

Passed by both Houses



New South Wales

Motor Accidents (Lifetime Care and Support) Amendment Bill 2009

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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, , 2009*



New South Wales

Motor Accidents (Lifetime Care and Support) Amendment Bill 2009

Act No , 2009

An Act to amend the *Motor Accidents (Lifetime Care and Support) Act 2006* to enable certain people who were injured before the commencement of the Lifetime Care and Support Scheme to buy into the Scheme and to extend the period of interim participation in the Scheme in the case of young children; and for other purposes.

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 Accidents (Lifetime Care and Support) Amendment Act 2009*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.
- (2) Schedule 1 [1]–[3] and [5] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

relevant Scheme commencement date, with respect to a person who has suffered motor accident injuries, means:

- (a) 1 October 2006 if the person was under 16 years of age at the time of the motor accident that caused the injuries, or
- (b) 1 October 2007 in any other case.

[2] Section 4 Application of Act

Omit section 4 (1). Insert instead:

- (1) This Act applies only in respect of motor accident injuries suffered by a person as a result of a motor accident occurring on or after the relevant Scheme commencement date.

Note. Section 7A provides for a limited exception to this provision.

[3] Section 7A

Insert after section 7:

7A Persons injured before commencement of Scheme may “buy in”

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring before the relevant Scheme commencement date (a *pre-commencement injury*) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme in respect of a pre-commencement injury only if the person would have been eligible to participate in the Scheme:
 - (a) had the motor accident occurred immediately after the relevant Scheme commencement date, and
 - (b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.

- (4) An application for a person to become a participant in the Scheme in respect of a pre-commencement injury cannot be made by an insurer.
- (5) The LTCS Guidelines may make provision for or with respect to how a person's contribution for participation in the Scheme in respect of a pre-commencement injury is to be determined.

[4] Section 9 Acceptance as a participant

Omit section 9 (5). Insert instead:

- (5) A person 3 years of age or over who is accepted as an interim participant remains an interim participant for a period of 2 years only.
- (5A) A person under 3 years of age who is accepted as an interim participant remains an interim participant until the person is 5 years of age.
- (5B) If a person who is an interim participant is accepted as a lifetime participant, the person ceases to be an interim participant on that acceptance and then remains a participant for life.

[5] Section 54 Recovery of lifetime care and support payments—uninsured and interstate vehicles and third party tortfeasors

Insert after section 54 (10):

- (11) This section does not permit the Authority to recover the present value of its treatment and care liabilities in respect of injuries to a participant in the Scheme if the participant paid an amount to the Authority under section 7A (1) in respect of those injuries.

[6] Section 65 Consequential amendments of Motor Accidents Compensation Act 1999 No 41

Omit the section.

[7] Schedule 3

Omit the Schedule. Insert instead:

Schedule 3 Savings, transitional and other provisions

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
Motor Accidents (Lifetime Care and Support) Amendment Act 2009
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Motor Accidents (Lifetime Care and Support) Amendment Act 2009

2 Interim participation

Section 9 (5A) and (5B), as inserted by the *Motor Accidents (Lifetime Care and Support) Amendment Act 2009*, extend to a person who:

- (a) on the commencement of those subsections is an interim participant, and
- (b) was younger than 3 years of age at the time the person became an interim participant.