



STATUTES AMENDMENT (MOTOR ACCIDENTS) ACT 1998

No. 67 of 1998

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ELIZABETHAE II REGINAE

A.D. 1998

No. 67 of 1998

An Act to amend the Motor Vehicles Act 1959 and the Wrongs Act 1936.

[Assented to 17 September 1998]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Motor Accidents) Act 1998*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF MOTOR VEHICLES ACT 1959**

Amendment of s. 5—Interpretation

4. Section 5 of the principal Act is amended by inserting in paragraph (a) of the definition of "premium" in subsection (1) "and published in the *Gazette*" after "that Part".

Amendment of s. 99—Interpretation

5. Section 99 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) For the purposes of this Part and schedule 4, death or bodily injury will be regarded as being caused by or as arising out of the use of a motor vehicle only if it is a consequence of—

- (a) the driving of the vehicle; or
- (b) the vehicle running out of control; or
- (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.

Insertion of s. 113A

6. The following section is inserted after section 113 of the principal Act:

Insurer not liable for aggravated damages or exemplary or punitive damages

113A. An insurer is not liable to pay any aggravated damages or exemplary or punitive damages awarded in an action against the insured person in respect of death or bodily injury caused by or arising out of the use of a motor vehicle insured under this Part and the insured person is not entitled to be indemnified by the insurer in respect of such an award.

Insertion of s. 118B

7. The following section is inserted after section 118A of the principal Act:

Interpretation of certain provisions where claim made or action brought against nominal defendant

118B. (1) The provisions of this Act prescribed by subsection (2) will be taken to apply where a claim is made or an action is brought against the nominal defendant under this Part as if, for the purposes of those provisions—

- (a) the motor vehicle in relation to which the claim is made or the action is brought were a motor vehicle insured under a policy of insurance; and
- (b) the nominal defendant were the insurer and any liability of the nominal defendant were a liability of the insurer under the policy of insurance.

(2) For the purposes of subsection (1), the following provisions of this Act are prescribed:

- (a) sections 110, 111 and 111A;
- (b) section 124(6a);
- (c) section 124AD;
- (d) section 125B;
- (e) sections 127 and 127A;
- (f) a provision specified by the regulations for the purposes of subsection (1).

Amendment of s. 124—Duty to co-operate with insurer**8. Section 124 of the principal Act is amended—**

(a) by inserting after subsection (3) the following subsections:

(3a) A person who at the time of an accident of a kind referred to in subsection (1) was the owner, the person in charge, or the driver, of the motor vehicle must co-operate fully with the insurer in respect of a claim made in respect of the accident.

Maximum penalty: \$250.

(3b) The duty to co-operate under subsection (3a) will include, in the case of the owner, a duty to give the insurer access to the vehicle, and, if required, possession of the vehicle, or part of the vehicle, on reasonable terms and conditions.;

(b) by inserting after subsection (6) the following subsections:

(6a) Where a claim is made upon an insured person in respect of an accident of a kind referred to in subsection (1), a person must not give the insurer, or someone known by the person to be engaged by the insurer in connection with the claim, any information that the person knows is material to the claim and is false or misleading.

Maximum penalty: \$1 250 or imprisonment for 3 months.

(6b) If—

- (a) an amount has been paid to the claimant in connection with a claim in respect of an accident of a kind referred to in subsection (1); and
- (b) the claimant has been found guilty of an offence against subsection (6) or (6a) in connection with the claim,

the person who made the payment is entitled to recover from the claimant the amount of any financial benefit that the claimant gained from the commission of the offence together with any amount that the court considers appropriate in respect of costs incurred in connection with the claim.

Amendment of s. 124A—Recovery by the insurer

9. Section 124A of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) A finding of a court in proceedings for an offence as to—

- (a) the insured person's incapacity to exercise effective control of the vehicle at the time of the motor accident owing to the influence of intoxicating liquor or a drug; or
- (b) the concentration of alcohol present in 100 millilitres of the insured person's blood at the time of the motor accident,

will be treated as determinative of the issue in an action by the insurer under subsection (1).

Insertion of s. 124AC

10. The following section is inserted after section 124AB of the principal Act:

Credit for payment of expenses by insurer

124AC. If an amount claimed as expenses incurred as a result of death or bodily injury caused by or arising out of the use of a motor vehicle is paid by an insurer to or on behalf of the claimant, the amount of any damages payable to the claimant in respect of the death or bodily injury is reduced by the amount so paid.

Insertion of s. 125B

11. The following section is inserted after section 125A of the principal Act:

Acquisition of vehicle by insurer

125B. (1) If—

- (a) the insurer considers it necessary to acquire the motor vehicle for the purposes of the conduct of negotiations or proceedings connected with the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle; and
- (b) the owner of the vehicle is unwilling to sell the vehicle to the insurer at all or for a price the insurer considers reasonable,

the insurer may acquire the vehicle compulsorily in accordance with this section.

(2) The insurer may, for the purposes of compulsorily acquiring the motor vehicle, apply to the Magistrates Court for a valuation of the vehicle.

(3) If within one month after the date of a valuation by the Court, the insurer pays into the Court the amount of the valuation, the Court—

- (a) must make an order vesting title to the motor vehicle in the insurer; and
- (b) may make any other incidental or ancillary orders that may be necessary or desirable in the circumstances of the case.

(4) The insurer must, after acquiring the vehicle, allow inspection and, if necessary, testing, of the vehicle, on reasonable terms and conditions, by—

- (a) any person who is or may become a party to proceedings in respect of death or bodily injury caused by or arising out of the use of the vehicle; or
- (b) any person who otherwise has a proper interest in inspecting the vehicle; or
- (c) any agent of a person referred to in paragraph (a) or (b).

Insertion of s. 127A

12. The following section is inserted after section 127 of the principal Act:

Control of medical services and charges for medical services to injured persons

127A. (1) In this section—

"**injured person**" means a person who has suffered bodily injury caused by or arising out of the use of a motor vehicle;

"**prescribed limit**", in relation to prescribed services, means the limit prescribed for the prescribed services for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986*;

"**prescribed scale**", in relation to prescribed services, means the scale of charges prescribed for the prescribed services for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986*;

"**prescribed services**" means services of a kind referred to in section 32(2) of the *Workers Rehabilitation and Compensation Act 1986*, but does not include services of a kind excluded from the application of this section by notice made under subsection (2).

(2) The Minister may, by notice in the *Gazette*—

- (a) require that, for the purposes of this section, the regulations made for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986* be read subject to modifications specified in the notice;
- (b) exclude specified services from the application of this section;
- (c) vary or revoke a notice under this subsection.

(3) The Minister must, before issuing a notice under subsection (2)(a) or a notice varying or revoking such a notice, consult with professional associations representing the providers of services to which the notice relates.

(4) For the purposes of this section, a reference in section 32 of the *Workers Rehabilitation and Compensation Act 1986* or the regulations made under that Act for the purposes of that section to a worker is to be taken to include a reference to an injured person.

(5) For the purposes of this section, a charge for prescribed services is excessive if—

- (a) the charge exceeds the prescribed limit or the charge allowed for the prescribed services under the prescribed scale; or
- (b) in the case of prescribed services for which there is not a prescribed limit and to which a prescribed scale does not apply—the charge exceeds an amount that the Magistrates Court considers reasonable for the provision of the services.

(6) The Magistrates Court may, on application by the insurer—

- (a) where an injured person has been charged an excessive amount for prescribed services—reduce the charge by the amount of the excess and, if the charge has been paid to the service provider, order the service provider to pay the amount of the excess to the insurer; or
- (b) where an injured person has received prescribed services that the Court considers were, in the circumstances of the case, inappropriate or unnecessary—disallow the charge for the services and, if the charge has been paid to the service provider, order the service provider to pay the amount of the charge to the insurer.

(7) Proceedings may not be commenced under subsection (6)(a) in relation to a charge for a prescribed service for which there is not a prescribed limit and to which a prescribed scale does not apply if, prior to the injured person being charged for the service, the insurer agreed to the amount of the charge.

(8) Proceedings may not be commenced under subsection (6) unless the insurer has—

- (a) first given the service provider notice that the insurer claims the charge to be excessive or the services to be inappropriate or unnecessary, as the case may be, and of the reasons for the claim; and
- (b) allowed at least 30 days from the giving of the notice for the service provider and any professional association or other person acting on behalf of the service provider to respond to the claim and consult with the insurer; and
- (c) given due consideration to any response to the claim and proposals for settlement of the matter made by or on behalf of the service provider; and
- (d) given the service provider notice of the result of the insurer's consideration of the matter and allowed a further period of 30 days to elapse from the giving of that notice for any further consultations if requested by the service provider.

(9) A person who provides prescribed services to an injured person, knowing that the person's injury has been caused by or arisen out of the use of a motor vehicle, must not, if a prescribed scale applies to the services, charge an amount for the services exceeding the amount allowed under the prescribed scale.

Maximum penalty: \$1 250.

(10) Proceedings may not be commenced under subsection (6) or for an offence against subsection (9) in respect of prescribed services provided in relation to bodily injury caused by or arising out of the use of a motor vehicle unless liability to damages (whether being the whole or part only of the amount claimed) in respect of that injury has been accepted by or established against an insured person or the insurer.

(11) Proceedings for an offence against subsection (9) may be commenced at any time within 12 months after—

- (a) liability to damages (whether being the whole or part only of the amount claimed) has been accepted or established as referred to in subsection (10); or
- (b) receipt by the insurer of an account for payment of the charge to which the proceedings relate,

whichever is the later.

(12) In proceedings for an offence against subsection (9) it is a defence if the defendant proves that, at the time the defendant charged for the services, the defendant, having made reasonable inquiries, had reason to believe that neither an insured person nor the insurer has or might have any liability to damages in respect of the injury.

PART 3 AMENDMENT OF WRONGS ACT 1936

Amendment of s. 35A—Motor accidents

13. Section 35A of the principal Act is amended—

(a) by inserting after paragraph (d) of subsection (1) the following paragraph:

(da) the damages for loss of future earning capacity awarded to the injured person must not exceed the prescribed maximum;;

(b) by striking out paragraphs (i) and (j) of subsection (1) and substituting the following paragraphs:

(i) if—

(i) the injured person was the driver of a vehicle involved in the accident; and

(ii) the accident was attributable in part to the injured person's negligence; and

(iii) —

(A) a concentration of .08 grams or more of alcohol in 100 millilitres of blood was present in the injured person's blood at the time of the accident; or

(B) the injured person's ability to drive the motor vehicle was, at the time of the accident, impaired in consequence of the consumption of alcohol or a drug,

the injured person is, because he or she drove in that condition, to be taken to have been negligent and the damages to be awarded must be reduced by the prescribed percentage or such greater percentage as the court thinks just and reasonable having regard to the extent to which the accident was attributable to the injured person's negligence; and

(j) if the injured person (not being a person under the age of 16 years) was, contrary to the requirements of the *Road Traffic Act 1961*, at the time of the accident, not wearing a seat belt, the damages to be awarded must, on account of that contravention, be reduced by 25 per cent; and

(ja) if—

- (i) the injured person (not being a person under the age of 16 years) was, contrary to the requirements of the *Road Traffic Act 1961*, at the time of the accident, not wearing a safety helmet; and
- (ii) there is a causal connection between the injured person's failure to wear a safety helmet at the time of the accident and the extent of the person's injury,

the damages to be awarded must, on account of that contravention, be reduced by 25 per cent; and

(jb) if—

- (i) the injured person (not being a person under the age of 16 years) was, at the time of the accident, a passenger in or on a motor vehicle; and
- (ii) the driver of the vehicle—
 - (A) had consumed alcohol in a quantity sufficient to result in a concentration of .08 grams or more of alcohol being present in 100 millilitres of his or her blood at the time of the accident; or
 - (B) had consumed alcohol or a drug in a quantity such that his or her ability to drive a motor vehicle was impaired at the time of the accident; and
- (iii) the injured person was aware, or ought to have been aware, that the driver of the vehicle had consumed alcohol or a drug in such a quantity,

the damages to be awarded must be reduced by the prescribed percentage; and

(jc) if—

- (i) the injured person (not being a person under the age of 16 years) was a passenger in or on a motor vehicle with a passenger compartment but was not, at the time of the accident, within the compartment; and
- (ii) there is a causal connection between the injured person's position in or on the vehicle at the time of the accident and the extent of the person's injury,

the damages to be awarded must, on account of the injured person's position in or on the vehicle, be reduced by 25 per cent; and;;

(c) by striking out subsection (3) and substituting the following subsections:

(3) If one or more of paragraphs (j), (ja), (jb) or (jc) of subsection (1) apply to the injured person, the reduction or reductions required to be made under that paragraph or those paragraphs in the damages to be awarded must be made after the court makes any other reduction that is based on the injured person's contributory negligence.

(3a) A reduction in the damages to be awarded is not required to be made under subsection (1)(jb) or (jc) if, in the circumstances of the case, the injured person could not reasonably be expected to have avoided travelling as a passenger in or on the motor vehicle or as a passenger outside the passenger compartment of the motor vehicle, as the case may be.;

(d) by striking out subsection (5) and substituting the following subsections:

(5) For the purposes of this section, an injury will be regarded as being caused by or arising out of the use of a motor vehicle only if it is a consequence of—

- (a) the driving of the vehicle; or
- (b) the vehicle running out of control; or
- (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.

(5a) A finding of a court in proceedings for an offence as to—

- (a) a concentration of alcohol present in 100 millilitres of the blood of the driver of a motor vehicle; or
- (b) incapacity of the driver of a motor vehicle to exercise effective control of the vehicle owing to the influence of intoxicating liquor or a drug,

will be treated as determinative of the issue for the purposes of the application of subsection (1)(i)(iii) or (jb)(ii) in proceedings for damages in respect of personal injury arising from a motor accident.;

(e) by inserting after the definition of "court" in subsection (6) the following definition:

"drive" includes ride, and "driver" and "driving" have corresponding meanings;;

(f) by inserting before the definition of "the prescribed amount" in subsection (6) the following definition:

"passenger compartment" of a motor vehicle means a part of the vehicle designed for the carriage of passengers;;

- (g) by striking out the definition of "**the prescribed minimum**" in subsection (6) and substituting the following definitions:

"the prescribed maximum" means—

- (a) in relation to an injury arising from a motor accident that occurred during 1999—\$2 million;
- (b) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 1998;

"the prescribed minimum" means—

- (a) in relation to an injury arising from a motor accident that occurred before 1 January 1999—\$1 400;
- (b) in relation to an injury arising from a motor accident that occurred during 1999—\$2 500;
- (c) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 500 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 1998;

"the prescribed percentage" means—

- (a) if the concentration of alcohol in the blood of the driver at the time of the accident was .15 grams or more in 100 millilitres of blood or the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle—50 per cent;
- (b) in any other case—25 per cent;.

PART 4 TRANSITIONAL PROVISION

Transitional provision

14. (1) An amendment made by this Act does not affect a cause of action, right or liability that arose before the commencement of the amendment.

(2) However, subsection (1) does not derogate from the operation of section 105 of the *Motor Vehicles Act 1959*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor