



***The Motor Accident  
Injuries Amendment  
Act 2022***



# Summary of Amendments

The *Motor Accident Injuries Amendment Act 2022 (the Bill)* passed both houses of the NSW Parliament on 17 November 2022 and was assented to on **28 November 2022**.

The major amendments to *Motor Accident Injuries Act 2017 (MAIA)* are set out below:

Topic	Change	Commencement	Application
<b>Nominal Defendant Liability in Statutory Benefit Claims</b> (s.1.10A)	The Nominal Defendant will be liable in statutory benefit claims in the same way it is liable in common law damages claims.  (See below)	28 November 2022	All pending MAIA claims after commencement
<b>Minor Injuries terminology</b> (wherever "minor injury" appears)	" <i>Minor injuries</i> " will be termed " <i>threshold injuries</i> ".	1 April 2023	All pending MAIA claims after commencement
<b>Minor Psych Injuries</b> (s 1.6)	A threshold psychiatric injury will be redefined to mean " <i>a psychological or psychiatric injury that is not a recognised psychiatric illness</i> ".	1 April 2023	All pending MAIA claims after commencement
<b>Cessation of Statutory Benefits</b> (ss 3.18 and 3.28)	A person injured in a motor accident in NSW will be entitled to statutory benefits – irrespective of fault or threshold injury – for 52 weeks from the date of accident, rather than 26 weeks.	1 April 2023	MVAs after commencement
<b>Reduction of Weekly Payments for Contributory Negligence</b> (s 3.38)	Where an injured person is partially at fault – but not over 61% - their weekly benefits may only be reduced for their contributory negligence after 52 weeks from the date of accident, rather than 26 weeks.	1 April 2023	MVAs after commencement
<b>Insurer's Second Liability Notice</b> (s 6.19)	The insurer's second liability notice will be due 9 months after the claim is made, rather than 3 months.	1 April 2023	MVAs after commencement
<b>Internal Review of WPI Determinations</b> (s 7.19)	An injured person will no longer need to seek internal review of a WPI determination before proceeding to the Commission.  <b>Note:</b> Internal review is still required for all other merit review matters, medical assessments of miscellaneous assessments.	28 November 2022	Insurer WPI determinations made after commencement
<b>Damages claim time limits</b> (ss 6.14, 6.23, 7.33)	The 20-month moratorium on making a common law claim, the 2-year moratorium on settling a common law claim and the 3-year time limit to commence a damages dispute in the Commission will all be removed.	28 November 2022	All pending MAIA claims after commencement

# Minor Injuries

After amendment, s 1.6 will read:

## 1.6 Meaning of “**threshold injury**”

- (1) For the purposes of this Act, a **threshold injury** is, subject to this section, one or more of the following—
- (a) a soft tissue injury,
  - (b) a **psychological or psychiatric injury that is not a recognised psychiatric illness**.
- (2) A **soft tissue injury** is (subject to this section) an injury to tissue that connects, supports or surrounds other structures or organs of the body (such as muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissues, fat, blood vessels and synovial membranes), but not an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci or cartilage.
- (3) **[omitted]**
- (4) The regulations may—
- (a) exclude a specified injury from being a **threshold injury** for the purposes of this Act, or
  - (b) include a specified injury as a **threshold injury** for the purposes of this Act.
- (5) The Motor Accident Guidelines may make provision for or with respect to the assessment of whether an injury is a **threshold injury** for the purposes of this Act.
- (6) Subsection (5) does not enable the Motor Accident Guidelines to make provision for or with respect to the resolution of disputes by the Commission or medical assessor.

### **Note—**

The rules of the Commission make provision for these matters.

# Cessation of Statutory Benefits

After amendment, the relevant provisions will read as follows:

## **3.11 Cessation of weekly payments to injured persons most at fault or with minor injuries after 52 weeks**

- (1) *An injured person is not entitled to weekly payments of statutory benefits under this Division for any period of loss of earnings or earning capacity that occurs more than **52 weeks** after the motor accident concerned if—*
  - (a) *the motor accident was caused wholly or mostly by the fault of the person, or*
  - (b) *the person's only injuries resulting from the motor accident were **threshold injuries**.*
- (2) *A motor accident was caused mostly by the fault of a person if the contributory negligence of the person in relation to the motor accident (as referred to in section 3.38) was greater than 61%.*

### **Note—**

*Section 3.38 provides for a reduction of statutory benefits after **52 weeks** for contributory negligence of the person not mostly at fault.*

## **3.28 Cessation of statutory benefits after 52 weeks to injured adult persons most at fault or to injured persons with threshold injuries**

- (1) *An injured person is not entitled to statutory benefits under this Division for treatment and care expenses incurred more than **52 weeks** after the motor accident concerned if—*
  - (a) *the motor accident was caused wholly or mostly by the fault of the person and the person was over 16 years of age at the time of the motor accident, or*
  - (b) *the person's only injuries resulting from the motor accident were **threshold injuries**.*
- (2) *A motor accident was caused mostly by the fault of a person if the contributory negligence of the person in relation to the motor accident (as referred to in section 3.38) was greater than 61%.*
- (3) **[omitted]**

## **3.38 Reduction of weekly statutory benefits after 12 months for contributory negligence**

- (1) *The common law and enacted law as to contributory negligence that applies to an award of damages in respect of a motor accident applies (except as provided by this section) to weekly payments of statutory benefits for any period of loss of earnings or earning capacity that occurs more than **52 weeks** after the time of the motor accident.*
- (2) to (6) unchanged

## 6.19 Acceptance of liability for claim for statutory benefits

- (1) *An insurer must, within 4 weeks after a claimant makes a claim for statutory benefits, give the claimant notice in accordance with the Motor Accident Guidelines stating whether or not the insurer accepts liability for the payment of statutory benefits during the first **52 weeks** after the time of the motor accident concerned.*
- (2) *An insurer must, within **9 months** after a claimant makes a claim for statutory benefits, give the claimant notice in accordance with the Motor Accident Guidelines stating whether or not the insurer accepts liability for the payment of statutory benefits after the first **52 weeks** after the time of the motor accident concerned.*
- (3) *The regulations may amend this section to alter the period of 4 weeks specified in subsection (1) or the period of 3 months specified in subsection (2).*
- (4) *If the insurer fails to notify the claimant in accordance with this section, the insurer is taken to have accepted liability for the statutory benefits concerned.*
- (5) *An insurer is not prevented from accepting liability for statutory benefits after having denied that liability and the acceptance of liability does not prevent the subsequent denial of liability.*
- (6) *An insurer who has accepted (or is deemed to have accepted) liability for statutory benefits must commence payment of statutory benefits without delay. An insurer cannot recover statutory benefits paid on the basis of the acceptance of liability for statutory benefits if the insurer subsequently denies liability.*
- (7) *An insurer may commence payment of statutory benefits before determining whether the insurer accepts liability for those statutory benefits.*
- (8) *It is a condition of an insurer's licence under this Act that the insurer must comply with this section.*

# Nominal Defendant

The Bill introduces s 1.10A, which reads:

## 1.10A Liability of Nominal Defendant

*The provisions of this Act relating to the liability of the Nominal Defendant in connection with a motor accident apply to a claim for statutory benefits in the same way as they apply to a claim for damages, subject to—*

- (a) *necessary modifications, and*
- (b) *modifications prescribed by the regulations.*

As such, it appears that:

- **Uninsured vehicles** – a claim for statutory benefits can only be made where the requirements of s 2.29 of MAIA are satisfied, including that the accident occurred on a road or road related area.
- **Unidentified vehicles** – a claim for statutory benefits can only be made where the requirements of s 2.30 of MAIA are satisfied, including that the injured person conducted due inquiry and search.

# Further Information

For further details about the content in this publication please contact:



Peter Hunt **Principal**  
peter.hunt@mccabes.com.au  
+61 2 8231 6284  
+61 414 425 879