

Motor Vehicle (Catastrophic Injuries) Bill 2016

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Motor Vehicle (Catastrophic Injuries) Bill 2016

A Bill for

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

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

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

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;

catastrophic injury means a motor vehicle 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;

- 1 **health profession** has the meaning given in the *Health*
2 *Practitioner Regulation National Law (Western Australia)*
3 section 5;
- 4 **health professional** means —
- 5 (a) in relation to the examination of an injured person in
6 Australia — a person registered under the *Health*
7 *Practitioner Regulation National Law (Western*
8 *Australia)* to practise a health profession (other than as a
9 student); or
- 10 (b) in relation to the examination of an injured person in
11 another country — a person licensed, registered or
12 otherwise authorised under a law of that country to
13 practise a health profession (other than as a student);
- 14 **legal costs** has the meaning given in the *Legal Profession*
15 *Act 2008* section 3;
- 16 **legal services** has the meaning given in the *Legal Profession*
17 *Act 2008* section 3;
- 18 **motor vehicle** has the meaning given in the *Motor Vehicle*
19 *(Third Party Insurance) Act 1943* section 3(1);
- 20 **motor vehicle accident** has the meaning given in section 4(1);
- 21 **motor vehicle injury** means a bodily injury to a person that
22 results from a motor vehicle accident;
- 23 **notify**, in relation to a person, means to give notice in writing to
24 the person;
- 25 **participant in the CISS** means a person who is a participant in
26 the CISS (either as an interim participant or as a lifetime
27 participant);
- 28 **prescribed** means prescribed by the regulations;
- 29 **registered provider** means a person registered under
30 section 23(1);
- 31 **treatment, care and support assessment** means an assessment
32 under section 15(1) of the treatment, care and support needs of a

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1 participant in the CISS in relation to the participant's motor
2 vehicle injury;

3 ***treatment, care and support needs*** has the meaning given in
4 section 6.

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

10 **4. Motor vehicle accident**

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

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

16 (a) the driving of the motor vehicle; or

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

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

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

25 **5. Motor vehicle injury to which Act applies**

26 (1) In this section —

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

-
- 1 **motor sports event** —
- 2 (a) means an event that tests the speed or reliability of
- 3 motor vehicles or the skill or endurance of their drivers
- 4 or navigators and that —
- 5 (i) takes place on a race track established or adapted
- 6 for the purpose of events of that kind; or
- 7 (ii) is an event to which an order made under the
- 8 *Road Traffic Act 1974* section 81C applies;
- 9 and
- 10 (b) includes a practice session for an event described in
- 11 paragraph (a);
- 12 **owner**, in relation to a motor vehicle, has the meaning given in
- 13 the *Motor Vehicle (Third Party Insurance) Act 1943*
- 14 section 3(1);
- 15 **private land** means land that is —
- 16 (a) alienated from the Crown for any estate of freehold; or
- 17 (b) the subject of a conditional purchase agreement, or of a
- 18 lease or concession with or without a right of acquiring
- 19 the fee simple in that land.
- 20 (2) This Act applies to a motor vehicle injury resulting from a
- 21 motor vehicle accident that occurs in this State on or after the
- 22 day on which this section comes into operation.
- 23 (3) Despite subsection (2), this Act does not apply to a motor
- 24 vehicle injury if the owner or driver of a motor vehicle has, as a
- 25 consequence of the driving of that motor vehicle or of that
- 26 motor vehicle running out of control, incurred liability for
- 27 negligence in respect of the injury.
- 28 (4) Despite subsection (2), this Act does not apply to a motor
- 29 vehicle injury resulting from a motor vehicle accident that
- 30 occurs on private land unless at least one motor vehicle
- 31 involved in the motor vehicle accident is —

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- 1 (a) a motor vehicle in respect of which a contract of
2 insurance is in force under the *Motor Vehicle (Third*
3 *Party Insurance) Act 1943*; or
- 4 (b) a motor vehicle —
- 5 (i) licensed or registered under the law of another
6 State or a Territory; and
- 7 (ii) to which a policy of compulsory third-party
8 person injury insurance, or a compulsory motor
9 vehicle accident compensation scheme, under the
10 law of that State or Territory applies.
- 11 (5) Despite subsection (2), this Act does not apply to a motor
12 vehicle injury resulting from a motor vehicle accident —
- 13 (a) that involves a motor vehicle taking part in a motor
14 sports event; or
- 15 (b) that occurs as a result of a terrorist act (as defined in the
16 *Terrorism (Extraordinary Powers) Act 2005* section 5).

17 **6. Treatment, care and support needs**

- 18 (1) The treatment, care and support needs of a person are the needs
19 of the person for or in connection with any of the following —
- 20 (a) medical treatment (including pharmaceuticals);
- 21 (b) dental treatment;
- 22 (c) rehabilitation;
- 23 (d) ambulance transportation;
- 24 (e) respite care;
- 25 (f) domestic assistance;
- 26 (g) attendant care services;
- 27 (h) aids and appliances;
- 28 (i) prostheses;
- 29 (j) education and vocational training;
- 30 (k) home and transport modification;

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

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

7 **7. Act binds Crown**

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

1 **Part 2 — Participation in catastrophic injuries**
2 **support scheme**

3 **8. Eligibility to participate**

4 (1) A person is eligible to be a participant in the CISS if —

5 (a) the person suffers a motor vehicle injury to which this
6 Act applies; and

7 (b) the motor vehicle injury is a catastrophic injury.

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

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

18 **9. Application to participate**

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

21 (2) The application must be —

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

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

26 **10. Acceptance as participant**

27 (1) A person becomes a participant in the CISS if the Commission
28 is satisfied that the person is eligible to be a participant in the
29 CISS and accepts the person in writing as a participant in the

1 CISS as an interim participant or a lifetime participant,
2 according to the person's eligibility.

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

9 **11. Interim participation**

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

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

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

21 **12. Lifetime participation**

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

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

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

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1 **13. Former interim participant may apply to become**
2 **participant**

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

8 **14. Suspension of participation**

9 (1) The Commission may, if the Commission considers it
10 appropriate to do so, suspend the participation of a person in the
11 CISS while the person is absent from Australia.

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

1 **Part 3 — Assessment of treatment, care and**
2 **support needs**

3 **15. Assessment of participant’s treatment, care and support**
4 **needs**

- 5 (1) The Commission must assess the treatment, care and support
6 needs of each participant in the CISS.
- 7 (2) The assessment must relate to those treatment, care and support
8 needs that —
- 9 (a) are necessary and reasonable in the circumstances; and
10 (b) relate to the motor vehicle injury in respect of which the
11 person is a participant.
- 12 (3) The Commission must notify the participant of the assessment
13 and the reasons for the findings on which it is based.

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

- 16 (1) The regulations may make provision for or in relation to the
17 assessment of the treatment, care and support needs of
18 participants in the CISS.
- 19 (2) In particular, the regulations may make provision for or in
20 relation to the following —
- 21 (a) procedures to be followed in connection with
22 assessments;
- 23 (b) intervals at which assessments are to be carried out and
24 the review of assessments from time to time as occasion
25 requires;
- 26 (c) methods and criteria to be used to determine the
27 treatment, care and support needs of participants;
- 28 (d) requirements to be complied with by participants in
29 connection with assessments, including requirements to

**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 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

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- 1 (ii) relate to the motor vehicle injury in respect of
2 which the person is a participant;
- 3 (b) any monetary or other limits on the provision of
4 particular treatment, care and support needs to a
5 participant in the CISS set out in the regulations;
- 6 (c) any provision made by the regulations as to how
7 expenses are to be paid for or covered.
- 8 (5) Instead of paying the expenses for which it is liable under this
9 section as and when they are incurred, the Commission may pay
10 those expenses by the payment to the participant of an amount
11 to cover those expenses over a fixed period pursuant to an
12 agreement between the Commission and the participant for the
13 payment of those expenses by the participant.

14 **19. Payment not required in certain circumstances**

- 15 (1) In this section —
- 16 *ordinary costs of raising a child* include all costs associated with
17 the child's care, upbringing, education and advancement in life
18 other than costs reasonably incurred because the child has suffered
19 the motor vehicle injury in respect of which the child is a
20 participant.
- 21 (2) The Commission is not required to make a payment in relation
22 to any of the following —
- 23 (a) any treatment, care, support or service provided to a
24 participant in the CISS on a gratuitous basis (that is,
25 anything provided to a participant for which the
26 participant has not paid and is not liable to pay);
- 27 (b) any treatment, care, support or service provided to a
28 participant in the CISS while the participant is absent
29 from Australia;
- 30 (c) in the case of a child, any treatment, care, support or
31 service that would ordinarily fall within the ordinary
32 costs of raising a child;

- 1 (d) any treatment, care, support or service that is required to
2 be provided by a registered provider but is provided by a
3 person who is not, at the time of provision, a registered
4 provider;
- 5 (e) any treatment, care, support or service that is provided
6 in contravention of the regulations.
- 7 (3) However, the Commission may elect to make a payment in
8 relation to any treatment, care, support or service referred to in
9 subsection (2) if the Commission considers that such a payment
10 is justified in the circumstances.
- 11 (4) Subsection (2) applies even if the treatment, care, support or
12 services concerned are provided in connection with the assessed
13 treatment, care and support needs of a participant in the CISS.
- 14 (5) The Commission is not required to pay for any treatment, care,
15 support or service provided to a person while the person's
16 participation in the CISS is suspended.
- 17 **20. Maximum amounts payable for certain treatment and**
18 **services**
- 19 (1) In this section each of the following terms has the meaning
20 given in the *Hospitals and Health Services Act 1927*
21 section 2(1) —
- 22 *private hospital*
23 *public hospital*
- 24 (2) This section applies to a fee payable for any of the following
25 treatment or services provided to a participant in the CISS —
- 26 (a) medical treatment;
27 (b) dental treatment;
28 (c) rehabilitation services;
29 (d) attendant care services.

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- 1 (3) This section also applies to a fee payable to a private hospital
2 for any treatment provided to a participant in the CISS at the
3 hospital.
- 4 (4) However, this section does not apply to a fee payable for
5 treatment or services referred to in subsection (2) if —
- 6 (a) the treatment or services are provided to the participant
7 at a public hospital (whether as an inpatient or
8 outpatient); and
- 9 (b) the fee is payable to the public hospital and not to the
10 provider of the treatment or services.
- 11 (5) The regulations may fix the maximum amount for which the
12 Commission is liable in respect of any claim for a fee to which
13 this section applies.
- 14 (6) Without limiting subsection (5), the regulations may fix a
15 maximum amount by reference to fees recommended by a
16 prescribed person or by reference to a schedule of fees
17 published by a prescribed person.
- 18 (7) A payment made by the Commission in respect of treatment or
19 services provided in connection with the treatment, care and
20 support needs of a participant in the CISS must be made
21 consistently with any regulations under this section.

22 **21. Recovery of payments for injury involving interstate vehicle**

- 23 (1) In this section —
- 24 ***appropriate person*** means —
- 25 (a) in relation to an interstate vehicle covered under a policy
26 of compulsory third-party personal injury insurance —
27 the insurer in respect of that policy; or
- 28 (b) in relation to an interstate vehicle covered under a
29 compulsory motor vehicle accident compensation
30 scheme — the person liable under that scheme;
- 31 ***interstate vehicle***, in relation to a motor vehicle injury, means a
32 motor vehicle that at the time of the injury was covered under a

1 policy of compulsory third-party personal injury insurance or a
2 compulsory motor vehicle accident compensation scheme under
3 the law of another State or a Territory.

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

13 **22. Injury compensable under *Workers' Compensation and***
14 ***Injury Management Act 1981***

15 (1) This section applies if the motor vehicle injury in respect of
16 which a person is a participant in the CISS is compensable
17 under the *Workers' Compensation and Injury Management*
18 *Act 1981* (the *WCIM Act*).

19 (2) The Commission is not required to pay costs or expenses under
20 this Part if those costs or expenses have already been paid under
21 the *WCIM Act*.

22 (3) If the Commission pays costs or expenses under this Part that
23 would have been payable under the *WCIM Act*, the
24 Commission may recover from the participant's employer, as
25 defined in section 5(1) of that Act, the value of that payment.

26 **23. Registered providers**

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

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- 1 (2) The Commission must keep a register of persons who are
2 registered under subsection (1).
- 3 (3) The register may be kept in a manner and form determined by
4 the Commission.
- 5 (4) The regulations may make provision for or in relation to —
6 (a) the standards of competency of registered providers; and
7 (b) matters relating to applications for registration under
8 this section.
- 9 (5) A registration may be granted on conditions determined by the
10 Commission.
- 11 (6) A registered provider must not, without reasonable excuse,
12 contravene a condition of its registration.
13 Penalty for this subsection: a fine of \$10 000.
- 14 (7) The Commission may, in accordance with the regulations —
15 (a) vary, add to or cancel any conditions of a registration; or
16 (b) revoke a registration.

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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, under section 5, a motor vehicle injury is a motor vehicle 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 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.

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.

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1 **26. Review of treatment, care and support assessment**

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

6 **27. Appeals to District Court**

7 (1) In this section —

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

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

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

16 (b) whether, under section 5, a motor vehicle injury is a
17 motor vehicle injury to which this Act applies.

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

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

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

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

27 **28. Regulations about dispute resolution**

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

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

- 1 (b) the practice and procedure to be followed in dispute
2 resolution proceedings;
- 3 (c) the appointment or designation of persons as review
4 officers for the purposes of dispute resolution
5 proceedings;
- 6 (d) the establishment of expert review panels for the
7 purposes of dispute resolution proceedings;
- 8 (e) the functions of the Commission, review officers and
9 expert review panels in relation to dispute resolution
10 proceedings;
- 11 (f) liability in respect of legal costs and other costs incurred
12 by an injured person or a participant in the CISS in
13 connection with applications made under this Part or
14 dispute resolution proceedings;
- 15 (g) the review of decisions made in dispute resolution
16 proceedings.

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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 *Hospitals and Health Services Act 1927* section 2(1);

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

1 (iii) unprofessional conduct.

2 **31. False or misleading information**

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

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

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

8 (c) for any other purpose under this Act.

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

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

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

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

16 (c) giving information that —

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

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

22 **32. Obstruction**

23 (1) In this section —

24 ***Commission officer*** means —

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

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

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

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

5 **33. Guidelines**

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

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

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

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

17 **34. Regulations**

18 (1) The Governor may make regulations prescribing matters —
19 (a) required or permitted to be prescribed by this Act; or
20 (b) necessary or convenient to be prescribed for giving
21 effect to this Act.

22 (2) Without limiting subsection (1), the regulations may —
23 (a) make provision for or in relation to applications under
24 this Act, including restrictions as to when applications
25 can be made; and
26 (b) provide for requirements as to the provision of
27 information to the Commission in connection with
28 applications or assessments under this Act; and
29 (c) provide for requirements as to the provision of any
30 consent or other authorisation necessary for the

- 1 Commission to obtain information in connection with
2 applications or assessments under this Act; and
3 (d) provide for offences against the regulations and
4 prescribe penalties not exceeding a fine of \$10 000 for
5 those offences.

6 **35. Regulations may adopt codes or legislation**

- 7 (1) In this section —
8 *code* means a code, standard, rule, specification or other
9 document, published in or outside Australia, that does not by
10 itself have legislative effect in this State;
11 *subsidiary legislation* includes rules, regulations, instructions,
12 local laws and by-laws.
- 13 (2) Regulations may adopt, either wholly or in part or with
14 modifications —
15 (a) any code; or
16 (b) any subsidiary legislation made, determined or issued
17 under any other Act or under any Act of the
18 Commonwealth, another State or a Territory.
- 19 (3) The adoption may be by —
20 (a) incorporating the code or subsidiary legislation in the
21 regulations; or
22 (b) incorporating the code or subsidiary legislation by
23 reference.
- 24 (4) If regulations adopt a code or subsidiary legislation by
25 reference, then, unless the regulations specify that a particular
26 text is adopted —
27 (a) the code or subsidiary legislation is adopted as existing
28 or in force when the regulations are made; and
29 (b) any amendments made to the code or subsidiary
30 legislation after the regulations are made have no legal
31 effect as part of the regulations unless they are

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- 1 specifically adopted by later regulations or a later
2 amendment to the regulations.
- 3 (5) If regulations adopt a code or subsidiary legislation by
4 reference, the Commission must ensure that a copy of the code
5 or subsidiary legislation, including any amendments made to it
6 from time to time that have been adopted, is published on a
7 website maintained by or on behalf of the Commission.

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Part 7 — Other Acts amended

Division 1 — *Civil Liability Act 2002* amended

36. Act amended

This Division amends the *Civil Liability Act 2002*.

37. 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.

Motor Vehicle (Catastrophic Injuries) Bill 2016

Part 7 Other Acts amended

Division 1 Civil Liability Act 2002 amended

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- 1 (3) Without limiting the meaning given in subsection (1) to
2 the term *treatment, care and support needs* it includes
3 gratuitous services of a domestic nature or gratuitous
4 services relating to nursing and attendance provided, or
5 to be provided, to a person by a member of the same
6 household or family as the person.
- 7 (4) Subsection (5) applies to the awarding of damages in
8 respect of a motor vehicle injury suffered by a person if
9 the person is a participant in the CISS in respect of the
10 injury.
- 11 (5) No damages are to be awarded to the person in respect
12 of —
- 13 (a) any treatment, care and support needs of the
14 person that relate to the motor vehicle injury
15 and that have arisen during the period in respect
16 of which the person is a participant in the CISS;
17 or
- 18 (b) any treatment, care and support needs of the
19 person that relate to the motor vehicle injury
20 and that will or may arise in future.
- 21 (6) If the person is an interim participant, it is to be
22 assumed for the purposes of subsection (5) that the
23 person will become a lifetime participant in respect of
24 the bodily injury.
- 25 (7) Subsection (8) applies to the awarding of damages in
26 respect of a motor vehicle injury suffered by a person if
27 the person —
- 28 (a) has ceased to be an interim participant in
29 respect of the injury; and
- 30 (b) has not become a lifetime participant in respect
31 of the injury.
- 32 (8) No damages are to be awarded to the person in respect
33 of any treatment, care and support needs of the person

- 1 that relate to the motor vehicle injury and that arose
2 during the period in respect of which the person was an
3 interim participant.
- 4 (9) Subsections (5) and (8) apply —
- 5 (a) whether or not the treatment, care and support
6 needs are assessed treatment, care and support
7 needs; and
- 8 (b) whether or not the Commission is required to
9 make a payment in respect of the treatment,
10 care and support needs; and
- 11 (c) whether or not any treatment, care, support or
12 service is provided on a gratuitous basis.
- 13 (10) This section has effect despite section 12.
14

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

17 **38. Act amended**

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

20 **39. Section 6 amended**

21 After section 6(a) insert:

- 22
- 23 (aa) to manage and administer, and monitor the
24 operation of, the catastrophic injuries support
25 scheme as defined in the *Motor Vehicle*
26 *(Catastrophic Injuries) Act 2016* section 3(1);
27 and
28

1 **40. Section 16 amended**

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

3

4 (b) a fund to be called the “Motor Vehicle
5 (Catastrophic Injuries) Fund”; and
6

7 (2) After section 16(2) insert:

8

9 (3) The Motor Vehicle (Catastrophic Injuries) Fund shall
10 consist of —

11 (a) moneys appropriated for, or derived from or in
12 connection with, the Commission’s functions
13 under section 6(aa) or its functions under
14 section 6(e) in so far as they relate to personal
15 injury; and

16 (b) other property received or acquired by the
17 Commission in connection with the
18 Commission’s functions referred to in
19 paragraph (a); and

20 (c) moneys or other property credited, apportioned
21 or transferred to that Fund under section 17
22 or 18,

23 and, subject to section 18, may be applied for the
24 purpose of carrying out the Commission’s functions
25 referred to in paragraph (a) and for that purpose only.
26

27 **41. Section 18 amended**

28 In section 18(2) after “Third Party Insurance Fund,” insert:

29

30 the Motor Vehicle (Catastrophic Injuries) Fund,
31

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

3 **42. Act amended**

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

6 **43. Section 3 amended**

7 In section 3(1) insert in alphabetical order:

8
9 *assessed treatment, care and support needs* has the
10 meaning given in the MV(CI) Act section 18(2);

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

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

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

19
20 **44. Section 3EA inserted**

21 After section 3E insert:

22
23 **3EA. Restrictions on damages if payments received under**
24 **CISS**

25 (1) In this section —

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

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

- 1 ***treatment, care and support needs*** means —
- 2 (a) treatment, care and support needs as defined in
- 3 the MV(CI) Act section 3(1); and
- 4 (b) excluded treatment, care and support needs as
- 5 defined in that section.
- 6 (2) Without limiting the meaning given in subsection (1) to
- 7 the term ***treatment, care and support needs*** it includes
- 8 gratuitous services of a domestic nature or gratuitous
- 9 services relating to nursing and attendance provided, or
- 10 to be provided, to a person by a member of the same
- 11 household or family as the person.
- 12 (3) Subsection (4) applies to the awarding of damages in
- 13 respect of bodily injury to a person directly caused by,
- 14 or by the driving of, a motor vehicle if the person —
- 15 (a) has ceased to be an interim participant in
- 16 respect of the bodily injury; and
- 17 (b) has not become a lifetime participant in respect
- 18 of the bodily injury.
- 19 (4) No damages are to be awarded to the person in respect
- 20 of any treatment, care and support needs of the person
- 21 that relate to the bodily injury and that arose during the
- 22 period in respect of which the person was an interim
- 23 participant.
- 24 (5) Subsection (4) applies —
- 25 (a) whether or not the treatment, care and support
- 26 needs are assessed treatment, care and support
- 27 needs; and
- 28 (b) whether or not the Commission is required to
- 29 make a payment in respect of the treatment,
- 30 care and support needs; and
- 31 (c) whether or not any treatment, care, support or
- 32 service is provided on a gratuitous basis.

1 (6) If subsection (4) applies a court is not to award
2 damages to a person contrary to that subsection.
3

4 **45. Sections 3FA and 3FB inserted**

5 After section 3F insert:
6

7 **3FA. Restrictions on damages to be part of the**
8 **substantive law**

9 (1) In this section —
10 *restrictive provisions* means sections 3A to 3F.

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

19 (3) This subsection applies if —
20 (a) a court (including a court of another
21 jurisdiction) awards damages to a person in
22 respect of bodily injury to a person directly
23 caused by, or by the driving of, a motor vehicle;
24 and
25 (b) the award does not conform with the restrictive
26 provisions.

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

Motor Vehicle (Catastrophic Injuries) Bill 2016

Part 7 Other Acts amended

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

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

8 **3FB. Damages for treatment, care and support needs:**
9 **catastrophic injury**

- 10 (1) In this section —
11 *treatment, care and support needs* has the meaning
12 given in the MV(CI) Act section 6.
- 13 (2) Subsection (3) applies to the awarding of damages in
14 respect of catastrophic injury to a person directly
15 caused by, or by the driving of, a motor vehicle to the
16 extent that the damages relate to any treatment, care
17 and support needs of the person that have arisen or will
18 or may arise in the future.
- 19 (3) In determining the amount of damages, no deduction is
20 to be made for any contributory negligence of the
21 person in relation to the catastrophic injury to which
22 the damages relate.
- 23 (4) If subsection (3) applies a court awarding damages to a
24 person is to award them in accordance with that
25 subsection.
26

27 **46. Section 3T amended**

- 28 (1) In section 3T(1) delete the passage that begins with “by the
29 Commission,” and continues to the end of the subsection and
30 insert:

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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).

47. 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 —

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Part 7 Other Acts amended

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

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- 1 (a) the effect of a policy of insurance complying
2 with this Act, including the effect that the
3 policy has because of the operation of
4 section 6A; and
- 5 (b) the obligations of persons as to the reporting of
6 motor vehicle accidents causing bodily injury
7 or death; and
- 8 (c) related matters.
9

10 **48. Section 6 amended**

11 In section 6(1)(c) delete “a form substantially similar to that”
12 and insert:

13
14 the form
15

16 **49. Section 6A inserted**

17 After section 6 insert:
18

19 **6A. Insurance relating to catastrophic injury**

- 20 (1) In this section —
21 *motor vehicle accident* has the meaning given in the
22 MV(CI) Act section 4(1).
- 23 (2) Subject to subsection (3), a policy of insurance
24 complying with this Act is also taken to insure any
25 person (the *injured person*) against the risk of
26 suffering a catastrophic injury that —
- 27 (a) is a motor vehicle injury to which the MV(CI)
28 Act applies; and
- 29 (b) results from a motor vehicle accident involving
30 the vehicle mentioned in the policy.

- 1 (3) The insurance referred to in subsection (2) extends
2 only to the making of payments under the CISS for, or
3 in respect of, necessary and reasonable expenses
4 incurred by or on behalf of the injured person in
5 relation to the injured person's assessed treatment, care
6 and support needs.
7

8 **50. Section 21 replaced**

9 Delete section 21 and insert:
10

11 **21. Term of policy of insurance extended in certain**
12 **cases**

- 13 (1) This section applies if a vehicle licence in respect of a
14 motor vehicle is renewed after it has expired.
- 15 (2) If the vehicle licence is renewed within the period of
16 15 days after the day on which the vehicle licence
17 expired, the operation of the policy related to the
18 vehicle licence is, despite section 4(8A)(b), extended
19 until the vehicle licence is renewed.
- 20 (3) In subsection (2) the reference to the policy related to
21 the vehicle licence is a reference to the policy of
22 insurance taken to have been issued under
23 section 4(8A) in respect of the motor vehicle to which
24 the licence applies.
- 25 (4) If the vehicle licence is not renewed until after the end
26 of the period mentioned in subsection (2), the motor
27 vehicle is an uninsured motor vehicle for the period
28 beginning on the day after the day on which the vehicle
29 licence expired and ending on the day on which the
30 vehicle licence is renewed.

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

5 **51. Sections 27B and 27C inserted**

6 After section 27A insert:
7

8 **27B. False or misleading information**

- 9 (1) A person must not do anything set out in
10 subsection (2) —
11 (a) in, or in connection with, a notice or other
12 document given under this Act; or
13 (b) in compliance, or purported compliance, with a
14 requirement under this Act; or
15 (c) for any other purpose under this Act.
16 Penalty for this subsection: a fine of \$10 000.
- 17 (2) The things to which subsection (1) applies are —
18 (a) making a statement that the person knows is
19 false or misleading in a material particular; and
20 (b) omitting from a statement made anything
21 without which the statement is, to the person's
22 knowledge, misleading in a material particular;
23 and
24 (c) giving information that —
25 (i) the person knows is false or misleading
26 in a material particular; or
27 (ii) omits anything without which the
28 information, to the person's knowledge,
29 is misleading in a material particular.

- 1 **27C. Obstruction**
- 2 (1) In this section —
- 3 **Commission officer** means —
- 4 (a) a person appointed as an officer or employee of
- 5 the Commission under the *Insurance*
- 6 *Commission of Western Australia Act 1986*
- 7 section 12(1); or
- 8 (b) a person engaged by the Commission under
- 9 section 12(4) of that Act.
- 10 (2) A person who obstructs or hinders a Commission
- 11 officer or other person in the performance of a function
- 12 under this Act commits an offence.
- 13 Penalty for this subsection: a fine of \$10 000.
- 14

15 **52. Section 30 replaced**

16 Delete section 30 and insert:

17

18 **30. Examination of injured person by health**

19 **professional**

- 20 (1) In this section —
- 21 **health profession** has the meaning given in the *Health*
- 22 *Practitioner Regulation National Law (Western*
- 23 *Australia)* section 5;
- 24 **health professional**, means —
- 25 (a) in relation to the examination of an injured
- 26 person in Australia — a person registered under
- 27 the *Health Practitioner Regulation National*
- 28 *Law (Western Australia)* to practise a health
- 29 profession (other than as a student); or

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- 1 (b) in relation to the examination of an injured
2 person in another country — a person licensed,
3 registered or otherwise authorised under a law
4 of that country to practise a health profession
5 (other than as a student).
- 6 (2) Where, in accordance with section 29, the Commission
7 has received notice of a claim for damages in relation
8 to the bodily injury of a person (an *injured person*), the
9 Commission may, subject to the regulations, require
10 the injured person from time to time to be examined by
11 a health professional nominated by the Commission.
- 12 (3) The Commission must pay for an examination under
13 subsection (2).
- 14 (4) An injured person may be accompanied at an
15 examination under subsection (2) by a medical adviser
16 but not by a legal adviser.
- 17 (5) If an injured person, without reasonable excuse, refuses
18 to undergo an examination under subsection (2), no
19 action for damages is to be commenced or proceeded
20 with unless the injured person has undergone the
21 examination.
- 22 (6) The costs (if any) allowed by a court to the
23 Commission as the successful defendant, in an action
24 for damages brought against it, may, in the discretion
25 of and upon the certificate of the court, include any
26 expenses incurred by the Commission in the payment
27 of professional fees to a health professional who has
28 conducted an examination under subsection (2).
29

1 **53. Section 34 replaced**

2 Delete section 34 and insert:

3

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

6 (1) In this section —

7 *commencement day* means the day on which the *Motor*
8 *Vehicle (Catastrophic Injuries) Act 2016* sections 47
9 and 50 come into operation;

10 *issued* means granted or renewed;

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

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

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

21 (3) This subsection applies if —

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

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

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

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- 1 (4) If subsection (3) applies —
- 2 (a) section 21(3) does not apply and, in
- 3 section 21(2), the reference to the policy related
- 4 to the vehicle licence is to be taken to be a
- 5 reference to the policy of insurance
- 6 incorporated in the vehicle licence as required
- 7 by the repealed provision; and
- 8 (b) in section 21(2) the reference to
- 9 section 4(8A)(b) is to be taken to be a reference
- 10 to paragraph (b) of the repealed provision.
- 11

12

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 (CISS)	3(1)
catastrophic injury.....	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.....	30(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)
relevant person.....	3(2)
subsidiary legislation	35(1)
treatment, care and support assessment	3(1)
treatment, care and support needs	3(1)
WCIM Act	22(1)