



New South Wales

Motor Accidents (Lifetime Care and Support) Amendment Bill 2009

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to enable a person who was injured in a motor accident before the commencement of the Lifetime Care and Support Scheme (*the Scheme*) to participate in the Scheme by buying in, and
- (b) to provide that a child under 3 years of age who is accepted as an interim participant in the Scheme remains a participant until the child is 5 years of age rather than for 2 years as is currently the case.

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 except for specified provisions that 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

Schedule 1 [3] inserts proposed section 7A into the *Motor Accidents (Lifetime Care and Support) Act 2006* (the *Principal Act*). The proposed section enables a person who was injured in a motor accident occurring before the relevant Scheme commencement date to be accepted as a lifetime participant in the Scheme if the person pays to the Lifetime Care and Support Authority (the *Authority*), for payment into the Lifetime Care and Support Authority Fund, an 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.

Such a person is eligible to participate in the Scheme only if the person would have been eligible to participate in the Scheme had the motor accident occurred immediately after the relevant Scheme commencement date and had no damages been awarded to the person in respect of the injury.

An application for participation in such a case cannot be made by an insurer and is to be made by or on behalf of the person.

Proposed section 7A also provides that guidelines issued under section 58 of the Principal Act may make provision for or with respect to how a person's contribution for participation in the Scheme under the proposed section is to be determined.

Schedule 1 [1] inserts a proposed definition of *relevant Scheme commencement date*, being 1 October 2006 in the case of a person who was under 16 years of age when injured in a motor accident and 1 October 2007 in any other case.

Schedule 1 [5] amends section 54 of the Principal Act to provide that the Authority is not permitted to recover damages under that section in respect of injuries to a participant in the Scheme if the participant paid an amount to the Authority under proposed section 7A in respect of those injuries. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [4] provides that a child under 3 years of age who is accepted as an interim participant in the Scheme remains an interim participant until the child is 5 years of age. Currently such a child would only remain an interim participant for 2 years.

Schedule 1 [7] omits a redundant Schedule, provides for regulations of a savings and transitional nature to be made consequential on the enactment of the proposed Act and provides for the amendment proposed to be made by Schedule 1 [4] to extend to children who are interim participants in the Scheme on the commencement of that amendment and who were under 3 years of age when they became interim participants. This means any such child will now continue to be an interim participant until he or she is 5 years of age.

Schedule 1 [6] omits a redundant provision.

First print



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New South Wales

Motor Accidents (Lifetime Care and Support) Amendment Bill 2009

No. , 2009

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Motor Accidents (Lifetime Care and Support) Amendment Act 2009</i> .	3 4
2 Commencement	5
(1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.	6 7
(2) Schedule 1 [1]–[3] and [5] commence on a day or days to be appointed by proclamation.	8 9

Schedule 1	Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16	1 2 3
[1] Section 3 Definitions		4
	Insert in alphabetical order in section 3 (1):	5
	<i>relevant Scheme commencement date</i> , with respect to a person who has suffered motor accident injuries, means:	6 7
	(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	8 9
	(b) 1 October 2007 in any other case.	10
[2] Section 4 Application of Act		11
	Omit section 4 (1). Insert instead:	12
	(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.	13 14 15
	Note. Section 7A provides for a limited exception to this provision.	16
[3] Section 7A		17
	Insert after section 7:	18
	7A Persons injured before commencement of Scheme may “buy in”	19
	(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 <i>pre-commencement injury</i>) 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.	20 21 22 23 24 25
	(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.	26 27 28 29
	(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:	30 31 32
	(a) had the motor accident occurred immediately after the relevant Scheme commencement date, and	33 34
	(b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.	35 36

(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.	1 2 3
(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 5 6
[4]	Section 9 Acceptance as a participant	7
	Omit section 9 (5). Insert instead:	8
(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.	9 10 11
(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.	12 13 14
(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.	15 16 17
[5]	Section 54 Recovery of lifetime care and support payments—uninsured and interstate vehicles and third party tortfeasors	18 19
	Insert after section 54 (10):	20
(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.	21 22 23 24
[6]	Section 65 Consequential amendments of Motor Accidents Compensation Act 1999 No 41	25 26
	Omit the section.	27

[7] Schedule 3	1
Omit the Schedule. Insert instead:	2
Schedule 3 Savings, transitional and other provisions	3 4
Part 1 Preliminary	5
1 Savings and transitional regulations	6
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act <i>Motor Accidents (Lifetime Care and Support) Amendment Act 2009</i>	7 8 9 10 11 12
(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.	13 14
(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:	15 16 17
(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	18 19 20
(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.	21 22 23

Part 2	Provisions consequent on enactment of Motor Accidents (Lifetime Care and Support) Amendment Act 2009	1
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		3
2	Interim participation	4
	Section 9 (5A) and (5B), as inserted by the <i>Motor Accidents (Lifetime Care and Support) Amendment Act 2009</i> , extend to a person who:	5
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		7
	(a) on the commencement of those subsections is an interim participant, and	8
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	(b) was younger than 3 years of age at the time the person became an interim participant.	10
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