



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.