

**MOTOR VEHICLE (THIRD PARTY
INSURANCE) AMENDMENT
ACT 1994**

No. 17 of 1994

AN ACT to amend the *Motor Vehicle (Third Party Insurance) Act 1943* and for related purposes.

[Assented to 3 May 1994.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Motor Vehicle (Third Party Insurance) Amendment Act 1994*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Motor Vehicle (Third Party Insurance) Act 1943** is referred to as the principal Act.

[* *Reprinted as at 11 March 1992 and amended by Act No. 6 of 1993.*]

Long title amended

4. The long title to the principal Act is amended by deleting “, to amend the *Traffic Act 1919-1941*” and substituting the following —

“

and in relation to the awarding of damages in respect of such bodily injuries

”.

Sections 3A to 3E inserted

5. After section 3 of the principal Act the following sections are inserted —

“

Application of sections 3C and 3D

3A. Sections 3C and 3D apply to the awarding of damages in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle.

Limit on powers of courts

3B. If sections 3C and 3D apply a court is not to award damages to a person contrary to those sections.

Restrictions on damages for non-pecuniary loss

3C. (1) In this section —

“Amount A” means —

- (a) for the financial year ending on 30 June 1994, \$200 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount A under subsections (8) and (9);

“Amount B” means —

- (a) for the financial year ending on 30 June 1994, \$10 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount B under subsections (8) and (10);

“Amount C” means —

- (a) for the financial year ending on 30 June 1994, \$30 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount C under subsections (8) and (10);

“non-pecuniary loss” means —

- (a) pain and suffering;

- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

(2) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.

(3) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount A, but the maximum amount may be awarded only in a most extreme case.

(4) If the amount of non-pecuniary loss is assessed to be Amount B or less, no damages are to be awarded for non-pecuniary loss.

(5) If the amount of non-pecuniary loss is assessed to be more than Amount B but not more than Amount C, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount B.

(6) If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of amounts B and C, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over —

$$\text{Amount B} - \left[\frac{\text{Amount so assessed}}{\text{assessed}} - \text{Amount C} \right]$$

(7) No entitlement to damages is created by subsection (2), (3), (5) or (6) and those subsections are

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subject to any law (other than Division 2 of Part IV of the *Workers' Compensation and Rehabilitation Act 1981*) that prevents or limits the awarding of damages

(8) By operation of this subsection and subsection (9) or (10) each of Amounts A, B and C is recalculated for each financial year with effect from 1 July ("**the recalculation date**"), commencing on 1 July 1994, by varying the respective amounts for the preceding financial year —

- (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or
- (b) if the relevant information is not so published, in accordance with the regulations.

(9) If an amount recalculated under subsection (8) as Amount A is not a multiple of \$1 000 it is to be rounded off to the nearest multiple of \$1 000 (with an amount that is \$500 more than a multiple of \$1 000 being rounded off to the next highest multiple of \$1 000).

(10) If an amount recalculated under subsection (8) as Amount B or C is not a multiple of \$500 it is to be rounded off to the nearest multiple of \$500 (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).

(11) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amounts A, B and C as they will have effect on and from that 1 July.

(12) Failure to publish, or late publication of, a notice under subsection (11) does not affect the operation of subsection (8), (9) or (10).

(13) Issues as to whether damages for non-pecuniary loss may be awarded and as to the amount of those damages that may be awarded are to be determined by reference to Amounts A, B and C as in effect on the date on which the determination is made.

Restrictions on damages for provision of home care services

3D. (1) This section limits the damages that may be awarded for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance that have been or are to be provided to the person in whose favour the award is made by a member of the same household or family as the person.

(2) No damages are to be awarded for the value of the services if the services would have been or would be provided to the person even if the person had not suffered the bodily injury.

(3) If the services are provided or to be provided for not less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated on a weekly basis at the rate of —

- (a) the amount estimated by the Australian Statistician as the average weekly total

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earnings of all employees in Western Australia for the relevant quarter; or

- (b) if the Australian Statistician fails or ceases to make the estimate referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.

(4) In paragraph (a) of subsection (3) “**the relevant quarter**” means the quarter in which the services were provided or, if at the date of the award an estimate as referred to in that paragraph is not available to the court for that quarter or the services are yet to be provided, the most recent quarter for which such an estimate is available to the court at the date of the award.

(5) If the services are provided or to be provided for less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated at an hourly rate of one-fortieth of the weekly rate that would be applicable under subsection (3) if the services were provided or to be provided for not less than 40 hours per week.

(6) If the amount of damages that may be awarded under subsection (3) or (5) is Amount D or less, no damages are to be awarded for the value of the services provided or to be provided.

(7) In subsection (6) “**Amount D**” means —

- (a) for the financial year ending on 30 June 1994, \$5 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount D under subsections (8) and (9).

(8) By operation of this subsection and subsection (9) Amount D is recalculated annually with effect from 1 July (“the recalculation date”), commencing on 1 July 1994, by varying Amount D for the preceding financial year —

- (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or
- (b) if the relevant information is not so published, in accordance with the regulations.

(9) If the amount recalculated under subsection (8) is not a multiple of \$500 it is to be rounded off to the nearest multiple of \$500 (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).

(10) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amount D as it will have effect on and from that 1 July.

(11) Failure to publish, or late publication of, a notice under subsection (10) does not affect the operation of subsections (8) and (9).

(12) The issue of whether damages may be awarded for the value of gratuitous services is to be determined by reference to Amount D as in effect on the date on which the determination is made.

Causes of action to which restrictions on damages apply

3E. Sections 3A to 3D do not apply to causes of action arising before 1 July 1993 but apply to causes of action arising on or after that day and before the commencement of section 5 of the *Motor Vehicle (Third Party Insurance) Amendment Act 1994* in the same way as they apply to causes of action arising after that commencement.

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Section 27A inserted

6. After section 27 of the principal Act the following section is inserted —

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Costs between solicitor and client

27A. (1) This section applies to an action for damages in respect of the death of or bodily injury to a person directly caused by, or by the driving of, a motor vehicle.

(2) An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person in an action to which this section applies, any greater reward than is provided for by a determination in force under section 58W of the *Legal Practitioners Act 1893*.

(3) An agreement is void —

- (a) if it is made contrary to this section; or
- (b) if it would have been contrary to this section if it had been made after the commencement of section 6 of the *Motor*

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and any money paid under such an agreement is recoverable by the person who has paid it.

(4) Subsection (3) does not affect the operation of an agreement so far as it relates to services provided before the commencement of section 6 of the *Motor Vehicle (Third Party Insurance) Amendment Act 1994* and does not apply in relation to any money paid in respect of services so provided.