



New South Wales

Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012

Explanatory note

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

Overview of Bill

The primary object of this Bill is to clarify the operation of the Lifetime Care and Support Scheme (*the Scheme*) under the *Motor Accidents (Lifetime Care and Support) Act 2006* in relation to the treatment and care needs of participants in the Scheme.

In particular, the Bill:

- (a) makes it clear that while a person who is a participant in the Scheme is entitled to have certain expenses relating to treatment and care needs paid for by the Lifetime Care and Support Authority (*the Authority*), the Authority is only obliged to pay for assessed treatment and care needs and is not obliged to pay for:
 - (i) certain treatment, care, support or services provided on a gratuitous basis or by a person who is not an approved provider, or
 - (ii) any treatment, care, support or services of a kind declared by the regulations to be excluded treatment and care needs, and
- (b) makes it clear that participation in the Scheme abolishes a participant's right to claim damages for economic loss, or receive payment under Chapter 3 of

the *Motor Accidents Compensation Act 1999 (the MAC Act)*, in respect of treatment and care needs (including those treatment and care needs that are not assessed treatment and care needs or in respect of which the Authority is not required to make a payment).

The Bill provides that the amendments are to operate from the date of introduction into Parliament of the Bill (in relation to claims made on or after that date).

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 on the date of assent to the proposed Act.

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

Schedule 1 [3] updates (and moves to the preliminary provisions of the *Motor Accidents (Lifetime Care and Support) Act 2006*) the definition of *treatment and care needs* and allows for the making of regulations to declare any treatment, care, support or services to be excluded treatment and care needs (being treatment and care needs in respect of which the Authority is not obliged to make a payment).

Schedule 1 [4] substitutes the heading to Part 2.

Schedule 1 [6] inserts new Part 2A (Payments under Scheme) and proposed section 11A (to replace current section 6 which is repealed by **Schedule 1 [5]**). Proposed section 11A makes it clear that the Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person (being those that are assessed by the Authority to be reasonable and necessary and that relate to the relevant motor accident) while the person is a participant in the Scheme. The proposed section also makes it clear that no expenses are payable by the Authority in relation to excluded treatment and care needs and treatment and care needs that are not assessed treatment and care needs.

Schedule 1 [6] also inserts proposed sections 11B and 11C. Proposed section 11B provides that the Authority is not required to (but may elect to) make a payment in relation to gratuitous treatment, care, support or services and treatment, care, support or services that are provided by a person who is not an approved provider (where required by the regulations or the LTCS Guidelines to be provided by an approved provider). Proposed section 11C (which replaces current section 10 which is repealed by **Schedule 1 [5]**) requires attendant care services to be provided by an approved provider along with any other services identified in the LTCS Guidelines as services that are to be provided by an approved provider. The proposed section also defines

an approved provider as a person approved by the Authority (or by any other person specified in the LTCS Guidelines) to provide the service under the Scheme.

Schedule 1 [1], [2], [7] and [8] make consequential amendments.

Schedule 1 [9] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [10] provides for savings and transitional matters. In particular, the amendments made by Schedule 1 apply to any claim made on or after the date of introduction into Parliament of the Bill for the proposed Act, regardless of whether the claim relates to past or future treatment and care needs.

Schedule 2 Amendment of Motor Accidents Compensation Act 1999 No 41

Schedule 2 [2] substitutes section 43A of the MAC Act to make it clear that Chapter 3 (which requires insurers to pay for certain treatment expenses) does not apply in respect of any treatment and care needs of a participant in the Scheme (whether or not the Authority is obliged to make a payment in respect of the treatment and care needs concerned and whether or not the treatment and care needs are provided for on a gratuitous basis).

Schedule 2 [7] inserts proposed section 141A into the MAC Act (to replace current section 130A which is repealed by **Schedule 2 [5]**) to make it clear that a person who is a participant in the Scheme cannot claim damages in respect of any treatment and care needs (whether or not the Authority is obliged to make a payment in respect of the treatment and care needs concerned and whether or not the treatment and care needs are provided for on a gratuitous basis). **Schedule 2 [1]** makes a consequential amendment.

Schedule 2 [3] and [4] transfer existing provisions to another Part of the MAC Act that more accurately reflects the nature of the provisions. **Schedule 2 [6]** makes a consequential amendment.

Schedule 2 [8] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2 [9] provides for savings and transitional matters. In particular, the amendments made by Schedule 2 apply in relation to any claim made on or after the date of introduction into Parliament of the Bill for the proposed Act, regardless of whether the claim relates to past or future treatment and care needs.