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MOTOR ACCIDENTS (LIFETIME CARE AND SUPPORT) AMENDMENT BILL 2014

Second Reading

The Hon. NIALL BLAIR (Parliamentary Secretary) [8.02 p.m.], on behalf of the Hon. Matthew Mason-Cox: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Motor Accidents (Lifetime Care and Support) Act 2006 establishes the NSW Lifetime Care and Support Authority, which administers the Lifetime Care and Support Scheme. The scheme pays for all the reasonable and necessary treatment and care expenses of people who have been seriously injured in motor accidents in New South Wales. People who are eligible for the scheme will have a spinal cord injury; moderate to severe brain injury; amputations; severe burns or will be blind as a result of the accident. The scheme covers all those so injured, regardless of fault.

The primary purpose of the Motor Accidents (Lifetime Care and Support) Amendment Bill 2014 is to enable the NSW Lifetime Care and Support Authority to enter into arrangements to exercise some or all of the functions of a "relevant authority" for the purpose of delivering treatment and care services to participants in the relevant authority's "care and support scheme" on its behalf. Both "care and support scheme" and "relevant authority" are defined in detail in new section 43A of the bill.

The immediate need for the bill arises because New South Wales wishes to assist the Australian Capital Territory by making arrangements to administer the Australian Capital Territory's newly established lifetime care and support scheme. However, new section 43A in the bill has been drafted broadly to allow the Government to potentially enter into arrangements with other relevant authorities operating care and support schemes that provide for the treatment and care of catastrophically injured people, in the future.

Where the Government does decide to enter into an arrangement with another care and support scheme, the bill allows for the relevant scheme to be specifically prescribed by regulation.

The Lifetime Care and Support Scheme is a leading scheme in Australia and is serving as a model for the development of the National Injury Insurance Scheme [NIIS]. To implement the NIIS for motor accidents, minimum benchmarks have been developed for State and Territory compensation schemes, modelled on the eligibility criteria in the New South Wales scheme. These benchmarks have been agreed by the seven jurisdictions including New South Wales and the Australian Capital Territory.

In order to meet its commitment to the minimum benchmarks the Australian Capital Territory has enacted the Lifetime Care and Support (Catastrophic Injuries) Act 2014. That Act establishes an Australian Capital Territory lifetime care and support scheme for people catastrophically injured in motor accidents in the Australian Capital Territory, regardless of fault. It provides for a lifetime care and support scheme in substantially the same terms as the New South Wales scheme.

The Australian Capital Territory has requested that the NSW Lifetime Care and Support Authority assist it by administering the Australian Capital Territory lifetime care and support scheme and the New South Wales Government has agreed to this in principle, subject to suitable arrangements being entered into. This bill, when passed, will be of immediate utility in assisting the Australian Capital Territory scheme to operate.

Once the bill is enacted Cabinet will be asked to endorse an intergovernmental agreement with the Australian Capital Territory. The terms of the intergovernmental agreement will be directed towards:

- Ensuring consistency between the NSW Lifetime Care and Support Scheme and the comparable Australian Capital Territory scheme is maintained,
- minimising differences in the administrative arrangements that support these schemes,

- facilitating the provision of treatment and care to participants in the Australian Capital Territory scheme,
- ensuring that outcomes for participants in either scheme are broadly the same,
- enabling the Government to prescribe the Australian Capital Territory lifetime care and support scheme so that the New South Wales authority can enter into a care and support arrangement with it, in accordance with new section 43A of the bill.

In anticipation of the Parliament supporting the enactment of this bill, preliminary negotiations on the terms of both the IGA and the agreement between the New South Wales and Australian Capital Territory authorities have taken place.

It is not anticipated that administering the Australian Capital Territory scheme will impose a significant burden on service provision to New South Wales participants. The authority presently administers the provision of treatment and care services to over 550 lifetime participants and 375 interim participants in the New South Wales scheme. In this context the expected numbers of participants in the Australian Capital Territory scheme will be between three and six people, with a range of zero to 12 people becoming eligible for participation in any given year.

The bill provides that each care and support arrangement the New South Wales authority administers is to have a separate account established for it in the New South Wales fund. Those accounts will need to be kept in sufficient funds to enable New South Wales to pay for services provided to participants in the scheme the subject of the care and support arrangement.

The bill ensures that the New South Wales fund is protected from any liability to pay for the treatment and care expenses of participants in schemes administered by the New South Wales authority under a care and support arrangement by clearly stating that "A liability of the Authority under a care and support arrangement is not a liability of the Fund except to the extent that the liability can be satisfied out of money standing to the credit of the separate account established for the arrangement within the Fund."

Officials from Treasury and the Audit Office were consulted on the aspects of the bill dealing with the administration of funds held in the New South Wales fund on behalf of another scheme.

The New South Wales authority is well equipped to assist the Australian Capital Territory and rather than being a burden to New South Wales, the opportunity to administer the Australian Capital Territory scheme will promote consistency and excellence in service provision to those who sadly are catastrophically injured on our roads regardless of whether the injury occurred in New South Wales or on the roads of our near neighbours in the Australian Capital Territory.

The Government has also taken the opportunity in this bill to clarify that the authority may satisfy its liability to pay for expenses incurred in relation to an injured person's treatment and care by making a reasonable contribution to another type of expenditure which will meet the same treatment and care needs. This amendment will give the authority flexibility in meeting a participant's treatment and care needs by making an alternative payment that achieves the same outcome, provided it is cost effective to do so.

In response to submissions made by the Bar Association and the Law Society of NSW about the scope of the amendment, the authority also proposes to make a statutory guideline to clarify the scope of the new power to ensure: Firstly, that the authority will consider making a contribution to alternative expenditure under new section 11AA where the treatment or care outcome for the participant will more probably than not be at least equally beneficial to the outcome for the participant that would result from the payment of the expenses to meet the initial assessed treatment and care need; and, secondly, that the authority only ever uses the power with the agreement of the participant and any other person making or contributing to the alternative expenditure.

Examples of how this provision might be useful include:

- Where a participant would have to purchase a vehicle suitable to modify—or, more usually, get a loan to make that purchase—so that the authority can pay for appropriate modifications, the authority may instead make a reasonable contribution to the cost of purchasing a vehicle that is already suitably modified as a cost-effective alternative treatment and care need.
- This provision could also enable the authority to make a reasonable contribution to the cost of purchasing a home that incorporates necessary modifications for a participant instead of paying a prohibitive amount for those modifications to be made to the participant's existing home.

This amendment will ensure that the authority is able to spend available funds in a manner that is consistent with the authority's focus on meeting the reasonable needs of each individual participant in the most cost-effective way possible.

I commend the bill to the House.