

National Injury Insurance Scheme (Queensland) Bill 2016

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Curtis Pitt MP

Title of the Bill

National Injury Insurance Scheme (Queensland) Bill 2016

Objectives of the Amendments

The objectives of the amendments are to correct minor drafting errors, alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50% and clarify the policy intent of certain provisions in the Bill.

The amendments address certain issues and stakeholder concerns which were identified during and as a result of the inquiry into the Bill by the Education, Tourism, Innovation and Small Business Committee (the Committee).

Achievement of the Objectives

The objectives will be achieved by amendments to the Bill that:

- clarify that, for the Bill, a finalised claim does not include a settlement required to be sanctioned by a court or the public trustee, where that sanction has not been obtained;
- insert a definition for the term 'motor accident' in the Bill, which is relevant to other changes to the Bill's provisions and takes account of the fact that a participant may suffer injuries, other than serious personal injuries, in the motor accident which led to their qualifying serious personal injury;
- remove the term *legal* in clause 11 of the Bill, to ensure there is consistency of terminology in clauses 11 and 18;
- clarify that when the agency makes a support plan under the Bill, the agency can consider funding treatment, care or support for all personal injuries resulting from the motor accident that led to the participant's entry into the National Injury Insurance Scheme, Queensland (NIIS(Q)), not just treatment, care and support for the serious personal injury the participant sustained;
- clarify that a service request lodged by a participant need not relate to the participant's qualifying serious personal injury, but may

- relate to any of the personal injuries resulting from the motor accident that led to the participant's entry into the NIIS(Q);
- insert an additional note to clause 42, to direct the reader to the provisions to be inserted in Part 2A of the *Civil Liability Act 2003*;
 - alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50%;
 - clarify that the provisions to be contained in Part 2A of the *Civil Liability Act 2003* apply to the awarding of treatment, care and support damages for the period following a participant's entry into the NIIS(Q), for all injuries resulting from a motor accident which results in a qualifying serious personal injury, not just damages related to the participant's serious personal injury;
 - clarify that there is no insurer liability for the period following a participant's entry into the NIIS(Q) to make payments for private hospital, medical and pharmaceutical expenses for a person's injuries arising from a motor vehicle accident, while the claimant remains a NIIS(Q) participant because of a serious personal injury arising out of that accident or has been paid by the agency a lump sum damages amount for treatment, care and support, relating to their personal injuries arising out of that accident;
 - clarify that there is no insurer liability for the period following a participant's entry into the NIIS(Q) to make payments for rehabilitation services for a person's injuries arising from a motor vehicle accident, while the claimant remains a NIIS(Q) participant because of a serious personal injury arising out of that accident or has been paid by the agency a lump sum damages amount for treatment, care and support, relating to their personal injuries arising out of that accident;
 - clarify that the term 'treatment, care and support damages', when used in the Bill, refers to damages for the period following a participant's entry into the NIIS(Q) for all of the personal injuries that resulted from the motor accident which led to the participant's entry into the NIIS(Q); and
 - correct minor drafting errors in the Bill, including in item (g) of the definition of 'serious personal injury' in the Bill.

Alternative Ways of Achieving Policy Objectives

These amendments make changes to the existing provisions of the Bill to correct minor drafting errors, alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50% and clarify the policy intent of certain provisions in the Bill.

There is no alternative way of achieving these objectives.

Estimated Cost for Government Implementation

The changes to alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50%, is expected to beneficially impact a small number of participants in the NIIS(Q). It is anticipated there will be some resultant increases in the costs of the NIIS(Q). The extent of those cost increases is currently known and is unlikely to be known for some time. The Government will closely monitor this aspect of NIIS(Q) costs as part of its ongoing reviews of NIIS(Q) scheme performance.

There are no increased administrative costs to government envisaged as a result of implementing the other proposed amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Consultation was not undertaken on these amendments. However, the amendments to the Bill respond to Recommendation 1 of the report of the Committee on the Bill (Report No. 13, 55th Parliament), and various submissions made to the Committee about the Bill. The amendments correct minor drafting errors, alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50%, and clarify the policy intent of certain provisions in the Bill.

Notes on Provisions

Amendment 1

Amendment 1 amends clause 10 (When a claim is *finalised*) to clarify that, for the Bill, a finalised claim does not include a settlement or judgment that is required to be sanctioned by a court or the public trustee, where that sanction has not been obtained.

The amendment responds to submissions made by the legal profession to the Committee that the definition in this clause should be expanded to include a court sanctioned claim.

The policy intention was a claim against an insurer is not considered *finalised* if a sanction is required from a court or the public trustee, but has not been obtained. This amendment recognises that other clauses of the Bill (for example, clause 44(8)) specifically refer to sanctioning of settlements or agreements, but clause 10 did not.

Amendment 2

Amendment 2 inserts a provision stating that, for the Bill, a reference to a participant's 'motor accident' is a reference to the motor accident that resulted in the participant's serious personal injury.

This definition is relevant to the other amendments to the Bill relating to preparation of a participant's support plan, and the definition of 'treatment, care and support damages'. It ensures the Bill's provisions recognise a participant may suffer injuries, other than serious personal injuries, in the motor accident which led to their qualifying serious personal injury.

Amendment 3

Amendment 3 amends clause 11 (References in Act to particular terms) to omit the word 'legal' from clause 11(4)(a) of the Bill.

The amendment ensures that the wording in clause 11(4)(a) of the Bill is consistent with the wording in clause 18(1)(b) of the Bill.

Amendment 4

Amendment 4 corrects a minor drafting error in clause 17 of the Bill.

Amendment 5

Amendment 5 amends clause 26 (Making support plan) to clarify that when the agency makes a support plan under the Bill, the agency can consider and approve the funding of treatment, care or support for all personal

injuries resulting from the motor accident that led to the participant's qualifying serious personal injury.

It is not intended that the agency's consideration should be limited only to treatment, care and support for the serious personal injury the participant sustained as a result of that accident.

Amendment 6

Amendment 6 corrects a minor drafting error in clause 26 of the Bill.

Amendment 7

Amendment 7 amends clause 28 (Making service request) to clarify that a service request lodged by a participant need not relate to the participant's qualifying serious personal injury. It acknowledges a service request could relate to treatment, care or support for any personal injury resulting from the motor accident that led to the participant's qualifying serious personal injury.

It is not intended that the agency's consideration of service requests should be limited only to treatment, care and support for the serious personal injury the participant sustained as a result of that accident.

Amendment 8

Amendment 8 amends clause 42 (Liability of agency to contribute towards damages) to insert an additional note to clause 42, to direct the reader to provisions inserted in the *Civil Liability Act 2003* by the Bill.

The amendment responds to submissions made to the Committee about the operation of this provision and the Committee's request for clarification regarding the intention of clause 42 and its outcome for participants.

Clause 42(1) of the Bill provides that if a participant gives a preservation notice, the agency is liable to contribute towards an insurer's liability, if any, on a claim for treatment, care and support damages, to the extent that that claim relates to the period following a participant's entry into the NIIS(Q).

Clause 42(2) of the Bill outlines when the agency stops being liable to contribute towards an insurer's liability on a claim for treatment, care and support damages.

A note follows clause 42(1) of the Bill to refer the reader to provisions in the *Motor Accident Insurance Act 1994* which are relevant to the claim process.

The above clauses of the Bill must also be considered in the context of new clauses being inserted in the *Civil Liability Act 2003* by clause 149 of the

Bill, in particular the new Part 2A (Participants in national injury insurance scheme, Queensland).

The clauses inserted in the *Civil Liability Act 2003* have the effect that the court only has the power to award treatment, care and support damages for the period following a participant's entry into the NIIS(Q) while the agency is liable under clause 42 of the Bill to contribute towards an insurer's liability.

If the agency ceases to be liable as a contributor, the court loses the ability to award treatment, care and support damages for the period following a participant's entry into the NIIS(Q) to the participant. In this situation, the participant may still have some other potential damages claims against the insurer, for example, relating to damages for pain and suffering and loss of earnings. However the claim against the insurer for the participant's treatment, care and support damages for the period following a participant's entry into the NIIS(Q) will no longer be sustainable. In this situation, although the participant will no longer be able to receive from the agency a lump sum treatment, care and support damages award, their future treatment, care and support costs will continue to be met by the agency, as the participant will remain a lifetime participant in the NIIS(Q).

Amendment 9

Amendment 9 amends clause 42 (Liability of agency to contribute towards damages) to alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50%.

The amendment responds to concerns raised by the legal profession directly with the Government and through the Parliamentary Committee about the level of contributory negligence in clause 42 of the Bill, in particular that the existing clause unfairly restricts a participant's common law rights to seek a lump sum for future treatment, care and support damages.

Review of this issue by Queensland Treasury indicates that it would not be unreasonable to amend clause 42 of the Bill so that the contributory negligence threshold is set at 50 percent or more.

Amendment 10

Amendment 10 corrects a minor drafting error in clause 43 of the Bill.

Amendment 11

Amendment 11 corrects a minor drafting error in clause 52 of the Bill.

Amendment 12

Amendment 12 corrects a minor drafting error in clause 59 of the Bill.

Amendment 13

Amendment 13 corrects a minor drafting error in clause 60 of the Bill.

Amendment 14

Amendment 14 corrects a minor drafting error in clause 143 of the Bill.

Amendment 15

Amendment 15 amends clause 149 (Insertion of new ch 3, pt 2A) and inserts definitions for the terms ‘motor accident’ and ‘serious personal injury’ into the new section 52A of the *Civil Liability Act 2003*.

These changes are associated with amendments that are being made to sections 52B and 52C of the *Civil Liability Act 2003*, which clarify the provisions in Part 2A of the *Civil Liability Act 2003* apply to the awarding of treatment, care and support damages for the period following a participant’s entry into the NIIS(Q) for all injuries resulting from a motor accident which results in a serious personal injury, not just damages related to the participant’s serious personal injury.

Amendment 16

Amendment 16 amends clause 149 (Insertion of new ch 3, pt 2A) and replaces clause 52B(1) to (3) with new subsections.

This amendment responds to submissions made by the insurance industry to the Committee about the need for the Bill to be absolutely clear about insurers’ liability to fund care and support costs.

It is not intended that the NIIS(Q) will cover, whilst a person is a participant in the NIIS(Q), only a portion of treatment, care and support costs (i.e. those relating to the serious personal injury) with other treatment, care and support costs being met by an insurer (i.e. those relating to non-eligible injuries).

Accordingly this amendment clarifies new section 52B of the *Civil Liability Act 2003* applies to the awarding of treatment, care and support damages for the period following a participant’s entry into the NIIS(Q) for all injuries resulting from a motor accident which results in a serious personal injury, not just damages related to the participant’s serious personal injury.

Amendment 17

Amendment 17 amends clause 149 (Insertion of new ch 3, pt 2A) and omits a definition which has been relocated to clause 52A.

Amendment 18

Amendment 18 amends clause 149 (Insertion of new ch 3, pt 2A) and replaces clause 52(1)(a) and (b) with new subsections.

This amendment responds to submissions made by the insurance industry to the Committee about the need for the Bill to be absolutely clear about insurers' liability to fund care and support costs.

It is not intended that the NIIS(Q) will cover, whilst a person is a participant in the NIIS(Q), only a portion of treatment, care and support costs (i.e. those relating to the serious personal injury) with other treatment, care and support costs being met by an insurer (i.e. those relating to non-eligible injuries).

Accordingly this amendment clarifies new section 52C of the *Civil Liability Act 2003* applies to the awarding of treatment, care and support damages for the period following a participant's entry into the NIIS(Q) for all injuries resulting from a motor accident which results in a serious personal injury, not just damages related to the participant's serious personal injury.

Amendment 19

Amendment 19 amends clause 149 (Insertion of new ch 3, pt 2A) to alter the level of contributory negligence at which a participant will not be able to seek a lump sum award for treatment, care and support damages from the court, for the period following a participant's entry into the NIIS(Q), to 50%.

The amendment responds to concerns raised by the legal profession directly with the Government and through the Parliamentary Committee about the level of contributory negligence in clause 42 of the Bill, in particular that the existing clause unfairly restricts a participant's common law rights to seek a lump sum for future treatment, care and support damages.

Review of this issue by Queensland Treasury indicates that it would not be unreasonable to amend clause 42 of the Bill so that the contributory negligence threshold is set at 50 percent or more. This amendment alters the level referred to in new clause 52C of the *Civil Liability Act 2003* so that it is consistent with the level referred to in clause 42 of the Bill.

Amendment 20

Amendment 20 amends clause 149 (Insertion of new ch 3, pt 2A) and renumbers clause 52(1)(c) as a consequence of the amendments made to clause 52(1)(a) and (b).

Amendment 21

Amendment 21 amends clause 149 (Insertion of new ch 3, pt 2A) and inserts definitions for the terms ‘motor accident’ and ‘serious personal injury’ into Schedule 2 of the *Civil Liability Act 2003*.

These changes are associated with amendments that are being made to sections 52A, 52B and 52C of the *Civil Liability Act 2003*.

Amendment 22

Amendment 22 amends clause 159 Amendment of s 39 (Response to the notice of claim) and relates to an insurer’s obligations when responding to a claim.

The amendment takes into account the fact that a participant’s entry into the NIIS(Q) relates to the serious personal injury sustained in a motor vehicle accident, although the participant may also have sustained other personal injuries in that accident.

Amendment 23

Amendment 23 amends clause 159 Amendment of s 39 (Response to the notice of claim) and relates to an insurer’s obligations when responding to a claim.

The amendment takes into account the fact that a participant’s entry into the NIIS(Q) relates to the serious personal injury sustained in a motor vehicle accident, although the participant may also have sustained other personal injuries in that accident.

Amendment 24

Amendment 24 amends clause 161 (Amendment of s 42 (Payment of medical expenses etc.)) and relates to an insurer’s obligations to make payments for various expenses when a claim has been made.

This amendment recognises a participant’s entry into the NIIS(Q) relates to the serious personal injury sustained in a motor vehicle accident, although the participant may also have sustained other personal injuries in that accident.

Amendment 25

Amendment 25 amends clause 161 (Amendment of s 42 (Payment of medical expenses etc.)) and relates to an insurer's obligations to make payments for various expenses when a claim has been made.

This amendment recognises a payment by the agency of lump sum damages for treatment, care and support, will relate to the period following a participant's entry into the NIIS(Q) and cover all personal injuries sustained in a motor vehicle accident by a participant, not just the serious personal injuries sustained in that accident.

Amendment 26

Amendment 26 amends clause 161 (Amendment of s 42 (Payment of medical expenses etc.)) and relates to an insurer's obligations to make payments for various expenses when a claim has been made.

This amendment responds to submissions made by the insurance industry to the Committee about the need for the Bill to be absolutely clear about insurers' liability to fund care and support costs.

The amendment takes into account the fact that although a participant's entry into the NIIS(Q) relates to the serious personal injury sustained in a motor vehicle accident, the participant may also have sustained other personal injuries in that accident.

The amendment clarifies there is no insurer liability to make payments for private hospital, medical and pharmaceutical expenses for the period following a participant's entry into the NIIS(Q), for any of a person's injuries arising from a motor vehicle accident, while the claimant is a NIIS(Q) participant because of a serious personal injury arising out of that accident or has been paid by the agency a lump sum damages amount for treatment, care and support, relating to those personal injuries.

Amendment 27

Amendment 27 amends clause 162 (Amendment of s 51 (Obligation to provide rehabilitation services)) and relates to an insurer's obligations to make payments for rehabilitation services when a claim has been made.

This amendment recognises a participant's entry into the NIIS(Q) relates to the serious personal injury sustained in a motor vehicle accident, although the participant may also have sustained other personal injuries in that accident.

Amendment 28

Amendment 28 amends clause 162 (Amendment of s 51 (Obligation to provide rehabilitation services) and relates to an insurer's obligations to make payments for rehabilitation services when a claim has been made.

This amendment recognises a payment by the agency of lump sum damages for treatment, care and support, will relate to the period following a participant's entry into the NIIS(Q) and cover all personal injuries sustained in a motor vehicle accident by a participant, not just the serious personal injuries sustained in that accident.

Amendment 29

Amendment 29 amends clause 162 (Amendment of s 51 (Obligation to provide rehabilitation services) and relates to an insurer's obligations to make payments for rehabilitation services when a claim has been made.

This amendment responds to submissions made by the insurance industry to the Committee about the need for the Bill to be absolutely clear about insurers' liability to fund care and support costs.

It is not intended that the NIIS(Q) will cover, whilst a person is a participant in the NIIS(Q), only a portion of treatment, care and support costs (i.e. those relating to the serious personal injury) with other treatment, care and support costs being met by an insurer (i.e. those relating to non-eligible injuries).

Accordingly this amendment clarifies there is no insurer liability to make payments for rehabilitation services for the period following a participant's entry into the NIIS(Q) for a person's injuries arising from a motor vehicle accident, while the claimant is a NIIS(Q) participant because of a serious personal injury arising out of that accident or has been paid by the agency a lump sum damages amount for treatment, care and support, relating to those personal injuries.

Amendment 30

Amendment 30 corrects a minor drafting error in clause 163 of the Bill.

Amendment 31

Amendment 31 corrects a minor drafting error in clause 163 of the Bill.

Amendment 32

Amendment 32 corrects a minor drafting error in the definition of 'decision-making period' in the Bill.

Amendment 33

Amendment 33 amends the definition of ‘serious personal injury’ in Schedule 1 of the Bill to correct a minor drafting error in item (g) of the definition.

This amendment responds to Recommendation 1 of the report of the Committee on the Bill (Report No. 13, 55th Parliament).

Amendment 34

Amendment 34 amends the definition of ‘treatment, care and support damages’ in Schedule 1 of the Bill to clarify that the term, when used in the Bill, refers to damages for all of the personal injuries that resulted from the motor accident which led to the participant’s entry into the NIIS(Q).

The amendment removes uncertainty about whether the term could be restricted to only damages resulting from the participant’s serious personal injury and responds to submissions made by the insurance industry to the Committee about the need for the Bill to be absolutely clear about insurers’ liability to fund care and support costs.