



New South Wales

# Motor Accident Injuries Amendment Regulation 2019

under the

Motor Accident Injuries Act 2017

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Motor Accident Injuries Act 2017*.

VICTOR DOMINELLO, MP  
Minister for Finance, Services and Property

## Explanatory note

The object of this Regulation is to amend the *Motor Accident Injuries Act 2017* and the *Motor Accident Injuries Regulation 2017*:

- (a) to make further provision with respect to the adjustment of premiums for third-party policies and Authority Fund levies to avoid or minimise excess profits and losses of insurers as a consequence of the establishment of the motor accident injuries scheme by that Act, and
- (b) to specify further disputes arising in connection with claims under that Act that are subject to merit review, medical assessment or miscellaneous claims assessment, and to fix the maximum costs recoverable by Australian legal practitioners for legal services provided in connection with those matters, and
- (c) to make further provision with respect to fixing the maximum amount of costs payable in connection with a claim for legal services provided to a claimant who is under the age of 18 years, and
- (d) to modify certain definitions for the purposes of provisions of that Act relating to weekly payments of compensation (including by extending a definition of *pre-accident weekly earnings* to self-employed persons and excluding leave entitlements from a person's *income from personal exertion*), and
- (e) to make other minor related amendments.

This Regulation is made under the *Motor Accident Injuries Act 2017*, including sections 3.5 (2), 7.51, 8.3 and 11.12 (the general regulation-making power) and clause 1 of Schedule 4.

## **Motor Accident Injuries Amendment Regulation 2019**

under the

Motor Accident Injuries Act 2017

### **1 Name of Regulation**

This Regulation is the *Motor Accident Injuries Amendment Regulation 2019*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## **Schedule 1      Amendment of Motor Accident Injuries Act 2017 No 10**

**[1] Schedule 1 Definitions relating to earnings for purposes of weekly payments of statutory benefits under Division 3.3**

Insert at the end of clause 3 (3) (c):

, or

(d) the monetary amount of any annual, sick or other leave entitlement.

**[2] Schedule 1 clause 4 (2)**

Omit “(other than a self-employed person)” from the subclause.

**[3] Schedule 2 Jurisdiction of Dispute Resolution Service**

Omit “treatment and care provided to an” from clause 1 (r).

Insert instead “an injured person is an Australian citizen or a permanent resident of Australia or whether treatment and care provided to the”.

**[4] Schedule 2, clause 1 (s)**

Omit “the vehicle was an uninsured vehicle at the time of the motor accident”.

**[5] Schedule 2, clause 2 (a), (b) and (d)**

Omit “an injured person” and “an injury caused by a motor accident” wherever occurring.

Insert instead “the injured person” and “the injury caused by the motor accident”, respectively.

**[6] Schedule 2, clause 2 (e)**

Omit “an injury”. Insert instead “the injury caused by the motor accident”.

**[7] Schedule 2, clause 3 (a1)**

Insert after clause 3 (a):

(a1) whether for the purposes of section 2.30 (Claim against Nominal Defendant where vehicle not identified) the person whose death or injury resulted from the motor accident was a trespasser on land that is a road related area open to or used by the public for driving, riding or parking vehicles,

**[8] Schedule 2, clause 3 (aa)**

Renumber the paragraph as paragraph (a2).

**[9] Schedule 2, clause 3 (g1)**

Insert after clause 3 (g):

(g1) whether for the purposes of Part 5 (Recovery for no-fault motor accidents) a motor accident is a no-fault motor accident,

**[10] Schedule 2, clause 3 (k)**

Omit “weekly payments of”.

**[11] Schedule 2, clause 3 (n)**

Insert at the end of clause 3:

- (n) any issue of liability for a claim, or part of a claim, for statutory benefits not otherwise specified in this Schedule.

**[12] Schedule 4 Savings, transitional and other provisions**

Insert before clause 2 (1):

- (1A) The object of this clause is to enable the Authority to ensure that the premium income and underwriting profits achieved by insurers during the transition period are not excessive or inadequate, having regard to the reduction in the cost to insurers of providing compulsory third-party insurance in relation to motor accidents as a consequence of this Act.

**[13] Schedule 4, clause 2 (3)**

Omit “issued during” where firstly and secondly occurring. Insert instead “in force during”.

**[14] Schedule 4, clause 2 (3) (b)**

Omit the paragraph.

**[15] Schedule 4, clause 2 (4)–(4B)**

Omit clause 2 (4). Insert instead:

- (4) The Motor Accident Guidelines are to make provision for the adjustment of either or both of the following to avoid or minimise transitional excess profits and transitional excess losses:
  - (a) premiums payable for third-party policies issued during the transition period,
  - (b) Authority Fund levies payable in connection with third-party policies issued during that period.
- (4A) The Motor Accident Guidelines may include provision for the adjustment of Authority Fund levies or premiums for the purposes of this clause to take into account innovations implemented by insurers to promote the objects of this Act.
- (4B) The following special arrangements are to apply in relation to Authority Fund levies payable in connection with third-party policies issued during the transition period:
  - (a) the Authority may, following any adjustment of those Fund levies to avoid or minimise transitional excess losses as provided by the Motor Accident Guidelines under this clause, direct payments from the Authority Fund to insurers corresponding to any increase in Authority Fund levies otherwise payable,
  - (b) the Authority may, before any adjustment of those Fund levies to avoid or minimise transitional excess profits as provided by the Motor Accident Guidelines under this clause, direct insurers to make payments to the Authority Fund corresponding to any proposed reduction in Authority Fund levies otherwise payable,
  - (c) an amount payable to or from the Authority Fund under this subclause is not recoverable from or payable to policy holders.

**[16] Schedule 4, clause 2 (9), definition of “reasonable profit”**

Insert “the range of” after “means”.

**[17] Schedule 4, clause 2 (9), definition of “transitional excess loss”**

Omit “to the extent that the shortfall is attributable to an overestimation of the reduction in cost of claims to result from this Act”.

**[18] Schedule 4, clause 2 (9), definition of “transitional excess profit”**

Omit “to the extent that the excess is attributable to an underestimation of the reduction in cost of claims to result from this Act”.

## **Schedule 2      Amendment of Motor Accident Injuries Regulation 2017**

**[1]    Clause 26 Maximum costs for claims made by minors (section 8.3 (1))**

Omit “if the amount paid in resolution of the claim is not more than \$25,000” from clause 26 (1) (a).

Insert instead “except as provided by paragraph (b) or (c)”.

**[2]    Schedule 1 Maximum costs for legal services**

Insert after clause 3 (2) (a):

- (a1) whether for the purposes of section 2.30 (Claim against Nominal Defendant where vehicle not identified) of the Act the person whose death or injury resulted from the motor accident was a trespasser on land that is a road related area open to or used by the public for driving, riding or parking vehicles,

**[3]    Schedule 1, clause 3 (2) (g1) and (g2)**

Insert after clause 3 (2) (g):

- (g1) any issue of liability for a claim, or part of a claim, for statutory benefits referred to in clause 3 (n) of Schedule 2 to the Act,
- (g2) whether for the purposes of Part 5 (Recovery for no-fault motor accidents) of the Act a motor accident is a no-fault motor accident,