

LEGISLATIVE COUNCIL

Motor Accident Injuries Amendment Bill 2013

Second print

Proposed amendments

No. 1 Pages 18 and 19, Schedule 1 [68], proposed Part 3A.2, line 33 on page 18 to line 16 on page 19. Omit all words on those lines. Insert instead:

Part 3A.2 Statutory benefits for death

65D Death of person leaving dependants

- (1) If the death of a person is caused by a motor accident, the following statutory benefits are payable:
 - (a) a lump sum death benefit of the same amount as the lump sum death benefit payable under section 25 (1) (a) of the *Workers Compensation Act 1987* at the date of death, which is to be apportioned among any dependants who are wholly or partly dependent for support on the deceased or (if there are no such dependants) paid to the deceased's legal personal representative, and
 - (b) in addition a weekly payment of the same amount as the payment provided for by section 25 (1) (b) of the *Workers Compensation Act 1987* per week in respect of:
 - (i) each dependent child of the deceased under the age of 16 years, and
 - (ii) each dependent child of the deceased being a student over the age of 16 years but under the age of 21 years.
- (2) Payments in respect of a dependent child under subsection (1) (b) are to continue:
 - (a) except as provided by paragraph (b)—until the child dies or reaches the age of 16 years, whichever first occurs, or
 - (b) in the case of a dependent child who is a student at the time of the deceased's death or after reaching the age of 16 years—until the child dies, reaches the age of 21 years or ceases to be a student, whichever first occurs.
- (3) The amount of any weekly payments or other statutory benefits payable under this Chapter are not to be deducted from the amounts referred to in subsection (1) (a) or (b).

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- (4) In this section:

child of the deceased means a child or stepchild of the deceased and includes a person to whom the deceased stood in the place of a parent.

dependent child of the deceased means a child of the deceased who was wholly or partly dependent for support on the deceased.

student means a person receiving full-time education at a school, college or university.

65E Funeral expenses

If the death of a person is caused by a motor accident, statutory benefits are also payable for reasonable funeral expenses not exceeding \$9,000 or such other amount as may be prescribed by the regulations.

65F Expenses of transporting body

If statutory benefits are payable under this Part and the usual place of residence of the deceased was, at the time of death, in Australia, statutory benefits are payable for the reasonable cost of transporting the body of the deceased to:

- (a) what would, in the circumstances, be an appropriate place for its preparation for burial or cremation, or
 - (b) that usual place of residence,
- whichever is the lesser cost.

65G Apportionment of payments between dependants

- (1) The statutory benefits payable under this Part to each dependant of the deceased may be apportioned by a claims assessor or by the NSW Trustee and Guardian.
- (2) The lump sum death benefit payable under this Part is not to be apportioned if the deceased leaves only one dependant (whether wholly or partly dependent on the deceased for support) and the whole of the lump sum death benefit is to be paid to that one dependant.
- (3) In apportioning the lump sum death benefit payable under this Part between 2 or more dependants, the whole lump sum death benefit is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full lump sum death benefit).
- (4) Application for apportionment may be made by or on behalf of a person entitled to the statutory benefit:
 - (a) to the NSW Trustee and Guardian, or
 - (b) to a claims assessor (whether or not an application has been made to the NSW Trustee and Guardian or the NSW Trustee and Guardian has made a decision).
- (5) The NSW Trustee and Guardian may decline to deal with an application for apportionment and advise the parties to apply to a claims assessor.
- (6) The NSW Trustee and Guardian is not to deal with an application for apportionment of statutory benefits if an application for apportionment of the same statutory benefits is before a claims assessor.

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- (7) A decision by the NSW Trustee and Guardian to apportion statutory benefits under this Part is subject to any decision made by a claims assessor with respect to the matter.
 - (8) If there are both total and partial dependants of the deceased, statutory benefits may be apportioned partly to the total and partly to the partial dependants.
 - (9) If a dependant dies:
 - (a) before a claim under this Part is made, or
 - (b) if a claim has been made, before an agreement or award has been arrived at or made,the legal personal representative of the dependant has no right to payment of statutory benefits, and the amount of statutory benefits is to be calculated and apportioned as if that dependant had died before the deceased.
 - (10) The regulations may make provision for or with respect to the publication of applications for apportionment and any other matter connected with apportionment.

65H Review of apportionment among dependants

- (1) A claims assessor or the NSW Trustee and Guardian may, on account of the variation of the circumstances of the various dependants or for any other sufficient cause, vary any previous apportionment among the dependants of the deceased of statutory benefits under this Part.
- (2) Application for a variation may be made by or on behalf of the person entitled to statutory benefits to the Authority or the NSW Trustee and Guardian.
- (3) The NSW Trustee and Guardian may apply to a claims assessor for any such variation of a previous apportionment made by the NSW Trustee and Guardian or by a claims assessor.
- (4) The NSW Trustee and Guardian is not to deal with an application for variation of any previous apportionment if an application for variation of the same previous apportionment is before a claims assessor.
- (5) The NSW Trustee and Guardian is not to vary an apportionment made by a claims assessor.

65I Payment in respect of dependent children

- (1) Statutory benefits payable under section 65D (1) (b) in respect of a dependent child of the deceased must, unless a claims assessor otherwise directs:
 - (a) be paid to the surviving parent of the child concerned, if there is one, or
 - (b) be paid to the NSW Trustee and Guardian for the benefit of the child or to any person (approved by the NSW Trustee and Guardian) having the care or custody of the dependent child, if no such parent survives.
- (2) If a claims assessor gives a direction under subsection (1), statutory benefits are payable in accordance with the direction.

65J Payment where no dependants

If the deceased leaves no dependants, statutory benefits payable under this Part are to be paid to the deceased's legal personal

representative or, if there is no such representative, to the person to whom the payment of the expenses for which the statutory benefits are payable is due.

- No. 2 Page 21, Schedule 1 [68], proposed section 65J, line 35. Omit “after the motor accident concerned.”. Insert instead “after the relevant date. The **relevant date** is the date of the motor accident or the date on which the person turns 18 years of age, whichever is the later.”.
- No. 3 Page 21, Schedule 1 [68], proposed section 65J, line 38. Omit “20%”. Insert instead “5%”.
- No. 4 Page 22, Schedule 1 [68], proposed section 65J, line 6. Omit “after the motor accident concerned”. Insert instead “after the relevant date”.
- No. 5 Page 23, Schedule 1 [68], proposed section 65L. Insert after line 3:
- (b) the monetary value of benefits received in the capacity of employee or in relation to any services rendered, and
- No. 6 Page 26, Schedule 1 [68], proposed section 65P. Insert after line 9:
- (2) An injured person’s capacity to earn in employment is to be determined by reference to employment that is actually available to the person. The insurer bears the onus of establishing that employment is actually available to an injured person.
- No. 7 Page 27, Schedule 1 [68], proposed section 65R, lines 13–18. Omit all words on those lines.
- No. 8 Page 39, Schedule 1 [68], proposed section 65ZI, lines 22–39. Omit all words on those lines.

Drafting note 1.1 *The following 2 amendments should not be moved if the previous amendment is successful.*

- No. 9 Page 39, Schedule 1 [68], proposed section 65ZI, line 28. Omit “10%”. Insert instead “5%”.
- No. 10 Page 39, Schedule 1 [68], proposed section 65ZI, line 28. Insert “or who was under 18 years of age at the time of the motor accident” after “10%”.
- No. 11 Page 43, Schedule 1 [68], proposed section 65ZO. Insert after line 21:
- (2) If the claimant is under a legal disability, the claim cannot be redeemed except with the approval of a claims assessor.
- No. 12 Page 43, Schedule 1 [68], proposed section 65ZO, line 22 Insert “other” before “cases”.
- No. 13 Page 43, Schedule 1 [68], proposed section 65ZP. Insert after line 32:
- (2) If the claimant is under a legal disability:
 - (a) the claims assessor must give directions to provide for the safe and appropriate investment on behalf of the claimant of the amount to be paid in redemption of the claim (the **redemption amount**), and
 - (b) the claims assessor may increase the redemption amount by such amount as the claims assessor considers reasonable to cover the future costs of financial management of the redemption amount (determined at a

rate not exceeding the appropriate rate charged by the NSW Trustee and Guardian).

- No. 14 Page 43, Schedule 1 [68], proposed section 65ZP, lines 34 and 35. Omit “an amount”. Insert instead “a higher amount”.
- No. 15 Page 49, Schedule 1 [68], proposed section 65ZZ, line 19. Omit “does not extend”. Insert instead “extends”.
- No. 16 Pages 49 and 50, Schedule 1 [68], proposed section 65ZZA, line 23 on page 49 to line 9 on page 50. Omit all words on those lines. Insert instead:
- (4) An insurer is not entitled to recover from a claimant any legal costs in relation to the claim.
- No. 17 Page 50, Schedule 1 [68], proposed section 65ZZB, line 23. Insert “, except as provided by paragraph (c)” after “death”.
- No. 18 Page 50, Schedule 1 [68], proposed section 65ZZB. Insert after line 23:
- (c) statutory benefits under Part 3A.5 are payable to the person’s estate if the person dies more than 6 months after the date of the motor accident and the degree of permanent impairment of the injured person immediately before death is capable of assessment,
- No. 19 Page 51, Schedule 1 [68], proposed section 65ZZD, line 36. Omit “resulting from the fault”. Insert instead “resulting solely from the fault”.
- No. 20 Page 53, Schedule 1 [68], proposed section 65ZZG, lines 18–21. Omit all words on those lines. Insert instead:
- No statutory benefits are payable in respect of the death of or injury to a person where the motor accident is caused by the deliberate act of the person done with the intention of causing death or serious injury to himself or herself.
- No. 21 Page 55, Schedule 1 [68], proposed section 65ZZL, lines 17–21. Omit all words on those lines. Insert instead:

65ZZL Appeal to Supreme Court

- (1) A party to proceedings before a claims assessor in respect of statutory benefits under this Chapter may appeal to the Supreme Court against any decision of the claims assessor in those proceedings.
- No. 22 Page 59, Schedule 1 [77], proposed section 69A, lines 18–20. Omit all words on those lines. Insert instead:
- (b) a duty to disclose all relevant information (including reports by health professionals) in a timely manner,
- No. 23 Page 80, Schedule 1 [138], proposed section 123A. Insert at the end of line 14:
- , and
- (c) damages for the costs of financial management of damages awarded, and
- (d) damages for the capital cost of equipment not otherwise provided for by way of statutory benefits for treatment and care expenses under Part 3A.4, and
- (e) damages to reimburse income tax paid on statutory benefits, or compensation under the *Workers*

Compensation Act 1987, required to be repaid by the claimant as a result of an award of damages.