

South Australia

## **Civil Liability Variation Regulations 2014**

under the *Civil Liability Act 1936*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Civil Liability Variation Regulations 2014*.

#### **2—Commencement**

These regulations will come into operation on 1 April 2014.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Civil Liability Regulations 2013*

### 4—Variation of regulation 3—Interpretation

- (1) Regulation 3—before the definition of *Act* insert:

*accredited health professional* means a person who is accredited under a scheme established by the designated Minister under section 76(2) of the Act;

- (2) Regulation 3—after the definition of *consequential mental harm* insert:

*designated Minister* has the same meaning as in section 76 of the Act;

- (3) Regulation 3—after the definition of *highest range* insert:

*injured person* means a person who claims damages in respect of personal injury arising from an MVA motor accident;

### 5—Variation of regulation 4—Injury scale value

Regulation 4(2)—delete subregulation (2) and substitute:

- (2) An ISV assessment must not be undertaken until—
- (a) the injury has stabilised; and
  - (b) a medical assessment of the injured person has been undertaken by an accredited health professional and a report provided under regulation 23.
- (3) However a medical assessment by an accredited health professional is not required if—
- (a) no health professional who is qualified to undertake the assessment has been accredited under the scheme established by the designated Minister under section 76(2) of the Act; or
  - (b) the insurer and the injured person reach an agreement that such an assessment is not required; or
  - (c) a court determines that such an assessment is not required.

### 6—Variation of regulation 5—Medical assessments before injury has stabilised

- (1) Regulation 5(b)—delete "or nominal defendant"  
(2) Regulation 5(b)—delete "or the nominal defendant"

### 7—Insertion of heading to Part 4 Division 1

Before regulation 20—insert:

#### **Division 1—Attendance at medical examinations**

### 8—Variation of regulation 20—Attendance at medical examinations

- (1) Regulation 20(1)—delete "A claimant" and substitute:

An injured person

- (2) Regulation 20(1)(a)—delete "by a health professional" and substitute:  
or assessment by a health professional selected or
- (3) Regulation 20(2) and (3)—delete subregulations (2) and (3)
- (4) Regulation 20(4)—delete "of a claimant" and substitute:  
or assessment of an injured person
- (5) Regulation 20(4)—delete "the claimant" and substitute:  
the injured person

## **9—Insertion of Divisions 2 and 3**

After regulation 20 insert:

### **Division 2—Additional provisions relating to accredited health professionals**

#### **21—Definition of health professional (section 76(16) of Act)**

Neuropsychologists are a class of persons brought within the ambit of the definition of *health professional* under section 76 of the Act.

#### **22—Provision of information to accredited health professionals**

A request for an examination or assessment made to an accredited health professional for the purposes of an ISV assessment must be accompanied by a copy of each of the following:

- (a) any relevant medical history, records or notes provided by the injured person's medical practitioner (if available);
- (b) any relevant hospital notes;
- (c) any other medical information so far as it is relevant to the injured person's claim;
- (d) any documents required by rules of court or practice directions.

#### **23—Reports by accredited health professionals**

- (1) An accredited health professional who is sent a request for an examination or assessment must provide a written report to the insurer within 30 days of the examination or assessment which gives an opinion with respect to—
  - (a) diagnosis; and
  - (b) prognosis; and
  - (c) injury stability; and
  - (d) whether the injury is consistent with the stated cause; and
  - (e) the effect of the MVA motor accident on any pre-existing injury and the extent to which it has been made worse by the injury; and

- (f) the effect of the MVA motor accident on any subsequent injury and the extent to which it has been made worse by the injury; and
  - (g) whether the assessment was based on AMA5 or other criteria with detailed reasons; and
  - (h) in a case of pure mental harm—the GEPIC rating with detailed reasons; and
  - (i) if relevant, the whole person impairment; and
  - (j) the ISV item number; and
  - (k) any other relevant matter if the insurer and injured person reach agreement.
- (2) A report provided under subregulation (1) must be in a form determined by the designated Minister (and include any information required by that form).
- (3) The insurer must, on receipt of a report under this Division, provide the injured person to whom the assessment relates with a copy of the report within 21 days.

### **Division 3—Related matters**

#### **24—Court requirements with respect to reports**

A medical report prepared under these regulations with respect to a claim in relation to personal injury damages must comply with any relevant rules of court or practice directions.

#### **25—Liability of insurer for certain costs (section 76(9) of Act)**

- (1) Subject to subregulation (2), the insurer is liable for the payment of—
- (a) the cost of an examination or assessment required under regulation 20(1)(a) and the report to the insurer on the examination or assessment; and
  - (b) the cost of any other examination or assessment conducted by a health professional, and the report to the insurer on the examination or assessment, where the insurer authorised or approved the examination or assessment before it was conducted.
- (2) If an injured person fails, without reasonable cause, to attend an examination as required under this Part—
- (a) the insurer may request that the injured person makes payment of any cancellation fees incurred because of the injured person's non attendance; and

- (b) if a request is made, the injured person is liable to pay for any fees incurred by the insurer (and the insurer may set this off against any liability for payment of damages or compensation).

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

on the recommendation of the designated Minister and with the advice and consent of the Executive Council  
on 13 February 2014

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