

Standing Committee on Law and Justice

# **Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council**

Ordered to be printed 20 December 2011 according to  
Standing Order 231

# Executive summary

## Chapter 1 Introduction

The Lifetime Care and Support (LTCS) Scheme is a NSW Government initiative established to provide for the treatment and care of people who have been catastrophically injured as a result of a motor accident, irrespective of who was at fault. The LTCS Scheme is administered by the Lifetime Care and Support Authority (LTCSA) and the Lifetime Care and Support Advisory Council (LTCSAC).

Chapter 1 outlines the role of the Committee in reviewing the LTCSA and the LTCSAC. Section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006* provides that a committee of the Legislative Council is to be designated to supervise the exercise and functions of the LTCSA and the LTCSAC. On 30 May 2007, the Standing Committee on Law and Justice (the Committee) was appointed to fulfill this function.

In relation to future reviews, Chapter 1 recommends that the Committee conduct its review of the LTCSA and LTCSAC on a biennial rather than an annual basis.

## Chapter 2 Overview of the Scheme and past reviews

Chapter 2 includes an outline of the operation of the Scheme to date including its object and purpose and key provisions of the legislation which underpins its operation. It also discusses the issues and recommendations that arose in previous reports.

Eligibility into the LTCS Scheme is described, including what happens procedurally when a person first enters the Scheme. Dispute resolution arises most commonly in relation to eligibility to enter the Scheme and decisions related to a participant's treatment and care. The processes for resolving such disputes are outlined in this Chapter (and stakeholder concerns about dispute resolution are considered in Chapter 4). The Chapter moves on to consider the day to day operation of the LTCS Scheme including a description of the role of LTCS Coordinators and case managers.

The Chapter concludes with a brief description of the proposed National Injury Insurance Scheme (NIIS), as proposed in the Productivity Commission's report on a national scheme for disability care and support. The NIIS would facilitate the establishment of nationally consistent, state-based, no fault schemes for people who have suffered catastrophic injuries, whatever the cause. At the time of writing, the Productivity Commission's recommendations had not been adopted by the state governments or the federal Government.

## Chapter 3 Scheme operation and performance

This Chapter outlines the operation of the LTCS Scheme to date including its relationship with the Motor Accidents Scheme. It includes statistical data detailing the number of people in the Scheme, both children and adults, and the type of accidents in which they were injured. It outlines the cost of the Scheme and the mechanisms employed by the LTCSA to forecast future costs.

Chapter 3 also outlines the progress of the LTCS Scheme including what was an overall positive review from most stakeholders who gave evidence to the Committee. The results of the most recent participant satisfaction survey are canvassed, which show that more than 83 per cent of respondents were satisfied with how the Scheme meets their needs.

Currently there are no participant members of the LTCSAC, although during the Second and Third Reviews, the Committee recommended their inclusion, which was broadly supported by stakeholders including the LTCSA itself. Thus, the present review recommends a stand-alone legislative amendment to enable participant involvement on the Council.

#### **Chapter 4 Entry into the Scheme, opting-out of the Scheme and dispute resolution**

That there should be an option for participants not to participate in the Scheme, and instead receive a lump sum payment to manage their own care, has been raised by stakeholders in previous reviews and also the present. Chapter 4 outlines the forthcoming staged implementation of an option in respect of periodic payments for self-management of attendant care. This includes a brief discussion of a relevant ruling by the Australian Taxation Office that such payments shall not be taxed as ‘income’, subject to certain specific conditions.

Chapter 4 describes the medical eligibility criteria and assessment tools, and outlines amended eligibility criteria for people who have had amputations as a result of a motor vehicle accident. It recommends that the LTCSA evaluate the current medical assessment tools and investigate alternatives to avoid inequity in Scheme eligibility

The Chapter concludes with consideration of participant access to independent legal advice and advocacy and outlines stakeholders concerns in relation to dispute resolution under the LTCS Scheme.

#### **Chapter 5 Administration of the Scheme**

The administrative burden of the LTCS Scheme on stakeholders, and in particular medical professionals, has been a regular concern which stakeholders have again raised in the present review. Clinicians have noted that attending to the paperwork generated by the LTCS Scheme limits the time they can spend with patients. In this regard, possible efficiencies in the LTCS Scheme to reduce the administrative burden of the Scheme were suggested by some stakeholders.

Chapter 5 also canvasses stakeholder views about delays in approval by the LTCSA of rehabilitation, care and support services. This issue arose both in evidence to the Committee and in the participant satisfaction survey. This Chapter also discusses related concerns about the role and expertise of LTCS Coordinators and problems with communication between stakeholders.

The LTCS Scheme priorities have shifted towards greater focus on community based care as more participants move out of acute care and back into the community. This focus is likely to become permanent in the longer term as participant numbers increase.

#### **Chapter 6 Treatment, rehabilitation and care services**

Chapter 6 canvasses a number of issues directly related to the treatment, rehabilitation and care services received by participants in the LTCS Scheme. The Chapter commences with discussion of what constitutes ‘reasonable and necessary’ treatment services pursuant to the legislation. It moves on to discuss the tension between LTCSA treatment decisions and the desire to respect participant choice in the context of the move towards ‘person-centred’ approaches in the disability sector. Some evidence of LTCS Coordinators ‘second-guessing’ of clinician decisions is also discussed.

Accessible housing was considered in depth as part of the Committee’s Third Review. In the present review, stakeholders raised particular concerns with delay and accessibility of transitional

accommodation for participants who are ready to leave hospital but have not yet secured, or had appropriate modifications to, a more permanent residence.

This Chapter discusses the impact of the passage into law of the *Carers Recognition Act 2010*. It also outlines stakeholder support for financial payments to be made to suitably qualified family members for the provision of voluntary care. Some concerns with such an arrangement are also considered.

Some stakeholders again expressed the view that the LTCSA should provide greater support to facilitating participants' recreation and leisure activities, including reasonable transportation costs to and from such activities. The physical benefits of such activities were emphasised and the LTCSA acknowledged that the issue was a difficult one.

The adequacy of educational support for children in the Scheme was questioned by the Children's Hospital at Westmead. The Hospital commended the LTCSA on recent efforts to work with schools to support education initiatives but also expressed the view that more could be done.

## Summary of recommendations

- Recommendation 1** **4**  
That the Legislative Council amend the resolution designating the Standing Committee on Law and Justice with responsibility for supervising the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council, so that the Committee will be required to report to the House in relation to the exercise of its functions under that resolution at least once every two years.
- Recommendation 2** **29**  
That the Government pursue a stand-alone amendment to section 45 of the *Motor Accidents (Lifetime Care and Support) Act 2006* to include two participant representatives on the Lifetime Care and Support Advisory Council.
- Recommendation 3** **39**  
That the Lifetime Care and Support Authority evaluate the current medical assessment tools used to assess eligibility criteria, and investigate and report on any alternative and/or additional tools or strategies that may be appropriately used to avoid inequity in Scheme eligibility. The Authority should consult with stakeholders during this process.
- Recommendation 4** **42**  
That the Lifetime Care and Support Authority should review the adequacy of the Accident Advice Support Grant on an annual basis and at minimum annually increase the grant to meet increases in the Consumer Price Index.
- Recommendation 5** **47**  
That the Lifetime Care and Support Authority work with the Brain Injury Rehabilitation Directorate and other stakeholders to examine the feasibility of a more robust and independent dispute resolution process for disputes concerning eligibility and treatment.
- Recommendation 6** **53**  
That the Lifetime Care and Support Authority collaborate with the Brain Injury Rehabilitation Directorate, the State Spinal Cord Injury Service, the Children’s Hospital at Westmead and other service providers to simplify and standardise forms with a view to minimising the duplication of information and limiting the administrative burden on service providers.
- Recommendation 7** **65**  
That the Lifetime Care and Support Authority work with the State Spinal Cord Injury Service and the Brain Injury Rehabilitation Directorate directly to develop methods for improved communication between clinicians and the Authority and to act on the concerns of service providers and to put in place a system whereby clinicians receive meaningful responses to the concerns they raise.
- Recommendation 8** **67**  
That the Lifetime Care and Support Authority develop and then employ effective mechanisms to better inform both general practitioners and acute treating teams of the Lifetime Care and Support Scheme and report to the Committee on these mechanisms in its next review.

- Recommendation 9** 76  
That the Lifetime Care and Support Authority ensure that it provides, as part of its induction training for Lifetime Care and Support Coordinators, information on respect for expert clinician decisions and treatment recommendations notwithstanding Coordinators' previous skills and experience.
- Recommendation 10** 76  
That the Lifetime Care and Support Authority consult with the Children's Hospital at Westmead to develop an agreed protocol to enable discussion of a participant's appropriate treatment options with clinicians prior to any discussion with a participant's family.
- Recommendation 11** 79  
That the Lifetime Care and Support Authority investigate options for permitting participants to be discharged from hospital to interim accommodation, prior to long-term accommodation having been secured.
- Recommendation 12** 88  
That the Lifetime Care and Support Authority clarify its guidelines and consider the extent to which the Authority will pay for treatment and care services while a participant is on holiday or overseas in order to balance the needs of participants with the scope and capacity of the Scheme.
- Recommendation 13** 89  
That the Lifetime Care and Support Authority publish its guidelines on recreation and leisure activities and clarify its policy on funding for the transport of participants and carers to and from recreation and leisure activities.
- Recommendation 14** 92  
That the Lifetime Care and Support Authority liaise with the Department of Education and Training and review the issues raised by the Children's Hospital Westmead as set out in paragraph 6.112 of this Report to improve and clarify the process of obtaining educational support for child participants in the Scheme, with a view to accepting and implementing those recommendations as appropriate.