



New South Wales

# Motor Accident Injuries Amendment (Claim for Statutory Benefits) Regulation 2023

under the

Motor Accident Injuries Act 2017

Her 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 Customer Service and Digital Government

## Explanatory note

The objects of this Regulation are to—

- (a) permit payment of weekly payments of statutory benefits in certain circumstances where a claim for statutory benefits is made under the *Motor Accident Injuries Act 2017* within 3 months, but not within 28 days, after the date of the motor accident, and
- (b) make further provision in relation to the determination by the Lifetime Care and Support Authority of amounts to be paid from the Motor Accident Injuries Treatment and Care Benefits Fund for the exercise of the functions of that Authority as the relevant insurer, and
- (c) make a minor correction to a savings provision in the Act.

This Regulation is made under the *Motor Accident Injuries Act 2017*, including sections 6.13(2), 10.15(2) and (3), 11.12, the general regulation-making power, and Schedule 4, Part 1, clause 1.

## **Motor Accident Injuries Amendment (Claim for Statutory Benefits) Regulation 2023**

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### **1 Name of Regulation**

This Regulation is the *Motor Accident Injuries Amendment (Claim for Statutory Benefits) Regulation 2023*.

### **2 Commencement**

This Regulation commences as follows—

- (a) for Schedule 2—the Schedule is taken to have commenced on 28 November 2022,
- (b) otherwise—on the day the Regulation is published on the NSW legislation website.

## **Schedule 1      Amendment of Motor Accident Injuries Regulation 2017**

### **[1]    Clause 8A**

Insert after clause 8—

#### **8A    Time for making claims (section 6.13(2))**

- (1) For the Act, section 6.13(2), payment of weekly payments of statutory benefits for a period before a claim is made is permitted if—
  - (a) the claim is made within 3 months after the date of the motor accident to which the claim relates, and
  - (b) the claimant provides a full and satisfactory explanation for the delay in making the claim.
- (2) The matters that must be taken into account in determining whether the claimant has a full and satisfactory explanation for the delay in making the claim include, but are not limited to, whether, before the expiry of the period of 28 days for making the claim—
  - (a) the claimant was aware of the right to make the claim, or
  - (b) the claimant was a person under a legal incapacity, or
  - (c) the claimant was prevented from making the claim before the expiry of that period because of illness or injury.
- (3) An explanation for the delay in making a claim is taken to be a full and satisfactory explanation for the purposes of subclause (1)(b) if the insurer has not rejected the explanation within 14 days after receiving the explanation.
- (4) This clause does not apply to a motor accident occurring before 1 April 2023.

### **[2]    Clauses 38A and 38B**

Insert after clause 38—

#### **38A    Lifetime Care and Support Authority to disclose information to Authority (section 10.15(2) and (3))**

- (1) The Lifetime Care and Support Authority must disclose to the Authority on request information relating to payments of statutory benefits for treatment and care that the Lifetime Care and Support Authority is required to make as the relevant insurer under the Act, section 3.2(3).
- (2) The information that may be requested under subclause (1) includes, but is not limited to—
  - (a) the total amount of payments of statutory benefits for treatment and care that the Lifetime Care and Support Authority estimates it will be required to make as the relevant insurer under the Act, section 3.2(3) for one or more specified future relevant periods, and
  - (b) the total amount of payments of statutory benefits for treatment and care that the Lifetime Care and Support Authority was required to make as the relevant insurer under the Act, section 3.2(3) for the current relevant period or one or more specified previous relevant periods, and
  - (c) the actual administrative and operational costs incurred by the Lifetime Care and Support Authority for one or more specified previous relevant periods, to the extent that those costs relate to the administration of the Act as the relevant insurer under the Act, section 3.2(3), and

- (d) the administrative and operational costs that the Lifetime Care and Support Authority estimates it will incur for one or more specified future relevant periods, to the extent that those costs relate to the administration of the Act as the relevant insurer under the Act, section 3.2(3).
- (3) The information must be disclosed within—
  - (a) a reasonable period specified by the Authority, or
  - (b) another period agreed by the Authority and the Lifetime Care and Support Authority.
- (4) The Lifetime Care and Support Authority must, as soon as practicable after becoming aware of a matter that is likely to have a material financial impact on the motor accidents scheme under the Act, disclose to the Authority the following information relating to the matter—
  - (a) a description of the matter,
  - (b) an explanation of the reasons the matter has occurred,
  - (c) an assessment of the risks to the motor accidents scheme,
  - (d) a description of the steps that have been, or are proposed to be, taken to mitigate those risks.
- (5) The matters in relation to which information must be disclosed under subclause (4) include, but are not limited to—
  - (a) a change in circumstances that is likely to affect the costs of the Lifetime Care and Support Authority in exercising its functions to the extent that those costs relate to the administration of the Act as the relevant insurer under section 3.2(3), and
  - (b) a change in the amount determined as the required contribution to the MAITC Benefits Fund under the Act, section 10.15(1)(d), for a relevant period, which represents an increase, or a decrease, of more than 10% in the amount determined for that purpose for the immediately preceding relevant period, and
  - (c) a matter involving one or more of the following that is likely to arise in relation to a claim in proceedings before a court, the Commission or a decision-maker if the Lifetime Care and Support Authority is a party to the proceedings—
    - (i) an issue that involves a question relating to the application of the Act or an instrument made under the Act,
    - (ii) an issue that involves a question of constitutional law,
    - (iii) a submission to a court that would, if accepted, substantially affect the statutory benefits or damages payable under the Act for similar claims,
    - (iv) criticism by the court, the Commission or the decision-maker.
- (6) In this clause—  
*decision-maker* has the same meaning as in the *Personal Injury Commission Act 2020*, section 32.

**38B Determination of maximum amounts for claims handling (section 10.15(3)(b))**

- (1) The Authority may determine, for a relevant period, the maximum amounts that may be determined by the Lifetime Care and Support Authority in relation to the cost of claims handling for the purposes of the Act, section 10.15(1)(b).

- (2) The Authority must consult with the Lifetime Care and Support Authority before making a determination for a relevant period.
- (3) The Authority must give the Lifetime Care and Support Authority written notice of the determination at least 6 months before the start of the relevant period to which the determination relates.

## **Schedule 2      Amendment of Motor Accident Injuries Act 2017 No 10**

### **Schedule 4 Savings, transitional and other provisions**

Omit “a claims assessor” from Part 7, clause 14(c). Insert instead “the Commission”.