

## **Motor Accidents (Lifetime Care and Support) Bill 2006**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

The *Motor Accidents Compensation Amendment Bill 2006* is cognate with this Bill.

### Overview of Bill

The object of this Bill is to establish a Scheme to provide lifetime care and support for persons who suffer catastrophic injuries in motor accidents that are covered by the *Motor Accidents Compensation Act 1999*. The Scheme will extend to injured persons who are “at fault” for the accident and to motor accidents for which no person is at fault.

The principal features of the Scheme are as follows:

- (a) the Lifetime Care and Support Authority (***the Authority***) established by the Bill will pay the reasonable treatment and care expenses of participants in the Scheme (including medical treatment, rehabilitation, attendant care services, and home and transport modification),
- (b) a person will be eligible to participate in the Scheme if the person has suffered a motor accident injury that satisfies the eligibility criteria set out in guidelines issued by the Authority,
- (c) participation in the Scheme will be either as a lifetime participant or as an interim participant (with interim participation lasting 2 years or until acceptance as a lifetime participant),
- (d) an application for participation in the Scheme can be made by or on behalf of the injured person or by an insurer of a motor accident claim in respect of the injury,
- (e) a person will not be eligible to participate in the Scheme if the person has been awarded common law damages for their treatment and care needs, and participation in the Scheme will disentitle a person to recover damages for their treatment and care needs,
- (f) the Bill provides dispute resolution mechanisms to deal with disputes as to eligibility, disputes as to whether an accident is a motor accident covered by the Scheme and disputes about the Authority’s assessment of the treatment and care needs of a participant,
- (g) funding for the Scheme will be provided by way of a special levy to be paid by persons to whom third-party policies are issued, with the levy to be collected on behalf of the Authority by licensed insurers at the time of issue of third-party policies.

### Outline of provisions

#### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** deals with the application of the proposed Act and, in particular, limits the application of the proposed Act to motor accidents occurring in the State after the commencement of the proposed Act that are covered by the *Motor Accidents Compensation Act 1999*.

**Clause 5** provides the interpretation of the proposed Act to be on the basis of definitions in the *Motor Accidents Compensation Act 1999*.

#### **Part 2 Care and support for Scheme participants**

**Clause 6** requires the Authority to pay the reasonable expenses incurred by or on behalf of a participant in the Scheme in providing for such of the treatment and care

needs of the participant as are reasonable and necessary in the circumstances. The clause lists the treatment and care needs covered by this obligation.

**Clause 7** provides that a person is eligible to participate in the Scheme if the person's injury satisfies the criteria set out in the LTCS Guidelines issued by the Authority, unless the person has already been awarded damages for their treatment and care needs. Participation in the Scheme may be as a lifetime participant or an interim participant.

**Clause 8** provides for how and by whom an application for a person to become a participant in the Scheme can be made.

**Clause 9** provides that a person who is eligible for acceptance into the Scheme must be accepted if an application for their acceptance into the Scheme is duly made, and also provides that an interim participant must be accepted as a lifetime participant if the person becomes eligible for lifetime participation. An interim participant remains a participant for 2 years unless accepted as a lifetime participant during that time.

**Clause 10** authorises the LTCS Guidelines to provide for approval by the Authority of treatment and care providers (other than medical practitioners) and for requiring treatment and care services for which the Authority is liable to be provided only by approved providers.

**Clause 11** provides that the proposed Act does not affect the operation of the *Motor Accidents Compensation Act 1999* except as specifically provided by the proposed Act.

### **Part 3 Dispute resolution**

#### **Division 1 Disputes about eligibility**

**Clause 12** contains definitions for the purposes of the Division.

**Clause 13** provides for the Authority to appoint assessors for the purposes of the Division.

**Clause 14** provides for a dispute as to whether a motor accident injury satisfies the criteria specified in the LTCS Guidelines to be referred to an Assessment Panel of 3 assessors for determination.

**Clause 15** provides for the review of the determination of an Assessment Panel by a Review Panel.

**Clause 16** provides for the determination of a dispute by an Assessment Panel or Review Panel to be final and binding for the purposes of the proposed Act.

**Clause 17** requires the Authority to pay the costs of determinations and reviews of determinations under the Division.

**Clause 18** provides that no legal costs are payable by the Authority for legal services provided to an injured person or an insurer in connection with determinations or reviews under the Division.

**Clause 19** provides for the LTCS Guidelines to deal with the procedures for dispute resolution under the Division and for the Authority to provide training and information to assessors.

#### **Division 2 Disputes about motor accident injury**

**Clause 20** provides for a dispute as to whether an injury is a motor accident injury to be referred for determination by a panel of 3 claims assessors under Part 4.4 of the *Motor Accidents Compensation Act 1999*. The panel's determination is final and binding for the purposes of the proposed Act.

**Clause 21** makes provision for the legal costs payable in respect of legal services provided in connection with dispute resolution under the Division (including provision for the panel determining a dispute to determine the reasonable legal costs of the injured person in respect of the determination and requiring the Authority to pay those legal costs).

### **Part 4 Treatment and care needs assessment**

**Clause 22** contains definitions for the purposes of the Part.

**Clause 23** provides for the Authority to make an assessment of the treatment and

care needs of a participant in the Scheme.

**Clause 24** provides for a dispute about an assessment of treatment and care needs to be referred to an assessor for determination.

**Clause 25** provides for the review by a Review Panel of 3 assessors of the determination of an assessor on a dispute about treatment and care needs.

**Clause 26** provides for the Authority's assessment of treatment and care needs to be binding for the purposes of the proposed Act and requires the Authority to revise its assessment to give effect to any decision of an assessor or Review Panel on a dispute about an assessment.

**Clause 27** requires a participant in the Scheme to comply with any reasonable request in connection with the assessment of or dispute about treatment and care needs.

**Clause 28** authorises the LTCS Guidelines to make provision for or with respect to the assessment of treatment and care needs.

**Clause 29** provides that no legal costs are payable by the Authority for legal services provided to a participant in the Scheme in connection with an assessment of or dispute about treatment and care needs.

#### **Part 5 Payments to hospitals, doctors and others**

**Clause 30** provides for the Authority to enter into bulk billing arrangements for payment of the expenses of hospital treatment, ambulance services and other treatment expenses.

**Clause 31** provides for the rates at which the Authority is required to pay the expenses of hospital treatment, ambulance services, medical and dental treatment and rehabilitation services that are not covered by bulk billing arrangements.

**Clause 32** provides for the regulations to set the fees payable for certain treatment and care expenses not provided and charged for at a hospital.

#### **Part 6 Administration**

##### **Division 1 Constitution of Authority**

**Clause 33** constitutes the Lifetime Care and Support Authority of New South Wales. The Authority is a corporation and a statutory body representing the Crown.

**Clause 34** provides for the Authority to have a 5 member Board of Directors.

**Clause 35** provides for the office of Chief Executive Officer of the Authority.

**Clause 36** provides for the employment of staff of the Authority.

**Clause 37** provides for the financial year of the Authority.

##### **Division 2 Management of Authority**

**Clause 38** provides for the role of the Minister and for the Minister to give directions in the public interest to the Board or the Chief Executive Officer with respect to the exercise of their functions.

**Clause 39** provides for the Board of Directors to have the function of determining the administrative policies of the Authority.

**Clause 40** provides that the Chief Executive Officer is to manage and control the affairs of the Authority.

**Clause 41** provides for the delegation of the Authority's functions.

**Clause 42** provides for the keeping and affixing of the seal of the Authority.

##### **Division 3 Functions of Authority**

**Clause 43** lists the functions of the Authority.

##### **Division 4 Lifetime Care and Support Advisory Council**

**Clause 44** constitutes the Lifetime Care and Support Advisory Council of New South Wales (*the Advisory Council*).

**Clause 45** provides for the membership and procedure of the Advisory Council.

**Clause 46** provides for the functions of the Advisory Council.

#### **Part 7 Funding of the Scheme**

**Clause 47** contains definitions for the purposes of the Part.

**Clause 48** establishes the Lifetime Care and Support Authority Fund (*the Fund*),

being the account from which payments that the Authority is liable to make under the proposed Act are to be made.

**Clause 49** provides for the Authority to determine the amount required to be contributed to the Fund to fund the liabilities of the Fund. The determination is to be made on the basis of an independent actuary's report.

**Clause 50** provides for the amount required to be contributed to the Fund to be funded by way of a Fund levy (determined by the Authority) to be paid by persons to whom third-party motor accident insurance policies are issued under the *Motor Accidents Compensation Act 1999*.

**Clause 51** deals with the payment and collection of the Fund levy.

**Clause 52** requires licensed insurers under the *Motor Accidents Compensation Act 1999* (who collect the Fund levy on behalf of the Authority) to keep certain records relating to the collection of those levies.

**Clause 53** provides for the audit of the records kept by licensed insurers in relation to the collection of Fund levies.

**Clause 54** provides for the recovery by the Authority of the present value of its treatment and care liabilities in respect of a participant in the Scheme in a case where the vehicle is unregistered or registered in another jurisdiction.

**Clause 55** provides for the MAA Premiums Determination Guidelines to deal with any unearned premiums surplus of motor accident insurers that results from or in connection with the operation of the proposed Act so that any surplus will be taken into account for the purpose of subsidising the premiums for policies issued within 12 months after the surplus accrues.

#### **Part 8 Miscellaneous**

**Clause 56** provides that the proposed Act applies despite any contract to the contrary.

**Clause 57** provides for the proposed Act to bind the Crown.

**Clause 58** deals with the making of the LTCS Guidelines.

**Clause 59** provides for the service of documents on the Authority or Advisory Council.

**Clause 60** provides protections against personal liability for persons involved in the administration of the proposed Act.

**Clause 61** provides protection against liability for assessors for acts and omissions in good faith.

**Clause 62** is a general regulation-making power.

**Clause 63** deals with proceedings for offences.

**Clause 64** gives effect to Schedule 3 (Consequential amendments of *Motor Accidents Compensation Act 1999*).

**Clause 65** provides for a review of the proposed Act in 5 years.

#### **Schedule 1 Provisions relating to Board of Directors of Authority**

**Schedule 1** contains provisions relating to the Board of Directors of the Authority, including provisions for deputy directors, terms of office, remuneration of directors, disclosure of pecuniary interests and procedure at meetings of the Board.

#### **Schedule 2 Provisions relating to Advisory Council**

**Schedule 2** contains provisions relating to the Advisory Council, including provisions for deputy members, terms of office, allowances for members, disclosure of pecuniary interests and procedure at meetings of the Advisory Council.

#### **Schedule 3 Consequential amendments of Motor Accidents Compensation Act 1999**

**Schedule 3** makes consequential amendments to the *Motor Accidents Compensation Act 1999*.