



New South Wales

# Motor Accidents and Workers Compensation Legislation Amendment Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are—

- (a) to make miscellaneous amendments to certain legislation concerning workers compensation and motor accidents, and
- (b) to make other consequential or related amendments, including amendments in the nature of statute law revision.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1 Amendments concerning motor accidents legislation

### 1.1 Limitation Act 1969 No 31

**Schedule 1.1** confirms the limitation period for personal injury actions does not extend to a cause of action on a claim under the *Motor Accident Injuries Act 2017*.

Currently, the *Limitation Act 1969* excludes actions on claims under the *Motor Accidents Compensation Act 1999*. However, the *Motor Accident Injuries Act 2017*, Schedule 4, clause 5 provides for a reference in another Act to the *Motor Accidents Compensation Act 1999* to be read as including a reference to the *Motor Accident Injuries Act 2017*.

## 1.2 Motor Accident Injuries Act 2017 No 10

### Schedule 1.2[2]—

- (a) expands the guideline-making power of the State Insurance Regulatory Authority (*SIRA*) in connection with the payment of premiums for third-party insurance, and
- (b) enables SIRA and licensed insurers to obtain certain additional information concerning the provision of services by taxis, hire vehicles and other vehicles, and
- (c) enables SIRA to direct certain persons to pay premiums for third-party insurance for taxis, hire vehicles and other vehicles.

**Schedule 1.2[1]** inserts definitions for terms used in the provisions inserted by Schedule 1.2[2].

**Schedule 1.2[3]** corrects a typographical error.

**Schedule 1.2[4]** makes it clear the insurer of an at-fault motor vehicle is the insurer who provides motor accident insurance cover for the motor vehicle concerned rather than the owner or driver.

**Schedule 1.2[5]** makes provision for who is responsible for paying statutory benefits if the insurer of an at-fault motor vehicle is not a licensed insurer.

Ordinarily, the benefits will be payable by the Nominal Defendant unless SIRA gives written approval for the non-licensed insurer to enter into arrangements with a licensed insurer to make the payments. However, the Nominal Defendant must make the payments if the policy provided by the non-licensed insurer does not insure against a liability to pay the statutory benefits.

Provision is also made for the recovery of the costs associated with handling these statutory benefits claims.

**Schedule 1.2[6]** alters the way in which the weekly amount of statutory benefits payable is calculated by applying the relevant percentage to the difference between—

- (a) the person's pre-accident weekly earnings, and
- (b) the person's post-accident earning capacity, if any, or post-accident earnings, whichever is the greater.

**Schedule 1.2[7], [13] and [16]** align terminology concerning earnings and earning capacity.

**Schedule 1.2[8] and [10]** clarify the language used in connection with additional certificates of fitness for work provided by injured persons to insurers under the *Motor Accident Injuries Act 2017*, section 3.15(3)(a1) as opposed to those given by medical practitioners. **Schedule 1.2[9]** also makes it clear these certificates provided by injured persons constitute medical certificates for the purposes of the Act.

**Schedule 1.2[11]** makes it clear an insurer is not required to make weekly payments of statutory benefits to which an injured person is entitled until the person has complied with certain requirements for the provision of evidence as to fitness for work.

**Schedule 1.2[12]** corrects an incorrect cross-reference.

**Schedule 1.2[14]** enables insurers and injured persons residing outside Australia to agree on shorter intervals for the payment of weekly statutory benefits rather than on a quarterly basis.

**Schedule 1.2[15]** makes a consequential amendment.

**Schedule 1.2[17]** makes it clear the payment of certain hospital, ambulance, medical and other expenses not covered by a bulk billing arrangement is to be at no greater than the maximum rate fixed by the regulations, rather than at the maximum rate.

**Schedule 1.2[18]** confirms a motor vehicle is uninsured for the purpose of deciding whether statutory benefits are payable if it was not subject to coverage under a third-party policy in circumstances where the vehicle was required to be insured under this Act.

**Schedule 1.2[19]–[21] and [23]** amend the *Motor Accident Injuries Act 2017*, Part 5 (Recovery for no-fault motor accidents) to make it clear the Part does not apply to the recovery of statutory benefits. Also, **Schedule 1.2[22]** makes it clear section 5.6 is intended to operate when a person is deemed to be the person at fault for causing a death or injury occasioned by a motor accident even though the accident itself is a no-fault motor accident. The amendments seek to address

concerns expressed in cases like *AAI Limited v Singh* [2019] NSWSC 1300 about the operation of the provisions.

**Schedule 1.2[24]** enables SIRA to approve forms for notices of claims.

**Schedule 1.2[25]** enables merit reviewers to assess costs.

**Schedule 1.2[26]** removes a limitation on the power to make regulations concerning the use of the expression “green slip” in connection with commercial services.

**Schedule 1.2[27]** clarifies what certain pre-accident weekly earnings mean in cases where there was a significant change in the earnings on a weekly basis of the injured person during the 12 months immediately before the day of the motor accident.

**Schedule 1.2[28]** inserts provisions of a savings or transitional nature consequent on amendments made by the proposed Act to the *Motor Accident Injuries Act 2017* and the *Motor Accidents Compensation Act 1999* and regulations under those Acts.

### **1.3 Motor Accident Injuries Regulation 2017**

**Schedule 1.3** makes it clear the maximum costs prescribed by the Regulation apply to costs recoverable by both Australian legal practitioners and claimants.

### **1.4 Motor Accidents Compensation Act 1999 No 41**

**Schedule 1.4[1]** corrects a typographical error.

**Schedule 1.4[2]** removes a limitation on the power to make regulations concerning the use of the expression “green slip” in connection with commercial services.

**Schedule 1.4[3]** enables SIRA, instead of the Minister, to make orders indexing the amounts relating to awards of damages.

## **Schedule 2 Amendments concerning workers compensation legislation**

### **2.1 Workers Compensation Act 1987 No 70**

**Schedule 2.1[1] and [2]** enable the regulations to prescribe the circumstances in which diseases are prescribed for the purposes of presumptions under the *Workers Compensation Act 1987*, section 19.

**Schedule 2.1[3]** requires an employer to pay additional compensation to cover certain investment and management fees and costs concerning a lump sum benefit paid concerning a dependant of a deceased worker.

**Schedule 2.1[4]** removes the requirement for an order of the Personal Injury Commission or certificate from a medical assessor to continue the entitlement to weekly compensation payments of certain workers who cease to reside in Australia whose incapacity for work results from injuries likely to be of a permanent nature.

**Schedule 2.1[5]** creates greater flexibility for the regulations to provide for what constitutes, or does not constitute, medical or related treatment for the purposes of the payment of compensation to cover the treatment.

**Schedule 2.1[6]** makes it clear certain provisions concerning judicial pensions repealed by the *Personal Injury Commission Act 2020* continue to apply in relation to certain retired or deceased Presidents of the former Workers Compensation Commission.

**Schedule 2.1[7]** inserts provisions of a savings or transitional nature consequent on amendments made by the proposed Act to the *Workers Compensation Act 1987*.

## **2.2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83**

**Schedule 2.2[1] and [6]** provide for compensation to be paid for fire fighters and emergency and rescue workers who die while carrying out their functions. **Schedule 2.2[10]** makes a consequential amendment.

**Schedule 2.2[2]** removes references to a table in the *Workers Compensation Act 1987* that no longer exists.

**Schedule 2.2[3] and [7]** provide for—

- (a) compensation to be paid to injured fire fighters and emergency and rescue workers to cover certain costs associated with returning to work with a new employer, based on the *Workers Compensation Act 1987*, section 64B, and
- (b) compensation to be paid to injured fire fighters and emergency and rescue workers to cover certain education or training costs associated with returning to work, based on the *Workers Compensation Act 1987*, section 64C.

**Schedule 2.2[5]** removes redundant provisions.

**Schedule 2.2[9]** allows for the provisional payment of certain claims for compensation by injured fire fighters and emergency and rescue workers. **Schedule 2.2[4] and [8]** make consequential amendments.

**Schedule 2.2[11]** enables the regulations to adopt publications as in force at a particular time or from time to time.

**Schedule 2.2[12]** inserts provisions of a savings or transitional nature consequent on amendments made by the proposed Act to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

## **Schedule 3 Amendments concerning service providers**

### **3.1 Civil and Administrative Tribunal Act 2013 No 2**

**Schedule 3.1** provides for the functions of the Civil and Administrative Tribunal (*NCAT*) conferred by the amendments made by Schedule 3.3 to be allocated to the Occupational Division of NCAT. It also provides for its functions under the *Workplace Injury Management and Workers Compensation Act 1998* to be allocated to the same Division.

### **3.2 Motor Accident Injuries Act 2017 No 10**

**Schedule 3.2[1]** makes it a condition of an insurer's licence for the insurer not to do certain things to the extent it would be inconsistent with a direction of SIRA directing a relevant service provider not to provide a service.

**Schedule 3.2[2]** enables funds to be paid out of the Motor Accidents Operational Fund (the SIRA Fund) to cover certain fees payable by SIRA to NCAT in connection with certain reviews conducted by NCAT of directions given by SIRA.

### **3.3 State Insurance and Care Governance Act 2015 No 19**

**Schedule 3.3[1]** enables SIRA to do the following—

- (a) give directions to certain providers of services (*relevant service provider*) for the purposes of workers compensation or motor accidents legislation requiring the provider to provide SIRA with specified data concerning services the provider provides,
- (b) give directions to relevant service providers to not provide services or provide them in a particular way,
- (c) issue guidelines about the provision of services by relevant service providers,
- (d) keep a register of relevant service providers given directions.

**Schedule 3.3[2]** makes provision for the enforcement of the directions given by SIRA by providing for the prosecution of offences summarily in the Local Court and enabling authorised officers to issue penalty notices for alleged offences.

**Schedule 3.3[3]** enables the regulations to adopt publications as in force at a particular time or from time to time.

### **3.4 Workers Compensation Act 1987 No 70**

**Schedule 3.4** makes it a condition of an insurer's licence for the insurer not to do certain things to the extent it would be inconsistent with a direction of SIRA directing a relevant service provider not to provide a service.

### **3.5 Workplace Injury Management and Workers Compensation Act 1998 No 86**

**Schedule 3.5** enables funds to be paid out of the Workers Compensation Operational Fund to cover certain fees payable by SIRA to NCAT in connection with certain reviews conducted by NCAT of directions given by SIRA.

## **Schedule 4 Amendments concerning establishment of Personal Injury Commission**

**Schedule 4.1 and 4.3** update references to approved medical specialists consequent on the enactment of the *Personal Injury Commission Act 2020*.

**Schedule 4.2[2]** extends the application of the *Judges' Pensions Act 1953* so it applies to a Judge of the Land and Environment Court or the District Court who concurrently holds the office of President of the Personal Injury Commission in the same way as it applies to a Judge of the Supreme Court. The amendment makes the amount of pension to which the judge is entitled on retirement consistent with the amount to which a Judge of the Supreme Court is entitled. However, if the judge continues to hold office as a judge of the lower court after retiring as President, the pension entitlements will instead be calculated by reference to the judicial salary payable to the judge at the time of retirement from the judicial office. **Schedule 4.2[1]** makes a consequential amendment.