

LEGISLATIVE COUNCIL

Motor Accident Injuries Amendment Bill 2013

Second print

Proposed amendments

- No. 1 Page 21, Schedule 1 [68], proposed section 65J, line 35. Omit “after the motor accident concerned”. Insert instead “after the relevant date for the motor accident concerned”.
- No. 2 Page 21, Schedule 1 [68], proposed section 65J. Insert after line 35:
- (2) The *relevant date* for a motor accident is:
 - (a) the date of the motor accident, unless paragraph (b) applies, or
 - (b) in the case of an injured person who is under 18 years of age at the time of the motor accident and whose injury results in permanent impairment with a degree of permanent impairment of greater than 5%—the date on which the person turns 18 years of age.
- No. 3 Page 22, Schedule 1 [68], proposed section 65J, line 6. Omit “after the motor accident concerned”. Insert instead “after the relevant date for the motor accident concerned”.
- No. 4 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. 5 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. 6 Page 27, Schedule 1 [68], proposed section 65R, lines 12–28. Omit all words on those lines.
- No. 7 Page 39, Schedule 1 [68], proposed section 65ZH, line 21. Insert “, unless the injured person otherwise agrees” after “care”.
- No. 8 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%”.

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- No. 9 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. 10 Page 43, Schedule 1 [68], proposed section 65ZO, line 22 Insert “other” before “cases”.
- No. 11 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 must 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. 12 Page 43, Schedule 1 [68], proposed section 65ZP, lines 34 and 35. Omit “an amount”. Insert instead “a higher amount”.
- No. 13 Page 49, Schedule 1 [68], proposed section 65ZZ, line 19. Omit “does not extend”. Insert instead “extends”.
- No. 14 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. 15 Page 50, Schedule 1 [68], proposed section 65ZZB, line 23. Insert “, except as provided by paragraph (c)” after “death”.
- No. 16 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 6 months or longer after the date of the motor accident and the degree of permanent impairment resulting from the person’s injury is capable of assessment,
- No. 17 Page 50, Schedule 1 [68], proposed section 65ZZC, line 33. Omit “if compensation”. Insert instead “to the extent that compensation”.
- No. 18 Page 50, Schedule 1 [68], proposed section 65ZZC, line 38. Insert “or reduce the” after “refuse”.
- No. 19 Page 51, Schedule 1 [68], proposed section 65ZZC, line 21. Omit “for which workers compensation was paid”. Insert instead “to the extent to which workers compensation was paid”.
- No. 20 Page 51, Schedule 1 [68], proposed section 65ZZD, line 36. Omit “resulting from the fault”. Insert instead “resulting solely from the fault”.
- No. 21 Page 53, Schedule 1 [68], proposed section 65ZZH line 38. Omit all words on that line. Insert instead:
- statutory benefits, and
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- (c) the amount for which statutory benefits for future treatment and care expenses in respect of the injury has been redeemed is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person liable to pay the statutory benefits.

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 future treatment and care expenses (as defined in Part 3A.4) where the liability to pay statutory benefits under Part 3A.4 has been redeemed, and
- (d) damages for the costs of financial management of damages awarded, 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.