on a motor accident claim.
- 17 (2) A court may reject the medical assessment certificate if satisfied that
18 admitting a matter in the certificate into the proceeding would cause
19 a party to the proceeding substantial injustice.
- 20 (3) If a court rejects the medical assessment certificate, the court
21 must—
- 22 (a) ask the CTP regulator to allocate the impairment dispute to a
23 medical assessor for another medical assessment under
24 section 155H; or
- 25 (b) make its own assessment of the injured person's degree of
26 permanent impairment in accordance with section 155I
27 (Assessment of degree of permanent impairment).

- 1 (4) If the court asks the CTP regulator to allocate the impairment
2 dispute to a medical assessor under subsection (3) (a), the court
3 must adjourn the proceeding until another medical assessment
4 certificate has been given.

5 **155L Injured people to attend medical assessments and**
6 **comply with requests**

- 7 (1) This section applies if an injured person for a motor accident claim
8 fails to—
9 (a) attend an appointment for a medical assessment; or
10 (b) comply with any reasonable request of the medical assessor in
11 relation to a medical assessment.
- 12 (2) If satisfied that the injured person has no reasonable excuse for the
13 failure, a court may, on application by the respondent for the claim,
14 by order, do 1 or more of the following:
15 (a) direct the injured person to—
16 (i) if the injured person failed to attend an appointment for a
17 medical assessment—attend another appointment for a
18 medical assessment on a date stated by the CTP
19 regulator; or
20 (ii) if the injured person failed to comply with a reasonable
21 request in relation to a medical assessment—comply with
22 the request;
23 (b) direct that a medical assessment be made on the available
24 evidence;
25 (c) direct that the injured person pay the costs associated with a
26 medical assessment;
27 (d) strike out the motor accident claim or part of the motor
28 accident claim;

- 1 (e) if a court proceeding based on the motor accident claim has
2 been started—
- 3 (i) adjourn the proceeding until the injured person—
- 4 (A) if the injured person failed to attend an appointment
5 for a medical assessment—attends another
6 appointment for a medical assessment; or
- 7 (B) if the injured person failed to comply with a
8 reasonable request in relation to a medical
9 assessment—complies with the request; or
- 10 (ii) strike out the proceeding or part of the proceeding.
- 11 (3) Also, if a court proceeding based on the motor accident claim has
12 been started, the court may draw an unfavourable inference from the
13 injured person's failure to attend an appointment for a medical
14 assessment or comply with a reasonable request in relation to a
15 medical assessment.

16 **Division 4.9B.4 Other matters**

17 **155M Guidelines to assist determining non-economic loss**

- 18 (1) The CTP regulator may make guidelines (the *non-economic loss*
19 *guidelines*) setting out information to assist courts in deciding the
20 appropriate level of damages for non-economic loss in motor
21 accident claims.
- 22 (2) A court may have regard to the non-economic loss guidelines when
23 awarding damages, but is not bound by the guidelines.
- 24 (3) A non-economic loss guideline is a notifiable instrument.
- 25 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **155N Appointment of medical assessors**

2 (1) The CTP regulator may appoint a suitably qualified person as a
3 medical assessor for this Act.

4 *Note 1* For the making of appointments (including acting appointments), see
5 the Legislation Act, pt 19.3.

6 *Note 2* In particular, a person may be appointed for a particular provision of a
7 law (see Legislation Act, s 7 (3)) and an appointment may be made by
8 naming a person or nominating the occupant of a position (see
9 Legislation Act, s 207).

10 (2) An appointment must not be for longer than 3 years.

11 *Note* A person may be reappointed to a position if the person is eligible to be
12 appointed to the position (see Legislation Act, s 208 and dict, pt 1,
13 def *appoint*).

14 (3) The CTP regulator may appoint a medical assessor generally or for a
15 stated impairment dispute.

16 (4) An appointment may be conditional.

17 **Example**

18 a medical assessor may only make medical assessments in relation to a stated
19 specialty

20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 Legislation Act, s 126 and s 132).

23 (5) The CTP regulator must end the appointment of a person as a
24 medical assessor if the person stops being suitably qualified to be a
25 medical assessor.

26 (6) A regulation may make provision in relation to the appointment of a
27 medical assessor, including when the CTP regulator may or must be
28 satisfied that a person is suitably qualified to be a medical assessor.

1 **1550 Medical assessment procedural guidelines**

2 (1) The CTP regulator may make guidelines (the *medical assessment*
3 *procedural guidelines*) for procedures in relation to medical
4 assessments under this part, including the following:

- 5 (a) applying for a medical assessment;
- 6 (b) referring an impairment dispute for a medical assessment;
- 7 (c) the requirements for a medical assessment certificate;
- 8 (d) the time for undertaking a procedural requirement in relation to
9 a medical assessment;
- 10 (e) reviewing a medical assessment.

11 (2) A medical assessment procedure guideline is a notifiable instrument.

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

13 **155P Impairment guidelines**

14 (1) The *impairment guidelines* for assessing the degree of permanent
15 impairment of an injured person are—

16 (a) in relation to an injury other than a psychological or psychiatric
17 injury—

18 (i) the guidelines made under subsection (2) (a); or

19 (ii) if there are no guidelines under subsection (2) (a)—the
20 American Medical Association’s Guides to the
21 Evaluation of Permanent Impairment, Fifth Edition (the
22 *AMA 5*); and

23 (b) in relation to a psychological or psychiatric injury—

24 (i) the guidelines made under subsection (2) (b); or

- 1 (ii) if there are no guidelines under subsection (2) (b)—the
2 WorkCover Guides for the Evaluation of Permanent
3 Impairment, 3rd Edition, chapter 11 (Psychiatric and
4 psychological disorders).

5 *Note* The WorkCover Guides for the Evaluation of Permanent
6 Impairment, 3rd Edition are accessible at
7 www.workcover.nsw.gov.au.

- 8 (2) The CTP regulator may make impairment guidelines (the *approved*
9 *impairment guidelines*) for assessing the degree of permanent
10 impairment of an injured person in relation to either or both of the
11 following:

12 (a) an injury other than a psychological or psychiatric injury;

13 (b) a psychological or psychiatric injury.

14 *Note* The power to make guidelines includes the power to amend or repeal
15 the guidelines. The power to amend or repeal the guidelines is
16 exercisable in the same way, and subject to the same conditions, as the
17 power to make the guidelines (see Legislation Act, s 46).

- 18 (3) An approved impairment guideline may apply, adopt or incorporate
19 a law or instrument, or a provision of a law or instrument, as in
20 force from time to time or at a particular time.

- 21 (4) An approved impairment guideline is a notifiable instrument.

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

- 23 (5) If there are no approved impairment guidelines, the CTP regulator
24 must ensure that—

25 (a) a copy of the AMA 5 is available for inspection at a place
26 prescribed by regulation; and

27 (b) a person may inspect them, on request, at the prescribed place
28 during normal business hours.

1 **155Q Costs of medical assessments**

2 (1) The costs of an injured person's medical assessment under this part
3 are payable—

4 (a) as prescribed by regulation; or

5 (b) if there is no regulation—as agreed under the industry deed; or

6 (c) if there is no agreement under the industry deed—by the
7 respondent's insurer.

8 *Note* **Insurer**, of a person—see s 81.

9 (2) The CTP regulator may make arrangements for the costs to be met
10 by the CTP regulator or by someone else.

11 *Note* A fee, charge or other amount payable may be determined under the
12 *Road Transport (General) Act 1999*, s 96, for this section.

13 (3) In this section:

14 **costs**, of a medical assessment, mean the following:

15 (a) the remuneration of medical assessors;

16 (b) the reasonable and necessary costs and expenses incurred by an
17 injured person, or the injured person's carer, to attend the
18 medical assessment;

19 (c) any costs incurred by the CTP regulator in relation to the
20 medical assessment;

21 (d) any other costs prescribed by regulation.

22 **155R Monitoring and oversight of medical assessments**

23 (1) The CTP regulator may arrange for the provision of training and
24 information to medical assessors to promote accurate and consistent
25 medical assessments.

- 1 (2) A medical assessor is not subject to the direction or control of the
2 CTP regulator or a public servant in relation to any decision of the
3 assessor that affects the interests of the parties to a medical
4 assessment.
- 5 (3) The CTP regulator or a public servant must not overrule or interfere
6 with any decision of a medical assessor in relation to a medical
7 assessment.

8 **155S Protection of medical assessors from liability**

- 9 (1) A medical assessor is not civilly liable for anything done or omitted
10 to be done honestly and without recklessness—
- 11 (a) in the exercise of a function under this Act; or
- 12 (b) in the reasonable belief that the conduct was in the exercise of
13 a function under this Act.
- 14 (2) Any civil liability that would, apart from this section, attach to the
15 medical assessor attaches instead to the Territory.
- 16 (3) A medical assessor is not compellable in a proceeding to give
17 evidence or produce documents in relation to any matter in which
18 the medical assessor was involved in the exercise of a function
19 under this Act.

1 **Part 4.9C Interest**

2 **156 Payment of interest**

3 (1) Interest is payable in relation to damages for a motor accident claim
4 only if 1 or more of the following apply:

5 (a) the respondent has not made an offer, or revised offer, of
6 settlement even though—

7 (i) the claimant has given the respondent information that
8 would enable a proper assessment of the claimant's full
9 entitlement to damages of any kind in relation to the
10 motor accident claim; and

11 (ii) the respondent has had a reasonable opportunity to make
12 an offer, or revised offer, of settlement;

13 (b) if the respondent is insured under a CTP policy or is the
14 nominal defendant and the preconditions to payment of
15 medical expenses under section 121 are met—the insurer has
16 failed to comply with its obligations under part 4.6;

17 (c) if the respondent has made a mandatory final offer or other
18 offer of settlement in writing—

19 (i) the total amount of damages awarded by a court (without
20 the addition of any interest) is more than 20% higher than
21 the highest amount offered by the respondent; and

22 (ii) the highest amount offered by the respondent is
23 unreasonable having regard to the information available
24 to the respondent when the offer was made.

25 (2) For subsection (1) (c), the highest amount offered by the respondent
26 is not unreasonable if, when the offer was made, the respondent was
27 not able to make a reasonable assessment of the claimant's
28 entitlement to damages of any kind in relation to the motor accident
29 claim.

1 **Part 4.9D Costs**

2 **156A Costs—small awards of damages—generally**

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

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

- 7 (2) If the court awards \$30 000 or less in damages, the court must apply
8 the following principles:

9 (a) if the amount awarded is less than the claimant's mandatory
10 final offer but more than the respondent's mandatory final
11 offer, no costs are to be awarded;

12 (b) if the amount awarded is equal to, or more than, the claimant's
13 mandatory final offer, costs must be awarded to the claimant in
14 the way prescribed by regulation as from the date on which the
15 proceeding began (but no award is to be made for costs up to
16 that date);

17 (c) if the amount awarded is equal to, or less than, the
18 respondent's mandatory final offer, costs must be awarded to
19 the respondent as prescribed by regulation.

- 20 (3) If the court awards more than \$30 000 but not more than \$50 000 in
21 damages, the court must apply the following principles:

22 (a) if the amount awarded is less than the claimant's mandatory
23 final offer but more than the respondent's mandatory final
24 offer, costs must be awarded to the claimant in accordance
25 with the *Civil Law (Wrongs) Act 2002*, chapter 14, up to the
26 maximum amount prescribed by regulation or, if no amount is
27 prescribed, \$2 500;

- 1 (b) if the amount awarded is equal to, or more than, the claimant's
2 mandatory final offer, costs must be awarded to the claimant as
3 follows:
- 4 (i) costs up to the date on which the proceeding began must
5 be awarded in accordance with the *Civil Law (Wrongs)*
6 *Act 2002*, chapter 14, up to the maximum amount
7 prescribed by regulation or, if no amount is prescribed,
8 \$2 500;
- 9 (ii) costs on or after the date on which the proceeding began
10 must be awarded on an indemnity basis;
- 11 (c) if the amount awarded is equal to, or less than, the
12 respondent's mandatory final offer, costs must be awarded as
13 follows:
- 14 (i) costs up to the date on which the proceeding began must
15 be awarded to the claimant in accordance with the *Civil*
16 *Law (Wrongs) Act 2002*, chapter 14, up to the maximum
17 amount prescribed by regulation or, if no amount is
18 prescribed, \$2 500;
- 19 (ii) costs on or after the date on which the proceeding began
20 must be awarded to the respondent in accordance with the
21 *Civil Law (Wrongs) Act 2002*, chapter 14.
- 22 (4) This section is subject to section 156B.
- 23 (5) In this section:
- 24 ***damages*** does not include damages for non-economic loss.

1 **156B Costs—small awards of damages—exceptions**

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

5 *Note* **Damages** does not include damages for non-economic loss (see s (7)).

- 6 (2) This section applies in addition to section 156A.

- 7 (3) The court may make an award of costs to compensate a party for
8 costs resulting from a failure by another party to comply with a
9 procedural obligation under this part.

- 10 (4) The court must not award costs to a party related to the introduction
11 of evidence by the party that is unnecessarily repetitive.

12 **Example**

13 If a claimant calls 2 or more expert witnesses from the same area of expertise to
14 give evidence to substantially the same effect, and the claimant is entitled to costs
15 under s 156A, the court must only allow costs related to 1 of the expert witnesses.

16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).

- 19 (5) Unless an award of damages is affected by factors that were not
20 reasonably foreseeable at the time of the exchange of mandatory
21 final offers, the court must not award costs to a party related to
22 investigations or gathering of evidence by the party after—

23 (a) the end of the compulsory conference; or

24 (b) if the parties or the court dispenses with a compulsory
25 conference—the date when the parties completed the exchange
26 of mandatory final offers.

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

1 (6) If an award of damages is affected by factors that were not
2 reasonably foreseeable by a party at the time of making the party's
3 mandatory final offer, the court may, if satisfied that it is just to do
4 so, make an order for costs under section 156A (2) or (3) as if the
5 reference to a mandatory final offer in the relevant subsection were
6 a reference to a later offer made in the light of the factors that
7 became apparent after the parties completed the exchange of
8 mandatory final offers.

9 **Example**

10 If a claimant's medical condition suddenly and unexpectedly deteriorates after the
11 date of the mandatory final offers and the court makes a much higher award of
12 damages than would have been reasonably expected at that date, the court may
13 ignore the mandatory final offers and award costs on the basis of later offers of
14 settlement.

15 (7) In this section:

16 *damages* does not include damages for non-economic loss.

17 **23 Parts 4.9A to 4.12**

18 *renumber as parts 4.10 to 4.17*

19 **24 Divisions 4.9B.1 to 4.9B.4**

20 *renumber as divisions 4.11.1 to 4.11.4*

21 **25 Divisions 4.11.1 to 4.11.4**

22 *renumber as divisions 4.16.1 to 4.16.4*

1 **26 Section 157 heading**

2 *substitute*

3 **157 Definitions—pt 4.14**

4 **27 Section 275**

5 *substitute*

6 **275 Review of Act**

- 7 (1) The Minister must review the operation of this Act as soon as
8 practicable after the end of 5 years after the commencement of the
9 *Road Transport (Third-Party Insurance) Amendment Act 2011*.
- 10 (2) The Minister must present a report on the review to the Legislative
11 Assembly within 3 months after the review is started.
- 12 (3) This section expires 6 years after the day it commences.

13 **28 New part 9.3**

14 *insert*

15 **Part 9.3 Transitional—Road Transport**
16 **(Third-Party Insurance)**
17 **Amendment Act 2011**

18 **291 Transitional—personal injury**

- 19 (1) This section applies to a claim for personal injury that arises out of a
20 motor accident that happened before the commencement of the
21 *Road Transport (Third-Party Insurance) Amendment Act 2011*.
- 22 (2) The claim for the personal injury must be dealt with as if that Act
23 had not been enacted.

1 (3) This section is a law to which the Legislation Act, section 88
2 (Repeal does not end effect of transitional laws etc) applies.

3 **292 Expiry—pt 9.3**

4 This part expires 1 year after the day it commences.

5 **29 Dictionary, new definition of *combined medical***
6 ***assessment***

7 *insert*

8 *combined medical assessment*, for part 4.9B (Damages for
9 non-economic loss)—see section 155C.

10 **30 Dictionary, definition of *compliance notice***

11 *omit*

12 4.10

13 *substitute*

14 4.14

15 **31 Dictionary, definition of *costs***

16 *omit*

17 4.11

18 *substitute*

19 4.16

-
- 1 **32 Dictionary, definition of *enforcing party***
- 2 *omit*
- 3 4.10
- 4 *substitute*
- 5 4.14
- 6 **33 Dictionary, new definitions**
- 7 *insert*
- 8 *impairment dispute*, for part 4.9B (Damages for non-economic
9 loss)—see section 155C.
- 10 *impairment guidelines*, for part 4.9B (Damages for non-economic
11 loss)—see section 155P.
- 12 **34 Dictionary, definition of *late party***
- 13 *omit*
- 14 4.10
- 15 *substitute*
- 16 4.14
- 17 **35 Dictionary, new definitions**
- 18 *insert*
- 19 *medical assessment*, for part 4.9B (Damages for non-economic
20 loss)—see section 155C.
- 21 *medical assessment certificate*, for part 4.9B (Damages for
22 non-economic loss)—see section 155C.
- 23 *medical assessor*, for part 4.9B (Damages for non-economic loss)—
24 see section 155C.

1 *non-economic loss*—see section 155B.

2 **36 Dictionary, definition of *relevant notice claim***

3 *omit*

4 4.10

5 *substitute*

6 4.14

7 **37 Dictionary, definition of *required thing***

8 *omit*

9 4.10

10 *substitute*

11 4.14

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Civil Law (Wrongs) Act 2002**

4 **[1.1] Section 98, new note**

5 *insert*

6 *Note* Damages for loss of earnings for injuries caused by motor accidents are
7 also dealt with in the *Road Transport (Third-Party Insurance) Act 2008*,
8 pt 4.9A.

9 **[1.2] Section 99, new note**

10 *insert*

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

14 **Part 1.2** **Road Transport (Third-Party**
15 **Insurance) Regulation 2008**

16 **[1.3] New sections 27A and 27B**

17 *insert*

18 **27A Appointment of medical assessors—Act, s 155N (5)**

19 The CTP regulator may be satisfied that a person is suitably
20 qualified to exercise the functions of a medical assessor if the
21 person—

22 (a) is, or has a similar level of skill, expertise and training as—

23 (i) a medical assessor under the *Motor Accidents*
24 *Compensation Act 1999* (NSW); or

- 1 (ii) an approved medical specialist under the *Workplace*
2 *Injury Management and Workers Compensation Act 1998*
3 (NSW); or
4 (iii) a legally qualified medical practitioner appointed under
5 the *Workers Rehabilitation and Compensation Act 1986*
6 (SA); and
7 (b) is suitably qualified to apply the impairment guidelines.

8 **27B Prescribed place for AMA 5—Act, s 155P (5) (a)**

9 The Canberra Hospital, Building 5, Yamba Drive, Garran,
10 ACT 2606 is prescribed.

11 **[1.4] Section 28**

12 *omit*

13 155

14 *substitute*

15 156A

16 **[1.5] Section 29**

17 *omit*

18 155

19 *substitute*

20 156A

21 **[1.6] Section 30**

22 *omit*

23 155

24 *substitute*

25 156A

1 **[1.7] Section 33 (2) (b)**

2 *omit*

3 4.11

4 *substitute*

5 4.16

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2011.

2 Notification

Notified under the Legislation Act on 2011.

3 Republications of amended laws

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