

CTP Handbook

Online edition

June 2015



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lawyers

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Information is current at the time of publication. Hunt & Hunt recommends consulting the South Australian Legislation website, maintained by the Attorney General's Department at <http://www.legislation.sa.gov.au/index.aspx> and listed sources to check for updates.

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Motor Accident Commission	(08) 8422 8100	www.mac.sa.gov.au
South Australian Police		www.sapolice.sa.gov.au
Return to Work SA	13 18 55	www.rtwsa.com
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Supreme Court Civil Registry	(08) 8204 0289	www.courts.sa.gov.au supreme.registry@courts.sa.gov.au
District Court Civil Registry	(08) 8204 0289	www.courts.sa.gov.au district.civil@courts.sa.gov.au
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Supreme Court Judgments		www.austlii.edu.au/au/cases/sa/SASC
District Court Judgments		www.austlii.edu.au/au/cases/sa/SADC
South Australian Legislation		www.legislation.sa.gov.au
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Ready Reckoner Data

DAMAGES FOR NON-ECONOMIC LOSS FOR ACCIDENTS OCCURRING FROM 1987 -2002

Calendar year	Multiplier
2002	1,710
2001	1,680
2000	1,580
1999	1,560
1998	1,530
1997	1,550
1996	1,520
1995	1,450
1994	1,430

Calendar year	Multiplier
1992	1,370
1991	1,310
1990	1,240
1989	1,150
1988	1,070
1987	1,000

Prescribed amount multiplier (*Wrongs Act 1936* (SA), section 35A)

DAMAGES FOR NON-ECONOMIC LOSS FOR ACCIDENTS OCCURRING FROM 2003 - PRIOR TO 1 JULY 2013

	<i>Wrongs Act s24b</i>		<i>Civil Liability Act s52(2)(d)</i>			
	2003	2004	2005	2006	2007	2008
1	1,150	1,190	1,220	1,260	1,310	1,320
2	2,300	2,380	2,440	2,510	2,610	2,650
3	3,450	3,580	3,660	3,770	3,920	3,970
4	4,600	4,770	4,890	5,030	5,220	5,300
5	5,750	5,960	6,110	6,290	6,530	6,620
6	6,900	7,150	7,330	7,540	7,830	7,940
7	8,050	8,340	8,550	8,800	9,140	9,270
8	9,200	9,530	9,770	10,060	10,450	10,590
9	10,350	10,730	10,990	11,320	11,750	11,910
10	11,500	11,920	12,210	12,570	13,060	13,240
11	13,800	14,300	14,660	15,090	15,670	15,890
12	16,100	16,690	17,100	17,600	18,280	18,530
13	18,400	19,070	19,540	20,120	20,890	21,180
14	20,700	21,450	21,980	22,630	23,500	23,830
15	23,000	23,840	24,430	25,150	26,110	26,480
16	25,300	26,220	26,870	27,660	28,730	29,120
17	27,600	28,600	29,310	30,180	31,340	31,770
18	29,900	30,990	31,750	32,690	33,950	34,420
19	32,200	33,370	34,200	35,210	36,560	37,070
20	34,500	35,750	36,640	37,720	39,170	39,710
21	37,950	39,330	40,300	41,490	43,090	43,680
22	41,400	42,900	43,970	45,270	47,010	47,660
23	44,850	46,480	47,630	49,040	50,920	51,630
24	48,300	50,060	51,300	52,810	54,840	55,600

	2009	2010	2011	2012	2013
1	1,390	1,410	1,450	1,500	1,530
2	2,780	2,820	2,900	3,010	3,060
3	4,180	4,230	4,340	4,510	4,590
4	5,570	5,640	5,790	6,020	6,120
5	6,960	7,050	7,240	7,520	7,650
6	8,350	8,460	8,690	9,030	9,180
7	9,740	9,870	10,130	10,530	10,710
8	11,130	11,290	11,580	12,040	12,240
9	12,530	12,700	13,030	13,540	13,770
10	13,920	14,110	14,480	15,050	15,310
11	16,700	16,930	17,370	18,060	18,370
12	19,490	19,750	20,270	21,070	21,430
13	22,270	22,570	23,160	24,080	24,490
14	25,050	25,390	26,060	27,090	27,550
15	27,840	28,210	28,950	30,100	30,610
16	30,620	31,030	31,850	33,110	33,670
17	33,400	33,860	34,740	36,120	36,730
18	36,190	36,680	37,640	39,130	39,790
19	38,970	39,500	40,530	42,140	42,850
20	41,750	42,320	43,430	45,150	45,920
21	45,930	46,550	47,770	49,660	50,510
22	50,100	50,780	52,110	54,180	55,100
23	54,280	55,020	56,450	58,690	59,690
24	58,460	59,250	60,800	63,210	64,280

	<i>Wrongs Act s24b</i>		<i>Civil Liability Act s52(2)(d)</i>			
	2003	2004	2005	2006	2007	2008
25	51,750	53,630	54,960	56,580	58,760	59,570
26	55,200	57,210	58,620	60,350	62,680	63,540
27	58,650	60,780	62,290	64,130	66,590	67,510
28	62,100	64,360	65,950	67,900	70,510	71,480
29	65,550	67,930	69,610	71,670	74,430	75,450
30	69,000	71,510	73,280	75,440	78,340	79,430
31	73,600	76,280	78,160	80,470	83,570	84,720
32	78,200	81,040	83,050	85,500	88,790	90,020
33	82,800	85,810	87,930	90,530	94,010	95,310
34	87,400	90,580	92,820	95,560	99,240	100,610
35	92,000	95,340	97,700	100,590	104,460	105,900
36	96,600	100,110	102,590	105,620	109,680	111,200
37	101,200	104,880	107,480	110,650	114,900	116,490
38	105,800	109,650	112,360	115,680	120,130	121,790
39	110,400	114,410	117,250	120,710	125,350	127,080
40	115,000	119,180	122,130	125,740	130,570	132,380
41	120,750	125,140	128,240	132,020	137,100	139,000
42	126,500	131,100	134,340	138,310	143,630	145,610
43	132,250	137,060	140,450	144,600	150,160	152,230
44	138,000	143,020	146,560	150,890	156,690	158,850
45	143,750	148,980	152,660	157,170	163,220	165,470
46	149,500	154,930	158,770	163,460	169,750	172,090
47	155,250	160,890	164,880	169,750	176,270	178,710
48	161,000	166,850	170,980	176,030	182,800	185,330
49	166,750	172,810	177,090	182,320	189,330	191,950
50	172,500	178,770	183,200	188,610	195,860	198,570
51	179,400	185,920	190,520	196,150	203,700	206,510
52	186,300	193,070	197,850	203,700	211,530	214,450
53	193,200	200,220	205,180	211,240	219,360	222,390
54	200,100	207,370	212,510	218,780	227,200	230,340
55	207,000	214,520	219,840	226,330	235,030	238,280
56	213,900	221,680	227,160	233,870	242,870	246,220
57	220,800	228,830	234,490	241,420	250,700	254,160
58	227,700	235,980	241,820	248,960	258,540	262,110
59	234,600	243,130	249,150	256,500	266,370	270,050
60	241,500	250,280	256,480	264,050	274,200	277,990
* Prescribed maximum	2,281,300	2,364,230	2,422,760	2,494,310	2,590,240	2,626,020
**Prescribed minimum	2,850	2,960	3,030	3,120	3,240	3,280

	2009	2010	2011	2012	2013
25	62,630	63,480	65,140	67,720	68,870
26	66,810	67,710	69,480	72,240	73,460
27	70,980	71,940	73,820	76,750	78,060
28	75,160	76,180	78,170	81,270	82,650
29	79,330	80,410	82,510	85,780	87,240
30	83,510	84,640	86,850	90,300	91,830
31	89,080	90,280	92,640	96,310	97,950
32	94,640	95,920	98,430	102,330	104,070
33	100,210	101,570	104,220	108,350	110,200
34	105,780	107,210	110,010	114,370	116,320
35	111,340	112,850	115,800	120,390	122,440
36	116,910	118,500	121,590	126,410	128,560
37	122,480	124,140	127,380	132,430	134,680
38	128,050	129,780	133,170	138,450	140,810
39	133,610	135,420	138,960	144,470	146,930
40	139,180	141,070	144,750	150,490	153,050
41	146,140	148,120	151,990	158,020	160,700
42	153,100	155,170	159,230	165,540	168,360
43	160,060	162,230	166,470	173,070	176,010
44	167,020	169,280	173,700	180,590	183,660
45	173,980	176,330	180,940	188,110	191,310
46	180,930	183,390	188,180	195,640	198,970
47	187,890	190,440	195,420	203,160	206,620
48	194,850	197,490	202,660	210,690	214,270
49	201,810	204,550	209,890	218,210	221,920
50	208,770	211,600	217,130	225,740	229,580
51	217,120	220,060	225,820	234,770	238,760
52	225,470	228,530	234,500	243,800	247,940
53	233,820	236,990	243,190	252,830	257,120
54	242,170	245,450	251,870	261,860	266,310
55	250,520	253,920	260,560	270,890	275,490
56	258,880	262,380	269,240	279,910	284,670
57	267,230	270,850	277,930	288,940	293,860
58	275,580	279,310	286,610	297,970	303,040
59	283,930	287,770	295,300	307,000	312,220
60	292,280	296,240	303,980	316,030	321,410
* Prescribed maximum	2,760,980	2,798,370	2,871,540	2,985,370	3,036,100
**Prescribed minimum	3,450	3,500	3,590	3,730	3,800

* Prescribed maximum, economic loss – refer to Civil Liability Act 1936 (SA), section 54(2)

**Prescribed minimum, 'medical expenses – refer to Civil Liability Act 1936 (SA), section 52(1)(b)

INJURY SCALE VALUE - DAMAGES FOR NON-ECONOMIC LOSS FROM 1 JULY 2013

ISV	\$Value		
	1 July 2013 to 30 June 2014	1 July 2014 to 20 June 2015	1 July 2015 to 30 June 2016
1 - 10	\$0.00	\$0.00	\$0.00
11	\$3,000	\$3,090	\$3,120
12	\$4,000	\$4,120	\$4,160
13	\$5,000	\$5,150	\$5,210
14	\$6,000	\$6,180	\$6,250
15	\$7,000	\$7,210	\$7,290
16	\$8,000	\$8,240	\$8,330
17	\$9,000	\$9,260	\$9,370
18	\$10,000	\$10,290	\$10,410
19	\$11,000	\$11,320	\$11,450
20	\$12,000	\$12,350	\$12,490
21	\$13,000	\$13,380	\$13,530
22	\$14,000	\$14,410	\$14,580
23	\$15,000	\$15,440	\$15,620
24	\$16,000	\$16,470	\$16,660
25	\$17,000	\$17,500	\$17,700
26	\$18,000	\$18,530	\$18,740
27	\$19,000	\$19,560	\$19,780
28	\$20,000	\$20,590	\$20,820
29	\$21,000	\$21,620	\$21,860
30	\$22,000	\$22,650	\$22,900
31	\$23,000	\$23,680	\$23,950
32	\$26,000	\$26,760	\$27,070
33	\$29,000	\$29,850	\$30,190
34	\$32,000	\$32,940	\$33,320
35	\$35,000	\$36,030	\$36,440
36	\$38,000	\$39,120	\$39,560
37	\$41,000	\$42,200	\$42,690
38	\$44,000	\$45,290	\$45,810
39	\$47,000	\$48,380	\$48,930
40	\$50,000	\$51,470	\$52,060
41	\$53,000	\$54,560	\$55,180
42	\$56,000	\$57,650	\$58,300
43	\$59,000	\$60,730	\$61,430
44	\$62,000	\$63,820	\$64,550
45	\$65,000	\$66,910	\$67,670

ISV	\$Value		
	1 July 2013 to 30 June 2014	1 July 2014 to 20 June 2015	1 July 2015 to 30 June 2016
46	\$70,000	\$72,060	\$72,880
47	\$75,000	\$77,200	\$78,090
48	\$80,000	\$82,350	\$83,290
49	\$85,000	\$87,500	\$88,500
50	\$90,000	\$92,640	\$93,700
51	\$95,000	\$97,790	\$98,910
52	\$100,000	\$102,940	\$104,110
53	\$105,000	\$108,090	\$109,320
54	\$110,000	\$113,230	\$114,520
55	\$115,000	\$118,380	\$119,730
56	\$120,000	\$123,530	\$124,940
57	\$125,000	\$128,670	\$130,140
58	\$130,000	\$133,820	\$135,350
59	\$135,000	\$138,970	\$140,550
60	\$140,000	\$144,110	\$145,760
61	\$145,000	\$149,260	\$150,960
62	\$150,000	\$154,410	\$156,170
63	\$155,000	\$159,550	\$161,380
64	\$160,000	\$164,700	\$166,580
65	\$165,000	\$169,850	\$171,790
66	\$170,000	\$175,000	\$176,990
67	\$180,000	\$185,290	\$187,400
68	\$190,000	\$195,580	\$197,820
69	\$200,000	\$205,880	\$208,230
70	\$210,000	\$216,170	\$218,640
71	\$220,000	\$226,460	\$229,050
72	\$230,000	\$236,760	\$239,460
73	\$240,000	\$247,050	\$249,870
74	\$250,000	\$257,350	\$260,280
75	\$260,000	\$267,640	\$270,700
76	\$270,000	\$277,930	\$281,110
77	\$280,000	\$288,230	\$291,520
78	\$290,000	\$298,520	\$301,930
79 - 100	\$300,000	\$308,810	\$312,340

Note: pursuant to section 52(7) of the *Civil Liability Act 1936* this scale will be adjusted on 1 July each year.

PRESENT VALUE OF AN ANNUITY OF \$1 PER WEEK AS AT 2015

Mortality Improvement Discount Rate 5% per annum. Based on Australian Life Tables 2010 -2012.

Age	Whole of Life		Annuity to age 67		Annuity to age 65		Annuity to age 60	
	Male	Female	Male	Female	Male	Female	Male	Female
0	1,047	1,051	1,021	1,023	1,017	1,019	1,005	1,007
1	1,050	1,053	1,022	1,024	1,018	1,020	1,005	1,007
2	1,049	1,052	1,020	1,022	1,016	1,018	1,002	1,004
3	1,048	1,052	1,018	1,020	1,013	1,015	999	1,001
4	1,047	1,051	1,015	1,017	1,010	1,012	996	998
5	1,045	1,050	1,012	1,015	1,007	1,009	992	994
6	1,044	1,049	1,009	1,012	1,004	1,007	988	990
7	1,043	1,048	1,006	1,009	1,001	1,003	984	986
8	1,041	1,046	1,003	1,006	997	1,000	980	982
9	1,039	1,045	1,000	1,003	994	997	975	978
10	1,038	1,044	996	1,000	990	993	970	973
11	1,036	1,043	992	996	986	989	965	968
12	1,034	1,041	989	992	981	985	960	963
13	1,032	1,040	984	988	977	981	955	958
14	1,030	1,038	980	984	972	976	949	952
15	1,028	1,036	975	980	967	972	943	947
16	1,025	1,034	971	976	962	967	936	941
17	1,023	1,033	966	971	957	962	930	934
18	1,021	1,031	961	966	951	957	923	928
19	1,019	1,029	956	961	946	951	916	921
20	1,016	1,027	950	956	940	945	909	913
21	1,014	1,025	945	950	934	939	901	906
22	1,011	1,022	939	944	927	933	893	898
23	1,008	1,020	932	938	920	926	884	889
24	1,005	1,017	926	932	913	919	875	880
25	1,002	1,015	919	925	906	911	866	871
26	999	1,012	912	918	898	904	856	861
27	995	1,009	904	910	890	895	846	851
28	991	1,006	896	903	881	887	835	840
29	988	1,002	888	894	872	878	824	828
30	984	999	879	886	863	868	812	817
31	979	995	870	877	853	858	799	804
32	975	991	861	867	842	848	786	791
33	970	987	851	857	832	837	773	777
34	966	983	841	847	820	826	759	763
35	961	979	830	836	808	814	743	748
36	955	974	818	824	796	801	728	732
37	950	969	806	812	783	788	711	715
38	944	964	794	800	769	774	694	698
39	938	959	780	787	754	760	676	680
40	931	953	767	773	739	745	657	660
41	925	947	752	758	723	729	637	640
42	917	941	737	743	707	712	616	619
43	910	935	721	727	689	695	594	597
44	902	928	704	711	671	677	571	574
45	894	921	687	693	652	658	547	550
46	886	914	669	675	632	637	521	524
47	877	906	650	656	611	616	495	498
48	868	898	630	636	589	594	467	470
49	858	890	609	615	567	571	438	440
50	848	882	587	593	542	547	407	409
51	838	872	564	570	517	522	375	377
52	827	863	540	546	491	495	341	343

Age	Whole of Life		Annuity to age 67		Annuity to age 65		Annuity to age 60	
	Male	Female	Male	Female	Male	Female	Male	Female
53	816	853	515	521	463	467	306	307
54	804	843	489	494	434	438	268	270
55	792	832	461	466	404	407	229	230
56	780	821	433	437	372	375	188	189
57	767	810	402	406	339	341	145	145
58	754	798	371	374	304	306	99	99
59	740	785	337	341	267	269	51	51
60	725	772	303	305	228	229		
61	710	759	266	268	187	188		
62	695	745	227	229	144	145		
63	679	730	187	188	99	99		
64	663	715	144	144	51	51		
65	646	699	99	99				
66	629	683	51	51				
67	612	667						
68	594	649						
69	575	632						
70	556	613						
71	537	595						
72	518	576						
73	498	556						
74	478	536						
75	458	516						
76	437	495						
77	417	474						
78	397	453						
79	377	431						
80	358	410						
81	338	388						
82	319	367						
83	301	346						
84	283	325						
85	266	305						
86	249	285						
87	233	267						
88	218	249						
89	204	232						
90	191	216						
91	179	201						
92	168	187						
93	159	175						
94	150	164						
95	143	154						
96	137	145						
97	131	137						
98	126	130						
99	122	124						
100	117	119						

Actuarial Calculations provided by Brett & Watson Pty Ltd,
Consulting Actuaries.

Use this information as a guide only – refer to current actuarial certificate for claims estimate.

LIFE EXPECTANCY ACCORDING TO AUSTRALIAN
LIFE TABLES 2010 – 2012

Age	Male	Female	Age	Male	Female	Age	Male	Female
0	80.06	84.31	37	44.36	48.12	74	12.40	14.60
1	79.39	83.60	38	43.41	47.14	75	11.72	13.83
2	78.42	82.62	39	42.46	46.18	76	11.05	13.08
3	77.44	81.63	40	41.51	45.21	77	10.41	12.33
4	76.45	80.64	41	40.57	44.24	78	9.78	11.61
5	75.46	79.65	42	39.62	43.28	79	9.18	10.90
6	74.46	78.66	43	38.68	42.32	80	8.60	10.21
7	73.47	77.66	44	37.75	41.36	81	8.04	9.55
8	72.48	76.67	45	36.81	40.41	82	7.51	8.90
9	71.49	75.68	46	35.88	39.45	83	7.00	8.29
10	70.49	74.68	47	34.95	38.50	84	6.52	7.70
11	69.50	73.69	48	34.03	37.56	85	6.06	7.14
12	68.51	72.69	49	33.11	36.61	86	5.64	6.61
13	67.51	71.70	50	32.20	35.67	87	5.24	6.11
14	66.52	70.70	51	31.29	34.74	88	4.87	5.65
15	65.53	69.71	52	30.38	33.80	89	4.52	5.22
16	64.55	68.72	53	29.49	32.87	90	4.21	4.82
17	63.56	67.74	54	28.59	31.95	91	3.92	4.45
18	62.59	66.76	55	27.71	31.02	92	3.66	4.12
19	61.63	65.77	56	26.83	30.10	93	3.44	3.82
20	60.67	64.79	57	25.95	29.19	94	3.24	3.55
21	59.70	63.81	58	25.09	28.28	95	3.06	3.32
22	58.74	62.82	59	24.22	27.37	96	2.91	3.11
23	57.78	61.84	60	23.37	26.47	97	2.78	2.93
24	56.81	60.86	61	22.52	25.57	98	2.67	2.77
25	55.85	59.87	62	21.68	24.68	99	2.57	2.62
26	54.89	58.89	63	20.85	23.80	100	2.46	2.50
27	53.92	57.90	64	20.03	22.92	101	2.36	2.38
28	52.96	56.92	65	19.22	22.05	102	2.27	2.27
29	52.00	55.94	66	18.41	21.18	103	2.19	2.17
30	51.04	54.96	67	17.62	20.33	104	2.11	2.08
31	50.08	53.98	68	16.84	19.48	105	2.03	2.00
32	49.13	53.00	69	16.07	18.64	106	1.96	1.92
33	48.17	52.02	70	15.31	17.80	107	1.90	1.85
34	47.22	51.04	71	14.56	16.98	108	1.84	1.79
35	46.26	50.06	72	13.83	16.18	109	1.79	1.73
36	45.31	49.09	73	13.11	15.38			

Australian Life Tables 2010-12, published by the Australian Government Actuary

LUMP SUM EQUIVALENT

Lump Sum equivalent to an income of \$1 deferred for periods from 1 to 50 Years. Calculated at interest rates of 3% and 5%

Period in years	Lump Sum 3%	Lump Sum 5%	Period in years	Lump Sum 3%	Lump Sum 5%
1	0.971	0.952	26	0.464	0.281
2	0.943	0.907	27	0.450	0.268
3	0.915	0.864	28	0.437	0.255
4	0.888	0.823	29	0.424	0.243
5	0.863	0.784	30	0.412	0.231
6	0.837	0.746	31	0.400	0.220
7	0.813	0.711	32	0.388	0.210
8	0.789	0.677	33	0.377	0.200
9	0.766	0.645	34	0.366	0.190
10	0.744	0.614	35	0.355	0.181
11	0.722	0.585	36	0.345	0.173
12	0.701	0.557	37	0.335	0.164
13	0.681	0.530	38	0.325	0.157
14	0.661	0.505	39	0.316	0.149
15	0.642	0.481	40	0.307	0.142
16	0.623	0.458	41	0.298	0.165
17	0.605	0.436	42	0.289	0.129
18	0.587	0.416	43	0.281	0.123
19	0.570	0.396	44	0.272	0.117
20	0.554	0.377	45	0.264	0.111
21	0.538	0.359	46	0.257	0.106
22	0.522	0.342	47	0.249	0.101
23	0.507	0.326	48	0.242	0.096
24	0.492	0.310	49	0.235	0.092
25	0.478	0.295	50	0.228	0.087

Actuarial Calculations provided by Brett & Watson Pty Ltd, Consulting Actuaries.

Use this information as a guide only – refer to current actuarial certificate for claims estimate.

BANKS FIXED INTEREST (12 MONTH DEPOSIT RATE)

Year	Interest Rate (%)
2014	3.28
2013	3.75
2012	4.63
2011	5.93
2010	6.0
2009	4.1
2008	6.45
2007	5.93
2006	5.0

Year	Interest Rate (%)
2005	4.6
2004	4.76
2003	3.92
2002	4.01
2001	4.15
2000	5.82

Interest rates calculated with reference to 'Retail deposit and interest rates' data published by the Reserve Bank of Australia, May 2015.

SOUTH AUSTRALIAN AVERAGE WEEKLY EARNINGS

"male – Full-time Adult Average Weekly Ordinary Time Earnings for South Australia"

Date	Average Weekly Earnings
Nov 2014	1,412.20
May 2014	1,444.30
Nov 2013	1,399.60
May 2013	1,356.40
Nov 2012	1,341.10
May 2012	1,302.20
Feb 2012	1,282.90
Nov 2011	1,287.70
Aug 2011	1,294.70
May 2011	1,261.50
Feb 2011	1 243.20
Nov 2010	1 231.10
Aug 2010	1200.00
May 2010	1190.80
Feb 2010	1204.10
Nov 2009	1193.70
Aug 2009	1189.90

Date	Average Weekly Earnings
May 2009	1180.40
Feb 2009	1157.80
Nov 2008	1159.10
Aug 2008	1125.60
May 2008	1100.10
Feb 2008	1086.60
Nov 2007	1086.70
Aug 2007	1060.30
May 2007	1041.40
Feb 2007	1025.70
Nov 2006	1024.80
Aug 2006	1012.00
May 2006	1003.80
Feb 2006	1012.20
Nov 2005	967.10
Aug 2005	959.20
May 2005	952.70

Date	Average Weekly Earnings
Feb 2005	948.10
Nov 2004	923.50
Aug 2004	911.40
May 2004	888.80
Feb 2004	886.80
Nov 2003	890.50

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To be read in conjunction with section 58 of *Civil Liability Act 1936 (SA)* and regulation 18 of the *Civil Liability Regulations 2013 (SA)*.

INDIVIDUAL RESIDENT INCOME TAX RATES

Financial year	Taxable income \$	Tax rate %
2013 – 2014 2012 – 2013	\$0 - \$18,200	Nil
	\$18,201 - \$37,000	19
	\$37,001 - \$80,000	32.5
	\$80,001 - \$180,000	37
	\$180,001 and over	45
2011 – 2012 2010 – 2011	\$0 – \$6,000	Nil
	\$6,001 – \$37,000	15
	\$37,001 – \$80,000	30
	\$80,001 – \$180,000	37
	\$180,001 and over	45
2009 – 2010	\$1 – \$6,000	Nil
	\$6,001 – \$35,000	15
	\$35,001 – \$80,000	30
	\$80,001 – \$180,000	38
	\$180,001 and over	45
2008 – 2009	\$0 – \$6,000	Nil
	\$6,001 – \$34,000	15
	\$34,001 – \$80,000	30
	\$80,001 – \$180,000	40
	\$180,000 and over	45
2007 – 2008	\$0 – \$6,000	Nil
	\$6,001 – \$30,000	15
	\$30,001 – \$75,000	30
	\$75,001 – \$150,000	40
	\$150,000 and over	45

Financial year	Taxable income \$	Tax rate %
2006 – 2007	\$0 – \$6,000	Nil
	\$6,001 – \$25,000	15
	\$25,001 – \$75,000	30
	\$75,001 – \$150,000	40
	\$150,000 and over	45
2005 – 2006	\$0 – \$6,000	Nil
	\$6,001 – \$21,600	15
	\$21,601 – \$63,000	30
	\$63,001 – \$95,000	42
	\$95,000 and over	47
2004 – 2005	\$0-6,000	Nil
	\$6,001 – 21,600	17
	\$21,601 – 58,000	30
	\$58,001 – 70,000	42
	\$70,001 and over	47
2003 – 2004	\$0 – 6,000	Nil
	\$6,001 – 21,600	17
	\$21,601– 52,000	30
	\$52,001 – 62,500	42
	\$62,501 and over	47

Note 1: Tax rates are a guide only. For more precise calculations refer to the ATO website: www.ato.gov.au/calculators-and-tools

Note 2: Rates are incremental. Eg: taxable income of \$50,000 in 2013-2014 year

Step 1: $\$37,000 - \$18,200 = \$18,800 \times 19\% = \$3,572.00$

Step 2: $\$50,000 - 37,000 = \$13,000 \times 32.5\% = \$4,225.00$

Total tax payable on \$50,000 = \$7,797.00

Motor Vehicles Act 1959 (SA)

SCHEDULE 4 – POLICY OF INSURANCE

Effective from: 10 July 2011

- (1) The insurer insures the owner of the motor vehicle and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in any part of the Commonwealth.
- (2) A person so insured warrants that he or she will not—
 - (a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results; or
 - (b) drive the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or
 - (c) drive the vehicle while there is present in his or her blood a concentration of .1 grams or more of alcohol in 100 millilitres of blood; or
 - (d) drive the vehicle while not duly licensed or otherwise permitted by law to drive the motor vehicle; or
 - (e) drive the vehicle while the vehicle is overloaded, or in an unsafe, unroadworthy or damaged condition; or
 - (f) use the vehicle otherwise than—
 - (i) for purposes stated in the application for registration, renewal of registration, exemption from registration or a permit, in respect of the vehicle; or
 - (ii) if trade plates are affixed to the vehicle—for purposes stated in the application for the issuing of those plates; or
 - (iii) for purposes agreed on between the insurer and the registered owner of the vehicle; or
 - (g) if the person is the driver of the vehicle when it is involved in an accident in which a person is killed or injured—commit an offence against section 43 of the Road Traffic Act 1961.
- (3) The owner of the vehicle warrants that no other person will, with his or her knowledge or consent (which will be presumed in any proceedings in the absence of proof to the contrary), drive or use the vehicle, or do or omit to do anything in relation to the vehicle, contrary to any of the paragraphs of clause 2.

- (4) This policy of insurance does not extend to liability arising from death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

SECTION 99 (3) – INTERPRETATION

Effective from: 10 July 2011

- (3) Subject to subsection (3a), for the purposes of this Part and Schedule 4, death or bodily injury will be regarded as being caused by or arising out of the use of a motor vehicle only if it is a direct consequence of—
 - (a) the driving of the vehicle; or
 - (b) the vehicle running out of control; or
 - (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.

SECTION 124—DUTY TO COOPERATE WITH INSURER

Effective from: 1 July 2011

- (1) Where an accident caused by, or arising out of the use of, a motor vehicle results in the death of, or bodily injury to, any person, written notice must be given as soon as practicable to the person who is the insurer under a policy of insurance in respect of the vehicle stating in detail—
 - (a) the fact of the accident; and
 - (b) the time and place at which it occurred; and
 - (c) the circumstances of the accident; and
 - (ca) the name, date of birth and address of the driver of the motor vehicle at the time of the accident; and
 - (d) the name and address of any person killed or injured in the accident; and
 - (e) the names and addresses of any witnesses of the accident.
- (2) Where notice is not given as required by subsection (1), the owner, the person in charge, and the driver, of the motor vehicle at the time of the accident are each guilty of an offence.
Maximum penalty: \$1 250 or imprisonment for 3 months.
- (3) It is a defence to a prosecution under subsection (2)—
 - (a) that the defendant did not know of the accident, or gave the requisite notice as soon as practicable after the accident came to his or her knowledge; or

- (b) that the defendant believed upon reasonable grounds that the requisite notice had been given; or
 - (c) if the defendant has not given notice of a particular detail as required by subsection (1)—that the defendant, having made reasonable inquiries, complied with the requirements of subsection (1) to the best of the defendant's knowledge, information and belief.
- (3a) A person who at the time of an accident of a kind referred to in subsection (1) was the owner, the person in charge, or the driver, of the motor vehicle must co-operate fully with the insurer in respect of a claim made in respect of the accident.
Maximum penalty: \$5 000.
- (3b) The duty to co-operate under subsection (3a) will include, in the case of the owner, a duty to give the insurer access to the vehicle, and, if required, possession of the vehicle, or part of the vehicle, on reasonable terms and conditions.
- (4) Where a claim is made upon an insured person in respect of an accident of a kind referred to in subsection (1), the insured person must as soon as practicable give notice of the claim to the insurer and furnish the insurer with such information in relation to the claim as the insurer may reasonably require.
Maximum penalty: \$750.
- (5) The insurer may, by notice in writing, require—
- (a) the driver of the motor vehicle at the time of the accident to produce the licence or permit in pursuance of which he or she was driving the motor vehicle, for the inspection of the insurer; or
 - (b) the owner of the motor vehicle at the time of the accident to produce prescribed documents relating to the motor vehicle, for the inspection of the insurer, and if a person of whom such a requirement has been duly made fails to comply with the requirement the person is guilty of an offence.
- Maximum penalty: \$750.
- (6) A person must not give any notice or information under this section that is, to his or her knowledge, false or misleading in any material particular.
Maximum penalty: \$50 000 or imprisonment for one year.

- (6a) Where a claim is made in respect of an accident of a kind referred to in subsection (1), a person must not give the insurer, or someone known by the person to be engaged by the insurer in connection with the claim, any information that the person knows is material to the claim and is false or misleading.

Maximum penalty: \$50 000 or imprisonment for one year.

- (6b) If—
- (a) an amount has been paid to the claimant in connection with a claim in respect of an accident of a kind referred to in subsection (1); and
 - (b) the claimant has been found guilty of an offence against subsection (6) or (6a) in connection with the claim, the person who made the payment is entitled to recover from the claimant the amount of any financial benefit that the claimant gained from the commission of the offence together with any amount that the court considers appropriate in respect of costs incurred in connection with the claim.
- (7) A notice or information given under this section is privileged from production or disclosure in any legal proceedings except proceedings under this Part.

SECTION 126A—CLAIM FOR COMPENSATION

Effective from: 1 July 2013

- (1) A person who seeks to make a claim for damages or other compensation in relation to the death of, or bodily injury to, a person for which insurance is provided under this Part must furnish the insurer or the nominal defendant (as the case may be) with a notice of claim that complies with the requirements of subsection (2).
- (2) A notice under subsection (1)—
- (a) must be provided at a time or within a period prescribed by the regulations; and
 - (b) must be furnished in a manner and form approved by the Minister; and
 - (c) must set out or be accompanied by—
 - (i) a statement setting out details of the claim; and
 - (ii) a certificate or opinion as to the nature and probable cause of the death or injury (as the case requires) provided by a medical practitioner; and

- (iii) the relevant police report number for any report provided to a police officer under the *Road Traffic Act 1961* in connection with the relevant accident; and
 - (iv) such other report or other information in relation to the accident or the claim as may be prescribed by the regulations; and
- (d) must be accompanied by a statement (in a form prescribed by the regulations) authorising the insurer or the nominal defendant to have access to records and other sources of information relevant to the claim.
- (3) Any material or information required under subsection (2)(c) must comply with any requirements prescribed by the regulations.
- (4) An insurer or the nominal defendant must, within 21 days of receiving any record or other information under subsection (2)(d), send a copy of the report or information to the claimant (or a legal practitioner engaged by the claimant).
- (5) An insurer and the nominal defendant must establish practices and procedures designed to assist claimants to comply with the requirements of the preceding subsections.
- (6) If a person fails to comply with a preceding subsection—
- (a) the insurer or the nominal defendant (as the case may be) may decline to consider or deal with the claim while the failure continues; and
 - (b) the person is not entitled, until he or she complies with the relevant requirements, to commence proceedings or to continue proceedings that have been commenced in respect of the death or injury.
- (7) Subsection (6) operates subject to any provision made by the regulations about qualifying or restricting the effect of failing to comply with the requirements of this section.
- (8) In this section—
- medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

SECTION 127—MEDICAL EXAMINATION OF CLAIMANTS

Effective prior to 1 July 2013

- (1) In this section—
- claimant** means a person who has made a claim, or on whose behalf a claim has been made, for bodily injury caused by or arising out of the use of a motor vehicle.
- (2) A claimant must—
- (a) submit himself or herself to any medical examination by a legally qualified medical practitioner nominated by the insurer that the insurer may require; and
 - (b) within 21 days of consulting a legally qualified medical practitioner in relation to the injury to which the claim relates, or such longer period as may be reasonable in the circumstances of the case or as the insurer may allow, inform the insurer, by notice in writing, of—
 - (i) the name of the medical practitioner; and
 - (ii) the day on which the consultation occurred; and
 - (c) within 21 days of receiving (either personally or through a legal practitioner engaged by the claimant) a written report from a legally qualified medical practitioner consulted by the claimant in relation to the injury, or such longer period as may be reasonable in the circumstances of the case, send a copy of that report to the insurer.
- (3) A claimant cannot be required to submit to a medical examination under subsection (2)(a) more frequently than is permitted by the regulations.
- (4) The cost of a medical examination under subsection (2)(a) must be borne by the insurer.
- (5) If a claimant fails to comply with subsection (2)(a)—
- (a) the claimant is not entitled, until he or she complies with the subsection, to commence proceedings or to continue proceedings that have been commenced in respect of the injury; and
 - (b) if proceedings have been commenced, the court may award costs against the claimant; and
 - (c) the claimant is not entitled to damages, compensation, interest or costs for any period during which the failure continues.

- (6) If a claimant fails to comply with subsection (2)(b) or (c) and proceedings have been commenced before a court—
- (a) the court may award costs against the claimant; and
 - (b) the court may take that failure into account in assessing an award of compensation in favour of the claimant.
- (6a) Subsection (6) will not apply to any failure by a claimant to comply with subsection (2)(c) if the claimant has dealt with the medical report and taken other action in accordance with any rules of the court under which a party to proceedings may be relieved from the obligation to disclose to another party a medical report the disclosure of which would unfairly prejudice the party's case.
- (7) In deciding on an award of costs under subsection (6) (a) or a reduction in an award of compensation under subsection (6)(b), the court may take into account—
- (a) the effect that the non-compliance with subsection (2)(b) or (c) has had on the proper conduct of the case by any other party to the action; and
 - (b) the effect that that non-compliance may have had on the possibility of settling the case before trial.
- (8) Where a written report is obtained by the insurer on the findings made, or the opinions formed, by a legally qualified medical practitioner on the examination of a claimant under subsection (2)(a), the insurer must, within 21 days of receiving the report, send a copy of the report to the claimant (or a legal practitioner engaged by the claimant).

SECTION 127 – MEDICAL EXAMINATION OF CLAIMANTS

Effective from: 1 July 2013

- (1) In this section—
- claimant** means a person who has made a claim, or on whose behalf a claim has been made, for bodily injury caused by or arising out of the use of a motor vehicle.
- (2) A claimant must—
- (b) within 21 days of consulting a legally qualified medical practitioner in relation to the injury to which the claim relates, or such longer period as may be reasonable in the circumstances of the case or as the insurer may allow, inform the insurer, by notice in writing, of—

- (i) the name of the medical practitioner; and
 - (ii) the day on which the consultation occurred; and
- (c) within 21 days of receiving (either personally or through a legal practitioner engaged by the claimant) a written report from a legally qualified medical practitioner consulted by the claimant in relation to the injury, or such longer period as may be reasonable in the circumstances of the case, send a copy of that report to the insurer.
- (6) If a claimant fails to comply with subsection (2)(b) or (c) and proceedings have been commenced before a court—
- (a) the court may award costs against the claimant; and
 - (b) the court may take that failure into account in assessing an award of compensation in favour of the claimant.
- (6a) Subsection (6) will not apply to any failure by a claimant to comply with subsection (2)(c) if the claimant has dealt with the medical report and taken other action in accordance with any rules of the court under which a party to proceedings may be relieved from the obligation to disclose to another party a medical report the disclosure of which would unfairly prejudice the party's case.
- (7) In deciding on an award of costs under subsection (6) (a) or a reduction in an award of compensation under subsection (6)(b), the court may take into account—
- (a) the effect that the non-compliance with subsection (2)(b) or (c) has had on the proper conduct of the case by any other party to the action; and
 - (b) the effect that that non-compliance may have had on the possibility of settling the case before trial.

SECTION 127A – CONTROL OF MEDICAL SERVICES AND CHARGES FOR MEDICAL SERVICES TO INJURED PERSONS

Effective from: 1 July 2013

- (1) In this section—
- injured person** means a person who has suffered bodily injury caused by or arising out of the use of a motor vehicle; prescribed limit, in relation to prescribed services, means the limit applying to the prescribed services for the purposes of section 32 of the Workers Rehabilitation and Compensation Act 1986;

prescribed scale, in relation to prescribed services, means the scale of charges applying to the prescribed services for the purposes of section 32 of the Workers Rehabilitation and Compensation Act 1986;

prescribed services means services of a kind referred to in section 32(2) of the Workers Rehabilitation and Compensation Act 1986, but does not include services of a kind excluded from the application of this section by notice made under subsection (2).

- (2) The Minister may, by notice in the Gazette—
- (a) require that, for the purposes of this section, the scales of charges made for the purposes of section 32 of the Workers Rehabilitation and Compensation Act 1986 be read subject to modifications specified in the notice;
 - (b) exclude specified services from the application of this section;
 - (c) vary or revoke a notice under this subsection.
- (3) The Minister must, before issuing a notice under subsection (2)(a) or a notice varying or revoking such a notice, consult with professional associations representing the providers of services to which the notice relates
- (3a) In addition, the Minister may, by instrument in writing, in relation to a particular case or class of case, increase a limit or charge that applies for the purposes of this section (and the prescribed limit or prescribed scale will, in that case, then be taken to be increased to the extent allowed by the instrument).
- (4) For the purposes of this section, a reference in section 32 of the Workers Rehabilitation and Compensation Act 1986 or the scales of charges made for the purposes of that section to a worker is to be taken to include a reference to an injured person.
- (5) For the purposes of this section, a charge for prescribed services is excessive if—
- (a) the charge exceeds the prescribed limit or the charge allowed for the prescribed services under the prescribed scale; or
 - (b) in the case of prescribed services for which there is not a prescribed limit and to which a prescribed scale does not apply—the charge exceeds an amount that the Magistrates Court considers reasonable for the provision of the services.
- (6) The Magistrates Court may, on application by the insurer—
- (a) where an injured person has been charged an excessive amount for prescribed services—reduce the charge by the amount of the excess and, if the charge has been paid to the service provider, order the service provider to pay the amount of the excess to the insurer; or
 - (b) where an injured person has received prescribed services that the Court considers were, in the circumstances of the case, inappropriate or unnecessary—disallow the charge for the services and, if the charge has been paid to the service provider, order the service provider to pay the amount of the charge to the insurer.
- (7) Proceedings may not be commenced under subsection (6)(a) in relation to a charge for a prescribed service for which there is not a prescribed limit and to which a prescribed scale does not apply if, prior to the injured person being charged for the service, the insurer agreed to the amount of the charge.
- (8) Proceedings may not be commenced under subsection (6) unless the insurer has—
- (a) first given the service provider notice that the insurer claims the charge to be excessive or the services to be inappropriate or unnecessary, as the case may be, and of the reasons for the claim; and
 - (b) allowed at least 30 days from the giving of the notice for the service provider and any professional association or other person acting on behalf of the service provider to respond to the claim and consult with the insurer; and
 - (c) given due consideration to any response to the claim and proposals for settlement of the matter made by or on behalf of the service provider; and
 - (d) given the service provider notice of the result of the insurer's consideration of the matter and allowed a further period of 30 days to elapse from the giving of that notice for any further consultations if requested by the service provider.
- (9) A person who provides prescribed services to an injured person, knowing that the person's injury has been caused by or arisen out of the use of a motor vehicle, must not, if a prescribed scale applies to the services, charge an amount for the services exceeding the amount allowed under the prescribed scale.
- Maximum penalty: \$1 250.

- (10) Proceedings may not be commenced under subsection (6) or for an offence against subsection (9) in respect of prescribed services provided in relation to bodily injury caused by or arising out of the use of a motor vehicle unless liability to damages (whether being the whole or part only of the amount claimed) in respect of that injury has been accepted by or established against an insured person or the insurer.
- (11) Proceedings for an offence against subsection (9) may be commenced at any time within 12 months after—
 - (a) liability to damages (whether being the whole or part only of the amount claimed) has been accepted or established as referred to in subsection (10); or
 - (b) receipt by the insurer of an account for payment of the charge to which the proceedings relate, whichever is the later.
- (12) In proceedings for an offence against subsection (9) it is a defence if the defendant proves that, at the time the defendant charged for the services, the defendant, having made reasonable inquiries, had reason to believe that neither an insured person nor the insurer has or might have any liability to damages in respect of the injury.

SECTION 127B—LIABILITY OF INSURER TO PAY TREATMENT, CARE AND SUPPORT COSTS

Effective from: 1 July 2013

- (1) In this section—

treatment, care and support needs of a person are the person's needs for or in connection with any of the following:

 - (a) medical treatment (including pharmaceuticals);
 - (b) dental treatment;
 - (c) rehabilitation;
 - (d) ambulance transportation;
 - (e) aids and appliances;
 - (f) prostheses;
 - (g) such other kinds of treatment, care, support or services as may be prescribed by the regulations.
- (2) Subject to this section, if—
 - (a) a person who has not attained the age of 16 years suffers bodily injury caused by or arising out of the use of a motor vehicle; and

- (b) the incident to which the bodily injury is attributable occurs in South Australia, then the insurer is liable to pay all the necessary and reasonable expenses with respect to the treatment, care and support needs of the person (including after he or she attains the age of 16 years) that are attributable to that bodily injury.
- (3) This section applies whether or not a liability at common law exists against the owner of the relevant motor vehicle or other person on account of the occurrence of the bodily injury (but any award of damages must take into account the extent to which an entitlement arises under this section).
- (4) This section does not apply in relation to a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.
- (5) Section 127A will apply to any services under this section insofar as they are prescribed services under that section.
- (6) If a person suffered the bodily injury as a result of or partly as a result of the fault of another person (the wrongdoer), the insurer is entitled to recover from the wrongdoer as a debt due to the insurer such proportion of the present value of the insurer's treatment, care and support liabilities in respect of the person's bodily injury as corresponds to the wrongdoer's share in the responsibility for the injury.
- (7) The present value of the insurer's treatment, care and support liabilities in respect of a bodily injury is the sum of the following amounts:
 - (a) amounts already paid by the insurer under this section in respect of the treatment, care and support needs associated with the bodily injury; and
 - (b) the present value of the amounts that the insurer estimates will be payable by the insurer in the future under this section in respect of the treatment, care and support needs associated with the bodily injury.

SECTION 127C—CONTROL OF LEGAL COSTS

Effective from: 1 July 2013

- (1) Subject to subsection (3), a court before which proceedings are brought in respect of a claim for which a person is insured under this Part must comply with the following provisions as to costs in relation to the claimant:
- (a) if the total amount recovered in respect of the claim does not exceed \$25 000—the court must not award in favour of the claimant costs as between party and party unless the court is of the opinion that there are exceptional circumstances justifying the award of such costs;
 - (b) if the total amount recovered in respect of the claim exceeds \$25 000 but does not exceed \$100 000—the court must not award in favour of the claimant costs in respect of the proceedings in excess of the costs applying under the designated scale unless the court is satisfied that there are exceptional circumstances justifying the award of additional costs.
- (2) A court before which proceedings are brought in respect of a claim for which a person is insured under this Part must comply with the following provisions as to costs in relation to the defendant:
- (a) if the total amount claimed does not exceed \$25 000—the court must not award in favour of the defendant costs as between party and party unless the court is of the opinion that there are exceptional circumstances justifying the award of such costs;
 - (b) if the total amount claimed exceeds \$25 000 but does not exceed \$100 000—the court must not award in favour of the defendant costs in respect of the proceedings in excess of the costs applying under the designated scale unless the court is satisfied that there are exceptional circumstances justifying the award of additional costs.
- (3) If proceedings are brought before a court in order to obtain approval of a compromise or settlement that relates to a person who is under a legal disability, subsection (1)(a) does not apply so as to prevent an award of costs as between party and party insofar as the costs are directly related to obtaining that approval.
- (4) In this section—
- designated scale** means the scale of costs that apply in relation to civil proceedings in the Magistrates Court of South Australia (even if the claim against the insurer is for an amount that exceeds the jurisdictional limit of that court), subject to any modifications made by the regulations for the purposes of this section.

Motor Vehicles (Third Party Insurance) Regulations 2013

REGULATION 3—INTERPRETATION

In these regulations—

- » **Act** means the *Motor Vehicles Act 1959*;
- » **motor vehicle injury** means a bodily injury to a person caused by or arising out of the use of a motor vehicle;
- » **relevant motor vehicle accident** means the motor vehicle accident that results in the motor vehicle injury that is relevant for the purposes of the application of the Act in relation to a particular person.

REGULATION 4—CLAIM FOR COMPENSATION (SECTION 126A OF ACT)

- (1) A notice of a claim under section 126A(1) of the Act must be given—
 - (a) in the case of a notice of a claim in relation to an action against the nominal defendant—as soon as reasonably practicable after it becomes apparent that—
 - (i) the identity of the relevant motor vehicle is not readily ascertainable; or
 - (ii) the relevant motor vehicle was uninsured; or
 - (b) in any other case—within 6 months after the relevant motor vehicle accident.
- (2) A failure to comply with subregulation (1) does not attract the operation of section 126A(6) of the Act if—
 - (a) the failure to give the notice of claim within the relevant period was occasioned by—
 - (i) ignorance or mistake of the claimant; or
 - (ii) absence of the claimant from the State; or
 - (iii) inability of the claimant on account of injury; or
 - (iv) inability of the claimant on account of the claimant's legal disability; or
 - (v) other reasonable cause; and
 - (b) the proper assessment of the claim has not been substantially prejudiced.
- (3) Nothing in section 126A of the Act (or these regulations) affects the ability of a person to commence or continue proceedings once the person has provided the information and statements referred to in subsection (2) (c) and (d) of that section (including after the period referred to in subregulation (1) has expired).

REGULATION 5—INFORMATION THAT MUST ACCOMPANY NOTICE OF CLAIM (SECTION 126A(2)(C)(IV) OF ACT)

- Pursuant to section 126A(2)(c)(iv) of the Act, a notice of claim under subsection (1) of that section must be accompanied by—
- (a) if the claim includes loss of income or earning capacity—evidence of income or earning capacity, including, for example, relevant payslips, PAYG payment summaries or income tax returns; and
 - (b) if the claim includes payment of medical expenses—evidence of expenses incurred up to the date of the claim, including, for example, accounts or receipts in respect of medical services; and
 - (c) if the claim relates to the death of a person and is brought under Part 5 of the *Civil Liability Act 1936*—the certificate of death of that person; and
 - (d) if the claimant was injured while driving a motor vehicle—the claimant's driver's licence number; and
 - (e) if the claimant was not driving a motor vehicle when he or she was injured—proof of the claimant's identity.

REGULATION 6—AUTHORITY TO OBTAIN INFORMATION (SECTION 126A(2)(D) OF ACT)

- (1) The prescribed form for a statement of authority to obtain information under section 126A(2)(d) of the Act is set out in Schedule 1.
- (2) Subject to subregulation (3), an authority to obtain information provided by a person under this regulation operates for the duration of the person's claim for compensation in respect of the relevant motor vehicle injury, unless revoked.
- (3) An authority to obtain information under this regulation is irrevocable for a period of 6 months from the date on which it is executed.

REGULATION 7—LIABILITY OF INSURER TO PAY TREATMENT, CARE AND SUPPORT COSTS (SECTION 127B(1)(G) OF ACT)

- (1) For the purposes of section 127B(1)(g) of the Act, the *treatment, care and support needs* of a child are the child's needs for or in connection with any of the following:
 - (a) education and vocational training;
 - (b) home and transport modification;
 - (c) such other kinds of treatment, care, support or services as may be approved by the insurer (either generally, for specified classes of cases, or for a particular person).
- (2) This regulation will expire on 1 July 2016.

Civil Liability Act 1936 (SA) - Effective prior to 1 July 2013

Effective prior to 1 July 2013

SECTION 3—INTERPRETATION

In this Act, unless the contrary intention appears—

- » **accident** means an incident out of which personal injury arises and includes a motor accident;
- » **brother** includes half-brother and step-brother;
- » **child** includes son, daughter, grandson, granddaughter, step-son and step-daughter;
- » **consequential mental harm** means mental harm that is a consequence of bodily injury to the person suffering the mental harm;
- » **Consumer Price Index** means the Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under the *Census and Statistics Act 1905* (Cwth);
- » **contributory negligence** means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;
- » **damages** means compensation or damages for harm and includes solatium but does not include—
 - (a) workers compensation; or
 - (b) compensation under a statutory scheme for compensating victims of crime;
- » **domestic partner**, in relation to any cause of action arising under this Act, means a person declared under the *Family Relationships Act 1975* to have been a domestic partner on the day on which the cause of action arose;
- » **drive** includes ride, and *driver* and *rider* have corresponding meanings;
- » **duty of care** means a duty to take reasonable care or to exercise reasonable skill (or both);
- » **harm** includes loss of life, personal injury, damage to property, economic loss and loss of any other kind;
- » **health care service** includes—
 - (a) a diagnostic service;
 - (b) a therapeutic service;
 - (c) any other service directed at maintaining or restoring health;
- » **intoxicated**—a person is intoxicated if under the influence of alcohol or a drug to the extent that the person's capacity to exercise due care and skill is impaired;
- » **medical expenses** includes—
 - (a) the fees of medical practitioners and other professional medical advisers and therapists; and
 - (b) the cost of hospitalisation; and
 - (c) the cost of medicines and therapeutic appliances;
- » **mental harm** means impairment of a person's mental condition;
- » **motor accident** means an incident in which personal injury arises out of the use of a motor vehicle;
- » **motor vehicle** means—
 - (a) a motor vehicle as defined in the *Motor Vehicles Act 1959*; or
 - (b) a vehicle operated on a railway, tramway or other fixed track or path by—
 - (i) a person who holds a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) a person who holds an accreditation under the *Rail Safety Act 1996*;
- » **negligence** means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care;
- » **non-economic loss** means—
 - (a) pain and suffering; or
 - (b) loss of amenities of life; or
 - (c) loss of expectation of life; or
 - (d) disfigurement;
- » **obvious risk**—see section 36;
- » **parent** includes father, mother, grandfather, grandmother, step-father and step-mother;
- » **passenger compartment** of a motor vehicle means a part of the vehicle designed for the carriage of passengers;
- » **personal injury or injury** means bodily injury and includes—
 - (a) mental harm;
 - (b) death;
- » **precaution** includes any action to avoid or reduce the risk of harm;
- » **prescribed discount rate** means—
 - (a) if no percentage is fixed by regulation for the purposes of this definition—5 per cent; or
 - (b) if such a percentage is fixed by regulation—the percentage so fixed;

- » **prescribed maximum** means—
 - (a) in relation to an injury arising from an accident that occurred during 2002—\$2.2 million; or
 - (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;
- » **prescribed minimum** means—
 - (a) in relation to an injury arising from an accident that occurred during 2002—\$2 750; or
 - (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;
- » **pure mental harm** means mental harm other than consequential mental harm;
- » **sister** includes half-sister and step-sister;
- » **spouse**, in relation to any cause of action arising under this Act, means a person who was legally married to another on the day on which the cause of action arose;
- » **State average weekly earnings** means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.

PART 5—WRONGFUL ACTS OR NEGLIGENCE CAUSING DEATH

SECTION 23—LIABILITY FOR DEATH CAUSED WRONGFULLY

Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to an indictable offence.

SECTION 24—HOW TO BRING ACTION ETC

- (1) Every such action shall be for the benefit of the spouse, domestic partner, parent, brother, sister and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.
- (2) In every such action, the court may, subject to this Act, give such damages as it thinks proportioned to the harm resulting from the death to the parties respectively for whom and for whose benefit the action is brought.
 - (2a) In any such action in respect of the death of any person after the passing of the *Wrongs Act Amendment Act 1939* damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.
 - (2aa) In assessing damages under this section in any action based on a death occurring after the passing of the *Wrongs Act Amendment Act 1956* there shall not be taken into account—
 - (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of the said Act;
 - (b) any sum paid or payable consequent on the death of the deceased person as a gratuity to any person for whose benefit the action is brought;
 - (c) any superannuation payments or benefits consequent upon the death of the deceased person;
 - (d) any sum paid or payable consequent upon the death of the deceased person under any contributory medical hospital death or funeral benefit scheme;

- (e) any sum paid or payable as a social service benefit or pension by the Governments of the Commonwealth of Australia, or the United Kingdom, or the State of South Australia to or in respect of any person for whose benefit the action is brought;
 - (f) any sum recovered or recoverable for the benefit of the estate of the deceased under section 3(2) of the *Survival of Causes of Action Act 1940* (which permits the recovery of damages for certain kinds of non-economic loss where the deceased dies of a dust-related condition).
- (3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.
 - (4) Where a deceased person is survived by a spouse and a domestic partner, the action shall, subject to this section, be brought for the benefit of both.
 - (5) An action need not be brought under this section for the benefit of a person who has, by notice in writing served upon the executor or administrator of the deceased, renounced the benefit of this section.
 - (6) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.
 - (7) No action lies against the executor or administrator for failing to bring an action for the benefit of a domestic partner if he brings the action without notice of the claim of the domestic partner under this section, but the interest of any such domestic partner in the action shall be recognised by the court if application for recognition is made to the court before the proceedings are finally determined.

SECTION 25—RESTRICTION OF ACTIONS AND TIME OF COMMENCEMENT

Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within three years after the death of the deceased person.

SECTION 26—PARTICULARS OF PERSON FOR WHOM DAMAGES CLAIMED

In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

SECTION 27—PROVISION WHERE NO EXECUTOR OR ADMINISTRATOR OR ACTION NOT COMMENCED WITHIN 6 MONTHS

- (1) In any case falling under section 23, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.
- (2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

SECTION 28—LIABILITY TO PARENTS OF PERSON WRONGFULLY KILLED

- (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving parents or parent of the child such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10 000, as the court thinks just by way of *solatium* for the suffering caused to the parents or parent by the death of the child.

- (2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.
- (3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.
- (4) In this section—
parent means the father or mother of a child.

SECTION 29—LIABILITY TO SURVIVING SPOUSE OR DOMESTIC PARTNER OF PERSON WRONGFULLY KILLED

- (1) Whenever the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving spouse or domestic partner of the deceased person such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand four hundred dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10 000, as the court thinks just by way of *solatium* for the suffering caused to the spouse or domestic partner by that death.
- (2) Where the deceased person is survived by a spouse and a domestic partner, they may both claim *solatium* under this section, but the total amount awarded by way of *solatium* in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse or domestic partner.
- (3) Where, in any proceedings under this section, a spouse and a domestic partner both claim *solatium* under this section, any *solatium* awarded by the court shall be apportioned between the claimants in such manner as the court thinks just.

- (4) In proceedings for *solatium* by a spouse, it is not necessary for the court to inquire if the deceased was also survived by a domestic partner (but a domestic partner may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings).

SECTION 30—FURTHER PROVISIONS AS TO SOLATIUM ETC

- (1) The rights conferred by sections 28 and 29 shall be in addition to and not in derogation of any rights conferred on the parent, spouse or domestic partner by any other provision of this Act.
- (2) In an action brought to enforce any right given under section 28 or 29 the court may in its discretion refuse to order the payment of any sum by way of *solatium* if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.
- (3) Any cause of action conferred on any person by section 28 or 29 shall not, on the death of that person, survive for the benefit of his estate.
- (4) A cause of action conferred on a person by section 28 or 29 is exercisable notwithstanding that the death of the person injured by the wrongful act, neglect or default was caused in circumstances which in law amount to an indictable offence.

PART 6—NEGLIGENCE

DIVISION 1—DUTY OF CARE

SECTION 31—STANDARD OF CARE

- (1) For determining whether a person (the *defendant*) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.
- (2) The reasonable person in the defendant's position will be taken to be sober unless—
 - (a) the defendant was intoxicated; and
 - (b) the intoxication was wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (c) the defendant was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs, and, in that event, the reasonable person will be taken to be intoxicated to the same extent as the defendant.

SECTION 32—PRECAUTIONS AGAINST RISK

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
 - (a) the probability that the harm would occur if precautions were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.

SECTION 33—MENTAL HARM—DUTY OF CARE

- (1) A person (the *defendant*) does not owe a duty to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section—
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:
 - (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;
 - (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the *defendant*) to another (the *plaintiff*) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

DIVISION 2—CAUSATION

SECTION 34—GENERAL PRINCIPLES

- (1) A determination that negligence caused particular harm comprises the following elements:
 - (a) that the negligence was a necessary condition of the occurrence of the harm (*factual causation*); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (*scope of liability*).

- (2) Where, however, a person (the *plaintiff*) has been negligently exposed to a similar risk of harm by a number of different persons (the *defendants*) and it is not possible to assign responsibility for causing the harm to any one or more of them—
- (a) the court may continue to apply the principle under which responsibility may be assigned to the defendants for causing the harm¹; but
 - (b) the court should consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

Note—

1 See *Fairchild v Glenhaven Funeral Services Ltd* [2002] 3 WLR 89.

SECTION 35—BURDEN OF PROOF

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

DIVISION 3—ASSUMPTION OF RISK

SECTION 36—MEANING OF OBVIOUS RISK

- (1) For the purposes of this Division, an *obvious risk* to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- (2) Obvious risks include risks that are patent or matters of common knowledge.
- (3) A risk may be obvious even though it is of low probability.

SECTION 37—INJURED PERSONS PRESUMED TO BE AWARE OF OBVIOUS RISKS

- (1) If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not actually aware of the risk.

- (2) For the purposes of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.
- (3) However, in order to establish a defence of voluntary assumption of risk, it is necessary to establish that the risk was such that a reasonable person in the plaintiff's position would have taken steps (which the plaintiff did not in fact take) to avoid it.

SECTION 38—NO DUTY TO WARN OF OBVIOUS RISK

- (1) A person (the *defendant*) does not owe a duty of care to another person (the *plaintiff*) to warn of an obvious risk to the plaintiff.
- (2) Subsection (1) does not apply if—
 - (a) the plaintiff has requested advice or information about the risk from the defendant; or
 - (b) the defendant is required to warn the plaintiff of the risk by a written law; or
 - (c) the risk is a risk of death or of personal injury to the plaintiff from the provision of a health care service by the defendant.
- (3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

SECTION 39—NO LIABILITY FOR MATERIALISATION OF INHERENT RISK

- (1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.
- (2) An *inherent risk* is a risk of something occurring that cannot be avoided by the exercise of reasonable care and skill.
- (3) This section does not operate to exclude liability in connection with a duty to warn of a risk.

DIVISION 4—NEGLIGENCE ON THE PART OF PERSONS PROFESSING TO HAVE A PARTICULAR SKILL

SECTION 40—STANDARD OF CARE TO BE EXPECTED OF PERSONS PROFESSING TO HAVE A PARTICULAR SKILL

In a case involving an allegation of negligence against a person (the *defendant*) who holds himself or herself out as possessing a particular skill, the standard to be applied by a court in determining whether the defendant acted with due care and skill is, subject to this Division, to be determined by reference to—

- (a) what could reasonably be expected of a person professing that skill; and
- (b) the relevant circumstances as at the date of the alleged negligence and not a later date.

SECTION 41—STANDARD OF CARE FOR PROFESSIONALS

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of a risk of death of or injury associated with the provision of a health care service.

DIVISION 5—LIABILITY OF ROAD AUTHORITIES

SECTION 42—LIABILITY OF ROAD AUTHORITIES

- (1) A road authority is not liable in tort for a failure—
 - (a) to maintain, repair or renew a road; or
 - (b) to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.
- (2) In this section—

road means a street, road or thoroughfare to which public access is available to vehicles or pedestrians (or both), and includes—

 - (a) a bridge, viaduct, busway (including the O-Bahn) or subway;
 - (b) an alley, laneway or walkway;
 - (c) a carpark;
 - (d) a footpath;
 - (e) a structure associated with a road;

road authority means—

- (a) a body or person in which the ownership of a road is vested by statute, or to which the care, control and management of a road is assigned by statute; or
- (b) if the road is on land of the Crown—the Crown or the Minister responsible for the care, control and management of the land; or
- (c) any other public authority or public body that is in fact responsible for the care, control and management of a road;

vehicle includes—

- (a) a motor vehicle;
- (b) a bicycle;
- (c) an animal that is being ridden;
- (d) an animal that is being used to draw a vehicle,

but does not include a tram or other vehicle (except an O-Bahn bus) that is driven on a fixed track.

DIVISION 6—EXCLUSION OF LIABILITY FOR CRIMINAL CONDUCT

SECTION 43—EXCLUSION OF LIABILITY FOR CRIMINAL CONDUCT

- (1) Liability for damages is excluded if the court—
 - (a) is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) However, the court may award damages despite this exclusionary principle if satisfied that—
 - (a) the circumstances of the particular case are exceptional; and
 - (b) the principle would, in the circumstances of the particular case, operate harshly and unjustly.
- (3) For the purposes of subsection (1)(a), a relevant conviction or acquittal is to be accepted as conclusive evidence of guilt or innocence of the offence to which it relates.
- (4) This section—
 - (a) applies where damages are claimed for personal injury—
 - (i) arising from a motor accident (whether caused intentionally or unintentionally); or
 - (ii) arising from an accident caused wholly or in part—
 - A. by negligence; or
 - B. by some other unintentional tort on the part of a person other than the injured person; or
 - C. by breach of a contractual duty of care; and
 - (b) if an injured person dies as a result of injury arising in the manner described in paragraph (a)—applies where damages for harm resulting from the death are claimed under Part 5; and
 - (c) does not affect the operation of a rule of law relating to joint illegal enterprises.

PART 7—CONTRIBUTORY NEGLIGENCE

SECTION 44—STANDARD OF CONTRIBUTORY NEGLIGENCE

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether a person who suffered harm (the *plaintiff*) has been contributorily negligent.
- (2) This section is not to derogate from any provision of this Act for reduction of damages on account of contributory negligence.

SECTION 45—CONTRIBUTORY NEGLIGENCE IN CASES BROUGHT ON BEHALF OF DEPENDANTS OF DECEASED PERSON

In a claim for damages brought on behalf of the dependants of a deceased person, the court is to have regard to any contributory negligence on the part of the deceased person.

SECTION 46—PRESUMPTION OF CONTRIBUTORY NEGLIGENCE WHERE INJURED PERSON INTOXICATED

- (1) If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will, subject to this section, be presumed.
- (2) The injured person may, however, rebut the presumption by establishing on the balance of probabilities—
 - (a) that the intoxication did not contribute to the accident; or
 - (b) that the intoxication was not self-induced; or
 - (c) —
 - (i) the intoxication is wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (ii) the injured person was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs.
- (3) Unless the presumption of contributory negligence is rebutted, the court must assess damages on the basis that the damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25 per cent or a greater percentage determined by the court to be appropriate in the circumstances of the case.

- (4) If, in the case of a motor accident, the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes—
- (a) that the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,
- the minimum reduction prescribed by subsection (3) is to be increased to 50 per cent.

SECTION 47—PRESUMPTION OF CONTRIBUTORY NEGLIGENCE WHERE INJURED PERSON RELIES ON CARE AND SKILL OF PERSON KNOWN TO BE INTOXICATED

- (1) If—
- (a) the injured person—
 - (i) was of or above the age of 16 years at the time of the accident; and
 - (ii) relied on the care and skill of a person who was intoxicated at the time of the accident; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated; and
 - (b) the accident was caused through the negligence of the other person; and
 - (c) the defendant alleges contributory negligence on the part of the injured person,
- contributory negligence will, subject to this section, be presumed.
- (2) Subject to the following exception, the presumption is irrebutable.
- Exception—**
- The injured person may rebut the presumption by establishing, on the balance of probabilities, that—
- (a) the intoxication did not contribute to the accident; or
 - (b) the injured person could not reasonably be expected to have avoided the risk.
- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.
- (4) A passenger in a motor vehicle is taken, for the purposes of this section, to rely on the care and skill of the driver.

- (5) If, in the case of a motor accident, the evidence establishes—
- (a) that the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,
- the fixed statutory reduction prescribed by subsection (3) is increased to 50 per cent.
- (6) This section operates to the exclusion of the defence of *volenti non fit injuria* insofar as it relates to the voluntary assumption of a risk arising from the intoxication of another.

SECTION 48—EVIDENTIARY PROVISION RELATING TO INTOXICATION

- (1) A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of this Part, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.
- (2) A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of this Part, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

SECTION 49—NON-WEARING OF SEATBELT ETC

- (1) If the injured person was injured in a motor accident, was of or above the age of 16 years at the time of the accident and—
- (a) the injured person was not, at the time of the accident, wearing a seatbelt as required under *the Road Traffic Act 1961*; or
 - (b) one of the following factors contributed to the accident or the extent of the injury:
 - (i) the injured person was not wearing a safety helmet as required under the *Road Traffic Act 1961*;

- (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the passenger compartment at the time of the accident,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception—

In the case mentioned in subsection (1)(b)(ii)—the injured person may rebut the presumption by establishing, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.

- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

SECTION 50—HOW CASE IS DEALT WITH WHERE DAMAGES ARE LIABLE TO REDUCTION ON ACCOUNT OF CONTRIBUTORY NEGLIGENCE

- (1) If damages are liable to reduction on account of actual or presumed contributory negligence, the court is to proceed in accordance with this section.
- (2) First, the court is to assess the damages to which the injured person would be entitled if there were no reduction for contributory negligence.
- (3) Secondly, the court is to—
 - (a) determine the extent of the injured person's contributory negligence, leaving out of the account factors for which a fixed statutory reduction is prescribed by this Part but taking into account the injured person's intoxication (if relevant) and factors that would, apart from this Part, amount to contributory negligence; and
 - (b) determine a percentage reduction to be made on account of these forms of contributory negligence (which cannot be less in a case involving intoxication than the relevant minimum prescribed by this Part); and
 - (c) then reduce the amount assessed under subsection (2) by the percentage determined under this subsection.

- (4) Thirdly, the court is to apply any applicable fixed statutory reduction to the amount assessed under subsection (2) and reduced, if required, under subsection (3), and, if 2 or more fixed statutory reductions are required, the court is to make them in series.

Example—

Suppose that an amount of \$100 000 is subject to 2 fixed statutory reductions of 25 per cent. In this case, the amount is first reduced to \$75 000 and then reduced to \$56 250.

- (5) There is no necessary correlation between a finding of contributory negligence in relation to a cause of action under this Part and an apportionment of liability in relation to a different cause of action arising from the same facts.

Example—

Suppose that A and B are both drivers of motor vehicles that come into collision as a result of the negligence of both with resultant personal injuries to each other and also to C, a passenger in B's vehicle. Suppose that B's damages are reduced by 60 per cent under this Part as a result of actual or presumptive contributory negligence causally related to the occurrence of the accident. This is not to imply that, in A's action against B, no reduction beyond 40 per cent can be made on a similar basis. In C's action against A and B, responsibility will be apportioned between A and B without regard to the provisions of this Part.

PART 8—DAMAGES FOR PERSONAL INJURY

SECTION 51—APPLICATION OF THIS PART

- (1) This Part applies—
- (a) where damages are claimed for personal injury arising from—
- (i) a motor accident (whether caused intentionally or unintentionally); or
 - (ii) an accident caused wholly or in part by—
 - A. negligence; or
 - B. some other unintentional tort on the part of a person other than the injured person; or
 - C. a breach of a contractual duty of care; or
- (b) where personal injury arising in the manner described in paragraph (a) results in death and damages are claimed under Part 5 for harm resulting from the death.

SECTION 52—DAMAGES FOR NON-ECONOMIC LOSS

- (1) Damages may only be awarded for non-economic loss if—
- (a) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
 - (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.
- (2) If damages are to be awarded for non-economic loss, they must be assessed as follows:
- (a) the injured person's total non-economic loss is to be assigned a numerical value (the *scale value*) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the noneconomic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);
 - (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
 - (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:

- (i) if the scale value is 10 or less—by multiplying the scale value by \$1 150;
 - (ii) if the scale value is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2 300;
 - (iii) if the scale value is 30 or less but more than 20—by adding to \$34 500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3 450;
 - (iv) if the scale value is 40 or less but more than 30—by adding to \$69 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4 600;
 - (v) if the scale value is 50 or less but more than 40—by adding to \$115 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5 750;
 - (vi) if the scale value is 60 or less but more than 50—by adding to \$172 500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6 900;
- (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example—

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34\,500 + (3 \times \$3\,450) = \$44\,850$$

SECTION 53—DAMAGES FOR MENTAL HARM

- (1) Damages may only be awarded for mental harm if the injured person—
 - (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
 - (b) is a parent, spouse, domestic partner or child of a person killed, injured or endangered in the accident.
- (2) Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness.
- (3) Damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

SECTION 54—DAMAGES FOR LOSS OF EARNING CAPACITY

- (1) If the injured person was incapacitated for work, damages for loss of earning capacity are not to be awarded in respect of the first week of the incapacity.
- (2) Total damages for loss of earning capacity (excluding interest awarded on damages for any past loss) are not to exceed the prescribed maximum.
- (3) In a case in which an action is brought for the benefit of the dependants of a deceased person, the total amount awarded to compensate economic loss resulting from the death of the deceased person (apart from expenses—such as funeral expenses—actually incurred as a result of the death) cannot exceed the prescribed maximum and if before the date of death the deceased person received damages to compensate loss of earning capacity, the limit is to be reduced by the amount of those damages.

SECTION 55—LUMP SUM COMPENSATION FOR FUTURE LOSSES

- (1) If—
 - (a) an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses; and
 - (b) an actuarial multiplier is used for the purpose of calculating the present value of the future losses,then, in determining the actuarial multiplier, a prescribed discount rate is to be applied.

SECTION 56—EXCLUSION OF INTEREST ON DAMAGES COMPENSATING NON-ECONOMIC LOSS OR FUTURE LOSS

Interest is not to be awarded on damages compensating non-economic or future loss.

SECTION 57—EXCLUSION OF DAMAGES FOR COST OF MANAGEMENT OR INVESTMENT

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

SECTION 58—DAMAGES IN RESPECT OF GRATUITOUS SERVICES

- (1) Damages are not to be awarded—
 - (a) to allow for the recompense of gratuitous services except services of a parent, spouse, domestic partner or child of the injured person; or
 - (b) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person.
- (2) Damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child are not to exceed an amount equivalent to 4 times State average weekly earnings.
- (3) However, the court may make an award in excess of the limit prescribed by subsection (2) if satisfied that—
 - (a) the gratuitous services are reasonably required by the injured person; and
 - (b) it would be necessary, if the services were not provided gratuitously by a parent, spouse, domestic partner or child of the injured person to engage another person to provide the services for remuneration,

but, in that event, the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

PART 9—MISCELLANEOUS

DIVISION 8—UNREASONABLE DELAY IN RESOLUTION OF CLAIM

SECTION 69—DEFINITIONS

- (1) In this Division—
- » **dependant** of a deceased person means any person on whose behalf an action could (assuming that he or she had been financially dependent on the deceased person) be brought under Part 5;
 - » **personal injury** includes—
 - (a) a disease;
 - (b) any impairment of a physical or mental condition.

SECTION 70—DAMAGES FOR UNREASONABLE DELAY IN RESOLUTION OF A CLAIM

- (1) Damages in the nature of exemplary damages may be awarded, on a claim by the personal representative of a deceased person, against another person (the person in default) if the conditions prescribed by subsection (2) are satisfied.
- (2) The conditions for an award of damages under this section are as follows:
- (a) the deceased person suffered personal injury giving rise to a right to compensation or damages; and
 - (b) the deceased person made a claim in writing (giving a reasonable indication of the grounds of the claim) for compensation or damages for the personal injury; and
 - (c) a person (the *person in default*) unreasonably delayed the resolution of the claim knowing, or in circumstances in which he or she ought to have known, that the deceased person was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim; and
 - (d) the person in default is—
 - (i) the person against whom the deceased person's claim lay; or
 - (ii) some other person who controlled or had an interest in the defence of the claim; and
 - (e) the deceased person died before compensation or damages for non-economic loss were finally determined by agreement between the parties or by judgment or decision of a court or tribunal; and
 - (f) damages have not been recovered and are not recoverable under section 3(2) of the *Survival of Causes of Action Act 1940*.
- (3) For the purposes of subsection (2)—
- (a) the question whether a person has unreasonably delayed resolution of a claim is to be determined in the context of the proceedings as a whole (including negotiations and other non-curial proceedings) and the conduct of the deceased person and any other parties to the proceedings;
 - (b) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;
 - (c) if a judgment or decision of a court or tribunal is liable to appeal, then—
 - (i) if there is no appeal—the judgment or decision finally determines compensation or damages on the date it is given; but
 - (ii) if there is an appeal—there is no final determination of compensation or damages until the appeal is determined.
- (4) A court or tribunal that has, or would have had, jurisdiction in an action for damages, workers compensation or other monetary compensation for the personal injury has jurisdiction to award damages on a claim under this section but such a claim must be brought before the court or tribunal within 3 years after the deceased person's death (either as a separate proceeding or by introducing it as an additional claim in existing proceedings for damages or compensation for the personal injury).
- (5) In determining the amount of the damages to be awarded under this section, the court or tribunal is to have regard to—
- (a) the need to ensure that the person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim; and
 - (b) the need to punish the person in default for the unreasonable delay; and
 - (c) any other relevant factor.
- (6) Damages may be awarded under this section despite any statutory restriction on the award of exemplary or punitive damages but, if the deceased person's claim was for worker's compensation, the damages cannot exceed the total amount of the compensation for non-economic loss to which the deceased person would have been entitled if the claim had been resolved immediately before his or her death.

- (7) Damages awarded under this section are to be paid, at the direction of the court or tribunal—
- (a) to the dependants of the deceased person in proportions determined by the court or tribunal; or
 - (b) to the estate of the deceased person.
- (8) In exercising its discretion under subsection (7), the court or tribunal—
- (a) is to make an award to dependants rather than to the estate unless there are no dependants or there is some other good reason to the contrary; and
 - (b) in apportioning between dependants is to have regard to other relevant statutory entitlements (if any) that arise on the death of the deceased person.
- (9) This section applies if the deceased person died on or after the commencement of this section (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

DIVISION 11—GOOD SAMARITANS

SECTION 74—GOOD SAMARITANS

- (1) In this section—
- » **emergency assistance** means—
 - (a) emergency medical assistance; or
 - (b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency;
 - » **good samaritan** means—
 - (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or
 - (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance;
 - » **medically qualified**—a person is to be regarded as medically qualified if the person—
 - (a) is a registered medical practitioner; or
 - (b) has professional qualifications in some field of health care that are statutorily recognised; or

- (c) works or has worked as an ambulance officer or in some other recognised paramedical capacity.
- (2) A good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.
- (3) A medically qualified good samaritan incurs no personal civil liability for advice given about the assistance to be given to a person in apparent need of emergency medical assistance.
- (4) However—
- (a) the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
 - (b) the immunity does not operate if the good samaritan's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

DIVISION 12—EXPRESSIONS OF REGRET

SECTION 75—EXPRESSIONS OF REGRET

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

PART 1 – PRELIMINARY

SECTION 1—SHORT TITLE

This Act may be cited as the *Civil Liability Act 1936*.

SECTION 2—ACT TO BIND THE CROWN

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

SECTION 3 – INTERPRETATION

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

- » **accident** means an incident out of which personal injury arises and includes a motor accident;
- » **brother** includes half-brother and step-brother;
- » **child** includes son, daughter, grandson, granddaughter, step-son and step-daughter;
- » **consequential mental harm** means mental harm that is a consequence of bodily injury to the person suffering the mental harm;
- » **Consumer Price Index** means the Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under the *Census and Statistics Act 1905* (Cwth);
- » **contributory negligence** means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;
- » **damages** means compensation or damages for harm and includes *solatium* but does not include—
 - (a) workers compensation; or
 - (b) compensation under a statutory scheme for compensating victims of crime;
- » **domestic partner**, in relation to any cause of action arising under this Act, means a person declared under the *Family Relationships Act 1975* to have been a domestic partner on the day on which the cause of action arose;
- » **drive** includes ride, and *driver* and *rider* have corresponding meanings;
- » **duty of care** means a duty to take reasonable care or to exercise reasonable skill (or both);
- » **harm** includes loss of life, personal injury, damage to property, economic loss and loss of any other kind;

- » **health care service** includes—
 - (a) a diagnostic service;
 - (b) a therapeutic service;
 - (c) any other service directed at maintaining or restoring health;
- » **intoxicated**—a person is intoxicated if under the influence of alcohol or a drug to the extent that the person's capacity to exercise due care and skill is impaired;
- » **medical expenses** includes—
 - (a) the fees of medical practitioners and other professional medical advisers and therapists; and
 - (b) the cost of hospitalisation; and
 - (c) the cost of medicines and therapeutic appliances;
- » **mental harm** means impairment of a person's mental condition;
- » **motor accident** means an incident in which personal injury is caused by or arises out of the use of a motor vehicle;
- » **motor vehicle** means—
 - (a) a motor vehicle as defined in the *Motor Vehicles Act 1959*; or
 - (b) a vehicle operated on a railway, tramway or other fixed track or path by—
 - (i) a person who holds a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) a person who holds an accreditation under the *Rail Safety Act 1996*;
- » **MVA motor accident** means a motor accident where the motor vehicle is a motor vehicle as defined in the *Motor Vehicles Act 1959*;
- » **negligence** means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care;
- » **non-economic loss** means—
 - (a) pain and suffering; or
 - (b) loss of amenities of life; or
 - (c) loss of expectation of life; or
 - (d) disfigurement;
- » **obvious risk**—see section 36;
- » **parent** includes father, mother, grandfather, grandmother, step-father and step-mother;

- » **passenger compartment** of a motor vehicle means a part of the vehicle designed for the carriage of passengers;
 - » **personal injury or injury** means bodily injury and includes—
 - (a) mental harm;
 - (b) death;
 - » **precaution** includes any action to avoid or reduce the risk of harm;
 - » **prescribed discount rate** means—
 - (a) if no percentage is fixed by regulation for the purposes of this definition—5 per cent; or
 - (b) if such a percentage is fixed by regulation—the percentage so fixed;
 - » **prescribed maximum** means—
 - (a) in relation to an injury arising from an accident that occurred during 2002—\$2.2 million; or
 - (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;
 - » **prescribed minimum** means—
 - (a) in relation to an injury arising from an accident that occurred during 2002—\$2 750; or
 - (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;
 - » **pure mental harm** means mental harm other than consequential mental harm;
 - » **sister** includes half-sister and step-sister;
 - » **spouse**, in relation to any cause of action arising under this Act, means a person who was legally married to another on the day on which the cause of action arose;
 - » **State average weekly earnings** means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.
- (2) For the purposes of this Act, personal injury will arise from a motor accident if the personal injury is caused by or arises out of the use of a motor vehicle.

PART 5 - WRONGFUL ACTS OR NEGLIGENCE CAUSING DEATH

SECTION 23—LIABILITY FOR DEATH CAUSED WRONGFULLY

Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to an indictable offence.

SECTION 24—HOW TO BRING ACTION ETC

- (1) Every such action shall be for the benefit of the spouse, domestic partner, parent, brother, sister and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.
- (2) In every such action, the court may, subject to this Act, give such damages as it thinks proportioned to the harm resulting from the death to the parties respectively for whom and for whose benefit the action is brought.
- (2a) In any such action in respect of the death of any person after the passing of the *Wrongs Act Amendment Act 1939* damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.
- (2aa) In assessing damages under this section in any action based on a death occurring after the passing of the *Wrongs Act Amendment Act 1956* there shall not be taken into account—
 - (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of the said Act;
 - (b) any sum paid or payable consequent on the death of the deceased person as a gratuity to any person for whose benefit the action is brought;
 - (c) any superannuation payments or benefits consequent upon the death of the deceased person;
 - (d) any sum paid or payable consequent upon the death of the deceased person under any contributory medical hospital death or funeral benefit scheme;

- (e) any sum paid or payable as a social service benefit or pension by the Governments of the Commonwealth of Australia, or the United Kingdom, or the State of South Australia to or in respect of any person for whose benefit the action is brought;
 - (f) any sum recovered or recoverable for the benefit of the estate of the deceased under section 3(2) of the *Survival of Causes of Action Act 1940* (which permits the recovery of damages for certain kinds of non-economic loss where the deceased dies of a dust-related condition).
- (3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.
 - (4) Where a deceased person is survived by a spouse and a domestic partner, the action shall, subject to this section, be brought for the benefit of both.
 - (5) An action need not be brought under this section for the benefit of a person who has, by notice in writing served upon the executor or administrator of the deceased, renounced the benefit of this section.
 - (6) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.
 - (7) No action lies against the executor or administrator for failing to bring an action for the benefit of a domestic partner if he brings the action without notice of the claim of the domestic partner under this section, but the interest of any such domestic partner in the action shall be recognised by the court if application for recognition is made to the court before the proceedings are finally determined.

SECTION 25—RESTRICTION OF ACTIONS AND TIME OF COMMENCEMENT

Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within three years after the death of the deceased person.

SECTION 26—PARTICULARS OF PERSON FOR WHOM DAMAGES CLAIMED

In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

SECTION 27—PROVISION WHERE NO EXECUTOR OR ADMINISTRATOR OR ACTION NOT COMMENCED WITHIN 6 MONTHS

- (1) In any case falling under section 23, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.
- (2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

SECTION 28—LIABILITY TO PARENTS OF PERSON WRONGFULLY KILLED

- (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving parents or parent of the child such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10000,

as the court thinks just by way of *solatium* for the suffering caused to the parents or parent by the death of the child.

- (2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.
- (3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.
- (4) In this section—
parent means the father or mother of a child.

SECTION 29—LIABILITY TO SURVIVING SPOUSE OR DOMESTIC PARTNER OF PERSON WRONGFULLY KILLED

- (1) Whenever the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving spouse or domestic partner of the deceased person such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand four hundred dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10 000,as the court thinks just by way of *solatium* for the suffering caused to the spouse or domestic partner by that death.
- (2) Where the deceased person is survived by a spouse and a domestic partner, they may both claim *solatium* under this section, but the total amount awarded by way of *solatium* in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse or domestic partner.
- (3) Where, in any proceedings under this section, a spouse and a domestic partner both claim *solatium* under this section, any *solatium* awarded by the court shall be apportioned between the claimants in such manner as the court thinks just.

- (4) In proceedings for *solatium* by a spouse, it is not necessary for the court to inquire if the deceased was also survived by a domestic partner (but a domestic partner may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings).

SECTION 30—FURTHER PROVISIONS AS TO SOLATIUM ETC

- (1) The rights conferred by sections 28 and 29 shall be in addition to and not in derogation of any rights conferred on the parent, spouse or domestic partner by any other provision of this Act.
- (2) In an action brought to enforce any right given under section 28 or 29 the court may in its discretion refuse to order the payment of any sum by way of *solatium* if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.
- (3) Any cause of action conferred on any person by section 28 or 29 shall not, on the death of that person, survive for the benefit of his estate.
- (4) A cause of action conferred on a person by section 28 or 29 is exercisable notwithstanding that the death of the person injured by the wrongful act, neglect or default was caused in circumstances which in law amount to an indictable offence.

PART 6 – NEGLIGENCE

DIVISION 1 – DUTY OF CARE

SECTION 31—STANDARD OF CARE

- (1) For determining whether a person (the *defendant*) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.
- (2) The reasonable person in the defendant's position will be taken to be sober unless—
 - (a) the defendant was intoxicated; and
 - (b) the intoxication was wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (c) the defendant was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs,
 and, in that event, the reasonable person will be taken to be intoxicated to the same extent as the defendant.

SECTION 32—PRECAUTIONS AGAINST RISK

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
 - (a) the probability that the harm would occur if precautions were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.

SECTION 33—MENTAL HARM—DUTY OF CARE

- (1) A person (the *defendant*) does not owe a duty to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section—
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:
 - (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;
 - (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the *defendant*) to another (the *plaintiff*) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

DIVISION 2 – CAUSATION

SECTION 34—GENERAL PRINCIPLES

- (1) A determination that negligence caused particular harm comprises the following elements:
 - (a) that the negligence was a necessary condition of the occurrence of the harm (*factual causation*); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (*scope of liability*).
- (2) Where, however, a person (the *plaintiff*) has been negligently exposed to a similar risk of harm by a number of different persons (the *defendants*) and it is not possible to assign responsibility for causing the harm to any one or more of them—

- (a) the court may continue to apply the principle under which responsibility may be assigned to the defendants for causing the harm¹; but
 - (b) the court should consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

Note—

1 See *Fairchild v Glenhaven Funeral Services Ltd* [2002] 3 WLR 89.

SECTION 35—BURDEN OF PROOF

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

DIVISION 3 – ASSUMPTION OF RISK

SECTION 36—MEANING OF OBVIOUS RISK

- (1) For the purposes of this Division, an *obvious risk* to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- (2) Obvious risks include risks that are patent or matters of common knowledge.
- (3) A risk may be obvious even though it is of low probability.

SECTION 37—INJURED PERSONS PRESUMED TO BE AWARE OF OBVIOUS RISKS

- (1) If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not actually aware of the risk.

- (2) For the purposes of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.
- (3) However, in order to establish a defence of voluntary assumption of risk, it is necessary to establish that the risk was such that a reasonable person in the plaintiff's position would have taken steps (which the plaintiff did not in fact take) to avoid it.

SECTION 38—NO DUTY TO WARN OF OBVIOUS RISK

- (1) A person (the *defendant*) does not owe a duty of care to another person (the *plaintiff*) to warn of an obvious risk to the plaintiff.
- (2) Subsection (1) does not apply if—
 - (a) the plaintiff has requested advice or information about the risk from the defendant; or
 - (b) the defendant is required to warn the plaintiff of the risk by a written law; or
 - (c) the risk is a risk of death or of personal injury to the plaintiff from the provision of a health care service by the defendant.
- (3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

SECTION 39—NO LIABILITY FOR MATERIALISATION OF INHERENT RISK

- (1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.
- (2) An *inherent risk* is a risk of something occurring that cannot be avoided by the exercise of reasonable care and skill.
- (3) This section does not operate to exclude liability in connection with a duty to warn of a risk.

DIVISION 4 – NEGLIGENCE ON THE PART OF PERSONS PROFESSING TO HAVE A PARTICULAR SKILL

SECTION 40—STANDARD OF CARE TO BE EXPECTED OF PERSONS PROFESSING TO HAVE A PARTICULAR SKILL

- (1) In a case involving an allegation of negligence against a person (the *defendant*) who holds himself or herself out as possessing a particular skill, the standard to be applied by a court in determining whether the defendant acted with due care and skill is, subject to this Division, to be determined by reference to—
- (a) what could reasonably be expected of a person professing that skill; and
 - (b) the relevant circumstances as at the date of the alleged negligence and not a later date.

SECTION 41—STANDARD OF CARE FOR PROFESSIONALS

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of a risk of death or injury associated with the provision of a health care service.

DIVISION 5 – LIABILITY OF ROAD AUTHORITIES

SECTION 42—LIABILITY OF ROAD AUTHORITIES

- (1) A road authority is not liable in tort for a failure—
- (a) to maintain, repair or renew a road; or
 - (b) to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.
- (2) In this section—
- road** means a street, road or thoroughfare to which public access is available to vehicles or pedestrians (or both), and includes—
- (a) a bridge, viaduct, busway (including the O-Bahn) or subway;
 - (b) an alley, laneway or walkway;
 - (c) a carpark;
 - (d) a footpath;
 - (e) a structure associated with a road;

road authority means—

- (a) a body or person in which the ownership of a road is vested by statute, or to which the care, control and management of a road is assigned by statute; or
- (b) if the road is on land of the Crown—the Crown or the Minister responsible for the care, control and management of the land; or
- (c) any other public authority or public body that is in fact responsible for the care, control and management of a road;

vehicle includes—

- (a) a motor vehicle;
- (b) a bicycle;
- (c) an animal that is being ridden;
- (d) an animal that is being used to draw a vehicle,

but does not include a tram or other vehicle (except an O-Bahn bus) that is driven on a fixed track.

DIVISION 6 – EXCLUSION OF LIABILITY FROM CRIMINAL CONDUCT

SECTION 43—EXCLUSION OF LIABILITY FOR CRIMINAL CONDUCT

- (1) Liability for damages is excluded if the court—
 - (a) is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) However, the court may award damages despite this exclusionary principle if satisfied that—
 - (a) the circumstances of the particular case are exceptional; and
 - (b) the principle would, in the circumstances of the particular case, operate harshly and unjustly.
- (3) For the purposes of subsection (1)(a), a relevant conviction or acquittal is to be accepted as conclusive evidence of guilt or innocence of the offence to which it relates.
- (4) This section—
 - (a) applies where damages are claimed for personal injury—
 - (i) arising from a motor accident (whether caused intentionally or unintentionally); or
 - (ii) arising from an accident caused wholly or in part—
- (5) by negligence; or
- (6) by some other unintentional tort on the part of a person other than the injured person; or
- (7) by breach of a contractual duty of care; and
 - (a) if an injured person dies as a result of injury arising in the manner described in paragraph (a)—applies where damages for harm resulting from the death are claimed under Part 5; and
 - (b) does not affect the operation of a rule of law relating to joint illegal enterprises.

PART 7 – CONTRIBUTORY NEGLIGENCE

SECTION 44—STANDARD OF CONTRIBUTORY NEGLIGENCE

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether a person who suffered harm (the *plaintiff*) has been contributorily negligent.
- (2) This section is not to derogate from any provision of this Act for reduction of damages on account of contributory negligence.

SECTION 45—CONTRIBUTORY NEGLIGENCE IN CASES BROUGHT ON BEHALF OF DEPENDANTS OF DECEASED PERSON

In a claim for damages brought on behalf of the dependants of a deceased person, the court is to have regard to any contributory negligence on the part of the deceased person.

SECTION 46—PRESUMPTION OF CONTRIBUTORY NEGLIGENCE WHERE INJURED PERSON INTOXICATED

- (1) If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will, subject to this section, be presumed.
- (2) The injured person may, however, rebut the presumption by establishing on the balance of probabilities—
 - (a) that the intoxication did not contribute to the accident; or
 - (b) that the intoxication was not self-induced; or
 - (c) —
 - (i) the intoxication is wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (ii) the injured person was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs.
- (3) Unless the presumption of contributory negligence is rebutted, the court must assess damages on the basis that the damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25 per cent or a greater percentage determined by the court to be appropriate in the circumstances of the case.

- (4) If, in the case of a motor accident, the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes—
- (a) that the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,
- the minimum reduction prescribed by subsection (3) is to be increased to 50 per cent.

SECTION 47—PRESUMPTION OF CONTRIBUTORY NEGLIGENCE WHERE INJURED PERSON RELIES ON CARE AND SKILL OF PERSON KNOWN TO BE INTOXICATED

- (1) If—
- (a) the injured person—
 - (i) was of or above the age of 16 years at the time of the accident; and
 - (ii) relied on the care and skill of a person who was intoxicated at the time of the accident; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated; and
 - (b) the accident was caused through the negligence of the other person; and
 - (c) the defendant alleges contributory negligence on the part of the injured person,
- contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception—

The injured person may rebut the presumption by establishing, on the balance of probabilities, that—

- (a) the intoxication did not contribute to the accident; or
 - (b) the injured person could not reasonably be expected to have avoided the risk.
- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.
- (4) A passenger in a motor vehicle is taken, for the purposes of this section, to rely on the care and skill of the driver.

- (5) If, in the case of a motor accident, the evidence establishes—
- (a) that the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,
- the fixed statutory reduction prescribed by subsection (3) is increased to 50 per cent.
- (6) This section operates to the exclusion of the defence of *volenti non fit injuria* insofar as it relates to the voluntary assumption of a risk arising from the intoxication of another.

SECTION 48—EVIDENTIARY PROVISION RELATING TO INTOXICATION

- (1) A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of this Part, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.
- (2) A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of this Part, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

SECTION 49—NON-WEARING OF SEATBELT ETC

- (1) If the injured person was injured in a motor accident, was of or above the age of 16 years at the time of the accident and—
- (a) the injured person was not, at the time of the accident, wearing a seatbelt as required under the *Road Traffic Act 1961*; or
 - (b) one of the following factors contributed to the accident or the extent of the injury:
 - (i) the injured person was not wearing a safety helmet as required under the *Road Traffic Act 1961*;

- (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the passenger compartment at the time of the accident,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception—

In the case mentioned in subsection (1)(b)(ii)—the injured person may rebut the presumption by establishing, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.

- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

SECTION 50—HOW CASE IS DEALT WITH WHERE DAMAGES ARE LIABLE TO REDUCTION ON ACCOUNT OF CONTRIBUTORY NEGLIGENCE

- (1) If damages are liable to reduction on account of actual or presumed contributory negligence, the court is to proceed in accordance with this section.
- (2) First, the court is to assess the damages to which the injured person would be entitled if there were no reduction for contributory negligence.
- (3) Secondly, the court is to—
 - (a) determine the extent of the injured person's contributory negligence, leaving out of the account factors for which a fixed statutory reduction is prescribed by this Part but taking into account the injured person's intoxication (if relevant) and factors that would, apart from this Part, amount to contributory negligence; and
 - (b) determine a percentage reduction to be made on account of these forms of contributory negligence (which cannot be less in a case involving intoxication than the relevant minimum prescribed by this Part); and
 - (c) then reduce the amount assessed under subsection (2) by the percentage determined under this subsection.

- (4) Thirdly, the court is to apply any applicable fixed statutory reduction to the amount assessed under subsection (2) and reduced, if required, under subsection (3), and, if 2 or more fixed statutory reductions are required, the court is to make them in series.

Example—

Suppose that an amount of \$100 000 is subject to 2 fixed statutory reductions of 25 per cent. In this case, the amount is first reduced to \$75 000 and then reduced to \$56 250.

- (5) There is no necessary correlation between a finding of contributory negligence in relation to a cause of action under this Part and an apportionment of liability in relation to a different cause of action arising from the same facts.

Example—

Suppose that A and B are both drivers of motor vehicles that come into collision as a result of the negligence of both with resultant personal injuries to each other and also to C, a passenger in B's vehicle. Suppose that B's damages are reduced by 60 per cent under this Part as a result of actual or presumptive contributory negligence causally related to the occurrence of the accident. This is not to imply that, in A's action against B, no reduction beyond 40 per cent can be made on a similar basis. In C's action against A and B, responsibility will be apportioned between A and B without regard to the provisions of this Part.

PART 8 – DAMAGES FOR PERSONAL INJURY

SECTION 51—APPLICATION OF THIS PART

- (1) This Part applies—
- (a) where damages are claimed for personal injury arising from—
 - (i) a motor accident (whether caused intentionally or unintentionally); or
 - (ii) an accident caused wholly or in part by—
 - A. negligence; or
 - B. some other unintentional tort on the part of a person other than the injured person; or
 - C. a breach of a contractual duty of care; or
 - (b) where personal injury arising in the manner described in paragraph (a) results in death and damages are claimed under Part 5 for harm resulting from the death.

SECTION 52—DAMAGES FOR NON-ECONOMIC LOSS

- (1) Damages may only be awarded for non-economic loss if—
- (a) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
 - (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.
- (2) If damages are to be awarded for non-economic loss, other than in relation to personal injury arising from an MVA motor accident, they must be assessed as follows:
- (a) the injured person's total non-economic loss is to be assigned a numerical value (the **scale value**) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the noneconomic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);
 - (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
 - (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:

- (i) if the scale value is 10 or less—by multiplying the scale value by \$1 150;
 - (ii) if the scale value is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2 300;
 - (iii) if the scale value is 30 or less but more than 20—by adding to \$34 500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3 450;
 - (iv) if the scale value is 40 or less but more than 30—by adding to \$69 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4 600;
 - (v) if the scale value is 50 or less but more than 40—by adding to \$115 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5 750;
 - (vi) if the scale value is 60 or less but more than 50—by adding to \$172 500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6 900;
- (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example—

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34\,500 + (3 \times \$3\,450) = \$44\,850$$

- (3) Subject to subsection (4), if damages are to be awarded for noneconomic loss in relation to personal injury arising from an MVA motor accident, they must be assessed as follows:
- (a) the injured person's total noneconomic loss is to be assigned a numerical value (an *injury scale value*) on a scale running from 0 to 100;
 - (b) in assessing the injury scale value, the court must apply any rules prescribed by the regulations;
 - (c) the damages for noneconomic loss are to be calculated as follows:
 - (i) if the injury scale value is assessed as 31 or less but more than 10 (see subsection (4))—by adding to \$2 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 10 by \$1 000 (indexed);
 - (ii) if the injury scale value is assessed as 45 or less but more than 31—by adding to \$23 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 31 by \$3 000 (indexed);
 - (iii) if the injury scale value is assessed as 66 or less but more than 45—by adding to \$65 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 45 by \$5 000 (indexed);
 - (iv) if the injury scale value is assessed as 78 or less but more than 66—by adding to \$170 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 66 by \$10 000 (indexed);
 - (v) if the injury scale value is assessed as 79 or more—\$300 000 (indexed).
- (4) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for noneconomic loss if the injury scale value that applies under subsection (3)(a) in relation to the injury exceeds 10.
- (5) However, a court may award damages for noneconomic loss in a case that would otherwise be excluded by operation of subsection (4) if satisfied—
- (a) that the consequences of the personal injury with respect to noneconomic loss are exceptional when judged by comparison with other cases involving the same injury; and

- (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.
- (6) An assessment of damages for noneconomic loss under subsection (5) must be based on an injury scale value that should rarely be more than 25% higher than the injury scale value that applies under subsection (3)(a) in relation to the injury.
- (7) An amount applying under subsection (3) (and followed by the word "(indexed)") is to be adjusted on 1 July of each year, beginning on 1 July 2014, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the March quarter of that year by the Consumer Price Index for the March quarter 2013 (with the amount so adjusted being calculated to the nearest multiple of \$10).
- (8) In connection with the operation of subsection (7), the amount to be applied with respect to a particular injury is the amount applying under subsection (3) at the time of occurrence of that injury.

SECTION 53—DAMAGES FOR MENTAL HARM

- (1) Damages may only be awarded for mental harm if the injured person—
 - (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
 - (b) is a parent, spouse, domestic partner or child of a person killed, injured or endangered in the accident.
- (2) Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness.
- (3) Damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

SECTION 54—DAMAGES FOR LOSS OF EARNING CAPACITY

- (1) If the injured person was incapacitated for work, damages for loss of earning capacity are not to be awarded in respect of the first week of the incapacity.
- (2) Total damages for loss of earning capacity (excluding interest awarded on damages for any past loss) are not to exceed the prescribed maximum.

- (3) In a case in which an action is brought for the benefit of the dependants of a deceased person, the total amount awarded to compensate economic loss resulting from the death of the deceased person (apart from expenses—such as funeral expenses—actually incurred as a result of the death) cannot exceed the prescribed maximum and if before the date of death the deceased person received damages to compensate loss of earning capacity, the limit is to be reduced by the amount of those damages.

SECTION 55—LUMP SUM COMPENSATION FOR FUTURE LOSSES

- (1) If—
- (a) an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses; and
 - (b) an actuarial multiplier is used for the purpose of calculating the present value of the future losses, then, in determining the actuarial multiplier, a prescribed discount rate is to be applied.

SECTION 56—EXCLUSION OF INTEREST ON DAMAGES COMPENSATING NON-ECONOMIC LOSS OR FUTURE LOSS

Interest is not to be awarded on damages compensating non-economic or future loss.

SECTION 56A—ADDITIONAL PROVISIONS RELATING TO MOTOR VEHICLE INJURIES (ECONOMIC LOSS)

- (1) Any entitlement to damages for economic loss in relation to personal injury arising from an MVA motor accident applies subject to the provisions of this section.
- (2) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for loss or impairment of future earning capacity if the injury scale value that applies under the regulations in relation to the injury exceeds 7.
- (3) However, a court may award damages in a case that would otherwise be excluded by operation of subsection (2) if satisfied—
- (a) that the consequences of the personal injury with respect to loss or impairment of future earning capacity are exceptional; and
 - (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.

- (4) In assessing damages for loss or impairment of future earning capacity in relation to personal injury arising from an MVA motor accident (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—

- (a) a court must not take into account—
 - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
 - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
- (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, the chance of each occurring, and the combination of those chances; and
- (c) a court must, when making an award of damages, state—
 - (i) the circumstances that have been taken into account for the purposes of the award; and
 - (ii) the inferences that the court has drawn from those circumstances; and
 - (iii) the court's evaluation of the chances of each circumstance relied on occurring; and
 - (iv) its determination of the resultant award of damages.

- (5) Damages awarded for any form of loss or impairment of earning capacity (whether past or future) in relation to personal injury arising from an MVA motor accident must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.
- (6) The maximum amount of damages that may be awarded to an employed person for loss in relation to personal injury arising from an MVA motor accident due to the loss of employer superannuation contributions is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based.
- (7) In subsection (6)—
- relevant percentage** means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions.

- (8) The maximum amount of damages that may be awarded to a selfemployed person for economic loss in relation to personal injury arising from an MVA motor accident due to the loss of superannuation contributions made by or on behalf of the person is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based (but nothing in this subsection gives rise to an entitlement to damages beyond damages awarded for loss or impairment of earning capacity).
- (9) In subsection (8)—
relevant percentage means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions for the benefit of an employee who earns the same amount as the selfemployed person.

SECTION 57—EXCLUSION OF DAMAGES FOR COST OF MANAGEMENT OR INVESTMENT

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

SECTION 58—DAMAGES IN RESPECT OF GRATUITOUS SERVICES

- (1) Damages are not to be awarded—
- (a) to allow for the recompense of gratuitous services except services of a parent, spouse, domestic partner or child of the injured person; or
 - (b) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person.
- (2) Damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child are not to exceed an amount equivalent to 4 times State average weekly earnings.
- (3) However, the court may make an award in excess of the limit prescribed by subsection (2) if satisfied that—
- (a) the gratuitous services are reasonably required by the injured person; and
 - (b) it would be necessary, if the services were not provided gratuitously by a parent, spouse, domestic partner or child of the injured person to engage another person to provide the services for remuneration,

but, in that event, the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

- (4) Despite the preceding subsections, in a case involving an injured person who has suffered personal injury arising from an MVA motor accident—
- (a) damages referred to in subsection (1) are not to be awarded unless—
 - (i) the injury scale value that applies under the regulations in relation to the injury exceeds 10; and
 - (ii) the services are provided or to be provided—
 - A. for at least 6 hours per week; and
 - B. for a period of at least 6 consecutive months; and
 - (b) any hourly rate used for the purposes of determining any damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child is not to exceed a rate prescribed by the regulations for the purposes of this paragraph.
- (5) Furthermore, in a case involving a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, subsection (1) operates subject to the qualification that damages are not to be awarded for the recompense of gratuitous services of a parent, spouse, domestic partner or child of the participant in respect of any assessed treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme.
- (6) A reference in subsection (5) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).

SECTION 58A—LIMITATIONS ON DAMAGES FOR PARTICIPANTS IN LIFETIME SUPPORT SCHEME

- (1) No damages may be awarded to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* in respect of any of the treatment, care and support needs of the person, or any excluded treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme and that arise (or will arise) during the period in respect of which the person is a participant in the Scheme.
- (2) Subsection (1) applies—
- (a) whether or not the treatment, care and support needs are assessed treatment, care and support needs under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*; and
 - (b) whether or not the Lifetime Support Authority is required to make a payment in respect of the treatment, care and support needs concerned; and
 - (c) whether or not any treatment, care, support or service is provided on a gratuitous basis.
- (3) A reference in subsection (1) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).
- (2) In making an award in relation to a relevant loss of financial support claim that will provide for the future (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—
- (a) a court must not take into account—
 - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
 - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
 - (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, and the combination of those chances; and
 - (c) a court must, when making an award of damages, state—
 - (i) the circumstances that have been taken into account for the purposes of the award; and
 - (ii) the inferences that the court has drawn from those circumstances; and
 - (iii) the court's evaluation of the chances of each circumstance occurring; and
 - (iv) its determination of the resultant award of damages.
- (3) Damages awarded in relation to a relevant loss of financial support claim must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.

SECTION 58B—ADDITIONAL PROVISIONS RELATING TO DEATH ON ACCOUNT OF A MOTOR VEHICLE INJURY

- (1) Any entitlement to damages for loss of financial support in respect of the death of a person arising from an MVA motor accident (a *relevant loss of financial support claim*) applies subject to the provisions of this section.

PART 9 – MISCELLANEOUS

DIVISION 5 – ACTIONS IN TORT RELATING TO SPOUSES AND DOMESTIC PARTNERS

SECTION 65—SPOUSE OR DOMESTIC PARTNER MAY CLAIM FOR LOSS OR IMPAIRMENT OF CONSORTIUM

- (1) If a person causes injury to another by wrongful act, neglect or default, the person will (whether or not the injury results in death) be liable in damages to the spouse or domestic partner of the injured person for loss or injury suffered by the spouse or domestic partner as a result of the loss or impairment of consortium.
- (2) Damages for the loss or impairment of consortium suffered by the spouse or domestic partner of an injured person on account of personal injury arising from an MVA motor accident will not be awarded unless the injury scale value that applies under the regulations in relation to the injury exceeds 10.

SECTION 66—DAMAGES WHERE INJURED SPOUSE OR DOMESTIC PARTNER PARTICIPATED IN BUSINESS

- (1) Where spouses or domestic partners are jointly engaged in the conduct of a business, and either of them suffers an injury as a result of which his or her participation in the conduct of the business ceases or is impaired, the other spouse or domestic partner (as the case may be) shall be entitled to recover from a person whose wrongful act, neglect or default caused the injury compensation for loss that he or she has suffered or continues to suffer by reason of the fact that the participation of his or her spouse or domestic partner (as the case may be) in the conduct of the business has ceased or has been impaired.
- (2) In this section—
business includes any professional or commercial undertaking;
injury includes an injury that results in death.

DIVISION 8 – UNREASONABLE DELAY IN RESOLUTION OF A CLAIM

SECTION 69—DEFINITIONS

- (1) In this Division—
dependant of a deceased person means any person on whose behalf an action could (assuming that he or she had been financially dependent on the deceased person) be brought under Part 5;
personal injury includes—
 - (a) a disease;
 - (b) any impairment of a physical or mental condition.

SECTION 70—DAMAGES FOR UNREASONABLE DELAY IN RESOLUTION OF A CLAIM

- (1) Damages in the nature of exemplary damages may be awarded, on a claim by the personal representative of a deceased person, against another person (the person in default) if the conditions prescribed by subsection (2) are satisfied.
- (2) The conditions for an award of damages under this section are as follows:
 - (a) the deceased person suffered personal injury giving rise to a right to compensation or damages; and
 - (b) the deceased person made a claim in writing (giving a reasonable indication of the grounds of the claim) for compensation or damages for the personal injury; and
 - (c) a person (the *person in default*) unreasonably delayed the resolution of the claim knowing, or in circumstances in which he or she ought to have known, that the deceased person was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim; and
 - (d) the person in default is—
 - (i) the person against whom the deceased person's claim lay; or
 - (ii) some other person who controlled or had an interest in the defence of the claim; and
 - (e) the deceased person died before compensation or damages for non-economic loss were finally determined by agreement between the parties or by judgment or decision of a court or tribunal; and

- (f) damages have not been recovered and are not recoverable under section 3(2) of the *Survival of Causes of Action Act 1940*.
- (3) For the purposes of subsection (2)—
- (a) the question whether a person has unreasonably delayed resolution of a claim is to be determined in the context of the proceedings as a whole (including negotiations and other non-curial proceedings) and the conduct of the deceased person and any other parties to the proceedings;
 - (b) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;
 - (c) if a judgment or decision of a court or tribunal is liable to appeal, then—
 - (i) if there is no appeal—the judgment or decision finally determines compensation or damages on the date it is given; but
 - (ii) if there is an appeal—there is no final determination of compensation or damages until the appeal is determined.
- (4) A court or tribunal that has, or would have had, jurisdiction in an action for damages, workers compensation or other monetary compensation for the personal injury has jurisdiction to award damages on a claim under this section but such a claim must be brought before the court or tribunal within 3 years after the deceased person's death (either as a separate proceeding or by introducing it as an additional claim in existing proceedings for damages or compensation for the personal injury).
- (5) In determining the amount of the damages to be awarded under this section, the court or tribunal is to have regard to—
- (a) the need to ensure that the person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim; and
 - (b) the need to punish the person in default for the unreasonable delay; and
 - (c) any other relevant factor.
- (6) Damages may be awarded under this section despite any statutory restriction on the award of exemplary or punitive damages but, if the deceased person's claim was for worker's compensation, the damages cannot exceed the total amount of the compensation for non-economic loss to which the deceased person would have been entitled if the claim had been resolved immediately before his or her death.

- (7) Damages awarded under this section are to be paid, at the direction of the court or tribunal—
- (a) to the dependants of the deceased person in proportions determined by the court or tribunal; or
 - (b) to the estate of the deceased person.
- (8) In exercising its discretion under subsection (7), the court or tribunal—
- (a) is to make an award to dependants rather than to the estate unless there are no dependants or there is some other good reason to the contrary; and
 - (b) in apportioning between dependants is to have regard to other relevant statutory entitlements (if any) that arise on the death of the deceased person.
- (9) This section applies if the deceased person died on or after the commencement of this section (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

SECTION 71—REGULATIONS

- (1) The Governor may make regulations for the purposes of this Division.
- (2) The regulations may (for example) deal with any aspect of the procedure to be followed in proceedings under this Division.

DIVISION 11 – GOOD SAMARITANS

SECTION 74—GOOD SAMARITANS

- (1) In this section—
- emergency assistance** means—
- (a) emergency medical assistance; or
 - (b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency;
- good samaritan** means—
- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or

- (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance;

medically qualified—a person is to be regarded as medically qualified if the person—

- (a) is a registered medical practitioner; or
 - (b) has professional qualifications in some field of health care that are statutorily recognised; or
 - (c) works or has worked as an ambulance officer or in some other recognised paramedical capacity.
- (2) A good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.
- (3) A medically qualified good samaritan incurs no personal civil liability for advice given about the assistance to be given to a person in apparent need of emergency medical assistance.
- (4) However—
- (a) the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
 - (b) the immunity does not operate if the good samaritan's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

DIVISION 12 – EXPRESSIONS OF REGRET

SECTION 75—EXPRESSIONS OF REGRET

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

Civil Liability Regulations 2013

The Civil Liability Regulations are current as at 1 April 2014.

Please check the source document to ensure there have been no further amendments since the time of this publication.

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SCHEDULE 1—RANGES OF INJURY SCALE VALUES

PART 1—PRELIMINARY

REGULATION 1—SHORT TITLE

These regulations may be cited as the *Civil Liability Regulations 2013*.

REGULATION 3—INTERPRETATION

- (1) In these regulations, unless the contrary intention appears—

accredited health professional means a person who is accredited under a scheme established by the designated Minister under section 76(2) of the Act;

Act means the *Civil Liability Act 1936*;

AMA 5 means the 5th edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association;

consequential mental harm does not include psychiatric impairment;

designated Minister has the same meaning as in section 76 of the Act;

GEPIC means *The guide to the evaluation of Psychiatric Impairment for Clinicians* prepared by MWN Epstein, G Mendelson and NHM Strauss as published in the Victorian Government Gazette on 8 May 2008;

GEPIC rating, in relation to pure mental harm, means a rating in accordance with the GEPIC for the psychiatric impairment caused by the mental harm;

highest range means the range of ISVs having the highest maximum ISV;

injured person means a person who claims damages in respect of personal injury arising from an MVA motor accident;

insurer includes the nominal defendant;

ISV means injury scale value;

Le Fort I fracture means a horizontal segmented fracture of the alveolar process of the maxilla;

Le Fort II fracture means a unilateral or bilateral fracture of the maxilla—

- (a) in which the body of the maxilla is separated from the facial skeleton and pyramidal in shape; and

- (b) that may extend through the body of the maxilla down the midline of the hard palate, through the floor of the orbit and into the nasal cavity;

Le Fort III fracture means a fracture in which the entire maxilla and 1 or more facial bones are completely separated from the brain case;

medical expert, in relation to an assessment of a GEPIC rating, means a person—

- (a) who is registered under the Health Practitioner Regulation National Law—
 - (i) to practise in the medical profession; and
 - (ii) holding specialist registration as a psychiatrist; and
- (b) who has successfully completed a course of training in the use of the GEPIC under a scheme determined by the Minister for the purposes of these regulations;

permanent impairment, in relation to an injury, means the impairment an injured person has, or is likely to have, after maximal medical improvement within the meaning of AMA 5;

psychiatric impairment means pure mental harm;

range, in relation to an ISV for an injury, means the range of ISVs for the injury set out in Schedule 1;

relevant MVA motor accident means the MVA motor accident that results in the personal injury that is relevant for the purposes of the application of these regulations in relation to a particular person;

whole person impairment, in relation to an injury, means an estimate, expressed as a percentage, of the impact of a permanent impairment caused by the injury on the injured person's overall ability to perform activities of daily living, as described by AMA 5, other than employment.

PART 2 – INJURY SCALE VALUES

REGULATION 4—INJURY SCALE VALUE

- (1) If general damages are to be awarded by a court in relation to an injury that results from an MVA motor accident occurring on or after 1 July 2013, the court must in assessing the ISV—
 - (a) assess the ISV under any rules prescribed by these regulations; and
 - (b) have regard to the ISVs given to cases involving the same or similar injuries.
- (2) An ISV assessment must not be undertaken until—
 - (a) the injury has stabilised; and
 - (b) a medical assessment of the injured person has been undertaken by an accredited health professional and a report provided under regulation 23.
- (3) However, a medical assessment by an accredited health professional is not required if—
 - (a) no health professional who is qualified to undertake the assessment has been accredited under the scheme established by the designated Minister under section 76(2) of the Act; or
 - (b) the insurer and the injured person reach an agreement that such an assessment is not required; or
 - (c) a court determines that such an assessment is not required.

REGULATION 5—MEDICAL ASSESSMENTS BEFORE INJURY HAS STABILISED

- (1) If a medical assessment of a person is undertaken for the purposes of determining an ISV but the health professional undertaking the assessment is of the opinion that, because the person's injury has not yet stabilised, the ISV is not able to be determined—
 - (a) the health professional must provide a report to that effect; and
 - (b) the insurer is liable for any costs associated with the assessment and report where the insurer has requested or approved the assessment.

REGULATION 6—RULES FOR ASSESSING ISV

- (1) This Part and Schedule 1 provide the rules under which a court must assess the ISV for an injury.
- (2) Schedule 1 provides the ranges of ISVs for particular injuries that the court is to consider in assessing the ISV for those injuries.
- (3) For an injury not mentioned in Schedule 1, a court, in assessing an ISV for the injury, may have regard to the ranges prescribed in Schedule 1 for other injuries of comparable severity.

REGULATION 7—ISV MUST BE A WHOLE NUMBER

An ISV assessed by a court must be expressed as a whole number (a number having a fraction of half or more being rounded up to the nearest whole number).

REGULATION 8—INJURY MENTIONED IN SCHEDULE 1

- (1) In assessing the ISV for an injury mentioned in the injury column in the table in Schedule 1, a court must consider the range of ISVs stated in the Schedule for the injury.
- (2) The range of ISVs for the injury reflects the level of adverse impact of the injury on the injured person.

REGULATION 9—COURT TO HAVE REGARD TO CERTAIN MATTERS

- (1) In addition to providing ranges of ISVs for particular injuries, Schedule 1 sets out provisions relevant to using the Schedule to assess an ISV for particular injuries.

Examples of relevant provisions—

 - (a) examples of the injury
 - (b) examples of factors affecting ISV assessment
 - (c) comments about appropriate level of ISV
- (2) In assessing an ISV, a court—
 - (a) must have regard to provisions referred to in subregulation (1) to the extent they are relevant in a particular case; and
 - (b) may have regard to other matters to the extent they are relevant in a particular case.

- (3) Without limiting subregulation (2), a court may have regard to—
 - (a) the injured person's age, life expectancy, pain, suffering and loss of amenities of life; and
 - (b) the effects of a preexisting condition of the injured person; and
 - (c) difficulties in life likely to have emerged for the injured person whether or not the injury happened; and
 - (d) with respect to assessing an ISV for multiple injuries, the range for, and other provisions of Schedule 1 in relation to, an injury other than the dominant injury of the multiple injuries; and
 - (e) the extent to which the injured person has refused treatment that could lead to a significant improvement in the level of impairment caused by that injury or condition, reasons for any refusal of treatment, and any evidence provided by a health professional as to the likely effect of treatment.

REGULATION 10—WHOLE PERSON IMPAIRMENT

The extent of whole person impairment is an important consideration, but not the only consideration, affecting the assessment of an ISV.

REGULATION 11—MULTIPLE INJURIES

- (1) Subject to regulation 12, in assessing the ISV for multiple injuries, a court must consider the range of ISVs for the dominant injury.
- (2) To reflect the level of adverse impact of multiple injuries on an injured person, the court may assess the ISV for the multiple injuries as being higher in the range of ISVs for the dominant injury of the multiple injuries than the ISV the court would assess for the dominant injury only.

Note—

This regulation acknowledges that—

- (a) the effects of multiple injuries commonly overlap, with each injury contributing to the overall level of adverse impact on the injured person; and
- (b) if each of the multiple injuries were assigned an individual ISV and these ISVs were added together, the total ISV would generally be too high.

REGULATION 12—MULTIPLE INJURIES AND MAXIMUM DOMINANT ISV INADEQUATE

- (1) This regulation applies if a court considers the level of adverse impact of multiple injuries on an injured person is so severe that the maximum ISV for the dominant injury is inadequate to reflect the level of impact.
- (2) To reflect the level of impact, the court may make an assessment of the ISV for the multiple injuries that is higher than the maximum ISV for the dominant injury.
- (3) However, the ISV for the multiple injuries—
 - (a) must not be more than 100; and
 - (b) should rarely be more than 25% higher than the maximum ISV for the dominant injury.
- (4) If the increase is more than 25% of the maximum dominant ISV, the court must give written reasons for the increase.

REGULATION 13—CONSEQUENTIAL MENTAL HARM

- (1) This regulation applies if a court is assessing an ISV where an injured person suffers consequential mental harm following a physical injury.
- (2) The court must treat the consequential mental harm merely as a feature of the injury.

REGULATION 14—PURE MENTAL HARM

- (1) This regulation applies if—
 - (a) a court is assessing an ISV; and
 - (b) a GEPIC rating for psychiatric impairment of an injured person is relevant under Schedule 1.
- (2) A GEPIC rating may be accepted by the court only if it is—
 - (a) an assessment of pure mental harm; and
 - (b) assessed by a medical expert; and
 - (c) provided to the court in a GEPIC report.

REGULATION 15—PREEXISTING CONDITIONS

- (1) This regulation applies if an injured person has a preexisting condition that may be relevant to assessing an ISV.

- (2) In considering the effect of the injury on the preexisting condition, the court may have regard only to the extent to which the preexisting condition has been made worse by the injury.

REGULATION 16—MEDICAL REPORT STATING WHOLE PERSON IMPAIRMENT PERCENTAGE

- (1) If a medical report states a whole person impairment percentage, it must state how the percentage is calculated, including—
 - (a) the clinical findings; and
 - (b) how the impairment is calculated; and
 - (c) if the percentage is based on criteria provided under AMA 5—
 - (i) an identification of the relevant provisions of AMA 5; and
 - (ii) if a range of percentages is available under AMA 5 for an injury of the type being assessed—the reason for assessing the injury at the selected point in the range.

REGULATION 17—GREATER WEIGHT TO ASSESSMENTS BASED ON AMA 5

- (1) This regulation does not apply to a medical assessment of scarring or of mental harm.
- (2) In assessing an ISV, a court must, unless it considers there is good reason for doing otherwise, give greater weight to a medical assessment of a whole person impairment percentage based on the criteria for the assessment of whole person impairment provided under AMA 5 than to a medical assessment of a whole person impairment percentage not based on the criteria.

PART 3 – DAMAGES IN RESPECT OF GRATUITOUS SERVICES

REGULATION 18—DETERMINATION OF STATE AVERAGE WEEKLY EARNINGS (SECTION 58 OF ACT)

For the purposes of assessing damages to be awarded in respect of gratuitous services under section 58 of the Act in respect of a particular period, *State average weekly earnings* are to be determined by applying the relevant male *Fulltime Adult Average Weekly Ordinary Time Earnings* for South Australia as published, from time to time, by the Australian Statistician.

REGULATION 19—DAMAGES IN RESPECT OF GRATUITOUS SERVICES (SECTION 58(4)(B) OF ACT)

- (1) For the purposes of assessing damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child, the rate prescribed under section 58(4)(b) of the Act is \$25 per hour (indexed).
- (2) The amount applying under subregulation (1) (and followed by the word “(indexed)”) is to be adjusted on 1 July of each year, beginning on 1 July 2014, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the March quarter of that year by the Consumer Price Index for the March quarter 2013.

PART 4 – ASSESSMENT OF MOTOR VEHICLE INJURIES

DIVISION 1—ATTENDANCE AT MEDICAL EXAMINATIONS

REGULATION 20—ATTENDANCE AT MEDICAL EXAMINATIONS

- (1) An injured person must—
 - (a) submit himself or herself to any medical examination or assessment by a health professional selected or nominated by the insurer that the insurer may require; and
 - (b) within 21 days of consulting a health professional in relation to the injury to which the claim relates, or such longer period as may be reasonable in the circumstances of the case or as the insurer may allow, inform the insurer, by notice in writing, of—
 - (i) the name of the health professional; and
 - (ii) the day on which the consultation occurred; and

- (c) within 21 days of receiving a written report from a health professional consulted by the person in relation to the injury, or such longer period as may be reasonable in the circumstances of the case, send a copy of that report to the insurer.

- (2) Where a written report is obtained by the insurer on the findings made, or the opinions formed, by a health professional on the examination or assessment of an injured person under subregulation (1)(a), the insurer must, within 21 days of receiving the report, send a copy of the report to the injured person.

DIVISION 2—ADDITIONAL PROVISIONS RELATING TO ACCREDITED HEALTH PROFESSIONALS

REGULATION 21—DEFINITION OF HEALTH PROFESSIONAL (SECTION 76(16) OF ACT)

Neuropsychologists are a class of persons brought within the ambit of the definition of *health professional* under section 76 of the Act.

REGULATION 22—PROVISION OF INFORMATION TO ACCREDITED HEALTH PROFESSIONALS

- (1) A request for an examination or assessment made to an accredited health professional for the purposes of an ISV assessment must be accompanied by a copy of each of the following:
 - (a) any relevant medical history, records or notes provided by the injured person’s medical practitioner (if available);
 - (b) any relevant hospital notes;
 - (c) any other medical information so far as it is relevant to the injured person’s claim;
 - (d) any documents required by rules of court or practice directions.

REGULATION 23—REPORTS BY ACCREDITED HEALTH PROFESSIONALS

- (1) An accredited health professional who is sent a request for an examination or assessment must provide a written report to the insurer within 30 days of the examination or assessment which gives an opinion with respect to—

- (a) diagnosis; and
 - (b) prognosis; and
 - (c) injury stability; and
 - (d) whether the injury is consistent with the stated cause; and
 - (e) the effect of the MVA motor accident on any preexisting injury and the extent to which it has been made worse by the injury; and
 - (f) the effect of the MVA motor accident on any subsequent injury and the extent to which it has been made worse by the injury; and
 - (g) whether the assessment was based on AMA5 or other criteria with detailed reasons; and
 - (h) in a case of pure mental harm—the GEPIC rating with detailed reasons; and
 - (i) if relevant, the whole person impairment; and
 - (j) the ISV item number; and
 - (k) any other relevant matter if the insurer and injured person reach agreement.
- (2) A report provided under subregulation (1) must be in a form determined by the designated Minister (and include any information required by that form).
- (3) The insurer must, on receipt of a report under this Division, provide the injured person to whom the assessment relates with a copy of the report within 21 days.

DIVISION 3—RELATED MATTERS

REGULATION 24—COURT REQUIREMENTS WITH RESPECT TO REPORTS

A medical report prepared under these regulations with respect to a claim in relation to personal injury damages must comply with any relevant rules of court or practice directions.

REGULATION 25—LIABILITY OF INSURER FOR CERTAIN COSTS (SECTION 76(9) OF ACT)

- (1) Subject to subregulation (2), the insurer is liable for the payment of—
- (a) the cost of an examination or assessment required under regulation 20(1)(a) and the report to the insurer on the examination or assessment; and
 - (b) the cost of any other examination or assessment conducted by a health professional, and the report to the insurer on the examination or assessment, where the insurer authorised or approved the examination or assessment before it was conducted.
- (2) If an injured person fails, without reasonable cause, to attend an examination as required under this Part—
- (a) the insurer may request that the injured person makes payment of any cancellation fees incurred because of the injured person’s non attendance; and
 - (b) if a request is made, the injured person is liable to pay for any fees incurred by the insurer (and the insurer may set this off against any liability for payment of damages or compensation).

NUMERICAL INDEX TO INJURY SCALE VALUES COMPILED BY HUNT & HUNT

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124 – 127	Amputation of lower limbs
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Part 9	Burn Injuries

ALPHABETICAL INDEX TO INJURY SCALE VALUES COMPILED BY HUNT & HUNT

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Part 9	Burn Injuries
1 – 4	Central Nervous System – Quadriplegia, Paraplegia, Hemiplegia , Monoplegia
80 – 84	Cervical spine injuries
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30 – 33	Ear injuries
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40 – 43	Lung injuries other than asthma
44 – 47	Male reproductive system injuries
10 – 13	Mental harm and Psychiatric impairment
151 – 154	Scarring to body other than face
19 – 22	Scarring to the face
90 – 93	Shoulder injuries
74 – 76	Spleen and pancreas injuries
85 – 89	Thoracic or lumbar spine injuries
146 – 149	Toe injuries
120 – 123	Pelvis or hip injuries
116 – 119	Upper limb injuries other than shoulder, amputation, elbow, wrist or hand injuries
100 – 103	Wrist injuries

SCHEDULE 1 – RANGES OF INJURY SCALE VALUES

Item No	Injury	Range	
Part 1—Central nervous system and head injuries			
1	Quadriplegia		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Presence and extent of pain » Extent of any residual movement » Consequential mental harm » Level of function and preinjury function » Degree of independence » Ability to participate in daily activities, including employment » Presence and extent of secondary medical complications » Loss of reproductive or sexual function » Bowel or bladder incontinence 	80	100
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate only if the injured person has assisted ventilation, extreme physical limitation and gross impairment of ability to communicate.</p>		
2	Paraplegia		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Presence and extent of pain » Extent of any residual movement » Consequential mental harm » Level of function and preinjury function » Degree of independence » Ability to participate in daily activities, including employment » Loss of reproductive or sexual function » Bowel or bladder incontinence » Presence and extent of secondary medical complications 	60	80
3	Hemiplegia or severe paralysis of more than 1 limb		
	<p>Examples of factors affecting ISV scale for item 3</p> <p>The same examples apply as for item 2.</p>		
	<p>Additional comment for item 3</p> <p>Incomplete paralysees causing whole person impairment of less than 40% must be assessed under orthopaedic injuries if it is the only injury or the dominant injury of multiple injuries.</p>		
3.1	Complete or nearly complete paralysis	60	80
3.2	Other paralysis, causing whole person impairment of at least 40%	45	60
4	Monoplegia		
	<p>Comment</p> <p>See items 5, 6 and 7 and orthopaedic injuries section.</p>		
5	Extreme brain injury		
	<p>Comment</p> <p>The injury will involve major trauma to the brain with severe permanent impairment for which there is radiological evidence</p>	71	100

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate only if the injured person needs fulltime nursing care and has the following— <ul style="list-style-type: none"> - gross disturbance of brain function - significant physical limitation and destruction of preexisting lifestyle - epileptic seizures - double incontinence - little or no language function - little or no meaningful response to environment - An injured person with an injury for which an ISV at or near the top of the range is appropriate may have some ability to follow basic commands, recovery of eye opening, return of postural reflex movement and return to preexisting sleep patterns. 		
	<p>Examples of factors affecting ISV assessment for item 5:</p> <ul style="list-style-type: none"> » Degree of insight » Life expectancy » Extent of bodily impairment 		
6	Serious brain injury		
	<p>Comment</p> <p>The injured person will be very seriously disabled and substantially depends on others for professional and other care</p>	56	70
	<p>Example of the injury</p> <p>Serious brain damage causing—</p> <ul style="list-style-type: none"> (a) physical impairment, for example, limb paralysis; or (b) cognitive impairment with marked impairment of intellect and personality 		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Life expectancy » Extent of physical limitations » Extent of cognitive limitations » Extent of sensory impairment, for example, loss of hearing or sense of taste or smell » Level of function and preexisting function » Degree of independence » Ability to communicate » Behavioural or psychological changes » Epilepsy confirmed by EEG or evidenced through a requirement for prophylactic medication for 6 months » Presence of and extent of secondary medical complications 		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate only if the injured person substantially depends on others and needs professional and other care, that is, passive overnight care and more than 6 hours of care per day</p>		
7	Moderate brain injury		
	<p>Comment</p> <p>The injured person will be seriously disabled, but the degree of the injured person's dependence on others, although still present, is lower than for an item 6 injury.</p>		

Item No	Injury	Range	
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Life expectancy » Extent of physical limitations » Extent of cognitive limitations » Extent of sensory limitation, for example, limitation of hearing or sense of taste or smell » Level of function and preexisting function » Degree of independence » Ability to communicate » Behavioural or psychological changes » Epilepsy or a high risk of epilepsy confirmed by EEG or requiring prophylactic medication for 6 months » Presence of, and extent of, secondary medical complications 		
7.1	<p>An ISV in this item will be applicable if there is no capacity for employment, and 1 or more of the following:</p> <ul style="list-style-type: none"> » moderate to severe cognitive impairment » marked personality change » dramatic effect on speech, sight or other senses » epilepsy or a high risk of epilepsy confirmed by EEG or evidenced through a requirement for prophylactic medication for 6 months. 	41	55
7.2	<p>An ISV in this item will be applicable if there is an increased risk of epilepsy confirmed by EEG requiring prophylactic medication for 6 months and—</p> <ul style="list-style-type: none"> » a moderate cognitive impairment » loss of, or greatly reduced capacity for, employment » noticeable interference with lifestyle 	21	40
8	Minor brain injury		
	<p>Comment</p> <p>An ISV under this item will be applicable if there is evidence of physical injury causing the brain damage. The injured person will make a good recovery and be able to take part in normal social life and to return to work. There may be minor problems persisting that prevent a restoration of normal function</p>	6	20
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Severity of any physical injury causing the brain damage, having regard to— <ul style="list-style-type: none"> (a) any medical assessment made immediately after the injury was caused, for example, CT or MRI scans, an ambulance officer's assessment or hospital emergency unit assessment; and (b) significant posttraumatic amnesia. » Extent of any ongoing, and possibly permanent, disability » Extent of any personality change » Depression » Extent of physical limitations » Extent of cognitive limitations » Extent of sensory limitation, for example, limitation of hearing or sense of taste or smell » Level of function and preexisting function » Degree of independence » Ability to communicate » Behavioural or psychological changes » Presence of, and extent of, secondary medical complications 		

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if:</p> <ul style="list-style-type: none"> » the injured person has epilepsy or an increased risk of epilepsy confirmed by EEG and the use of prophylactic medication; and » there is ongoing reduced concentration and memory, or reduced mood control, that does not significantly interfere with the person's ability to take part in normal social life or return to work. 		
9	Minor head injury, other than a skeletal injury of the facial area		
	<p>Comment</p> <p>Brain damage, if any, is minimal.</p>	0	5
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Uncomplicated skull fracture » Concussion with transitory loss of consciousness and no residual effects 		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Severity of any physical injury causing brain damage » Length of time to recover from any symptoms » Extent of ongoing symptoms » Presence, or absence of, headaches 		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at the bottom of the range will be applicable for an injury from which the injured person fully recovers within a few weeks » An ISV at or near the top of the range will be appropriate if there is an uncomplicated skull fracture and/or there are associated concussive symptoms of dizziness, headache and memory loss (usually persisting for less than 6 months) 		
Part 2—Pure mental harm			
	<p>General comment</p> <p>This Part includes references to ratings on the psychiatric impairment scale, Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC).</p>		
10	Extreme psychiatric impairment		
	<p>Example of the injury</p> <p>An ISV score in the lower part of the range will be appropriate if psychiatric impairment is assessed with a GEPIC rating of Class 5.</p>	41	65
11	Serious psychiatric impairment		
	<p>Comment about appropriate level of ISV</p> <p>An ISV under this item will be applicable if psychiatric impairment is assessed with a GEPIC rating of Class 4.</p>	26	40
12	Moderate psychiatric impairment		
	<p>Comment</p> <p>There is generally only moderate impairment.</p>	8	25
	<p>Example of the injury</p> <p>An ISV score in this range will be appropriate if psychiatric impairment is assessed with a moderate GEPIC rating of Class 3</p>		

Item No	Injury	Range	
13	Minor psychiatric impairment		
	Comment : There is generally only mild impairment.	0	7
	Comment about appropriate level of ISV An ISV near the top of the range will be applicable if psychiatric impairment is assessed with a mild GEPIC rating of Class 2. An ISV near the bottom of the range will be applicable if psychiatric impairment is assessed with a GEPIC rating of Class 1.		
Part 3—Facial injuries			
Division 1—Skeletal injuries of the facial area			
	Examples of factors affecting ISV assessment for items 14 to 22 » Extent of skeletal or functional damage » Degree of cosmetic damage or disfigurement » Consequential mental harm » Availability of cosmetic repair		
14	Extreme facial injury		
	Comment : The injury will involve severe traumatic injury to the face requiring substantial reconstructive surgery.	26	45
	Examples of the injury » A Le Fort I fracture or Le Fort II fracture if the degree of incapacity and disfigurement after reconstructive surgery will be very severe » A Le Fort III fracture causing incapacity in daily activities		
	Additional example of factor affecting ISV scale The extent of any neurological impairment or effect on the airway Note— Le Fort I fracture, Le Fort II fracture and Le Fort III fracture are defined in regulation 3.		
15	Serious facial injury		
	Comment : The injury will involve serious traumatic injury to the face requiring reconstructive surgery that is not substantial.	14	25
	Examples of the injury » A Le Fort I fracture or Le Fort II fracture if the degree of incapacity and disfigurement after reconstructive surgery will not be very severe » A Le Fort III fracture if no serious deformity will remain after reconstructive surgery » A serious or multiple fracture of the nasal complex either or both— (a) requiring more than 1 operation; and (b) causing 1 or more of the following— › permanent damage to the airway › permanent damage to nerves or tear ducts › facial deformity. » A serious cheekbone fracture that will require surgery and cause serious disfigurement and permanent effects despite reconstructive surgery, for example, hyperaesthesia or paraesthesia » A very serious multiple jaw fracture that will— (a) require prolonged treatment; and (b) despite reconstructive surgery, cause permanent effects, for example, severe pain, restriction in eating, paraesthesia or a risk of arthritis in the joints. » A severed trunk of the facial nerve (7th cranial nerve), causing total paralysis of facial muscles on 1 side of the face		

Item No	Injury	Range	
	<p>Additional examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Any neurological impairment or effect on the airway » Permanent cosmetic deformity 		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the injury causes permanent cosmetic deformity, asymmetry of 1 side of the face and limited consequential mental harm. » An ISV at or near the top of the range will be appropriate if the injury causes serious bilateral deformity and significant consequential mental harm. 		
16	Moderate facial injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A simple cheekbone fracture, requiring minor reconstructive surgery, from which the injured person will fully recover with little cosmetic damage » A fracture of the jaw causing— <ul style="list-style-type: none"> (a) permanent effects, for example, difficulty in opening the mouth or in eating; or (b) hyperaesthesia or paraesthesia in the area of the fracture. » Damaged branches of the facial nerve (7th cranial nerve) with permanent paralysis of some of the facial muscles » A displaced fracture of the nasal complex from which the injured person will almost fully recover after surgery » A severed sensory nerve of the face with minor permanent paraesthesia 	6	13
17	Minor facial injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A simple cheekbone fracture, for which surgery is not required and from which the injured person will recover fully » A simple jaw fracture, requiring immobilisation and from which the injured person will recover » A stable fracture of the joint process of the jaw » A displaced fracture of the nasal complex requiring only manipulation » A simple undisplaced fracture of the nasal complex, from which the injured person will fully recover » A severed sensory nerve of the face, with good repair causing minimal or no paraesthesia 	0	5
18	Injury to teeth or gums		
	<p>Comment</p> <p>There will generally have been a course of treatment as a result of the injury.</p>		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Extent and degree of discomfort during treatment » Difficulty with eating 		
	<p>Comment about appropriate level of ISV</p> <p>If protracted dentistry causes the injury, the ISV may be higher than the ISV for the same injury caused by something else.</p>		
18.1	<i>Loss of or serious damage to more than 3 teeth, serious gum injury or serious gum infection</i>	6	12
18.2	<i>Loss of or serious damage to 2 or 3 teeth, moderate gum injury or moderate gum infection</i>	3	5
18.3	<i>Loss of or serious damage to 1 tooth, minor gum injury or minor gum infection</i>	0	2

Item No	Injury	Range	
Division 2—Scarring to the face			
	General comments This Division will usually apply to an injury involving skeletal damage only if the skeletal damage is minor		
19	Extreme facial scarring		
	Examples of the injury <ul style="list-style-type: none"> » Widespread area scarring, for example, over the side of the face or another whole area » Severe contour deformity » Significant deformity of the mouth or eyelids with muscle paralysis or tic 	21	50
	Comment about appropriate level of ISV <ul style="list-style-type: none"> » An ISV in the upper half of the range may be appropriate if the injured person is relatively young, the cosmetic damage is very disfiguring and the consequential mental harm is severe » An ISV at or near the top of the range will be appropriate if the injury is caused by burns that resulted in loss of the entire nose, eyelids or ears. 		
20	Serious facial scarring		
	Examples of the injury <ul style="list-style-type: none"> » Substantial disfigurement and significant consequential mental harm » Discoloured hypertrophic or keloid scarring » Serious contour defects » Severe linear scarring » Extensive atrophic scarring 	11	20
21	Moderate facial scarring		
	Comment Any consequential mental harm is minor, or having been considerable at the outset, has greatly diminished.		
	Examples of the injury <ul style="list-style-type: none"> » Scarring, the worst effects of which will be reduced by plastic surgery that will leave minor cosmetic damage » Scars crossing lines of election with discoloured, indurated, hypertrophic or atrophic scarring, of moderate severity 	6	10
22	Minor facial scarring		
	Examples of the injury <ul style="list-style-type: none"> » A single scar able to be camouflaged » More than 1 very small scar if the overall effect of the scars is to mar, but not markedly to affect, appearance and consequential mental harm is minor » Almost invisible linear scarring, in lines of election, with normal texture and elevation 	0	5
Part 4—Injuries affecting the senses			
Division 1—General comment			
	Injuries mentioned in this Part are commonly symptoms of brain and nervous system injury		

Item No	Injury	Range	
Division 2—Injuries affecting the eyes			
23	Total sight and hearing impairment		
	Comment The injury ranks with the most devastating injuries.	90	100
	Examples of factors affecting ISV scale » Degree of insight » Age and life expectancy		
24	Total sight impairment		
	Examples of factors affecting ISV scale » Degree of insight » Age and life expectancy	50	80
25	Complete sight impairment in 1 eye with reduced vision in the other eye		
	Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is serious risk of further significant deterioration in the remaining eye.	25	50
26	Complete sight impairment in 1 eye or total loss of 1 eye		
	Examples of factors affecting ISV scale » The extent to which the injured person's activities are adversely affected by the impairment or loss » Associated scarring or cosmetic damage	26	30
	Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is a minor risk of sympathetic ophthalmia.		
27	Serious eye injury		
	Examples of the injury » A serious but incomplete loss of vision in 1 eye without significant risk of loss or reduction of vision in the other eye » An injury causing double vision that is not minor and intermittent	11	25
28	Moderate eye injury		
	Example of the injury Minor but permanent impairment of vision in one eye, including if there is double vision that is minor and intermittent	6	10
29	Minor eye injury		
	Examples of the injury A minor injury, for example, from being struck in the eye, exposed to smoke or other fumes or being splashed by liquids— (a) causing initial pain and temporary interference with vision; and (b) from which the injured person will fully recover within a relatively short time	0	5

Item No	Injury	Range	
Division 3—Injuries affecting the ears			
30	Extreme ear injury		
	<p>Definition of injury The injury involves a binaural hearing loss of at least 80%.</p>	36	55
	<p>Additional examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Associated problems, for example, severe tinnitus, moderate vertigo, a moderate vestibular disturbance or headaches » Availability of hearing aids or other devices that may reduce the hearing loss 		
	<p>Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if the injury happened at an early age so as to prevent or to seriously affect the development of normal speech</p>		
31	Serious ear injury		
	<p>Definition of injury The injury involves—</p> <ul style="list-style-type: none"> (a) a binaural hearing loss of at least 50% but less than 80%; or (b) severe permanent vestibular disturbance. 	26	35
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV in the lower half of the range will be appropriate if there is no speech impairment or tinnitus » An ISV in the upper half of the range will be appropriate if there is speech impairment and tinnitus. 		
32	Moderate ear injury		
	<p>Definition of injury The injury involves—</p> <ul style="list-style-type: none"> (a) a binaural hearing loss of at least 20% but less than 50%; or (b) significant permanent vestibular disturbance. 	11	25
	<p>Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there are problems associated with the injury, for example, severe tinnitus, moderate vertigo, a moderate vestibular disturbance or headaches.</p>		
33	Minor ear injury		
	<p>Definition of injury The injury involves a binaural hearing loss of less than 20%.</p>		
	<p>Comment</p> <ul style="list-style-type: none"> » This item covers the bulk of hearing impairment cases » The injury is not to be judged simply by the degree of hearing loss » There will often be a degree of tinnitus present » There may also be minor vertigo or a minor vestibular disturbance causing loss of balance » A vestibular disturbance may increase the level of ISV. 		
33.1	<i>Moderate tinnitus and hearing loss</i>	6	11
33.2	<i>Mild tinnitus with some hearing loss</i>	4	5
33.3	<i>Slight or occasional tinnitus with slight hearing loss or an occasional vestibular disturbance, or both</i>	0	3

Item No	Injury	Range	
Division 4—Impairment of taste or smell			
34	Total loss of taste or smell, or both		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there will be a total loss of either taste or smell » An ISV at or near the top of the range will be appropriate if there will be a total loss of both taste and smell. 	6	9
35	Partial loss of smell or taste, or both		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there will be a partial loss of either taste or smell » An ISV at or near the top of the range will be appropriate if there will be a partial loss of both taste and smell. 	0	5
Part 5—Injuries to internal organs			
Division 1—Chest injuries			
	<p>Example of factors affecting ISV assessment for items 36 to 39</p> <p>The level of any reduction in the capacity for employment and enjoyment of life</p>		
36	Extreme chest injury		
	<p>Comment</p> <p>The injury will involve severe traumatic injury to the chest, or a large majority of the organs in the chest cavity, causing a high level of disability and ongoing medical problems.</p>	46	65
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there will be total removal of 1 lung or serious heart damage, or both, with serious and prolonged pain and suffering and significant permanent scarring.</p>		
37	Serious chest injury		
	<p>Comment : The injury will involve serious traumatic injury to the chest or organs in the chest cavity, causing serious disability and ongoing medical problems.</p>		
	<p>Examples of the injury</p> <p>A trauma to 1 or more of the following, causing permanent damage, physical disability and impairment of function—</p> <ul style="list-style-type: none"> » the chest (eg the chest wall mechanics with consequent restrictive ventilatory impairment) » the heart » 1 or both of the lungs (eg scarring or restrictive pleural disease) » the diaphragm (eg rupture or phrenic nerve injury) » an injury that causes the need for oxygen therapy for about 16 to 18 hours a day 	21	45
	<p>Example of factors affecting ISV scale</p> <p>The need for a permanent tracheostomy</p>		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if, after recovery, there are both of the following—</p> <ol style="list-style-type: none"> (a) serious impairment to cardiopulmonary function; (b) whole person impairment for the injury of, or of nearly, 40%. 		

Item No	Injury	Range	
38	Moderate chest injury		
	<p>Example of the injury</p> <p>The injury will involve serious traumatic injury to the chest or organs in the chest cavity, causing moderate disability and ongoing medical problems</p>	11	20
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Duration and intensity of pain and suffering (eg chronic inter costal neuralgia) » The degree of permanent impairment of lung or cardiac function, as evidenced by objective test results » The need for a temporary tracheostomy for shortterm airway management 		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be applicable if there are multiple rib fractures causing—</p> <ul style="list-style-type: none"> (a) a flail segment (flail chest) requiring mechanical ventilation in the acute stage; and (b) moderate permanent impairment of cardiopulmonary function. <p>An ISV at near the bottom of the range will be appropriate if there will be a partial loss of a breast without significant consequential mental harm.</p> <p>An ISV in the lower half of the range will be appropriate if there was a pneumothorax, or haemothorax, requiring intercostal catheter insertion.</p>		
39	Minor chest injury		
	<p>Examples of factors affecting ISV scale for items 39.1 and 39.2</p> <ul style="list-style-type: none"> » complexity of any fractures » extent of injury to underlying organs » extent of any disability » duration and intensity of pain and suffering 		
39.1	<i>Complicated or significant fracture, or internal organ injury, that substantially resolves</i>		
	<p>Comment</p> <p>The injury will involve significant or complicated fractures, or internal injuries, that cause some tissue damage but no significant longterm effect on organ function.</p>	5	10
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Multiple fractures of the ribs or sternum, or both, that may cause cardiopulmonary contusion » Internal injuries that cause some tissue damage but no significant longterm effect on organ function 		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is a fractured sternum that substantially resolves, and there is some ongoing pain and activity restriction » An ISV at or near the top of the range will be appropriate if the injury causes significant persisting pain and significant activity restriction. 		
39.2	<i>Soft tissue injury, minor fracture or minor internal organ injury</i>		
	<p>Comment</p> <ul style="list-style-type: none"> » The injury will involve a soft tissue injury, minor fracture, or minor and nonpermanent injury to internal organs » There may be persistent pain from the chest, for example, from the chest wall or sternochondral or costochondral joints. 	0	4

Item No	Injury	Range	
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A single penetrating wound, causing some tissue damage but no longterm effect on lung function » An injury to the lungs caused by the inhalation of toxic fumes or smoke that will not permanently interfere with lung function » A soft tissue injury to the chest wall, for example, a laceration or serious seatbelt bruising » Fractured ribs or a minor fracture of the sternum causing serious pain and disability for weeks, without internal organ damage or permanent disability 		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the bottom of the range will be appropriate if there is a soft tissue injury from which the injured person will fully recover.</p>		
Division 2—Lung injury other than asthma			
	<p>General comments</p> <p>The level of an ISV for lung disease often reflects the fact that the disease is worsening and there is a risk of the development of secondary medical conditions.</p>		
	<p>Examples of factors affecting ISV assessment for items 40 to 43</p> <p>Consequential mental harm may increase the level of ISV</p>		
40	Extreme lung injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Lung disease involving serious disability causing severe pain and dramatic impairment of function and quality of life » A recurrent pulmonary embolism resulting in failure of the right side of the heart requiring a lung transplant, heart transplant or both 	46	65
	<p>Additional examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Age » Likelihood of progressive worsening » Duration and intensity of pain and suffering 		
41	<i>Serious lung injury</i>		
41.1	<i>Serious lung injury if progressive worsening of lung function</i>		
	<p>Example of item 41.1 :</p> <p>Lung disease, causing—</p> <ul style="list-style-type: none"> » significantly reduced and worsening lung function » prolonged and frequent coughing » restriction of physical activity, employment and enjoyment of life. 	25	45
	<p>Additional examples of factors affecting ISV scale for item 41.1</p> <ul style="list-style-type: none"> » The possibility of lung cancer developing may increase the level of ISV » The need for continuous oxygen therapy 		
41.2	<i>Serious lung injury if no progressive worsening of lung function</i>		
	<p>Examples of item 41.2</p> <ul style="list-style-type: none"> » Lung disease causing breathing difficulties, short disabling breathlessness, requiring frequent use of inhaler » Lung disease causing a significant effect on employment and social life, including inability to tolerate a smoky environment, with an uncertain prognosis » A recurrent pulmonary embolism causing pulmonary hypertension and cor pulmonale 	11	24

Item No	Injury	Range	
42	Moderate lung injury		
	<p>Example of the injury</p> <p>A pulmonary embolism requiring anticoagulant therapy for at least 1 year or pulmonary endarterectomy</p>	6	11
43	Minor lung injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Lung disease causing slight breathlessness, with— <ul style="list-style-type: none"> (a) no effect on employment; and (b) the likelihood of substantial and permanent recovery within a few years after the injury is caused » A pulmonary embolism requiring anticoagulant therapy for less than 1 year 	0	5
	<p>Comment about appropriate level of ISV</p> <p>An ISV under this item will also will be appropriate if there is lung disease causing temporary aggravation of bronchitis, or other chest problems, that will resolve within a few months.</p>		
Division 4—Injuries to male reproductive system			
	<p>General comment</p> <ul style="list-style-type: none"> » This Division applies to injuries caused by physical trauma rather than as a secondary result of psychiatric impairment » For psychiatric impairment that causes loss of reproductive system function, (see psychiatric impairment) » Sterility is usually either— <ul style="list-style-type: none"> (a) caused by surgery, chemicals or disease; or (b) caused by a traumatic injury that is often aggravated by scarring. 		
	<p>Examples of factors affecting ISV assessment for items 44 to 47</p> <ul style="list-style-type: none"> » Consequential mental harm » Effect on social and domestic life 		
44	Impotence and sterility		
	<p>Additional examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Age » Whether the injured person has children » Whether the injured person intended to have children or more children 	5	37
44.1	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate if a young injured person has total impotence and loss of sexual function and sterility » An ISV in the upper half of the range will be appropriate if a young injured person without children has uncomplicated sterility, without impotence or any aggravating features » An ISV near the middle of the range will be appropriate if a middleaged injured person with children has sterility and permanent impotence » An ISV in lower half of the range will be appropriate if an injured person with children may have intended to have more children and has uncomplicated sterility, without impotence or any aggravating features » An ISV at or near the bottom of the range will be applicable if the sterility has little impact. 		

Item No	Injury	Range	
45	Loss of part or all of the penis		
	Comment about appropriate level of ISV » Extent of penis remaining » Availability of prosthesis » Extent to which sexual activity will be possible	5	25
46	Loss of both testicles		
	See item 44 where sterility results	5	37
47	Loss of 1 testicle		
	Additional example of factors affecting ISV scale Age, cosmetic damage or scarring	2	11
	Comment about appropriate level of ISV An ISV at or near the bottom of the range will be appropriate if the injury does not reduce reproductive capacity.		
Division 5—Injuries to female reproductive system			
	General comment » This Division applies to injuries caused by physical trauma rather than as a secondary result of psychiatric impairment » For psychiatric impairment that causes loss of reproductive system function, (see psychiatric impairment).		
	Examples of factors affecting ISV assessment for items 48 to 49 » Extent of any physical trauma » Whether the injured person has children » Whether the injured person intended to have children or more children » Age » Scarring » Depression or consequential mental harm » Effect on social and domestic life		
48	Infertility		
48.1	<i>Infertility causing severe effects</i>		
	Example Infertility with severe depression, anxiety and pain	16	35
48.2	<i>Infertility causing moderate effects</i>		
	Example Infertility without any medical complication if the injured person has children	9	15
	Comment about appropriate level of ISV An injury under this item is applicable even if there is consequential mental harm		
48.3	<i>Infertility causing minor effects</i>		
	Example Infertility if— (a) the injured person was unlikely to have had children, for example, because of age; and (b) there is little or no consequential mental harm	0	8

Item No	Injury	Range	
49	Any other injury to the female reproductive system		
49.1	<i>Injury to female genitalia or reproductive organs, or both</i>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate if the injury causes the early onset of menopause or irregular hormonal activity » An ISV at or near the middle of the range will be appropriate if the injury causes: <ul style="list-style-type: none"> - development of a prolapse or fistula - a laceration or tear with good repair. 	3	25
49.2	<i>Female impotence</i>		
	<p>Comment</p> <p>The injury may be correctable by surgery.</p>	5	15
	<p>Additional examples of factors affecting ISV scale</p> <p>The level of sexual function or the extent of any corrective surgery</p>		
49.3	<i>An injury causing an inability to give birth by normal vaginal delivery, for example, because of pelvic ring disruption or deformity</i>		
	<p>Comment</p> <p>The injury may be correctable by surgery.</p>	4	15
49.4	<i>Reduced fertility, caused by, for example, trauma to ovaries or fallopian tubes</i>	2	11
Division 6—Injuries to digestive system			
Subdivision 1—Upper digestive tract			
50	Extreme injury to the digestive system caused by trauma		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Severe permanent damage to the upper digestive system, with ongoing debilitating pain and discomfort, diarrhoea, nausea and vomiting that— <ul style="list-style-type: none"> (a) are not controllable by drugs; and (b) causes weight loss of at least 15%. » An injury to the throat requiring a permanent gastrostomy 	19	40
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is an injury to the oropharynx/oesophagus (throat) requiring a temporary gastrostomy for more than 1 year and permanent dietary changes, for example, a requirement for a soft food diet » An ISV at or near the top of the range will be appropriate if there is an injury to the oropharynx/oesophagus (throat) requiring a permanent gastrostomy, with significant ongoing symptoms. 		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » the extent of any voice or speech impairment » need for ongoing endoscopic procedure 		
51	Serious injury to the digestive system caused by trauma		
	<p>Examples of the injury</p> <p>A serious injury causing longterm complications and requiring continuous medication</p>	11	18

Item No	Injury	Range	
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » The extent of any ongoing voice or speech impairment » Whether a feeding tube was required, and if so, for how long it was required » Urgent and/or uncontrolled bowel use <p>An ISV under this item is applicable if a feeding tube is required for between 3 and 12 months</p>		
52	Moderate injury to the digestive system caused by trauma		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A blunt trauma or a penetrating stab wound, causing some permanent tissue damage, but with no significant longterm effect on digestive function » An injury requiring a feeding tube for less than 3 months 	6	10
	<p>Example of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Whether a feeding tube was required, and if so, for how long it was required » Whether dietary changes are required to reduce the risk of aspiration because of impaired swallowing 		
53	Minor injury to the digestive system caused by trauma		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A soft tissue injury to the abdomen wall, for example, a laceration or serious seatbelt bruising to the abdomen or flank, or both » A minor injury to the throat or tongue causing temporary difficulties with swallowing or speech » A laceration of the tongue requiring suturing 	0	5
Subdivision 2—Injuries to the digestive system not caused by trauma			
	<p>General comments</p> <p>There is a marked difference between those comparatively rare cases having a long term or even permanent effect on quality of life and cases in which the only ongoing symptom is an allergy, for example, to specific foods, that may cause shortterm illness.</p>		
54	Extreme injury to the digestive system not caused by trauma		
	<p>Example of the injury</p> <p>Severe toxicosis—</p> <ol style="list-style-type: none"> (a) causing serious acute pain, vomiting, diarrhoea and fever, requiring hospitalisation for days or weeks; and (b) also causing 1 or more of the following: <ul style="list-style-type: none"> › ongoing incontinence › haemorrhoids › irritable bowel syndrome; and (c) having a significant impact on the capacity for employment and enjoyment of life. 	13	35
	<p>Comment about appropriate level of ISV</p> <p>An ISV in the lower half of the range will be appropriate if the injury causes a chronic infection that requires prolonged hospitalisation that will not resolve after antibiotic treatment for a year.</p>		
55	Serious injury to the digestive system not caused by trauma		
	<p>Examples of the injury</p> <p>Constant abdominal pain, causing significant discomfort, for up to 18 months caused by a delay in diagnosis of an injury to the digestive system</p>	6	12

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate if there is an adverse response to the administration of a drug that— <ul style="list-style-type: none"> (a) requires admission to an intensive care unit; and (b) does not cause any permanent impairment; and (c) causes the need for ongoing drug therapy for life. » An ISV in the upper half of the range will be appropriate if a chronic infection— <ul style="list-style-type: none"> (a) requires prolonged hospitalisation and additional treatment; and (b) will be resolved by antibiotic treatment within 1 year. » An ISV at or near the bottom of the range will be appropriate if there is an adverse response to the administration of a drug that— <ul style="list-style-type: none"> (a) requires admission to an intensive care unit; and (b) does not cause any permanent impairment; and (c) does not cause the need for ongoing drug therapy for life. 		
56	Moderate injury to the digestive system not caused by trauma		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » An infection that is resolved by antibiotic treatment, with or without additional treatment in hospital, within 3 months after the injury is caused » An adverse response to the administration of a drug, causing any of the following continuing over a period of more than 7 days, and requiring hospitalisation: <ul style="list-style-type: none"> (a) vomiting; (b) shortness of breath; (c) hypertension; (d) skin irritation 	3	5
57	Minor injury to the digestive system not caused by trauma		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Disabling pain, cramps and diarrhoea, ongoing for days or weeks » A localised infection, requiring antibiotic treatment, that heals within 6 weeks after the start of treatment » An adverse response to the administration of a drug, causing any of the following continuing over a period of not more than 7 days, and not requiring hospitalisation: <ul style="list-style-type: none"> (a) vomiting; (b) shortness of breath; (c) hypertension; (d) skin irritation » Intermittent abdominal pain for up to 6 months caused by a delay in diagnosis of an injury to the digestive system 	0	2
Division 7—Kidney or ureter injuries			
	<p>General comment: An injury to a ureter or the ureters alone, without loss of, or serious damage to, a kidney will generally be assessed under items 60 or 61.</p>		
	<p>Examples of factor affecting ISV assessment for items 58 to 61</p> <ul style="list-style-type: none"> » Age » Risk of ongoing kidney or ureter problems, complications or symptoms » Need for future medical procedures 		

Item No	Injury	Range	
58	Extreme injury to kidneys or ureters		
58.1	<i>Loss of both kidneys causing loss of renal function and requiring permanent dialysis or transplant</i>	56	75
58.2	<i>Serious damage to both kidneys, requiring temporary or intermittent dialysis</i>	31	55
	Examples of factors affecting ISV scale		
	» The effect of dialysis and loss of kidney function on activities of daily living		
	» The length of time for which dialysis was required or the frequency of intermittent dialysis		
	» Ongoing requirement for medication, for example, to control blood pressure		
	» Whether the injury caused the need for dietary changes		
	Comment about appropriate level of ISV		
	» An ISV at or near the bottom of the range will be appropriate if dialysis was required for an initial 3 months period, with intermittent dialysis required after that		
	» An ISV at or near the top of the range will be appropriate if the injury required dialysis for about 1 year and ongoing dietary changes and medication.		
59	Serious injury to kidneys or ureters		
	Comment	19	30
	The injury may require temporary dialysis for less than 3 months.		
	Example of the injury		
	Loss of 1 kidney if there is severe damage to, and a risk of loss of function of, the other kidney		
	Comment about appropriate level of ISV		
	The higher the risk of loss of function of the other kidney, the higher the ISV.		
60	Moderate injury to kidneys or ureters		
	Examples of the injury	12	18
	» Loss of 1 kidney, with no damage to the other kidney		
	» An injury to a ureter or the ureters that requires surgery or placement of stents		
61	Minor injury to kidneys or ureters		
	Example of the injury	0	11
	A laceration or contusion to 1 or both of the kidneys confirmed by imaging		
	Comment about appropriate level of ISV		
	» An ISV at or near the bottom of the range will be appropriate if there is an injury to a kidney causing a contusion		
	» An ISV at or near the top of the range will be appropriate if a partial removal of a kidney is required		
Division 8—Liver, gall bladder or biliary tract injuries			
	Examples of factors affecting ISV assessment		
	» Whether there are recurrent episodes of infection or obstruction		
	» Whether there is a risk of developing biliary cirrhosis		
62	Extreme injury to liver, gall bladder or biliary tract		
	Example of the injury	51	70
	Loss, or injury causing effective loss of liver function		

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there are recurrent episodes of liver failure that require hospital admission and medical management but do not require liver transplantation » An ISV at or near the top of the range will be appropriate if the injury requires liver transplantation 		
63	Serious injury to liver, gall bladder or biliary tract		
	<p>Example of the injury</p> <p>Serious damage causing physical loss of over 30% of the tissue of the liver, but with some functional capacity of the liver remaining</p>	36	50
64	Moderate injury to liver, gall bladder or biliary tract		
	<p>Example of the injury : A laceration, contusion or trauma damage to the liver, with a moderate permanent effect on liver function, confirmed from imaging</p> <p>The removal of the gall bladder that causes ongoing symptoms</p>	11	35
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the injury causes impaired liver function with symptoms of intermittent nausea and vomiting and weight loss » An ISV at or near the bottom of the range will also be appropriate if there is a gall bladder injury with recurrent infection or symptomatic stone disease, the symptoms of which may include, for example, pain or jaundice » An ISV at or near the middle of the range will be appropriate if the injury involves removal of the gall bladder causing a bile duct injury » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) surgery is required to remove not more than 30% of the liver; or (b) bile ducts require repair, for example, placement of stents. » An ISV at or near the top of the range will also be appropriate if there is an injury to the gall bladder, that despite biliary surgery, causes ongoing symptoms, infection or the need for further endoscopic surgery 		
65	Minor injury to liver, gall bladder or biliary duct		
	<p>Comment : An injury within this item should not require surgery to the liver.</p>	3	10
	<p>Example of the injury : A laceration or contusion to the liver, with a minor effect on liver function and confirmed from imaging</p>		
	<p>Comment about appropriate level of ISV</p> <p>An ISV in the lower half of the range will be appropriate if there is an uncomplicated removal of the gall bladder with no ongoing symptoms.</p>		
Division 9—Bowel injuries			
	<p>Examples of factors affecting ISV assessment for items 66 to 69</p> <ul style="list-style-type: none"> » Age » Risk of ongoing bowel problems, complications or symptoms » Need for future surgery » The degree to which dietary changes are required to manage chronic pain or diarrhoea caused by the injury 		

Item No	Injury	Range	
66	Extreme bowel injury		
	Example of the injury : An injury causing a total loss of natural bowel function and dependence on colostomy	41	60
67	Serious bowel injury		
	Example of the injury : A serious abdominal injury causing either or both of the following: (a) impairment of bowel function (which often requires permanent or longterm colostomy, leaving disfiguring scars); (b) permanent restrictions on employment and diet and/or requiring nutritional supplements	19	40
68	Moderate bowel injury		
	Example of the injury (a) the injury requires temporary surgical diversion of the bowel, for example, an ileostomy or colostomy; and (b) there is ongoing intermittent abnormal bowel function requiring medication; and (c) some loss of bowel, weight loss and permanent restriction on diet and/or requiring nutritional supplements	7	18
69	Minor bowel injury		
	Example of the injury An injury causing tears to the bowel, with minimal ongoing bowel problems	3	6
Division 10—Bladder, prostate or urethra injuries			
	Examples of factors affecting ISV assessment for items 70 to 73 » Age » Risk of ongoing bladder, prostate or urethra problems, complications or symptoms » Need for future surgery		
70	Extreme bladder, prostate or urethra injury		
	Example of the injury An injury causing a complete loss of bladder function and control, with permanent dependence on urostomy	40	60
71	Serious bladder, prostate or urethra injury		
	Example of the injury An injury causing serious impairment of bladder control, with some incontinence	19	39
	Comment about appropriate level of ISV An ISV in the upper half of the range will be appropriate if there is serious ongoing pain.		
72	Moderate bladder, prostate or urethra injury		
	Example of the injury An injury causing continued impairment of bladder control, with minimal incontinence and minimal pain	7	18
	Comment about appropriate level of ISV An ISV at or near the top of the range will be applicable if— » an ongoing requirement for minor surgery, for example, cystoscopy or urethral dilation; or » other surgery due to being unresponsive to treatment		

Item No	Injury	Range	
73	Minor bladder, prostate or urethra injury		
	Example of the injury : A bladder injury that may require conservative intermittent medical treatment for which surgery is not required and from which the injured person will fully recover	3	6
Division 11—Spleen and pancreas injuries			
74	Injuries to the pancreas		
	Examples of factors affecting ISV scale	11	35
	<ul style="list-style-type: none"> » The extent of any ongoing risk of internal infection and disorders, for example, diabetes » The need for, and outcome of, further surgery, for example, surgery to manage pain caused by stone disease, infection or an expanding pseudocyst » An ISV at or near the middle of the range will be appropriate if there are chronic symptoms, for example, pain or diarrhoea, and weight loss » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) there are chronic symptoms with significant weight loss of between 10% and 20% of body weight, and pancreatic enzyme replacement is required; or (b) an injury to the pancreas causes diabetes. 		
75	Loss of spleen (complicated)		
	Example of the injury : Loss of spleen if there will be a risk, that is not minor, of ongoing internal infection and disorders caused by the loss	8	20
	Comment		
	<ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate if the injury leads to a splenectomy, with portal vein thrombosis after the splenectomy » An ISV at or near the middle of the range will be appropriate if— <ul style="list-style-type: none"> (a) the injury leads to a splenectomy, with serious infection after the splenectomy; and (b) the infection requires surgical or radiological intervention 		
76	Injury to the spleen or uncomplicated loss of spleen		
	Example of the injury : Laceration or contusion to the spleen that—	0	7
	<ul style="list-style-type: none"> (a) has been radiologically confirmed; (b) has no ongoing bleeding; (c) is managed conservatively; and (d) resolves fully 		
	Comment about appropriate level of ISV		
	An ISV at or near the top of the range will be appropriate if there has been removal of the spleen (splenectomy), with little or no risk of ongoing infections and disorders caused by the loss of the spleen.		
Division 12—Hernia injuries			
77	Severe hernia		
	Example of the injury : An incisional hernia if after repair there is either or both—	11	20
	<ul style="list-style-type: none"> (a) ongoing pain; and (b) a restriction on physical activities, sport or employment 		
	Comment about appropriate level of ISV		
	An ISV at the top of the range will be appropriate if—		
	<ul style="list-style-type: none"> (a) the incisional hernia is reoccurring; and (b) has a whole of person impairment of 10% or more 		

Item No	Injury	Range	
78	Moderate hernia		
	Example of the injury An incisional hernia that after repair has some real risk of recurring in the shortterm	6	10
79	Minor hernia		
	Example of the injury An uncomplicated incisional hernia, whether or not repaired	0	5
Part 6—Orthopaedic injuries			
Division 1—Cervical spine injuries			
	<p>General comment for items 80 to 84</p> <p>This Division does not apply to the following injuries (that are dealt with in items 1 to 3):</p> <ul style="list-style-type: none"> » quadriplegia » paraplegia » hemiplegia or severe paralysis of more than 1 limb. <p>There must be clinical findings present at the time of examination.</p> <p>Clinical findings must be consistent with radiological objective evidence where present.</p> <ul style="list-style-type: none"> » Cervical spine injuries, other than those dealt with in items 1 to 3, range from cases of very severe disability to cases of a minor strain, with no time off work and symptoms only suffered for 2 or 3 weeks » Symptoms associated with nerve root compression or damage cannot be taken into account in assessing an ISV under items 80 to 82 unless objective signs are present of a permanent nerve root compression or damage, or other specific imaging findings as defined— <ul style="list-style-type: none"> - CT and/or MRI scans or other appropriate imaging evidence of disc herniation (as distinct from merely a disc bulge and/or annular tear), and residual and corresponding objective neurological impairment, for example— <ul style="list-style-type: none"> › sensory loss › loss of muscle strength and/or corresponding atrophy › impaired reflexes 		
80	Extreme cervical spine injury		
	Comment These are extremely severe injuries that cause gross limitation of movement and serious interference with performance of daily activities. The injury will involve significant upper or lower extremity impairment and may require the use of an adaptive device or prosthesis	41	75
	Examples of the injury <ul style="list-style-type: none"> » A total neurological loss at a single level » Severe multilevel neurological dysfunction » Structural compromise of the spinal canal with extreme upper or lower extremity motor and sensory impairments » Fractures involving more than 50% compression of a vertebral body with neural compromise 		
	Comment about appropriate level of ISV <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment of about 35% » An ISV at or near the top of the range will be appropriate if there is a cervical spine injury causing monoplegia of the dominant upper limb and whole person impairment of at least 60%. 		

Item No	Injury	Range	
81	Serious cervical spine injury		
	<p>Comment</p> <ul style="list-style-type: none"> » The injury of the cervical spine will cause serious neurological upper extremity impairment or serious permanent impairment of the cervical spine for which there is radiological evidence » The injury may involve— <ul style="list-style-type: none"> (a) a change of motion segment integrity; or (b) bilateral or multilevel nerve root compression or damage; or (c) a fracture involving more than 25% compression of 1 vertebral body or a fusion (either traumatic or postsurgical); or (d) an injury showing objective signs of nerve root damage after surgery. 	16	40
	<p>Examples of the injury</p> <p>Loss of motion in a motion segment because of a surgical or posttraumatic fusion</p>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if— <ul style="list-style-type: none"> (a) the injured person has had surgery and symptoms persist; or (b) there is a fracture involving 25% compression of 1 vertebral body. » An ISV in the middle of the range will be appropriate if there is a fracture involving about 50% compression of a vertebral body, with ongoing pain » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) the injured person has had a fusion of vertebral bodies that has failed, leaving objective signs of significant residual nerve root damage and ongoing pain, affecting 1 side of the body; and (b) there is whole person impairment of about 28%. 		
82	Moderate cervical spine injury—fracture, disc prolapse (herniated disc) or nerveroot compression or damage		
	<p>Comment</p> <p>An ISV for this item will be appropriate if—</p> <ul style="list-style-type: none"> (a) there is a herniated disc for which there is radiological evidence corresponding to an anatomically correct level of objective neurological impairment; and (b) there are symptoms of pain and 3 or more of the following objective signs that are anatomically localised to an appropriate spinal nerve root distribution: <ul style="list-style-type: none"> (i) sensory loss; (ii) loss of muscle strength and/or corresponding atrophy; (iii) impaired reflexes; (iv) unilateral atrophy; and (c) the impairment has not improved after nonoperative treatment 	5	15
83	Moderate cervical spine injury—soft tissue injury		
	<p>Comment : The injury will cause moderate permanent impairment, for which there is a clinical history and examination findings that are compatible with a specific injury for which there will be 2 or more objective signs.</p>	5	10
	<p>Comment about appropriate level of ISV</p> <p>An ISV at the top half of the range is appropriate if there is a whole of person impairment of 8% caused by a traumatic soft tissue injury</p>		

Item No	Injury	Range	
84	Minor cervical spine injury		
	<p>Comment</p> <ul style="list-style-type: none"> » Injuries within this item include a whiplash injury with minor ongoing symptoms, and/or dysfunction including symptoms, remaining for more or expected to remain more than 18 months after the injury is caused; and » There are no objective signs of a neurological impairment (for example, a radiculopathy) at the time of assessment. 	0	4
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » A low range ISV under this item will be applicable if the injury will resolve within months after the injury is caused; and » A high range ISV under this item will be applicable if, the injury causes persistent headaches, significant neck stiffness and some ongoing pain and/or dysfunction 		
Division 2—Thoracic spine or lumbar spine injuries			
	<p>General comments</p> <ul style="list-style-type: none"> » This Division does not apply to the following injuries (that are dealt with in items 1 to 3): <ul style="list-style-type: none"> - quadriplegia - paraplegia - hemiplegia or severe paralysis of more than 1 limb. - Thoracic or lumbar spine injuries, other than those dealt with in items 1 to 3, range from cases of very severe disability to cases of a minor strain, with no time off work and symptoms suffered only for 2 or 3 weeks » Symptoms associated with nerve root compression or damage cannot be taken into account in assessing an ISV under item 85 to 87 unless objective signs are present of nerve root compression or damage, for example— <ul style="list-style-type: none"> - CT or MRI scans or other radiological evidence - muscle wasting - clinical findings of deep tendon reflex loss, motor weakness and loss of sensation. <p>There must be clinical findings present at the time of examination. Clinical findings must be consistent with radiological objective evidence where present.</p>		
85	Extreme thoracic or lumbar spine injury		
	<p>Comment</p> <p>These are extremely severe injuries causing gross limitation of movement and serious interference with performance of daily activities. There may be some motor or sensory loss, and some impairment of bladder, anorectal or sexual function.</p>	36	60
	<p>Example of the injury</p> <p>A fracture involving compression of a thoracic or lumbar vertebral body of more than 50%, with neurological impairment</p>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 25% » An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of at least 45%. 		

Item No	Injury	Range	
86	Serious thoracic or lumbar spine injury		
	<p>Comment</p> <ul style="list-style-type: none"> » The injury will cause serious permanent impairment in the thoracic or lumbar spine » The injury may involve— <ul style="list-style-type: none"> (a) bilateral or multilevel nerve root damage; or (b) a change in motion segment integrity, for example, because of surgery. 		
	<p>Example of the injury</p> <p>A fracture involving at least 25% compression of 1 thoracic or lumbar vertebral body</p>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if— <ul style="list-style-type: none"> (a) the injured person has had surgery and symptoms persist; or (b) there is a fracture involving 25% compression of 1 vertebral body. » An ISV in the middle of the range will be appropriate if there is a fracture involving 50% compression of a vertebral body, with ongoing pain » An ISV at or near the top of the range will be appropriate if the injured person has had a fusion of vertebral bodies that has failed— <ul style="list-style-type: none"> (a) leaving objective signs of significant residual nerve root damage and ongoing pain, affecting 1 side of the body; and (b) causing whole person impairment of 24%. 	16	35
87	Moderate thoracic or lumbar spine injury—fracture, disc prolapse or nerve root compression or damage		
	<p>Comment</p> <p>An ISV for this item will be appropriate if—</p> <ul style="list-style-type: none"> (a) there is a herniated disc for which there is radiological evidence corresponding to an anatomically correct level of objective neurological impairment; and (b) there are symptoms of pain and 3 or more of the following objective signs that are anatomically localised to an appropriate spinal nerve root distribution— <ul style="list-style-type: none"> (i) sensory loss; (ii) loss of muscle strength, and/or corresponding atrophy; (iii) impaired reflexes; (iv) unilateral atrophy; and (c) the impairment has not improved after nonoperative treatment. 	5	15
88	Moderate thoracic or lumbar spine injury—soft tissue injury		
	<p>Comment</p> <p>The injury will cause moderate permanent impairment, for which there is a clinical history and examination findings that are compatible with a specific injury for which there will be 2 or more objective signs.</p>	5	10
	<p>Comment about appropriate level of ISV</p> <p>An ISV at the top half of the range is appropriate if there is a whole of person impairment of 8% caused by a traumatic soft tissue injury</p>		

Item No	Injury	Range	
89	Minor thoracic or lumbar spine injury		
	<p>Example of the injury</p> <p>A soft tissue injury of the thoracic or lumbar spine with no—</p> <ul style="list-style-type: none"> » significant clinical findings » fractures » documented neurological impairment » significant loss of motion segment integrity » other objective signs of impairment relating to the injury 	0	4
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be appropriate, whether or not the injured person continues to suffer some ongoing pain, if the injury will substantially reach maximum medical improvement, with only minor symptoms, within about 18 months after the injury is caused » An ISV at or near the bottom of the range will be appropriate if the injury will resolve without any ongoing symptoms within months after the injury is caused 		
Division 3—Shoulder injuries			
	<p>General comments : Injuries under items 90 to 93 include subluxations or dislocations of the sternoclavicular joint, acromioclavicular joint or glenohumeral joint.</p> <ul style="list-style-type: none"> » Soft tissue injuries may involve the musculoligamentous supporting structures of the joints » Fractures may involve the clavicle, the scapula (shoulder blade) and the humerus 		
	<p>Comment about appropriate level of ISV for items 90 to 93</p> <p>An ISV at or near the top of the range will generally only be appropriate if the injury is to the shoulder of the dominant upper limb.</p>		
90	Extreme shoulder injury		
	<p>Comment : These are the most severe traumatic injuries causing gross permanent impairment.</p>	31	50
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A severe fracture or dislocation, with secondary medical complications » Joint disruption with poor outcome after surgery » Degloving » Permanent nerve palsies 		
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there is whole person impairment of 45% and complete loss of all shoulder function of the dominant upper limb.</p>		
91	Serious shoulder injury		
	<p>Comment : The injury will involve serious trauma to the shoulder causing serious permanent impairment.</p>	16	30
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A crush injury » A serious fracture with secondary arthritis » Nerve palsies from which the injured person will partially recover » Established nonunion of a clavicular or scapular fracture despite open reduction and internal fixation (ORIF) » Established nonunion of a clavicular or scapular fracture if surgery is not appropriate or not possible, and there is significant functional impairment 		

Item No	Injury	Range	
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 25% and the injury is to the dominant upper limb.</p>		
92	Moderate shoulder injury		
92.1	<p>Comment</p> <p>An ISV under this item will be applicable if there is a whole of person impairment of 10—12%</p>	11	15
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Traumatic adhesive capsulitis with discomfort, limitation of movement and symptoms persisting or expected to persist for about 2 years » Permanent and significant soft tissue disruption, for example, from tendon tears or ligament tears » A fracture, from which the injured person has made a reasonable recovery, requiring open reduction and internal fixation » Nerve palsies from which the injured person has made a good recovery » Painful persisting dislocation of the acromioclavicular joint » An injury to the sternoclavicular joint causing permanent, painful instability 		
	<p>Comment about the appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the injury is to the nondominant upper limb » An ISV at or near the top of the range will be appropriate if the injury is to the dominant upper limb 		
92.2	<p>Comment</p> <p>An ISV under this item will be appropriate if there is a whole person impairment for the injury of less than 10%</p>	6	10
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Traumatic adhesive capsulitis with discomfort, limitation of movement and symptoms persisting or expected to persist for about 2 years » Permanent and significant soft tissue disruption, for example, from tendon tears or ligament tears » Nerve palsies from which the injured person has made a good recovery » Painful persisting dislocation of the acromioclavicular joint » An injury to the sternoclavicular joint causing permanent, painful instability 		
	<p>Comment about this level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the injury is to the nondominant upper limb » An ISV at or near the top of the range will be appropriate if the injury is to the dominant upper limb 		
93	Minor shoulder injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Soft tissue injury with considerable pain from which the injured person makes an almost full recovery in less than 18 months » Fracture from which the injured person has made an uncomplicated recovery » Strain injury of the acromioclavicular joint or sternoclavicular joint 	0	5

Item No	Injury	Range	
Division 4—Amputation of upper limbs			
	Comment about appropriate level of ISV for items 94 to 95 An ISV at or near the top of the range will generally only be appropriate if the amputation is of the dominant upper limb		
94	Loss of both upper limbs, or loss of 1 arm and extreme injury to the other arm		
	Comment The effect of the injury is to reduce the injured person to a state of considerable helplessness	55	85
	Examples of factors affecting ISV scale <ul style="list-style-type: none"> » Whether the amputations are above or below the elbow (the loss of the elbow joint adds greatly to the disability) » The length of any stump suitable for use with a prosthesis » Severity of any phantom pains 		
	Additional Comment about appropriate level of ISV <ul style="list-style-type: none"> » An ISV of 70 to 85 will be appropriate if— <ul style="list-style-type: none"> (a) both upper limbs are amputated at the shoulder; or (b) 1 arm is amputated at the shoulder, and there is a loss of function in the other arm, causing whole person impairment of 60%. » An ISV of 65 to 80 will be appropriate if— <ul style="list-style-type: none"> (a) both upper limbs are amputated through the elbow or above the elbow but below the shoulder; or (b) 1 arm is amputated through the elbow or above the elbow but below the shoulder, and there is a loss of function in the other arm, causing whole person impairment of 57%. » An ISV of 55 to 75 will be appropriate if— <ul style="list-style-type: none"> (a) both upper limbs are amputated below the elbow; or (b) 1 arm is amputated below the elbow, and there is a loss of function in the other arm, causing whole person impairment of 54%. 		
95	Loss of 1 upper limb		
	Examples of factors affecting ISV assessment <ul style="list-style-type: none"> » Whether the amputation is above or below the elbow (the loss of the elbow joint adds greatly to the disability) » Whether the amputation was of the dominant arm » The length of any stump suitable for use with a prosthesis » Severity of any phantom pains » Extent of any disability in the other arm 		
95.1	<i>An upper limb amputation at the shoulder</i>	50	65
95.2	<i>An upper limb amputation through the elbow or above the elbow but below the shoulder</i>	40	65
	Additional Comment about appropriate level of ISV <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will generally be appropriate if there is an amputation through the elbow » An ISV at or near the top of the range will be appropriate if there is a short stump because a short stump may create difficulties in the use of a prosthesis 		
95.3	<i>An upper limb amputation below the elbow</i>	35	60

Item No	Injury	Range	
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there is an amputation through the forearm with residual severe pain in the stump and phantom pains</p>		
Division 5—Elbow injuries			
	<p>Comment about appropriate level of ISV for items 96 to 99</p> <p>An ISV at or near the top of the range will generally only be appropriate if the injury is to the elbow of the dominant upper limb</p>		
96	Extreme elbow injury		
	<p>Comment</p> <p>The injury will involve an extremely severe elbow injury, falling short of amputation, leaving little effective use of the elbow joint</p>	26	50
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Whole person impairment for the injury of between 24% and 42% » A complex elbow fracture, or dislocation, with secondary complications » Joint disruption, with poor outcome after surgery » Degloving » Permanent nerve palsies » An injury causing severe limitation of elbow movement with the joint constrained in a nonfunctional position 		
97	Serious elbow injury		
	<p>Comment : The injury will involve significant disability and require major surgery.</p>	13	25
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A serious fracture with secondary arthritis » A crush injury » Nerve palsies from which the injured person will partially recover » Permanent, poor restricted range of movement with the elbow constrained in a satisfactory functional position 		
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 23% and the injury is to the elbow of the dominant upper limb.</p>		
98	Moderate elbow injury		
	<p>Comment : The injury will cause moderate longterm disability but does not require multiple surgeries.</p>	6	12
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A fracture, from which the injured person has made a reasonable recovery, requiring open reduction and internal fixation » Nerve palsies from which the injured person has made a good recovery 		
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 5% » An ISV at or near the top of the range will be appropriate if there is a moderately severe injury to the elbow of the dominant upper limb— <ul style="list-style-type: none"> (a) requiring prolonged treatment; and (b) causing whole person impairment of 10%. 		

Item No	Injury	Range	
99	Minor elbow injury		
	Comment The injury will cause no permanent damage and no permanent impairment of function.	0	5
	Examples of the injury » A fracture with an uncomplicated recovery » A soft tissue injury with pain, minor tennis elbow syndrome or lacerations		
Division 6—Wrist injuries			
	Comment about appropriate level of ISV for items 100 to 103 An ISV at or near the top of the range will generally only be appropriate if the injury is to the wrist of the dominant upper limb.		
100	Extreme wrist injury		
	Comment The injury will involve severe fractures, or a dislocation, causing a high level of permanent impairment.	25	40
	Examples of the injury » A severe fracture or dislocation with secondary joint complications » Joint disruption with poor outcome after surgery » Degloving » Permanent nerve palsies		
	Additional Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 36% and the injury is to the wrist of the dominant upper limb.		
101	Serious wrist injury		
	Examples of the injury » An injury causing significant permanent loss of wrist function, for example, severe problems with gripping or pushing objects, but with some useful movement remaining » Nonunion of a carpal fracture » Severe carpal instability	16	24
	Additional Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 20% and the injury is to the wrist of the dominant upper limb.		
102	Moderate wrist injury		
102.1	Examples of the injury A wrist injury, confirmed from imaging that causes some permanent disability, for example, some persisting pain and stiffness— » Persisting radioulnar instability » Moderate carpal instability » Recurrent tendon subluxation or entrapment	11	15
	Additional Comment about appropriate level of ISV An ISV under this item will be appropriate if there is a whole person impairment for the injury of greater than or equal to 10%		

Item No	Injury	Range	
102.2	<p>Examples of the injury</p> <p>A wrist injury, that is not serious and causes some permanent disability, for example, some persisting pain and stiffness—</p> <ul style="list-style-type: none"> » Persisting radioulnar instability » Carpal instability » Recurrent tendon subluxation or entrapment 	6	10
	<p>Comment about this level of ISV</p> <p>An ISV under this item will be appropriate if there is a whole person impairment for the injury of less than 10%</p>		
103	Minor wrist injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A fracture from which the injured person almost fully recovers » A soft tissue injury, for example, severe bruising » Continued pain following carpal tunnel release 	0	5
Division 7—Hand injuries			
	<p>General comment for items 104 to 115</p> <p>Hands are cosmetically and functionally the most important part of the upper limbs.</p>		
	<p>Comment about appropriate level of ISV for items 104 to 115</p> <ul style="list-style-type: none"> » The appropriate ISV for loss of a hand is only a little less than the appropriate ISV for the loss of the relevant arm » An ISV at or near the top of the range will generally be appropriate if the injury is to the dominant hand. 		
104	Total or effective loss of both hands		
	<p>Example of the injury</p> <p>A serious injury causing extensive damage to both hands making them little more than useless</p>	51	75
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » The level of residual capacity left in either hand » Severity of any phantom pains if there has been an amputation or amputations 		
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if both hands remain attached to the forearms and are of some cosmetic importance » An ISV at or near the top of the range will be appropriate if both hands are amputated through the wrist. 		
105	Serious injury to both hands		
	<p>Comment</p> <p>The injury will involve significant loss of function in both hands, for example, loss of 50% or more of the use of each hand.</p>	40	50
106	Total or effective loss of 1 hand		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A crushed hand that has been surgically amputated or rendered functionally useless » Traumatic amputation of all fingers and most of the palm 	35	60

Item No	Injury	Range	
	<p>Example of factor affecting ISV scale Severity of any phantom pain if there has been an amputation</p>		
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there has been an amputation of the fingers at the metacarpophalangeal joints, but the thumb remains, and there is whole person impairment for the injury of 32% » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) there has been amputation of the dominant hand at the wrist; and (b) there is residual severe pain in the stump and ongoing complications, for example, chronic regional pain syndrome or neuroma formation. 		
107	Amputation of the thumb or part of the thumb		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » The level of amputation, for example, at carpo metacarpal (CMC) joint, through the distal third of the thumb metacarpal, at the metacarpophalangeal (MCP) joint or thumb interphalangeal (IP) joint » Whether the injury is to the dominant hand » The extent of any damage to the fingers 	15	28
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if— <ul style="list-style-type: none"> (a) there has been an amputation through the interphalangeal joint of the thumb; and (b) there is whole person impairment for the injury of 11%. » An ISV at or near the middle of the range will be appropriate if there has been an amputation through the proximal phalanx » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) there has been an amputation at the base of the thumb at the carpometacarpal (CMC) joint level of the dominant hand; and (b) there are ongoing debilitating complications. 		
108	Amputation of index, middle and ring fingers, or any 2 of them		
	<p>Comment</p> <p>The amputation will cause complete loss or nearly complete loss of 2 or all of the following fingers of the hand:</p> <ul style="list-style-type: none"> » index finger » middle finger » ring finger » little finger 	15	30
	<p>Example of factor affecting ISV scale</p> <p>The level of the amputation, for example, whether the hand has been made to be of very little use and any remaining grip is very weak</p>		

Item No	Injury	Range	
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if 2 fingers, whether index, middle or ring fingers, are amputated at the level of the proximal interphalangeal joints » An ISV at or near the middle of the range will be appropriate if there is whole person impairment for the injury of 19% » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) the index, middle and ring fingers are amputated at the level of the metacarpophalangeal joint (MCP joint) or there is whole person impairment for the injury of at least 27%; and (b) the injury is to the dominant hand. 		
109	Amputation of individual fingers		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Whether the amputation was of the index or middle finger » The level of the amputation » Any damage to other fingers short of amputation 	5	20
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the top of the range will be applicable if there is complete loss of the index or middle finger of the dominant hand, and serious impairment of the remaining fingers causing whole person impairment of at least 15% » An ISV of not more than 10 will be applicable if— <ul style="list-style-type: none"> (a) there has been an amputation of the index or middle finger at the proximal interphalangeal joint (PIP joint); or (b) there is whole person impairment for the injury of 8%. » An ISV at or near the bottom of the range will be applicable if— <ul style="list-style-type: none"> (a) there has been an amputation at the level of the distal interphalangeal joint of the little or ring finger; or (b) there is whole person impairment for the injury of 3%. 		
110	Amputation of thumb and all fingers		
	<p>Comment</p> <p>As the injury will cause effective loss of the hand, see item 106.</p>		
111	Any other injury to 1 or more of the fingers or the thumb		
	<p>Comment about appropriate level of ISV for items under 111</p> <p>An ISV of not more than 5 will be appropriate if substantial function of the hand remains.</p>		
	<p>Examples of factors affecting ISV</p> <ul style="list-style-type: none"> » Whether the injury is to the thumb, or index or middle finger » Any damage to other fingers » Whether the injury is to the dominant hand 		
111.1	<i>Extreme injury to 1 or more of the fingers or the thumb</i>		
	<p>Example of the injury</p> <p>Total loss of function of 1 or more of the fingers, with the joints ankylosed in nonfunctional positions</p>	16	25

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 14% » An ISV at or near the top of the range will be appropriate if there is an injury to the thumb of the dominant hand causing total loss of function of the thumb 		
111.2	<i>Serious injury to 1 or more of the fingers or the thumb</i>		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A severe crush injury causing ankylosis of the fingers » A bursting wound, or an injury causing severe finger damage, causing residual scarring and dysfunction » An injury leaving a digit that interferes with the remaining function of the hand » Division of 1 or more of the long flexor tendons of the finger, with unsuccessful repair 	12	15
111.3	<i>Moderate injury to 1 or more of the fingers or the thumb</i>		
	<p>Comment : There will be permanent discomfort, pain or sensitive scarring</p>	6	11
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Moderate injury to the thumb or index finger causing loss of movement or dexterity » A crush injury causing multiple fractures of 2 or more fingers » Division of 1 or more of the long flexor tendons of the finger, with moderately successful repair 		
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV under this item will be appropriate if there is whole person impairment for the injury of 8% and the injury is to the dominant hand.</p>		
111.4	<i>Minor injury to 1 or more of the fingers or the thumb</i>		
	<p>Example of the injury : An uncomplicated fracture or soft tissue injury that has healed with minimal residual symptoms</p>	0	5
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is a straight forward fracture of 1 or more of the fingers, with complete resolution within a short time » An ISV at or near the top of the range will be appropriate if there has been— <ul style="list-style-type: none"> (a) a fracture causing minor angular or rotational malunion of the thumb, or index or middle finger, of the dominant hand; or (b) some adherence of a tendon following surgical repair, limiting full function of the digit 		
112	Extreme hand injury		
	<p>Comment</p> <ul style="list-style-type: none"> » The injury will involve a severe traumatic injury to the hand that may include amputation of part of the hand, causing gross impairment of the hand » A hand injury causing whole person impairment for the injury of 35% will generally fall within this item 	31	45
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » An injury reducing a hand's capacity to 50% or less » An injury involving the amputation of several fingers that are rejoined to the hand leaving it clawed, clumsy and unsightly » An amputation of some fingers and part of the palm causing grossly reduced grip and dexterity and gross disfigurement 		

Item No	Injury	Range	
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the injured hand has some residual usefulness for performing activities of daily living » An ISV at or near the top of the range will be appropriate if the injured hand— <ul style="list-style-type: none"> (a) has little or no residual usefulness for performing activities of daily living; and (b) is the dominant hand 		
113	<p>Serious hand injury</p> <p>Examples of the injury</p> <ul style="list-style-type: none"> » A severe crush injury causing significantly impaired function despite surgery » Serious permanent tendon damage » Serious nerve damage 	16	30
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 20%</p>		
114	<p>Moderate hand injury</p> <p>Examples of the injury</p> <ul style="list-style-type: none"> » A crush injury, penetrating wound or deep laceration, requiring surgery » Moderately serious tendon or nerve damage » A hand injury causing whole person impairment for the injury of between 5% and 12% 	6	15
115	<p>Minor hand injury</p> <p>Examples of the injury : A soft tissue injury, minor fracture or an injury that does not require surgery, with nearly full recovery of hand function</p>	0	5
<p>Division 8—Upper limb injuries other than shoulder, amputation, elbow, wrist or hand injuries</p>			
	<p>Comment about appropriate level of ISV for items 116 to 119</p> <p>An ISV at or near the top of the range will generally only be appropriate if the injury is to the dominant upper limb.</p>		
116	<p>Extreme upper limb injury, other than an injury mentioned in items 90 to 115</p> <p>Comment</p> <p>The injury will involve an extremely serious upper limb injury, falling short of amputation leaving the injured person little better off than if the whole arm had been lost.</p> <p>Examples of the injury</p> <ul style="list-style-type: none"> » A serious brachial plexus injury affecting peripheral nerve function » A nonunion of a fracture, with peripheral nerve damage to the extent that an arm is nearly useless 	36	65
	<p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 31% » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) there is a complete brachial plexus lesion shown by a flail arm and paralysis of all muscles of the hand; and (b) the injury is to the dominant limb. » An ISV at or near the top of the range will also be appropriate if there is a serious crush injury that causes whole person impairment for the injury of 55% 		

Item No	Injury	Range	
117	<p>Serious upper limb injury, other than an injury mentioned in items 90 to 115</p> <p>Examples of the injury</p> <ul style="list-style-type: none"> » A serious fracture of the humerus, radius or ulna, or any combination of the humerus, radius and ulna, if there is significant permanent residual impairment of function » A brachial plexus injury requiring nerve grafts with partial recovery of shoulder and elbow function and normal hand function <p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 16% » An ISV at or near the top of the range will be appropriate if there is an injury to the dominant limb causing whole person impairment of 30%. 	21	35
118	<p>Moderate upper limb injury, other than an injury mentioned in items 90 to 115</p> <p>Examples of the injury</p> <ul style="list-style-type: none"> » A fracture that causes impairment of associated soft tissues, including nerves and blood vessels » A fracture with delayed union or infection » Multiple fractures of the humerus, radius or ulna, or multiple fractures of any combination of the humerus, radius and ulna 		
118.1	<p>Comment about appropriate level of ISV : An ISV under this item will be applicable if there is a crush injury causing significant skin or muscle loss with permanent residual impairment, or there is whole person impairment for the injury of 15%</p>	11	20
118.2	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 6% » An ISV in the lower half of the range will be appropriate if there is a complicated fracture of the humerus, radius or ulna, or any combination of the humerus, radius and ulna— <ul style="list-style-type: none"> (a) requiring open reduction and internal fixation; and (b) from which the injured person has recovered or is expected to recover. 	6	10
119	<p>Minor upper limb injury, other than an injury mentioned in items 90 to 115</p> <p>Example of the injury : An uncomplicated fracture of the humerus, radius or ulna, or any combination of the humerus, radius and ulna, from which the injured person has fully recovered within a short time</p> <p>Additional Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there are soft tissue injuries, lacerations, abrasions and contusions, from which the injured person will fully or almost fully recover » An ISV at or near the top of the range will be appropriate if there is a brachial plexus injury from which the injured person has substantially recovered within a few weeks, leaving some minor functional impairment. 	0	5
Division 9—Pelvis or hip injuries			
	<p>General comment for items 120 to 123</p> <ul style="list-style-type: none"> » The most serious injuries to the pelvis or hips can be as devastating as a leg amputation and will have similar ISVs » However, the appropriate ISV for other injuries to the pelvis or hips will generally be no higher than about 20. 		

Item No	Injury	Range	
	<p>Examples of factors affecting ISV assessment for items 120 to 123</p> <ul style="list-style-type: none"> » Exceptionally severe specific sequelae will increase the level of ISV » The availability of remedies, for example, a total hip replacement is an important factor in assessing an ISV » Age 		
120	Extreme pelvis or hip injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » An extensive pelvis fracture » Degloving » Permanent nerve palsies 	46	65
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 40% » An ISV at or near the top of the range will be appropriate if the injured person is not able to mobilise without a wheelchair and is relatively young. 		
121	Serious pelvis or hip injury		
	<p>Comment : There will be substantial residual disability, for example, severe lack of bladder and bowel control, sexual dysfunction, or deformity making the use of 2 canes or crutches routine.</p>	26	45
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A fracture dislocation of the pelvis involving both ischial and pubic rami » Traumatic myositis ossificans with formation of ectopic bone around the hip » A fracture of the acetabulum leading to degenerative changes and leg instability requiring an osteotomy, with the likelihood of future hip replacement surgery 		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the bottom of the range will be appropriate for an injury causing whole person impairment for the injury of 20%.</p>		
122	Moderate pelvis or hip injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A significant pelvis or hip injury, with no major permanent disability » A hip fracture requiring a hip replacement » A fracture of the sacrum extending into the sacroiliac joint causing ongoing significant symptoms and whole person impairment of at least 10% 	11	25
	<p>Comment about appropriate level of ISV</p> <p>An ISV for this item will be appropriate if there is a fracture requiring a hip replacement that is only partially successful, so that there is a clear risk of the need for revision surgery.</p> <p>An ISV in this range will be appropriate if there is whole person impairment for the injury of 10%.</p>		
123	Minor pelvis or hip injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » An uncomplicated fracture of 1 or more of the bones of the pelvis or hip that does not require surgery or cause permanent impairment » Undisplaced coccygeal fractures » Undisplaced or healed pubic rami fractures » An injury to the coccyx requiring surgery, that is successful. 	0	10

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is a soft tissue injury from which the injured person fully recovers » An ISV of not more than 7 will be appropriate if there is whole person impairment for the injury of 5% » An ISV at or near the top of the range will be appropriate if the person has ongoing coccydynia and difficulties with sitting. 		
Division 10—Amputation of lower limbs			
Subdivision 1—Amputation of both lower limbs			
	<p>Examples of factors affecting ISV assessment for items 124 and 125</p> <ul style="list-style-type: none"> » The level of each amputation » Severity of any phantom pain » Pain in the stumps » Extent of any ongoing symptoms 		
124	Loss of both lower limbs above or through the knee		
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be appropriate if each amputation is near the hips so neither stump can be used with a prosthesis.</p>	55	70
125	Below the knee amputation of both lower limbs		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 48% » An ISV at or near the top of the range will be appropriate if— <ul style="list-style-type: none"> (a) both legs are amputated just below the knees leaving little or no stumps for use with prostheses; (b) there is poor quality skin cover; and (c) there is a chronic regional pain syndrome. 	50	65
Subdivision 2—Amputation of 1 lower limb			
	<p>Examples of factors affecting ISV assessment for items 126 and 127</p> <ul style="list-style-type: none"> » The level of the amputation » Severity of any phantom pain » Whether there have been problems with a prosthesis, for example, pain and further damage to the stump 		
126	Above or through the knee amputation of 1 lower limb		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the amputation is through or just above the knee » An ISV at or near the top of the range will be appropriate if the amputation is near the hip and a prosthesis cannot be used. 	35	50

Item No	Injury	Range	
127	Below the knee amputation of 1 lower limb		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate in a straightforward case of a belowknee amputation with no complications » An ISV at or near the top of the range will be appropriate if there is an amputation close to the knee joint, leaving little or no stump for use with a prosthesis. 	31	45
Division 11—Lower limb injuries other than items 120 to 127 and 132 to 149			
128	Extreme lower limb injury, other than an injury mentioned in items 120 to 127 and 132 to 149		
	<p>Comment : These are the most severe injuries short of amputation; leaving the injured person little better off than if the whole leg had been lost.</p>	31	55
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Extensive degloving of the lower limb » An injury causing gross shortening of the lower limb » A fracture that has not united despite extensive bone grafting » Serious neurovascular injury » A lower limb injury causing whole person impairment of 40% 		
129	Serious lower limb injury, other than an injury mentioned in items 120 to 127 and 132 to 149		
	<p>Comment</p> <ul style="list-style-type: none"> » Removal of extensive muscle tissue and extensive scarring may have a significant enough impact to fall within this item » An injury to multiple joints or ligaments causing instability, prolonged treatment and a long period of nonweightbearing may have a significant enough impact to fall within this item, but generally only if those results are combined. 	21	30
	<p>Example of the injury : Multiple complex fractures of the lower limb that are expected to take years to heal and cause serious deformity and serious limitation of mobility</p>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 16% » An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 25%. 		
130	Moderate lower limb injury, other than an injury mentioned in items 120 to 127 and 132 to 149		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A fracture causing impairment of associated soft tissues, including nerves and blood vessels » A fracture with delayed union or infection » Multiple fractures of the femur, tibia or fibula, or multiple fractures of any combination of the femur, tibia and fibula 	11	20
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Period of nonweightbearing » Presence or risk of degenerative change » Imperfect union of a fracture » Muscle wasting » Limited joint movement » Unsightly scarring » Permanently increased vulnerability to future damage 		

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <p>An ISV at or near the top of the range will be applicable if there is a deep vein thrombosis requiring treatment for life; or if there is whole person impairment for the injury of 15%.</p> <p>An ISV at or near the bottom of the range will be applicable if there is whole person impairment for the injury of 10%.</p>		
131	Minor lower limb injury, other than an injury mentioned in items 120 to 127 and 132 to 149		
	<p>Example of the injury</p> <p>An uncomplicated fracture of the femur, tibia or fibula, from which the injured person has fully recovered</p>	0	10
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is a deep vein thrombosis requiring treatment for less than 6 months, from which the injured person will fully recover » An ISV at or near the bottom of the range will also be appropriate if— <ul style="list-style-type: none"> (a) there are soft tissue injuries, lacerations, cuts, bruising or contusions, from which the injured person will fully or almost fully recover; and (b) any residual disability will be minor. » An ISV at or near the top of the range will be appropriate if there is a deep vein thrombosis requiring treatment for at least 1 year » An ISV at or near the top of the range will also be appropriate if the injured person is left with impaired mobility or a defective gait » An ISV at or near the top of the range will also be appropriate if there is whole person impairment for the injury of 9%. 		
Division 12—Knee injuries			
	<p>General comment for items 132 to 135</p> <p>The availability of remedies, for example, a total knee replacement is an important factor in assessing an ISV under this Division.</p>		
132	Extreme knee injury		
	<p>Example of the injury</p> <p>A severe knee injury if there is a disruption of the joint, gross ligamentous damage, loss of function after unsuccessful surgery, lengthy treatment and considerable pain</p>	25	40
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is whole person impairment for the injury of 20% » An ISV at or near the top of the range will be appropriate if a total knee replacement was needed and— <ul style="list-style-type: none"> (a) it is very likely that the knee replacement will need to be repeated; or (b) there are ongoing severe symptoms, poor function and whole person impairment for the injury of more than 30%. 		
133	Serious knee injury		
	<p>Comment : The injury may involve—</p> <ul style="list-style-type: none"> (a) ongoing pain, discomfort, limitation of movement, instability or deformity; and (b) a risk, in the longterm, of degenerative changes caused by damage to the joint surfaces, muscular wasting or ligamentous or meniscal injury. 	11	24

Item No	Injury	Range	
	<p>Example of the injury A leg fracture extending into the knee joint, causing pain that is constant, permanent and limits movement or impairs agility</p>		
	<p>Comment about appropriate level of ISV An ISV at or near the middle of the range will be appropriate if there is a ligamentous injury, that required surgery and prolonged rehabilitation, causing whole person impairment of 15% and functional limitation.</p>		
134	Moderate knee injury		
	<p>Examples of the injury A dislocation or torn cartilage or meniscus causing ongoing minor instability, wasting and weakness</p>	6	10
	<p>Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is whole person impairment for the injury of 8%</p>		
135	Minor knee injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A partial cartilage, meniscal or ligamentous tear, that recovers with or without surgery » A laceration » A twisting or bruising injury 	0	5
Division 13—Ankle injuries			
	<p>Comment about appropriate level of ISV for items 136 to 139 The appropriate ISV for the vast majority of ankle injuries is 1 or 2.</p>		
136	Extreme ankle injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A transmalleolar fracture of the ankle with extensive soft tissue damage causing 1 or more of the following: <ul style="list-style-type: none"> (a) severe deformity with varus or valgus malalignment; (b) a risk that any future injury to the relevant leg may lead to a belowknee amputation of the leg; (c) marked reduction in walking ability with constant dependence on walking aids; (d) inability to place the relevant foot for even loadbearing distribution. » An ankylosed ankle in a severely misaligned position with severe ongoing pain and other debilitating complications » Whole person impairment for the injury of more than 20% 	21	35
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » A failed arthrodesis » Regular disturbance of sleep » Need for an orthosis for load bearing and walking 		
137	Serious ankle injury		
	<p>Example of the injury An injury requiring a long period of treatment, a long time in plaster or insertion of pins and plates, if—</p> <ul style="list-style-type: none"> (a) there is permanent significant ankle instability; or (b) the ability to walk is severely limited on a permanent basis 	11	20

Item No	Injury	Range	
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Unsightly scarring » The significance of any malunion » A requirement for modified footwear » Whether, and to what degree, there is swelling following activity 		
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV under this item will be applicable if there is whole person impairment for the injury of 10—19%</p>		
138	Moderate ankle injury		
	<p>Examples of the injury</p> <p>A fracture, ligamentous tear or similar injury, as evidenced by imaging and causing moderate disability, for example—</p> <ul style="list-style-type: none"> » difficulty in walking on uneven ground » awkwardness on stairs » irritation from metal plates » residual scarring 	6	10
	<p>Additional Comment about appropriate level of ISV</p> <p>An ISV in this range will be appropriate if there is whole person impairment for the injury of 6—9%</p>		
139	Minor ankle injury		
	<p>Examples of the injury : A sprain, ligamentous or soft tissue injury or minor or undisplaced fracture</p>	0	5
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Whether the injured person has fully recovered from the injury, and if not, whether there is any tendency for the ankle to give way » Whether there is scarring, aching or discomfort 		
Division 14—Foot injuries			
Subdivision 1—Amputations			
140	Amputation of both feet		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Severity of any phantom pain » Pain in the stumps » Extent of any ongoing symptoms 	32	65
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there are amputations of both feet at the forefoot (transmetatarsal level amputations) » An ISV of about 40 will be appropriate if there are amputations of both feet at the mid foot (tarsometatarsal level or Lisfranc amputations) » An ISV at or near the top of the range will be appropriate if each amputation is at the level of the ankle (Syme's amputation) and the stumps cannot be used with prostheses. 		
141	Amputation of 1 foot		
	<p>Examples of factors affecting ISV scale</p> <ul style="list-style-type: none"> » Severity of any phantom pain » Pain in the stump » Extent of any ongoing symptoms 	20	35

Item No	Injury	Range	
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if the amputation is at the forefoot (transmetatarsal level amputation) » An ISV of about 26 will be appropriate if the amputation is at the mid foot (tarsometatarsal level or Lisfranc amputation) » An ISV at or near the top of the range will be appropriate if the amputation is at the level of the ankle (Syme's amputation) and the stump cannot be used with a prosthesis. 		
Subdivision 2—Other foot injuries			
142	Extreme foot injury		
	Comment : There will be permanent and severe pain or very serious permanent disability.	13	25
	Example of the injury : An unusually severe foot injury causing whole person impairment of 15% or more, for example, a heel fusion or loss of the tibiocalcaneum angle		
	Comment about appropriate level of ISV : An ISV at or near the top of the range will be appropriate if there is subtalar fibrous ankylosis in a severely malaligned position, ongoing pain and whole person impairment for the injury of 24%.		
143	Serious foot injury		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » A severe midfoot deformity causing whole person impairment of 8% » A lower level loss of the tibiocalcaneum angle 	8	12
144	Moderate foot injury		
	<p>Example of the injury</p> <p>A displaced metatarsal fracture causing permanent deformity, with ongoing symptoms of minor severity, for example, a limp that does not prevent the injured person engaging in most daily activities</p>	4	7
145	Minor foot injury		
	<p>Examples of the injury</p> <p>A simple metatarsal fracture, ruptured ligament, puncture wound or similar injury</p>	0	3
	<p>Comment about appropriate level of ISV</p> <p>An ISV of 2 or less will be appropriate if there is a straightforward foot injury, for example, a fracture, laceration or contusions, from which the injured person will fully recover.</p>		
Division 15—Toe injuries			
146	Extreme toe injury		
	<p>Examples of factors affecting ISV assessment for items 146 to 149</p> <ul style="list-style-type: none"> » Whether the amputation was traumatic or surgical » Extent of the loss of the forefoot » Residual effects on mobility 		
146.1	<i>Amputation of all toes</i>		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the middle of the range will be appropriate if the amputation is through the metatarsophalangeal joints (MTP joints) of all toes » An ISV at or near the top of the range will be appropriate if there is complete amputation of all toes and amputation of a substantial part of the forefoot. 	8	20

Item No	Injury	Range	
146.2	<i>Amputation of the great toe</i>		
	Example of factors affecting ISV The level at which the amputation happens or any ongoing symptoms	6	12
	Comment about appropriate level of ISV An ISV at or near the top of the range will be appropriate if there is complete loss of the great toe and ball of the foot caused by an amputation through the first metatarsal bone.		
146.3	<i>Amputation of individual lesser toes</i>		
	Example of factors affecting ISV The level at which the amputation happens or any ongoing symptoms	3	5
	Comment about appropriate level of ISV » An ISV at or near the bottom of the range will be appropriate if there is an amputation of 1 lesser toe and— (a) there is no ongoing pain; and (b) there is little or no loss of function of the foot; and (c) the cosmetic effect of the amputation is minor. » An ISV at or near the top of the range will be appropriate if there is complete amputation of all lesser toes and part of the forefoot.		
147	Serious toe injury		
	Comment : The injury will cause serious and permanent disability.	8	12
	Examples of the injury » A severe crush injury causing ankylosis of the toes » A bursting wound, or an injury causing severe toe damage, with significant symptoms		
148	Moderate toe injury		
	Comment There will be permanent discomfort, pain or sensitive scarring.	4	7
	Examples of the injury » A moderate injury to the great toe » A crush injury causing multiple fractures of 2 or more toes		
	Comment about appropriate level of ISV : An ISV at or near the top of the range will be appropriate if there has been more than 1 unsuccessful operation, or there are persisting stabbing pains, impaired gait or similar effects.		
149	Minor toe injury		
	Examples of the injury : A relatively straightforward fracture or soft tissue injury	0	3
	Comment about appropriate level of ISV An ISV of 1 will be appropriate if there is a straightforward fracture of 1 or more toes with complete resolution within a short time.		
Division 16—Limb disorders			
150	General comment		
	The ISV for a limb disorder must be assessed having regard to the item of this Schedule that— (a) relates to the part of the body affected by the disorder; and (b) is for an injury that has a similar level of adverse impact to the disorder.		

Item No	Injury	Range	
	<p>Examples of a limb disorder</p> <ul style="list-style-type: none"> » Tenosynovitis (inflammation of synovial sheaths of tendons usually resolving with rest over a short period and sometimes leading to ongoing symptoms of loss of grip and dexterity) » Peripheral nerve injury (the constriction of the motor or sensory nerves or thickening of surrounding tissue, for example, carpal tunnel syndrome or sciatica) » Epicondylitis (inflammation around the elbow joint, for example, medially (golfer's elbow) or laterally (tennis elbow)) » Vascular disorders, for example, deep vein thrombosis 		
	<p>Examples of factors affecting ISV assessment</p> <ul style="list-style-type: none"> » Whether the disorder is bilateral or one sided » The level of pain, swelling, tenderness or crepitus or other symptoms » The capacity to avoid a recurrence of symptoms » The ability to engage in daily activities » The availability and likely benefit of surgery » Whether the disorder is to a dominant or nondominant limb 		
Part 7—Scarring to parts of the body other than the face			
	<p>General comment</p> <ul style="list-style-type: none"> » This Part applies to external appearance and physical condition of the skin only, and includes scarring to the scalp, trunk and limbs » Facial scarring must be assessed under Part 3, Division 3 » This Part does not apply to adhesions, or scarring, of internal organs » This Part will usually apply to an injury involving skeletal damage only if the skeletal damage is minor » Many of the physical injuries mentioned in this Schedule involve some scarring from the initial injury and subsequent surgery, including skin grafting, to repair the injury and this has been taken into account in fixing the range of ISVs for the injuries. <p>Example— The ISV range for an injury causing a closed fracture of a limb takes into account the potential need for open reduction and internal fixation of the fracture and the resulting surgical wound and scar.</p>		
	<p>Examples of factors affecting ISV assessment for items 151 to 154</p> <ul style="list-style-type: none"> » Location of a scar » Age » Consequential mental harm » Likelihood of a scar fading or becoming less noticeable over time 		
151	Extreme scarring to a part of the body other than the face		
	<p>Comment about appropriate level of ISV</p> <ul style="list-style-type: none"> » An ISV at or near the bottom of the range will be appropriate if there is— <ul style="list-style-type: none"> (a) extensive scarring to 1 or more of the limbs and significant cosmetic disfigurement; and (b) either— <ul style="list-style-type: none"> (i) the need to keep the limb or limbs covered or wear special clothing; or (ii) ongoing limitation in the ability to participate in activities because of cosmetic disfigurement or functional impairment. » An ISV at or near the top of the range will be appropriate if there is gross permanent scarring over an extensive area or areas of the body, with ongoing pain and other symptoms. 	20	25

Item No	Injury	Range	
152	Serious scarring to a part of the body other than the face		
	<p>Comment : There is serious scarring—</p> <ul style="list-style-type: none"> (a) requiring extensive medical treatment or surgery; and (b) causing significant ongoing limitation in the ability to participate in activities because of cosmetic disfigurement or functional impairment. 	12	19
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Significant scarring over the upper and lower arm requiring skin grafting if— <ul style="list-style-type: none"> (a) there are postoperative complications requiring additional medical treatment for up to 18 months; and (b) is maximum medical improvement within 2 years after the scarring is caused. » Hypertrophic (keloid) scarring caused by a burn to the front of the neck, with an intermittent sensation of burning, itching or irritation. 		
153	Moderate scarring to a part of the body other than the face		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Several noticeable scars that are hypertrophic (keloid) » A significant linear scar in an area of major cosmetic importance, for example, the front of the neck 	8	11
154	Minor scarring to a part of the body other than the face		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Scarring caused by a superficial burn that heals within a few weeks and causes some minor change of pigmentation in a noticeable area » A single noticeable scar, or several superficial scars, to 1 or both of the legs, arms or hands, with some minor cosmetic damage 	0	7
Part 8—Injuries affecting the hair			
155	Extreme injury affecting head hair		
	Example of the injury : Total permanent loss of head hair	11	15
156	Serious injury affecting head hair		
	<p>Example of the injury : Damage to head hair—</p> <ul style="list-style-type: none"> (a) the physical effect of the damage is— <ul style="list-style-type: none"> (i) dermatitis; or (ii) tingling or burning of the scalp, causing dry, brittle hair that breaks off or falls out, or both; and (b) the physical effect leads to depression, loss of confidence and inhibited social life 	4	10
	<p>Comment about appropriate level of ISV</p> <p>An ISV under this item will be appropriate if—</p> <ul style="list-style-type: none"> (a) thinning continues and prospects of regrowth are poor; or (b) there is a partial loss of areas of hair and regrowth is slow. 		
157	Moderate injury affecting head hair or loss of body hair		
	<p>Examples of the injury</p> <ul style="list-style-type: none"> » Hair that has been pulled out leaving bald patches » The same example applies as for item 156 but with fewer or only moderate symptoms 	0	3
	Example of factor affecting ISV scale : Length of time before regrowth		

Item No	Injury	Range	
Part 9—Burn injuries			
	Mapped to max body part		
	General comment		
	<ul style="list-style-type: none"> » The ISV for a burn injury must be assessed having regard to the item of this Schedule that— <ul style="list-style-type: none"> (a) relates to the part of the body affected by the burn injury; and (b) is for an injury that has a similar level of adverse impact to the burn injury. » Burns to the face must be assessed under the section on scarring to the face » In burns cases, the ISV for an injury to a part of the body causing functional impairment will generally be at or near the top of the range for an injury to that part of the body » In serious burns cases, the effects of scarring are more comprehensive and less able to be remedied than the effects of scarring from other causes. 		

PART 1 – PRELIMINARY

SECTION 3 – INTERPRETATION

Effective from: 1 October 2005

(1) In this Act—

apportionable liability—see subsection (2);

claimant means a person who asserts, or is entitled to assert, a right to damages for harm;

contributories means the person (or persons) seeking contribution under this Act and the person (or persons) from whom contribution is sought;

contributory negligence means a failure by a person who suffers harm to take reasonable care for his or her own protection or the protection of his or her own interests;

damages means compensation or damages for harm and includes solatium but does not include workers compensation;

defendant includes a third party (that is, the defendant to a third party claim);

derivative harm means harm suffered as a result of injury to, or death of, another (but does not include nervous shock arising from injury to, or death of, another);

Examples—

- 1 The loss suffered by dependants as a result of the death of the person on whom they are dependent (See Part 2 of the Wrongs Act 1936).
- 2 Loss or impairment of consortium (See section 33 of the Wrongs Act 1936).
- 3 Business losses resulting from injury to or death of spouse who participated in the business (See section 34 of the Wrongs Act 1936).

derivative liability means—

- (a) a vicarious liability (including a partner's liability for the act or omission of another member of the partnership); or
- (b) a liability of a person who is subject to a nondelegable duty of care for the act or omission of another that places the person in breach of the non-delegable duty; or
- (c) if an insurer or indemnifier is directly liable to a person who has suffered harm for the act or omission of a person who is insured or indemnified against the risk of causing the harm—the liability of the insurer or indemnifier; or

- (d) a liability as nominal defendant under a statutory scheme of third-party motor vehicle insurance;
- duty of care** means a duty to take reasonable care or to exercise reasonable skill (or both);

group—a group consists of a person who is directly liable for a particular act or omission and the person or persons (if any) who have a derivative liability for the person's act or omission;

harm includes loss of life, personal injury, damage to property, economic loss and loss of any other kind (whether the harm is primary or derivative);

innocent—wrongdoing is innocent if the wrongdoer whose act or omission actually caused the harm neither intended to cause harm nor was negligent in causing harm;

negligent wrongdoing means—

- (a) a breach of a duty of care that arises under the law of torts; or
- (b) a breach of a contractual duty of care; or
- (c) a breach of a statutory duty of care that is actionable in damages or innocent wrongdoing that gives rise to a statutory right to damages;

notional damages—a plaintiff's notional damages is the amount of the damages (excluding exemplary damages) to which the plaintiff is, or would be, entitled assuming—

- (a) no contributory negligence; and
- (b) the defendant were fully liable for the plaintiff's harm and were not entitled to limitation of liability under—
 - (i) this Act; or
 - (ii) any other Act that limits the liability of defendants of a particular class (as distinct from one that imposes a general limitation of liability); or
 - (iii) a contract;

primary harm means harm other than derivative harm;

special limitation of liability means a limitation of liability to which a defendant is entitled under—

- (a) an Act (other than this Act) that limits the liability of defendants of a particular class (as distinct from one that imposes a general limitation of liability); or
- (b) a contract;

wrongdoer means—

- (a) a person who commits an act, or makes an omission, that causes or contributes to harm (including a person whose act or omission contributes to his or her own harm); or
- (b) a person who has a derivative liability for harm resulting from the act or omission of someone else;

Note—

A person may be considered a wrongdoer even though the person—

- » has died; or
- » has been wound up or has ceased to exist; or
- » has become insolvent; or
- » cannot be found.

wrongdoing means an act or omission that causes or contributes to harm (including such an act or omission on the part of the person who suffers the harm); and a reference to the *wrongdoing of a wrongdoer* (or a *defendant*) is to be understood as a reference to wrongdoing for which that person is directly liable or for which that person has a derivative liability.

- (2) A liability is an *apportionable liability* if the following conditions are satisfied:
 - (a) the liability is a liability for harm (but not derivative harm) consisting of—
 - (i) economic loss (but not economic loss consequent on personal injury); or
 - (ii) loss of, or damage to, property;
 - (b) 2 or more wrongdoers (who were not acting jointly) committed wrongdoing from which the harm arose;
 - (c) the liability is the liability of a wrongdoer whose wrongdoing was negligent or innocent.

Example—

A, who acts with intention to defraud, prepares a false and deceptive statement. B, who is not aware of the fraud, negligently publishes the statement to C, who relies on it and suffers financial loss in consequence. C brings an action against A and B under section 56 of the *Fair Trading Act 1987*. In this case, B's liability is an apportionable liability but A's is not.

- (3) A liability to pay exemplary damages is not however to be regarded as an apportionable liability.

SECTION 4 – APPLICATION OF ACT

Effective from: 1 October 2005

- (1) This Act applies to liabilities of the following kinds—
 - (a) a liability in damages that arises under the law of torts;
 - (b) a liability in damages for breach of a contractual duty of care;
 - (c) liability in damages that arises under statute.
- (2) This Act—
 - (a) has no effect on criminal proceedings; and
 - (b) does not make enforceable an agreement for an indemnity that would not have been enforceable apart from this Act; and
 - (c) does not apply to liability subject to apportionment under section 72 of the *Development Act 1993*.

PART 2 – CONCURRENT LIABILITY AND CONTRIBUTORY NEGLIGENCE

SECTION 6—RIGHT TO CONTRIBUTION

Effective from: 1 October 2005

- (1) A person who is liable in damages for harm suffered by another may recover contribution from a third person who is also liable in damages for the same harm.
- (2) The right to contribution—
 - (a) exists even though the act or omission that gave rise to the liability of the person seeking to recover contribution may amount to an offence; and
 - (b) extends to liabilities incidental to damages (such as a liability for interest), (but the right is subject to Part 3 and any other statutory provision that may operate to modify, exclude or limit it in a particular case).
- (3) An action for contribution may be brought—
 - (a) by way of third party proceedings, or proceedings between the parties, in an action in which damages are sought from the person entitled to contribution; or
 - (b) by way of a separate action brought within the relevant time limit against the person from whom contribution is sought.

- (4) The *relevant time limit* is the longer of the following—
- (a) the period within which the person who suffered the harm could have brought an action against the person from whom contribution is sought;
 - (b) 2 years after the damages payable by the person entitled to contribution are finally determined.
- (5) The contribution is to be an amount that is fair and equitable having regard to the extent of each contributory's responsibility for the harm.
- (6) In determining the contribution to be made by a contributory whose liability for the harm is a derivative liability, the court is to have regard to the act or omission from which the liability arose.
- (7) If it is fair and equitable to do so, the court may exempt a person from liability to make contribution or order that the contribution to be recovered is to amount to a complete indemnity.
- (8) An action for contribution may be brought even though—
- (a) judgment in an action in which damages are sought for the relevant harm has not yet been given; or
 - (b) the person who suffered the harm has released the person from whom contribution is sought from liability or has obtained judgment against that person; or
 - (c) a notice that would be required if the person who suffered the harm were to obtain a judgment against the person from whom contribution is sought has not been given; or
 - (d) the time within which the person who suffered the harm could have commenced an action against the contributory has expired.
- (9) However—
- (a) if a person is liable to indemnify another against the other's liability, the person is (to the extent of the liability to indemnify) not entitled to contribution from the other person under this section;
 - (b) a contractual limitation or exclusion of liability operates to limit or exclude an entitlement to contribution under this section if—
 - (i) it arises from a contract made before the occurrence of the act or omission that gave rise to the liability; and

- (ii) it would, assuming the person who suffered primary harm had brought an action for damages against the person from whom contribution is sought, have limited or excluded that person's right to recover damages;
- (c) an employer is not entitled to contribution from an employee under this section unless the employee's wrongful act amounted to serious and wilful misconduct².

Notes—

- 1 See for example section 111 of the *Supreme Court Act 1935* which deals with apportionment of liability in the case of a collision between ships at sea.
- 2 Compare section 27C of the *Wrongs Act 1936*.

SECTION 7 - APPORTIONMENT OF LIABILITY IN CASES WHERE THE PERSON WHO SUFFERS PRIMARY HARM IS AT FAULT

Effective from: 1 October 2005

- (1) If contributory negligence contributes to (but is not the sole cause of) the harm for which a claimant seeks damages, the claim is not to be defeated on the ground of the contributory negligence.
- (2) If a claimant's harm is caused partly by another's negligent wrongdoing and partly by contributory negligence, the court must proceed as follows:
 - (a) the court must determine (and record) the amount of the damages to which the claimant would have been entitled assuming there had been no contributory negligence; and
 - (b) the court must then reduce the amount so determined to the extent the court thinks just and equitable having regard to the extent the contributory negligence contributed to the harm.
- (3) This section applies subject to—
 - (a) any contractual modification, exclusion or limitation binding on the claimant or, in the case of a claim for damages for derivative harm, on the person who suffered the primary harm; and
 - (b) any statutory modification, exclusion or limitation.
- (4) In this section, a reference to contributory negligence extends, in the case of a claim for derivative harm, to negligence on the part of the person who suffered the primary harm.

PART 3 – APPORTIONABLE LIABILITY

SECTION 8 – LIMITATION OF DEFENDANT’S LIABILITY IN CASES OF APPORTIONABLE LIABILITY

Effective from: 1 October 2005

- (1) If a defendant’s liability on a claim for damages is apportionable, the liability is limited under this section.
- (2) If the limitation applies, the defendant’s liability is limited to a percentage of the plaintiff’s notional damages that is fair and equitable having regard to—
 - (a) the extent of the defendant’s responsibility for the harm; and
 - (b) the extent of the responsibility of other wrongdoers (including wrongdoers who are not party to the proceedings) whose acts or omissions caused or contributed to the harm.
- (3) For the purpose of subsection (2)—
 - (a) 2 or more wrongdoers who are members of the same group are to be treated as a single wrongdoer; and
 - (b) if the plaintiff was guilty of contributory negligence, that contributory negligence will be brought into account as wrongdoing and a percentage assigned to it; and
 - (c) if 2 or more wrongdoers are each entitled to the benefit of a limitation of liability under this section (for some reason other than that they are members of the same group), the aggregate percentage assigned to them cannot exceed—
 - (i) if there is no contributory negligence on the plaintiff’s part—100%; or
 - (ii) if there is contributory negligence on the plaintiff’s part—100% less a percentage representing the extent of the plaintiff’s responsibility for his or her harm.
- (4) In a case involving apportionable liability, the court must proceed as follows:
 - (a) the court first determines the plaintiff’s notional damages;
 - (b) the court gives judgment against any defendant whose liability is not subject to limitation under this section for damages calculated without regard to this Part;
 - (c) the court determines, in relation to each defendant whose liability is limited under this section, a proportion of the plaintiff’s notional damages equivalent to the percentage representing the extent of that defendant’s liability;
- (d) the court then gives judgment against each such defendant based on the assessment made under paragraph (c) (but in doing so must give effect to any special limitation of liability to which any of them may be entitled).

Example—

A Ltd (which runs a forestry business) has engaged B (an independent contractor) to protect its forest from fire. C (an arsonist) sets the forest on fire. B is negligent in failing to detect and stop C’s malicious act. A Ltd sues B and C for damages. In this case, B would be entitled to a limitation of liability under this section but C would not. In working out the amounts for which judgment should be given, the court would determine first the amount of damages necessary to cover the damage caused by the fire. Judgment for that amount would be given against C. In determining the amount for which judgment should be given against B, responsibility for the damage would be divided between B and C on essentially the same basis as would formerly have been applicable to an action for contribution between them. Judgment would be given against B for an amount reflecting the proportionate responsibility assigned to B on that basis.

- (5) The plaintiff is not entitled to recover, by way of damages under the judgment, more than the amount fixed as the plaintiff’s notional damages.

Example—

Suppose that A has suffered a loss of \$1 000 for which B, C and D are liable. The liability of B and C is limited to 20% and 30% respectively, but D’s liability is not limited. Judgment is therefore given against B for \$200, against C for \$300 and against D for \$1 000. In this case, the court would fix \$1 000 as the plaintiff’s notional damages—thus limiting the damages that the plaintiff is entitled to recover under the judgment to that amount. If A proceeded first to recover in full against B and C, recovery against D would be limited to \$500. Conversely, recovery in full against D would preclude recovery against B and C. But rights of contribution may arise—see section 9.

- (6) However, this section does not affect the award of exemplary damages and, if such damages are awarded, they may be recovered in the ordinary way from a defendant against whom they were awarded.

SECTION 9 – CONTRIBUTION

Effective From: 1 October 2005

(1) In a case in which the liability of one or more wrongdoers is limited under this Part, the provisions of Part 2 regarding contribution apply but subject to the following qualifications:

- (a) no order for contribution between wrongdoers whose liability is limited may be made;

Exception—

Contribution will be allowed between wrongdoers who are members of the same group, in respect of the liability of the group, in the same way (and subject to the same exceptions) as apply under Part 2.

- (b) no order for contribution may be made in favour of a wrongdoer whose liability is limited against a wrongdoer whose liability is not limited;
- (c) no order for contribution may be made in favour of a wrongdoer whose liability is not limited (*A*) against a wrongdoer (*B*) whose liability is limited unless *A* has fully satisfied the judgment debt, and, if such an order is made, the amount of contribution awarded against *B* cannot exceed the amount of *B*'s liability for damages under the judgment.

SECTION 10 – PROCEDURAL PROVISION

Effective from: 1 October 2005

(1) If a defendant entitled to a limitation of liability under this Part has reasonable grounds to believe that a person who is not a party to the action may be liable on the plaintiff's claim, the defendant must, as soon as practicable, provide the plaintiff with information that is in the defendant's possession, or reasonably available to the defendant (and not equally available to the plaintiff), about—

- (a) the other person's identity and whereabouts; and
- (b) the circumstances giving rise to the other person's liability.

(2) If a defendant fails to comply with its obligation under this section, a court may order the defendant to pay costs incurred in proceedings that could have been avoided if the obligation had been carried out.

(3) A court may order that costs payable under this section be assessed on the basis of an indemnity.

SECTION 11 – SEPARATE PROCEEDINGS

Effective from: 1 October 2005

(1) If a plaintiff brings separate actions for the same harm against wrongdoers who are entitled to a limitation of liability under this Part, the judgment first given (or that judgment as varied on appeal) determines for the purpose of all other actions—

- (a) the amount of the plaintiff's notional damages; and
- (b) the proportionate liability of each wrongdoer who was a party to the action in which the judgment was given; and
- (c) whether the plaintiff was guilty of contributory negligence and, if so, the extent of that negligence.

Workers Rehabilitation and Compensation Act 1986 (SA)

SECTION 54(7) – LIMITATION OF EMPLOYER'S LIABILITY

Effective from: 1 July 2012

- (1) Where—
- (a) compensation is paid or payable to a person (the *injured party*) under this Act;
 - (b) the injured party has received, or is entitled to, damages from another person (the *wrongdoer*) in pursuance of rights arising from the same trauma as gave rise to the rights to compensation under this Act;
 - (c) the person by whom the compensation is paid or payable under this Act (the *claimant*) is entitled to recover the amount of the compensation by virtue of subsection (5) or (6),
- then the following provisions apply:
- (a) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:
 - (i) no amount may be recovered from the wrongdoer in excess of the wrongdoer's unsatisfied liability to the injured party; and
 - (ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party; and
 - (iii) no amount may be recovered from the injured party in excess of the amount of the damages received by the injured party; and
 - (iv) in a case involving contributory negligence on the part of a worker, the amount to be recovered from the wrongdoer by the claimant under this subsection must be adjusted to the extent that is just and equitable having regard to the extent to which the wrongdoer establishes that the contributory negligence contributed to the occurrence of the relevant injury;
 - (b) the claimant shall, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;
 - (c) any amount recovered by the claimant against a wrongdoer under this subsection shall be deemed to be an amount paid in or towards satisfaction of the wrongdoer's liability to the injured party;
 - (d) an action for the recovery of compensation under this subsection—
 - (i) may be heard and determined in proceedings brought in the District Court of South Australia; and
 - (ii) must be commenced within 3 years after the date of the trauma referred to in paragraph (b).

Limitation of Actions Act 1936

SECTION 48 - GENERAL POWER TO EXTEND PERIODS OF LIMITATION

Effective prior to 1 May 2004

- (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for—

- (a) instituting an action; or
- (b) doing any act, or taking any step in an action; or
- (c) doing any act or taking any step with a view to instituting an action,

a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.

- (2) A court may exercise the powers conferred by this section in respect of any action that—

- (a) the court has jurisdiction to entertain; or
- (b) the court would, if the action were not out of time, have jurisdiction to entertain.

- (3) This section does not—

- (a) apply to criminal proceedings; or
- (b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied—
 - (i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff; or
 - (ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,

and that in all the circumstances of the case it is just to grant the extension of time.

- (4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.

- (5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.

- (6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.

SECTION 45A – SPECIAL PROVISION REGARDING CHILDREN

Effective from: 1 May 2004

- (1) If—

- (a) a child (the *plaintiff*) suffers personal injury; and
- (b) the time for bringing an action for damages is extended by this Act to more than 6 years from the date of the incident out of which the injury arose (the *relevant date*),

notice of an intended action must be given within 6 years after the relevant date by, or on behalf of, the child to the person or persons alleged to be liable in damages (the *defendant*).

Exception—

If the injury arises from an intentional tort and the action is to be brought against the person who actually committed the tort, notice of the action need not be given to that person, but if any other person is alleged to be liable for the tort, notice must be given to that other person.

- (2) If the injury is alleged to have arisen out of a motor accident, the notice must be given to the relevant third-party insurer.
- (3) The notice is to contain the information required by regulation.
- (4) The plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) must comply with a reasonable request by the defendant—
- (a) to provide copies of medical and other records and reports in the possession or power of the plaintiff (or the plaintiff's parent or guardian) relevant to the nature and extent of the plaintiff's injury and any consequent disability; or
 - (b) to undergo examination, at the expense of the defendant, by a medical expert for the purpose of ascertaining the nature and extent of the plaintiff's injury and any consequent disability.

- (5) The defendant may, by written notice to the plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) require the plaintiff, within 6 months after the date of the notice, to bring an action so that the claim may be judicially determined.
- (6) In any such action, the court may, if it thinks it appropriate, exercise its power to make a determination of liability and adjourn final assessment of damages until a later date.
- (7) Non-compliance with a requirement of this section on the part of a plaintiff does not prevent the plaintiff from bringing an action for damages but unless the court is satisfied that there is good reason to excuse the non-compliance—
 - (a) no damages will be allowed in such an action to compensate or allow for medical or gratuitous services provided before the date the action was commenced; and
 - (b) no legal or other costs incurred in contemplation of the action or a possible action will be allowed.

SECTION 48 – GENERAL POWER TO EXTEND PERIODS OF LIMITATION

Effective from: 1 May 2004

- (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for—
 - (a) instituting an action; or
 - (b) doing any act, or taking any step in an action; or
 - (c) doing any act or taking any step with a view to instituting an action,
 a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.
- (2) A court may exercise the powers conferred by this section in respect of any action that—
 - (a) the court has jurisdiction to entertain; or
 - (b) the court would, if the action were not out of time, have jurisdiction to entertain.
- (3) This section does not—
 - (a) apply to criminal proceedings; or
 - (b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied—

- (i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff; or
 - (ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,
- and that in all the circumstances of the case it is just to grant the extension of time.

- (3a) A fact is not to be regarded as material to the plaintiff's case for the purposes of subsection (3)(b)(i) unless—
 - (a) it forms an essential element of the plaintiff's cause of action; or
 - (b) it would have major significance on an assessment of the plaintiff's loss.

Example—

In a case involving personal injury, a fact might qualify as a fact material to the plaintiff's case if it establishes—

- (a) a substantial reduction of the plaintiff's capacity to work; or
 - (b) that the plaintiff will require substantially more medical care than previously expected; or
 - (c) a significant loss of expectation of life.
- (3b) In determining whether it is, in all the circumstances of a case, just to grant an extension of time, the court should have regard to—
 - (a) the period of extension sought and, in particular, whether the passage of time has prejudiced a fair trial; and
 - (b) the desirability of bringing litigation to an end within a reasonable period and thus promoting a more certain basis for the calculation of insurance premiums; and

- (c) the nature and extent of the plaintiff's loss and the conduct of the parties generally; and
 - (d) any other relevant factor.
- (4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.
- (5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.
- (6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.

Supreme Court Civil Rules 2006

SCHEDULE 2 - SUPREME COURT SCALE OF COSTS SUMMARY

Effective from: 1 July 2011

Documents

Drawing and engrossing [Including original and the lawyer's file copy]

- | | |
|---|--|
| 1 | Drawing any document of importance other than correspondence and those listed in item 2, per ¼ page. |
| 2 | Drawing proofs, indices, formal lists, extracts from other documents, lists of authorities, or other formal documents, per ¼ page. |
| 3 | Engrossing documents, when copying or scanning is not appropriate, per ¼ page. |

Perusing and examining documents and electronic documents

- | | |
|---|---|
| 4 | Perusing documents, per ¼ page. |
| 5 | Examining documents, when a perusal is not justified, per ¼ page. |

Documents produced by copying or scanning, or receiving emails, faxes, or any other electronic transmissions

- | | |
|---|------------|
| 6 | Per sheet. |
|---|------------|

Attendances and Communications

Attendances and oral communications, whether personal or by electronic communication, and including attendances to swear or take affidavits, per six minute unit

- | | |
|----|--|
| 7 | By a lawyer involving skill. |
| 8 | By a lawyer not involving skill. |
| 9 | By a non lawyer employed or engaged by a lawyer. |
| 10 | Arranging appointments, per person, including all work involved. |

Attending Hearings, including preparation, and when not attending as instructing lawyer for counsel

- | | |
|----|---|
| 11 | Short. |
| 12 | Ordinary. |
| 13 | If protracted, per 6 minute unit of hearing time. |

Filing and delivery

- | | |
|----|--|
| 14 | Filing or delivery of documents other than personal service, when no other attendance is properly allowable. |
|----|--|

Correspondence

[Including original to send and the lawyer's file copy, and the ordinary postal or transmission expenses]

- | | |
|----|--|
| 15 | Whether sent by letter, email, SMS, or fax, per ¼ page. |
| 16 | Circular correspondence, after the first, per item (plus copying for subsequent pages after the first page). |

Miscellaneous

- | | |
|----|---|
| 17 | Paying disbursements by whatever means and including all work and associated expenses. |
| 18 | Preparation of Trial Books, Tender Books, Books of Exhibits, Application Books, Appeal Books and Briefs, including indices, pagination and binding, per page. |
| 19 | Lump sum on a default judgment. |

SCCR 2006, Schedule 2 Ex GST - 1 Jul 2011 – 30 Sep 2012	SCCR 2006, Schedule 2 plus 4.7% Ex GST 1 Oct 2012 – 30 Sep 2013	SCCR 2006, Schedule 2 plus 7.7% Ex GST 1 Oct 2013 – 30 Sep 2014	SCCR 2006, Schedule 2 plus 11.1% Ex GST 1 Oct 2014 –
\$28.00	\$29.32	\$30.16	\$31.11
\$14.00	\$14.66	\$15.08	\$15.55
\$4.00	\$4.19	\$4.31	\$4.44
\$2.00 - \$8.00	\$2.09 - \$8.38	\$2.15 - \$8.62	\$2.22 - \$8.89
\$0.50	\$0.52	\$0.54	\$0.56
\$0.30	\$0.31	\$0.32	\$0.33
per 6 minute unit	per 6 minute unit	per 6 minute unit	
\$30.00	\$31.41	\$32.31	\$33.33
\$18.00	\$18.85	\$19.39	\$19.99
\$14.00	\$14.66	\$15.08	\$15.55
\$20.00	\$20.94	\$21.54	\$22.22
\$110.00	\$115.17	\$118.47	\$122.21
\$190.00	\$198.93	\$204.63	\$211.09
\$30.00	\$31.41	\$32.31	\$33.33
\$20.00	\$20.94	\$21.54	\$22.22
\$20.00	\$20.94	\$21.54	\$22.22
\$10.00	\$10.47	\$10.77	\$11.11
\$20.00	\$20.94	\$21.54	\$22.22
\$1.50	\$1.57	\$1.62	\$1.67
\$2040.00	\$2,135.88	\$2,197.08	\$2,266.44

RULE 27 (1)

A legal practitioner acting for a party must give its client a copy of Rules 55-58 inclusive, Rule 106 and the cost scale applicable to the action.

COSTS (RULES 106 – 110)

RULE 106

(1) Subject to these Rules or to an order of the Court, the successful party (as defined by this Rule) in an action (other than a minor civil action) is entitled on judgment to costs against an unsuccessful party, or any other party that the Court may order, in accordance with the following principles –

(a) Where judgment is in respect of an action for a sum of money the shared costs in Cost Scale 1 in the Third Schedule applicable to the sum of money claimed at any stage of the litigation are totalled. The costs due to the successful party are calculated by multiplying the total shared costs by the results of this formula:

$$\frac{2 \times \text{the judgment sum} - \text{amount claimed}}{\text{amount claimed}}$$

and where the result is positive the costs are awarded to the plaintiff (“the successful party”) and where the result is negative the costs are awarded to the defendant (“the successful party”) and where the result is zero there is no successful party.

(b) Where the plaintiff discontinues or reduces any aspect of its claim by filing and serving a notice under Rule 88 the amount claimed is reduced accordingly the day after the amendment or admission is filed and served.

(c) Where a defendant files and serves an admission of part of the plaintiff’s claim the amount claimed is reduced accordingly from the day after the admission is filed and served. If the plaintiff pursues the balance of its claim for the purposes of the formula in Rule 106(1)(a) any judgment sum will exclude the part admitted by the defendant from the day after it is admitted. If the amount admitted is not paid within 7 days plus the costs applicable on the scale for that sum and any interest due the plaintiff is entitled to sign

judgment for the amount admitted, plus costs applicable on the scale plus any interest without that prejudicing its rights in relation to the balance of the amounts claimed in its action.

(d) Where judgment is in respect of an action that is not an action for a sum of money the Court may determine which party is the successful party, the amount claimed for the scale, and the apportionment (if any).

- (2) Where there is a counterclaim the costs on the claim and counterclaim must be separately calculated and applied.
- (3) Where proper cause exists, the Court may fix a cost budget specifying the total sum of costs that will be awarded to a successful party for an action or any part of an action.
- (4) Where proper cause exists the Court may order that a successful party is entitled to costs on a solicitor client basis.
- (5) In a minor civil action, a successful party is entitled on judgment to costs against an unsuccessful party, or any other party that the Court may order, in accordance with Cost Scale 2 in the Third Schedule.
- (6) A plaintiff who serves a claim by post (except by the agency of the Registrar) is not entitled to the costs thrown away up to the time a judgment relying upon that service is set aside unless the Court is satisfied that the claim form came to the attention of the defendant.
- (7) A Magistrate who is not the trial Magistrate may conduct a settlement conference at which s/he formally intimates her or his view of the likely result of a case and put that intimation in writing. The intimation must not be available to the trial Magistrate until after judgment when the trial Magistrate may take it into account in relation to any application for costs. Note that a plaintiff may not be entitled to the costs for the filing of a claim unless notice of the claim is given, or if the defendant has given notice of willingness to consent to judgment, in accordance with Rule 20A.

RULE 107

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- (1) Unless the Court orders otherwise, where costs of proceedings are reserved, such costs must be dealt with in accordance with these Rules.
 - (2) The Court may order that a party must make payment of costs within a time fixed by the Court and if they are not paid the Court may then order the action be dismissed or the defence struck out, and judgment entered for non compliance with the cost order.

RULE 108

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- (1) The Court may tax costs and allow costs in respect of the taxation.
 - (2) The successful party must make a genuine attempt to agree his or her costs but if they cannot be agreed may file and serve on the unsuccessful party a Bill of Costs in taxable form.
 - (3) If the unsuccessful party does not file and serve a written notice of objection to an item of the Bill of Costs (including detailed reasons for the objection) within 21 days of the service of the Bill of Costs, he or she will be taken to admit the item.
 - (4) When a Bill of Costs in taxable form is filed, the Registrar must fix, and give notice in writing to the parties, of the date, time and place for the taxation, which may proceed in the absence of any party.
 - (5) Where costs taxed off represent 10%, or more, of the costs allowed and certified on taxation, the successful party is not entitled to any costs in respect of the taxation.

RULE 109

-
- (1) The Court may award costs in respect of the exercise of its jurisdiction under the *Enforcement of Judgments Act 1991* and where applicable in accordance with Cost Scale 3.
 - (2) Where the Court appoints a person to execute a process or to carry out the duties of the Sheriff in relation to any matter pursuant to Section 7(1) of the *Sheriff's Act 1978*, the Court must not allow any additional costs or fees to the judgment creditor against the judgment debtor unless it is satisfied by affidavit evidence that the judgment debtor has been avoiding service or there is other proper cause.

RULE 110

The Court, notwithstanding that it has no jurisdiction to hear an action or proceeding, may award costs as if it had jurisdiction.

THIRD SCHEDULE: COST SCALES

COSTS SCALE 1: SHARED COSTS

Item	\$25,001-\$100,000
(1) Pre-action notice in an action other than for personal injury	1% of the amount claimed
(2) Filing an action or defence including where necessary attending the first Directions Hearing. (a) For an action for a liquidated sum (b) For an action other than for a liquidated sum	(a) 3% of the amount claimed (b) 5% of the amount claimed
(3) Any and all activity after the first directions hearing until the trial date is set or the last pre-trial conference or hearing whichever is the latter. (a) For an action for a liquidated sum (b) For an action other than for a liquidated sum	(a) 10% of the amount claimed (b) 12% of the amount claimed
(4) All aspects not otherwise specified of and incidental to preparing for trial including proofing witnesses, advice on evidence and law (solicitor and counsel) delivering brief to counsel and fee on brief.	10% of the amount claimed
(5) Preparing and filing a trial plan	2.5% of the amount claimed
(6) To advise on compromise or settlement for a person under disability or under the <i>Correctional Services Act 1982</i> section (a) Where quantum only is in dispute; (b) Where quantum and liability are in dispute.	(a) 2% of the amount claimed (b) 3% of the amount claimed
(7) Attendance as counsel at trial (includes fee on brief and refreshers) (a) first day (b) subsequent day(s)	(a) 3% of the amount claimed (b) 2.5% of the amount claimed
(8) Arranging attendance of a witness at trial (including issuing and a summons to witness if this is necessary).	\$100
(9) Attendance on an application to set aside a warrant	\$150
(10) Any other attendance where the costs are not within any other item.	\$150

Other costs and disbursements

Item		
(1)	Court ordered mediation	2% of the amount claimed
(2)	Filing a Form 18 not otherwise provided for:	\$150
(3)	Request for an Investigation or Examination Summons including attending at the hearing	\$110
(4)	Service of any document:	
	(a) personal where required	(a) \$100
	(b) other	(b) \$50
(5)	Preparing bill for taxation (includes attendance).	\$350
(6)	Professional or other expert witness per day (included waiting)	\$800
(7)	Other adult witness per day (includes waiting)	\$250
(8)	Juvenile witness (includes waiting)	\$100
(9)	Travel expenses for witnesses Where the witness is normally resident more than 50 km from the trial Court at the rate of 50 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.	
(10)	Accommodation for witnesses Where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$250.	
(11)	Expert reports \$1,000 or such other amount ordered by the Court.	
(12)	Other All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, photocopying, telephone charges and courier expenses.	

NOTES:

- 1 The Court may allow any larger or lesser amount in respect of any matter at the time of making any order.
- 2 All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set for each item nor for anything not itemised. Counsel fees include juniors and all other assistants.
- 3 For the purposes of items expressed as a percentage the costs calculated must be rounded to the nearest \$10.
- 4 For the purpose of determining the sum to which the scale is applicable, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
- 5 For the purpose of this scale the cost of repairs to, or the loss of, property and any other consequential loss are regarded as a liquidated sum.
- 6 Only the witness expenses for the successful party are to be included.
- 7 The cost of mediation is for the cost of the mediator if that amount or more is actually incurred.
- 8 The costs in the scale do not include GST and if that is applicable the amount of GST may be added.
- 9 A proper amount for pre-action processes in personal injury matters can be agreed between the parties.

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