

## AMENDMENTS TO THE *MOTOR ACCIDENTS (COMPENSATION) ACT*

### SUMMARY OF CHANGES

*This paper aims to provide background on the legislative amendments to the Motor Accidents (Compensation) Act due to commence 1 July 2007.*

#### **1. Introduction: Structure of *Motor Accidents (Compensation) Act***

The *Motor Accidents (Compensation) Act* (MACA) establishes the Northern Territory's compulsory motor accident compensation scheme. The scheme is underwritten by the Northern Territory Government and funded by contributions from motorists at the time of registering or re-registering a motor vehicle in the Territory. The Territory Insurance Office (TIO) administers the MACA scheme on behalf of the Territory Government.

The MACA scheme provides statutory compensation benefits for medical and rehabilitation costs, loss of earning capacity, personal attendant care and lump sum compensation for Territory residents who suffer permanent impairment from motor accidents. The scheme also provides compensation benefits for the spouse and dependants of persons killed in a motor accident.

MACA also provides the same statutory benefits for residents injured interstate in Northern Territory registered vehicles.

Prior to the commencement of the changes, non residents injured in an accident in the Territory involving a Territory registered vehicle could seek compensation through the courts (common law damages) if they could prove that their injuries result from the negligence of another party. The costs of common law claims were borne by the MACA scheme where the driver of a Territory registered vehicle was at fault.

Benefits may be reduced or excluded if claimants are in breach of certain criminal and traffic offences at the time of the accident.

In most cases, MACA compensation benefits for Territory residents injured in a motor vehicle accident, or for the dependants of persons killed in a motor vehicle accident, are provided automatically, regardless of who caused the accident.

Statutory motor accident compensation schemes based on this principle avoid the need for costly and potentially stressful litigation in order to obtain compensation. However, such schemes also require the surrender of certain common law rights, or in other words, the right to sue for compensation in a court of law.

Victoria and Tasmania also operate motor accident compensation schemes based on this principle. All other jurisdictions operate common law based schemes that can require compensation to be determined by a court of law. Under such schemes, parties that are found to have caused the accident through negligence are generally not entitled to compensation.

## **2. Background: Review of MACA Benefit Provisions**

The Treasurer approved a review of MACA benefit provisions in April 2005. This was the first major review of motor accidents compensation benefits since MACA was introduced in 1979.

In April 2006, Government considered the recommendations of the review and directed the preparation of discussion draft legislation. In December 2006, the discussion draft legislation was released for public comment.

Following the public consultation process, the Motor Accidents (Compensation) Amendment Bill 2007 was passed during the April 2007 sittings of the Legislative Assembly. The more significant of the amendments are discussed below.

## **3. Amendments to the *Motor Accidents (Compensation) Act***

### ***Abolition of common law rights***

A key change includes the abolition of a non resident's right to seek a damages claim through common law for the death of, or injury to, a person arising from a motor accident that occurs in the Territory.

This establishes a single compensation benefit structure for all accidents in the Territory, regardless of the residency of claimants and the location of the accident. This also means that MACA benefits apply for accidents occurring on private property.

### ***Indemnity for residents and benefits for death or injury resulting from motor accidents limited to accidents occurring in Australia***

MACA is amended to limit the current indemnity for residents against claims for compensation for accidents occurring outside the Territory to within Australia.

Consequential changes mean that benefits are payable to claimants who suffer personal injury or dependent family member if a person dies in, or as a result of, a motor accident occurring in the Territory regardless of residency.

The amended legislation also provides for the provision of compensation benefits for any accident occurring anywhere in the Territory, as opposed to accidents involving vehicles on public roads or places, as currently applies.

However, the payment of benefits for residents for accidents occurring outside the Territory is now restricted to accidents occurring within Australia. The provision also provides for residents injured in an accident outside the Territory to claim against the motor accident compensation scheme operating in the jurisdiction that the accident occurs.

### ***Exclusions from certain benefits***

Currently a driver under the influence of alcohol or drugs at the time of accident is excluded from loss of earning capacity and permanent impairment benefits if, in the opinion of the Territory Insurance Office Board, the influence of alcohol or drugs contributed to the accident. This exclusion for driving under the influence of alcohol or drugs has now been linked to relevant laws.

As coverage is now extended to accidents occurring on private property and relevant traffic laws under the *Traffic Act* only apply on public roads and places, the exclusion has also been amended to include drivers under the influence of alcohol or drugs involved in an accident on private property.

Reduced benefits now also apply where the motor vehicle had never been registered, or was unregistered for a period of at least 3 months and the injured person is the owner or driver of the unregistered motor vehicle. The exclusion applies to the driver if the driver knew or ought to have known that the vehicle was unregistered.

The MACA amendments also extend this exclusion to include a person who is injured in or as a result of a motor accident and that person engages in conduct that creates a substantial risk of injury and recklessly ignores that risk. This exclusion applies whether the injured person is a driver, passenger, pedestrian or cyclist.

### ***Reduction in certain benefits***

A new provision reduces loss of earning capacity and permanent impairment benefits by 25 per cent if a claimant was not wearing a seat belt or safety helmet (if required) at the time of the motor vehicle accident.

This also includes a new provision reducing the amount of the entitlement in respect of the death or injury arising out of a motor vehicle accident if the injured person is entitled to benefits through a policy of insurance or entitled to compensation under another compensation scheme (other than a workers compensation scheme).

### ***Patient treatment and management plan***

MACA is revised to confer power on the Territory Insurance Office Board to determine a medical treatment plan or rehabilitation program for an injured person, subject to the advice of a medical practitioner.

### ***Benefits limited to within Australia***

Other key changes result in claimant not being entitled to compensation or provision of services outside of Australia.

This provision is largely aimed at reducing the complexities and costs associated with managing overseas claims, particularly for medical, rehabilitation and attendant care benefits where health systems and costs could vary substantially from those applying in Australia.

However, provision is made under regulations for lump sum payment, or commutation, of benefits for claimants wishing to leave Australia permanently or for an extended period, subject to certain criteria. These changes are explained in more detail further on.

### ***Short-term attendant care benefits***

Attendant care benefits include personal services provided to injured claimants in the home, and include assistance in washing, clothing, cooking/feeding, transport etc.

Short term attendant care benefits are provided to seriously injured and incapacitated claimants that are expected to ultimately recover from their injuries.

The changes increase the current cap on benefits from 28 hours per week to 32 hours and introduces a 12 month time limit for the provision of benefits. However, the time limit can be extended on the basis of medical advice.

Attendant care benefits are also broadened to include household services, or services a domestic nature (house cleaning, laundry and gardening services etc) required for the proper running and maintenance of the claimant's household.

### ***Long-term attendant care benefits***

Long term attendant care benefits are provided for seriously and permanently injured claimants. To be eligible, a claimant must be assessed as suffering over 85 per cent permanent impairment. In practice, this includes quadriplegics and persons suffering serious brain injury.

MACA has been amended to increase the cap on benefits from 28 hours per week to 32 hours, and to reduce the permanent impairment threshold from 85 per cent to 60 per cent. Similarly, this entitlement is extended to household services.

A new respite care benefit, equal to 2 weeks attendant care benefits, is also introduced in recognition of the care provided by family and relatives.

The increase in attendant care hours, inclusion of household services and provision of respite care will provide more support to those seriously and permanently injured.

### ***Emergency travel benefit***

Immediate financial assistance, up to the value of \$4 000 for travel to the hospital or the funeral by a spouse, parent or child of the person injured or killed in or as a result of a motor accident, is now available.

### ***Reduction of death benefits in certain cases***

The amendments will allow the Territory Insurance Office Board to reduce compensation provided to dependants of persons killed in motor vehicle accidents involving alcohol or drugs.

Death benefits payable may also be reduced if the accident occurred while the deceased engaged in conduct that created a substantial risk of injury. This provision applies to a driver, passenger, pedestrian or cyclist.

### ***Commutation of benefits***

Currently, MACA compensation benefits for medical, rehabilitation, attendant care and loss of earning capacity are provided to Territory residents in the form of periodical payments or as costs are incurred, and not in the form of a one-off lump sum payment.

Commutation of benefits is only presently available for loss of earning capacity, where the assessed entitlement is considered too small to justify the administrative costs of providing ongoing payments over time. A claimant is required to apply for commutation to the Territory Insurance Office Board.

A new provision now enables a liability to pay statutory benefits to be commuted and paid by way of a single lump sum, in accordance with criteria and conditions prescribed by Regulations.

This recognises the potential hardship and disadvantage that may accrue through the limitation of MACA benefits to within Australia.

Accordingly, the Regulations will allow a claimant to apply to the TIO Board for commutation of medical, rehabilitation, long term attendant care and loss of earning capacity benefits. The TIO Board will be required to commute benefits if it is satisfied that the following conditions are met:

- the claimant resides outside of Australia or is about to leave Australia to take up residence overseas for a substantial period;
- the claimant would otherwise be eligible for the benefits for which commutation is sought;
- the claimant suffers permanent impairment of at least 15 per cent; and
- the claimant's injuries have stabilised to the point where it is possible to predict the future course of the claimant's condition with reasonable certainty.

In commuting benefits, the TIO Board will be required to estimate compensation benefits that would apply if the claimant was otherwise to remain in Australia, and discount the amount to present value. In calculating the commutation payment, the following restrictions are to apply:

- the commutation payment for medical and rehabilitation benefits must not exceed \$300 000 (indexed to inflation);
- the total commutation payment for all benefits must not exceed \$1 million (indexed to inflation); and
- the likely future amelioration or deterioration of the claimant's condition is to be accounted for.

Under the Regulations, commutation of benefits would abolish any future claim for compensation for a claimant from the MACA scheme.