Western Australia

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016

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Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Motor vehicle accident	4
5.	Motor vehicle injury to which Act applies	5
5A.	Workplace injury to which Act applies	6
6.	Treatment, care and support needs	7
7.	Act binds Crown	8

Part 2 — Participation in catastrophic injuries support scheme

8.	Eligibility to participate	9
9.	Application to participate	9
10.	Acceptance as participant	10
11.	Interim participation	10
12.	Lifetime participation	11
13.	Former interim participant may apply to become participant	11
14.	Suspension of participation	11

Part 3 — Assessment of treatment, care and support needs

15.	Assessment of participant's treatment, care and support needs	13

16. Regulations about assessment of treatment, care and support needs 13
17. Commission not liable for legal costs for assessment 14

Part 4 — Payments under catastrophic injuries support scheme

18. Payment of assessed treatment, care and support needs 15
19. Payment not required in certain circumstances 16
20. Maximum amounts payable for certain treatment and services 17
21. Recovery of payments for injury involving interstate vehicle 18
23. Registered providers 19

Part 5 — Dispute resolution

24. Terms used 21
25. Review of eligibility decision 21
26. Review of treatment, care and support assessment 22
27. Appeals to District Court 22
28. Regulations about dispute resolution 23

Part 6 — Miscellaneous

29. No contracting out 24
30. Notification and disclosure of information by hospital 24
30A. Notification and disclosure of information about injured worker 25
31. False or misleading information 26
32. Obstruction 27
33. Guidelines 27
34. Regulations 28
35. Regulations may adopt codes or legislation 28
36. Review of Act 29

Part 7 — Other Acts amended

Division 1 — *Civil Liability Act 2002* amended

37. Act amended 30
38. Section 13A inserted 30
13A. Restrictions on damages if payments received under CISS 30

Division 2 — *Insurance Commission of Western Australia Act 1986* amended

39. Act amended 32
40. Section 6 amended 32
41. Section 16 amended 33
42. Section 18 amended 33

Division 3 — *Motor Vehicle (Third Party Insurance) Act 1943* amended

43. Act amended 34
44. Section 3 amended 34
45. Section 3EA inserted 34
3EA. Restrictions on damages if payments received under CISS 34
46. Sections 3FA and 3FB inserted 36
3FA. Restrictions on damages to be part of the substantive law 36
3FB. Damages for treatment, care and support needs: catastrophic injury 37
47. Section 3T amended 38
48. Section 4 amended 38
49. Section 6 amended 39
50. Section 6A inserted 39
6A. Insurance relating to catastrophic injury 39
51. Section 21 replaced 40
21. Term of policy of insurance extended in certain cases 40
52. Sections 27B and 27C inserted 41
27B. False or misleading information 41
27C. Obstruction 42
53. Section 30 replaced 42
30. Examination of injured person by health professional 42
54. Section 34 replaced 44
34. Transitional provision for *Motor Vehicle (Catastrophic Injuries) Act 2016* 44

Notes

Compilation table 46
Other notes 46

Defined terms

Western Australia

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016

An Act to provide for a scheme for the lifetime care and support of certain people catastrophically injured in motor vehicle or workplace accidents, to make consequential amendments to other Acts, and for related purposes.

[Long title amended: No. 21 of 2023 s. 662.]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

[Section 1 amended: No. 21 of 2023 s. 663.]

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act, unless the contrary intention appears —

assessed treatment, care and support needs has the meaning given in section 18(2);

catastrophic injuries support scheme (***CISS***) means the scheme provided for in this Act for the lifetime care and support of certain people catastrophically injured in motor vehicle accidents or workplace accidents;

catastrophic injury means a motor vehicle injury or workplace injury that satisfies the prescribed criteria for eligibility for participation in the CISS;

Commission means the body continued as the Insurance Commission of Western Australia under the *Insurance Commission of Western Australia Act 1986*;

document includes a tape, a disk and any other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

excluded treatment, care and support needs means treatment, care, support or services of a kind prescribed for the purposes of this definition;

health profession has the meaning given in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

health professional means —

(a) in relation to the examination of an injured person in Australia — a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise a health profession (other than as a student); or

(b) in relation to the examination of an injured person in another country — a person licensed, registered or otherwise authorised under a law of that country to practise a health profession (other than as a student);

legal costs has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1);

legal services has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1);

motor vehicle has the meaning given in the *Motor Vehicle (Third Party Insurance) Act 1943* section 3(1);

motor vehicle accident has the meaning given in section 4(1);

motor vehicle injury means a bodily injury to a person that results from a motor vehicle accident;

notify, in relation to a person, means to give notice in writing to the person;

participant in the CISS means a person who is a participant in the CISS (either as an interim participant or as a lifetime participant);

prescribed means prescribed by the regulations;

registered provider means a person registered under section 23(1);

treatment, care and support assessment means an assessment under section 15(1) of the treatment, care and support needs of a participant in the CISS in relation to the participant's motor vehicle injury or workplace injury;

treatment, care and support needs has the meaning given in section 6;

worker has the meaning given in the *Workers Compensation and Injury Management Act 2023* section 5;

workplace accident means an incident that results in a worker suffering a workplace injury;

workplace injury means an injury to a worker in respect of which compensation under the *Workers Compensation and Injury Management Act 2023* is payable.

(2) A reference in this Act to an injured person or a participant in the CISS (the ***relevant person***), in relation to the making of an application by, or the giving of a notice or other document to, the relevant person, includes a reference to another person with lawful authority to act on the relevant person's behalf.

[Section 3 amended: No. 9 of 2022 s. 424; No. 21 of 2023 s. 664.]

4. Motor vehicle accident

(1) A motor vehicle accident is an incident caused by or arising out of the use of a motor vehicle.

(2) For the purposes of subsection (1), an incident is caused by or arises out of the use of a motor vehicle if, and only if, it results directly from —

(a) the driving of the motor vehicle; or

(b) the motor vehicle running out of control; or

(c) a collision, or action to avoid a collision, with the motor vehicle (whether the motor vehicle is stationary or moving).

(3) If a person renders assistance, or attempts to render assistance, at the scene of a motor vehicle accident and, as the result of doing so, suffers a bodily injury, the injury is to be taken to have resulted from the accident.

5. Motor vehicle injury to which Act applies

(1) In this section —

driver, in relation to a motor vehicle, has the meaning given in the *Motor Vehicle (Third Party Insurance) Act 1943* section 3(1);

motor sports event —

(a) means an event that tests the speed or reliability of motor vehicles or the skill or endurance of their drivers or navigators and that —

(i) takes place on a race track established or adapted for the purpose of events of that kind; or

(ii) is an event to which an order made under the *Road Traffic Act 1974* section 81C applies;

and

(b) includes a practice session for an event described in paragraph (a);

owner, in relation to a motor vehicle, has the meaning given in the *Motor Vehicle (Third Party Insurance) Act 1943* section 3(1);

private land means land that is —

(a) alienated from the Crown for any estate of freehold; or

(b) the subject of a conditional purchase agreement, or of a lease or concession with or without a right of acquiring the fee simple in that land.

(2) This Act applies to a motor vehicle injury resulting from a motor vehicle accident that occurs in this State on or after the day on which this section comes into operation.

(3) Despite subsection (2), this Act does not apply to a motor vehicle injury if the owner or driver of a motor vehicle has, as a consequence of the driving of that motor vehicle or of that motor vehicle running out of control, incurred liability for negligence in respect of the injury.

(4) Despite subsection (2), this Act does not apply to a motor vehicle injury resulting from a motor vehicle accident that occurs on private land unless at least one motor vehicle involved in the motor vehicle accident is —

(a) a motor vehicle in respect of which a contract of insurance is in force under the *Motor Vehicle (Third Party Insurance) Act 1943*; or

(b) a motor vehicle —

(i) licensed or registered under the law of another State or a Territory; and

(ii) to which a policy of compulsory third-party person injury insurance, or a compulsory motor vehicle accident compensation scheme, under the law of that State or Territory applies.

(5) Despite subsection (2), this Act does not apply to a motor vehicle injury resulting from a motor vehicle accident —

(a) that involves a motor vehicle taking part in a motor sports event; or

(b) that occurs as a result of a terrorist act (as defined in the *Terrorism (Extraordinary Powers) Act 2005* section 5).

5A. Workplace injury to which Act applies

(1) This Act applies to a workplace injury resulting from a workplace accident that occurs on or after the day on which the *Workers Compensation and Injury Management Act 2023* section 665 comes into operation.

(2) This Act does not apply to a workplace injury unless there is an established entitlement to compensation in respect of the injury.

(3) There is an established entitlement to compensation in respect of a workplace injury if, and only if —

(a) the injured person has made a claim under the *Workers Compensation and Injury Management Act 2023* for compensation under that Act in respect of the injury; and

(b) liability to pay that compensation has been accepted (or is taken to have been accepted) by a licensed insurer or self-insurer under that Act or has been determined by an arbitrator under that Act.

(4) A workplace injury that is also a motor vehicle injury to which this Act applies must be treated as a motor vehicle injury to which this Act applies and not as a workplace injury to which this Act applies.

Note for this section:

A person is not eligible to apply to become a participant in the CISS in respect of a workplace injury unless the person resides in Australia at the time of the application. The participation of a person in the CISS in respect of a workplace injury is suspended while the person is absent from Australia. See sections 9(1A) and 14(1A).

[Section 5A inserted: No. 21 of 2023 s. 665.]

6. Treatment, care and support needs

(1) The treatment, care and support needs of a person are the needs of the person for or in connection with any of the following —

(a) medical treatment (including pharmaceuticals);

(b) dental treatment;

(c) rehabilitation;

(d) ambulance transportation;

(e) respite care;

(f) domestic assistance;

(g) attendant care services;

(h) aids and appliances;

(i) prostheses;

(j) education and vocational training;

(k) home and transport modification;

(l) any other kinds of treatment, care, support or services that are approved by the Commission (either generally, for specified classes of cases, or for a particular person).

(2) Despite subsection (1), but subject to subsection (1)(l), the treatment, care and support needs of a person do not include excluded treatment, care and support needs.

7. Act binds Crown

This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Part 2 — Participation in catastrophic injuries support scheme

8. Eligibility to participate

(1) A person is eligible to be a participant in the CISS if the person suffers a catastrophic injury that is —

(a) a motor vehicle injury to which this Act applies; or

(b) a workplace injury to which this Act applies.

(2) Participation in the CISS is as an interim participant or as a lifetime participant and, for that purpose, the regulations may establish criteria for eligibility for interim participation in the CISS and criteria for eligibility for lifetime participation in the CISS.

(3) A person is not eligible to be a participant in the CISS in respect of a motor vehicle injury or workplace injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, in respect of the future treatment, care and support needs of the person that relate to the injury.

[Section 8 amended: No. 21 of 2023 s. 666.]

9. Application to participate

(1) An injured person may apply to the Commission to become a participant in the CISS in respect of a motor vehicle injury or workplace injury.

(1A) A person is not eligible to apply to become a participant in the CISS in respect of a workplace injury unless the person resides in Australia at the time of the application.

Note for this subsection:

Participation in the CISS in respect of a workplace injury is suspended while the person is absent from Australia. See section 14(1A).

(2) The application must be —

(a) made in a manner and form determined by the Commission; and

(b) accompanied by any information required by the Commission.

[Section 9 amended: No. 21 of 2023 s. 667.]

10. Acceptance as participant

(1) A person becomes a participant in the CISS if the Commission is satisfied that the person is eligible to be a participant in the CISS and accepts the person in writing as a participant in the CISS as an interim participant or a lifetime participant, according to the person's eligibility.

(2) If the Commission is satisfied that a person is eligible to be a participant in the CISS and that an application for the person to become a participant has been duly made, the Commission must accept the person as a participant in the CISS as an interim participant or a lifetime participant, according to the person's eligibility.

11. Interim participation

(1) If the Commission accepts a person as an interim participant then, subject to subsection (2), the person remains a participant in the CISS for a period determined in accordance with the regulations.

(2) If the Commission decides that a person who is an interim participant is no longer eligible to be a participant in the CISS, the person ceases to be an interim participant when notified of the decision.

(3) The fact that a person ceases to be an interim participant does not prevent subsequent acceptance of the person as an interim participant or a lifetime participant.

12. Lifetime participation

(1) A person who is an interim participant must be accepted as a lifetime participant if the Commission becomes satisfied during the person's interim participation in the CISS that the person is eligible for lifetime participation in the CISS.

(2) If the Commission accepts a person as a lifetime participant then, subject to subsection (3), the person remains a participant in the CISS for life.

(3) If the Commission decides that a person who is a lifetime participant is no longer eligible to be a participant in the CISS, the person ceases to be a lifetime participant when notified of the decision.

13. Former interim participant may apply to become participant

An injured person who has ceased to be an interim participant in respect of a motor vehicle injury or workplace injury may apply to the Commission, in accordance with the regulations, to become a participant in the CISS as an interim participant or as a lifetime participant in respect of the same injury.

[Section 13 amended: No. 21 of 2023 s. 668.]

14. Suspension of participation

(1) The Commission may, if the Commission considers it appropriate to do so, suspend the participation of a person in the CISS while the person is absent from Australia, if the person is a participant in respect of a motor vehicle injury.

(1A) The participation of a person in the CISS is suspended while the person is absent from Australia if the person is a participant in respect of a workplace injury.

(2) The regulations may confer power on the Commission to suspend the participation of a person in the CISS in prescribed circumstances, including circumstances involving failure to comply with a requirement under the regulations.

[Section 14 amended: No. 21 of 2023 s. 669.]

Part 3 — Assessment of treatment, care and support needs

15. Assessment of participant's treatment, care and support needs

(1) The Commission must assess the treatment, care and support needs of each participant in the CISS.

(2) The assessment must relate to those treatment, care and support needs that —

(a) are necessary and reasonable in the circumstances; and

(b) relate to the motor vehicle injury or workplace injury in respect of which the person is a participant.

(3) The Commission must notify the participant of the assessment and the reasons for the findings on which it is based.

[Section 15 amended: No. 21 of 2023 s. 670.]

16. Regulations about assessment of treatment, care and support needs

(1) The regulations may make provision for or in relation to the assessment of the treatment, care and support needs of participants in the CISS.

(2) In particular, the regulations may make provision for or in relation to the following —

(a) procedures to be followed in connection with assessments;

(b) intervals at which assessments are to be carried out and the review of assessments from time to time as occasion requires;

(c) methods and criteria to be used to determine the treatment, care and support needs of participants;

(d) requirements to be complied with by participants in connection with assessments, including requirements to undergo medical examinations or other examinations by health professionals.

(3) An assessment of the treatment, care and support needs of a participant in the CISS must be carried out in accordance with the regulations.

17. Commission not liable for legal costs for assessment

The Commission is not liable for legal costs for or in respect of legal services provided to a participant in the CISS in relation to an assessment of the treatment, care and support needs of the participant.

Part 4 — Payments under catastrophic injuries support scheme

18. Payment of assessed treatment, care and support needs

(1) The Commission must pay for all necessary and reasonable expenses incurred by or on behalf of a person in relation to the person's assessed treatment, care and support needs while the person is a participant in the CISS.

(2) The assessed treatment, care and support needs of a person who is a participant in the CISS are those treatment, care and support needs assessed by the Commission, in its treatment, care and support assessment for the person, to be treatment, care and support needs that —

(a) are necessary and reasonable in the circumstances; and

(b) relate to the motor vehicle injury or workplace injury in respect of which the person is a participant.

(3) The Commission is not liable for any expenses in respect of the following —

(a) excluded treatment, care and support needs;

(b) treatment, care and support needs that are not assessed treatment, care and support needs;

(c) treatment, care and support needs excluded from the operation of this section by the regulations.

(4) Without limiting subsection (3), subsections (1) and (2) operate subject to the following —

(a) any criteria set out in the regulations that make provision for or with respect to determining which treatment, care and support needs of a participant in the CISS —

(i) are necessary and reasonable in the circumstances; and

(ii) relate to the motor vehicle injury or workplace injury in respect of which the person is a participant;

(b) any monetary or other limits on the provision of particular treatment, care and support needs to a participant in the CISS set out in the regulations;

(c) any provision made by the regulations as to how expenses are to be paid for or covered.

(5) Instead of paying the expenses for which it is liable under this section as and when they are incurred, the Commission may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Commission and the participant for the payment of those expenses by the participant.

[Section 18 amended: No. 21 of 2023 s. 671.]

19. Payment not required in certain circumstances

(1) In this section —

ordinary costs of raising a child include all costs associated with the child's care, upbringing, education and advancement in life other than costs reasonably incurred because the child has suffered the motor vehicle injury or workplace injury in respect of which the child is a participant.

(2) The Commission is not required to make a payment in relation to any of the following —

(a) any treatment, care, support or service provided to a participant in the CISS on a gratuitous basis (that is, anything provided to a participant for which the participant has not paid and is not liable to pay);

(b) any treatment, care, support or service provided to a participant in the CISS while the participant is absent from Australia;

(c) in the case of a child, any treatment, care, support or service that would ordinarily fall within the ordinary costs of raising a child;

(d) any treatment, care, support or service that is required to be provided by a registered provider but is provided by a person who is not, at the time of provision, a registered provider;

(e) any treatment, care, support or service that is provided in contravention of the regulations.

(3) However, the Commission may elect to make a payment in relation to any treatment, care, support or service referred to in subsection (2) if the Commission considers that such a payment is justified in the circumstances.

(4) Subsection (2) applies even if the treatment, care, support or services concerned are provided in connection with the assessed treatment, care and support needs of a participant in the CISS.

(5) The Commission is not required to pay for any treatment, care, support or service provided to a person while the person's participation in the CISS is suspended.

[Section 19 amended: No. 21 of 2023 s. 672.]

20. Maximum amounts payable for certain treatment and services

(1) In this section each of the following terms has the meaning given in the *Private Hospitals and Health Services Act 1927* section 2(1) —

private hospital

public hospital

(2) This section applies to a fee payable for any of the following treatment or services provided to a participant in the CISS —

(a) medical treatment;

(b) dental treatment;

(c) rehabilitation services;

(d) attendant care services.

(3) This section also applies to a fee payable to a private hospital for any treatment provided to a participant in the CISS at the hospital.

(4) However, this section does not apply to a fee payable for treatment or services referred to in subsection (2) if —

(a) the treatment or services are provided to the participant at a public hospital (whether as an inpatient or outpatient); and

(b) the fee is payable to the public hospital and not to the provider of the treatment or services.

(5) The regulations may fix the maximum amount for which the Commission is liable in respect of any claim for a fee to which this section applies.

(6) Without limiting subsection (5), the regulations may fix a maximum amount by reference to fees recommended by a prescribed person or by reference to a schedule of fees published by a prescribed person.

(7) A payment made by the Commission in respect of treatment or services provided in connection with the treatment, care and support needs of a participant in the CISS must be made consistently with any regulations under this section.

[Section 20 amended: No. 1 of 2023 s. 92.]

21. Recovery of payments for injury involving interstate vehicle

(1) In this section —

appropriate person means —

(a) in relation to an interstate vehicle covered under a policy of compulsory third-party personal injury insurance — the insurer in respect of that policy; or

(b) in relation to an interstate vehicle covered under a compulsory motor vehicle accident compensation scheme — the person liable under that scheme;

interstate vehicle, in relation to a motor vehicle injury, means a motor vehicle that at the time of the injury was covered under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of another State or a Territory.

(2) If, after a person who has suffered a motor vehicle injury (the ***injured person***) has been accepted as an interim participant, the Commission decides that this Act does not apply to the injury because the owner or driver of a motor vehicle has incurred liability for negligence in respect of the injury, the Commission may, if that motor vehicle is an interstate vehicle, recover from the appropriate person amounts already paid by the Commission under this Part in respect of the treatment, care and support needs of the injured person.

*[**22.** Deleted: No. 21 of 2023 s. 673.]*

23. Registered providers

(1) The Commission may register specified persons, or persons of a specified class, to provide the treatment, care, support or services under the CISS that are identified under the regulations as treatment, care, support or services to be provided by a registered provider.

(2) The Commission must keep a register of persons who are registered under subsection (1).

(3) The register may be kept in a manner and form determined by the Commission.

(4) The regulations may make provision for or in relation to —

(a) the standards of competency of registered providers; and

(b) matters relating to applications for registration under this section.

(5) A registration may be granted on conditions determined by the Commission.

(6) A registered provider must not, without reasonable excuse, contravene a condition of its registration.

Penalty for this subsection: a fine of $10 000.

(7) The Commission may, in accordance with the regulations —

(a) vary, add to or cancel any conditions of a registration; or

(b) revoke a registration.

Part 5 — Dispute resolution

24. Terms used

In this Part —

dispute resolution proceedings means proceedings relating to the review of an eligibility decision or a treatment, care and support assessment;

eligibility decision means —

(a) a decision made by the Commission for the purposes of Part 2 about —

(i) whether an incident that results in an injury is a motor vehicle accident; or

(ii) whether an injury is a motor vehicle injury or workplace injury to which this Act applies; or

(iii) whether an injury results from a motor vehicle accident or is attributable to some other condition, event, incident or factor; or

(iv) whether a motor vehicle injury or workplace injury is a catastrophic injury; or

(v) a prescribed matter;

or

(b) a decision made by the Commission under section 14(1) or regulations referred to in section 14(2) to suspend the participation of a person in the CISS.

[Section 24 amended: No. 21 of 2023 s. 674.]

25. Review of eligibility decision

If an injured person or a participant in the CISS disputes an eligibility decision, the person may apply to the Commission, in accordance with regulations, for a review of the eligibility decision.

26. Review of treatment, care and support assessment

If a participant in the CISS disputes a treatment, care and support assessment, the participant may apply to the Commission, in accordance with the regulations, for a review of the treatment, care and support assessment.

27. Appeals to District Court

(1) In this section —

review decision means a decision made on the review of an eligibility decision but does not include a decision referred to in subsection (2).

(2) A party to dispute resolution proceedings may appeal to the District Court against a decision made in those proceedings about —

(a) whether an incident that results in an injury is a motor vehicle accident; or

(b) whether an injury is a motor vehicle injury or workplace injury to which this Act applies.

(3) A party to dispute resolution proceedings may, with the leave of the District Court, appeal to the District Court against a review decision made in those proceedings.

(4) The District Court must not grant leave to appeal under subsection (3) unless a question of law is involved.

(5) An appeal under this section must be commenced within the prescribed period after the date of the decision appealed against.

(6) An appeal under this section must be conducted in accordance with the rules of court of the District Court.

[Section 27 amended: No. 21 of 2023 s. 675.]

28. Regulations about dispute resolution

The regulations may make provision for or in relation to the following —

(a) the making of applications under this Part and the way in which those applications are dealt with;

(b) the practice and procedure to be followed in dispute resolution proceedings;

(c) the appointment or designation of persons as review officers for the purposes of dispute resolution proceedings;

(d) the establishment of expert review panels for the purposes of dispute resolution proceedings;

(e) the functions of the Commission, review officers and expert review panels in relation to dispute resolution proceedings;

(f) liability in respect of legal costs and other costs incurred by an injured person or a participant in the CISS in connection with applications made under this Part or dispute resolution proceedings;

(g) the review of decisions made in dispute resolution proceedings.

Part 6 — Miscellaneous

29. No contracting out

This Act applies despite anything to the contrary in a contract.

30. Notification and disclosure of information by hospital

(1) In this section —

hospital has the meaning given in the *Health Services Act 2016* section 8;

relevant information, in relation to a patient, means the whole or any part of the patient's medical record or any other information about the patient that is or is likely to be relevant to the treatment, care or support of the patient.

(2) If a person (the ***patient***) is admitted to a hospital suffering an injury that is or is reasonably believed to be a catastrophic injury, the person in charge of the hospital or a person authorised by the person in charge of the hospital for the purposes of this subsection —

(a) may notify the Commission of the patient's admission; and

(b) may disclose to the Commission relevant information about the patient.

(3) If a notification is given or a disclosure is made in good faith under subsection (2) —

(a) no civil or criminal liability is incurred in respect of the notification or disclosure; and

(b) the notification or disclosure is not to be regarded as —

(i) a breach of any duty of confidentiality or secrecy imposed by law; or

(ii) a breach of professional ethics, professional standards or any principles of conduct applicable to a person's employment; or

(iii) unprofessional conduct.

[Section 30 amended: No. 1 of 2023 s. 93.]

30A. Notification and disclosure of information about injured worker

(1) In this section —

relevant information, about an injured worker, means information about the worker's injury or about a claim for compensation or damages in respect of the worker's injury that is relevant to —

(a) the worker's eligibility to be a participant in the CISS; or

(b) the worker's participation in the CISS.

(2) Words and expressions used in this section that have a defined meaning in the *Workers Compensation and Injury Management Act 2023* have the same meaning in this section as they have in that Act.

(3) WorkCover WA, a licensed insurer or self-insurer may disclose relevant information about an injured worker to the Commission if the worker's injury is or appears likely to be a catastrophic injury.

(4) An insurer or self-insurer who has received a claim for compensation made by an injured worker in respect of an injury that is or appears likely to be a catastrophic injury must —

(a) provide to the Commission details of the worker's claim and copies of any medical report or certificate of capacity obtained by or provided to the insurer or self-insurer in connection with the claim; and

(b) notify the Commission within 7 days after liability to pay compensation has been accepted (or is taken to have been accepted) by the licensed insurer or self-insurer or has been determined by an arbitrator.

(5) A worker who has suffered an injury that is a catastrophic injury must notify the Commission within 7 days after —

(a) an election is made by the worker to retain the right to seek damages in respect of the injury for the purposes of the *Workers Compensation and Injury Management Act 2023* section 421;

(b) any payment of damages in respect of the injury is received by the worker, or any claim for damages by the worker in respect of the injury is settled, if the damages include an amount for expenses in relation to future treatment, care and support needs.

[Section 30A inserted: No. 21 of 2023 s. 676.]

31. False or misleading information

(1) A person must not provide false or misleading information —

(a) in, or in connection with, an application made or a notice or other document given under this Act; or

(b) in compliance, or purported compliance, with a requirement under this Act; or

(c) for any other purpose under this Act.

Penalty for this subsection: a fine of $10 000.

(2) For the purposes of subsection (1), a person provides false or misleading information if the person —

(a) makes a statement that the person knows is false or misleading in a material particular; or

(b) omits from a statement made by the person anything without which the statement is, to the person's knowledge, misleading in a material particular; or

(c) gives information that —

(i) the person knows is false or misleading in a material particular; or

(ii) omits anything without which the information, to the person's knowledge, is misleading in a material particular.

[Section 31 inserted: No. 21 of 2023 s. 677.]

32. Obstruction

(1) In this section —

Commission officer means —

(a) a person appointed as an officer or employee of the Commission under the *Insurance Commission of Western Australia Act 1986* section 12(1); or

(b) a person engaged by the Commission under section 12(4) of that Act.

(2) A person who obstructs or hinders a Commission officer or other person in the performance of a function under this Act commits an offence.

Penalty for this subsection: a fine of $10 000.

33. Guidelines

(1) The Commission may issue guidelines to provide guidance on matters relating to the operation of the CISS and to the administration of this Act.

(2) The Commission must publish guidelines issued under this section on a website maintained by or on behalf of the Commission.

(3) Guidelines issued under this section are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(4) A person who has functions under this Act must have regard to guidelines issued under this section when performing those functions.

34. Regulations

(1) The Governor may make regulations prescribing matters —

(a) required or permitted to be prescribed by this Act; or

(b) necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting subsection (1), the regulations may —

(a) make provision for or in relation to applications under this Act, including restrictions as to when applications can be made; and

(b) provide for requirements as to the provision of information to the Commission in connection with applications or assessments under this Act; and

(c) provide for requirements as to the provision of any consent or other authorisation necessary for the Commission to obtain information in connection with applications or assessments under this Act; and

(d) provide for offences against the regulations and prescribe penalties not exceeding a fine of $10 000 for those offences.

35. Regulations may adopt codes or legislation

(1) In this section —

code means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;

subsidiary legislation includes rules, regulations, instructions, local laws and by-laws.

(2) Regulations may adopt, either wholly or in part or with modifications —

(a) any code; or

(b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

(3) The adoption may be by —

(a) incorporating the code or subsidiary legislation in the regulations; or

(b) incorporating the code or subsidiary legislation by reference.

(4) If regulations adopt a code or subsidiary legislation by reference, then, unless the regulations specify that a particular text is adopted —

(a) the code or subsidiary legislation is adopted as existing or in force when the regulations are made; and

(b) any amendments made to the code or subsidiary legislation after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.

(5) If regulations adopt a code or subsidiary legislation by reference, the Commission must ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time that have been adopted, is published on a website maintained by or on behalf of the Commission.

36. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the 5th anniversary of the day on which this section comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Part 7 — Other Acts amended

Division 1 — *Civil Liability Act 2002* amended

37. Act amended

This Division amends the *Civil Liability Act 2002*.

38. Section 13A inserted

At the end of Part 2 Division 3 insert:

13A. Restrictions on damages if payments received under CISS

(1) In this section —

CISS means the scheme provided for in the MV(CI) Act for the lifetime care and support of certain people catastrophically injured in motor vehicle accidents;

interim participant means a person who under the MV(CI) Act is an interim participant in the CISS;

lifetime participant means a person who under the MV(CI) Act is a lifetime participant in the CISS;

MV(CI) Act means the *Motor Vehicle (Catastrophic Injuries) Act 2016*;

treatment, care and support needs means —

(a) treatment, care and support needs as defined in the MV(CI) Act section 3(1); and

(b) excluded treatment, care and support needs as defined in that section.

(2) If a term used in this section (other than a term defined in subsection (1)) is given a meaning in the MV(CI) Act section 3(1), it has the same meaning in this section.

(3) Without limiting the meaning given in subsection (1) to the term ***treatment, care and support needs*** it includes gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance provided, or to be provided, to a person by a member of the same household or family as the person.

(4) Subsection (5) applies to the awarding of damages in respect of a motor vehicle injury suffered by a person if the person is a participant in the CISS in respect of the injury.

(5) No damages are to be awarded to the person in respect of —

(a) any treatment, care and support needs of the person that relate to the motor vehicle injury and that have arisen during the period in respect of which the person is a participant in the CISS; or

(b) any treatment, care and support needs of the person that relate to the motor vehicle injury and that will or may arise in future.

(6) If the person is an interim participant, it is to be assumed for the purposes of subsection (5) that the person will become a lifetime participant in respect of the bodily injury.

(7) Subsection (8) applies to the awarding of damages in respect of a motor vehicle injury suffered by a person if the person —

(a) has ceased to be an interim participant in respect of the injury; and

(b) has not become a lifetime participant in respect of the injury.

(8) No damages are to be awarded to the person in respect of any treatment, care and support needs of the person

that relate to the motor vehicle injury and that arose during the period in respect of which the person was an interim participant.

(9) Subsections (5) and (8) apply —

(a) whether or not the treatment, care and support needs are assessed treatment, care and support needs; and

(b) whether or not the Commission is required to make a payment in respect of the treatment, care and support needs; and

(c) whether or not any treatment, care, support or service is provided on a gratuitous basis.

(10) This section has effect despite section 12.

Division 2 — *Insurance Commission of Western Australia Act 1986* amended

39. Act amended

This Division amends the *Insurance Commission of Western Australia Act 1986*.

40. Section 6 amended

After section 6(a) insert:

(aa) to manage and administer, and monitor the operation of, the catastrophic injuries support scheme as defined in the *Motor Vehicle (Catastrophic Injuries) Act 2016* section 3(1); and

41. Section 16 amended

(1) Delete section 16(1)(b) and insert:

> (b) a fund to be called the "Motor Vehicle (Catastrophic Injuries) Fund"; and

(2) After section 16(2) insert:

> (3) The Motor Vehicle (Catastrophic Injuries) Fund shall consist of —
>
> (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(aa) or its functions under section 6(e) in so far as they relate to personal injury; and
>
> (b) other property received or acquired by the Commission in connection with the Commission's functions referred to in paragraph (a); and
>
> (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,
>
> and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions referred to in paragraph (a) and for that purpose only.

42. Section 18 amended

In section 18(2) after "Third Party Insurance Fund," insert:

the Motor Vehicle (Catastrophic Injuries) Fund,

Division 3 — *Motor Vehicle (Third Party Insurance) Act 1943* amended

43. Act amended

This Division amends the *Motor Vehicle (Third Party Insurance) Act 1943*.

44. Section 3 amended

In section 3(1) insert in alphabetical order:

assessed treatment, care and support needs has the meaning given in the MV(CI) Act section 18(2);

catastrophic injury has the meaning given in the MV(CI) Act section 3(1);

CISS means the scheme provided for in the MV(CI) Act for the lifetime care and support of certain people catastrophically injured in motor vehicle accidents;

MV(CI) Act means the *Motor Vehicle (Catastrophic Injuries) Act 2016*;

45. Section 3EA inserted

After section 3E insert:

3EA. Restrictions on damages if payments received under CISS

(1) In this section —

interim participant means a person who under the MV(CI) Act is an interim participant in the CISS;

lifetime participant means a person who under the MV(CI) Act is a lifetime participant in the CISS;

treatment, care and support needs means —

(a) treatment, care and support needs as defined in the MV(CI) Act section 3(1); and

(b) excluded treatment, care and support needs as defined in that section.

(2) Without limiting the meaning given in subsection (1) to the term ***treatment, care and support needs*** it includes gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance provided, or to be provided, to a person by a member of the same household or family as the person.

(3) Subsection (4) applies to the awarding of damages in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle if the person —

(a) has ceased to be an interim participant in respect of the bodily injury; and

(b) has not become a lifetime participant in respect of the bodily injury.

(4) No damages are to be awarded to the person in respect of any treatment, care and support needs of the person that relate to the bodily injury and that arose during the period in respect of which the person was an interim participant.

(5) Subsection (4) applies —

(a) whether or not the treatment, care and support needs are assessed treatment, care and support needs; and

(b) whether or not the Commission is required to make a payment in respect of the treatment, care and support needs; and

(c) whether or not any treatment, care, support or service is provided on a gratuitous basis.

(6) If subsection (4) applies a court is not to award damages to a person contrary to that subsection.

46. Sections 3FA and 3FB inserted

After section 3F insert:

3FA. Restrictions on damages to be part of the substantive law

(1) In this section —

restrictive provisions means sections 3A to 3F.

(2) To remove doubt it is declared that if the substantive law of Western Australia is to govern a claim for damages in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle, the restrictive provisions are part of that substantive law and are to be applied accordingly by the court that determines the claim (including a court of another jurisdiction).

(3) This subsection applies if —

(a) a court (including a court of another jurisdiction) awards damages to a person in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle; and

(b) the award does not conform with the restrictive provisions.

(4) If subsection (3) applies, the person against whom the award is made is not required to pay the damages awarded to the extent that the award is contrary to the restrictive provisions.

(5) If subsection (3) applies and the person against whom the award is made has paid as damages an amount in excess of the amount that would have been payable if the award had conformed with the restrictive provisions, that person is entitled to recover the excess as a debt from the person to whom the payment is made.

3FB. Damages for treatment, care and support needs: catastrophic injury

(1) In this section —

treatment, care and support needs has the meaning given in the MV(CI) Act section 6.

(2) Subsection (3) applies to the awarding of damages in respect of catastrophic injury to a person directly caused by, or by the driving of, a motor vehicle to the extent that the damages relate to any treatment, care and support needs of the person that have arisen or will or may arise in the future.

(3) In determining the amount of damages, no deduction is to be made for any contributory negligence of the person in relation to the catastrophic injury to which the damages relate.

(4) If subsection (3) applies a court awarding damages to a person is to award them in accordance with that subsection.

47. Section 3T amended

(1) In section 3T(1) delete the passage that begins with "by the Commission," and continues to the end of the subsection and insert:

and the MV(CI) Act by the Commission, will be sufficient to meet claims, payments, costs and other expenses anticipated to arise or to be incurred under this Act and the MV(CI) Act.

(2) In section 3T(2) delete "the Fund." and insert:

the Fund and the Motor Vehicle (Catastrophic Injuries) Fund established under the *Insurance Commission of Western Australia Act 1986* section 16(1)(b).

48. Section 4 amended

Delete section 4(8) and insert:

(8) Despite anything to the contrary in the Vehicles Act, no licence is to be granted or renewed under that Act in respect of a motor vehicle unless, before or at the time of the grant or renewal, there is paid to and received by the Director General the appropriate insurance premium determined by the Commission for the class of vehicle concerned and for the period for which the licence is granted or renewed.

(8A) The grant or renewal of a licence under the Vehicles Act in respect of a motor vehicle is to be taken to constitute the issue of a policy of insurance complying with this Act —

(a) in respect of the motor vehicle; and

(b) in respect of the period for which the licence is granted or renewed.

(8B) A licence document under the Vehicles Act in respect of a motor vehicle must incorporate a statement in a form approved by the Commission explaining —

(a) the effect of a policy of insurance complying with this Act, including the effect that the policy has because of the operation of section 6A; and

(b) the obligations of persons as to the reporting of motor vehicle accidents causing bodily injury or death; and

(c) related matters.

49. Section 6 amended

In section 6(1)(c) delete "a form substantially similar to that" and insert:

the form

50. Section 6A inserted

After section 6 insert:

6A. Insurance relating to catastrophic injury

(1) In this section —

motor vehicle accident has the meaning given in the MV(CI) Act section 4(1).

(2) Subject to subsection (3), a policy of insurance complying with this Act is also taken to insure any

person (the ***injured person***) against the risk of suffering a catastrophic injury that —

(a) is a motor vehicle injury to which the MV(CI) Act applies; and

(b) results from a motor vehicle accident involving the vehicle mentioned in the policy.

(3) The insurance referred to in subsection (2) extends only to the making of payments under the CISS for, or in respect of, necessary and reasonable expenses incurred by or on behalf of the injured person in relation to the injured person's assessed treatment, care and support needs.

51. Section 21 replaced

Delete section 21 and insert:

21. Term of policy of insurance extended in certain cases

(1) This section applies if a vehicle licence in respect of a motor vehicle is renewed after it has expired.

(2) If the vehicle licence is renewed within the period of 15 days after the day on which the vehicle licence expired, the operation of the policy related to the vehicle licence is, despite section 4(8A)(b), extended until the vehicle licence is renewed.

(3) In subsection (2) the reference to the policy related to the vehicle licence is a reference to the policy of insurance taken to have been issued under section 4(8A) in respect of the motor vehicle to which the licence applies.

(4) If the vehicle licence is not renewed until after the end of the period mentioned in subsection (2), the motor vehicle is an uninsured motor vehicle for the period beginning on the day after the day on which the vehicle licence expired and ending on the day on which the vehicle licence is renewed.

(5) Subsection (4) does not affect the amount of the insurance premium that must be paid before the vehicle licence can be renewed.

52. Sections 27B and 27C inserted

After section 27A insert:

27B. False or misleading information

(1) A person must not do anything set out in subsection (2) —

(a) in, or in connection with, a notice or other document given under this Act; or

(b) in compliance, or purported compliance, with a requirement under this Act; or

(c) for any other purpose under this Act.

Penalty for this subsection: a fine of $10 000.

(2) The things to which subsection (1) applies are —

(a) making a statement that the person knows is false or misleading in a material particular; and

(b) omitting from a statement made anything without which the statement is, to the person's knowledge, misleading in a material particular; and

(c) giving information that —

(i) the person knows is false or misleading in a material particular; or

(ii) omits anything without which the information, to the person's knowledge, is misleading in a material particular.

27C. Obstruction

(1) In this section —

Commission officer means —

(a) a person appointed as an officer or employee of the Commission under the *Insurance Commission of Western Australia Act 1986* section 12(1); or

(b) a person engaged by the Commission under section 12(4) of that Act.

(2) A person who obstructs or hinders a Commission officer or other person in the performance of a function under this Act commits an offence.

Penalty for this subsection: a fine of $10 000.

53. Section 30 replaced

Delete section 30 and insert:

30. Examination of injured person by health professional

(1) In this section —

health profession has the meaning given in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

health professional, means —

(a) in relation to the examination of an injured person in Australia — a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise a health profession (other than as a student); or

(b) in relation to the examination of an injured person in another country — a person licensed, registered or otherwise authorised under a law of that country to practise a health profession (other than as a student).

(2) Where, in accordance with section 29, the Commission has received notice of a claim for damages in relation to the bodily injury of a person (an ***injured person***), the Commission may, subject to the regulations, require the injured person from time to time to be examined by a health professional nominated by the Commission.

(3) The Commission must pay for an examination under subsection (2).

(4) An injured person may be accompanied at an examination under subsection (2) by a medical adviser but not by a legal adviser.

(5) If an injured person, without reasonable excuse, refuses to undergo an examination under subsection (2), no action for damages is to be commenced or proceeded with unless the injured person has undergone the examination.

(6) The costs (if any) allowed by a court to the Commission as the successful defendant, in an action for damages brought against it, may, in the discretion of and upon the certificate of the court, include any expenses incurred by the Commission in the payment

of professional fees to a health professional who has conducted an examination under subsection (2).

54. Section 34 replaced

Delete section 34 and insert:

34. Transitional provision for *Motor Vehicle (Catastrophic Injuries) Act 2016*

(1) In this section —

commencement day means the day on which the *Motor Vehicle (Catastrophic Injuries) Act 2016* sections 48 and 51 come into operation;

issued means granted or renewed;

relevant day means the day on which the *Motor Vehicle (Catastrophic Injuries) Act 2016* section 5 comes into operation;

repealed provision means section 4(8) as enacted before the commencement day.

(2) If a vehicle licence is issued on or after the commencement day for a period beginning before the relevant day, the repealed provision applies in relation to the issue of the vehicle licence and section 4(8) to (8B) do not apply.

(3) This subsection applies if —

(a) a vehicle licence that expired before the commencement day has not been renewed before the commencement day; or

(b) a vehicle licence expires on or after the commencement day but before the relevant day; or

(c) the period for which a vehicle licence was issued began before the relevant day and the vehicle licence expires on or after the relevant day.

(4) If subsection (3) applies —

(a) section 21(3) does not apply and, in section 21(2), the reference to the policy related to the vehicle licence is to be taken to be a reference to the policy of insurance incorporated in the vehicle licence as required by the repealed provision; and

(b) in section 21(2) the reference to section 4(8A)(b) is to be taken to be a reference to paragraph (b) of the repealed provision.

Notes

This is a compilation of the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Motor Vehicle (Catastrophic Injuries) Act 2016 [1]	8 of 2016	14 Apr 2016	s. 1 and 2: 14 Apr 2016 (see s. 2(a)); Act other than s. 1, 2 and 5: 14 May 2016 (see s. 2(b) and *Gazette* 13 May 2016 p. 1421); s. 5: 1 Jul 2016 (see s. 2(b) and *Gazette* 13 May 2016 p. 1421)
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Health Services Amendment Act 2023 Pt. 4	1 of 2023	22 Feb 2023	1 Jul 2023 (see s. 2(b) and SL 2023/103 cl. 2)
Workers Compensation and Injury Management Act 2023 Pt. 15 Div. 3 Subdiv. 11	21 of 2023	24 Oct 2023	1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)

Other notes

[1] Now known as the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*; short title changed (see note under s. 1).

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
appropriate person	21(1)
assessed treatment, care and support needs	3(1)
catastrophic injuries support scheme	3(1)
catastrophic injury	3(1)
CISS	3(1)
code	35(1)
Commission	3(1)
Commission officer	32(1)
dispute resolution proceedings	24
document	3(1)
driver	5(1)
eligibility decision	24
excluded treatment, care and support needs	3(1)
health profession	3(1)
health professional	3(1)
hospital	29(1)
injured person	21(2)
interstate vehicle	21(1)
legal costs	3(1)
legal services	3(1)
motor sports event	5(1)
motor vehicle	3(1)
motor vehicle accident	3(1)
motor vehicle injury	3(1)
notify	3(1)
ordinary costs of raising a child	19(1)
owner	5(1)
participant in the CISS	3(1)
patient	30(2)
prescribed	3(1)
private hospital	20(1)
private land	5(1)
public hospital	20(1)
registered provider	3(1)
relevant information	30(1), 30A(1)
relevant person	3(2)
review decision	27(1)
subsidiary legislation	35(1)
treatment, care and support assessment	3(1)

treatment, care and support needs ..... 3(1)
worker ..... 3(1)
workplace accident ..... 3(1)
workplace injury ..... 3(1)

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