

# MOTOR ACCIDENTS BILL.

## EXPLANATORY MEMORANDUM.

### PART I.—CLAUSES 1-4.

#### *Clauses 1 and 2.*

These clauses contain the usual citation provision, a provision enabling the Act to be brought into operation in stages and a provision setting out the Parts and Divisions of the Bill.

#### *Clause 3.*

This clause contains definitions and other interpretation provisions.

In particular, “dependent child” means a child under 16 or a child over 16 and under 21 who is wholly or mainly dependent for economic support on the deceased person. It includes an illegitimate or adopted child.

“Dependent spouse” means a spouse wholly or mainly dependent for economic support on the deceased person. It includes a de facto wife.

Sub-clause (2) contains interpretations to define references to injuries, deaths and accidents as references to injuries, deaths or accidents occurring in Victoria by reason of the use of motor cars.

#### *Clause 4.*

This clause provides that the Act binds the Crown and that the Motor Accidents Board established under the Act is a Crown instrumentality.

### PART II.—CLAUSES 5-12.

#### *Clause 5.*

This clause contains provisions in a usual form to establish as a body corporate a Board to be known as the Motor Accidents Board.

#### *Clause 6.*

This clause provides that the Board has three members and contains the details of their appointment.

#### *Clause 7.*

This clause makes provision for acting appointments.

#### *Clause 8.*

This clause makes provision for termination of appointments and resignation from office.

#### *Clause 9.*

This clause provides that the Board’s acts and decisions are not invalid by reason only of vacancies in office or defects in the appointment of members.

#### *Clause 10.*

This clause enables the Board to appoint its own staff, who are not subject to the Public Service Act.

#### *Clause 11.*

This clause makes the usual provision relating to the preservation of public service rights of persons appointed to the staff of the Board.

#### *Clause 12.*

This clause makes provision in relation to the conduct of meetings of the Board.

## PART III.—CLAUSES 13–36.

*Clause 13.*

This clause specifies the persons to whom the provisions of the Act relating to the right to receive payments apply. Where an accident occurs in Victoria involving a Victorian registered car persons (whether or not in the car) injured and dependents of persons who are killed are entitled to apply for benefits under the Act. Where a person resident in Victoria is injured or killed as the result of a road accident in Victoria involving a motor car but a Victorian registered car is not involved, the person or his dependents may also apply for benefits under the Act. “Victorian registered car” includes a car not registered but that ought to be registered, veteran cars that have permits under section 19 of the Motor Car Act, trailers and cars that have temporary permits under section 11A or 19 of that Act and cars belonging to the Commonwealth or the Tramways Board where the Board has made agreements under clause 70. The clause excludes persons travelling in trains or trams involved in accidents with cars unless arrangements are made between the Board and the Railways Board or the Tramways Board or other persons operating trains or trams under clauses 71–74.

*Clause 14.*

This clause enables the Board in the case of a person injured or killed in an accident to regard as a Victorian resident for the purposes of the Act a person who had been only shortly in Victoria but who was intending to become resident.

*Clause 15.*

This clause provides that where a person is entitled to compensation under the *Workers Compensation Act* 1958 or the equivalent law in another State or Territory or under Commonwealth legislation, benefits under this Act are not payable. Provision is, however, made in sub-clause (2) to enable the Board to make payments in a particular case where the Board determines it is appropriate to do so, that is, for example, where there has been a delay in payment of workers compensation or where the payments under the Motor Accidents Act would be greater.

*Clause 16.*

This clause provides that a person is not entitled to receive loss of income benefits if at the time of the accident he was excluded from the operation of the Act for a reason specified in the clause. The reasons include conviction for driving a car under the influence of intoxicating liquor or drugs, not holding a licence, driving an uninsured car and using a car for an unlawful purpose, or where he was responsible for a death so as to amount to manslaughter or other indictable offence.

*Clause 17.*

This clause provides that loss of income benefits are not payable unless the entitlement exceeds an amount of \$40 or the period of incapacity resulting from the accident exceeds two days.

*Clause 18.*

This clause contains provisions for ascertaining the entitlement to benefits where a person has injuries resulting from more than one accident or a dependent child is entitled to benefits as a result of the death of both parents. The effect of the clause is that at any particular time benefits payable must not exceed the benefit payable as a result of a single accident or single death.

*Clause 19.*

This clause contains an interpretation provision enabling the payment of benefits to be related, where appropriate, to working weeks of less than seven days.

*Clause 20.*

This clause contains an interpretation of “average weekly income” derived from employment. The amount is the net amount after deduction of tax and is subject to a limit of \$150 per week. The expression is used in clauses 25–27 and in clause 18.

*Clause 21.*

This clause contains an interpretation of average weekly personal exertion income derived from self-employment. The interpretation of that income is based on that contained in the *Income Tax Assessment Act 1936-1972* and is the net amount after deduction of tax.

The amount is subject to a limit of \$150 per week.

*Clause 22.*

This clause contains provisions for making application to the Board for payments. It requires applications to be made within 3 years of the date of the accident except that in respect of medical, etc. expenses applications may be made within 3 years after such expenses were incurred. A right to appeal to the Tribunal is given where the Board refuses an application or takes no action within 1 month after an application is made. This latter provision is to encourage the Board to act promptly in relation to an application.

*Clause 23.*

This clause requires the Board to give an applicant detailed particulars of amounts of payments and will enable applicants to obtain any information necessary to enable an appeal to be made against determinations of the Board.

*Clause 24.*

This clause requires an applicant who is receiving benefits to give to the Board relevant particulars of changes in circumstances after the making of an application such as common law actions he may be taking and such changes as may affect a person's entitlement to benefits.

*Clause 25.*

This clause contains particulars of the calculation of loss of income benefits for injured persons. The benefit is 80 per cent. of the sum of the average weekly income from employment lost by reason of the injury and of the average weekly income from self-employment, in so far as there is a reduction in capacity to earn income from personal exertion. The benefit is subject to a maximum weekly benefit of \$120 for a period, whether or not continuous, of 104 weeks falling within five years after the accident. Amounts of income received as an employé after the date of the accident are taken into account in calculating the loss of income incurred as a result of the accident. Sub-clause (5) contains a provision that relates to self-employed persons and enables the Board where no loss of income is suffered as a result of the accident to refuse or defer determination of an application. Provision is made for an appeal against that refusal or deferral. The formulae express the benefits as a lump sum entitlement but the Act envisages payment by instalments.

*Clause 26.*

This clause contains particulars of the calculation of payments to a dependent spouse and provides that a dependent spouse is entitled to  $62\frac{1}{2}$  per cent. of the average weekly income of the deceased spouse or of \$150, whichever is less. Where there are dependent children the spouse's entitlement is diminished by one-sixth for each child but is never reduced on account of payments to children by more than one-half. The clause contains provision to enable the dependent spouse to convert to a lump sum payment 15 per cent. of the maximum possible entitlement (that is the  $62\frac{1}{2}$  per cent. referred to above). The provisions of the clause are complex as they have to cover all possible cases including the case where there are no dependent children and either there is or there is not a lump sum conversion and the case where there are more than three dependent children and either there is or is not a lump sum conversion. Benefits cease after payments in respect of a period of 104 weeks or the death or re-marriage of the dependent spouse, whichever first occurs.

*Clause 27.*

This clause contains particulars of the calculation of payments to dependent children and provides that a dependent child is entitled to a maximum of a one-third share of half the amount to which the dependent spouse would be entitled if there were no children, that is one-sixth of the total. The entitlement continues for 104 weeks or until the child ceases to be dependant, whichever first occurs. Provision is made for payments to be made to the child or to a person who has the care of the child. Where there are more than 3 children, each child takes an equal share of the one-half of the maximum possible entitlement of the dependent spouse (that is the 62½ per cent. referred to in clause 26).

*Clause 28.*

This clause enables payments to be made where the person injured or killed was not an income earner but would have been in the period of incapacity. The provisions would cover school leavers as well as persons temporarily unemployed for whatever reason. Payments would be made on the basis of an estimate of the amount (less tax) that the person would have earned if he had been working, subject to a maximum amount.

*Clause 29.*

This clause contains provision for the payment of a lump-sum amount in settlement of loss of income benefits. The payment of a lump-sum amount terminates the applicant's entitlement to loss of income benefits but does not affect the rights of a spouse or children.

*Clause 30.*

Sub-clause (1) provides that the Board shall pay 70 per cent. of hospital expenses, and 80 per cent. of medical and other ancillary costs and expenses and, where the injured person was engaged in house-keeping duties, 80 per cent. of the costs of employing a house-keeper and 80 per cent. of any other costs or expenses that the Board determines are relevant. Hospital, ambulance and medical costs and expenses are payable under this clause only where an agreement under clauses 66, 67 and 68 has not been made. In most cases there would be such an agreement and no charge would therefore be made to the patient.

The costs and expenses concerned are those incurred within three years of the accident and where there have been claims in that period, costs and expenses incurred within 5 years of the accident. The cost of a housekeeper is covered in respect of not more than 104 weeks but the maximum payment is limited to \$2,000 and no payment may be made where costs less than \$20 are incurred.

Sub-clause (2) provides for the payment of 80 per cent. of funeral costs and, where the deceased person was engaged in house-keeping, 80 per cent. of the costs of employing a house-keeper subject to the same provisions as are provided in sub-clause (1).

*Clause 31.*

This clause enables the Board to pay costs and expenses either to the applicant or direct to the person to whom the amount is owed and where that is done, the liability of any other person to pay that amount is discharged.

*Clause 32.*

This clause enables the Board to pay benefits weekly monthly or by such instalments as it determines. This includes a power to make provisional instalments.

*Clause 33.*

This clause contains the provisions relating to an appeal to the Tribunal by an applicant in respect of loss of income or other benefits.

*Clause 34.*

This clause contains provisions relating to medical examinations of applicants for loss of income benefits. The examination is to be by a medical practitioner nominated by the Board and provision is made for suspension of payments where an applicant fails to have the examination.

*Clause 35.*

This clause provides for the report to the Board by the medical practitioner who has carried out an examination of an applicant and enables an applicant who so wishes to submit a report from another medical practitioner selected by himself.

*Clause 36.*

This clause requires the Board to pay the cost of medical examinations.

## PART IV.—CLAUSES 37–53.

*Clause 37.*

This clause establishes the Motor Accidents Tribunal the members of which must be barristers and solicitors of at least seven years' standing. The members are appointed by the Governor in Council and the clause contains the usual provisions relating to appointment.

*Clause 38.*

This clause contains provisions for termination of office and resignation.

*Clause 39.*

This clause provides that the Tribunal constituted by one member shall hear and determine appeals.

*Clause 40.*

This clause enables the Tribunal to refer questions of law to the Supreme Court and requires it to refer questions of law at the request of a party to proceedings. It also provides for a party to appeal to the Supreme Court against the Tribunal's determination of a question of law.

*Clause 41.*

This clause provides for the appointment of a Registrar of the Tribunal and includes a specific duty to keep a register of appeals. Further duties may be imposed by the regulations upon the Registrar relating to the operation of the Tribunal.

*Clause 42.*

This clause enables an appellant to appear in person or to be legally represented before the Tribunal.

*Clause 43.*

This clause applies to the Tribunal certain of the provisions of the *Evidence Act* 1958 relating to hearings by boards of inquiries.

*Clause 44.*

This clause enables the Tribunal to make orders as to costs.

*Clause 45.*

This clause provides that the Tribunal may regulate its own procedure.

*Clause 46.*

This clause enables the Tribunal to require persons to give evidence and produce documents and enables the Tribunal to require an appellant to submit to a medical examination.

*Clause 47.*

This clause contains an interpretation provision of matters against which an appeal lies.

*Clause 48.*

This clause specifies the persons who may appeal. The persons concerned are an injured person, a dependent spouse, a dependent child, or the legal personal representative of such a person.

*Clause 49.*

This clause sets out the times within which appeals must be made. In the case of appeals against income payments, the appeals may be made at any time within 6 years after the accident. All other appeals must be made within 3 months after the decision giving rise to the appeal.

*Clause 50.*

This clause sets out the procedure for an appeal. The appellant must first request the Board to give reasons for its decision and a period of fourteen days is given after the appellant receives those reasons within which he must give written notice of appeal to the Board, setting out the grounds of appeal. The Tribunal must then set the appeal down for hearing.

*Clause 51.*

This clause enables the Board to revoke or vary its decision upon receiving a request for reasons under clause 50, before notice of appeal is given under that clause.

*Clause 52.*

This clause enables the Tribunal to substitute its discretion for the Board's discretion.

*Clause 53.*

This clause requires the Tribunal to give written notice of its decision in each case, and requires the Board to take such action as is necessary to give effect to a decision of the Tribunal.

## PART V.—CLAUSES 54–57.

*Clause 54.*

Sub-clause (1) contains provisions to enable the Board to recover the amount of payments made by it in respect of an injury or death from a person other than an authorized insurer or a person with whom the Board has made an agreement under clauses 70–74, who appears to be liable to pay damages or to indemnify a person liable to pay damages in respect of that injury or death. This means it can recover from persons or bodies who are liable in tort to the claimant and who have not contributed to the fund from which payments are made under the Act.

Sub-clause (2) makes a similar provision in relation to the situation where such persons or bodies have agreed to pay damages or an amount by way of indemnity. The remaining sub-clauses contain provisions facilitating the Board's right to recover amounts under the clause.

*Clause 55.*

This clause contains provisions enabling the Board to recover payments made by it where a person who has received such payments has recovered damages. The provisions do not apply where the damages were recovered from a person insured with a Victorian Authorized Insurer or person who has made an agreement with the Board under clauses 70–74.

*Clause 56.*

This clause provides that where a person's right to recover damages is reduced through contributory negligence the Board's right in the circumstances referred to in clauses 54 or 55, to recover payments made to that person is proportionately reduced.

*Clause 57.*

This clause enables the Board to require a person who receives payment from the Board to institute proceedings to recover damages or to complete the prosecution of proceedings instituted, and where a person fails to do so, the Board may institute proceedings or take over the prosecution of them at its own expense. That is to say, it gives the Board subrogation rights to recoup payments made by it.

PART VI.—CLAUSES 58–65.

*Clause 58.*

This clause requires the Board to open at least one bank account and enables it to open such other bank accounts as may be necessary.

*Clause 59.*

This clause provides that moneys of the Board may be used only for specified purposes in accordance with the Act.

*Clause 60.*

This clause enables the Board to make investments with the approval of the Treasurer.

*Clause 61.*

This clause contains financial provisions relating to the initial period of operation of the scheme and requires payments in respect of accidents occurring within the first thirteen weeks of commencement of the scheme to be made from a special account. As the increase in third-party insurance premiums resulting from the commencement of this Bill will operate only from the date of renewal of annual motor car registrations, there will, on average, be a short-fall of six months before the increased premiums are received by authorized insurers. In order to diminish the increase in liabilities that the insurers would have to bear as a consequence of the short-fall in premiums, this clause provides a formula that, as estimated by the Government Actuary, will approximately compensate for that short-fall. The formula provides that all benefits payable by the Board in respect of accidents occurring in the first 13 weeks of the scheme are to be charged to a special account. The special account will operate for the first three years of the scheme and a prescribed part of each premium paid in that period will be allocated to it. Provision is made in clause 62 for bank overdrafts to be obtained by the Board to provide advances necessary for the initial operation of the special account. The amount of annual third-party premiums prescribed under section 88 of the Bill or under section 71 of the *Motor Car Act* 1958 will take account of the proportion paid to the special account under this clause.

*Clause 62.*

This clause enables the Board to borrow moneys on overdraft to enable it to commence the scheme.

*Clauses 63 and 64.*

These clauses are the usual provisions for the keeping of accounts and the auditing of the accounts by the Auditor-General.

*Clause 65.*

This clause contains the provisions for levying the costs of the scheme from authorized insurers. It requires an authorized insurer to pay amounts assessed by the Board at intervals on a proportionate basis having regard to premium income received by authorized insurers, the estimated needs of the Board and the balance in the fund.

## PART VII.—CLAUSES 66–90.

*Clause 66.*

This clause contains provisions to enable the Board to enter into agreements with hospitals that treat accident cases. Under such an agreement the Board would agree to pay direct to the hospital agreed costs of treatment of accident victims and provides that charges cannot be made to the patient by the hospital except where the patient has requested and received special services such as a private room.

*Clause 67.*

This clause enables the Board to make agreements with ambulance services in a similar manner to those made under clause 66.

*Clause 68.*

This clause contains the provisions under which the Board may make agreements with doctors for payment of specified fees so as to discharge in full the liability of a patient entitled to benefits under the Act.

*Clause 69.*

This clause requires the making and revocation of agreements under clauses 66–68 to be notified in the *Government Gazette*.

*Clause 70.*

This clause enables the Board to enter into agreements with the Commonwealth and the Tramways Board in respect of cars used in Victoria that are not insured under the Motor Car Act. Where an agreement is made contributions would be made to the Board and the Board may not recover amounts of payments under Part V.

*Clause 71.*

This clause enables the Board to enter into agreements with the Railways in relation to accidents between cars and trains. Where an agreement is made the Railways would contribute to the Board's funds and the Board would not recover amounts from the Railways under Part V. The clause also enables the Board to make agreements in relation to compensation of persons who are passengers in trains involved in accidents with cars.

*Clause 72.*

This clause is similar to clause 71 and enables the Board to make agreements with persons other than the Victorian Railways Commissioners who operate trains in Victoria. Those persons include the State Electricity Commission, the Portland Harbor Trust, the Australian Paper Mills and the operators of Puffing Billy.

*Clause 73.*

This clause is similar to clauses 71 and 72 and enables the Board to make agreements with the Tramways Board.

*Clause 74.*

This clause is similar to clause 73 and enables the Board to make agreements with persons other than the Tramways Board who operate trams, for instance the Bendigo Council.

*Clause 75.*

This clause requires the Board, where it receives an application for benefits, to give notice of the application to authorized insurers or persons with whom agreements are made or nominal defendants.



*Clause 76.*

This clause requires the Board to give copies of documents to claimants, authorized insurers, persons with whom agreements are made or nominal defendants likely to be interested in common law proceedings.

*Clause 77.*

This clause provides that statements in writing by the Board are *prima facie* evidence of amounts paid or of the Board's liability to make payments.

*Clause 78.*

This clause requires a person who receives payments from the Board and who was not, by reason of clause 16, entitled to those payments to repay the amount of those payments to the Board.

*Clause 79.*

Sub-clause (1) provides that a person may not in a common law action seek to recover damages in respect of a loss of income during a period unless he has applied to the Board for payments in respect of the loss of income during that period. Sub-clause (2) prevents a person recovering in a common law action amounts of specified expenditure that he could have recovered from the Board, unless he has applied to the Board for payments under clause 30. Sub-clause (3) provides that damages awarded at common law to a dependent spouse or dependent child shall be reduced by the amount of payments received from the Board. Sub-clause (4) provides that the Board's liability ceases when judgment is obtained in a common law action or a settlement is reached. Sub-clause (5) provides that the Board shall give notice of the amount it has paid to a dependent spouse or dependent child in order that the amount for the purposes of sub-clause (3) may be ascertained. Sub-clause (6) provides that the clause relates only to proceedings involving authorized insurers, persons with whom agreements are made or nominal defendants.

*Clause 80.*

This clause restricts the operation of the Act to accidents occurring after the commencement of the section.

*Clause 81.*

This clause creates an offence of making false statements for the purposes of the Act.

*Clause 82.*

This clause enables the Board to make payments up to \$1,000 notwithstanding that a grant of representation to the estate of a deceased person has not been obtained.

*Clause 83.*

This clause provides that amounts payable by the Board to a person may not be assigned to another person and, subject to the Matrimonial Causes Act and the Maintenance Act, may not be made the subject of attachment for payment to another person.

*Clause 84.*

This clause requires authorized insurers and nominal defendants to give certain information to the Board.

*Clause 85.*

This clause requires the Commissioner of Police to give certain information to the Board.

*Clause 86.*

This clause contains the usual provision for an annual report to the Minister.

*Clause 87.*

This clause contains amendments to the *Motor Car Act* 1958 that are consequential upon the Bill. Sub-clause (1) amends the interpretation of "owner" in accordance with clause 3 of the Bill and makes a consequential amendment to the interpretation of "proprietor". Sub-clause (2) amends section 45 of the *Motor Car Act* 1958 and provides for the payment to the Board of a prescribed part of each premium for the purposes of the special account referred to in clause 61 of the Bill. Sub-clauses (3) and (4) make necessary consequential amendments to sections 46 and 61 of the *Motor Car Act* 1958.

*Clause 88.*

This clause contains a transitional provision relating to the making of regulations affecting compulsory third party insurance premiums.

*Clause 89.*

This clause contains the usual power to make regulations.