



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

2022 Review of the Lifetime Care and Support scheme

Report 83

February 2023



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Standing Committee on Law and Justice

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2022 Review of the Lifetime Care and Support scheme

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Chair: The Hon. Chris Rath, MLC



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Terms of reference

3. For the purposes of section 27 of the State Insurance and Care Governance Act 2015, the committee is the designated Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers' compensation and motor accidents legislation:
 - (a) the Workers' Compensation Scheme,
 - (b) the Workers' Compensation (Dust Diseases) Scheme,
 - (c) the Motor Accidents Scheme, and
 - (d) the Motor Accidents (Lifetime Care and Support) Scheme.
4. In exercising the supervisory function outlined in paragraph 3, the committee:
 - (a) does not have authority to investigate a particular compensation claim, and
 - (b) must report to the House in relation to the operation of each of the schemes at least every two years every Parliament.

The terms of reference for the inquiry were referred to the committee by the Legislative Council within the resolution establishing the Subject Standing Committees on 8 May 2019.¹

¹ Resolution establishing Subject Standing Committees, *Minutes*, NSW Legislative Council, 8 May 2019, Item no. 125, pp 92-97.

Committee details

Committee members

The Hon Chris Rath MLC	Liberal Party	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Lou Amato MLC	Liberal Party	
Ms Abigail Boyd MLC	The Greens	
The Hon Anthony D'Adam MLC	Australian Labor Party	
The Hon Wes Fang MLC	The Nationals	
The Hon Taylor Martin MLC	Liberal Party	
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Chair's foreword

In New South Wales, the Lifetime Care and Support (LTCS) scheme provides treatment, rehabilitation and personalised care services to people severely injured in motor vehicle accidents. Care and support is provided regardless of who is at fault in an accident, and for the duration of a person's life if necessary. Given its significance, it is essential that the LTCS scheme is financially sustainable and able to provide quality treatment, care and support to injured people.

In this review, the committee continued to monitor the financial position of the LTCS scheme, examining the decline in its insurance ratio and increases to the LTCS Fund levy. Developments relating to the provision of treatment and attendant care services to LTCS scheme participants were also explored. In evidence, icare reiterated its firm view expressed during the previous inquiry, that the scheme is in a sound financial position. icare also advised of their plans to achieve the desired financial targets for the scheme, initiatives regarding attendant care services, and the overall positive results of the 2021 Lifetime Care participant survey. Like the last review, the committee notes icare's position, but maintains its interest in the financial position of the scheme, and the provision of treatment and care services.

Significantly during this review, the 2017 Compulsory Third Party (CTP) insurance scheme reached its five-year milestone which marked the commencement of the CTP Care program. The CTP Care program is also managed by icare and provides support for injured persons who do not meet the severe injury test of the Lifetime Care and Support scheme, but require ongoing treatment and care. While part of the CTP scheme, the CTP Care program has a similar funding structure and service remit to the LTCS scheme. Consequently, evidence relating to the expectations, operational readiness and financial position of the CTP Care program have been discussed as part of this review.

Finally, the committee examined evidence relating to the dispute framework for the Lifetime Care and Support Authority and concerns that participants in the CTP Care program and the Lifetime Care and Support scheme may not have clear access to dispute resolution processes. The committee agreed that greater clarity is needed over the legislative power of the Independent Review Office to deal with disputes related to the Lifetime Care and Support Authority, and recommended that this issue be remedied through an amendment to the *Personal Injury Commission Act 2020*.

Regular review by the committee provides important oversight to the operation and performance of the schemes which support people injured in motor vehicle accidents in New South Wales. On behalf of the committee, I sincerely thank all stakeholders for their ongoing contributions to the committee's reviews. The committee acknowledges the ongoing work undertaken by icare and the State Insurance Regulatory Authority in relation to the CTP Care program and the Lifetime Care and Support scheme, as well as the attendant care providers who support and care for those seriously injured in motor accidents in New South Wales. I also thank my committee colleagues for their contribution throughout the review, and the secretariat for their professional support.

I commend this report to the Parliament.



Hon Chris Rath MLC
Committee Chair

Recommendation

Recommendation 1

19

That the *Personal Injury Commission Act 2020* be amended to clarify the legislative power of the Independent Review Office to deal with disputes related to the Lifetime Care and Support Authority.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 8 May 2019.

The committee received six submissions.

The committee held one public hearing at Parliament House in Sydney, combining witnesses from this inquiry with witnesses from the *2022 Review of the Compulsory Third Party insurance scheme*.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript, answers to pre-hearing questions, answers to questions on notice and answers to supplementary questions.

Reports and other documents relating to previous committee reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes are also available on the committee's website.

Chapter 1 Overview

The Standing Committee on Law and Justice is required to supervise and report on the operation of various insurance and compensation schemes in New South Wales at least once every two years, including the Lifetime Care and Support scheme and the Compulsory Third Party insurance scheme.

Since 2017 support for those injured in motor accidents has been delivered via two schemes, the Lifetime Care and Support scheme and the Compulsory Third Party (CTP) insurance scheme. In December 2022 the final part of the CTP scheme commenced: the CTP Care program. The CTP Care program is an extension of the CTP insurance scheme. In practice it fills the gap between the CTP scheme and the Lifetime Care and Support scheme, by providing support for injured persons who do not meet the severe injury test of the Lifetime Care and Support scheme, but require treatment and care for more than five years after an accident.

While separate from the Lifetime Care and Support scheme, the CTP Care program is also managed by the Lifetime Care and Support Authority within Insurance and Care NSW (icare) and has a similar funding structure and service remit. Consequently, its examination sits neatly within this review.

Oversight role of this committee

- 1.1 Section 27 of the *State Insurance and Care Governance Act 2015* requires the operations of the Lifetime Care and Support (LTCS) scheme to be supervised by a committee of the Legislative Council. This oversight role is undertaken by the Standing Committee on Law and Justice, with the committee required to report to the Legislative Council at least once every two years.²
- 1.2 The committee is also required to oversight the operations of the Compulsory Third Party (CTP) insurance scheme, which includes the CTP Care program administered by Insurance and Care NSW (icare). Due to the connection between the CTP and LTCS schemes, the committee often undertakes their two oversight roles concurrently.
- 1.3 While the committee has been monitoring and reviewing the LTCS scheme, established by the *Motor Accidents (Lifetime Care and Support) Act 2006*, since 2007, this is the committee's third review since legislative reforms were implemented by the *Motor Accident Injuries Act 2017*.
- 1.4 In February 2019 the committee published its first review of the LTCS scheme following these reforms, with one recommendation: that icare ensures it maintains high standards of care to LTCS scheme participants, given the then implementation of the National Disability Insurance Scheme. The government response noted that icare was trying to align its care to that of the National Disability Insurance Scheme, without lowering its standard.³
- 1.5 The committee's second review of the LTCS scheme was published in July 2021. That review continued to examine the standard of support provided by attendant care providers. It also examined the financial position of the scheme, with particular attention to the decline in its net assets, increases in attendant care costs and the investment losses experienced due to the

² Resolution establishing Subject Standing Committees, *Minutes*, NSW Legislative Council, 8 May 2019, Item no. 125, pp 92-97.

³ See Standing Committee on Law and Justice, report no. 70, entitled, *2018 Review of the Lifetime Care and Support scheme*, dated February 2019 and the government response.

pandemic. The committee acknowledged the view put forth by icare that in the longer term the LTCS scheme was in a strong financial position, with sufficient assets to support its ongoing obligations to participants. The committee indicated that the financial position of the scheme would remain a particular point of interest, as would the quality of standards in the delivery of attendant care services.⁴

- 1.6 In this third review, the committee has examined the operation of the LTCS scheme broadly, as well as looked at the development and readiness of the CTP Care program.

Overview of the Lifetime Care and Support scheme

- 1.7 The Lifetime Care and Support (LTCS) scheme was established by the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide lifetime care and support services for people severely injured in motor vehicle accidents in New South Wales. Support is available under the scheme regardless of who is at fault in an accident, and can include a wide range of individualised treatment, rehabilitation and personalised care services for the duration of the person's life.

- 1.8 A number of agencies are responsible for the administration and regulation of the LTCS scheme, including:

- Insurance and Care NSW (icare), which is a public financial corporation governed by an independent board of directors established to deliver a number of insurance and care schemes in New South Wales
- Lifetime Care and Support Authority (LCSA), which is the relevant service within icare that has responsibility for the LTCS scheme
- State Insurance Regulatory Authority (SIRA), which is an independent statutory body established to steward and regulate statutory insurance and care schemes in New South Wales, including the LTCS scheme
- the NSW Ombudsman, which may consider complaints and resolve disputes.

- 1.9 The *Lifetime Care and Support Guidelines*, issued by icare according to the *Motor Accidents (Lifetime Care and Support) Act 2006*, regulate the delivery of the LTCS scheme, including eligibility, assessments of needs, provision of treatment and care, and dispute resolution.⁵ To be eligible for the LTCS scheme, a person must have a severe injury, such as a spinal cord injury, brain injury, amputation, severe burns or permanent blindness.⁶

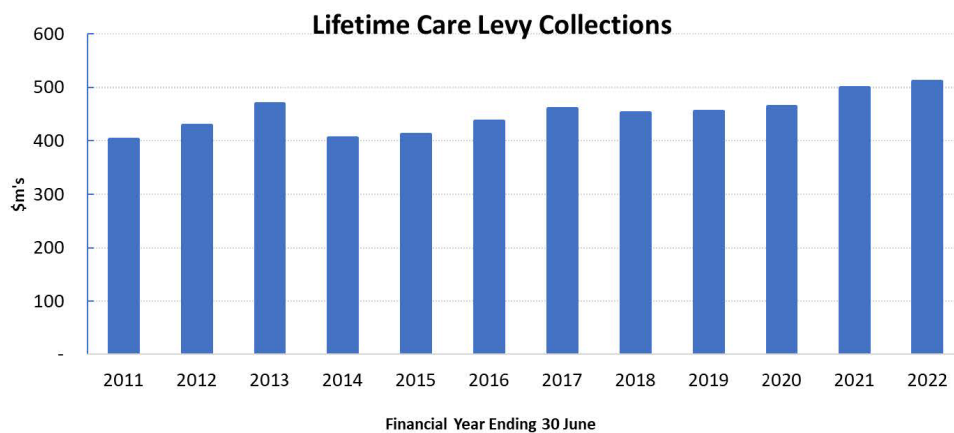
⁴ See Standing Committee on Law and Justice, report no. 78, entitled, *2020 Review of the Lifetime Care and Support scheme*, dated July 2021.

⁵ Insurance and Care NSW, *Lifetime Care and Support Guidelines*, 2018, pp 9-11 available online at: <https://www.icare.nsw.gov.au/injured-or-ill-people/motor-accident-injuries/guidelines-and-policies#gref>.

⁶ Insurance and Care NSW, *Lifetime Care and Support Guidelines*, 2018 available online at: <https://www.icare.nsw.gov.au/injured-or-ill-people/motor-accident-injuries/guidelines-and-policies#gref>.

- 1.10** The Lifetime Care and Support Scheme Fund covers the costs of the LTCS scheme. The LTCS Fund meets these costs by collecting and investing levy revenue raised as part of mandatory Compulsory Third Party (CTP) insurance premiums, also known as Green Slip insurance, which is paid by all motorists when registering their vehicle.
- 1.11** The LTCS levy, and its subsequent investment income, is designed to cover 'the total lifetime costs for participants who incur injuries in the levy collection year'.⁷ icare is responsible for determining the LTCS levy targets annually. Table 1 below shows the total annual levy collected for each financial year from 2011 to 2022.

Table 1 Historical LTCS levy collection since 2011⁸



- 1.12** SIRA is responsible for setting the per vehicle levy rates in CTP premiums, to meet the annual targets set by icare. From January 2023, the LTCS levy is on average \$100.04 per vehicle.⁹
- 1.13** icare is also responsible for investing LTCS levy revenue. The *Capital Management Policy* guides icare's investment activities for the LTCS scheme, and provides a framework for measuring the financial strength of the scheme.¹⁰ Under the *Capital Management Policy*, the following two metrics are considered when assessing the financial strength of the scheme, the:
- 'insurance ratio', which is the primary metric, reflecting the ratio of assets to the associated liabilities in the scheme. Current calculations expect long-term investment return of 6 per cent per annum, and future inflation on benefit payments of 4 per cent per annum.
 - 'accounting funding ratio', which is calculated using discounting assumptions based on risk-free Government bond yields and long-term inflation rates set with consideration to the long-term bond rates.¹¹

⁷ Submission 1, icare, p 3.

⁸ Submission 1, icare, p 3.

⁹ Submission 3, State Insurance Regulatory Authority, p 4, and answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

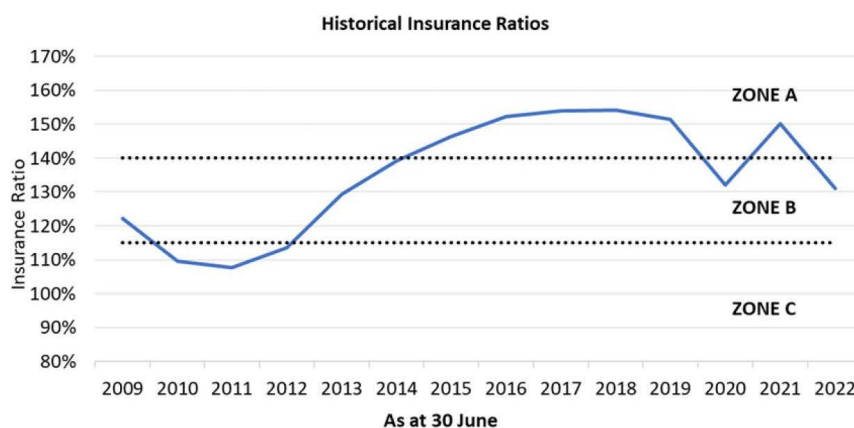
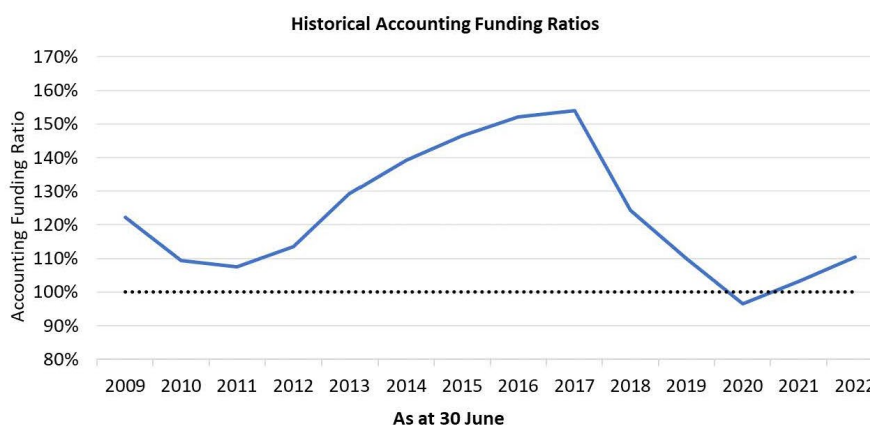
¹⁰ Submission 1, icare, p 3.

¹¹ Submission 1, icare, p 3.

- 1.14 The *Capital Management Policy* sets a target operating zone for the insurance ratio 'based on the icare Board's risk appetite'. The current insurance ratio target is over 140 per cent, which is also referred to as 'Zone A'.¹² Table 2 below, contains the insurance and account ratios achieved by the LTCS scheme since 2009.

Table 2 Historical insurance and account ratios since 2009¹³

The target operating zone is indicated by Zone A:



- 1.15 Individuals usually enter the LTCS scheme on a two-year interim basis because of the possibility of recovery and ongoing improvement in their condition. Following an interim period, individuals may remain in the LTCS scheme as lifetime participants.¹⁴ As at August 2022, there were 1,742 scheme participants. Of these, 1,370 have a brain injury, 381 have a spinal cord injury and 54 have other injuries.¹⁵ Table 3 provides a breakdown of scheme participants by the period of time since injury, and by age:

¹² Submission 1, icare, p 3.

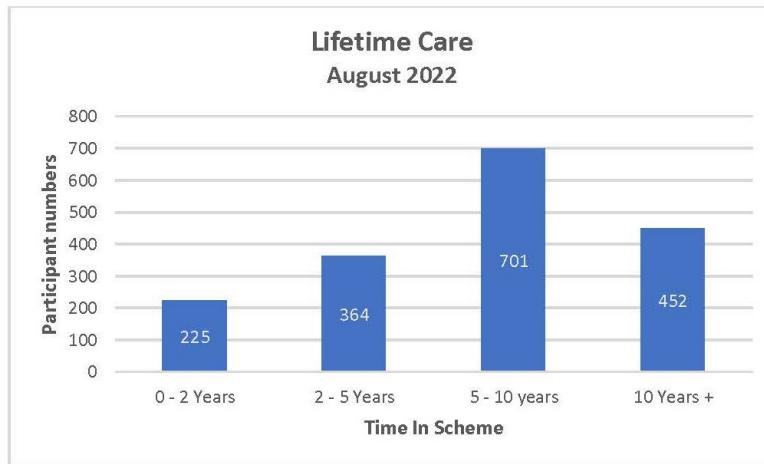
¹³ Submission 1, icare, p 3.

¹⁴ Insurance and Care NSW, *Lifetime Care and Support Guidelines*, 2018, p 8, available online at: <https://www.icare.nsw.gov.au/injured-or-ill-people/motor-accident-injuries/guidelines-and-policies#gref>.

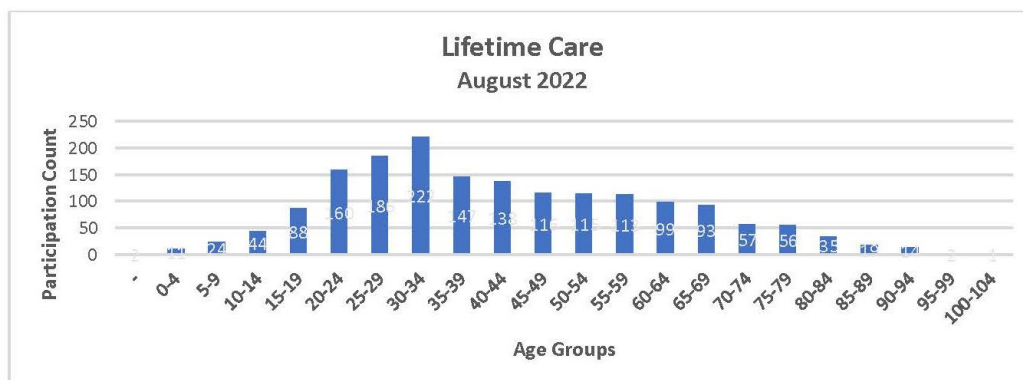
¹⁵ Submission 1, icare, p 2.

Table 3 Scheme participants, by time since injury and by age¹⁶

Time since injury:



Age of participants as at August 2022:



- 1.16** Treatment and care services are provided by icare to scheme participants via a Panel of Attendant Care providers. There are currently 32 providers who provide physical assistance, cognitive and behaviour support, and high clinical needs to scheme participants.¹⁷
- 1.17** Attendant Care providers are required to be certified against the *Australian Community Industry Standard*, and must also meet procurement and industrial relations requirements as part of their contracts with icare.¹⁸
- 1.18** At the time of this review icare was undertaking a tender process for a new Panel of Attendant Care providers, commencing February 2023. Once appointed, this panel will provide treatment and care for the subsequent five years.¹⁹

¹⁶ Submission 1, icare, p 2.

¹⁷ Answers to questions on notice, icare, p 2.

¹⁸ Answers to pre-hearing questions, icare, p 3 and answers to questions on notice, icare, p 5.

¹⁹ Submission 1, icare, p 11.

Overview of the CTP Care program

- 1.19** In December 2022 the CTP Care program commenced, filling the gap between the supports provided by insurers under the Compulsory Third Party (CTP) insurance scheme and by icare under the Lifetime Care and Support scheme. The CTP Care program provides support for people who require treatment and care for more than five years after an accident, but who do not meet the severe injury test of the Lifetime Care and Support scheme.
- 1.20** As mentioned earlier this committee is also required to review the Compulsory Third Party (CTP) insurance scheme. As detailed in that review, the CTP scheme is established by the *Motor Accident Injuries Act 2017* and makes it mandatory for all motorists to pay for insurance when registering a vehicle. This insurance protects vehicle owners against liability for injury of another person, and covers the costs of motor accidents, including the treatment and care of injured persons for five years following an accident.²⁰
- 1.21** Under the 2017 CTP scheme, injured persons who require treatment and care for more than five years are transferred into the CTP Care program. The CTP Care program is managed by the Lifetime Care and Support Authority within icare, and paid for from the Motor Accident Injuries Treatment and Care Benefits (MAITCB) Fund. The State Insurance Regulatory Authority (SIRA) provides regulatory supervision to the CTP Care program.²¹
- 1.22** Injured persons are transferred into the CTP Care program, either once five years have passed, or earlier via a CTP Care Agreement between the licensed insurer and the Lifetime Care and Support Authority/icare, who assumes their responsibilities, becoming the 'relevant insurer'.²²
- 1.23** In the event that injured persons are transferred early, the licensed insurer continues to cover the cost of treatment and care. This may occur via a lump sum payment to the MAITCB Fund, as well as on a cost-recovery basis.²³ After the first five years have lapsed, icare assumes the ongoing cost of treatment and care which is funded via its own levy on CTP premiums paid into the MAITCB Fund.²⁴
- 1.24** To ensure the sustainability of the MAITCB Fund, icare is responsible for determining annual MAITCB Fund levy targets. SIRA is then responsible for setting the applicable CTP premium levy rates, per vehicle, to meet these annual targets. From January 2023, the MAITCB Fund levy is, on average, \$22.50 per vehicle.²⁵

²⁰ Submission 3, State Insurance Regulatory Authority, pp 3-4.

²¹ Submission 3, State Insurance Regulatory Authority, pp 2-4.

²² ClaytonUtz, *Statutory review of the Motor Accident Injuries Act 2017*, 22 September 2021, p 110.

²³ ClaytonUtz, *Statutory review of the Motor Accident Injuries Act 2017*, 22 September 2021, p 112.

²⁴ ClaytonUtz, *Statutory review of the Motor Accident Injuries Act 2017*, 22 September 2021, p 110.

²⁵ Submission 3, State Insurance Regulatory Authority, p 6, and answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

- 1.25** To 30 June 2022, 35 injured persons had been transferred to the CTP Care program via early agreements. In December 2022 the first cohort of 70 injured persons in the 2017 CTP scheme were scheduled to transfer into the CTP Care program. It is expected that the CTP Care program would accept 248 people in the first quarter and 1,300 in the first year.²⁶

²⁶ Submission 3, State Insurance Regulatory Authority, p 8.

Chapter 2 Key Issues

This chapter focuses on key issues raised in this review relating to the operation of the Lifetime Care and Support scheme, as well as matters relating to the development and readiness of the CTP Care program. It also outlines concerns raised regarding the dispute resolution frameworks which apply to the Lifetime Care and Support Authority.

Lifetime Care and Support scheme

2.1 As outlined in Chapter 1, the Lifetime Care and Support scheme provides lifetime treatment, rehabilitation and care for people severely injured in a motor accident, regardless of fault. This section outlines key issues discussed during the inquiry relating to the financial position of the Lifetime Care and Support Scheme Fund and the development and provision of treatment and care services.

Financial position of the Lifetime Care and Support Scheme Fund

- 2.2** Lifetime Care and Support Scheme Fund levy accounts for approximately 20 per cent of LTCS scheme costs, with the remaining costs earned through investments managed by icare.²⁷ One of the issues explored in this review was the financial position of the scheme, including the decline in its insurance ratio and increases to the LTCS Fund levy.
- 2.3** As outlined in Chapter 1, the Capital Management Policy primarily measures the financial strength of the LTCS scheme via an 'insurance ratio'. The target insurance ratio for the LTCS scheme is over 140 per cent, also referred to as 'Zone A'.²⁸
- 2.4** In evidence, icare reported that as at 30 June 2022 the insurance ratio for the LTCS scheme had fallen to 131 per cent, putting the current financial position of the LTCS scheme in Zone B.²⁹
- 2.5** icare detailed the drivers of this decline, noting that volatile equity markets, recent rises in interest rates, and inflationary pressure on treatment and care costs, including increased wages under the *Social, Community, Homecare and Disability Services Industry Award*, had all impacted the financial position of the LTCS scheme.³⁰
- 2.6** icare also discussed with the committee the financial pressures on the LTCS scheme in comparison to those experienced by the National Disability Insurance Scheme (NDIS). Dr Nick Allsop, Group Executive Lifetime Schemes, icare, highlighted that attendant care was a key risk area as it accounted for 70 per cent of the LTCS schemes cost base.³¹

²⁷ Evidence, Mr Richard Harding, Chief Executive Officer, icare, 18 November 2022, p 28.

²⁸ Submission 1, icare, p 3.

²⁹ Submission 1, icare, p 3.

³⁰ Answers to pre-hearing questions, icare, p 1; and submission 1, icare, p 11.

³¹ Evidence, Dr Nick Allsop, Group Executive Lifetime Schemes, icare, 18 November 2022, p 41.

- 2.7** While the LTCS scheme and NDIS both increased fees by 8.7 and 9 per cent respectively in 2022, icare noted that the LTCS scheme had a 'lower starting point' than the NDIS.³² icare further commented that its funding model limited the impacts of the *Social, Community, Homecare and Disability Services Industry Award* with scheme participants not experiencing reduced care hours, as experienced by NDIS clients.³³
- 2.8** Despite the decline in the current financial position, icare emphasised that the LTCS scheme 'is in a financially sound position', with 'assets of \$8.1 billion and liabilities of \$7.3 billion'. It informed the committee that a management action plan was in place to return to the targeted Zone A insurance ratio.³⁴
- 2.9** In terms of the management action plan developed by icare, it explained there were four levers available to respond to the financial position of the scheme, including levies, scheme treatment and care costs, scheme expenses and investment returns.³⁵
- 2.10** Mr Richard Harding, Chief Executive Officer, icare, also advised the committee that the management action plan focused on the LTCS Fund levy as 'the current option ... to address ... short-term economic impacts to the scheme'.³⁶
- 2.11** icare explained the rationale for focusing on the levy to improve the financial position of the scheme, instead of other levers, noting:
- opportunities to review the way treatment and care support is contracted or how providers are paid 'tend to have relatively low impact on scheme costs'
 - scheme expenses 'are a relatively small proportion of overall scheme costs' and 'have a relatively small impact on the overall capital position'
 - the 'long-term nature' of the LTCS scheme 'allows it to take a higher return investment profile', which means short term changes are not viable.³⁷
- 2.12** The increasing cost of the LTCS Fund levy and its impact on CTP premiums was examined in detail during the inquiry.
- 2.13** SIRA informed the committee that the average LTCS levy cost per vehicle has risen over the last five years from \$80.60 in 2017, \$87.30 in 2022, and \$100.04 from January 2023,³⁸ with the percentage increase for 2023 being 19.9 per cent.³⁹

³² Submission 1, icare, p 11.

³³ Submission 1, icare, p 11.

³⁴ Submission 1, icare, p 3.

³⁵ Answers to pre-hearing questions, icare, p 2.

³⁶ Evidence, Mr Harding, 18 November 2022, p 28.

³⁷ Answers to pre-hearing questions, icare, p 2.

³⁸ Submission 3, State Insurance Regulatory Authority, p 7; and answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

³⁹ Submission 3, State Insurance Regulatory Authority, p 7.

- 2.14** SIRA observed that together, the levies associated with the LTCS and the CTP Care program make up over '25 per cent of the average CTP premium' in 2023.⁴⁰
- 2.15** The impact of an increase to the LTCS Fund levy could have been more significant for CTP premiums for 2023. In December 2022, SIRA announced that excess insurer profits returned to the CTP Scheme in 2022 under the transitional excess profit and losses (TEPL) mechanism would be used to 'help offset the levy changes' relating to both LTCS and the CTP Care program and 'maintain the affordability of Green Slips'.⁴¹
- 2.16** In evidence, icare explained that the 'costs and expenses associated with participants who enter the scheme each year are met by a combination of levies collected and investment earnings. There are no margins built into the levy'.⁴²
- 2.17** icare informed the committee that the management action plan it had developed to address the financial stability of the LTCS scheme included a sustainability margin, previously known as a deficit repair levy. In January 2023 the sustainability margin equated to approximately \$8.00 per vehicle.⁴³ icare stated that the aim of the sustainability margin was to 'add approximately \$550 million to the assets of the scheme over a 10-year period' improving 'the insurance ratio for Lifetime Care and Support Scheme from 131% at 30 June 2022 up to above 140% (i.e. Zone A) by 30 June 2032'.⁴⁴
- 2.18** Throughout the review, icare emphasised that it took a 'long-term' view rather than an aggressive approach to achieving the target insurance ratio via the increased levy. Dr Allsop remarked 'we're not looking to do this as a shock impact on motorists ... we may see returns improve, and that may give us some comfort that we will get back above that 140 per cent target faster than we anticipate'.⁴⁵
- 2.19** The committee heard that achieving the desired Zone A insurance ratio of 140 per cent remained dependant on 'the budgeted investment returns being realised and the claims experience performing in line with expectations'.⁴⁶ icare advised that 'regular monitoring of the capital position and the levy will occur and adjustments to the levy will be made if indicators suggest they are required'.⁴⁷
- 2.20** Dr Allsop also informed the committee that icare is committing to track its progress, in terms of the financial position of the LTCS scheme, with SIRA every six months.⁴⁸

⁴⁰ Submission 3, State Insurance Regulatory Authority, p 7, and answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

⁴¹ Media Release, State Insurance Regulatory Authority, 'SIRA claws back \$178.7 million in excess insurer profit - SIRA', 21 December 2022, [https://www.sira.nsw.gov.au/news/sira-claws-back-\\$178.7-million-in-excess-insurer-profit](https://www.sira.nsw.gov.au/news/sira-claws-back-$178.7-million-in-excess-insurer-profit);

⁴² Answers to pre-hearing questions, icare, p 2.

⁴³ Answers to pre-hearing questions, icare, p 2.

⁴⁴ Answers to pre-hearing questions, icare, p 2.

⁴⁵ Evidence, Dr Allsop, 18 November 2022, p 30.

⁴⁶ Answers to pre-hearing questions, icare, p 2.

⁴⁷ Answers to pre-hearing questions, icare, p 2.

⁴⁸ Evidence, Dr Allsop, 18 November 2022, p 30.

Treatment and care

- 2.21** The LTCS scheme provides medical treatment and rehabilitation to persons with brain, spinal cord and other severe injuries, along with personal carer support, known as attendant care services.
- 2.22** A range of matters relating to the development and provision of treatment and attendant care services were discussed during the review. These included:
- investments to develop available services, such as funding for five psychiatry fellowships, piloting a brain injury telepsychiatry service, a Positive Behaviour Support Project, Vocational Intervention Program, pain clinics and building remediation works⁴⁹
 - the 2021 Lifetime Care participant survey results, which found that overall 90 per cent of respondents were satisfied with the Lifetime Care and Support scheme, and reported varying satisfaction levels in the areas of services and equipment, contact and communication, 'My Plan' and goals, health literacy and cultural needs⁵⁰
 - changes and challenges in the care sector, including the impact of the National Disability Insurance Scheme (NDIS) on service supply and pricing, support worker shortages, and the *Social, Community, Homecare and Disability Services Industry Award*⁵¹
 - certifications and standards for attendance care providers, with icare confirming that compliance with industrial relations obligations and the Attendant Care Industry Standard were contractual requirements for care providers, who were also subject to compliance review and monitoring activities since the last review.⁵²
- 2.23** The Australian Lawyers Alliance raised two specific issues relating to the provision of treatment and care in the LTCS scheme. These included concerns that:
- family members of scheme participants were providing a 'reserve workforce' to the LTCS scheme, as service providers had 'very little reserve capacity' to cope with unexpected staff shortages
 - scheme participants have been encouraged to 'pursue NDIS entitlements' rather than LTCS funding.⁵³
- 2.24** To address these concerns, the Australian Lawyers Alliance was of the view that family members should be compensated for providing care services in emergency situations, and that the 'LTCS scheme should be the substantive and theoretically the sole provider' of care services to scheme participants.⁵⁴

⁴⁹ Submission 1, icare, pp 9-11 and answers to pre-hearing questions, icare, p 5.

⁵⁰ Submission 1, icare, p 6.

⁵¹ Submission 1, icare, p 1.

⁵² Answers to pre-hearing questions, icare, p 3; and answers to questions on notice, icare, pp 2-5.

⁵³ Submission 4, Australian Lawyers Alliance, pp 4-6.

⁵⁴ Submission 4, Australian Lawyers Alliance, pp 5-6.

- 2.25** In discussing the relationship between the LTCS scheme and the NDIS with the committee, Dr Allsop commented that the 140 participants who are eligible for support under both the LTCS scheme and the NDIS, 'get most of their support from the Lifetime Care and Support Scheme but the NDIS does help them with recreational travel and other aspects that aren't covered under the Lifetime Care scheme'.⁵⁵
- 2.26** Dr Allsop also discussed the future outlook of services with the committee, commenting that:
- [the LTCS scheme] will continue to grow for at least another decade before it even begins to hit a steady state ... At the moment what we deliver is a very bespoke service ... We're very cautious about the assumptions we make ... because the scheme is deeply committed to providing the services that people who are participants of the scheme need ... What we need to do is make sure that we're set up to do that in a scalable and sustainable way going forward as the scheme continues to grow.⁵⁶
- 2.27** The committee heard that icare was giving consideration to assistive technology that will work for scheme participants, as well as attendant care career pathways and workforce supports that may encourage people into care occupations and allow them to remain in the workforce longer.⁵⁷

CTP Care program

- 2.28** As outlined in Chapter 1, injured motorists requiring treatment and care for more than five years after an accident are transferred to the CTP Care program. CTP Care is managed by the Lifetime Care and Support Authority within icare and paid for by the Motor Accident Injuries Treatment and Care Benefits Fund, known as the MAITCB Fund.
- 2.29** With the passing of the CTP scheme's five-year mark on 1 December 2022, claimants started transferring from the CTP scheme and the management of their insurer into the CTP Care program and icare's management.
- 2.30** Initial program expectations and the readiness of the Lifetime Care and Support Authority for the transition were discussed during the inquiry, as were increases to the MAITCB Fund levy.

Program expectations

- 2.31** The expected number of program participants and the nature of their treatment and care needs was discussed with the committee by icare and SIRA. SIRA advised the committee that 70 people with active treatment and care needs were scheduled to transfer to CTP Care in December 2022, and it was anticipated that 248 persons would transfer 'in the first quarter and 1,300 in the first year'.⁵⁸

⁵⁵ Evidence, Dr Allsop, 18 November 2022, p 39.

⁵⁶ Evidence, Dr Allsop, 18 November 2022, p 39.

⁵⁷ See evidence, Dr Allsop, 18 November 2022, p 39; and evidence, Mr Harding, 18 November 2022, p 40.

⁵⁸ Submission 3, State Insurance Regulatory Authority, p 8.

- 2.32** Based on the available data from SIRA, icare 'estimated that between 1,300 and 1,700 people injured per annum, will have a future treatment or care need to be covered by CTP Care'.⁵⁹ icare also noted that the needs of these clients were expected to 'vary significantly ranging from very intense complex needs, like those of a Lifetime Care and Support participant, to intermittent or single service needs'.⁶⁰
- 2.33** icare further advised that 36 people had entered the CTP Care program early, and 'learnings from the early stages ... have been used to inform the future service delivery model for the different cohorts of injured people to be transferred to CTP Care at five years from accident'.⁶¹
- 2.34** The committee heard that interim participants in the LTCS scheme, who did not meet the requirements to stay as lifetime participants, could transfer directly into CTP Care. Dr Nick Allsop, Group Executive Lifetime Schemes, icare, commented that the early access CTP Care Agreements between insurers and icare would provide 'continuity of support' for people injured in motor accidents. Dr Allsop noted that the early agreement arrangements ensure people 'remain under the guidance, supervision and support for icare', removing the need for multiple transitions between schemes and providing 'a more seamless experience' for injured persons.⁶²

Program readiness and regulation

- 2.35** SIRA and icare detailed the preparatory work undertaken to develop the CTP Care program and ensure the Lifetime Care and Support Authority was ready to assume responsibility for injured persons transferring into CTP Care.
- 2.36** Both SIRA and icare reported to the committee on the nature and scope of work undertaken since 2017 to achieve program readiness, including:
- development of CTP Care Guidelines in the *Motor Accident Guidelines*, setting out transition and program requirements relating to management of payments, treatment and care, complaints handling, customer experience and data provision
 - collaborative program development between icare, SIRA and insurers
 - establishment of the CTP Care Steering Committee and CTP Care Working Group, with monthly meetings to ensure governance and operational preparedness
 - development of a CTP Care Master Deed Agreement between insurers and the Lifetime Care and Support Authority
 - review of insurer transition notices to injured persons by SIRA to ensure appropriate and consistent messaging
 - CTP Care recruitment, staff trainings and IT systems development

⁵⁹ Submission 1, icare, p 12.

⁶⁰ Submission 1, icare, p 12.

⁶¹ Submission 1, icare, p 12.

⁶² Evidence, Dr Allsop, 18 November 2022, p 29.

- comprehensive internal risk and assurance review of operational readiness by icare
- external readiness review against the Department of Customer Service Gateway review framework for pre-commissioning.⁶³

2.37 icare noted certain final delivery dates relating to staff onboarding, training and systems completion, but confirmed program preparedness to the committee, stating 'CTP Care is ready and able to commence providing treatment and care with people, process and systems in place'.⁶⁴

2.38 icare also highlighted that the CTP Care delivery program continues through to March 2023, and includes feedback mechanisms, opportunity for program refinement and improvement, and additional system enhancements to 'ensure successful embedment throughout the first months of commencement'.⁶⁵

2.39 SIRA similarly noted that the *Motor Accident Guidelines: CTP Care* were published with effect from 25 November 2022, with the Lifetime Care and Support Authority and insurers 'ready to ensure compliance' from their commencement.⁶⁶

2.40 In relation to ongoing supervision and monitoring, SIRA explained that its statutory powers regarding insurer compliance in the CTP scheme do extend to CTP Care and the provision of treatment and care benefits under the program.⁶⁷ SIRA advised it would 'implement a consistent supervision framework' which will include 'regulatory engagement, inclusion in relevant Insurer Claims and Conduct Assurance Program activities, insurer metric and complaints monitoring'.⁶⁸ CTP Care will also be included in public performance reporting.⁶⁹

2.41 SIRA noted that it does not have the powers to regulate the levy targets set by icare which fund CTP Care.⁷⁰ In this regard SIRA has responsibility for setting the per vehicle levy rates to meet the levy targets, and is able to request information from icare in support of any changes to their requirements.⁷¹

Motor Accident Injuries Treatment and Care Benefits Fund levy increases

2.42 As outlined in Chapter 1, the Motor Accident Injuries Treatment and Care Benefits (MAITCB) Fund levy target is determined by icare annually and collected by SIRA as part of CTP premiums. Increases to the amount of the MAITCB Fund levy were detailed and discussed by SIRA and icare during the inquiry.

⁶³ Submission 3, State Insurance Regulatory Authority, pp 8-9; submission 1, icare, pp 11-12; and answers to pre-hearing questions, icare, p 6.

⁶⁴ Answers to pre-hearing questions, icare, p 6.

⁶⁵ Answers to pre-hearing questions, icare, p 6.

⁶⁶ Answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

⁶⁷ Submission 3, State Insurance Regulatory Authority, p 9.

⁶⁸ Submission 3, State Insurance Regulatory Authority, p 9.

⁶⁹ Submission 3, State Insurance Regulatory Authority, p 9.

⁷⁰ Answers to pre-hearing questions, State Insurance Regulatory Authority, p 3.

⁷¹ Submission 3, State Insurance Regulatory Authority, p 6.

- 2.43** SIRA advised the committee that increases in the MAITCB Fund levy targets set by icare have resulted in increased CTP premiums, with the average levy cost per vehicle having risen from \$10.50 in 2017 to \$22.50 from January 2023.⁷² SIRA noted that the percentage increase in 2022 was a '44.9 per cent increase on the previous 12 months', which it described as 'significant'.⁷³
- 2.44** As discussed at paragraph 2.15, excess insurer profits returned to the CTP scheme in 2022 under the transitional excess profit and losses (TEPL) mechanism will be used to 'offset the levy changes' and 'maintain the affordability of Green Slips'.⁷⁴
- 2.45** When discussing the MAITCB Fund levy increase with icare, icare noted:
- ... this fund was established with no seed funding, in an environment of great uncertainty around actual costs at start up. The initial levies were expected to fund the people who would ultimately enter the scheme after five years, while covering the cost of establishing of the scheme itself. ... The initial levy was set by SIRA and based on data from the TAC in Victoria due to the lack of NSW CTP data on injuries with durations in excess of five years.⁷⁵
- 2.46** icare went on to explain that as the claims experience in the 2017 CTP scheme has developed, insights have been gained to better understand the potential number of CTP Care participants and their needs, which 'has led to changes to the levy and the financial position of the scheme over time'.⁷⁶
- 2.47** icare acknowledged that the 'largest increases occur in the 2022 and 2023 years as the actual gap from the lack of seed funding was realised, as well as developing experience around care costs and the broader economic environment'.⁷⁷
- 2.48** An explanation regarding the calculation of the MAITCB Fund levy for 2023 was provided to the committee by SIRA, who explained that from January 2023 the MAITCB Fund levy target set by icare also includes a 'sustainability margin component (formerly named a deficit repair levy) ... of \$34 million or an average of \$5.44 per vehicle ... to ensure the financial stability of the MAITCB Fund'.⁷⁸ SIRA further informed the committee that this sustainability margin is 'estimated to bring the insurance ratio up to above 100 per cent by June 2027'.⁷⁹

⁷² Submission 3, State Insurance Regulatory Authority, p 7, and answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

⁷³ Submission 3, State Insurance Regulatory Authority, p 7.

⁷⁴ Media Release, State Insurance Regulatory Authority, 'SIRA claws back \$178.7 million in excess insurer profit - SIRA', 21 December 2022, available online at: [https://www.sira.nsw.gov.au/news/sira-claws-back-\\$178.7-million-in-excess-insurer-profit](https://www.sira.nsw.gov.au/news/sira-claws-back-$178.7-million-in-excess-insurer-profit).

⁷⁵ Answers to pre-hearing questions, icare, p 4.

⁷⁶ Answers to pre-hearing questions, icare, p 4.

⁷⁷ Answers to pre-hearing questions, icare, p 4.

⁷⁸ Answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

⁷⁹ Answers to pre-hearing questions, State Insurance Regulatory Authority, p 2.

2.49 Despite the expectations around the sustainability margin, the committee heard there was continued cost uncertainty. In his evidence, Mr Richard Harding, Chief Executive Officer, icare, explained that 'levy collection is the sole revenue source for the program' and that there remains 'risks borne of the scheme's infancy'.⁸⁰ icare stated:

A high degree of uncertainty remains around the number of CTP Care clients that will enter the scheme, the average cost of claims, as well as the operating costs of the scheme, as there are no CTP Care post five year claims as yet.⁸¹

Dispute resolution and the Lifetime Care and Support Authority

2.50 During this review the committee heard concerns that the Independent Review Office lacks legislative power to assist in disputes related to the CTP Care program, and that a separate complaints process applies to the Lifetime Care and Support scheme.

2.51 The Independent Review Office explained that the provisions and definitions contained in the *Motor Accidents Injuries Act 2017*, *Motor Accidents (Lifetime Care and Support) Act 2006* and *Personal Injury Commission Act 2020* relating to 'licenced insurers' and the Lifetime Care and Support Authority as the 'relevant insurer' has created uncertainty over their power to deal with complaints about the CTP Care program, and that their powers do not extend to the Lifetime Care and Support scheme.⁸²

2.52 SIRA similarly commented on their own regulatory limits in relation to the Lifetime Care and Support Authority, noting that they do not have statutory power to supervise the management of claims in the Lifetime Care and Support scheme.⁸³

2.53 The Independent Review Office contended that it was Parliament's intention to have the Office deal with complaints, despite the uncertainty in the drafting of the legislation. It stated:

The intent of Schedule 5 of the PIC Act [*Personal Injury Commission Act 2020*] was to confer a general CTP complaints handling power upon the IRO, and there is no rationale for excluding complaints from participants in CTP Care and the LCSS from that remit. Without an effective external complaint handling option, participants in these schemes are disadvantaged.

In view of current uncertainty, the IRO recommends there be amendments to the appropriate legislation to clarify that the IRO has the power to deal with complaints made by participants in the CTP Care program and the LCSS.⁸⁴

⁸⁰ Evidence, Mr Harding, 18 November 2022, p 28.

⁸¹ Answers to pre-hearing questions, icare, p 4.

⁸² Submission 5, Independent Review Office, pp 3-4.

⁸³ Submission 3, State Insurance Regulatory Authority, p 9.

⁸⁴ Submission 5, Independent Review Office, pp 4-5.

- 2.54** To address the potential dispute resolution 'gap for injured persons under CTP Care', the committee was informed that in June 2022, SIRA delegated their 'power to receive and investigate complains made about CTP Care' to the Independent Review Office.⁸⁵ This delegated authority was further confirmed by SIRA in an update to the *Motor Accident Guidelines*.⁸⁶ The Independent Review Office, however, expressed the view that this delegation is an 'interim measure', and that it does not 'address the question of complaints concerning' the Lifetime Care and Support scheme.⁸⁷
- 2.55** The committee also received evidence which sought to illustrate the experiences of participants with the dispute resolution framework. For example, icare detailed the number and nature of complaints received in the 2021-2022 financial year for the Lifetime Care and Support scheme. icare advised that:
- 196 level 1 complaints were resolved on average within 1 business day at the first point of contact
 - 10 level 2 complaints were resolved on average within 17 business days following internal escalation
 - 1 level 3 complaint was resolved within 20 business days following escalation to the NSW Ombudsman.⁸⁸

Committee comment

- 2.56** The committee has continued to monitor the financial position of the Lifetime Care and Support scheme and the provision of treatment and care to scheme participants. We acknowledge the ongoing work undertaken by icare in relation to the scheme, and the support, treatment and care provided to those seriously injured in motor accidents in New South Wales by attendant care providers.
- 2.57** The committee notes the evidence received regarding the Lifetime Care and Support Fund, including icare's firm views on the scheme's sound financial position and the introduction of a sustainability margin into the levy to achieve the desired financial targets for the scheme. The committee also notes evidence relating to attendant care services, including the new panel of attendant care providers. The committee maintains its interest in these two aspects of the operation of the scheme, and will likely revisit both matters in the next review.
- 2.58** The committee also notes that the 2017 CTP scheme reached its five-year milestone during the course of this review, which marked the commencement of the CTP Care program administered by icare. The committee acknowledges and commends the significant scope of work required by icare, SIRA and insurers to develop the program and ensure its operational readiness. Like the matters above, we expect the next review of this committee to pay particular attention to the program's operation and financial position.

⁸⁵ Submission 5, Independent Review Office, p 3. See also answers to pre-hearing questions, State Insurance Regulatory Authority, p 3.

⁸⁶ Answers to pre-hearing questions, State Insurance Regulatory Authority, p 3.

⁸⁷ Submission 5, Independent Review Office, pp 3-4.

⁸⁸ Submission 1, icare, p 8. See also submission 5, Independent Review Office, p 4.

- 2.59** Finally, the committee notes the evidence received in relation to the powers of the Independent Review Office and whether it is permitted to assist in disputes related to the Lifetime Care and Support Authority. While we acknowledge the overall positive results of the 2021 Lifetime Care and Support Authority participant survey and the apparent responsiveness of icare to complaints, the committee would like to ensure participants in both the CTP Care program and the Lifetime Care and Support Authority scheme continue to have clear access to dispute resolution processes.
- 2.60** The committee therefore recommends that this issue be remedied through legislative amendment.

Recommendation 1

That the *Personal Injury Commission Act 2020* be amended to clarify the legislative power of the Independent Review Office to deal with disputes related to the Lifetime Care and Support Authority.

Appendix 1 Submissions

No.	Author
1	Insurance & Care NSW (icare)
2	Australasian College of Road Safety
3	State Insurance Regulatory Authority (SIRA)
4	Australian Lawyers Alliance (ALA) NSW
5	Independent Review Office (IRO)
6	New South Wales Bar Association

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 18 November 2022 Macquarie Room Parliament House, Sydney	Mr Michael Timms	Deputy Chair, Australasian College of Road Safety, NSW Chapter
	Mr Brian Wood	Secretary, Motorcycle Council of NSW
	Mr Martin Rogers	Chief Executive Officer, NSW Taxi Council
	Mr Nick Abraham	Deputy Chief Executive Officer, NSW Taxi Council
	Ms Sheetal Balakrishnan <i>(via videoconference)</i>	Senior Solicitor, Public Interest Advocacy Centre
	Ms Michelle Cohen <i>(via videoconference)</i>	Principal Solicitor, Public Interest Advocacy Centre
	Mr Andrew Stone SC	Australian Lawyers Alliance NSW
	Mr John Turnbull SC	New South Wales Bar Association
	Ms Jnana Gumbert	New South Wales Bar Association
	Mr Leigh Davidson	Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales
	Mr Chris Butel	General Manager CTP, QBE Insurance, and Member Representative, Insurance Council of Australia
	Ms Zoe Wang	Manager Health and Recovery CTP Claims, IAG, and Member Representative, Insurance Council of Australia
	Ms Estelle Pearson	Actuary, Principal Finity Consulting, representing the Insurance Council of Australia
	Mr Richard Harding	Chief Executive Officer and Managing Director, icare

Date	Name	Position and Organisation
	Dr Nick Allsop	Group Executive Lifetime Schemes, icare
	Mr Simon Cohen	Independent Review Officer, Independent Review Office
	Mr Adam Dent	Chief Executive, State Insurance Regulatory Authority
	Dr Petrina Casey	Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority

Appendix 3 Minutes

Minutes no. 48

Monday 6 June 2022

Standing Committee on Law and Justice

Room 1136, Parliament House, Sydney at 10.01 am

1. Members present

Mr Rath, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato

Mr Buttigieg (participating)

Mr D'Adam

Mr Fang

Mr Farlow (substituting for Mr Martin until 12.08 pm)

Mr Martin (from 12.08 pm)

Mr Roberts

2. Apologies

Ms Boyd

3. Previous minutes

Resolved, on the motion of Mr Amato: That draft minutes no. 47 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 16 March 2022 – Email from Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service to the secretariat providing additional information requested by the committee on SafeWork NSW inspections of manufactured stone worksites
- 16 March 2022 – Email from the office of the Hon Scott Farlow MLC to the secretariat advising that Mr Farlow is an apology for the hearing on Friday 18 March 2022
- 28 March 2022 – Letter from Mr John Merritt, Chair, WorkSafe Victoria to the Chair providing information on WorkSafe Victoria's engineered stone licensing scheme.

Resolved, on the motion of Mr Roberts, that the committee authorise the publication of the following items of correspondence:

- Correspondence from Mr John Merritt, Chair, WorkSafe Victoria, regarding Victoria's engineered stone licensing scheme, dated 28 March 2022
- Correspondence from Mr Tim Noonan, SIRA, including the Driscoll Evidence Review, dated 23 February 2022
- Correspondence from the Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service providing information on SafeWork NSW inspections of manufactured stone worksites, dated 16 March 2022
- Correspondence from Ms Clemency Morony, icare, including reports prepared by PriceWaterhouse Coopers and Deloitte regarding remediation of underpayments to workers under the dust diseases scheme, dated 14 March 2022.

5. 2021 Review of the Dust Diseases Scheme

5.1 Submissions

The committee noted that the following supplementary submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 15a.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Kate Cole OAM, President, Australian Institute of Occupational Hygienists, received 7 March 2022
- answers to questions on notice from Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, received 14 March 2022
- answers to questions on notice from Mr Chris Donovan, National WHS Director, the Australian Workers' Union, received 15 March 2022
- answers to questions on notice from Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, received 16 March 2022
- answers to questions on notice from Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Associate Professor at UNSW, representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, received 25 March 2022
- answers to questions on notice from Mr Michael Shearer, President, Mine Ventilation Society of Australia, received 27 March 2022
- answers to questions on notice from Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine and representative, Royal Australasian College of Physicians, received 28 March 2022
- answers to questions on notice from Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, received 30 March 2022
- answers to questions on notice and supplementary questions from SafeWork NSW, received 27 April 2022
- answers to questions on notice and supplementary questions from icare, received 29 April 2022.

5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *2021 Review of the Dust Diseases Scheme*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Donnelly: That paragraph 1.11 be amended by inserting after the word 'scarring' the following new sentence: 'Each review has also head that silicosis is a preventable lung disease.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.12 be amended by inserting 'far' before 'more'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.19 be amended by inserting after '2020' the following new sentence: 'Of the 14 recommendations, the government supported six (recommendations 1, 2, 9, 11, 12 and 13), supported in principle seven (recommendations 3, 4, 5, 6, 7, 10 and 14) and rejected one (recommendation 8).'

Resolved, on the motion of Mr Donnelly: That paragraph 1.21 be amended by inserting 'mining' after 'cement'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.23 be amended by omitting 'questions' after 'have been' and inserting instead 'significant questions raised'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after 1.29:

'The matter of underreporting of the disease caused by exposure to respiratory crystalline silica was raised in a number of submissions and witnesses to this inquiry. This matter is discussed in more detail in Chapters 2 and 3 of the report.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.38 be amended by inserting 'very clearly' after 'underlined'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.45 be amended by inserting 'Hospital' after 'the Alfred'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.49 be amended by omitting the words 'to some extent focused' after 'The last three reviews of this committee have' and inserting instead 'provided a particular focus'.

Mr Donnelly moved: That the following new sentence be added after the end of paragraph 1.50:

'We believe that on the balance of the evidence once again brought before the inquiry, it is clear that the government does not understand the seriousness of this occupational disease.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 1.52 be omitted: 'We call upon the government to consider not only the recommendations we outline in this report, but also whether it can and should do more to ensure workers are not being exposed to harmful levels of silica dust. In our view, there is clearly more work to be done in this area, and we hope it happens soon, so that other lives are not taken prematurely and the social, economic and human costs associated with silicosis are avoided' and the following new paragraph be inserted instead:

'This is now the fourth report by the Standing Committee on Law and Justice sounding the alarm regarding the occupational disease caused by respirable crystalline silica. We call on the government, without further delay, to examine closely the compelling evidence brought once again before a parliamentary inquiry about the seriousness of the matter. We urge the government to support all the recommendations made by the committee and move expeditiously to implement them.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Chapter 2

Resolved, on the motion of Mr Donnelly: That the introductory paragraph be amended by inserting 'serious' before 'concerns' after 'continuing' (line 3) and 'given' (line 7).

Resolved, on the motion of Mr Donnelly: That paragraph 2.1 be amended by omitting 'the previous review' and inserting instead 'previous reviews'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.2 be amended by inserting ', except for Victoria,' after 'has been'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.4 be amended by omitting 'The committee's previous review' and inserting instead 'The committee's 2019 review.'

Resolved, on the motion of Mr Donnelly: That paragraph 2.23 be amended by omitting 'push for' and inserting instead 'advocate for' after 'encouraged this committee'.

Resolved, on the motion of Mr Donnelly: That paragraphs 2.29, 2.33 and 2.44 be amended by omitting 'previous review' and inserting instead '2019 review'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.47 be amended by inserting 'significant' before 'improvements required in terms of education and training'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.55 be amended by omitting 'report' and inserting instead 'reports' before 'the committee noted that'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.68 be amended by inserting 'both at factories and at installation' after 'manufactured stone workplaces'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.109 be amended by omitting 'review' and inserting instead 'reviews' after 'In our previous'.

Mr Donnelly moved: That Recommendation 1 be amended by:

- omitting 'work towards' and inserting instead pursue' before 'a health based workplace exposure standard'
- inserting 'a time-weighted average over 8 hours' before 'of 0.02mg/m³'
- inserting 'strongly' before 'advocating for this change at a national level'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 2.117 be amended by omitting 'suggest there is room to step up' and inserting instead 'support the stepping up of' before 'efforts in other industries to ensure that air quality is monitored regularly.'

Mr Donnelly moved: That Recommendation 2 be amended by:

- inserting 'by no later than 31 December 2022' after 'implement' and before 'measures to enhance air quality monitoring'
- inserting mandatory after 'enhance' and before 'air quality monitoring'
- inserting 'including details of all legislative and regulative breaches' after 'air quality monitoring and reporting' and before 'in relation to respirable crystalline silica'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That recommendation 3 be amended by inserting at the end: 'Such mandated product labelling and safety data sheets must be provided across the entire manufactured stone supply chain and be available in multiple languages'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Roberts: That the following new paragraph be inserted after paragraph 2.122:

'Taking into account evidence received, the committee has concerns regarding the limited amount of compliance inspections undertaken 'on-site' where manufactured stone is being installed. For this reason, we recommend that SafeWork NSW undertake a more rigorous regime of random on-site compliance inspections at sites where manufactured stone is being installed.'

Mr Roberts moved: That the following new recommendation inserted after paragraph 2.122:

Recommendation X

That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed'.

Mr D'Adam moved: That the motion of Mr Roberts be amended by inserting at the end: 'That the compliance strategy be implemented from 1 January 2023 for a period of 12 months with a review of its effectiveness to be completed and published by no later than 30 June 2024'.

Amendment of Mr D'Adam put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Original question of Mr Roberts, put and passed.

Resolved, on the motion of Mr Donnelly: That recommendation 4 be amended by omitting the words 'silica exposure presents a risk' and inserting instead 'licensing requirements for silica exposure operate'.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 4 (paragraph 2.122):

'The committee notes that in site visitation data provided by SafeWork NSW there were very low numbers of Health and Safety Representatives in manufactured stone workplaces. The committee is concerned that SafeWork NSW has not placed sufficient emphasis on encouraging and facilitating workplace representation as part of their compliance strategy and is relying too heavily on educational strategies directed towards employers. To remedy this SafeWork NSW should implement an organisational goal of increasing the numbers of Health and Safety Representatives elected in the manufactured stone industry.'

Recommendation X

That SafeWork NSW implement an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.'

Mr Farlow moved: That the motion of Mr Donnelly be amended by omitting 'implement' in the recommendation and inserting instead 'investigate the feasibility of implementing' before 'an organisational goal of increasing the number of Health and Safety Representatives.'

Amendment of Mr Farlow put.

The committee divided.

Ayes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Noes: Mr Donnelly, Mr D'Adam.

Amendment of Mr Farlow resolved in the affirmative.

Original question of Mr Donnelly, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That paragraph 2.122 be amended by omitting 'potentially still' and inserting instead 'still some' before 'workers engaged in installation for small businesses that SafeWork's monitoring and compliance regime does not reach.'

Mr D'Adam moved: That the existing paragraph 2.124 and recommendation 5 be omitted and the following new paragraph and recommendation be inserted instead:

'Noting the principles put forward by the National Dust Disease Taskforce to underpin the development of licensing schemes at a jurisdictional level, we call on the New South Wales Government to legislate to establish a licensing scheme for manufactured stone, that must be renewed every 12 months, by no later than 31 December 2022 and that such a licensing scheme include a publicly available database of licence holders.

Recommendation X

That the NSW Government by no later than 31 December 2022 legislate to establish a licensing scheme for businesses working with manufactured stone, that must be renewed every 12 months, and that such a licensing scheme include a publicly available database of licence holders.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Amato: That Recommendation 5 be amended by inserting 'including a publicly available database of licence holders' after 'in New South Wales'.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 5:

'When legislating for a licensing scheme that the NSW Government include provisions for Silica Control Plans that require the following elements:

- a requirement for the registration with the regulator of all workers operating within the scope of the control plan including any subcontractors
- a requirement for mandatory minimum training to be provided to the workers by a provider accredited by the regulator and that completion of the training be a precondition for the registration of a worker under the licensing scheme
- a requirement for the control plan to be independently audited prior to the issuing or renewal of any business license
- a requirement that license holders with more than five workers must elect Health and Safety Representatives and the details of the elected representatives be registered with the regulator.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr D'Adam: That Recommendation 5, as previously amended, be further amended by inserting at the end: 'When legislating for a licensing scheme, that the NSW Government

consider the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.'

Mr Donnelly moved: That recommendation 6 be omitted and the following recommendation inserted instead:

'That the NSW Government will support the ban on manufactured stone if by July 2024:

- there is no measurable and acceptable improvement in regulatory compliance rates for the manufactured stone sector
- the evidence indicates that preventative measures are not effectively protecting those working with manufactured stone from silicosis and silica-related diseases.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 6:

'The committee notes concerns from a number of stakeholders about the adequacy of SafeWork NSW's compliance and enforcement work. The inquiry received evidence that supported the need for an independent review to be undertaken into SafeWork NSW reflecting a recommendation made by the McDougall Review. The committee supports this and recommends that such a review be initiated by the NSW Government.

Recommendation X

That consistent with the recommendation of the McDougall Review, the NSW Government initiate an independent review into SafeWork NSW to include consideration of its exercise of both regulatory and educational functions.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Martin joined the meeting and Mr Farlow left the meeting.

Chapter 3

Resolved, on the motion of Mr Donnelly: That paragraph 3.23 be amended by omitting 'previous' and inserting instead '2019'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.36 be amended by omitting 'previous' and inserting instead '2019'.

Mr Donnelly moved: That Recommendation 7 be amended by:

- omitting 'review the approach taken to' and inserting instead 'will ensure that regarding'
- omitting 'silica, to ensure that' and inserting instead 'silica:'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Recommendation 7 be amended by inserting ', former, current and future' after 'all workers' in the first bullet point.

Mr Donnelly moved: That Recommendation 8 be amended by omitting 'review and improve' and inserting instead 'will ensure that'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Recommendation 8 be amended by omitting 'greater clarity' in the second bullet point and inserting instead 'certainty'.

Chapter 4

Resolved, on the motion of Mr Donnelly: That paragraphs 4.5, 4.6 and 4.7 be amended by omitting 'last' and inserting instead '2019'.

Mr Donnelly moved: That the following new paragraph be inserted after paragraph 4.66:

'The Auditor-General's Financial Audit, 20 April 2022, entitled *Treasury 2021* notes at page 18:

The Workers Compensation (Dust Diseases) Authority increased its outstanding claims liability by \$93.9 million at 30 June 2021 to allow for additional payments to injured workers. The increase comprised:

- \$39.3 million to correct historical underpayments to affected workers
- \$54.6 million for higher future claim costs, relating to existing exposures

The underpayments relate to totally disabled retired workers being incorrectly paid in the first 26 weeks of their entitlements. Under existing legislation, the fortnightly entitlements in this period should be based on their current weekly wage rate, instead of a lower statutory indexed rate. It is estimated that 1,345 workers were incorrectly paid, resulting in underpayments of \$39.3 million. icare advise that underpaid workers will be remediated through compensation payments.

According to an icare Board paper dated 4 June 2021, the Authority sought legal advice on the underpayments issue in 2014, and sought to explain that changes in leadership meant that the advice was not being picked up again until 2020. As a result, the Authority continued to pay at the lower statutory rate until 2020–21.

The Authority has also been overpaying some participants. It is estimated up to 754 workers with an injury before 30 June 1987 have been receiving the same rate of compensation as workers with an injury after 30 June 1987, when their compensation should be 20 per cent lower. In addition, the Authority found it incorrectly paid a dependent allowance for up to 334 individual workers with an injury after 30 June 1987. The icare Board has approved the continuation of current payment practices, while NSW Treasury seeks legislative amendments to preserve entitlements.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Martin: That the following new paragraph be inserted after paragraph 4.66:

'It is noted that the Auditor General, in the Financial Audit reported entitled *Treasury 2021*, released after the conclusion of public hearings for this inquiry, commented on various matters relating to the remediation program'.

[FOOTNOTE: Audit Office of New South Wales, *Treasury 2021*, Financial Audit, 20 April 2022.]

Resolved, on the motion of Mr Donnelly: That Recommendation 9 be amended by:

- inserting 'adequacy of the' before 'legal, financial, physical and mental support provided to workers'
- inserting 'with an intention of expanding the support and care provided to workers' after 'case management models'.

Resolved, on the motion of Mr Donnelly, that Recommendation 10 be amended by omitting 'as a matter of priority' and inserting instead 'within this term of Parliament' before 'amend the definition of a 'dust disease'.

Mr Donnelly moved: That the following new recommendation be inserted after paragraph 4.74:

'Recommendation X

That the NSW Government provide an appropriate level of additional annual funding to SafeWork NSW to strengthen its regulatory enforcement and monitoring of health and safety standards within the manufactured stone industry.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee heard evidence from the Asbestos Diseases Foundation of Australia pertaining to the current configuration of the Dust Diseases Board which no longer caters directly to the specific needs of victims of Dust Diseases. Under the pre-2015 configuration the dust diseases board had a more unique and empathetic perspective on the plight of those victims and allowed them to tailor compensation appropriate to those circumstances on a case-by-case basis. Under the current configuration Board members exclusively deal with the allocation and administration of research grant funding, as opposed to compensation which is governed by standardised formulaic metrics rather than a more hands on human approach. The committee also heard that the vast majority of research grant funding is allocated outside NSW.

Recommendation X

That the government review the current operation and outcomes of victim compensation payments in respect of the way compensation payments are handled and administered compared with the pre-2015 regime which was formulated by the former, section 5. Workers' Compensation (Dust Diseases) Board, whereby Board members were nominated by Unions and Industry and had exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under this Act. This model should be reconsidered as a means for improving the allocation of compensation payments.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 10:

'That the NSW Government examine and report on the reasons why the vast majority of research grant funding allocated by the Board has been directed outside of New South Wales.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee notes the evidence provided to the inquiry by icare regarding the remediation program. icare reported that progress had been made with respect to addressing the matters of both underpayments and overpayments with the expectation that outstanding issues will be resolved by June 2022.

Recommendation X

That the responsible Minister provide a statement to the House by no later than 30 June 2022 reporting on the progress made by icare with respect to the remediation program established to address both underpayment and overpayments in workers entitlements, including entitlements under the Dust Diseases Scheme.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The secretariat table the report at 11.00 am, 10 June 2022.

6. Next oversight reviews

The committee discussed the timeline for its next reviews of the Workers Compensation scheme and CTP insurance and Lifetime Care and Support schemes. Discussion ensued about whether the Workers Compensation Scheme should have focus on the rise in psychological claims.

Resolved, on the motion of Mr Roberts: That the committee agree over email as to whether the next review of the workers compensation scheme should have a specific focus, and that the following timeline be adopted:

- submissions to open on Friday 17 June and close 24 July 2022
- two hearing dates to be held in September 2022
- report to be tabled by end November 2022.

Resolved, on the motion of Mr Roberts: That the combined Review of the CTP insurance scheme and Lifetime Care and Support scheme adopt the following timeline:

- submissions to open on 15 August and close on 25 September 2022
- two hearing dates to be held in November 2022
- report to be tabled by end February 2023.

7. Adjournment

The committee adjourned at 1:07 pm until Thursday 16 June, 9.30 am (public hearing for the medical cannabis bill inquiry).

Peta Leemen

Committee Clerk

Minutes no. 53

Friday 18 November 2022

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 9.05 am

1. Members present

Mr Rath, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato (via videoconference)

Mr D'Adam (via videoconference)

Mr Fang (from 9.13 am until 1.35 pm)

Mr Martin

Mr Roberts

2. Apologies

Ms Boyd

3. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 44, 45, 52 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 September 2022 – Email from Office of the Secretary, Department of Customer Service to secretariat, advising State Insurance Regulatory Authority will submit a response to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 10 November 2022 – Letter from Judge Phillips, President of the Personal Injury Commission to the Chair, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme
- 11 November 2022 – Email from State Insurance Regulatory Authority (SIRA) to secretariat providing responses to pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 14 November 2022 – Email from Insurance & Care NSW (icare) to secretariat providing responses to pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 17 November 2022 – Letter from Australian Lawyers Alliance (ALA) to the Chair, providing a response to issues raised in correspondence to the 2022 Review of the Compulsory Third Party insurance scheme.

Sent:

- 25 August 2022 – Email from Chair, the Hon Chris Rath MLC, to key stakeholders, issuing submission invitations to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 24 October 2022 – Email from Chair, the Hon Chris Rath MLC, to submission authors, calling for supplementary submissions to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes on the extension of the Independent Legal Assistance and Review Service (ILARS) to claimants under the Motor Accident Injuries Act 2017
- 31 October 2022 - Email from secretariat to Insurance & Care NSW (icare) issuing pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 31 October 2022 - Email from secretariat to State Insurance Regulatory Authority (SIRA) issuing pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes.

5. 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

5.1 Supplementary submissions

The committee noted, as previously agreed to via email, submission authors were invited to make supplementary submissions to the inquiry on the extension of the Independent Legal Assistance and Review Service (ILARS) to claimants under the Motor Accident Injuries Act 2017.

5.2 Public submissions and supplementary submissions

The committee noted the following submissions, including supplementary submissions, to the 2022 review of the Compulsory Third Party insurance scheme were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1 to 5, and 7 to 11a.

The committee noted following submissions to the 2022 review of the Lifetime Care and Support scheme were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1 to 6.

5.3 Confidential submissions

Resolved, on the motion of Mr Fang: That the committee keep the following submission confidential: submission no. 6.

5.4 Attachments to submissions

Resolved, on the motion of Mr Martin: That the committee authorise the publication of attachments to submission nos 8 and 11.

5.5 Pre-hearing questions

The committee noted, as previously agreed to via email, pre-hearing questions were issued to Insurance & Care NSW (icare) and State Insurance Regulatory Authority (SIRA).

The committee noted the following answers to pre-hearing questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions from SIRA, received 11 November 2022
- answers to pre-hearing questions from iCare, received 14 November 2022.

5.6 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Michael Timms, Australasian College of Road Safety
- Mr Brian Wood, Secretary, Motorcycle Council of NSW

- Mr Martin Rogers, CEO, NSW Taxi Council
- Mr Nick Abraham, Deputy CEO, NSW Taxi Council
- Ms Sheetal Balakrishnan, Senior Solicitor, Public Interest Advocacy Centre (via videoconference)
- Ms Michelle Cohen, Principal Solicitor, Public Interest Advocacy Centre (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Stone SC, Australian Lawyers Alliance NSW
- Mr John Turnbull SC, New South Wales Bar Association
- Ms Jnana Gumbert, New South Wales Bar Association
- Mr Leigh Davidson, Law Society of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Chris Butel, Chair, Motor Accident Insurance Scheme Committee, Insurance Council of Australia
- Zoe Wang, Chair, Claims Managers Association Committee, Insurance Council of Australia
- Estelle Pearson, Actuarial Advisor, Compulsory Third Party Committee, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Harding, CEO & Managing Director, icare
- Dr Nick Allsop, Group Executive Lifetime Schemes, icare.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Simon Cohen, Independent Review Officer, Independent Review Office.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority
- Dr Petrina Casey, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority.

Mr Dent tabled the following document:

- Letter from Judge Phillips, President of the Personal Injury Commission to Mr Joshua Dale, NSW President, Australian Lawyers Alliance, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The hearing concluded at 4.10 pm.

5.7 Tendered document

Resolved, on the motion of Mr Donnelly: That the committee accept the following document tabled during the public hearing, and publish only if the document differs to that previously received by the committee:

- Letter from Judge Phillips, President of the Personal Injury Commission to Mr Joshua Dale, NSW President, Australian Lawyers Alliance, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme, tendered by Mr Dent.

5.8 Correspondence

Resolved, on the motion of Mr Roberts: That:

- the committee accept and publish the correspondence, including attachments, from:
 - Judge Phillips, President of the Personal Injury Commission to the Chair, received 10 November 2022
 - Australian Lawyers Alliance (ALA), received 17 November 2022
- the Chair write to Judge Phillips, President of the Personal Injury Commission, to:
 - outline the proper process that should be followed if the Personal Injury Commission wishes to make a contribution to an inquiry in the future, including making a late submission or requesting to be a witness if there are concerns they wish to respond to
 - note the committee's concern at the approach the Judge has taken to respond directly to a witness regarding matters the witness has raised specifically with the committee in the context of an inquiry, noting that such an approach could be perceived as an attempt to intimidate a witness or influence a witness in making future or further contributions to a parliamentary inquiry
 - invite the Personal Injury Commission to make a late submission to the current review, addressing the issues raised by Australian Lawyers Alliance, should the Personal Injury Commission wish to further respond
 - invite Judge Phillips to give evidence at a hearing on a date to be confirmed, potentially via videoconference, and subject to the availability of members.

6. Adjournment

The committee adjourned at 4.13 pm until Monday 28 November 2022, Room 1136, Parliament House (report deliberative).

Allison Stowe

Committee Clerk

Draft minutes no. 55

Tuesday 21 February 2023

Standing Committee on Law and Justice

Via WebEx, Sydney, 10.05 am

1. Members present

Mr Rath, *Chair*

Mr D'Adam *Acting Deputy Chair*

Ms Boyd (substituting for Ms Higginson for the 2022 review of the workers compensation scheme)

Mr Buttigieg (substituting for Mr Donnelly)

Mr Fang

Mr Farlow (substituting for Mr Amato for the 2022 reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes and substituting for Mr Martin for the 2022 review of the workers compensation scheme)

Mrs MacDonald (substituting for Mr Martin for the 2022 reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes and substituting for Mr Amato for the 2022 review of the workers compensation scheme)

Mr Roberts

2. Election of Acting Deputy Chair

The committee noted the apology of Mr Donnelly, Deputy Chair. The Chair called for nominations for a member to act as Deputy Chair for the purpose of the meeting.

Mr D'Adam moved: That Mr D'Adam be elected Acting Deputy Chair of the committee for the purpose of the meeting.

There being no further nominations, the Chair declared Mr D'Adam elected Acting Deputy Chair for the purpose of the meeting.

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 54 be amended to note when Mr Donnelly and Mr D'Adam left the meeting.

Resolved, on the motion of Mr D'Adam: That draft minutes nos 53 and 54, as amended, be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 23 September 2022 – Letter from Mr Joshua Dale, NSW President of the Australian Lawyers Alliance to State Insurance Regulatory Authority (SIRA), copied to the committee, providing a submission for the statutory review of the Personal Injury Commission Act 2020, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*
- 28 November 2022 – Letter from Judge Phillips, President of the Personal Injury Commission to the Chair, providing a response to correspondence from the committee dated 21 November 2022, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*
- 6 December 2022 – Email from Mr Peter Ellis, private individual, to secretariat, providing copy of a letter to Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, *relevant to the 2022 review of the workers compensation scheme*
- 6 December 2022 – Email from Mr David Waugh, private individual, to the Standing Committee on Law and Justice, concerning the workers compensation system, *relevant to the 2022 review of the workers compensation scheme*
- 10 December 2022 – Email from Herschel Baker, International Liaison Director, Queensland Director, Drug Free Australia, to the Committee Chair, reviewing the need for changes to vaping regulations including a crackdown on imports, introducing quality and safety standards and restricting labels and flavours to make e-cigarettes less appealing to children
- 11 December 2022 – Email from Mary Xian, private individual, to the Standing Committee on Law and Justice, entitled 'Dominello ICAC referral, Westpac rip-off scheme, and NSW Premier Mike Baird fell downstairs' and attachments
- 13 December 2022 – Email from Phillip Armstrong, private individual, to the secretariat, regarding a potential law reform matter for consideration by the Legislative Council dealing with Criminal Law amendments to 2001 NSW CARA Part 7 - SS 84 - 85 "Application for Quashing of Conviction following Governor FREE PARDON"
- 20 February 2022 – Email from Mary Xian, private individual, to the Standing Committee on Law and Justice, entitled 'Please help to stop the violence against women'

Sent

- 21 November 2022 – Letter from the Chair to Judge Phillips, President of the Personal Injury Commission, in response to correspondence from Judge Phillips dated 10 November 2022, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*.

Resolved, on the motion of Mrs MacDonald: That the committee keep the correspondence from Mr Peter Ellis, private individual, providing a copy of a letter to Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, dated 6 December 2022, confidential as it contains potential adverse mention.

5. 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

5.1 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution establishing the inquiry:

- answers to questions on notice from Mr Andrew Stone SC, Australian Lawyers Alliance NSW, received 2 December 2022
- answers to questions on notice from Ms Sheetal Balakrishnan, Public Interest Advocacy Centre, received 6 December 2022
- answers to questions on notice from Ms Gabrielle Bashir SC, New South Wales Bar Association, received 7 December 2022
- answers to questions on notice from Dr Nick Allsop, icare, received 14 December 2022
- answers to questions on notice from Ms Joanne van der Plaats, Law Society of New South Wales, received 14 December 2022
- answers to questions on notice from Mr Simon Cohen, Independent Review Office, received 15 December 2022
- answers to questions on notice and supplementary questions from the State Insurance Regulatory Authority (SIRA), received 16 December 2022
- answers to questions on notice from the Insurance Council of Australia, received 19 December 2022.

5.2 Transcript correction

Resolved, on the motion of Mr D'Adam: That the committee, as previously agreed via email, authorise:

- the publication of correspondence from Mr Brian Wood, Motorcycle Council of NSW, received 29 November 2022, providing transcript corrections to the evidence given at the hearing for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes held on 18 November 2022, and
- the insertion of a footnote on the transcript noting receipt of correspondence clarifying the evidence given and providing a hyperlink to the published correspondence.

5.3 Consideration of Chair's draft report: 2022 Review of the Compulsory Third Party insurance scheme

The Chair submitted his draft report entitled *2022 Review of the Compulsory Third Party insurance scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Fang: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 9.00 am, on Thursday 23 February 2023;
- The secretariat table the report on Friday, 24 February 2023;
- The Chair is to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

5.4 Consideration of Chair's draft report: 2022 Review of the Lifetime Care and Support scheme

The Chair submitted his draft report entitled *2022 Review of the Lifetime Care and Support scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Roberts: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 9.00 am, on Thursday 23 February 2023;
- The secretariat table the report on Friday, 24 February 2023;
- The Chair is to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. 2022 Review of the Workers Compensation scheme

The Chair submitted his draft report entitled *2022 Review of the workers compensation scheme*, which, having been previously circulated, was taken as being read.

Debate ensued.

Resolved, on the motion of Mr D'Adam: That the:

- report deliberative for the 2022 review of the workers compensation scheme be deferred
- legacy report for the 57th Parliament include a recommendation that the House consider referring the evidence from the 2022 review of the workers compensation scheme to the Standing Committee on Law and Justice in the 58th Parliament, to form part of the process for the next review of the workers compensation scheme.

7. Legacy report

The committee noted that the secretariat is currently preparing a legacy report for the 57th Parliament and will liaise with members shortly regarding a date for its consideration.

8. Adjournment

The committee adjourned at 10.37 am, *sine die*.

Allison Stowe and Talina Drabsch
Committee Clerks

