

South Australia

# Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013

An Act to provide a scheme for the lifetime treatment, care and support of persons catastrophically injured in motor vehicle accidents; to make related amendments to the *Civil Liability Act 1936*, the *Motor Accident Commission Act 1992*, the *Motor Vehicles Act 1959*, and the *Stamp Duties Act 1923*; and for other purposes.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

*approved insurer* means an approved insurer under Part 4 of the *Motor Vehicles Act 1959*;

*approved provider*—see section 29;

**assessed treatment, care and support needs** are treatment, care and support needs that apply under section 27(2);

**attendant care and support services** means services that aim to provide assistance to people with everyday tasks and includes (for example) personal assistance, nursing, home maintenance and domestic services;

**Authority** means the Lifetime Support Authority of South Australia established by this Act;

**board** means the board of directors of the Authority;

**child** means a person under the age of 18 years;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**eligible person** means a person who is eligible to be a participant in the Scheme under section 24;

**excluded treatment, care and support needs**—see section 4(2);

**expert review panel** means an expert review panel constituted under Schedule 1;

**Fund** means the Lifetime Support Scheme Fund established under Part 7;

**health professional** means a registered health practitioner under the *Health Practitioner Regulation National Law* (other than a student);

**insurer** means an insurer in respect of a liability that may be incurred in respect of a motor vehicle injury (including an insurer under a law of a place other than South Australia or under a law of the Commonwealth);

**LSS Rules** means the rules made by the Governor under section 56;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**Minister for Health** means the Minister responsible for the administration of the *Health Care Act 2008*;

**motor vehicle accident** means the incident caused by or arising out of the use of a motor vehicle that results in a motor vehicle injury;

**motor vehicle injury** means a bodily injury to a person caused by or arising out of the use of a motor vehicle;

**participant in the Scheme** or **participant** means a person accepted under this Act as a participant in the Scheme (either as a lifetime participant or as an interim participant);

**private hospital** means a private hospital within the meaning of the *Health Care Act 2008*;

**public hospital** means a hospital incorporated under the *Health Care Act 2008*;

**relevant motor vehicle accident** means the motor vehicle accident that results in the motor vehicle injury that is relevant for the purposes of the application of this Act in relation to a particular person;

**Scheme** means the Scheme under this Act for the lifetime treatment, care and support of certain persons injured in motor vehicle accidents;

*third-party policy* means the policy of insurance that applies under Part 4 of the *Motor Vehicles Act 1959*;

*treatment, care and support needs*—see section 4;

*treatment, care and support needs assessment* means an assessment under Part 4.

- (2) Other words and expressions used in this Act have the meaning assigned to them in section 5, or Part 4, of the *Motor Vehicles Act 1959*, unless the context otherwise requires or the LSS Rules provide otherwise.
- (3) Without limiting subsection (2), section 99(3), (3a) and (4) of the *Motor Vehicles Act 1959* will apply in relation to this Act in order to determine whether a bodily injury is to be regarded as being caused by or arising out of the use of a motor vehicle.
- (4) Subsection (3) applies subject to any provision made by the LSS Rules.

#### 4—Treatment, care and support needs

- (1) For the purposes of this Act, the *treatment, care and support needs* of a participant in the Scheme are the participant's needs for or in connection with any of the following:
  - (a) medical treatment (including pharmaceuticals);
  - (b) dental treatment;
  - (c) rehabilitation;
  - (d) ambulance transportation;
  - (e) respite care;
  - (f) attendant care and support services;
  - (g) aids and appliances;
  - (h) prostheses;
  - (i) education and vocational training;
  - (j) home and transport modification;
  - (k) workplace modification;
  - (l) such other kinds of treatment, care, support or services as may be prescribed by the regulations for the purposes of this subsection;
  - (m) such other kinds of treatment, care, support or services as may be determined by the Authority (either generally, for specified classes of cases, or for a particular person).
- (2) Despite subsection (1), but subject to subsection (1)(m), the treatment, care and support needs of a participant do not include any treatment, care, support or services declared by the LSS Rules to be *excluded treatment, care and support needs*.

#### 5—Application of Act

- (1) This Act applies to and in relation to—
  - (a) motor vehicle injuries that result from a motor vehicle accident occurring on or after the commencement of this section; and

- (b) motor vehicle injuries that result from a motor vehicle accident occurring before the commencement of this section where the person who suffered the injury is accepted into the Scheme under section 6.
- (2) This Act may apply to and in relation to a motor vehicle injury whether or not the injury was caused (wholly or in part) by the fault of the owner or driver of the motor vehicle in the use or operation of the motor vehicle or of any other person, or whether or not the injury can be attributable to the act or omission of any particular person, and so applies even if the injured person was at fault (whether as owner or driver of the vehicle or otherwise).
- (3) In addition, if a person becomes a participant in the Scheme, this Act applies to and in relation to—
  - (a) any injury that is wholly or predominantly related to the motor vehicle injury that gave rise to the person's participation in the Scheme; and
  - (b) any other injury that, under the LSS Rules, will be covered as part of the person's participation in the Scheme; and
  - (c) without limiting paragraphs (a) and (b) (or any other provisions of this Act), any treatment, care and support needs, or any expenses, that under the LSS Rules will be covered as part of the person's participation in the Scheme.

## **6—Persons injured before commencement of Scheme can "buy in"**

- (1) A person who has suffered a motor vehicle injury that results from a motor vehicle accident occurring before the commencement of section 5 (a *pre-commencement injury*) may be accepted into the Scheme as a lifetime participant in the Scheme if—
  - (a) the person makes an application to the Authority in a manner and form determined by the Authority; and
  - (b) the person provides such information as the Authority may require as part of its assessment of the application; and
  - (c) the Authority determines that it will accept the person into the Scheme under this section; and
  - (d) the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) In connection with the operation of subsection (1)—
  - (a) acceptance into the Scheme will be for the purpose of providing treatment, care, support and services in relation to the assessed treatment, care and support needs of the person; and
  - (b) the contribution to be paid into the Fund will be an amount that the Authority determines as the amount required to fund the treatment, care and support needs of the person as a lifetime participant in the Scheme in respect of the injury after applying any principle or criteria specified in the LSS Rules.
- (3) An application made for a person to become a participant in the Scheme in respect of a pre-commencement injury cannot be made by an insurer.
- (4) The LSS Rules may make provision for or with respect to any matter that may be convenient in connection with this section (including as to the provision of any information or report that may be relevant in the circumstances).

## **Part 2—Lifetime Support Authority of South Australia**

### **Division 1—Establishment of Authority**

#### **7—Establishment of Authority**

- (1) The *Lifetime Support Authority of South Australia* is established.
- (2) The Authority is a body corporate.
- (3) The Authority is an instrumentality of the Crown and holds its property on behalf of the Crown.

#### **8—Ministerial control**

The Authority is subject to the general control and direction of the Minister.

### **Division 2—Board of directors**

#### **9—Board of directors**

- (1) The Authority is to have a board of directors.
- (2) The board is the governing body of the Authority and anything done by the board in the administration of the Authority is taken to be an act of the Authority.

#### **10—Composition of board**

- (1) The board consists of at least 3 but not more than 10 persons appointed by the Governor on the recommendation of the Minister.
- (2) A person appointed as a member of the board must have such qualifications or experience as are, in the Minister's opinion, necessary to enable the board to carry out its functions effectively.
- (3) The Governor will appoint 1 member of the board to chair its meetings.
- (4) The Governor may appoint a suitable person to be the deputy of a member of the board and to act as a member of the board during any period of absence of the member.

#### **11—Conditions of membership**

- (1) A member of the board is appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
  - (c) for misconduct; or
  - (d) for neglect of duty.



- (3) The office of a member of the board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of an indictable offence; or
  - (e) is sentenced to imprisonment for an offence; or
  - (f) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (g) is removed from office under subsection (2).
- (4) On the office of a member of the board becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

## **12—Allowances and expenses**

- (1) A member of the board is entitled to fees, allowances and expenses approved by the Governor.
- (2) The fees, allowances and expenses are payable out of the Lifetime Support Scheme Fund.

## **13—Validity of acts**

An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## **14—Proceedings**

- (1) Three members of the board constitute a quorum of the board and no business may be transacted at a meeting of the board unless a quorum is present.
- (2) The member appointed to chair meetings of the board will preside at meetings of the board or, in the absence of that member, a member chosen to preside by those present.
- (3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.
- (4) Each member present at a meeting of the board has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A telephone or video conference between members of the board constituted in accordance with procedures determined by the board will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present.
- (6) A resolution of the board—
  - (a) of which prior notice was given to all members of the board in accordance with procedures determined by the board; and
  - (b) in which a majority of the members of the board expressed their concurrence in writing,

will be taken to be a decision of the board made at a meeting of the board.

- (7) The board must have accurate minutes kept of its proceedings.
- (8) Subject to this section, the board may determine its own procedures.

### **15—Delegation**

- (1) The board may delegate any of its functions or powers.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be made—
    - (i) to a particular person or body; or
    - (ii) to the person for the time being occupying a particular office or position; and
  - (b) may be made subject to conditions or limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the board to act in any matter.

## **Division 3—Functions and powers**

### **16—Functions**

The Authority has the following functions:

- (a) to monitor the operation of the Scheme;
- (b) to provide advice to the Minister about the administration, efficiency and effectiveness of the Scheme;
- (c) to provide support and funding for—
  - (i) programs that will provide high-quality services to participants in the Scheme; and
  - (ii) research and education in connection with services provided to participants in the Scheme;
- (d) to disseminate information about the Scheme;
- (e) to keep the LSS Rules under review;
- (f) to be responsible for the Fund;
- (g) other functions conferred on the Authority by or under this or any other Act.

### **17—Powers**

The Authority has all the powers of an individual and, in particular, may—

- (a) enter into any form of contract or arrangement; and
- (b) engage experts and consultants; and
- (c) acquire, hold, deal with or dispose of real or personal property; and
- (d) establish and operate ADI accounts and invest money; and

- (e) do anything necessary or convenient to be done in the exercise of its functions.

## **Division 4—Other matters**

### **18—Staff and facilities**

- (1) The Authority may engage persons to be members of its staff on terms and conditions determined by the Authority.
- (2) The Authority may—
  - (a) by arrangement with the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality; or
  - (b) with the approval of the Minister, make use of the services, facilities or staff of any other entity.

### **19—Advances by Treasurer**

- (1) The Treasurer may advance money to the Authority (by way of grant or loan) on terms and conditions determined by the Treasurer in consultation with the board.
- (2) An amount advanced to the Authority under subsection (1) will be paid out of the Consolidated Account which is appropriated by this section to the necessary extent.

### **20—Borrowing and security for loans**

Except as approved by the Treasurer, the Authority may not borrow money or give security for the repayment of a loan.

### **21—Accounts and audit**

- (1) The board must cause proper accounts to be kept of the Authority's financial affairs.
- (2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of the Authority.

### **22—Annual report**

- (1) The board must, on or before 30 September in each year, deliver to the Minister a report on the operations of the Authority during the preceding financial year.
- (2) The report must contain the audited accounts and financial statements for the financial year.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

### **23—Code of conduct**

- (1) The Authority must develop and maintain a code of conduct that sets out—
  - (a) the procedures that will be adopted by the Authority to assist people to assess whether they are eligible to be participants in the Scheme; and
  - (b) the procedures that will be adopted by the Authority to assess the needs of participants in the Scheme and to ensure that participants are appropriately assisted under the Scheme; and

- (c) other steps that will be taken by the Authority to ensure that the Authority interacts with people in a constructive and supportive manner.
- (2) The code must also include—
  - (a) a process for receiving and managing any complaints that may be made to the Authority about how the Authority has exercised a function or power under this Act; and
  - (b) any other material that the Minister considers should be included in the code.
- (3) The Authority may amend or replace the code.
- (4) The code (including any amendment or replacement) is to be published in the Gazette.
- (5) The Minister must, within 12 sitting days after the publication of the code, or of any amendment or replacement, cause a copy of the code or the amendment (as the case requires) to be laid before both Houses of Parliament.

## **Part 3—Participation in Scheme**

### **24—Eligibility for participation in Scheme**

- (1) A person is eligible to be a participant in the Scheme if—
  - (a) the person suffers a bodily injury; and
  - (b) the injury was caused by or arose out of the use of a motor vehicle; and
  - (c) the relevant motor vehicle accident occurred in South Australia; and
  - (d) the coverage of this Act is not excluded under subsection (5); and
  - (e) the injury suffered by the person satisfies the criteria specified by the LSS Rules for eligibility for the Scheme provided by this Act.
- (2) Participation in the Scheme may be as a lifetime participant or as an interim participant and, for that purpose, the LSS Rules are to establish criteria for eligibility for lifetime participation and criteria for eligibility for interim participation in the Scheme.
- (3) A person is not eligible to be a participant in the Scheme in relation to an injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, in respect of the future treatment, care and support needs of the person that relate to the injury.
- (4) Subsection (3) does not apply to a person who has applied to be accepted into the Scheme under section 6.
- (5) For the purposes of subsection (1), the coverage of this Act is excluded in relation to—
  - (a) a motor vehicle injury suffered by a participant in a road race; or
  - (b) a motor vehicle injury that is also a compensable injury under the *Workers Rehabilitation and Compensation Act 1986*.

## 25—Application to participate in Scheme

- (1) An application for an eligible person to become a participant in the Scheme in respect of motor vehicle injury—
  - (a) is to be made to the Authority; and
  - (b) may only be made by—
    - (i) the person (or a person with lawful authority to act on his or her behalf); or
    - (ii) an insurer under a policy of insurance in respect of a motor vehicle involved in the relevant motor vehicle accident; or
    - (iii) the nominal defendant.
- (2) An application under subsection (1)(b)(ii) or (iii) does not require the consent of the eligible person.
- (3) An application—
  - (a) must be made in a manner and form determined by the Authority; and
  - (b) must be accompanied by any information required by the Authority.
- (4) The Authority may, on receipt of an application under this section, require the applicant or, if the applicant is an insurer or the nominal defendant, the person to whom the application relates (or a person with lawful authority to act on his or her behalf)—
  - (a) to provide such information as the Authority may require as part of its assessment of the application; and
  - (b) to provide such consents or other authorisations as the Authority may require in order to obtain information that the Authority may require as part of its assessment of the application.
- (5) The information required under subsection (4) may include—
  - (a) the provision of a report that is to be prepared in view of the application;
  - (b) the provision of any other report or document that may be relevant in the circumstances.
- (6) The LSS Rules may make provision for or with respect to applications to become a participant in the Scheme, including provision for or with respect to—
  - (a) the making and determination of applications, including the period within which an application must be made; and
  - (b) requiring an insurer or the nominal defendant to pay the costs of any assessment or report required by the Authority in connection with an application; and
  - (c) imposing restrictions on the time within which an application can be made or requiring the deferring of the making of an application until an injury has stabilised.
- (7) The LSS Rules must at least permit an initial application to become a participant in the Scheme to be made within 3 years from the date of the relevant motor vehicle accident (or within a longer period specified by the LSS Rules).

## 26—Acceptance as a participant

- (1) A person becomes a participant in the Scheme if the Authority is satisfied that the person is eligible to be a participant and accepts the person in writing as a participant in the Scheme.
- (2) The Authority must accept a person as a participant in the Scheme if the Authority is satisfied—
  - (a) that the person is eligible to be a participant; and
  - (b) that application for the person to be a participant has been duly made.
- (3) A person will be accepted as—
  - (a) a lifetime participant; or
  - (b) an interim participant,according to the person's eligibility.
- (4) A person accepted as an interim participant must be accepted as a lifetime participant if the Authority becomes satisfied during the person's interim participation in the Scheme that the person is eligible for lifetime participation in the Scheme.
- (5) A person accepted as a lifetime participant in the Scheme remains a participant for life.
- (6) Subject to subsection (7), a decision as to whether an interim participant should be accepted as a lifetime participant should be made at an appropriate time after the person's injury has stabilised, as determined in accordance with the LSS Rules.
- (7) The LSS Rules may provide that a person will cease to be an interim participant if he or she has not been accepted as a lifetime participant within a period determined under the LSS Rules.
- (8) The expiration of a period of interim participation in the Scheme does not prevent subsequent acceptance of the person as a lifetime participant in the Scheme.
- (9) If a person who is an interim participant is accepted as a lifetime participant, the person ceases to be an interim participant on that acceptance and then remains a participant for life.
- (10) The LSS Rules must provide that any period for which a person is an interim participant in the Scheme will be added to the period for which an application may be made to become a lifetime participant.
- (11) Any period for which a person is an interim participant in the Scheme will be added to the period of 3 years applying under section 36 of the *Limitation of Actions Act 1936* (and that section will be taken to have been modified accordingly).

## Part 4—Benefits under Scheme

### Division 1—Extent of benefits

#### 27—Assessed treatment, care and support needs

- (1) The Authority is to pay for all the necessary and reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment, care and support needs of the person while the person is a participant in the Scheme.
- (2) The assessed treatment, care and support needs of a person who is a participant in the Scheme are those treatment, care and support needs assessed by the Authority, in its treatment, care and support needs assessment, to be treatment, care and support needs that—
  - (a) are necessary and reasonable in the circumstances; and
  - (b) relate to the injury or injuries to which this Act applies.
- (3) The Authority is not liable for any expenses in respect of—
  - (a) excluded treatment, care and support needs; or
  - (b) treatment, care and support needs that are not assessed treatment, care and support needs; or
  - (c) treatment, care and support needs excluded from the operation of this section by the LSS Rules.
- (4) Without limiting subsection (3), subsections (1) and (2) operate subject to—
  - (a) any criteria set out in the LSS Rules that make provision for or with respect to determining which treatment, care and support needs of a participant in the Scheme—
    - (i) are necessary and reasonable in the circumstances; and
    - (ii) relate to the injury or injuries to which this Act applies; and
  - (b) any monetary or other limits placed on the provision of particular treatment, care and support needs to a participant in the Scheme set out in the LSS Rules; and
  - (c) any provision made by the LSS Rules as to how expenses are to be paid or covered.
- (5) As an alternative to paying the expenses for which it is liable under this section as and when they are incurred, the Authority may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant (and this will satisfy any liability that would otherwise arise in relation to the matters to which the agreement relates).

## 28—Payment not required in certain circumstances

- (1) The Authority is not required to make a payment in relation to any of the following:
  - (a) any treatment, care, support or service provided to a participant in the Scheme on a gratuitous basis (that is, anything provided to a participant for which the participant has not paid and is not liable to pay);
  - (b) in the case of a child—any treatment, care, support or service that would ordinarily fall within the ordinary costs of raising a child;
  - (c) any treatment, care, support or service that is required to be provided by an approved provider but is provided by a person who is not, at the time of provision, an approved provider;
  - (d) any treatment, care, support or service that is provided in contravention of the LSS Rules.
- (2) However, the Authority may elect to make a payment in relation to any treatment, care, support or service referred to in subsection (1) if the Authority considers that such a payment is justified in the circumstances.
- (3) The LSS Rules may make provision for or with respect to determining whether a payment is justified under subsection (2).
- (4) Subsection (1)(c) does not apply in relation to services provided—
  - (a) by a medical practitioner; or
  - (b) by a person acting in circumstances allowed under the LSS Rules.
- (5) To avoid doubt, subsection (1) applies even if the treatment, care, support or services concerned are provided in connection with the assessed treatment, care and support needs of a participant in the Scheme.
- (6) The Authority is not required to pay for any treatment, care, support or service provided to a person while the person's participation in the Scheme is suspended.
- (7) In this section—

*ordinary costs of raising a child* include all costs associated with the child's care, upbringing, education and advancement in life other than costs reasonably incurred because the child has suffered the injury or injuries to which this Act applies.

## 29—Approved providers

- (1) The Authority may approve—
  - (a) specified persons; or
  - (b) persons of a specified class,to provide the treatment, care, support or services under the Scheme that are identified under the LSS Rules as treatment, care, support or services that are to be provided by an approved provider.
- (2) The LSS Rules may also make provision for or with respect to—
  - (a) the standards of competency of approved providers; and
  - (b) the matters that relate to applications for approval under this section.



- (3) An approval may be granted on conditions or limitations determined by the Authority.
- (4) An approved provider must not, without reasonable excuse, contravene or fail to comply with a condition or limitation of the approval.  
Maximum penalty: \$10 000.
- (5) The Authority may, in accordance with the LSS Rules—
  - (a) vary a condition of approval;
  - (b) revoke an approval.
- (6) A condition of approval may be varied by the addition, substitution or deletion of 1 or more conditions.

## **Division 2—Treatment, care and support needs assessments**

### **30—Assessment of treatment, care and support needs**

- (1) The Authority is to make an assessment of the treatment, care and support needs of a participant in the Scheme (as required from time to time).
- (2) The assessment must relate to those treatment, care and support needs that—
  - (a) are necessary and reasonable in the circumstances; and
  - (b) relate to the injury or injuries to which this Act applies.
- (3) The Authority is to certify in writing as to its assessment of the treatment, care and support needs of the participant, including its reasons for any finding on which the assessment is based, and is to give a copy of the certificate to the participant.
- (4) The Authority may appoint or engage health professionals and other suitably qualified persons to act as assessors for the purposes of this Part (and a decision by an assessor acting under this section will be taken to be a decision of the Authority).

### **31—Cooperation by participant**

A participant in the Scheme must comply with any reasonable request made by the Authority or an assessor in connection with an assessment of the treatment, care and support needs of the participant, including a request to undergo a medical examination or other examination by a health professional or other suitably qualified person.

### **32—Requirements under LSS Rules**

- (1) The LSS Rules may make provision for or with respect to the assessment of the treatment, care and support needs of a participant in the Scheme.
- (2) In particular, the LSS Rules may make provision for or with respect to the following:
  - (a) the procedures to be followed in connection with such an assessment;
  - (b) the intervals at which such assessments are to be carried out and the review of assessments from time to time as occasion requires;
  - (c) the methods and criteria to be used to determine the treatment, care and support needs of participants;
  - (d) the information to be provided by participants in connection with assessments;

- (e) the suspension of the participation of a person in the Scheme if the person fails to comply with a requirement specified by the LSS Rules in connection with an assessment of the treatment, care and support needs of the person (including to undergo a medical examination or other examination by a health professional or other suitably qualified person).
- (3) An assessment of the treatment, care and support needs of a participant in the Scheme is to be carried out in accordance with the LSS Rules.

## Part 5—Disputes and reviews

### Division 1—Disputes about non-medical matters

#### 33—Preliminary

- (1) In this Division—

*relevant determination* means—

- (a) a threshold determination; or
- (b) a determination of the Authority that results in the suspension of the participation of a person in the Scheme; or
- (c) a determination prescribed by the regulations for the purposes of this definition;

*threshold determination* means a determination by the Authority as to any of the following:

- (a) whether a person is eligible to be a participant in the Scheme under section 24(1)(a);
  - (b) whether an incident that results in bodily injury is an incident that was caused by or arose out of the use of a motor vehicle;
  - (c) whether a person is eligible to be a participant in the Scheme under section 24(1)(c) or (d);
  - (d) whether an application by a person to become a participant in the Scheme has been made within a relevant period specified by the LSS Rules.
- (2) The following are *interested parties* in relation to a relevant determination:
    - (a) in relation to a threshold determination—
      - (i) the person to whom an application under this Act relates; and
      - (ii) an insurer or the nominal defendant;
    - (b) in relation to any other determination—the person to whom the determination relates.

#### 34—Resolution of disputes

- (1) If there is a dispute about a relevant determination, an interested party in relation to the determination may apply at first instance to have the dispute reviewed by a review officer.
- (2) An application must be made in a manner and form prescribed by the LSS Rules.

- (3) Notice of an application must be given to any other interested party in relation to the determination and any such interested party may, on application made in accordance with the LSS Rules, become a party to the dispute.
- (4) For the purposes of a review by a review officer, the review officer—
  - (a) may adopt such procedures as the review officer thinks fit; and
  - (b) is not bound by the rules of evidence but may inform himself or herself in any way that the review officer considers appropriate.
- (5) Without limiting subsection (4), a review officer may require a person to appear before the review officer at a specified time and place to answer questions or to produce material (or both).
- (6) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (5).  
Maximum penalty: \$5 000.
- (7) At the completion of the review proceedings, the review officer may—
  - (a) confirm or vary the determination to which the proceedings relate; or
  - (b) revoke the determination to which the proceedings relate and substitute another determination.
- (8) The outcome of the review must be incorporated into a written determination setting out the review officer's reasons for his or her determination.
- (9) The costs of any proceedings before a review officer under this section are payable by the Authority.
- (10) The costs to which subsection (9) applies—
  - (a) include the necessary costs and expenses of travel and accommodation incurred by the person to whom the application under this Act relates, and by a carer of such a person (which may include a parent) in order to accompany and support the person, in attending before a review officer; but
  - (b) do not include—
    - (i) any costs associated with being represented before a review officer; or
    - (ii) any costs excluded from the operation of subsection (9) by the regulations.
- (11) For the purposes of this section, the Authority must assign or appoint persons to act as review officers (who may, but need not, be members of the staff of the Authority).

### **35—Appeals to District Court**

- (1) An appeal lies to the District Court against a determination of a review officer under this Division.
- (2) An appeal under this section may be instituted by a party to the dispute to which the determination relates.
- (3) The appeal must be instituted within 28 days of the date of the determination appealed against.

## Division 2—Disputes about eligibility

### 36—Disputes about eligibility

- (1) If there is a dispute—
  - (a) about whether an injury results from a motor vehicle accident or is attributable to some other condition, event, incident or factor; or
  - (b) about whether an injury suffered by a person satisfies the criteria specified by the LSS Rules for eligibility for the Scheme provided by this Act; or
  - (c) about the relationship between 2 or more injuries, including whether an injury is wholly or predominantly related to a motor vehicle injury; or
  - (d) without limiting a preceding paragraph—about whether an injury falls within, or is excluded from, the coverage of this Act under the LSS Rules; or
  - (e) about a matter prescribed by the regulations,the dispute may be referred to an expert review panel.
- (2) The dispute may be referred—
  - (a) by the Authority; or
  - (b) by notice to the Authority given—
    - (i) by or on behalf of an injured person; or
    - (ii) by an insurer or the nominal defendant.
- (3) A notice under subsection (2)(b) must comply with any requirement prescribed by the LSS Rules.
- (4) The expert review panel to which a dispute is referred for determination is to determine the dispute and give a certificate as to its determination setting out the reasons for its determination.
- (5) The costs of any proceedings before an expert review panel under this section are payable by the Authority.
- (6) The costs to which subsection (5) applies—
  - (a) include the necessary costs and expenses of travel and accommodation incurred by the injured person, and by a carer of the injured person (which may include a parent) in order to accompany and support the person, in attending before an expert review panel (or a member of an expert review panel); but
  - (b) do not include—
    - (i) any costs associated with being represented before an expert review panel; or
    - (ii) any costs excluded from the operation of subsection (5) by the regulations.

### **37—Appeals to District Court**

- (1) Subject to subsection (2), an appeal lies to the District Court against a determination of an expert review panel under this Division that a person is ineligible or otherwise does not qualify to participate in the Scheme.
- (2) An appeal under this section may only be instituted by or on behalf of the person to whom the determination relates.
- (3) The appeal must be instituted within 28 days of the date of the determination appealed against.

## **Division 3—Review of assessments**

### **38—Review of assessments**

- (1) A participant in the Scheme may apply to have an assessment of the Authority about the treatment, care and support needs of the participant under Part 4 reviewed by an expert review panel.
- (2) An application must be made in a manner and form prescribed by the LSS Rules.
- (3) The application must be made within 28 days after the participant is given notice of the assessment of the participant's treatment, care and support needs (unless an extension of time is allowed under the LSS Rules).
- (4) On a review, the expert review panel may—
  - (a) confirm or vary the assessment; or
  - (b) revoke the assessment and substitute its own assessment.
- (5) The expert review panel must give a certificate as to the outcome of the review setting out the reasons for any decision or assessment made by the expert review panel under this section.
- (6) The Authority must, to such extent (if any) as may be necessary, revise its assessment of the treatment, care and support needs of the participant to give effect to the outcome of a review by an expert review panel.
- (7) A decision or assessment of an expert review panel under this section is final and binding for the purposes of this Act and any proceedings under this Act.
- (8) Subsection (7) does not apply in relation to any proceedings for judicial review and does not prevent or restrict a court from exercising any judicial power or from determining a matter according to law.
- (9) An expert review panel undertaking a review under this section must act consistently with, and apply, any relevant provision of the LSS Rules.
- (10) The costs of any proceedings before an expert review panel under this section are payable by the Authority.

- (11) The costs to which subsection (10) applies—
- (a) include the necessary costs and expenses of travel and accommodation incurred by the participant, and by a carer of the participant (which may include a parent) in order to accompany and support the participant, in attending before an expert review panel (or a member of an expert review panel); but
  - (b) do not include—
    - (i) any costs associated with being represented before an expert review panel; or
    - (ii) any costs excluded from the operation of subsection (10) by the regulations.

## **Part 6—Medical and other treatment or care costs**

### **39—Bulk billing arrangements**

- (1) Bulk billing arrangements may be entered into by the Authority with respect to—
- (a) the payment of expenses incurred in connection with the treatment of participants in the Scheme at public hospitals; or
  - (b) the payment of expenses incurred in transporting participants in the Scheme by ambulance; or
  - (c) the payment of other treatment expenses incurred by participants in the Scheme.
- (2) A bulk billing arrangement is an arrangement with the Minister for Health, service providers or others acting on their behalf for the payment by the Authority of any such expenses of participants in the Scheme at the rate provided by the arrangement.
- (3) For the purposes of this section, the treatment or transport of participants in the Scheme includes the treatment or transport of persons classified as participants in the Scheme in accordance with a bulk billing arrangement.

### **40—Payment of certain expenses not covered by bulk billing arrangements**

- (1) This section applies to—
- (a) payment for the treatment of participants in the Scheme at public hospitals; and
  - (b) payment for conveying participants in the Scheme by ambulance; and
  - (c) payment for any medical or dental treatment of, or rehabilitation services provided to, participants in the Scheme,

in any case where payment for the expenses concerned has not been made, and is not required to be made, in accordance with a bulk billing arrangement under this Part.

- (2) The rate at which such a payment is required to be made by the Authority under this Act is as follows:
- (a) in the case of treatment at public hospitals—at the rate determined by the Minister for Health by order published in the Gazette;

- (b) in any case in which a maximum rate is fixed under section 41—at the maximum rate so fixed;
  - (c) in the case to which a rate referred to in paragraph (a) or (b) does not apply—at the rate reasonably appropriate to the treatment or service having regard to the customary charge made in the community for the treatment or service.
- (3) If the Authority does not make a payment under subsection (2), the person or body that provided the treatment or service to which the payment relates may recover the payment from the Authority as a debt in a court of competent jurisdiction.

#### **41—Maximum fees payable for services not provided at public hospitals**

- (1) This section applies to—
- (a) the fee payable for any medical treatment of a participant in the Scheme; and
  - (b) the fee payable for any dental treatment of a participant in the Scheme; and
  - (c) the fee payable for any rehabilitation service provided to a participant in the Scheme; and
  - (d) the fees payable for any attendant care and support services provided to a participant in the Scheme; and
  - (e) the fees payable for any other services identified by the Minister for the purposes of this section by notice published in the Gazette—
    - (i) on the recommendation of the Authority; and
    - (ii) after consultation with the Minister for Health,

but does not apply to any such treatment or service that is provided at a public hospital (whether to an in-patient or out-patient) and for which any payment is required to be made to the hospital and not to the treatment or service provider.

- (2) This section also applies to the fee payable to a private hospital for any treatment at the hospital.
- (3) The Minister may, by notice published in the Gazette—
- (a) on the recommendation of the Authority; and
  - (b) after consultation with the Minister for Health,
- fix the maximum amount for which the Authority is liable in respect of any claim for fees to which this section applies.
- (4) Any such fees may (but need not) be fixed by reference to fees recommended by a professional association recognised by the Minister for the purposes of this section or by reference to any other scale of fees.
- (5) A payment by the Authority in respect of a service provided in connection with the treatment, care and support needs of a participant in the Scheme is to be made consistently with any notice published under subsection (3).

## Part 7—The Fund

### Division 1—Establishment of Fund

#### 42—Lifetime Support Scheme Fund

- (1) The Authority must establish and maintain a fund entitled the *Lifetime Support Scheme Fund*.
- (2) The Fund will consist of—
  - (a) the levies paid to the Authority under this Part; and
  - (b) any income and accretions produced by the investment of money from the Fund; and
  - (c) any money advanced to the Authority for the purposes of the Fund; and
  - (d) other money received by the Authority under, or in connection with, this Act; and
  - (e) other money required to be paid into the Fund by or under this or any other Act.
- (3) The Fund is to be applied towards—
  - (a) all payments required to be made by the Authority for the purposes of Part 4; and
  - (b) the costs incurred by the Authority in performing its functions under this Act; and
  - (c) the costs of the system of assessment, dispute resolution or review under this Act; and
  - (d) without limiting paragraph (c), a contribution to the costs associated with the establishment and operation of expert review panels, determined by the Minister from time to time after consultation with the Authority; and
  - (e) the duty imposed under Part 3 Division 11 of the *Stamp Duties Act 1923*; and
  - (f) any other costs or liabilities prescribed by the regulations for the purposes of this subsection; and
  - (g) all other money required or authorised by or under this or any other Act to be paid from the Fund.
- (4) The Authority may invest money that is not immediately required for the purposes of the Fund as the Authority thinks fit.
- (5) The Treasurer may, until there are sufficient funds in the Fund to meet the liabilities of the Fund, or at any other time considered appropriate by the Treasurer, lend money (from time to time) to the Authority on such terms and conditions as the Treasurer may determine.
- (6) The Treasurer may charge a fee of such amount as the Treasurer thinks fit in respect of any loan made to the Authority under subsection (5).



## Division 2—Contributions associated with motor vehicle injuries

### 43—Determination by Authority of amount to be contributed to Fund

- (1) The Authority is to determine, before the beginning of each relevant period, an amount that the Authority considers is required to be contributed to the Fund—
  - (a) to fund the present and likely future liabilities of the Authority under Part 4 in respect of persons who become participants in the Scheme in respect of motor vehicle injuries suffered during that period; and
  - (b) to meet the payments required to be made from the Fund (other than excluded payments or payments under Part 4) during that period (to the extent that liability for any such payment has not been covered under paragraph (a)); and
  - (c) to satisfy the requirement to make any payment of duty under Part 3 Division 11 of the *Stamp Duties Act 1923* in relation to the relevant period; and
  - (d) to make provision for such other matters as the Authority should, in all the circumstances, make provision for under this Division in connection with any liability of the Authority under this Act (including so as to make provision for any past liability that would otherwise be unfunded).
- (2) The Authority's determination in respect of a relevant period is to be made—
  - (a) in accordance with a report of an independent actuary engaged by the Authority after consultation with the Treasurer to report to the Authority on the amount required to be contributed to the Fund as referred to in subsection (1); and
  - (b) after applying any principle or requirement specified by the Minister by notice in the Gazette for the purposes of this section; and
  - (c) after taking into account any other payments that may be made by another body or person in connection with the operation of this Act.
- (3) The Authority must, once it has made a determination under this section, embody the terms of that determination in a report furnished to the Minister before the beginning of the relevant period.
- (4) The Minister must, on receipt of a report under subsection (3) and after taking into account such matters (including matters not covered by the report) as the Minister thinks fit, after consultation with the Treasurer, determine an amount that should be paid to the Authority for contribution to the Fund for the relevant period (the ***required fund contribution***).
- (5) If the Minister, in acting under subsection (4), makes a determination that is inconsistent with the determination embodied in the Authority's report under subsection (3), the Authority must include a report on the matter in its annual report.
- (6) In this section—
 

***excluded payments*** means any payments—

  - (a) that relate to a person who is a participant in the Scheme under section 6; or

- (b) that relate to any other matter (if any) prescribed by the regulations for the purposes of this definition;

**relevant period** means a financial year or such other period as the Authority determines from time to time, after consultation with the Minister, to be a relevant period for the purposes of this section.

- (7) Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must be no longer than 12 months.

#### **44—LSS Fund levy**

- (1) The required fund contribution for a relevant period is to be made by the payment to the Authority of a levy (the **LSS Fund levy**) that is imposed on all persons who apply for any of the following under the *Motor Vehicles Act 1959*:
  - (a) the registration of a motor vehicle;
  - (b) an exemption from registration in respect of a motor vehicle;
  - (c) a permit in respect of a motor vehicle.
- (2) The LSS Fund levy payable by a person is to be an amount calculated under a scheme determined by the Minister after consultation with the Treasurer and the Authority, and the total of all LSS Fund levies with respect to a relevant period must aim to be an amount that will result in the required fund contribution for the relevant period being contributed to the Fund.
- (3) Without limiting subsection (2), a scheme under this section may provide for a differentiation that applies according to any classification or criteria determined by the Minister.
- (4) The amounts to be recovered under this section will be payable at the time of any application that falls within the ambit of subsection (1) and will be collected by the Registrar at the time that any such application is made.
- (5) The Registrar must, subject to subsection (6), pay to the Authority the LSS Fund levies collected by the Registrar under this section.
- (6) The Registrar will retain out of the amount to be paid to the Authority such administration expenses as are determined by the Treasurer for the purposes of this section.

#### **45—Recovery of payments in respect of vehicles not insured under State law**

- (1) The Authority is entitled to recover from the appropriate person as a debt due to the Authority the present value of its treatment, care and support liabilities in respect of the motor vehicle injury of a participant in the Scheme if—
  - (a) the injury was caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle; and
  - (b) at the time of a motor vehicle accident the motor vehicle was not insured in accordance with the requirements of Part 4 of the *Motor Vehicles Act 1959*.

- (2) If the participant suffered the motor vehicle injury as a result of the participant's contributory negligence, the amount that the Authority is entitled to recover under this section is to be reduced in proportion to the participant's share in the responsibility for the injury.
- (3) If the participant suffered the motor vehicle injury as a result partly of the fault of a person (other than the owner or driver of a motor vehicle), the Authority is entitled to recover from that person as a debt due to the Authority such proportion of the present value of its treatment, care and support liabilities in respect of the injury as corresponds to the person's share in the responsibility for the injury.
- (4) The present value of the Authority's treatment, care and support liabilities in respect of a motor vehicle injury is the sum of the following amounts:
  - (a) amounts already paid by the Authority under Part 4 in respect of the treatment, care and support needs associated with the injury; and
  - (b) the present value of the amounts that the Authority estimates will be payable by the Authority in the future under Part 4 in respect of the treatment, care and support needs associated with the injury.
- (5) The *appropriate person* from whom the Authority may recover is the person who at the time of the motor vehicle accident was the owner of the motor vehicle or, if at that time some other person was driving the motor vehicle, the owner and the driver jointly or either of them severally.
- (6) It is a sufficient defence in any proceedings to recover under this section against the owner (whether severally or jointly with the driver) of a motor vehicle if the owner establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without the owner's authority.
- (7) It is a sufficient defence in any proceedings to recover under this section against the driver of a motor vehicle (whether severally or jointly with the owner) if the driver establishes to the satisfaction of the court that, at the time of the occurrence, the driver was driving the motor vehicle with the authority of the owner (or had reasonable grounds for believing and did in fact believe that the driver had such authority) and that the driver had reasonable grounds to believe and did in fact believe that the motor vehicle was insured in accordance with the requirements of Part 4 of the *Motor Vehicles Act 1959*.
- (8) The Authority is not entitled to recover under this section from the owner or driver of a motor vehicle that, at the relevant time, was not required to be registered or was exempt from registration or, if required to be registered, was not required to be insured under the *Motor Vehicles Act 1959*.
- (9) The certificate of the Authority as to the present value of the Authority's treatment, care and support liabilities in respect of an injury is evidence of the matters certified for the purposes of any proceedings in connection with this section.
- (10) This section does not permit the Authority to recover the present value of its treatment, care and support liabilities in respect of injuries to a participant in the Scheme if the participant paid an amount to the Authority under section 6 in respect of those injuries.

## 46—Recovery in respect of persons in default

- (1) If—
- (a) an approved insurer or the nominal defendant has a right of recovery against a person (the *relevant person*) under a designated section; and
  - (b) the person who suffered a bodily injury in relation to which the right of recovery applies becomes a participant in the Scheme,

then the Authority may exercise the same right of recovery against the relevant person for the present value of its treatment, care and support liabilities in respect of the participant in the Scheme as the approved insurer or nominal defendant has under the designated section.

- (2) The present value of the Authority's treatment, care and support liabilities in respect of a participant in the Scheme is the sum of—
- (a) amounts already paid by the Authority under Part 4 in respect of the treatment, care and support needs of the participant; and
  - (b) the present value of the amounts that the Authority estimates will be payable by the Authority in the future under Part 4 in respect of the treatment, care and support needs of the participant.
- (3) The certificate of the Authority as to the present value of the Authority's treatment, care and support liabilities in respect of an injury is evidence of the matters certified for the purposes of any proceedings in connection with this section.
- (4) For the purposes of this section, a designated section will apply in relation to a right of recovery by the Authority—
- (a) as if a reference to an insurer or the nominal defendant (as the case may require) were a reference to the Authority; and
  - (b) subject to such other modifications or exclusions as may be prescribed by regulation made under this section.

- (5) In this section—
- designated section* means—

- (a) section 116; or
- (b) section 124A,

of the *Motor Vehicles Act 1959*.

## Part 8—Miscellaneous

### 47—No contracting out

This Act applies despite any contract to the contrary.

#### **48—Release of information**

- (1) The Authority is authorised to disclose or release—
  - (a) information concerning the treatment, care and support needs of participants (including the expenses that are paid or payable by the Authority under the Scheme in relation to those needs) to such persons, and subject to such conditions, as the Authority thinks fit; and
  - (b) other information under an authorisation (if any) prescribed by the regulations.
- (2) An insurer is authorised to disclose or release to the Authority information that it has obtained under the *Motor Vehicles Act 1959* in relation to a person who may become, or who has become, a participant in the Scheme.

#### **49—Immunity**

- (1) A matter or thing done or omitted to be done by an assessor, a review officer or a member of an expert review panel under this Act in the performance or exercise of a function or power under this Act does not, if the matter or thing was done or omitted in good faith, subject the assessor, review officer or member of the panel personally to any action, liability, claim or demand.
- (2) Any liability that would attach to a person were it not for the operation of subsection (1) attaches instead to the Crown.

#### **50—Treasurer's guarantee**

- (1) Liabilities incurred or assumed by the Authority in pursuance of this Act are guaranteed by the Treasurer.
- (2) A liability of the Treasurer under a guarantee arising by virtue of subsection (1) will be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.
- (3) The Treasurer may, from time to time, after consultation with the board, fix charges to be paid by the Authority in respect of the guarantee provided under this section and determine the times and manner of their payment.

#### **51—False or misleading information**

A person must not—

- (a) provide to the Authority or any other person who is performing or exercising a function or power under this Act information that the person knows is false or misleading in a material particular; or
- (b) refuse or fail to include in information provided to a person who is performing or exercising a function or power under this Act other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty: \$10 000.

## 52—Absence of participant from Australia

- (1) If a participant in the Scheme is to be absent from Australia, the participant must, at least 28 days before leaving Australia, give the Authority notice of the proposed absence in accordance with the LSS Rules.
- (2) The Authority may, if the Authority considers that action under this subsection is justified—
  - (a) waive or reduce the period that applies under subsection (1) in relation to a particular person in a particular case;
  - (b) suspend the participation of a person in the Scheme while the person is absent from Australia (whether or not notice has been given in accordance with this section).

## 53—Extraterritorial operation of Act

It is the intention of Parliament that the operation of this Act is to include, as far as possible, operation in relation to the following:

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

## 54—Authority to act on behalf of participant

Without limiting any other provision or law, any authorisation or step that may be given or taken under this Act by a participant in the Scheme may be given or taken by a person with lawful authority to act on behalf of the participant.

## 55—Agreements with prescribed authorities

- (1) The Authority may enter into an agreement with a prescribed authority for the provision of services to persons—
  - (a) who have suffered compensable injuries under the *Workers Rehabilitation and Compensation Act 1986*; and
  - (b) who, in the opinion of the prescribed authority, would benefit from participating in certain aspects of the Scheme relating to treatment, care and support needs.
- (2) If a person is the subject of an agreement under this section—
  - (a) no other eligibility requirements under this Act will apply in relation to the person (and, if relevant, section 24(5)(b) will not apply); and
  - (b) the person is eligible to receive such services under this Act as are contemplated by the agreement; and
  - (c) the prescribed authority must pay to the Authority, for payment into the Fund, a contribution agreed between the Authority and the prescribed authority; and

- (d) the Authority is authorised to make payments out of the Fund in order to give effect to any provision of the agreement; and
  - (e) any payments made from the Fund in respect of the person will be taken to be excluded payments for the purposes of section 43.
- (3) A prescribed authority is authorised to disclose to the Authority information that is within the ambit of section 112 of the *Workers Rehabilitation and Compensation Act 1986* for purposes associated with the operation of this section or so that the Authority may provide services to a person under this section in an effective manner.
- (4) In this section—
- prescribed authority** means—
- (a) in relation to a person who suffered a compensable injury as a worker of a self-insured employer under the *Workers Rehabilitation and Compensation Act 1986*—that self-insured employer; and
  - (b) in any other case—the WorkCover Corporation;

**WorkCover Corporation** means the WorkCover Corporation of South Australia under the *WorkCover Corporation Act 1994*.

## 56—LSS Rules

- (1) The Governor may, on the recommendation of the Authority, make rules (**LSS Rules**) for or with respect to any matter that by this Act is required or permitted to be subject to those rules.
- (2) The Governor may, on the recommendation of the Authority, vary, revoke or substitute LSS Rules.
- (3) The LSS Rules may—
  - (a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the rules are made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons or circumstances to which they are expressed to apply; and
  - (d) provide that a matter is to be determined according to the discretion of the Minister or the Authority.
- (4) Section 10AA and Part 3A of the *Subordinate Legislation Act 1978* do not apply to the LSS Rules.
- (5) The LSS Rules (including any variation, revocation or substitution) will come into operation on the day on which they are made or from such later date or time as is specified in the LSS Rules.

## 57—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) require the keeping of records, statistics or other information; and
  - (b) require the provision of reports, statements, documents or other forms of information to the Authority; and
  - (c) require the giving of notice to the Authority at specified intervals, or on the occurrence of any specified event; and
  - (d) specify any procedure associated with any process under this Act; and
  - (e) impose penalties, not exceeding \$10 000, for a contravention of, or failure to comply with, a regulation; and
  - (f) prescribe saving or transitional provisions in connection with the enactment or operation of this Act.
- (3) A regulation may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the regulation is made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons or circumstances to which it is expressed to apply; and
  - (d) provide that a matter is to be determined according to the discretion of the Minister or the Authority.
- (4) A provision of a regulation made under subsection (2)(f) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

## Schedule 1—Expert review panels

### 1—Interpretation

In this Schedule—

***medical expert*** means—

- (a) a health professional; or
- (b) a person who is within a class brought within the ambit of this definition by the regulations;

***referred question*** means any question that constitutes a matter in dispute or a matter subject to review before an expert review panel;

***relevant person*** means the person who is the subject of proceedings before an expert review panel.



## 2—Establishment

- (1) There will be such expert review panels as are necessary for the purposes of this Act.
- (2) For the purpose of constituting expert review panels, there is to be a list of medical experts appointed by the Minister.
- (3) A person appointed under subclause (2) will be appointed on terms and conditions, and for a term (not exceeding 3 years), determined by the Minister and, on the expiration of a term of office, is eligible for re-appointment.
- (4) The office of a person appointed under subclause (2) becomes vacant if the person—
  - (a) resigns by written notice addressed to the Minister; or
  - (b) is removed from office by the Minister for—
    - (i) breach of, or non-compliance with, a condition of appointment; or
    - (ii) mental or physical incapacity to carry out duties of office satisfactorily; or
    - (iii) misconduct; or
    - (iv) neglect of duty; or
    - (v) incompetence; or
  - (c) completes a term of office and is not re-appointed; or
  - (d) in the case of a person who has been a health professional—ceases to be registered under the *Health Practitioner Regulation National Law*; or
  - (e) is convicted of an indictable offence or of an offence which, if committed in South Australia, would be an indictable offence; or
  - (f) is sentenced to imprisonment for an offence.
- (5) From the list of medical experts under subclause (2), the Minister must appoint (on terms and conditions determined by the Minister)—
  - (a) a Convenor; and
  - (b) a Deputy Convenor.
- (6) The Deputy Convenor may, subject to the direction of the Convenor, exercise the functions and powers conferred on the Convenor by or under this Schedule.
- (7) The Deputy Convenor has, and may exercise, the functions and powers conferred on the Convenor by or under this Schedule while the office of the Convenor is vacant.

## 3—Constitution

- (1) An expert review panel is to consist of the number of members, not exceeding 3, as is determined by the Convenor in each particular case.
- (2) If a medical expert has been engaged to treat or examine, or to furnish a report in relation to, a person (other than as a member of an expert review panel), the medical expert is not to sit as a member of an expert review panel examining the person.
- (3) The Convenor must appoint a presiding member for each expert review panel constituted by more than 1 person, who will have general responsibility for managing the operations of the panel in a particular case.

#### **4—Validity of acts**

An act or proceeding of an expert review panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

#### **5—Procedures**

- (1) An expert review panel is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (2) An expert review panel may act informally and without regard to technicalities or legal forms.
- (3) An expert review panel may engage consultants and seek expert advice as it considers necessary in any particular case.
- (4) The Convenor may give directions as to the arrangement of the business of the expert review panels.
- (5) The Minister may for the purposes of—
  - (a) ensuring procedural fairness in the procedures of the expert review panels; and
  - (b) facilitating the proper administration of the expert review panels, issue guidelines as to the procedures of expert review panels.
- (6) The Convenor may give directions as to the procedures of the expert review panels but may not give directions inconsistent with any guidelines issued by the Minister.
- (7) In the case of an expert review panel constituted by 3 members, an act or decision of a majority of the members of the panel constitutes an act or decision of the panel.
- (8) In the case of an expert review panel constituted by 2 members—
  - (a) an act or decision of both members of the panel constitutes an act or decision of the panel; and
  - (b) if the members cannot agree on a matter, a medical expert appointed by the Convenor will determine the matter as if he or she constituted the expert review panel.
- (9) Subject to this clause and the other provisions of this Schedule, an expert review panel may determine its own procedures.

#### **6—Powers and procedures on a referral**

- (1) An expert review panel may ask a relevant person—
  - (a) to meet with the panel and answer questions; and
  - (b) to supply copies of all documents in the possession, custody or control of the person which relate to the question referred to the panel; and
  - (c) to submit to an examination by the panel or by a member of the panel.
- (2) A person or body referring a question to an expert review panel must submit a document to the panel specifying—
  - (a) the injury or alleged injury to, or in respect of, which the referred question relates; and

- 
- (b) the facts or questions of fact relevant to the referred question which the person or body is satisfied have been agreed and those facts or questions that are in dispute.
  - (3) A person or body referring a question to an expert review panel must submit copies of all documents relating to the referred question in the possession, custody or control of that person or body to the panel.
  - (4) If an expert review panel requests and the relevant person consents, a medical expert who has provided a service to a relevant person in relation to the relevant injury must—
    - (a) meet with the panel and answer questions; and
    - (b) supply relevant documents to the panel.
  - (5) A person must not, without reasonable excuse, fail to comply with a requirement under subclause (4).  
Maximum penalty: \$5 000.
  - (6) Any attendance of a person before an expert review panel must be in private, unless the panel considers that it is necessary for another person to be present.
  - (7) Information given to an expert review panel cannot be used in subsequent proceedings unless—
    - (a) the proceedings are before a court; or
    - (b) the relevant person consents to the use of the information.

## **7—Admissibility**

An opinion, certificate, report or other document furnished by an expert review panel is admissible in evidence in any proceedings before a court.

## **8—Support staff and facilities**

- (1) The Minister must ensure that there are such administrative and ancillary staff as are necessary for the proper functioning of the expert review panels.
- (2) The expert review panels may—
  - (a) under an arrangement established by the Minister and the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality; or
  - (b) with the approval of the Minister, make use of the services, facilities or staff of any other entity.

# **Schedule 2—Related amendments and transitional provisions**

## **Part 1—Related amendments**

### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Civil Liability Act 1936*

### 2—Amendment of section 3—Interpretation

- (1) Section 3—definition of *motor accident*—before "arises out of" insert:

is caused by or
- (2) Section 3—after the definition of *motor vehicle* insert:

*MVA motor accident* means a motor accident where the motor vehicle is a motor vehicle as defined in the *Motor Vehicles Act 1959*;
- (3) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) For the purposes of this Act, personal injury will arise from a motor accident if the personal injury is caused by or arises out of the use of a motor vehicle.

### 3—Amendment of section 52—Damages for non-economic loss

- (1) Section 52(2)—after "If damages are to be awarded for non-economic loss" insert:

, other than in relation to personal injury arising from an MVA motor accident
- (2) Section 52—after subsection (2) insert:
  - (3) Subject to subsection (4), if damages are to be awarded for non-economic loss in relation to personal injury arising from an MVA motor accident, they must be assessed as follows:
    - (a) the injured person's total non-economic loss is to be assigned a numerical value (an *injury scale value*) on a scale running from 0 to 100;
    - (b) in assessing the injury scale value, the court must apply any rules prescribed by the regulations;
    - (c) the damages for non-economic loss are to be calculated as follows:
      - (i) if the injury scale value is assessed as 31 or less but more than 10 (see subsection (4))—by adding to \$2 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 10 by \$1 000 (indexed);
      - (ii) if the injury scale value is assessed as 45 or less but more than 31—by adding to \$23 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 31 by \$3 000 (indexed);

- (iii) if the injury scale value is assessed as 66 or less but more than 45—by adding to \$65 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 45 by \$5 000 (indexed);
  - (iv) if the injury scale value is assessed as 78 or less but more than 66—by adding to \$170 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 66 by \$10 000 (indexed);
  - (v) if the injury scale value is assessed as 79 or more—\$300 000 (indexed).
- (4) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for non-economic loss if the injury scale value that applies under subsection (3)(a) in relation to the injury exceeds 10.
- (5) However, a court may award damages for non-economic loss in a case that would otherwise be excluded by operation of subsection (4) if satisfied—
  - (a) that the consequences of the personal injury with respect to non-economic loss are exceptional when judged by comparison with other cases involving the same injury; and
  - (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.
- (6) An assessment of damages for non-economic loss under subsection (5) must be based on an injury scale value that should rarely be more than 25% higher than the injury scale value that applies under subsection (3)(a) in relation to the injury.
- (7) An amount applying under subsection (3) (and followed by the word "(indexed)") is to be adjusted on 1 July of each year, beginning on 1 July 2014, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the March quarter of that year by the Consumer Price Index for the March quarter 2013 (with the amount so adjusted being calculated to the nearest multiple of \$10).
- (8) In connection with the operation of subsection (7), the amount to be applied with respect to a particular injury is the amount applying under subsection (3) at the time of occurrence of that injury.

#### 4—Insertion of section 56A

After section 56 insert:

##### **56A—Additional provisions relating to motor vehicle injuries (economic loss)**

- (1) Any entitlement to damages for economic loss in relation to personal injury arising from an MVA motor accident applies subject to the provisions of this section.
- (2) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for loss or impairment of future earning capacity if the injury scale value that applies under the regulations in relation to the injury exceeds 7.
- (3) However, a court may award damages in a case that would otherwise be excluded by operation of subsection (2) if satisfied—
  - (a) that the consequences of the personal injury with respect to loss or impairment of future earning capacity are exceptional; and
  - (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.
- (4) In assessing damages for loss or impairment of future earning capacity in relation to personal injury arising from an MVA motor accident (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—
  - (a) a court must not take into account—
    - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
    - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
  - (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, the chance of each occurring, and the combination of those chances; and
  - (c) a court must, when making an award of damages, state—
    - (i) the circumstances that have been taken into account for the purposes of the award; and
    - (ii) the inferences that the court has drawn from those circumstances; and
    - (iii) the court's evaluation of the chances of each circumstance relied on occurring; and
    - (iv) its determination of the resultant award of damages.

- (5) Damages awarded for any form of loss or impairment of earning capacity (whether past or future) in relation to personal injury arising from an MVA motor accident must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.
- (6) The maximum amount of damages that may be awarded to an employed person for loss in relation to personal injury arising from an MVA motor accident due to the loss of employer superannuation contributions is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based.
- (7) In subsection (6)—  
*relevant percentage* means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions.
- (8) The maximum amount of damages that may be awarded to a self-employed person for economic loss in relation to personal injury arising from an MVA motor accident due to the loss of superannuation contributions made by or on behalf of the person is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based (but nothing in this subsection gives rise to an entitlement to damages beyond damages awarded for loss or impairment of earning capacity).
- (9) In subsection (8)—  
*relevant percentage* means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions for the benefit of an employee who earns the same amount as the self-employed person.

## **5—Amendment of section 58—Damages in respect of gratuitous services**

Section 58—after subsection (3) insert:

- (4) Despite the preceding subsections, in a case involving an injured person who has suffered personal injury arising from an MVA motor accident—
- (a) damages referred to in subsection (1) are not to be awarded unless—
- (i) the injury scale value that applies under the regulations in relation to the injury exceeds 10; and
- (ii) the services are provided or to be provided—
- (A) for at least 6 hours per week; and
- (B) for a period of at least 6 consecutive months; and

- (b) any hourly rate used for the purposes of determining any damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child is not to exceed a rate prescribed by the regulations for the purposes of this paragraph.
- (5) Furthermore, in a case involving a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, subsection (1) operates subject to the qualification that damages are not to be awarded for the recompense of gratuitous services of a parent, spouse, domestic partner or child of the participant in respect of any assessed treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme.
- (6) A reference in subsection (5) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).

## **6—Insertion of sections 58A and 58B**

After section 58 insert:

### **58A—Limitations on damages for participants in lifetime support scheme**

- (1) No damages may be awarded to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* in respect of any of the treatment, care and support needs of the person, or any excluded treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme and that arise (or will arise) during the period in respect of which the person is a participant in the Scheme.
- (2) Subsection (1) applies—
  - (a) whether or not the treatment, care and support needs are assessed treatment, care and support needs under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*; and
  - (b) whether or not the Lifetime Support Authority is required to make a payment in respect of the treatment, care and support needs concerned; and
  - (c) whether or not any treatment, care, support or service is provided on a gratuitous basis.



- (3) A reference in subsection (1) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).

**58B—Additional provisions relating to death on account of a motor vehicle injury**

- (1) Any entitlement to damages for loss of financial support in respect of the death of a person arising from an MVA motor accident (a *relevant loss of financial support claim*) applies subject to the provisions of this section.
- (2) In making an award in relation to a relevant loss of financial support claim that will provide for the future (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—
- (a) a court must not take into account—
    - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
    - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
  - (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, and the combination of those chances; and
  - (c) a court must, when making an award of damages, state—
    - (i) the circumstances that have been taken into account for the purposes of the award; and
    - (ii) the inferences that the court has drawn from those circumstances; and
    - (iii) the court's evaluation of the chances of each circumstance occurring; and
    - (iv) its determination of the resultant award of damages.
- (3) Damages awarded in relation to a relevant loss of financial support claim must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.

## **7—Amendment of section 65—Spouse or domestic partner may claim for loss or impairment of consortium**

Section 65—after its present contents (now to be designated as subsection (1)) insert:

- (2) Damages for the loss or impairment of consortium suffered by the spouse or domestic partner of an injured person on account of personal injury arising from an MVA motor accident will not be awarded unless the injury scale value that applies under the regulations in relation to the injury exceeds 10.

## **8—Insertion of Part 9 Division 13**

After section 75 insert:

### **Division 13—Regulations**

#### **76—Assessment of motor vehicle injuries**

- (1) The regulations may, in relation to any claim, entitlement or award of damages in respect of personal injury arising from an MVA motor accident—
  - (a) authorise an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to require a claimant to submit to an assessment or examination of a prescribed kind; and
  - (b) require that an examination or assessment be undertaken by an accredited health professional (see subsection (2)) in order to obtain advice and evidence in relation to any relevant matter; and
  - (c) specify procedures to be followed in connection with any examination or assessment, including as to the determination or selection of an accredited health professional who is to undertake the examination or assessment; and
  - (d) specify the maximum number of examinations or assessments that may be made in a particular case; and
  - (e) prescribe rules that are to be applied with respect to the determination of any injury scale value under this Act; and
  - (f) without limiting a preceding paragraph, make provision for the provision of advice or evidence about diagnosis, causation, prognosis, future requirements for treatment, care or support, or other matters that are relevant to any assessment of damages or liability in respect of the injury; and

- (g) make provision for the preparation and furnishing of reports and other information or material, including as to the procedures or processes associated with requesting any report, document or other material, the form of any report, document or other material, and the persons to whom any report, document or other material is to be provided or made available; and
  - (h) provide for any other matter that may be relevant to assessing or determining a claim or entitlement, or making an award of damages.
- (2) The designated Minister may establish an accreditation scheme with respect to health professionals in connection with regulations under this section.
- (3) The accreditation scheme—
  - (a) may provide for a term or a period of accreditation, and for the suspension or cancellation of accreditation on specified grounds; and
  - (b) may specify terms or conditions of accreditation; and
  - (c) may provide for any aspect of the scheme to be administered or managed by a person or body specified by the designated Minister; and
  - (d) may provide that a person holding an accreditation, registration or other form of authorisation or status under another scheme recognised by the designated Minister will be taken to hold an accreditation under this section; and
  - (e) may be amended or substituted by the designated Minister from time to time.
- (4) The rules that are to apply for the purpose of assessing injury scale values (*ISVs*) for multiple injuries must include 1 or more provisions that adopt the following principles:
  - (a) a court must consider the range of *ISVs* for the dominant injury of the multiple injuries;
  - (b) in order to reflect the level of adverse impact of multiple injuries on an injured person, a court may assess the *ISV* for the multiple injuries as being higher in the range of *ISVs* for the dominant injury of the multiple injuries than the *ISV* that the court would assess for the dominant injury only;
  - (c) if a court considers that the level of impact of multiple injuries on an injured person is so severe that the maximum *ISV* for the dominant injury is inadequate to reflect the level of impact, the court may make an assessment of the *ISV* for the multiple injuries that is higher than the maximum *ISV* for the dominant injury, subject to the following qualifications:

- (i) the ISV for multiple injuries cannot exceed 100;
  - (ii) the ISV for multiple injuries should rarely be more than 25% higher than the maximum ISV for the dominant injury.
- (5) In connection with the operation of subsection (4), a dominant injury, in relation to multiple injuries, is—
  - (a) subject to paragraph (b)—the injury of the multiple injuries having the highest range; or
  - (b) if the highest range for 2 or more of the injuries of the multiple injuries is the same—the injury of those injuries selected as the dominant injury by a court assessing an ISV.
- (6) Subsections (4) and (5) do not limit any other principle or provision that may apply under the regulations in relation to the assessment and determination of an ISV for a particular injury.
- (7) For the purposes of the rules that are to apply for the purpose of assessing any injury scale value under a designated section (being rules that determine a substantive matter rather than prescribe a procedural matter), the relevant regulations are the regulations applying at the time of the occurrence of the relevant injury.
- (8) If a person fails to comply with a requirement prescribed under subsection (1) in respect of a claim or proceedings made or commenced by the person—
  - (a) in the case of a claim—a person or body to which the claim has been made may decline to consider or deal with the claim while the failure continues; and
  - (b) the person is not entitled, until he or she complies with the requirement, to commence proceedings or to continue proceedings that have been commenced in respect of the personal injury.
- (9) In addition, the regulations may—
  - (a) require an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to pay for the costs of examinations and assessments, and for the preparation and furnishing of reports, documents or other material, in prescribed circumstances (subject to any limits specified in the regulations); and

- (b) limit the liability of an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to pay for the costs of examinations and assessments, and for the preparation and furnishing of reports, documents or other material, in connection with a claim (and any such regulation may provide that prescribed costs (if any) be borne by a claimant and will have effect according to its terms and despite a liability that would otherwise arise under Part 4 of the *Motor Vehicles Act 1959* or any other Act or law); and
  - (c) require an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to make a contribution (determined in accordance with the regulations) towards the costs of the accreditation scheme established by the Minister under this section (including so that the scheme is fully-funded through the making of those contributions).
- (10) A regulation under subsection (1)(e) may only be made on the recommendation of the designated Minister.
- (11) Before the designated Minister makes a recommendation under subsection (10), the designated Minister must consult with—
  - (a) the Attorney-General; and
  - (b) The South Australian Branch of the Australian Medical Association Incorporated; and
  - (c) The Law Society of South Australia.
- (12) If an association referred to in subsection (11) objects to any matter contained in a regulation under subsection (10), the designated Minister must, at the request of that association, prepare a report that—
  - (a) provides information about the consultation that has been undertaken; and
  - (b) sets out the objection that has been made (including the reasons put forward by the association for its objection).
- (13) The Minister must cause a copy of a report under subsection (12) to be laid before both Houses of Parliament as soon as is reasonably practicable after the request is made.
- (14) In addition, a regulation that would have the effect of changing the injury scale value applying with respect to a particular injury so that a person who suffers that injury (and no other injury) would, on account of that change, no longer have a right to damages for non-economic loss under section 52(3) and (4) cannot come into operation until the time for disallowance of the regulation has passed.
- (15) Nothing in this section is intended to prevent or restrict a court from exercising any judicial power or from determining a matter according to law.

(16) In this section—

**designated Minister** means the Minister from time to time designated by the Governor by proclamation to be the designated Minister for the purposes of this section;

**designated section** means any of the following sections:

- (a) section 52;
- (b) section 56A;
- (c) section 58;
- (d) section 65;

**health professional** means—

- (a) a registered health practitioner under the *Health Practitioner Regulation National Law* (other than a student); or
- (b) a person who is within a class brought within the ambit of this definition by the regulations.

### **77—Regulations—general provisions**

- (1) Without limiting section 76, the Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) A regulation under this Act may—
  - (a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the regulation is made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons or circumstances to which it is expressed to apply; and
  - (d) provide that a matter is to be determined according to the discretion of a prescribed person or body.

## **Part 3—Amendment of *Motor Accident Commission Act 1992***

### **9—Insertion of section 4A**

After section 4 insert:

#### **4A—Commission to behave as model litigant**

- (1) The Commission must behave as a model litigant in the conduct of litigation.
- (2) Any model litigant guidelines applicable to the Crown Solicitor apply also to the Commission.

## **10—Amendment of section 14—Functions and objectives of Commission**

Section 14(3)—after paragraph (c) insert:

and

- (d) to encourage early and appropriate treatment and rehabilitation for people who suffer road accident injuries in respect of which the Commission bears financial responsibility under the policies of compulsory third party insurance referred to in subsection (1).

## **Part 4—Amendment of *Motor Vehicles Act 1959***

### **11—Amendment of section 5—Interpretation**

Section 5(1)—after the definition of *licence* insert:

*LSS Fund levy* means the LSS Fund levy under Part 7 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*;

### **12—Amendment of section 20—Application for registration**

Section 20(2)—after paragraph (b) insert:

- (ba) the appropriate LSS Fund levy; and

### **13—Amendment of section 24—Duty to grant registration**

Section 24(1)—after "the appropriate insurance premium" insert:

, the appropriate LSS Fund levy

### **14—Amendment of section 118B—Interpretation of certain provisions where claim made or action brought against nominal defendant**

- (1) Section 118B(1)(b)—after "the policy of insurance" insert:

or the other provisions of this Part

- (2) Section 118B(2)—after paragraph (d) insert:

(da) section 126A;

- (3) Section 118B(2)(e)—delete "and 127A" and substitute:

, 127A, 127B and 127C

### **15—Insertion of section 126A**

After section 126 insert:

#### **126A—Claim for compensation**

- (1) A person who seeks to make a claim for damages or other compensation in relation to the death of, or bodily injury to, a person for which insurance is provided under this Part must furnish the insurer or the nominal defendant (as the case may be) with a notice of claim that complies with the requirements of subsection (2).

- (2) A notice under subsection (1)—
  - (a) must be provided at a time or within a period prescribed by the regulations; and
  - (b) must be furnished in a manner and form approved by the Minister; and
  - (c) must set out or be accompanied by—
    - (i) a statement setting out details of the claim; and
    - (ii) a certificate or opinion as to the nature and probable cause of the death or injury (as the case requires) provided by a medical practitioner; and
    - (iii) the relevant police report number for any report provided to a police officer under the *Road Traffic Act 1961* in connection with the relevant accident; and
    - (iv) such other report or other information in relation to the accident or the claim as may be prescribed by the regulations; and
  - (d) must be accompanied by a statement (in a form prescribed by the regulations) authorising the insurer or the nominal defendant to have access to records and other sources of information relevant to the claim.
- (3) Any material or information required under subsection (2)(c) must comply with any requirements prescribed by the regulations.
- (4) An insurer or the nominal defendant must, within 21 days of receiving any record or other information under subsection (2)(d), send a copy of the report or information to the claimant (or a legal practitioner engaged by the claimant).
- (5) An insurer and the nominal defendant must establish practices and procedures designed to assist claimants to comply with the requirements of the preceding subsections.
- (6) If a person fails to comply with a preceding subsection—
  - (a) the insurer or the nominal defendant (as the case may be) may decline to consider or deal with the claim while the failure continues; and
  - (b) the person is not entitled, until he or she complies with the relevant requirements, to commence proceedings or to continue proceedings that have been commenced in respect of the death or injury.
- (7) Subsection (6) operates subject to any provision made by the regulations about qualifying or restricting the effect of failing to comply with the requirements of this section.



(8) In this section—

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

#### **16—Amendment of section 127—Medical examination of claimants**

- (1) Section 127(2)(a)—delete paragraph (a)
- (2) Section 127(3), (4) and (5)—delete subsections (3), (4) and (5)
- (3) Section 127(8)—delete subsection (8)

#### **17—Amendment of section 127A—Control of medical services and charges for medical services to injured persons**

Section 127A—after subsection (3) insert:

- (3a) In addition, the Minister may, by instrument in writing, in relation to a particular case or class of case, increase a limit or charge that applies for the purposes of this section (and the prescribed limit or prescribed scale will, in that case, then be taken to be increased to the extent allowed by the instrument).

#### **18—Insertion of sections 127B and 127C**

After section 127A insert:

##### **127B—Liability of insurer to pay treatment, care and support costs**

(1) In this section—

*treatment, care and support needs* of a person are the person's needs for or in connection with any of the following:

- (a) medical treatment (including pharmaceuticals);
- (b) dental treatment;
- (c) rehabilitation;
- (d) ambulance transportation;
- (e) aids and appliances;
- (f) prostheses;
- (g) such other kinds of treatment, care, support or services as may be prescribed by the regulations.

(2) Subject to this section, if—

- (a) a person who has not attained the age of 16 years suffers bodily injury caused by or arising out of the use of a motor vehicle; and
- (b) the incident to which the bodily injury is attributable occurs in South Australia,

then the insurer is liable to pay all the necessary and reasonable expenses with respect to the treatment, care and support needs of the person (including after he or she attains the age of 16 years) that are attributable to that bodily injury.

- (3) This section applies whether or not a liability at common law exists against the owner of the relevant motor vehicle or other person on account of the occurrence of the bodily injury (but any award of damages must take into account the extent to which an entitlement arises under this section).
- (4) This section does not apply in relation to a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.
- (5) Section 127A will apply to any services under this section insofar as they are prescribed services under that section.
- (6) If a person suffered the bodily injury as a result of or partly as a result of the fault of another person (the wrongdoer), the insurer is entitled to recover from the wrongdoer as a debt due to the insurer such proportion of the present value of the insurer's treatment, care and support liabilities in respect of the person's bodily injury as corresponds to the wrongdoer's share in the responsibility for the injury.
- (7) The present value of the insurer's treatment, care and support liabilities in respect of a bodily injury is the sum of the following amounts:
  - (a) amounts already paid by the insurer under this section in respect of the treatment, care and support needs associated with the bodily injury; and
  - (b) the present value of the amounts that the insurer estimates will be payable by the insurer in the future under this section in respect of the treatment, care and support needs associated with the bodily injury.

### **127C—Control of legal costs**

- (1) Subject to subsection (3), a court before which proceedings are brought in respect of a claim for which a person is insured under this Part must comply with the following provisions as to costs in relation to the claimant:
  - (a) if the total amount recovered in respect of the claim does not exceed \$25 000—the court must not award in favour of the claimant costs as between party and party unless the court is of the opinion that there are exceptional circumstances justifying the award of such costs;

- (b) if the total amount recovered in respect of the claim exceeds \$25 000 but does not exceed \$100 000—the court must not award in favour of the claimant costs in respect of the proceedings in excess of the costs applying under the designated scale unless the court is satisfied that there are exceptional circumstances justifying the award of additional costs.
- (2) A court before which proceedings are brought in respect of a claim for which a person is insured under this Part must comply with the following provisions as to costs in relation to the defendant:
- (a) if the total amount claimed does not exceed \$25 000—the court must not award in favour of the defendant costs as between party and party unless the court is of the opinion that there are exceptional circumstances justifying the award of such costs;
  - (b) if the total amount claimed exceeds \$25 000 but does not exceed \$100 000—the court must not award in favour of the defendant costs in respect of the proceedings in excess of the costs applying under the designated scale unless the court is satisfied that there are exceptional circumstances justifying the award of additional costs.
- (3) If proceedings are brought before a court in order to obtain approval of a compromise or settlement that relates to a person who is under a legal disability, subsection (1)(a) does not apply so as to prevent an award of costs as between party and party insofar as the costs are directly related to obtaining that approval.
- (4) In this section—

*designated scale* means the scale of costs that apply in relation to civil proceedings in the Magistrates Court of South Australia (even if the claim against the insurer is for an amount that exceeds the jurisdictional limit of that court), subject to any modifications made by the regulations for the purposes of this section.

## 19—Insertion of section 134A

After section 134 insert:

### 134A—Review of scheme

- (1) The Minister must cause a review of this Part to be undertaken if the Class 1 premium imposed in respect of insurance under this Part exceeds, in relation to a particular financial year, the prescribed percentage of State average weekly earnings that is current at 1 July of that financial year.
- (2) The Minister must ensure—
  - (a) that the review is completed within 6 months after the end of the financial year that applies under subsection (1); and

- (b) that the results of the review are set out in a written report furnished to the Minister.
- (3) The Minister must cause a copy of a report furnished to the Minister under this section to be laid before both Houses of Parliament within 6 sitting days after receiving the report.
- (4) If a review is undertaken under this section, this section will then not apply in relation to the next 2 financial years immediately following the financial year in which the review is completed.
- (5) In this section—

*Class 1 premium* means a premium payable under this Part in respect of passenger cars garaged within Metropolitan Adelaide identified, from time to time, by the Minister for the purposes of this definition by notice in the Gazette;

*State average weekly earnings* means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.

## Part 5—Amendment of *Stamp Duties Act 1923*

### 20—Insertion of Part 3 Division 11

After section 82A insert:

#### Division 11—LSS Fund levy

##### 82B—Interpretation

In this Division—

*Authority* means the Lifetime Support Authority of South Australia established under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*;

*LSS Fund levy* means the LSS Fund levy under Part 7 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.

##### 82C—Lodgment of statement and payment of duty

The Authority is liable under this section to pay duty in respect of each LSS Fund levy paid to the Authority and must, under a scheme established by the Treasurer for the purposes of this Division (at intervals determined under that scheme)—

- (a) lodge with the Commissioner a statement in an approved form setting out the total of all such levies received by the Authority during a preceding period specified under the scheme; and
- (b) pay to the Commissioner duty equivalent to 11% of that amount.

## Part 6—Transitional provisions

### 21—Civil Liability Act—transitional provisions

- (1) In this clause—  
*principal Act* means the *Civil Liability Act 1936*.
- (2) An amendment made by this Act—
  - (a) that amends section 52, 58 or 65 of the principal Act; or
  - (b) that inserts section 56A, 58A or 58B into the principal Act,does not affect a cause of action, right or liability that arose before the commencement of the amendment.
- (3) Section 58A of the principal Act (as inserted by this Act) applies in relation to a person who is a participant in the Scheme under this Act in respect of a motor vehicle injury that results from an MVA motor accident (as defined by the principal Act) occurring on or after the commencement of section 5 of this Act.
- (4) Subclauses (2) and (3) do not derogate from the operation of section 105 of the *Motor Vehicles Act 1959*.
- (5) To avoid doubt, section 76(14) of the principal Act (as enacted by this Act) does not apply in relation to a regulation that prescribes the injury scale values that are to apply on the commencement of section 52(3) of the principal Act (as enacted by this Act).

### 22—Motor Vehicles Act—transitional provisions

- (1) In this clause—  
*principal Act* means the *Motor Vehicles Act 1959*.
- (2) Section 126A of the principal Act (as inserted by this Act) applies to any claim made after the commencement of that section (including a claim in relation to a death or bodily injury that results from an accident that occurred before that commencement).
- (3) An amendment made by this Act to section 127 of the principal Act does not apply in relation to any claim in relation to bodily injury that results from an accident occurring before the commencement of the amendment (and so a paragraph or subsection to be deleted by such an amendment will continue to operate in relation to such a claim including a claim made after the commencement of the amendment).
- (4) Section 127B of the principal Act (as inserted by this Act) applies in relation to a death or bodily injury that results from an accident occurring on or after the commencement of that section.
- (5) Section 127C of the principal Act (as inserted by this Act) applies in relation to a claim in respect of a death or a bodily injury that results from an accident occurring on or after the commencement of that section.

## 23—Contribution to liabilities of Authority—transitional provisions

- (1) The Treasurer may, after consultation with MAC and the Authority, determine an amount that (in the opinion of the Treasurer) represents the amount derived by MAC from premiums in respect of policies of insurance under Part 4 of the *Motor Vehicles Act 1959* in respect of any treatment, care and support needs of persons who become participants in the Scheme under this Act after the commencement of the Scheme and the commencement of section 58A of the *Civil Liability Act 1936* (as inserted by this Act), including so as to provide an amount with respect to unexpended risk reserves held by MAC that are attributable to road accidents for which provision is made but for which liability does not eventually arise.
- (2) The Treasurer may make a determination under subclause (1)—
  - (a) in respect of past and future premiums payable under Part 4 of the *Motor Vehicles Act 1959* (applying such estimates as the Treasurer thinks fit); and
  - (b) on the basis of—
    - (i) estimates with respect to reductions in the liability and financial requirements of MAC in the future; and
    - (ii) estimates with respect to the liabilities and financial requirements of the Authority under this Act in the future,and after taking into account such other matters as the Treasurer thinks fit.
- (3) An amount determined by the Treasurer under subclause (1) will be payable by MAC (from out of the Compulsory Third Party Fund established under Part 4 of the *Motor Accident Commission Act 1992*) to the Authority (for payment into the Lifetime Support Scheme Fund established under Part 7 of this Act) at a time determined by the Treasurer after consultation with MAC and the Authority.
- (4) This clause operates despite any provision in the *Motor Accident Commission Act 1992* about payments into or out of the Compulsory Third Party Fund.
- (5) In this clause—

*MAC* means the Motor Accident Commission.

## Part 7—Review

### 24—Review

- (1) The designated Committee must review the operation of this Act (including the amendments made by this Act to other Acts) as soon as practicable after the expiry of 3 years from its commencement.
- (2) The review must include an assessment of—
  - (a) the extent to which this Act has provided an effective and fair scheme to assist people who have been catastrophically injured in motor vehicle accidents; and
  - (b) whether it would be appropriate to extend the Scheme established by this Act to people who have been catastrophically injured due to other causes, and the issues associated with implementing such a reform; and

- (c) the operation of the provisions for the assessment and awarding of damages under section 52 of the *Civil Liability Act 1936* with respect to MVA motor accidents (as defined under that Act) enacted by this Act, with particular reference to—
  - (i) whether the exclusion of a right of recovery for non-economic loss if the injury scale value that applies in a particular case does not exceed 10 has resulted in cases of substantial hardship; and
  - (ii) whether the rules and principles applying to an injured person who has suffered multiple injuries have—
    - (A) provided reasonable compensation within the scheme established under that section; or
    - (B) caused a change in the manner in which such persons claim compensation that has or could lead to an increase in premiums payable under Part 4 of the *Motor Vehicles Act 1959*; and
- (d) the operation of the other amendments to the *Civil Liability Act 1936* enacted by this Act, with particular reference to the introduction and effect of thresholds under various heads of damages; and
- (e) the effect that the amendments to the *Motor Vehicles Act 1959* enacted by this Act have had on the handling and settlement of claims under Part 4 of that Act,

and may include any other matter that the designated Committee considers to be relevant to a review of this Act.

- (3) In this clause—

*designated Committee* means—

- (a) unless paragraph (b) applies—the Social Development Committee of Parliament; or
- (b) if both Houses of Parliament have, before the third anniversary of the commencement of this Act, by resolution, designated another Committee of Parliament to conduct the review envisaged by this clause—that Committee.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2013	15	<i>Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013</i>	23.5.2013	1.7.2013 except ss 4—6, Pts 3—6 & Sch 1—1.7.2014 ( <i>Gazette 20.6.2013 p2629</i> )