

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).

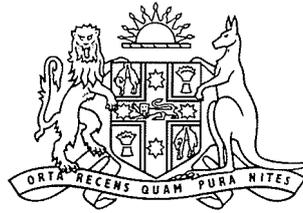
Schedule 2 [7] inserts proposed section 141A into the MAC Act (to replace current section 130A which is repealed by **Schedule 2 [5]**) to make it clear that a person who is a participant in the Scheme cannot claim damages in respect of any treatment and care needs (whether or not the Authority is obliged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

First print



New South Wales

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

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New South Wales

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

No. , 2012

A Bill for

An Act to amend the *Motor Accidents (Lifetime Care and Support) Act 2006* and the *Motor Accidents Compensation Act 1999* in relation to treatment and care needs; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Motor Accidents	1
	(Lifetime Care and Support) Act 2006	2
	No 16	3
[1] Section 3 Definitions		4
	Insert in alphabetical order in section 3 (1):	5
	<i>approved provider</i> —see section 11C (2).	6
	<i>assessed treatment and care needs</i> —see section 11A (2).	7
	<i>excluded treatment and care needs</i> —see section 5A (2).	8
[2] Section 3 (1)		9
	Omit “section 6” from the definition of <i>treatment and care needs</i> .	10
	Insert instead “section 5A”.	11
[3] Section 5A		12
	Insert after section 5:	13
5A Treatment and care needs		14
(1)	For the purposes of this Act, the <i>treatment and care needs</i> of a participant in the Scheme are the participant’s needs for or in connection with any of the following:	15
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	(a) medical treatment (including pharmaceuticals),	18
	(b) dental treatment,	19
	(c) rehabilitation,	20
	(d) ambulance transportation,	21
	(e) respite care,	22
	(f) attendant care services,	23
	(g) aids and appliances,	24
	(h) prostheses,	25
	(i) education and vocational training,	26
	(j) home and transport modification,	27
	(k) workplace and educational facility modifications,	28
	(l) such other kinds of treatment, care, support or services as may be prescribed by the regulations under this paragraph.	29
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(2)	Despite subsection (1), the treatment and care needs of a participant do not include any treatment, care, support or services	31
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	of a kind declared by the regulations to be <i>excluded treatment and care needs</i> .	1 2
[4] Part 2, heading		3
	Omit the heading. Insert instead:	4
	Part 2 Participation in Scheme	5
[5] Sections 6 and 10		6
	Omit the sections.	7
[6] Part 2A		8
	Insert after Part 2:	9
	Part 2A Payments under Scheme	10
11A Assessed treatment and care needs of participants to be paid for by Authority		11 12
(1)	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 while the person is a participant in the Scheme.	13 14 15 16
(2)	The <i>assessed treatment and care needs</i> of a person who is a participant in the Scheme are those treatment and care needs that are assessed by the Authority, in its treatment and care needs assessment, to be treatment and care needs that:	17 18 19 20
	(a) are reasonable and necessary in the circumstances, and	21
	(b) relate to the motor accident injury in respect of which the person is a participant.	22 23
(3)	No expenses are payable in respect of:	24
	(a) excluded treatment and care needs, and	25
	(b) treatment and care needs that are not assessed treatment and care needs.	26 27
(4)	As an alternative to paying the expenses for which it is liable under this section as and when they are incurred, the Authority may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant.	28 29 30 31 32 33

- (5) The LTCS Guidelines may make provision for or with respect to determining which treatment and care needs of a participant in the Scheme are reasonable and necessary in the circumstances and relate to the motor accident injury in respect of which the person is a participant. 1
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- 11B Payment not required in certain circumstances** 6
- (1) The Authority is not required to make a payment in relation to the following: 7
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- (a) any treatment, care, support or service provided to a participant in the Scheme on a gratuitous basis (that is, anything provided to a participant for which the participant has not paid and is not liable to pay), 9
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- (b) any treatment, care, support or service that is required to be provided by an approved provider but is provided by a person who is not, at the time of the provision, an approved provider. 13
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- (2) However, the Authority may elect to make a payment in relation to any treatment, care, support or service referred to in subsection (1) if the Authority is of the opinion that special circumstances exist that justify such payment. 17
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- (3) The LTCS Guidelines may make provision for or with respect to determining whether special circumstances exist that justify payment in relation to any treatment, care, support or service referred to in subsection (1). 21
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- (4) To avoid doubt, this section applies even if the treatment, care, support or services concerned are provided in connection with the provision of the assessed treatment and care needs of a participant in the Scheme. 25
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- (5) This section has effect despite section 11A. 29
- 11C Approved providers** 30
- (1) The following treatment, care, support or services (provided in connection with the provision of assessed treatment and care needs of a participant in the Scheme) are to be provided only by an approved provider of the treatment, care, support or service: 31
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- (a) attendant care services, 35
- (b) any other treatment, care, support or services (other than the services of a medical practitioner) identified in the LTCS Guidelines as treatment, care, support or services that are to be provided by an approved provider. 36
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(2)	An <i>approved provider</i> of a service is a person, or a person of a class, approved by the Authority (or by any other person specified in the LTCS Guidelines), in accordance with the LTCS Guidelines, to provide the treatment, care, support or service under the Scheme.	1 2 3 4 5
(3)	The LTCS Guidelines may also make provision for or with respect to the standards of competency of approved providers.	6 7
[7]	Sections 48 (3) (a) and 49 (1) (a) Omit “Part 2 (Care and support for Scheme participants)” wherever occurring. Insert instead “Part 2A (Payments under Scheme)”.	8 9 10
[8]	Sections 49 (1) (b) and (c) and (2) and 54 (4) Omit “Part 2” wherever occurring. Insert instead “Part 2A”.	11 12
[9]	Schedule 3 Savings, transitional and other provisions Insert at the end of clause 1 (1): <i>Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012</i>	13 14 15 16
[10]	Schedule 3, Part 3 Insert after Part 2:	17 18
	Part 3 Provisions consequent on enactment of Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012	19 20 21 22
	3 General operation of amendments	23
(1)	An amendment made to this Act by the <i>Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012 (the amending Act)</i> applies in relation to any claim made on or after the relevant date, regardless of whether the claim is made in relation to past or future treatment and care needs.	24 25 26 27 28 29
(2)	To avoid doubt, subclause (1) applies even if the motor accident concerned occurred before the relevant date or the claim relates to a person who was a participant in the Scheme before the relevant date.	30 31 32 33

- (3) In this clause: 1
claim means a claim within the meaning of the *Motor Accidents Compensation Act 1999* or a claim or request for payment in 2
relation to treatment and care needs made to a licensed insurer or 3
the Authority under this Act. 4
the relevant date means the date of introduction into Parliament 5
of the Bill for the amending Act. 6
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- 4 Approved providers** 8
An approval given by or on behalf of the Authority under 9
section 10 that was in force immediately before the omission of 10
that section, and the insertion of section 11C, by the *Motor* 11
Accidents and Lifetime Care and Support Schemes Legislation 12
Amendment Act 2012 is taken, on that omission and insertion, to 13
be an approval under section 11C. 14

Schedule 2	Amendment of Motor Accidents Compensation Act 1999 No 41	1
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[1]	Section 27A Effect of Lifetime Care and Support Scheme payments	3
	Omit “section 130A (No damages for expenses covered by Lifetime Care and Support Scheme)”.	4
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	Insert instead “section 141A (No damages relating to treatment and care needs for Lifetime Care and Support Scheme participants)”.	6
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[2]	Section 43A	8
	Omit the section. Insert instead:	9
43A	Application of Chapter to treatment and care needs covered by Lifetime Care and Support Scheme	10
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(1)	This Chapter does not apply in respect of any treatment and care needs of a person who is a participant in the Scheme under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> , or any excluded treatment and care needs, that relate to the motor accident injury in respect of which the person is a participant in the Scheme and that arise during the period in which the person is a participant in the Scheme.	12
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(2)	This section applies:	19
(a)	whether or not the treatment and care needs are assessed treatment and care needs under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> , and	20
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(b)	whether or not the Lifetime Care and Support Authority is required to make a payment in respect of the treatment and care needs concerned, and	23
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(c)	whether or not the treatment, care, support or service (provided in connection with treatment and care needs) is provided on a gratuitous basis.	26
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(3)	In this section, <i>treatment and care needs</i> and <i>excluded treatment and care needs</i> have the same meanings as they have in the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> .	29
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[3]	Section 128	32
	Re-number as section 141B and insert after section 141A (as inserted by Schedule 2 [7]) with the heading “ Maximum amount of damages for provision of certain attendant care services ”.	33
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[4] Section 129	1
Renumber as section 141C and insert after section 141B (as inserted by Schedule 2 [3]) with the heading “ Respite care ”.	2 3
[5] Section 130A No damages for expenses covered by Lifetime Care and Support Scheme	4 5
Omit the section.	6
[6] Sections 137 (2) and 142 (3)	7
Omit “section 128” wherever occurring. Insert instead “section 141B”.	8
[7] Section 141A	9
Insert after section 141:	10
141A No damages relating to treatment and care needs for Lifetime Care and Support Scheme participants	11 12
(1) No damages may be awarded to a person who is a participant in the Scheme under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> in respect of any of the treatment and care needs of the participant, or any excluded treatment and care needs, that relate to the motor accident injury in respect of which the person is a participant in the Scheme and that arise during the period in which the person is a participant in the Scheme.	13 14 15 16 17 18 19
(2) This section applies:	20
(a) whether or not the treatment and care needs are assessed treatment and care needs under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> , and	21 22 23
(b) whether or not the Lifetime Care and Support Authority is required to make a payment in respect of the treatment and care needs concerned, and	24 25 26
(c) whether or not the treatment, care, support or service (provided in connection with treatment and care needs) is provided on a gratuitous basis.	27 28 29
(3) In this section, <i>treatment and care needs</i> and <i>excluded treatment and care needs</i> have the same meanings as they have in the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> .	30 31 32
[8] Schedule 5 Savings, transitional and other provisions	33
Insert at the end of clause 2 (1):	34
<i>Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012</i>	35 36

[9] Schedule 5, Part 10	1
Insert after Part 9:	2
Part 10 Provisions arising from Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012	3 4 5
40 General operation of amendments	6
(1) An amendment made to this Act by the <i>Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012 (the amending Act)</i> applies in relation to any claim made on or after the relevant date, regardless of whether the claim is made in relation to past or future treatment and care needs.	7 8 9 10 11 12
(2) To avoid doubt, subclause (1) applies even if the motor accident concerned occurred before the relevant date or the claim relates to a person who was a participant in the Scheme under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> before the relevant date.	13 14 15 16 17
(3) In this clause: <i>claim</i> includes a claim or request for payment in relation to treatment and care needs made to a licensed insurer or the Lifetime Care and Support Authority under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> . <i>the relevant date</i> means the date of introduction into Parliament of the Bill for the amending Act.	18 19 20 21 22 23 24