

Passed by both Houses



New South Wales

Motor Accident Injuries Amendment Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Motor Accident Injuries Amendment Bill 2022

Act No _____, 2022

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

This Act commences as follows—

- (a) for Schedule 1[10]–[14], [19], [24], [25], [30], [31], [34]–[45], [52] and [53]—
on the date of assent to this Act,
- (b) otherwise—on 1 April 2023 or a later day or days appointed by proclamation.

Schedule 1 Amendment of Motor Accident Injuries Act 2017 No 10

[1] Section 1.3 Objects of Act

Omit “minor injuries” from section 1.3(2)(d).

Insert instead “soft tissue injuries and psychological or psychiatric injuries that are not recognised psychiatric illnesses”.

[2] Section 1.4 Definitions

Omit the definition of *minor injury* from section 1.4(1).

[3] Section 1.4(1)

Insert in alphabetical order—

threshold injury—see section 1.6.

[4] Section 1.6, heading

Omit the heading. Insert instead—

1.6 Meaning of “threshold injury”

[5] Section 1.6(1)

Omit the subsection. Insert instead—

- (1) For the purposes of this Act, a *threshold injury* is, subject to this section, one or more of the following—
 - (a) a soft tissue injury,
 - (b) a psychological or psychiatric injury that is not a recognised psychiatric illness.

[6] Section 1.6(3)

Omit the subsection.

[7] Section 1.6(4)(a)

Omit “soft tissue injury or from being a minor psychological or psychiatric injury”.

Insert instead “threshold injury”.

[8] Section 1.6(4)(b)

Omit “soft tissue injury or as a minor psychological or psychiatric injury”.

Insert instead “threshold injury”.

[9] Section 1.6(5)

Omit “minor injury”. Insert instead “threshold injury”.

[10] Section 1.10A

Insert after section 1.10—

1.10A Liability of Nominal Defendant

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—

- (a) necessary modifications, and
- (b) modifications prescribed by the regulations.

[11] Section 2.25 Adjustment of premiums and Fund levies in case of excess profits or excess losses

Insert “or minimise” after “avoid” wherever occurring in section 2.25(1)–(5).

[12] Section 2.25

Insert after section 2.25(2)—

- (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.

[13] Section 2.27 Nominal Defendant

Insert at the end of the section—

Note— See section 1.10A for the application of this Division to statutory benefits.

[14] Section 2.28 Application of Division to statutory benefits

Omit the section.

[15] Section 3.11, heading

Omit the heading. Insert instead—

3.11 Cessation of weekly payments after 52 weeks to injured persons most at fault or with threshold injuries

[16] Section 3.11(1)

Omit “26 weeks”. Insert instead “52 weeks”.

[17] Section 3.11(1)(b)

Omit “minor injuries”. Insert instead “threshold injuries”.

[18] Section 3.11, note

Omit “26 weeks”. Insert instead “52 weeks”.

[19] Section 3.24 Entitlement to statutory benefits for treatment and care

Insert at the end of the section—

- (3) The Motor Accident Guidelines may provide for—
 - (a) circumstances in which the cost of treatment and care is taken to be reasonable for the purposes of this section, and
 - (b) circumstances in which treatment and care is taken to be reasonable and necessary for the purposes of subsection (2).

Note— See Part 7 and Schedule 2 for provisions relating to disputes about whether treatment and care, or the cost of treatment and care, provided or to be provided to an injured person is reasonable and necessary.

[20] Section 3.28, heading

Omit the heading. Insert instead—

3.28 Cessation of statutory benefits after 52 weeks to injured adult persons most at fault or to injured persons with threshold injuries

- [21] **Section 3.28(1)**
Omit “26 weeks”. Insert instead “52 weeks”.
- [22] **Section 3.28(1)(b)**
Omit “minor injuries”. Insert instead “threshold injuries”.
- [23] **Section 3.28(3)**
Omit the subsection.
- [24] **Section 3.31 Limits under Guidelines on statutory benefits for particular treatment and care**
Omit “attendant care” from section 3.31(1)(c).
- [25] **Section 3.31(1)(c)**
Insert instead “, or who otherwise meet the requirements of the Motor Accident Guidelines” after “approved competencies”.
- [26] **Section 3.38, heading**
Omit “6 months”. Insert instead “12 months”.
- [27] **Section 3.38(1)**
Omit “26 weeks”. Insert instead “52 weeks”.
- [28] **Section 4.4, heading**
Omit the heading. Insert instead—
4.4 No damages for threshold injuries
- [29] **Section 4.4**
Omit “minor injuries”. Insert instead “threshold injuries”.
- [30] **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).
- [31] **Section 6.14 Time for making of claims for damages**
Omit section 6.14(1).
- [32] **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”.
- [33] **Section 6.19(2) and (3)**
Omit “3 months” wherever occurring. Insert instead “9 months”.
- [34] **Section 6.23 Restrictions on settlement of claim for damages**
Omit section 6.23(1).

[35] Section 6.27 Medical and other examination of claimant

Insert after section 6.27(1)—

- (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.
- (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).

[36] Section 6.27(2)

Omit “Any such examination or assessment”.

Insert instead “An examination or assessment under subsection (1)”.

[37] Section 7.19 Internal review required before medical assessment

Insert after section 7.19(2)—

- (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.

[38] Section 7.33 Time limits for referring claims and making assessment

Omit the section.

[39] Section 9.10 Imposition of civil penalty on or censure of licensed insurer

Insert “, or in addition to,” after “instead of” in section 9.10(1).

[40] Section 9.10(2) and (3)

Omit the subsections. Insert instead—

- (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.

[41] Section 9.14 Administrative reviews of licensing decisions by Civil and Administrative Tribunal

Omit “fine” from section 9.14(1)(f). Insert instead “civil penalty”.

[42] Section 10.12 Motor Accidents Operational Fund (the SIRA Fund)

Insert after section 10.12(3)(h1)—

- (h2) expenditure incurred by the Authority in the provision of a trauma support service established under section 11.1A,
- (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,

[43] Section 10.15 Assessment by Lifetime Care and Support Authority of amount to be contributed to MAITC Benefits Fund

Insert at the end of the section—

- (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).
- (3) Without limiting subsection (2), the regulations may—
 - (a) require the Lifetime Care and Support Authority to disclose to the Authority information relating to—
 - (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
 - (ii) other significant matters that are likely to have a material financial impact on the motor accidents scheme under this Act, and
 - (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.
- (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.
- (5) The Minister is not to recommend the making of a regulation under subsection (2) or (3) unless the Minister certifies that—
 - (a) the Minister administering the *Motor Accidents (Lifetime Care and Support) Act 2006* has been consulted about the proposed regulation, and
 - (b) the Lifetime Care and Support Authority has been consulted about the proposed regulation.

[44] Section 11.1A

Insert before section 11.1—

11.1A Trauma support service

- (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.
- (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.

[45] Section 11.13 Review of Act

Omit section 11.13(2). Insert instead—

- (2) A review under this section is to be undertaken—
 - (a) as soon as practicable after the period of 3 years from the commencement of the *Motor Accident Injuries Amendment Act 2022*, and
 - (b) every 5 years after the period of 3 years referred to in paragraph (a).
- (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.

[46] Schedule 2 Matters for the purposes of Part 7

Omit clause 1(l) and (m).

[47] Schedule 2, clause 2(c)

Omit the paragraph.

[48] Schedule 2, clause 2(e)

Omit “minor injury”. Insert instead “threshold injury”.

[49] Schedule 2, clause 3(d)

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”.

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”.

[50] Schedule 2, clause 3(e)

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”.

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”.

[51] Schedule 2, clause 3(g)

Omit “6 months”. Insert instead “12 months”.

[52] Schedule 2, clause 3(k)

Insert “, including statutory benefits for a period before a claim is made,” after “payment of statutory benefits”.

[53] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Motor Accident Injuries Amendment Act 2022

Definition

In this Part—

2022 amending Act means the *Motor Accident Injuries Amendment Act 2022*.

Application of amendments

Except as provided by this Part or the regulations, an amendment made to this Act by the 2022 amending Act extends to—

- (a) a motor accident occurring before the commencement of the amendment, but not before 1 December 2017, and
- (b) a claim for statutory benefits or damages made before the commencement of the amendment, but not before 1 December 2017, and

- (c) proceedings pending before a merit reviewer, a medical assessor, a claims assessor or a court immediately before the commencement of the amendment.

Statutory benefits after 26 weeks

An amendment made to this Act by the 2022 amending Act, Schedule 1[16], [18], [21], [23], [26], [27] or [51] or Schedule 2[7] does not apply to a motor accident occurring before the commencement of the amendment.

Acceptance of liability

An amendment made to this Act by the 2022 amending Act, Schedule 1[32] or [33] does not apply to a motor accident occurring before the commencement of the amendment.

Internal review

The amendment made to this Act by the 2022 amending Act, Schedule 1[37] 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.

Schedule 2 Amendment of Motor Accident Injuries Regulation 2017

[1] Clause 4 Meaning of “minor injury”

Omit the heading to clause 4. Insert instead—

4 Meaning of “threshold injury”, section 1.6(4) of the Act

[2] Clause 4(2)

Omit “minor psychological or psychiatric injury”. Insert instead “threshold injury”.

[3] Clause 4(2), note

Omit “minor injury”. Insert instead “threshold injury”.

[4] Clause 18 Medical matters subject to evidence restriction (section 7.52 (4))

Omit “minor injuries” from clause 18(b). Insert instead “threshold injuries”.

[5] Clause 18(d)

Omit “minor injury”. Insert instead “threshold injury”.

[6] Schedule 1 Maximum costs for legal services

Omit “minor injuries” wherever occurring in Schedule 1, Part 1, clause 3(2)(d) and (e).
Insert instead “threshold injury”.

[7] Schedule 1, Part 1, clause 3(2)(g)

Omit “6 months”. Insert instead “12 months”.