



New South Wales

Motor Accident Injuries Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill to make the following amendments to the *Motor Accident Injuries Act 2017* (the *principal Act*)—

- (a) to change the terminology used in reference to soft tissue injuries, and psychological or psychiatric injuries that are not recognised psychiatric illnesses,
- (b) to clarify the application to claims for statutory benefits of provisions of the principal Act relating to the liability of the Nominal Defendant,
- (c) to make further provision in relation to the power of the State Insurance Regulatory Authority (the *Authority*) to regulate premiums for compulsory third-party policies,
- (d) to extend, from 26 weeks to 52 weeks, the period after a motor accident for which weekly payments of statutory benefits or statutory benefits for treatment and care are payable to injured persons wholly or mostly at fault or with injuries referred to in paragraph (a),
- (e) to make further provision in relation to the time for making claims for statutory benefits and claims for damages,
- (f) to enable regulations under the principal Act to make provision for the determination by the Authority of amounts to be paid into the Motor Accident Injuries Treatment and Care Benefits Fund to reflect to cost of exercising certain functions of the Lifetime Care and Support Authority,
- (g) to authorise the Authority to establish a trauma support service for members of the family of persons who have been injured or who have died as a result of motor accidents,

- (h) to provide for funding of the amount of legal costs the Authority determines is to be reimbursed to claimants who are parties to court proceedings significantly impacting the sustainability and affordability of the motor accidents scheme under the principal Act,
- (i) to make further provision for statutory review of the principal Act,
- (j) to make further provision for guideline-making powers under the principal Act in relation to statutory benefits and assessments for the purposes of the principal Act,
- (k) to make provision for other miscellaneous matters and matters of a savings and transitional nature.

The Bill also makes consequential amendments to the *Motor Accident Injuries Act 2017*.

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 Amendment of Motor Accident Injuries Act 2017 No 10

Schedule 1[1]–[9], [17], [22], [26], [27] and [46] make the amendments mentioned in paragraph (a) of the Overview. The amendment changes the terminology from *minor injuries* to *threshold injuries*.

Schedule 1[10] makes it clear that the provisions of the principal Act relating to the liability of the Nominal Defendant in connection with a motor accident apply to a claim for statutory benefits in the same way as they apply to a claim for damages. The application of those provisions to statutory benefits is subject to necessary modifications. The amendment also authorises the making of regulations modifying the application of the provisions to statutory benefits. **Schedule 1[13] and [14]** make consequential amendments.

Schedule 1[11] makes it clear that the power of the Authority to take action to make adjustments to avoid excess underwriting profits and losses of licensed insurers authorises the Authority to take action to minimise those profits and losses.

Schedule 1[12] enables guidelines under the principal Act to include provision for the adjustment of premiums and Fund levies under the Act to take into account innovations implemented by insurers to promote the objects of the Act.

Schedule 1[16] extends, from 26 weeks to 52 weeks, the period after a motor accident for which weekly payments of statutory benefits are payable to an injured person wholly or mostly at fault or with threshold injuries. **Schedule 1[15], [18], [30], [31] and [47]** make consequential amendments.

Schedule 1[19] enables guidelines under the principal Act to provide for circumstances in which the cost of treatment and care is taken to be reasonable, and treatment and care is taken to be reasonable, for the purposes of a provision of the principal Act establishing entitlement to statutory benefits for treatment and care.

Schedule 1[21] extends, from 26 weeks to 52 weeks, the period after a motor accident for which statutory benefits for treatment and care are payable to an injured person wholly or mostly at fault or with threshold injuries. **Schedule 1[20], [23], [44], [45] and [48]** make consequential amendments.

Schedule 1[24] extends a guideline-making power under the principal Act that allows the guidelines to limit attendant care services for which statutory benefits are payable to services provided by providers of an approved class or with approved competencies. The amendment extends the power to all services for which statutory benefits would otherwise be payable. **Schedule 1[25]** makes a consequential amendment.

Schedule 1[28] allows regulations under the principal Act to permit payment of weekly payments of statutory benefits where a claim for statutory benefits is not made with 28 days after the date of a motor accident. **Schedule 1[49]** makes a consequential amendment.

Schedule 1[29] omits a provision preventing certain claims for damages in relation to a motor accident from being made before the end of the period of 20 months after the motor accident.

Schedule 1[32] removes a restriction on settling certain claims for damages within 2 years after a motor accident.

Schedule 1[33] provides for the appointment of persons authorised to conduct certain rehabilitation and functional and vocational capacity assessments where required by guidelines made under the principal Act. **Schedule 1[34]** makes a consequential amendment.

Schedule 1[35] removes a requirement for internal review of an insurer's decision about the degree of permanent impairment of an injured person before a medical assessment can be conducted.

Schedule 1[36] removes a provision preventing a party to a claim for damages from referring the claim for assessment more than 3 years after a motor accident without a full and satisfactory explanation for the delay.

Schedule 1[38] requires the Authority to give a licensed insurer a reasonable opportunity to make submissions in relation to an alleged contravention before the Authority imposes a civil penalty. **Schedule 1 [37] and [39]** make a consequential amendments.

Schedule 1[40] authorises to be paid from the Motor Accidents Operational Fund the expenditure incurred by the Authority in the provision of the trauma service established in accordance with the amendment made by **Schedule 1[42]**. The amendment also authorises to be paid from the fund the amount of legal costs the Authority determines are to be reimbursed to claimants who are parties to court proceedings significantly impacting the sustainability and affordability of the motor accidents scheme under the principal Act.

Schedule 1[41] provides for the making of regulations in relation to the determination by the Authority of amounts to be set aside for the exercise of the functions of the Lifetime Care and Support Authority relating to the administration of the principal Act as the relevant insurer.

Schedule 1[42] authorises the Authority to establish a trauma support service for members of the family of persons who have been injured or who have died as a result of motor accidents. **Schedule 1[40]** makes a consequential amendment.

Schedule 1[43] requires the Minister to review the principal Act as soon as practicable after the period of 3 years after the commencement of the proposed Act and every 5 years after the period of 3 years.

Schedule 1[50] makes amendments of a savings or transitional nature.

Schedule 2 Amendment of Motor Accident Injuries Regulation 2017

Schedule 2 contains amendments to the *Motor Accident Injuries Regulation 2017* consequent on the amendments mentioned in paragraph (a) of the Overview.



New South Wales

Motor Accident Injuries Amendment Bill 2022

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New South Wales

Motor Accident Injuries Amendment Bill 2022

No. _____, 2022

A Bill for

An Act to make miscellaneous amendments to the *Motor Accident Injuries Act 2017* and regulations under the Act following a statutory review of the Act.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Motor Accident Injuries Amendment Act 2022*.

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2 Commencement

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This Act commences as follows—

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- (a) for Schedule 1[10]–[14], [19], [24], [25], [28], [29], [32]–[43], [49] and [50]—
on the date of assent to this Act,
- (b) otherwise—on 1 April 2023 or a later day or days appointed by proclamation.

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Schedule 1	Amendment of Motor Accident Injuries Act 2017	1
	No 10	2
[1]	Section 1.3 Objects of Act	3
	Omit “minor injuries” from section 1.3(2)(d).	4
	Insert instead “soft tissue injuries and psychological or psychiatric injuries that are not recognised psychiatric illnesses”.	5 6
[2]	Section 1.4 Definitions	7
	Omit the definition of <i>minor injury</i> from section 1.4(1).	8
[3]	Section 1.4(1)	9
	Insert in alphabetical order—	10
	<i>threshold injury</i> —see section 1.6.	11
[4]	Section 1.6, heading	12
	Omit the heading. Insert instead—	13
	1.6 Meaning of “threshold injury”	14
[5]	Section 1.6(1)	15
	Omit the subsection. Insert instead—	16
	(1) For the purposes of this Act, a <i>threshold injury</i> is, subject to this section, one or more of the following—	17 18
	(a) a soft tissue injury,	19
	(b) a psychological or psychiatric injury that is not a recognised psychiatric illness.	20 21
[6]	Section 1.6(3)	22
	Omit the subsection.	23
[7]	Section 1.6(4)(a)	24
	Omit “soft tissue injury or from being a minor psychological or psychiatric injury”.	25
	Insert instead “threshold injury”.	26
[8]	Section 1.6(4)(b)	27
	Omit “soft tissue injury or as a minor psychological or psychiatric injury”.	28
	Insert instead “threshold injury”.	29
[9]	Section 1.6(5)	30
	Omit “minor injury”. Insert instead “threshold injury”.	31
[10]	Section 1.10A	32
	Insert after section 1.10—	33
	1.10A Liability of Nominal Defendant	34
	The provisions of this Act relating to the liability of the Nominal Defendant in connection with a motor accident apply to a claim for statutory benefits in the same way as they apply to a claim for damages, subject to—	35 36 37

	(a) necessary modifications, and	1
	(b) modifications prescribed by the regulations.	2
[11]	Section 2.25 Adjustment of premiums and Fund levies in case of excess profits or excess losses	3
	Insert “or minimise” after “avoid” wherever occurring in section 2.25(1)–(5).	4
[12]	Section 2.25	6
	Insert after section 2.25(2)—	7
	(2A) The Motor Accident Guidelines may include provision for the adjustment of premiums and Fund levies under Division 10.4 for the purposes of this clause to take into account innovations implemented by insurers to promote the objects of this Act.	8
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[13]	Section 2.27 Nominal Defendant	12
	Insert at the end of the section—	13
	Note— See section 1.10A for the application of this Division to statutory benefits.	14
[14]	Section 2.28 Application of Division to statutory benefits	15
	Omit the section.	16
[15]	Section 3.11, heading	17
	Omit the heading. Insert instead—	18
	3.11 Cessation of weekly payments after 52 weeks to injured persons most at fault or with threshold injuries	19
		20
[16]	Section 3.11(1)	21
	Omit “26 weeks”. Insert instead “52 weeks”.	22
[17]	Section 3.11(1)(b)	23
	Omit “minor injuries”. Insert instead “threshold injuries”.	24
[18]	Section 3.11(3)	25
	Insert after section 3.11(2)—	26
	(3) The following provisions apply to a period of loss of earnings of an injured person referred to in subsection (1)(a) that occurs more than 26 weeks, but not more than 52 weeks, after the motor accident concerned—	27
		28
		29
	(a) section 3.38 does not operate to reduce the weekly payments of statutory benefits payable for the period,	30
		31
	(b) the weekly payments of compensation payable for the period are to be reduced by 61%.	32
		33
[19]	Section 3.24 Entitlement to statutory benefits for treatment and care	34
	Insert at the end of the section—	35
	(3) The Motor Accident Guidelines may provide for—	36
	(a) circumstances in which the cost of treatment and care is taken to be reasonable for the purposes of this section, and	37
		38
	(b) circumstances in which treatment and care is taken to be reasonable and necessary for the purposes of subsection (2).	39
		40

	Note— See Part 7 and Schedule 2 for provisions relating to disputes about whether treatment and care, or the cost or treatment and care, provided or to be provided to an injured person is reasonable and necessary.	1 2 3
[20]	Section 3.28, heading Omit the heading. Insert instead—	4 5
	3.28 Cessation of statutory benefits after 52 weeks to injured adult persons most at fault or to injured persons with threshold injuries	6 7
[21]	Section 3.28(1) Omit “26 weeks”. Insert instead “52 weeks”.	8 9
[22]	Section 3.28(1)(b) Omit “minor injuries”. Insert instead “threshold injuries”.	10 11
[23]	Section 3.28(3) Omit the subsection.	12 13
[24]	Section 3.31 Limits under Guidelines on statutory benefits for particular treatment and care Omit “attendant care” from section 3.31(1)(c).	14 15 16
[25]	Section 3.31(1)(c) Insert instead “, or who otherwise meet the requirements of the Motor Accident Guidelines” after “approved competencies”.	17 18 19
[26]	Section 4.4, heading Omit the heading. Insert instead— 4.4 No damages for threshold injuries	20 21 22
[27]	Section 4.4 Omit “minor injuries”. Insert instead “threshold injuries”.	23 24
[28]	Section 6.13 Time for making of claims for statutory benefits Insert “, unless permitted by the regulations” after “claim is made” in section 6.13(2).	25 26
[29]	Section 6.14 Time for making of claims for damages Omit section 6.14(1).	27 28
[30]	Section 6.19 Acceptance of liability for claim for statutory benefits Omit “26 weeks” wherever occurring in section 6.19(1) and (2). Insert instead “52 weeks”.	29 30 31
[31]	Section 6.19(2) and (3) Omit “3 months” wherever occurring. Insert instead “9 months”.	32 33
[32]	Section 6.23 Restrictions on settlement of claim for damages Omit section 6.23(1).	34 35

[33] Section 6.27 Medical and other examination of claimant	1
Insert after section 6.27(1)—	2
(1A) If the Motor Accident Guidelines require an assessment for the purposes of subsection (1)(b) or (c) to be conducted by a person authorised by the Guidelines, the claimant is not required to undergo the assessment unless it is conducted by a person so authorised.	3 4 5 6
(1B) The Motor Accident Guidelines may make provision for or in relation to the appointment of persons authorised to conduct assessments for the purposes of subsection (1)(b) or (c).	7 8 9
[34] Section 6.27(2)	10
Omit “Any such examination or assessment”.	11
Insert instead “An examination or assessment under subsection (1)”.	12
[35] Section 7.19 Internal review required before medical assessment	13
Insert after section 7.19(2)—	14
(2A) This section does not apply to a medical dispute about the degree of permanent impairment of the injured person that has resulted from injury caused by the motor accident.	15 16 17
[36] Section 7.33 Time limits for referring claims and making assessment	18
Omit the section.	19
[37] Section 9.10 Imposition of civil penalty on or censure of licensed insurer	20
Insert “, or in addition to,” after “instead of” in section 9.10(1).	21
[38] Section 9.10(2) and (3)	22
Omit the subsections. Insert instead—	23
(2) Before imposing a civil penalty, the Authority must give the licensed insurer a reasonable opportunity to make submissions in relation to the alleged contravention.	24 25 26
[39] Section 9.14 Administrative reviews of licensing decisions by Civil and Administrative Tribunal	27 28
Omit “fine” from section 9.14(1)(f). Insert instead “civil penalty”.	29
[40] Section 10.12 Motor Accidents Operational Fund (the SIRA Fund)	30
Insert after section 10.12(3)(h1)—	31
(h2) expenditure incurred by the Authority in the provision of a trauma support service established under section 11.1A,	32 33
(h3) the amount of legal costs the Authority determines are to be reimbursed to claimants who are parties to court proceedings significantly impacting the sustainability and affordability of the motor accidents scheme under this Act,	34 35 36 37
[41] Section 10.15 Assessment by Lifetime Care and Support Authority of amount to be contributed to MAITC Benefits Fund	38 39
Insert at the end of the section—	40

(2)	The regulations may make provision in relation to the determination of amounts for the purposes of subsection (1)(b) to be set aside for the exercise of the functions of the Lifetime Care and Support Authority relating to the administration of this Act as the relevant insurer under section 3.2(3).	1 2 3 4
(3)	Without limiting subsection (2), the regulations may—	5
(a)	require the Lifetime Care and Support Authority to disclose to the Authority information relating to—	6 7
(i)	payments of statutory benefits for treatment and care that the Lifetime Care and Support Authority is required to make under Division 3.4, and	8 9 10
(ii)	other significant matters that are likely to have a material financial impact on the motor accidents scheme under this Act, and	11 12 13
(b)	authorise the Authority to determine maximum amounts that may be determined by the Lifetime Care and Support Authority in relation to the cost of claims handling.	14 15 16
(4)	The Authority may only determine maximum amounts for the purposes of subsection (3)(b) if it is satisfied that the amounts are reasonable to enable the Lifetime Care and Support Authority to exercise its functions under this Act.	17 18 19
(5)	The Minister is not to recommend the making of a regulation under subsection (2) or (3) unless the Minister certifies that—	20 21
(a)	the Minister administering the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> has been consulted about the proposed regulation, and	22 23 24
(b)	the Lifetime Care and Support Authority has been consulted about the proposed regulation.	25 26
[42]	Section 11.1A	27
	Insert before section 11.1—	28
11.1A	Trauma support service	29
(1)	The Authority may establish in association with its operations a trauma support service for members of the family of persons who have been injured or who have died as a result of motor accidents.	30 31 32
(2)	The trauma support service is to provide support determined by the Authority immediately after a motor accident to members of the family of persons who have been injured or who have died as a result of the motor accident.	33 34 35
[43]	Section 11.13 Review of Act	36
	Omit section 11.13(2). Insert instead—	37
(2)	A review under this section is to be undertaken—	38
(a)	as soon as practicable after the period of 3 years from the commencement of the <i>Motor Accident Injuries Amendment Act 2022</i> , and	39 40 41
(b)	every 5 years after the period of 3 years referred to in paragraph (a).	42
(2A)	A report of the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the period for undertaking the review.	43 44 45

[44] Schedule 2 Matters for the purposes of Part 7	1
Omit clause 1(l) and (m).	2
[45] Schedule 2, clause 2(c)	3
Omit the paragraph.	4
[46] Schedule 2, clause 2(e)	5
Omit “minor injury”. Insert instead “threshold injury”.	6
[47] Schedule 2, clause 3(d)	7
Omit “to injured persons most at fault or with minor injuries after 26 weeks) the motor accident concerned was caused by the fault of another”.	8 9
Insert instead “after 52 weeks to injured persons most at fault or with threshold injuries) the motor accident concerned was caused wholly or mostly by the fault of the injured”.	10 11
[48] Schedule 2, clause 3(e)	12
Omit “26 weeks to injured adult persons most at fault or to injured persons with minor injuries) or 3.36 (No statutory benefits for at-fault driver or owner if vehicle uninsured) the motor accident was caused”.	13 14 15
Insert instead “52 weeks to injured adult persons most at fault or to injured persons with threshold injuries) or 3.36 (No statutory benefits for at-fault driver or owner if vehicle uninsured) the motor accident was caused wholly or”.	16 17 18
[49] Schedule 2, clause 3(k)	19
Insert “, including statutory benefits for a period before a claim is made,” after “payment of statutory benefits”.	20 21
[50] Schedule 4 Savings, transitional and other provisions	22
Insert at the end of the Schedule with appropriate Part and clause numbering—	23
Part Provisions consequent on enactment of Motor Accident Injuries Amendment Act 2022	24 25
Definition	26
In this Part—	27
<i>2022 amending Act</i> means the <i>Motor Accident Injuries Amendment Act 2022</i> .	28
Application of amendments	29
Except as provided by this Part or the regulations, an amendment made to this Act by the 2022 amending Act extends to—	30 31
(a) a motor accident occurring before the commencement of the amendment, but not before 1 December 2017, and	32 33
(b) a claim for statutory benefits or damages made before the commencement of the amendment, but not before 1 December 2017, and	34 35 36
(c) proceedings pending before a merit reviewer, a medical assessor, a claims assessor or a court immediately before the commencement of the amendment.	37 38 39

Statutory benefits after 26 weeks

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An amendment made to this Act by the 2022 amending Act, Schedule 1[16],
[18], [21] or [23] does not apply to a motor accident occurring before the
commencement of the amendment.

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Acceptance of liability

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An amendment made to this Act by the 2022 amending Act, Schedule 1[30] or
[31] does not apply to a motor accident occurring before the commencement
of the amendment.

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Internal review

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The amendment made to this Act by the 2022 amending Act, Schedule 1[35]
does not apply to a decision of an insurer made before the commencement of
the amendment about the degree of permanent impairment of an injured
person.

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Schedule 2	Amendment of Motor Accident Injuries Regulation 2017	1
		2
[1]	Clause 4 Meaning of “minor injury”	3
	Omit the heading to clause 4. Insert instead—	4
	4 Meaning of “threshold injury”, section 1.6(4) of the Act	5
[2]	Clause 4(2)	6
	Omit “minor psychological or psychiatric injury”. Insert instead “threshold injury”.	7
[3]	Clause 4(2), note	8
	Omit “minor injury”. Insert instead “threshold injury”.	9
[4]	Clause 18 Medical matters subject to evidence restriction (section 7.52 (4))	10
	Omit “minor injuries” from clause 18(b). Insert instead “threshold injuries”.	11
[5]	Clause 18(d)	12
	Omit “minor injury”. Insert instead “threshold injury”.	13
[6]	Schedule 1 Maximum costs for legal services	14
	Omit “minor injuries” wherever occurring in Schedule 1, Part 1, clause 3(2)(d) and (e). Insert instead “threshold injury”.	15 16