

Standing Committee on Law and Justice

**Review of the exercise of the
functions of the Lifetime
Care and Support Authority
and the Lifetime Care and
Support Advisory Council**

Third Report

Ordered to be printed 11 November 2010

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.

Review of the exercise of the functions of the Lifetime Care and Support Authority, and the Lifetime Care and Support Advisory Council : third report / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2010. – xviii, 139 p. ; 30 cm. (Report ; no. 45)

Chair: Christine Robertson, MLC

“November 2010”

ISBN 9781921286629

1. Lifetime Care and Support Authority of NSW.
2. Lifetime Care and Support Scheme (N.S.W.)
3. Lifetime Care and Support Advisory Council (N.S.W.)
4. Traffic accident victims—Services for—New South Wales.
 - I. Title
 - II. Robertson, Christine.
 - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 45

363.125 (DDC22)

How to contact the Committee

Members of the Standing Committee on Law and Justice can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Director

Standing Committee on Law and Justice

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet: www.parliament.nsw.gov.au/lawandjustice

Email: Lawandjustice@parliament.nsw.gov.au

Telephone (02) 9230 2976

Facsimile (02) 9230 2981

Terms of reference

1. That, in accordance with section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006*, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the Lifetime Care and Support Authority of NSW and the Lifetime Care and Support Advisory Council of NSW under the Act.
2. That the terms of reference of the Committee in relation to these functions be:
 - (a) to monitor and review the exercise by the Authority and Council of their functions,
 - (b) to report to the House, with such comments as it thinks fit, on any matter appertaining to the Authority or Council or connected with the exercise of their functions to which, in the opinion of the Committee, the attention of the House should be directed, and
 - (c) to examine each annual or other report of the Authority and Council and report to the House on any matter appearing in, or arising out of, any such report.
3. That the Committee report to the House in relation to the exercise of its functions under this resolution at least once each year.
4. That nothing in this resolution authorises the Committee to investigate a particular participant, or application for participation, in the Lifetime Care and Support Scheme provided for by the *Motor Accidents (Lifetime Care and Support) Act 2006*.¹

¹ *LC Minutes (30/05/2007)* 81, Item 3.

Committee membership

The Hon Christine Robertson MLC	Australian Labor Party	<i>(Chair)</i>
The Hon David Clarke MLC	Liberal Party	<i>(Deputy Chair)</i>
The Hon John Ajaka MLC	Liberal Party	
The Hon Greg Donnelly MLC	Australian Labor Party	
Mr David Shoebridge MLC*	The Greens	
The Hon Lynda Voltz MLC	Australian Labor Party	

***Note on Committee membership**

Mr David Shoebridge MLC replaced Ms Sylvia Hale MLC as a member of the Committee on 9 September 2010. Ms Hale had been a valued member of the Committee since 29 May 2007.

Secretariat

Ms Rachel Callinan, Director

Ms Rhia Victorino, Principal Council Officer

Ms Louise Tosetto, Principal Council Officer

Ms Kate Harris, Council Officer

Ms Shu-Fang Wei, Council Officer Assistant

Table of contents

	Chair’s foreword	x
	Executive summary	xi
	Summary of recommendations	xvi
	Glossary	xviii
Chapter 1	Introduction	1
	The Lifetime Care and Support Scheme	1
	The Committee’s role	1
	Conduct of the Inquiry	1
	Submissions	1
	Public hearings	2
	Questions on notice	2
	The Committee's report	3
	Structure of the report	3
Chapter 2	Overview of the Scheme and past reviews	5
	The Scheme	5
	The Lifetime Care and Support Authority and the Advisory Council	6
	The Scheme process	7
	Eligibility	7
	Services provided	8
	The process	8
	Review and dispute resolution provisions	8
	The Committee's past Reviews	9
	First Review	9
	Second Review	11
	Committee comment	16
	Issues from past Reviews to be considered in the current Review	16
	A national disability long-term care and support scheme	17
Chapter 3	Scheme performance and other issues	19
	Scheme performance	19
	Utilisation	19
	Financial matters	21
	Current success of the Scheme	23

	Committee comment	26
	Relationship with the Motor Accidents Scheme	27
	Committee comment	30
	Membership of the Lifetime Care and Support Advisory Council	30
	Committee comment	32
Chapter 4	Entry into the Scheme, dispute resolution and other issues	33
	Buying-in to the Scheme	33
	Committee comment	34
	Opting-out of the Scheme	35
	Committee comment	41
	Injuries caused by accidents not covered by the Scheme	42
	Accidents involving vehicles not capable of registration	43
	Accidents involving projectiles, pedestrians and cyclists	43
	A tiered system of care	44
	Committee comment	45
	Medical eligibility criteria and assessment tools	45
	Committee comment	47
	Review of decisions and dispute resolution	48
	Review mechanisms	48
	Issues raised by stakeholders	50
	Committee comment	53
	Support for participants in the early stages	54
	Committee comment	55
	Access to independent advice and advocacy	56
	Committee comment	58
Chapter 5	Administration and other issues	61
	Discharge procedures	61
	Committee comment	62
	Administrative/resource burden and revenue issues	62
	Administration and resource burden	62
	Revenue issues	68
	Committee comment	72
	Financial systems	73
	Committee comment	74
	Approval process for treatment, rehabilitation and care services	75
	Delays in approval process	75
	Delays in delivery of equipment and services	78

	Notification process	79
	Inability to access cumulative participant history	81
	Committee comment	82
	Privacy	83
	Committee comment	84
	LTCS Coordinators	85
	Role of LTCS Coordinators	85
	Previous Reviews	86
	Stakeholder concerns raised in current Review	86
	LTCSA response	91
	Committee comment	93
Chapter 6	Treatment, rehabilitation and care services	95
	'Reasonable and necessary' services	95
	Committee comment	96
	Home modifications	97
	Committee comment	101
	Accommodation	101
	Supported accommodation	101
	Accessible housing	104
	Committee comment	106
	Attendant care	106
	Committee comment	111
	Support for family carers	112
	Financial support for family carers	112
	Identifying and supporting family carers	114
	Committee comment	116
	Recreation and leisure activities	116
	Committee comment	120
	Educational support for children	121
	Committee comment	122
Appendix 1	Submissions	123
Appendix 2	Witnesses	124
Appendix 3	Tabled documents	126
Appendix 4	Minutes	127

Tables

Table 3.1	Scheme participants – injury type as at May 2010	Page 20
Table 3.2	Scheme participants' care and support expenses as at June 2010	Page 22

Figures

Figure 3.1	Scheme participants – geographical breakdown as at May 2010	Page 20
Figure 3.2	Scheme participants – age group as at May 2010	Page 21

Chair's foreword

This report is the culmination of the Committee's Third Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

The Committee has heard from a range of stakeholders including LTCS Scheme participants and family carers of participants, service providers, medical professionals and advocacy groups. While a range of issues were identified for examination in this Review, a great deal of praise for the Scheme and the ongoing improvements made by the Lifetime Care and Support Authority since the Scheme was introduced was also expressed. I am pleased to report that the Lifetime Care and Support Authority and the Advisory Council are exercising their functions effectively.

This report revisits the issues that were raised in the Committee's previous two Reviews to provide an update on developments. The Committee has noted the considerable efforts made by the Lifetime Care and Support Authority to listen to the concerns of stakeholders and to accept and implement the Committee's recommendations. This open and responsive approach demonstrates the commitment of the Authority to ensuring that the Scheme performs in the best interests of participants.

A number of new issues have emerged during this year's Review and the Committee has carefully examined them with the assistance of the Authority, the Advisory Council and stakeholders. While we acknowledge the importance of dealing with these issues, and a number of recommendations have been made to this effect, it is also important to remember that the Scheme is still relatively new. We are pleased to observe that the Authority has adopted a considered and consultative approach to understanding and addressing issues as they emerge.

A number of participants and family carers took part in this Review. I would like to extend my most heartfelt thanks to you for providing us with such invaluable insight into the Scheme; both its strengths and the areas in which it can improve. My thanks also go to the other individuals and groups who have devoted considerable time to preparing submissions and appearing at our hearings.

Finally, I would like to thank my Committee colleagues for their bipartisan approach and the Secretariat staff for their thorough work on this Review and report.



Christine Robertson
Committee Chair

Executive summary

Chapter 1 – Introduction

The Lifetime Care and Support (LTCS) Scheme is a NSW Government scheme administered by the Lifetime Care and Support Authority (LTCSA) that provides lifelong treatment, rehabilitation and care for people who have been severely injured in a motor vehicle accident in NSW, regardless of who was at fault. The Scheme commenced on 1 October 2006 for children under the age of 16 and on 1 October 2007 for people aged 16 and over. It is funded by a levy collected through Compulsory Third Party insurance.

Section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) ('the Act') requires a Legislative Council committee to supervise the exercise of the functions of the LTCSA and the Lifetime Care and Support Advisory Council (LTCSAC). The Standing Committee on Law and Justice was appointed on 30 May 2007 to fulfill this function and report to the House at least once a year. This is the Committee's Third Review.

The Committee received 19 submissions from a range of stakeholders and heard evidence from representatives of the LTCSA and LTCSAC and a number of stakeholder groups. In addition, a LTCS Scheme participant and his family, another participant and two participant carers shared their experiences with the Committee at the public hearing.

Chapter 2 – Overview of the Scheme and past reviews

Chapter 2 provides a brief description of the LTCS Scheme, the LTCSA and the LTCSAC. It also provides an overview of the Committee's past two reviews, including a brief account of the issues raised in those reviews that were not raised again during the current Review. The Committee is pleased to note that many of our recommendations from past Reviews have been responded to positively by the Government and the LTCSA, and have been acted upon accordingly. Many of these issues have not been raised as part of the current Review which suggests that they may have been successfully resolved. The Committee recognises, however, that some issues may reemerge in future reviews and commits to reexamining them if they do. Chapter 2 also discusses the Australian Productivity Commission's current inquiry into a national disability long-term care and support scheme.

Chapter 3 – Scheme performance and other issues

Chapter 3 reviews the performance of the LTCS Scheme with reference to the LTCSA's *Annual Report 2008-2009*, including its utilisation and finances. As at May 2010, there were 379 participants, of which 46 were children, and the remaining 333 adults. 50 of these participants are lifetime participants and it is anticipated that this number will grow significantly as a large proportion of participants will remain in the Scheme for life. The majority of participants have a traumatic brain injury and/or spinal cord injury. The LTCSA advised that the number of people entering the Scheme is within the expected level, and while there has been an increase in the number of children entering the Scheme from previous years, they remain well below the number expected when the Scheme was introduced.

The current success of the Scheme from the viewpoint of key stakeholders is also considered in Chapter 3, as are the results of the LTCSA's first participant satisfaction survey. The survey was undertaken in 2009 with a total of 112 participants taking part. The survey showed overall satisfaction with the Scheme with 84 per cent expressing their satisfaction with how the Scheme is meeting their needs. Dissatisfaction was expressed by only 12 per cent of participants.

The Committee commends the LTCSA and the LTCSAC on the continued success of the Scheme and notes the positive results of the LTCSA's first participant satisfaction survey. The Committee acknowledges the service providers, including medical practitioners and other clinical staff, for their role in contributing to the success of the Scheme. There was, however, some level of dissatisfaction among the Scheme participants who appeared before the Committee, as well as among survey respondents. While representing a small percentage of Scheme participants, it is important that their concerns are recognised. The Committee hopes that its annual review process will assist the LTCSA and the LTCSAC to address these concerns and that the level of dissatisfaction diminishes.

Also examined in Chapter 3 is the interaction between the LTCS Scheme to the Motor Accidents Scheme. Areas of concern raised during this Review relate to the lack of clarity over how claimants of both Schemes should be managed, inconsistencies between the Schemes, and the potential need for legislative change to address these inconsistencies. The Committee has recommended that the MAA, in consultation with the LTCSA, examine whether CTP claims are being made for treatment, rehabilitation and care expenses that should be claimed under the LTCS Scheme and if so, to consider whether an amendment is required to the *Motor Accidents Compensation Act 1999* to appropriately address the potential for duplicating claims and awarded damages.

The Government has accepted the recommendation in our *Second Review Report* for participant representation on the LTCSAC and the LTCSA has confirmed that participant representation will be included when changes are next made to the Act.

Chapter 4 – Entry into the Scheme, dispute resolution and other issues

The ability for a person injured in a motor vehicle accident prior to the introduction of the LTCS Scheme to use their awarded lump sum compensation to *buy-in* to the Scheme was examined during our Second Review, with the LTCSA advising that it was examining the issue to construct a buy-in methodology. In the current Review, the LTCSA advised that guidelines for buying-in to the Scheme had been drafted and circulated to stakeholders for comment.

The inability of Scheme participants to *opt-out* of the Scheme is an ongoing issue raised again in the current Review, with some stakeholders arguing strongly that opting-out should be possible. While the Scheme does not allow a participant to fully opt-out of the Scheme, guidelines are being developed by the LTCSA to allow participants who so choose to receive periodic payments in order to manage their own care. The Committee notes that allowing participants to opt-out of the Scheme is contrary to the purpose of the Scheme and notes the view of the LTCSA that it may not be in the best interests of participants. Nonetheless, where possible participant choice should be respected and encouraged and the Committee is satisfied that the LTCSA is exercising its functions appropriately in relation to this issue by working to implement its periodic payment option.

Two issues concerning gaps in eligibility for the Scheme are also examined in this Chapter. First, accidents involving vehicles not capable of registration and second, accidents involving projectiles, pedestrians and cyclists. The medical tools used by the LTCSA to assess eligibility criteria for the

Scheme is also examined. The Committee has recommended that the LTCSA evaluate the current medical assessment tools it uses to assess eligibility for the Scheme, and investigate and report on any alternative or additional tools that may be used, including the Paediatric Care and Needs Scale. The way in which vision impairment is assessed in terms of eligibility for the Scheme is also considered in this Chapter.

A number of issues relating to the review of decisions and dispute resolution mechanisms were also raised in this Review, including the independence of these processes, whether legal costs should be covered by the Scheme and improvements that could be made. The Committee is satisfied that the LTCSA takes the appropriate action to ensure that disputes are reviewed by independent and appropriately qualified professionals and that all decisions are open to ongoing and continuing review. While legal costs incurred for disputes about treatment, rehabilitation and care are not recoverable under the Scheme, the Committee accepts the advice of the LTCSA that such disputes are a rarity and the Scheme is designed so that the need for legal representation is minimised.

The need for further information and support for participants in the early stages of the Scheme was brought to the Committee's attention during the Review. The Committee has recommended that the LTCSA consider establishing a peer support group for new participants to the Scheme. In response to concerns that participants and carers need more information about independent legal advice and advocacy, the Committee has recommended that the LTCSA identify additional legal advocacy groups to include in its information about advocacy services on its website.

Chapter 5 - Administration and other issues

This Chapter starts with an examination of the administration and resource burden that the LTCSA Scheme places on health service providers and associated revenue issues. During the Second Review, the Committee was advised by the Minister for Health that NSW Health would review the impact of the Scheme on health services' resources. During this Review the Committee was advised that the outcomes of the review confirmed ongoing concerns relating to administration and revenue management. One of the main areas of concern related to the how Scheme requirements are impacting on clinician time spent with patients. The LTCSA advised that the reimbursements provided under the Scheme should be sufficient to address administrative demands and stakeholders argued that the burden could be minimised if revenue generated through the Scheme was returned to service providers rather than the Area Health Services as occurs at present. The Committee has recommended therefore that the Minister for Health and the Minister for Finance enter into a memorandum of understanding or contract agreement clarifying the administration of LTCS revenue within the public health system, to ensure that money reimbursed for services is returned to the relevant health care units.

A number of aspects of the LTCS Scheme's approval process for treatment, rehabilitation and care services were identified as concerns in the current Review. Delays in approval, delays in the delivery of services and equipment, and the need to notify service providers were identified as problematic. Also raised was the duplication of information that is required for applications due to the inability to access a participant's cumulative history. In response the LTCSA commented that the guidelines are clear on the approval processes and commented that delays in equipment and service delivery are due to a number of factors including the customisation required and location of the participant. The LTCSA also provided useful contextual information in relation to many of these issues and advised the Committee of steps it is undertaking to improve its processes. The Committee is concerned, however, that some participants are experiencing extensive delays in receiving equipment and has therefore recommended that the LTCSA improve the process for interim equipment hire and consider the suggestion put

forward to reduce the duplication of forms required by accepting original equipment orders as justification for hire.

An emerging issue was raised during this review with regards to privacy and confidentiality. The Committee acknowledges the importance of privacy for all participants in the Scheme and will monitor this issue in future Reviews.

A number of concerns were identified by Stakeholders in relation to LTCS Coordinators, who play a vital function in the Scheme's provision of treatment and care. While, overall, positive comments were made about the work of LTCS Coordinators, stakeholders also drew the committee's attention to confusion that exists about the role of the Coordinators in relation to case managers and clinicians, the varying knowledge level among Coordinators and difficulties experience by some participants and clinicians in communicating with Coordinators. The LTCSA has shown that it is aware of stakeholders concerns and is working to resolve them. The Committee has recommended that the LTCSA review the comments and the suggestions made by stakeholders as part of this Review to improve the effectiveness of LTCS Coordinators, with a view to accepting and implemented them as appropriate.

Chapter 6 – Treatment, rehabilitation and care services

Stakeholders raised a number of issues relating to the treatment, rehabilitation and care services provided by the LTCS Scheme to its participants.

Some stakeholders called for clearer guidance on what is considered by the LTCSA to be 'reasonable and necessary' in terms of treatment, rehabilitation and care services, so as to be provided under the Scheme. While the Committee considers that the LTCSA's current approach of case by case decision making in this regard is appropriate, we note that decisions made about what services are reasonable and necessary should be transparent and fair. To ensure that participants understand decisions that are made, and to promote consistency, the Committee has recommended that the LTCSA ensure that sufficient information as to the reasons why a particular form of treatment, rehabilitation or service has been rejected is provided to participants and/or those who make applications for services on their behalf.

The criteria for home modification approvals, the availability of supported accommodation for 'high need' participants and the availability of wheelchair accessible housing were all concerns raised by stakeholders in this Review. To assist in meeting the Scheme's immediate needs for accommodating participants requiring 24 hour care, the LTCSA has established two group houses and is working to set up more. The Committee commends the Authority on the work done in this area. The Committee encourages the LTCSA to streamline the approval process for home modifications and pursue partnerships with community housing associations. The Committee also notes the advice that there is insufficient wheelchair accessible housing to meet the needs of Scheme participants. The LTCSA has expressed a willingness to report further on this issue and the Committee will include this issue as a particular focus in its Fourth Review of the LTCSA in 2011.

Another issue that came to the Committee's attention during this Review was the provision of attendant care services under the LTCS Scheme and a range of concerns identified by stakeholders. Attendant care is one of the major components of the Scheme and the Committee notes the initiatives undertaken by the LTCSA in relation to attendant care which demonstrates that the LTCSA is focused on attendant care as an important issue. The Committee will also revisit issues surrounding attendant care in its next Review.

Financial support for family carers, and the way in which families are identified and supported as carers by the LTCSA are also examined in this report. In relation to financial support for family carers, the Committee has accepted the LTCSA's advice that it does not pay family members to become carers due to the potential negative impact that this may have on functional family relationships and notes the availability of the Commonwealth Carers Allowance. The Committee has recommended that the LTCSA consult with carers' advocacy groups to examine the feasibility of modifying the language used by the LTCSA on its website and in official publications when referring to the family of Scheme participants and providing clear information on the support services available for family carers.

Participant access to recreation and leisure activities under the Scheme was also discussed during this Review, as it was in previous reviews. The Committee recognises the significant progress that has been made by the LTCSA to ensure that participants have access to recreation and leisure activities. In this review particular concerns were raised over funding for transport to recreation and leisure activities and the Committee has recommended that the issue of transport be appropriately considered by the LTCSA as part of its new holistic approach to meeting the needs of Scheme participants in terms of recreational and leisure activities. The report also examines the concerns raised by one stakeholder about the provision of educational support for LTCSA Scheme participants.

Summary of recommendations

Recommendation 1

Page 30

That the Motor Accidents Authority, in consultation with the Lifetime Care and Support Authority, examine whether Compulsory Third Party claims are being made for treatment, rehabilitation and care expenses that should be claimed under the Lifetime Care and Support Scheme and, if so, consider whether an amendment is required to the *Motor Accidents Compensation Act 1999* to address the potential for duplicating claims and awarded damages.

Recommendation 2

Page 48

That the Lifetime Care and Support Authority evaluate the current medical assessment tools it uses to assess eligibility for the Lifetime Care and Support Scheme, and investigate and report on any alternative and/or additional tools that may be used, including the Paediatric Care and Needs Scale.

Recommendation 3

Page 48

That the Lifetime Care and Support Authority meet with Vision Australia to discuss concerns regarding the assessment of vision impairment in terms of eligibility for the Lifetime Care and Support Scheme.

Recommendation 4

Page 56

That the Lifetime Care and Support Authority consider establishing a peer support group for new participants to the Scheme and consult with participants about the requirements for this group.

Recommendation 5

Page 59

That the Lifetime Care and Support Authority consult with legal organisations to identify additional legal advocacy groups with expertise in providing advice to people with disabilities to include in its information about advocacy services on its website.

Recommendation 6

Page 73

That the Minister for Health and the Minister for Finance enter into a memorandum of understanding or contract agreement clarifying the administration of LTCS revenue within the public health system, to ensure that money reimbursed for services is returned to the relevant health care units. In determining the most appropriate terms of that agreement, consultation should take place with the LTCSA and service providers, including those who have contributed to the Committee's Third Review on this issue.

Recommendation 7

Page 75

That the Lifetime Care and Support Authority give consideration to the recommendation put forward by NSW Health in its *Report on the NSW Health Review of the Impact of the Lifetime Care and Support Scheme* to provide a lump sum payment to health service providers to cover the cost of system upgrades to meet the requirements of the LTCS Scheme.

Recommendation 8

Page 83

That the Lifetime Care and Support Authority improve the process for interim equipment hire and consider the suggestion put forward by the Brain Injury Rehabilitation Directorate to reduce the duplication of forms required by accepting original equipment orders as justification for hire.

Recommendation 9*Page 94*

That the Lifetime Care and Support Authority review the suggestions and recommendations to improve the effectiveness of Lifetime Care and Support Coordinators made by stakeholders who participated in the Committee's Third Review, as set out in Chapter 5 of the Committee's report, with a view to accepting and implemented them as appropriate.

Recommendation 10*Page 97*

That the Lifetime Care and Support Authority ensure that sufficient information as to the reasons why a particular form of treatment, rehabilitation or service has been rejected is provided to the application maker, to enable them to understand the basis of the decision and to promote consistency.

Recommendation 11*Page 116*

That the Lifetime Care and Support Authority consult with carers' advocacy groups to examine the feasibility of modifying the language used on the Lifetime Care and Support Authority website and in official publications when referring to the family of Lifetime Care and Support Scheme participants and providing clear information on the support services available for carers.

Recommendation 12*Page 121*

That the Lifetime Care and Support Authority, in developing its new approach to the issue of recreational and leisure activities provided by the Lifetime Care and Support Scheme include consideration of the provision of funding for transport, and publish the details of the new approach as soon as possible.

Glossary

ACIA	Attendant Care Industry Association
BIRD	Brain Injury Rehabilitation Directorate
CTP	Compulsory Third Party
LTCS	Lifetime Care and Support
LTCSA	Lifetime Care and Support Authority
LTCSAC	Lifetime Care and Support Advisory Council
MAA	Motor Accidents Authority
MCIS	Medical Care and Injury Services
PBIRT	Paediatric Brain Injury Rehabilitation Team
SCIA	Spinal Cord Injuries Australia
SSCIS	State Spinal Cord Injury Service
TBI	Terminal Brain Injury
The Act	<i>Motor Accidents (Lifetime Care and Support) Act 2006</i> (NSW)

Chapter 1 Introduction

In this Chapter the Committee outlines its role in reviewing the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council and describes the process of the Committee's Third Review.

The Lifetime Care and Support Scheme

- 1.1 The Lifetime Care and Support (LTCS) Scheme is a NSW Government scheme administered by the Lifetime Care and Support Authority (LTCSA) that provides lifelong treatment, rehabilitation and care for people who have been severely injured in a motor vehicle accident in NSW, regardless of who was at fault. The Scheme commenced operation on 1 October 2006 for children under the age of 16 and 1 October 2007 for people aged 16 and over. It is funded by a levy collected through Compulsory Third Party (CTP) insurance.²
- 1.2 The LTCS Scheme is described in further detail in Chapter 2.

The Committee's role

- 1.3 Section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) requires a Legislative Council committee to supervise the exercise of the functions of the LTCSA and the Lifetime Care and Support Advisory Council (LTCSAC). The Standing Committee on Law and Justice was appointed on 30 May 2007 to fulfill this function and report to the House at least once a year.³ This is the Committee's Third Review of the LTCSA and LTCSAC.
- 1.4 Information on the Committee's previous reviews, including reports, can be found on the Committee's website at: www.parliament.nsw.gov.au/lawandjustice.

Conduct of the Inquiry

- 1.5 The Committee resolved to commence this Third Review on 25 February 2010. The Review was conducted concurrently with the Committee's Tenth Review of the Motor Accidents Authority and the Motor Accidents Council which is the subject of its own report, tabled in October 2010.

Submissions

- 1.6 The Committee continued the practice undertaken in the previous reviews to call for public submissions by way of advertisements in major metropolitan newspapers. As with the previous reviews, the Committee also wrote directly to a number of stakeholders inviting them to make a submission. At the Committee's request, the LTCSA advertised the review through its E-Newsletter, which targets Scheme participants and service providers.

² Lifetime Care and Support Authority (LTCSA), *Annual Report 2008-2009*, p 4.

³ *LC Minutes* (30/05/2007) 81.

- 1.7 The Committee received 19 submissions from a range of stakeholders including a number of disability and special interest advocacy groups, treatment and rehabilitation service providers, the legal and insurance sectors, Scheme participants and others. All those who made a submission are listed in Appendix 1.

Public hearings

- 1.8 The Committee held two public hearings on 11 and 21 June 2010 at which Mr David Bowen, Executive Director of the LTCSA and Mr Neil Mackinnon, A/Director of Service Delivery with the LTCSA, gave evidence, along with Mr Nicholas Whitlam, Chair of the LTCSA Board and Mr Dougie Herd, Chair of the LTCSAC.
- 1.9 The Committee also heard from a panel of witnesses representing the NSW Agency for Clinical Innovation (formerly known as the Greater Metropolitan Clinical Taskforce): Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, Dr Joe Gurka, Director of the Brain Injury Program, Brain Injury Rehabilitation Directorate, and Ms Frances Monypenny, Manager, State Spinal Cord Injury Service.
- 1.10 Representatives of the Law Society of NSW, NSW Bar Association, Australian Lawyers Alliance, Insurance Council of Australia, Motorcycle Council of NSW, Royal Rehabilitation Centre Sydney, Australian RehabWorks and Spinal Cord Injuries Australia also appeared.
- 1.11 The Committee also sought the input of LTCS Scheme participants and their carers to provide direct feedback to the Review about the treatment and care provided by the Scheme and their interaction with the LTCSA. One participant and his family, another participant and two participant carers provided their experiences to the Committee at the public hearing. The Committee is especially grateful to these people for giving us their very valuable time and for sharing their experiences with us.
- 1.12 A full list of witnesses is provided in Appendix 2.

Questions on notice

- 1.13 Following the practice developed during the Committee's numerous reviews of the Motor Accidents Authority⁴ and continued in the first two reviews of the LTCSA, the Committee forwarded a number of written questions on notice to the LTCSA prior to the first hearing. The questions were based on the LTCSA's Annual Report 2008-2009, last year's Review and issues raised in submissions.
- 1.14 The LTCSA provided responses to the Committee's questions which other stakeholders, in turn, were asked to respond to in the hearing and in further questions on notice. This process enables significant depth of consideration of the issues.

⁴ The Standing Committee on Law and Justice has a similar statutory obligation to review the exercise of the functions of the Motor Accidents Authority and Motor Accidents Council. The Committee was first appointed to undertake this role in November 1999 and undertook its Tenth Review in 2010.

The Committee's report

- 1.15** In this report the Committee has examined a large number of issues that have been raised by submission makers and witnesses during the course of the Review. The process of the Review has enabled the Committee to put issues and concerns directly to the LTCSA and the LTCSAC and, in turn, stakeholders have also had a chance to respond to the answers and comments provided.
- 1.16** This process has resulted in a considerable amount of information which has enabled the Committee to undertake a significant depth of analysis on many of the issues that have emerged. The Committee has endeavored to do justice to the hard work of stakeholders in identifying issues to examine and in providing relevant information and options to address them. Some issues in relation to which only a very small amount of information was received have not been examined in this report, but may be considered in future reviews.
- 1.17** The Motorcycle Council of NSW raised a number of issues relating to the Medical Care and Injury Services (MCIS) levy in its submission to the LTCSA Review. The LTCSA Scheme is funded through a portion of the MCIS levy which is a component of the Compulsory Third Party (CTP) green slip insurance policy purchased by motorists when registering a motor vehicle in NSW. As the CTP insurance scheme is regulated by the Motor Accidents Authority (MAA) as part of its statutory obligations, the issues raised by the Motorcycle Council in relation to the MCIS levy were examined as part of the Committee's Tenth Review of the exercise of the functions of the MAA.

Structure of the report

- 1.18** This report is comprised of six chapters. This first chapter outlines the Committee's role in reviewing the LTCSA and the LTCSAC and sets out the process undertaken by the Committee during this Review.
- 1.19** Chapter 2 provides a brief overview of the LTCSA Scheme and its administering body, the LTCSA, as well as the LTCSAC. It also provides an overview of the Committee's past two reviews, including a brief account of the issues raised in those reviews that will not be further examined as part of the current Review. The Australian Productivity Commission's current inquiry into a national disability long-term care and support scheme will also be briefly considered.
- 1.20** Chapter 3 reviews the Lifetime Care and Support Scheme's performance to date, including its utilisation and finances. The current success of the Scheme as reported to the Committee by key stakeholders is also to be considered, as are the results of the LTCSA's first participant satisfaction survey. The relationship of the LTCSA Scheme to the Motor Accidents Scheme is also examined in this Chapter, as is the membership of the LTCSAC.
- 1.21** Chapter 4 examines a number of issues raised by stakeholders in the current Review including buying-in and opting-out of the Scheme, injuries caused by accidents not covered by the Scheme, the assessment tools used to determine medical eligibility for the Scheme and the review of decisions and dispute resolution mechanisms. Support for participants in the early stages of the Scheme and access to independent advice and advocacy is also examined.

- 1.22** Chapter 5 examines issues that were raised by stakeholders relating to various aspects of the LTCS Scheme's administration. These issues include the new discharge procedures for Scheme participants, the administration and resource burden on health service providers and associated revenue issues, the approval process for treatment, rehabilitation and care services and privacy concerns. Chapter 5 also looks at issues raised in relation to LTCS Coordinators, who play a vital function in the Scheme's provision of treatment and care.
- 1.23** Chapter 6 considers the issues raised by stakeholders relating to the treatment, rehabilitation and care services provided to LTCS Scheme participants. First, the requirement that services be 'reasonable and necessary' is examined. Issues identified in relation to home modifications, accessible housing and supported accommodation are then explored. Attendant care issues and support for family carers are also considered, as are concerns raised by stakeholders about recreation and leisure activities and educational support for child participants.

Chapter 2 Overview of the Scheme and past reviews

This chapter provides a brief overview of the Lifetime Care and Support Scheme and its administering body, the Lifetime Care and Support Authority, as well as the Lifetime Care and Support Advisory Council. It also provides an overview of the Committee's past two reviews, including a brief account of the issues raised in those reviews that will not be further examined as part of the current Review. The Australian Productivity Commission's current inquiry into a national disability long-term care and support scheme will also be briefly considered.

More detail on the establishment and genesis of the Scheme can be found in Chapter 2 of the Committee's 2008 report on its first Review of the exercise of the functions of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.

The Scheme

- 2.1** The Lifetime Care and Support (LTCS) Scheme provides 'lifelong treatment, rehabilitation and attendant care for people severely injured in a motor vehicle accidents in NSW, regardless of who was at fault' in the accident. The Scheme covers catastrophic injuries including spinal cord injury, moderate to severe brain injury, multiple amputations, severe burns or permanent blindness.⁵
- 2.2** The LTCS Scheme was established under the *Motor Accidents (Lifetime Care and Support) Act 2006* (hereafter referred to as the Act) and commenced on 1 October 2006 for children under the age of 16 and on 1 October 2007 for people aged 16 and over.⁶
- 2.3** The Act is divided into eight parts:
- Part 2 sets out the care, treatment and support to be paid by the Authority, the Scheme's eligibility criteria, its application and acceptance processes, provisions for the approval of treatment and care providers, and the effect of the Scheme on motor accidents compensation claims
 - Part 3 deals with dispute resolution processes
 - Part 4 governs treatment and care needs assessment
 - Part 5 governs payment to hospitals, doctors and other medical services
 - Part 6 deals with the administration of the LTCS Scheme and the roles of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council
 - Part 7 sets out how the Scheme is funded
 - Part 8 makes miscellaneous provisions, including for a Committee of the Legislative Council to supervise the Scheme, Authority and Advisory Council.
- 2.4** In comparison to the Motor Accidents Scheme, which provides monetary compensation for injury, the Lifetime Care and Support Authority (LTCSA) coordinates and pays for the

⁵ Lifetime Care and Support Authority (LTCSA), *Annual Report, 2008-2009*, p 4.

⁶ LTCSA, *Annual Report, 2008-2009*, p 4.

treatment and care services that are reasonable and necessary to meet the needs of participants.⁷

- 2.5** As stated in the LTCSA's *Annual Report 2008-2009* (hereafter referred to as the Annual Report), the vision of the Scheme is to ensure 'people severely injured in motor accidents in NSW are treated with respect and dignity and have the maximum possible opportunities and choices in achieving quality of life'.⁸
- 2.6** Part 7 of the Act sets out how the Scheme is funded. Funding is provided through the Medical Care and Injury Services (MCIS) levy paid by motorists when they purchase a Compulsory Third Party (CTP) green slip insurance policy. Licensed insurers collect the levy on behalf of the Motor Accidents Authority. The Act states that levy contributions must be set so as to fund the full cost of providing lifetime care and treatment to Scheme participants, and meet other Scheme expenses.⁹

The Lifetime Care and Support Authority and the Advisory Council

- 2.7** The LTCS Scheme is administered by the LTCSA, which is in turn advised and monitored by the Lifetime Care and Support Advisory Council (LTCSAC). The functions of the LTCSA are set out in the Act.
- 2.8** The LTCSA coordinates and funds the provision of care, treatment and rehabilitation for lifetime support and other services for participants. Among other things, the Authority also:
- monitors the operation of the Scheme and conducts research and collects statistics in relation to its operation
 - advises the Minister on the administration, efficiency and effectiveness of the Scheme and publicise and disseminate information
 - provides administrative support, advice and recommendations to the LTCSAC, and
 - monitors and provides support and funding for research and education services relating to care, treatment, rehabilitation and lifetime support for people who are catastrophically injured in motor accidents.¹⁰
- 2.9** The LTCSA has a Board of Directors consisting of the Chief Executive Officer of the Authority and four part-time directors.¹¹ The Board has the function of determining the administrative policies of the Authority and, in exercising that function, it must ensure that, as far as practicable, the activities of the Authority are carried out properly and efficiently.¹²
- 2.10** The LTCSAC's primary roles are to monitor the operation of the services provided by the Scheme and to review the *Lifetime Care and Support Guidelines* and advise the LTCSA in relation

⁷ Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 37, October 2008, p 5.

⁸ LTCSA, *Annual Report, 2008-2009*, p 4.

⁹ LTCSA, *Annual Report, 2008-2009*, p 4.

¹⁰ *Motor Accidents (Lifetime Care and Support) Act 2006*, s 43.

¹¹ *Motor Accidents (Lifetime Care and Support) Act 2006*, s 34.

¹² *Motor Accidents (Lifetime Care and Support) Act 2006*, s 39.

to them. In addition, the Council can provide advice to the Minister on any matter relating to the Scheme that it considers appropriate.¹³

2.11 An issue relating to the membership of the LTCSAC is examined in Chapter 3.

The Scheme process

2.12 This section briefly outlines eligibility for the Scheme, its provisions, the process that participants must go through to become part of the Scheme and the dispute resolution mechanisms. These aspects of the Scheme were described in detail in the Committee's *First Review Report*.¹⁴

Eligibility

2.13 To be eligible to participate in the LTCS Scheme, a person's injury must result from an accident involving a motor vehicle insured under the NSW Motor Accidents Scheme, as prescribed by the *Motor Accidents Compensation Act 1999*.¹⁵

2.14 The LTCS Scheme does not cover injuries arising from the use or operation of a motor vehicle that is not capable of registration, or the use or operation of an unregistered and uninsured vehicle on private property.¹⁶

2.15 The Scheme covers those with serious injuries requiring lifelong care. Eligibility for the Scheme is dependent on the type and severity of injury and is determined on the basis of medical assessment.¹⁷ There are different eligibility criteria in respect to spinal cord injuries, brain injuries, severe burns, multiple amputations and permanent blindness.¹⁸ Eligibility is a two-stage process as there is 'interim' and 'lifetime' participation in the Scheme.

2.16 Eligibility for interim participation is assessed soon after injury and is for a period of up to two years for those over three years of age. Interim participation for children under this age will continue until they reach the age of five years, after which lifetime participation will be assessed. This interim participation period exists because of possible recovery and improvements to a person's health that may occur during that time.¹⁹

2.17 Lifetime participation is assessed before the expiry of the interim period.²⁰ Once accepted as a lifetime participant, the LTCSA will provide support and pay for treatment, rehabilitation and care related to the motor accident injury for the rest of the participant's life.²¹

¹³ Standing Committee on Law and Justice, Report 37, p 13.

¹⁴ Standing Committee on Law and Justice, Report 37, pp 7-12.

¹⁵ Standing Committee on Law and Justice, Report 37, p 7.

¹⁶ Standing Committee on Law and Justice, Report 37, p 7.

¹⁷ LTCSA, *Annual Report, 2007-2008*, p 7.

¹⁸ LTCSA, *Lifetime Care and Support Guidelines 2010* (hereafter referred to as '*LTCS Guidelines*'), pp 4-6. accessed 29 October 2010, <www.lifetimecare.nsw.gov.au/Guidelines_and_Policies_for_Professionals.aspx>

¹⁹ LTCSA, *LTCS Guidelines, 2009*, p 7; *Motor Accidents (Lifetime Care and Support) Act 2006*, s 9(5A).

²⁰ LTCSA, *Annual Report, 2007-2008*, p 7.

²¹ Standing Committee on Law and Justice, Report 37, pp 9-10.

Services provided

- 2.18** The LTCSA pays for treatment, rehabilitation and care services that are 'reasonable and necessary' to help meet the participants' needs and achieve their goals. Medical treatment services may include doctors, hospitals and medication. Rehabilitation may include physiotherapy, occupational therapy, speech pathology, social work, psychology, equipment to assist in daily living and home and vehicle modification. Attendant care services refer to personal or respite care, childcare, domestic assistance and educational or vocational support.²²

The process

- 2.19** To enter the Scheme an initial notification process involves hospital staff, brain or spinal injury teams, or social workers assisting the injured person and his or her family to notify the LTCSA if they believe the injuries sustained may make the person eligible for the Scheme. Notification is made via either a phone call or by sending a completed Severe Injury Advice Form.²³
- 2.20** On receipt of this notification, a LTCS coordinator meets with the injured person and his or her family to explain the Scheme and the application process. A more detailed Application Form requests information about the motor accident, as well as a medical certificate completed by a treating specialist. The application is then assessed and, if eligible, the injured person and treating team are informed of the commencement date for interim participation.²⁴
- 2.21** All participants in the LTCS Scheme are assigned a LTCS coordinator who will act as the primary point of contact between the participant, service providers and the LTCSA.²⁵
- 2.22** There are two types of plans that the coordinator will help the participant develop: the LTCS Plan is concerned with meeting the individual participant's current and future needs and aspirations, and the Community Living Plan outlines necessary services for the ongoing support of the participant. This second plan is regularly reviewed.²⁶
- 2.23** The *First Review Report* describes the process of being accepted into the Scheme in further detail.²⁷

Review and dispute resolution provisions

- 2.24** The Act includes provisions requiring the LTCSA to review decisions regarding eligibility and treatment, rehabilitation and care needs if an applicant or participant does not agree with the

²² Standing Committee on Law and Justice, Report 37, p 9.

²³ Standing Committee on Law and Justice, Report 37, p 9.

²⁴ Standing Committee on Law and Justice, Report 37, p 9.

²⁵ Standing Committee on Law and Justice, Report 37, p 10.

²⁶ Standing Committee on Law and Justice, Report 37, p 10; Please note, the First Review Report also describes a third plan, known as the Community Discharge Plan (CDP), as part of this process. However, the CDP has since been replaced by a new discharge procedure from 1 March 2010 for adults and 1 July 2010 for children. LTCS E-News: The Lifetime Care and Support Newsletter, Issue 35, 24 February 2010, p 1 and Issue 41, 25 June 2010, p 1.

²⁷ Standing Committee on Law and Justice, Report 37, pp 9-11.

Authority's decision.²⁸ Wherever possible, the LTCSA will try to resolve the issue informally, however, this might not be possible and a formal dispute may be lodged in writing. Independent assessors are used to resolve disputes.²⁹

- 2.25** The Authority reported to the Committee that up until August 2010 there have been four disputes relating to eligibility; two have been resolved and two are still in progress. In one of the resolved disputes the Authority's decision that the injured person was not eligible for lifetime participation was confirmed, while in the other the Authority's decision that the injured person was not eligible for lifetime participation was overturned. The Authority has now accepted that injured person as a lifetime participant.³⁰
- 2.26** There have also been nine disputes in relation to the treatment and care needs of Scheme participants. These were all referred to an external dispute assessor and have been resolved. The disputes related to a range of issues, including attendant care, hydrotherapy treatment, equipment, vocational courses, home modifications and surgery. Of the nine disputes, three confirmed the Authority's decision not to approve the requested item or service, one found that some, but not all, of the requested treatment was reasonable and necessary, and four overturned the Authority's decision not to approve the requested item or service. On these four occasions, the independent assessor found the disputed treatment to be reasonable and necessary.³¹
- 2.27** The Committee notes that in most cases relating to treatment and care where the Authority's decision was overturned, the dispute assessor obtained additional information that would have altered the Authority's original decision about approval had that information been available to the Authority at the time of the decision.³²
- 2.28** The Scheme's review and dispute resolution provisions will be further examined in Chapter 4.

The Committee's past Reviews

- 2.29** As outlined in Chapter 1, the Standing Committee on Law and Justice was appointed in May 2007 to supervise the exercise of the functions of the LTCSA and the LTCSAC on an annual basis. The following section provides an overview of the Committee's past two reviews and the progress of its recommendations to date.

First Review

- 2.30** The Committee reported on its First Review in October 2008. In that report, the Committee noted the very positive response among stakeholders to the establishment of the Scheme, and considered the Scheme's implementation to be 'proceeding well'.³³ The Committee made two

²⁸ *Motor Accidents (Lifetime Care and Support) Act 2006*, Parts 3 and 4.

²⁹ LTCSA, *Resolving disputes about eligibility: A guide for applications to the LTCS Scheme*, September 2007; LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCS Scheme*, September 2007; Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Question 2.

³⁰ Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Question 2.

³¹ Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Question 2.

³² Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Question 3.

³³ Standing Committee on Law and Justice, Report 37, p xv.

recommendations relating to the interim participation of children and access to independent review of decisions, advice and advocacy for participants.

- 2.31** The first recommendation in the *First Review Report* was that an amendment be made to the Act to provide that children less than three years of age when injured are not assessed for lifetime participation in the Scheme until they are at least five years of age. The objective was to ensure that their injuries fully stabilise before significant decisions are made about their projected lifetime care needs.³⁴
- 2.32** In the NSW Government's response to the *First Review Report*, the Government indicated its full support for this recommendation by committing to pursue legislative change.³⁵ Subsequently, the *Motor Accidents (Lifetime Care and Support) Amendment Act 2009* was passed by Parliament and was assented to on 9 June 2009, extending the interim participation of children less than three years of age to five years of age.
- 2.33** The second recommendation in the *First Review Report* was that the LTCSA, together with the LTCSAC, formally consider the range of options for independent review of decisions, and the provision of independent advice and advocacy for applicants, interim participants and lifetime participants in the Scheme, with the view to developing recommendations as to the most appropriate mechanisms for each.³⁶
- 2.34** In response to this recommendation, the Government commented that a number of mechanisms were already in place to allow for the independent review of decisions regarding an injured person's eligibility for and participation in the Scheme. In addition, the Government advised that, at that time, the LTCSA was preparing a discussion paper on the provision of advocacy services in the Scheme for consultation with advocacy groups.³⁷
- 2.35** Despite the Government's response, this issue was raised again in both the Second and current Reviews, with stakeholders expressing particular concern for how brain injured participants could exercise their right for an independent review of decisions made about their care and how these participants could access advocacy services.³⁸ The development of this issue since the First Review will be examined in detail in Chapter 4.
- 2.36** The *First Review Report* also identified a number of other emerging issues which the Committee committed to reconsider as part of its second and subsequent reviews. These include accidents not covered by the Scheme, eligibility for the Scheme and entry to it, the evaluation of medical assessment tools used to assess eligibility criteria, opt-out and self purchasing provisions, the provision of services to participants (including supported accommodation and attendant care), support for family carers, administration and paperwork, the role of LTCS coordinators,

³⁴ Standing Committee on Law and Justice, Report 37, pp 38-40.

³⁵ NSW Government, Government Response to the Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 37, October 2008, p 1.

³⁶ Standing Committee on Law and Justice, Report 37, p 55.

³⁷ Government Response to the Standing Committee on Law and Justice, Report 37, p 1.

³⁸ Legislative Council, Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 21.

transparency, accountability and access to information, interface with the Motor Accidents Scheme, estimated financial liabilities, and premiums.³⁹

2.37 The Committee noted in its First Review that many of these issues were perhaps to be expected during the establishment of such a substantial and complex Scheme as this, and committed to exploring them as implementation of the Scheme progressed.⁴⁰ Accordingly, most of these issues will be examined as part of the current Review, with the exception of issues specifically relating to entry into the Scheme via the orthopaedics area for which no further evidence was received in the current Review.

Second Review

2.38 The Committee reported on its Second Review in September 2009. In that report, the Committee commented that, overall, the Scheme was 'functioning effectively', and that issues raised in the Second Review, once addressed through its recommendations, would see the Scheme and Authority 'continuing to develop on its positive path of delivering lifetime care and support for its participants'.⁴¹

2.39 The *Second Review Report* provided an update on the issues raised in the First Review, and identified a number of other new issues that had become apparent with the development of the Scheme.

2.40 The Committee made nine recommendations relating to:

- people being hit by projectiles whilst in a registered motor vehicle
- the supported accommodation expert advisory group
- the NSW Health review of the impact of the LTCS Scheme on health service resources
- the timing of the introduction of the LTCS coordinator to potential child participants
- membership of the LTCSAC and supporting a participant representative on the Council
- the role of recreation and leisure in participant rehabilitation
- education and community awareness campaigns, and
- the use of future care as awarded damages in divorce and other legal settlements.⁴²

2.41 Some of these issues and recommendations will be considered in greater detail as part of the current Review, as stakeholders again identified these as areas for improvement. They include eligibility for people being hit by projectiles whilst in a registered motor vehicle, revenue issues for Area Health Services, the impact of the Scheme on health service resources, provisions to buy-in to the Scheme, recreation and leisure activities as part of the treatment and support covered by the Scheme and membership of the LTCSAC.⁴³

³⁹ Standing Committee on Law and Justice, Report 37, pp 33-64.

⁴⁰ Standing Committee on Law and Justice, Report 37, p xv.

⁴¹ Standing Committee on Law and Justice, Report 40, p xv.

⁴² Standing Committee on Law and Justice, Report 40, pp xvi-xvii.

⁴³ Standing Committee on Law and Justice, Report 40, p 51.

2.42 However, several of the issues examined in the *Second Review Report* have either been resolved since that Review or were not raised as an issue in the current Review. These issues are briefly described in the following section. The Committee acknowledges that some of these issues may arise in future reviews and commits to reconsidering and exploring these if they do.

Timing of the introduction of the LTCS Coordinator to potential child participants

2.43 Since the First Review, the role of the LTCS Coordinator has and continues to be an area of concern for stakeholders. One of the specific issues identified in the Second Review related to the time at which a coordinator is introduced to potential participants and their families.⁴⁴

2.44 The *Second Review Report* discussed stakeholder concerns about the potential detrimental impact on families, particularly those of severely injured children, of being prematurely introduced to the Scheme while still in the very early stages of coming to grips with their child's injuries.⁴⁵ The Committee therefore recommended:

That the Lifetime Care and Support Authority, in the case of potential child participants, consult with the treating rehabilitation team regarding the appropriate timing for the introduction of the Lifetime Care and Support Coordinator.⁴⁶

2.45 In response to this recommendation, the NSW Government suggested that feedback from Scheme participants indicated that families of people who are likely to enter the Scheme in fact wanted more contact with LTCS Coordinators. Nevertheless, the Government accepted the Committee's recommendation and advised that contact between LTCS Coordinators and the families of potential child participants will now be arranged in consultation with the treating rehabilitation units.⁴⁷

2.46 The Committee did not receive any further evidence regarding this specific aspect of the Coordinator's role as part of the current Review, but was advised of a number of other concerns relating to the LTCS Coordinator. These concerns will be examined in Chapter 5.

Definition of families used by the LTCSA in applying LTCS Guidelines

2.47 During the Second Review, some stakeholders raised concerns regarding the definition of families used by the LTCSA in applying the Lifetime Care and Support Guidelines (hereafter referred to as the *LTCS Guidelines*) for the approval of family related services such as respite care, counseling, before and after school care and transport, and accommodation costs. While stakeholders argued that the application of the definition of families and significant others was too narrow, the LTCSA maintained that it interprets these definitions broadly when considering requests for services related to family support.⁴⁸

⁴⁴ Standing Committee on Law and Justice, Report 40, p 44.

⁴⁵ Standing Committee on Law and Justice, Report 40, p 45.

⁴⁶ Standing Committee on Law and Justice, Report 40, p 49.

⁴⁷ NSW Government, Government Response to the Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 2.

⁴⁸ Standing Committee on Law and Justice, Report 40, pp 61-63.

- 2.48 One stakeholder also made comments about the definition of the types of interventions available for families and significant others, and suggested that these are too specific to encompass other interventions that may support family and friendship networks.⁴⁹
- 2.49 While the Committee did not make specific recommendations about these issues in its Second Review, it did encourage the LTCSA to continue its broad application of the definition of families and significant others, and noted stakeholder concerns about the definition of family-related interventions.⁵⁰
- 2.50 The Committee did not receive any further evidence about this issue in the current Review.

Improving awareness of the Scheme

- 2.51 Another issue that was brought to the Committee's attention during its Second Review was the limited awareness of the LTCSA Scheme, particularly among service providers in rural and cross border locations. The Committee also heard that improved general public awareness of the Scheme may assist, among other things, in making initial confrontations with the Scheme less overwhelming for participants and families.⁵¹ The Committee therefore recommended in its *Second Review Report*:

That the Lifetime Care and Support Authority:

- Ensure its education campaigns are wider spread to address the awareness issues for service providers in rural and cross border areas and
- Consider conducting community awareness campaigns of the Lifetime Care and Support Scheme for the general public.⁵²

- 2.52 The NSW Government responded to this recommendation by advising that the LTCSA currently targets its ongoing education and information programs at health professionals and service providers who are likely to be involved in the treatment and rehabilitation of Scheme participants. In addition, the Authority runs education and information sessions in major trauma centres.⁵³
- 2.53 The Government also advised that, while the LTCSA considers community awareness campaigns to be the most effective way of providing information to those who need it, it will consider its use as appropriate.⁵⁴
- 2.54 This issue was not raised as an area of concern in the current Review. Mr Neil Mackinnon, the A/Director of Service Delivery at the LTCSA, did, however, comment that there had been an improvement in the general knowledge of the Scheme and its processes but noted that this was as a result of 'ongoing familiarity and use' of the Scheme rather than any increases in educative processes.⁵⁵

⁴⁹ Standing Committee on Law and Justice, Report 40, pp 63-64.

⁵⁰ Standing Committee on Law and Justice, Report 40, p 64.

⁵¹ Standing Committee on Law and Justice, Report 40, pp 64-67.

⁵² Standing Committee on Law and Justice, Report 40, p 67.

⁵³ Government Response to the Standing Committee on Law and Justice, Report 40, p 3.

⁵⁴ Government Response to the Standing Committee on Law and Justice, Report 40, p 3.

⁵⁵ Mr Neil Mackinnon, Acting Director, Service Delivery, Lifetime Care and Support Authority, Evidence, 11 June 2010, p 18.

Interim participation for people with spinal cord injuries

- 2.55** During the Second Review, the issue of interim participation for people with spinal cord injuries was raised by the NSW Bar Association. The Association suggested that there was no real need for people with certain spinal cord injuries, such as a severed spinal cord, to be accepted as interim participants and then be required to wait two years before being accepted as a lifetime participant, when there is no cure or possibility of improvement.⁵⁶ This view was also shared by the Australian Lawyers Alliance.⁵⁷
- 2.56** While the State Spinal Cord Injury Service (SSCIS) acknowledged that the proposal had some merit, the LTCSA advised that the two year interim participation is appropriate as spinal classification is not always definitive earlier on. The Authority did note, however, that in some cases where the participant had complete spinal cord injury and would not recover, it had agreed to bring forward the lifetime participation decision when asked.⁵⁸
- 2.57** The Committee acknowledged the concerns and comments raised by the NSW Bar Association and SSCIS in the Second Review, and recognised that the LTCSA was already appropriately addressing this issue on a case by case basis for participants with complete spinal cord injuries.⁵⁹
- 2.58** As part of the current Review, the Australian Lawyers Alliance have again raised the issue, arguing that 'the recommendations contained in [their submission to the Second Review] have not been acted upon', including their suggestion that spinal cord injury participants be immediately accepted as lifetime participants in the Scheme.⁶⁰ However, the Alliance did not provide any additional comment on the issue and it is not clear why they hold such a view. The Committee therefore reiterates its comments from the *Second Review Report* in regard to this issue and acknowledges that the LTCSA appropriately addresses the lifetime participation of spinal cord injury participants on a case by case basis.

LTCS Guidelines being ultra vires the Act

- 2.59** Another issue of concern raised by some stakeholders in the Second Review was that the *LTCS Guidelines* may be ultra vires (that is, beyond the power of) the *Motor Accidents (Lifetime Care and Support) Act 2006*. In this regard it was suggested that the *LTCS Guidelines* were limiting the Act's intent by setting provisions on what is 'reasonable and necessary' in the treatment, rehabilitation or care needs of Scheme participants.⁶¹
- 2.60** In its *Second Review Report*, the Committee noted these concerns and that there was a need for the *LTCS Guidelines* to ensure consistency in the Scheme. The Committee also recognised that interpreting what is 'reasonable and necessary' treatment, rehabilitation and care is fundamental to the operation of the Scheme and that this issue is likely to be cause for further consideration in future reviews. While at that time the Committee determined that no

⁵⁶ Standing Committee on Law and Justice, Report 40, p 67.

⁵⁷ Submission 11, Australian Lawyers Alliance, pp 2 and 9. Please note, the Alliance submitted its submission to the Second Review as an attachment to their submission to the current Review.

⁵⁸ Standing Committee on Law and Justice, Report 40, p 68.

⁵⁹ Standing Committee on Law and Justice, Report 40, p 68.

⁶⁰ Submission 11, p 9.

⁶¹ Standing Committee on Law and Justice, Report 40, p 72.

recommendation was warranted, it did encourage the LTCSA to ensure that the *Guidelines* do not limit the definitions of the Act.

- 2.61** The Australian Lawyers Alliance raised this issue in the current Review by way of resubmitting its May 2009 submission to the Committee's Second Review, which addressed the issue.⁶² No further comment was provided by the Alliance on this matter, nor has it been raised by other stakeholders as part of this Review, with the exception of the LTCSA who were asked a pre-hearing question on notice about the issue.
- 2.62** In response to a pre-hearing question on what advice it had received on this issue since the Second Review, the LTCSA informed the Committee that it had not sought further legal advice but instead amended all *Guidelines* to ensure that 'they are indicative but do not override the provisions of the Act that services must be reasonable and necessary.'⁶³ The Committee accepts this approach and again encourages the Authority to continue to ensure that the intent of the Act is not limited by its application of the *LTCS Guidelines*.

The use of future care as awarded damages in divorce and other legal settlements

- 2.63** During the Second Review, the Committee was made aware that lump sum compensation awarded to accident victims was being treated as capital by the Australian Family Court in divorce settlements. While the LTCSA explained that having a system of lifetime care and support, rather than a lump sum payment, addresses this issue for LTCS Scheme participants, the Committee expressed concern that awarded damages being used in legal settlements may have an impact on a person's ability to buy-in to the LTCS Scheme.⁶⁴ As a result, the Committee recommended:

That the Minister for Finance request that the NSW Attorney General examine the issue of awarded damages for the future care of injured people being used as part of divorce settlements and other legal settlements, and if appropriate, refer the issue to the Standing Committee on Attorneys General.⁶⁵

- 2.64** In response to the *Second Review Report*, the NSW Government advised that the Minister for Finance had referred this recommendation to the Attorney General, and that it is currently under consideration.⁶⁶
- 2.65** As part of this Review, Mr David Bowen, the Executive Director of the LTCSA, informed the Committee that the Attorney General had referred the recommendation to the Standing Committee of Attorneys-General and that 'it will probably take a couple of years to go through that process'.⁶⁷
- 2.66** The Committee will continue to monitor this issue and will revisit it in a future review.

⁶² Submission 11, p 9.

⁶³ Answers to pre-hearing questions on notice, LTCSA, Question 31, p 25.

⁶⁴ Standing Committee on Law and Justice, Report 40, pp 75-76.

⁶⁵ Standing Committee on Law and Justice, Report 40, p 77.

⁶⁶ Government Response to the Standing Committee on Law and Justice, Report 40, p 3.

⁶⁷ Mr David Bowen, Executive Director, LTCSA, Evidence, 21 June 2010, p 78.

Stakeholder comment

2.67 As part of the current Review, the SSCIS commented that an annual review of the exercise of the functions of the LTCSA and LTCSAC does not allow sufficient time for any recommended changes to the Scheme to be properly implemented and then appropriately evaluated:

... it is our view that not enough time has elapsed since the publication of the Report on the Second Review for implementation of its recommendations and the evaluation of the impact of the strategies and changes made as a result of these recommendation, to take effect.⁶⁸

2.68 While this view has not been expressed by other stakeholders as part of the current Review, the Committee is mindful of such observations.

Committee comment

2.69 It is pleasing to note that many of the Committee's recommendations from past Reviews considered in this section have been responded to positively by the Government and acted upon accordingly. Some of these issues have not been raised as part of the current Review, suggesting that they may have been addressed satisfactorily. The Committee recognises, however, that some issues may reemerge in future reviews and commits to reexamining these if they do.

2.70 The Committee acknowledges the comments of the SSCIS that an annual review of the LTCSA and LTCSAC may not allow sufficient time for recommendations and changes to the Scheme to be implemented and evaluated. The Committee concurs that this may be the case for some of the more complex issues and recommendations, although the proceeding discussion demonstrates that the annual review process does provide sufficient time for some recommendations to be accepted and acted upon satisfactorily. In regard to more complex issues, the Committee's review process ensures that unresolved issues are followed through to subsequent reviews, and the following section lists all those issues that are ongoing.

2.71 The Committee also notes that, in fulfilling similar statutory obligations to review the Motor Accidents Authority (MAA) and Motor Accidents Council (MAC), a move from an annual to a biennial review was recommended during its Ninth Review, and was subsequently accepted by the Government. The Committee recognises that a biennial review may be an appropriate option for future reviews of the LTCSA and LTCSAC.

Issues from past reviews to be considered in the current Review

2.72 The following issues were identified in the First and Second Reviews and continue to be areas of concern for stakeholders in the current Review, and as such will be considered in greater detail in other chapters of this report:

- Interface with the Motor Accidents Compensation Scheme (Chapter 3)
- Membership of the Lifetime Care and Support Advisory Council (Chapter 3)

⁶⁸ Submission 8, NSW State Spinal Cord Injury Service, p 2.

- Estimated financial liabilities and premiums (Chapter 3)
- Opting-out and buying-in to the Scheme (Chapter 4)
- Accidents not covered by the Scheme (Chapter 4)
- Medical assessment tools used to assess eligibility criteria (Chapter 4)
- Independent review of decisions (Chapter 4)
- Independent advice and advocacy for participants (Chapter 5)
- Impact of the Scheme on health service resources (Chapter 5)
- Revenue issues for Area Health Services (Chapter 5)
- The role of LTCS Coordinators (Chapter 5)
- Supported accommodation (Chapter 6)
- Attendant care services (Chapter 6)
- Support for family carers (Chapter 6)
- Recreation and leisure activities (Chapter 4).

A national disability long-term care and support scheme

- 2.73** In November 2009, the Prime Minister announced that the Australian Government's Productivity Commission would inquire into the feasibility of establishing a national long-term care and support scheme. The proposed scheme would provide long-term essential care and support for people with severe or profound disabilities, however acquired. This would include people with a disability present at birth or acquired through an accident or health condition.⁶⁹
- 2.74** A specific requirement of the Productivity Commission's inquiry is to consult with other jurisdictions about options for disability funding and to consider State/Territory arrangements for the provision of compensation or services for injury which causes a disability requiring long term care and support.⁷⁰
- 2.75** NSW Health advised that the Productivity Commission has commenced the inquiry into a National Disability Scheme and, while the coverage of the proposed national scheme would be much broader than that of the LTCS Scheme, the proposed scheme may operate in a similar way to both the LTCS and Motor Accidents Schemes currently operating in NSW.⁷¹ Indeed, according to the LTCSA, the LTCS Scheme 'is of interest to the Commission as a functioning model for provision of lifetime services'.⁷²

⁶⁹ Hon K Rudd MP, Hon J Macklin MP and, Hon B Shorten MP, 'Australian Government to consider new approaches to disability', *Joint Media Release*, 23 November 2010; Productivity Commission, 'Inquiry into Disability Care and Support', *Circular No. DCS 1*, 14 April 2010.

⁷⁰ Answers to pre-hearing questions on notice, LTCSA, Question 1, p 1; Productivity Commission, 'Inquiry into Disability Care and Support', *Terms of Reference*, 17 February 2010.

⁷¹ Submission 17, NSW Health, p 2.

⁷² Answers to pre-hearing questions on notice, LTCSA, Question1, p 1.

- 2.76** Mr Nicholas Whitlam, the Chair of the LTCSA Board informed the Committee that it would play an active role in assisting the Commission in its inquiry, and advised that it had already hosted a visit from the Commissioners and provided considerable information to assist its investigations.⁷³ The LTCSA also advised that its Executive Director, Mr David Bowen, has been appointed as a member of the independent panel providing assistance to the Commission in its deliberations.⁷⁴
- 2.77** The Commission plans to release its draft report for public consultation in February 2011 and is expected to report to the Government in July 2011.⁷⁵

⁷³ Mr Nicholas Whitlam, Chair, LTCSA, Evidence, 11 June 2010, p 11; Answers to pre-hearing questions on notice, LTCSA, Question1, p 1.

⁷⁴ Answers to pre-hearing questions on notice, LTCSA, Question 1, p 1.

⁷⁵ Productivity Commission, *Disability Care and Support – public inquiry*, accessed 5 August 2010, <www.pc.gov.au/projects/inquiry/disability-support>

Chapter 3 Scheme performance and other issues

This chapter reviews the Lifetime Care and Support Scheme's performance to date, including its utilisation and finances. The current success of the Scheme as reported to the Committee by key stakeholders will also be considered, as will the results of the Lifetime Care and Support Authority's first participant satisfaction survey. The relationship of the Lifetime Care and Support Scheme to the Motor Accidents Scheme is also examined in this Chapter, as is the membership of the Lifetime Care and Support Advisory Council.

Scheme performance

Utilisation

- 3.1** This section describes the participants in the Scheme including their sex, age, location, injury type and the role they had in the accident, for example whether they were the driver, passenger or a pedestrian.

Participants

- 3.2** At the time of the Committee's First Review there were 76 participants in the Scheme and at its Second Review, 233 participants.⁷⁶
- 3.3** As at May 2010,⁷⁷ there were 379 Scheme participants, 262 of whom were male and 117 female. Of the 379 participants, 46 were children (under 16 years old, also known as 'paediatric participants') and the remaining 333 were adults. Included in the 379 participants are eight participants who are now deceased.⁷⁸
- 3.4** As described in Chapter 2, lifetime participation in the Scheme is assessed before the interim period expires. As at May 2010, there were 50 lifetime participants in the Scheme.⁷⁹ As the Scheme develops it is anticipated that this number will grow significantly as it is presumed that a majority of participants will remain in the Scheme for life.⁸⁰ Indeed, the number of lifetime participants has increased considerably since the last review, where the Authority reported only four lifetime participants as at June 2009.⁸¹

⁷⁶ NSW Legislative Council, Standing Committee on Law and Justice, *Second Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 9.

⁷⁷ Please note, more current participant data was released by the Lifetime Care and Support Authority (LTCSA) in the July 2010 issue of its monthly newsletter. For example, it reported that as at July 2010, there were 399 participants in the Scheme. However, for the purposes of this Review, information has been drawn from the Authority's answers to questions on notice which, while dated May 2010, provides more comprehensive participant data.

⁷⁸ Answers to questions on notice taken during evidence 21 June 2010, Mr David Bowen, Executive Director, LTCSA, *Participant statistics: 20 May 2010*, p 2.

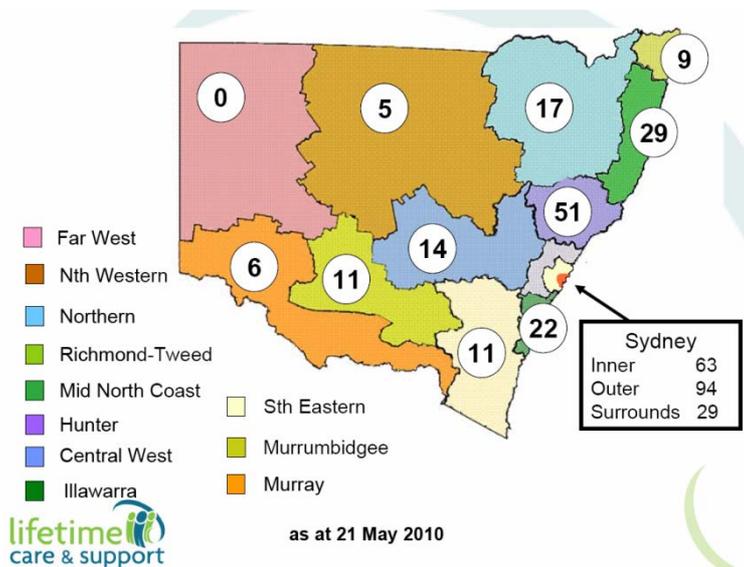
⁷⁹ Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 2.

⁸⁰ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – First report*, Report 37, October 2008, p 10.

⁸¹ Standing Committee on Law and Justice, Report 40, p 7.

3.5 Below is a geographical breakdown of where Scheme participants reside.

Figure 3.1 Scheme participants – geographical breakdown as at May 2010⁸²



3.6 The type of injuries sustained by participants is outlined in the table below.

Table 3.1 Scheme participants – injury type as at May 2010⁸³

Injury type	Paediatric	Adult
Traumatic brain injury	40	258
Spinal cord injury	5	69
Traumatic brain injury and spinal cord injury	1	1
Amputations	0	3
Severe burns	0	1
Severe burns and spinal cord injury	0	1

3.7 Of the 46 paediatric participants: 24 passengers, 13 pedestrians, 4 cyclists, 2 drivers, 3 motorcycle riders/other.⁸⁴

3.8 Of the 333 adult participants: 114 drivers, 81 motorcycle riders (including 3 million passengers), 64 passengers, 62 pedestrians, and 12 cyclists/other.⁸⁵

3.9 Below is a graph providing the breakdown of participants by age groups.

⁸² Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 6.

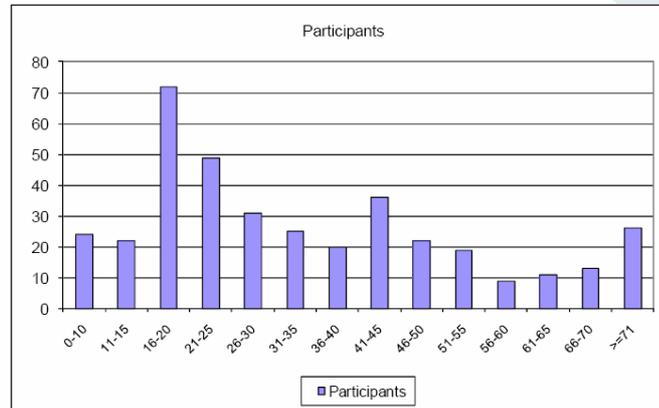
⁸³ Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 7.

⁸⁴ Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 9.

⁸⁵ Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 9.

Figure 3.2 Scheme participants – age group as at May 2010⁸⁶

Scheme participants: Age as at 21 May 2010



- 3.10** Mr Nicholas Whitlam, the Chairman of the LTCSA Board, advised that the overall number of people entering the Scheme has been within the expected range.⁸⁷ The Authority also noted that for the first time, there are more participants in the community than in hospital or rehabilitation.⁸⁸
- 3.11** As in the Second Review, the Authority indicated that the level of severity of injuries sustained by Scheme participants has been higher than expected and that the average age of participants continues to be older than expected. Indeed, Mr Whitlam remarked that a 'surprising number' of older people have been entering the Scheme, the LTCSA speculates will continue with the ageing population remaining active road users. Mr Whitlam also noted that the number of children entering the Scheme has increased slightly compared to earlier years, although it still remains well below the number expected at the time the Scheme was introduced.⁸⁹

Financial matters

- 3.12** According to the Annual Report, the financial statements for the LTCSA disclosed a deficit of \$4.022 million, decreasing equity to \$156 million.⁹⁰ This is in contrast to the \$60.020 million surplus reported in last year's Review, which formed equity of over \$160 million.⁹¹
- 3.13** With regard to the deficit, the Authority explained that the global financial crisis had impacted on the valuation of its investment assets. However, due to its investment strategy, the

⁸⁶ Answers to questions on notice taken during evidence 21 June 2010, Mr Bowen, *Participant statistics*, p 12.

⁸⁷ Mr Nicholas Whitlam, Chair, LTCSA, Evidence, 11 June 2010, p 10.

⁸⁸ LTCSA, *Annual Report 2008-2009*, p 3.

⁸⁹ Mr Whitlam, Evidence, 11 June 2010, p 10.

⁹⁰ LTCSA, *Annual Report 2008-2009*, p 16.

⁹¹ LTCSA, *Annual Report 2007-2008*, p 21.

Authority advised that it was able to limit its exposure, and as a result, 'the Scheme remains financially healthy'.⁹²

- 3.14** Detailed income statements and expenditure tables for the Scheme are provided in the Authority's Annual Report and have not been reproduced here. However, to compare with expenditure figures presented in the Second Review, the following table provides a breakdown of actual expenditure from when the Scheme commenced until June 2010.

Table 3.2 Scheme participants' care and support expenses as at June 2010⁹³

Expenses	\$
Attendant care	13,065,276
Equipment	4,084,540
Home modifications	1,748,510
Rehabilitation	8,716,956
Hospital	31,998,660
Medical	4,796,301
Expenses	3,489,185
Total	67,899,428

Life Costing Model

- 3.15** The Life Costing Model is a tool to assist in the process of estimating costs for providing lifelong treatment, rehabilitation and care services to Scheme participants. The tool allows the Authority to estimate the lifetime cost of individual participants, the cost of all participants, as well as calculating the cash flow requirements of the Authority.⁹⁴
- 3.16** The Committee was first informed of the Life Costing Model in its Second Review. In this regard, the LTCSA advised that it had undertaken a project relating to the financial underpinnings of the Scheme.⁹⁵
- 3.17** As part of the current Review, the LTCSA was asked to provide an update on the progress of the Life Costing Model. The Authority indicated that, 'in day to day use, the [Model] serves well for budget provisioning purposes'.⁹⁶ They explained that it was being used to calculate the present value of future cash flows for each participant in the Scheme which, when consolidated, then informs and supports the formal actuarial estimates for future costs of the Scheme.⁹⁷

⁹² LTCSA, *Annual Report 2008-2009*, p 3.

⁹³ Correspondence from Ms Amy Mai, Management Accountant, MAA and LTCSA, to Senior Council Officer, 16 September 2010.

⁹⁴ LTCSA, *Annual Report 2007-2008*, p 15.

⁹⁵ Standing Committee on Law and Justice, Report 40, p 11.

⁹⁶ Answers to pre-hearing questions on notice, LTCSA, Question 2(b), p 2.

⁹⁷ Answers to pre-hearing questions on notice, LTCSA, Question 2(a), p 1.

- 3.18** The LTCSA further advised that the Life Costing Model was remodelled throughout 2009-2010 to ensure that it linked to the Authority's financial systems. The Authority informed the Committee that this has allowed for actual costs to be overlaid on estimates of costs, thereby making forecasts increasingly accurate over time.⁹⁸
- 3.19** The Committee was advised that, following development and testing, the final model would go into final production release in June 2010.⁹⁹ The Committee looks forward to examining how successful the model has been operating in its next review.

Medical Care and Injury Services Levy and CTP premiums

- 3.20** As outlined in Chapter 2, the Scheme is funded through the Medical Care and Injury Services (MCIS) levy which is a component of the Compulsory Third Party (CTP) green slip insurance policy purchased by motorists when registering a motor vehicle in NSW. A proportion of the MCIS levy contributes to the LTCS fund, and represents a non-fixed percentage of the insurer premium for each vehicle class and region rating.¹⁰⁰
- 3.21** In the last financial year, the Scheme received \$327.562 million in funding through the levy.¹⁰¹
- 3.22** Significantly, the LTCSA reported that they had reduced the levy on motorists by 2.5 per cent in February 2009 and approved a further 3.5 per cent reduction from August 2009.¹⁰² The Authority explained that they were able to allow this reduction because the increase in CTP premiums was delivering a higher income to the LTCSA than was required to maintain full funding. The LTCSA was therefore able to lower the levy and still receive the same total income as required to meet projected costs for people injured that year.¹⁰³

Current success of the Scheme

- 3.23** As part of the current Review, the Committee heard from a range of support groups, service providers, medical practitioners, and participants and participant carers who expressed their overall support for the Scheme and commented on its success to date.
- 3.24** For example, Dare to Do Australia, a community advocacy group supporting the catastrophically ill and injured, remarked:

⁹⁸ Answers to pre-hearing questions on notice, LTCSA, Question 2(b), p 2.

⁹⁹ Answers to pre-hearing questions on notice, LTCSA, Question 2(b), p 2.

¹⁰⁰ Answers to pre-hearing questions on notice, LTCSA, Question 37, p 27. Please note, the remainder of the MCIS levy includes an amount collected by the MAA to cover bulk billings payment for ambulance and acute care services, RTA processing costs associated with CTP insurance policies and MAA costs: LTCSA, Answers to post-hearing questions on notice, Question 8. For more information on the MCIS levy, including an analysis of issues raised in relation to it by the Motorcycle Council of NSW, please refer to the Committee's Tenth Review of the exercise of the functions of the MAA and Motor Accidents Council.

¹⁰¹ LTCSA, *Annual Report 2008-2009*, p 16.

¹⁰² LTCSA, *Annual Report 2008-2009*, p 11.

¹⁰³ Answers to post-hearing questions on notice, LTCSA, Question 9, p 5.

At this point it is clear that the Lifetime Care and Support Scheme has delivered great benefits [to those] who suffer catastrophic injuries as a result of a motor vehicle accident.¹⁰⁴

3.25 A number of service providers and medical practitioners not only acknowledged the importance of the Scheme but observed that it had improved significantly since its introduction. For example, the State Spinal Cord Injury Service stated that the Scheme has been 'a very important development and most welcome change ... for people who have been severely and permanently injured in motor accidents'.¹⁰⁵

3.26 Similarly, Royal Rehabilitation Centre Sydney suggested that the Scheme had become an increasingly important funder of long-term care costs, and that since its establishment:

... the expansion and improvement in the LTCS Guidelines, policies, eligibility criteria, models of care, and inter-agency collaboration have been significant and welcomed.¹⁰⁶

3.27 Dr Adeline Hodgkinson, the Co-Chair of the Brain Injury Rehabilitation Directorate and the Director of the Brain Injury Rehabilitation Service at Liverpool Hospital, commented that 'there is a very positive feel about how the Scheme is working'.¹⁰⁷

3.28 This view was reflected by Australian RehabWorks, a private provider of rehabilitation services to Scheme participants, who advised that they have had very good experiences with the Scheme's operation and processes, and is supportive of the LTCSA's approach to its participants:

Our experience as a private provider of rehabilitation services in dealing with the Lifetime Care and Support Authority has been a positive one in assisting participants with both traumatic brain injury and spinal cord injury to participate in rehabilitation... Our experience has been that Lifetime Care and Support make decisions in the best interest of the participant and we have experienced fairness in application of the reasonable and necessary guidelines.¹⁰⁸

3.29 Several participants and family carers of participants, some of whom appeared before the Committee during the public hearings to share their experiences, also commended the Scheme and the work of the Authority.

3.30 For example, Scheme participant Mr Lyndon Wait, stated that he was 'very happy with the system'.¹⁰⁹ Mr Ian Franklin, the father of a participant, was also positive about his and his son's experiences with the Scheme:

... the experience we have had with Lifetime Care has been fantastic... It is a good system. I think we would have been struggling a lot more had we not had it.¹¹⁰

¹⁰⁴ Submission 1, Dare to Do Australia, p 1.

¹⁰⁵ Submission 8, State Spinal Cord Injury Service, p 1.

¹⁰⁶ Submission 10, Royal Rehabilitation Centre Sydney, p 1.

¹⁰⁷ Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, and Director, Brain Injury Rehabilitation Service, Liverpool Hospital, Evidence, 21 June 2010, p 1.

¹⁰⁸ Submission 3, Australian RehabWorks, p 1.

¹⁰⁹ Mr Lyndon Wait, Evidence, 21 June 2010, p 28.

¹¹⁰ Mr Ian Franklin, Evidence, 21 June 2010, p 28.

- 3.31** Mr Daniel Strbik, the father of a Scheme participant, informed the Committee that he has had very little to organise on his part to ensure that his daughter's treatment and care were provided for. Mr Strbik explained that, once his family had learnt of the Scheme through an LTCS Coordinator and was assigned a case manager "... the whole thing took over from there... we have had nothing that we had to look after ourselves. It was all looked after by the case manager and made simple for all the therapies and all the approvals that had to go through."¹¹¹
- 3.32** Ms Tania Panopoulos, the mother of a lifetime participant, expressed her appreciation for the Scheme's establishment and the care provided for her son: "I thank God that there is a Scheme for people with brain injury otherwise I don't know where he would be right now. I am happy with the LTCS, where there was no hope you have given us hope never denying Peter his needs seeing him as a human being..."¹¹² Ms Panopolous did, however, raise a number of specific concerns with particular decisions made in regards to her son which the Committee is unable to look into due to our terms of reference.¹¹³
- 3.33** One Scheme participant, Mr Mark Harris, recognised that the Scheme fulfills a worthwhile role but argued strongly that in his circumstances a lump sum payment would be preferable to having his care and treatment managed by the Scheme.¹¹⁴ Mr Harris raised a number of concerns and issues which are examined in the appropriate sections on this report.
- 3.34** In addition to the experiences of these participants and family members, which has provided a personal insight to the impact of the Scheme and its benefits, a more general view of the Scheme's overall success has been provided by the results of the LTCSA's first participant satisfaction survey, as discussed below.

Participant satisfaction survey

- 3.35** In 2009, the LTCSA conducted its first participant survey to measure participant satisfaction with the Scheme and service providers, and to gather information regarding the Authority's performance so as to inform its quality improvement program.¹¹⁵
- 3.36** The survey was subject to tender and carried out by an external surveyor appointed by the Authority. The survey was developed and conducted from August to December 2009.¹¹⁶
- 3.37** The LTCSA advised that the participant survey was both qualitative and quantitative, and made careful consideration of the needs of participants with traumatic brain injury. The qualitative surveys were conducted in person, while the quantitative surveys were conducted by telephone.¹¹⁷

¹¹¹ Mr Daniel Strbik, Evidence, 21 June 2010, p 28.

¹¹² Submission 19, Ms Tania Panopoulos, p 1.

¹¹³ The Committee's terms of reference, Item 4 prohibits the Committee from investigating a particular participant, or application for participation

¹¹⁴ Submission 5, Mr Mark Harris; Mr Mark Harris, Evidence, 21 June 2010, p 22.

¹¹⁵ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 4; LTCSA, *Annual Report 2008-2009*, p 9.

¹¹⁶ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 4

¹¹⁷ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

- 3.38** A total of 112 Scheme participants took part in the survey. These participants were individuals who had been in the Scheme for at least six months, had left hospital, and had not participated in any previous surveys conducted by the Authority.¹¹⁸
- 3.39** The survey results showed an overall satisfaction with the Scheme, with 84 per cent of Scheme participants expressing that they were either satisfied, very satisfied or extremely satisfied with how the Scheme was meeting their needs. 12 per cent of participants were dissatisfied, very dissatisfied or extremely dissatisfied with how the Scheme was meeting their needs.¹¹⁹
- 3.40** The survey results also revealed an overall satisfaction with funded services, with at least 75 per cent of participants expressing that they were either satisfied, very satisfied or extremely satisfied with every service nominated. Satisfaction results for individual services are as follows: 88 per cent were satisfied with attendant care services, 89 per cent with case management services, and 95 per cent with occupational therapy services.¹²⁰
- 3.41** The LTCSA suggested that these high satisfaction rates identified a strong feeling of gratitude and goodwill among participants and their families towards the Authority, even in cases where issues with services providers, for example, were still to be resolved.¹²¹
- 3.42** 27 per cent of participants reported problems with services in the last three months, with the main areas of concern being delays with approval for or access to services, and problems with attendant care or domestic assistance.¹²² These concerns were also raised by submission makers to the Committee's review and are examined in Chapters 5 and 6.
- 3.43** The survey also asked participants to comment on what improvements could be made by the Authority. While one third of participants felt that no improvements were necessary, those who did suggested that improvements could be made in two key areas – decreasing delays with approvals and access to services, and improving communication or contact.¹²³ These issues are examined in Chapter 5.

Committee comment

- 3.44** The Committee recognises the valuable provisions the Scheme makes for lifelong treatment, rehabilitation and care services to people who are severely injured in motor vehicle accidents in NSW, regardless of who was at fault. The Committee supports the vision of the Scheme to affirm the rights and dignity of the injured person and ensure a holistic approach to their needs, care and support.
- 3.45** The Committee commends the LTCSA and the LTCSAC on the success of the Scheme to date, and acknowledges the service providers, including medical practitioners and other clinical staff, for their role in assisting the Scheme's implementation.

¹¹⁸ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

¹¹⁹ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

¹²⁰ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

¹²¹ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

¹²² Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

¹²³ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 6.

- 3.46** The Committee is very pleased to see the continued success of the Scheme and is encouraged by the positive results of the LTCSA's first participant satisfaction survey.
- 3.47** The Committee notes that there is some level of dissatisfaction among the participants who appeared before the Committee as well as survey respondents. While representing a small percentage of Scheme participants, it is important that their concerns are recognised. The Committee hopes that its recurring review process will assist the Authority and the Council to address these issues and that the level of dissatisfaction with the Scheme diminishes.
- 3.48** The Committee will observe the views and comments of all stakeholders, particularly Scheme participants and their carers, as the Scheme develops and faces new challenges in the future.

Relationship with the Motor Accidents Scheme

- 3.49** As described in the *First Review Report*, the LTCS Scheme and the Motor Accidents Scheme, although separate, do interact. While the LTCS Scheme meets the lifelong treatment, rehabilitation and care needs of a participant, if that participant was injured through the fault of another driver, they may also make a CTP claim for compensation under the Motor Accidents Scheme.¹²⁴
- 3.50** Under the Motor Accidents Scheme, people injured in motor vehicle accidents can seek compensation for economic and non-economic losses, such as lost income and pain and suffering. However, as stipulated in the *Motor Accidents Compensation Act 1999*, LTCS Scheme participants with a concurrent CTP claim cannot claim damages for any treatment and care needs under the Motor Accidents Scheme as these are to be met solely by the LTCS Scheme.¹²⁵
- 3.51** The Insurance Council of Australia raised 'boundary issues' between the two Schemes during the First Review. ICA suggested that clarification was needed to identify which Scheme paid for particular expenses. At the time, the Committee considered the issue would become more apparent as the LTCS Scheme's implementation proceeds.¹²⁶
- 3.52** While the issue was not raised during the Second Review, it has again emerged in the current Review with some stakeholders identifying specific areas of concern. These include a lack of clarity over how claimants of both Schemes should be managed, inconsistencies between the Schemes, and the potential need for legislative change to address these inconsistencies.
- 3.53** According to the Brain Injury Service, Kids Rehab, The Children's Hospital at Westmead, the relationship between the schemes and their administering bodies is not clear, making it difficult to manage claimants of both schemes.¹²⁷ Kids Rehab indicated that there are instances of 'recommendations from LTCSA for service providers to try and access CTP funds that fall outside their legislative guidelines, but there is resistance from the respective insurers under the CTP systems to cover these costs!'¹²⁸

¹²⁴ Standing Committee on Law and Justice, Report 37, pp 13-14.

¹²⁵ Standing Committee on Law and Justice, Report 37, p 14.

¹²⁶ Standing Committee on Law and Justice, Report 37, pp 56-57.

¹²⁷ Submission 13, Brain Injury Service, Kids Rehab, The Children's Hospital at Westmead, p 8.

¹²⁸ Submission 13, p 8.

- 3.54** While Kids Rehab conceded that 'the process of accessing the CTP system for costs not accepted by the LTCSA has not been greatly tested' within their service, it expressed concern that claimants of both Schemes were not being appropriately guided, making the process of accessing the dual compensations systems 'a burden of time, emotional energy, administration and finances'.¹²⁹
- 3.55** In response to Kids Rehab's concerns, the LTCSA reiterated that the LTCS Scheme covers the treatment, rehabilitation and care expenses for its participants. The Authority advised that where there are other injury-related expenses, these may be covered by the CTP insurer granted the claim is for economic or non-economic loss. The LTCSA also noted that it had met with Kids Rehab to provide further information on this issue.¹³⁰
- 3.56** Other issues concerning the relationship between the LTCS and Motor Accidents Schemes were identified by the Insurance Council of Australia. For example, the Council argued that claims were being made to CTP insurers which were 'ostensibly outside the scope of the LTCS Scheme' therefore highlighting an 'apparent inconsistency of operation under the CTP and LTCS Schemes in NSW'.¹³¹
- 3.57** The Insurance Council of Australia explained that its members were concerned that not all treatment and care needs were being covered by the LTCS Scheme, stating that:

Our members have been served with pleadings claiming damages in respect of treatment and care needs in addition to those provided under the LTCS Scheme.¹³²

- 3.58** The Council advised that its insurers were being presented with claims 'arguably not funded under the LTCS Scheme', including gratuitous attendant care services, attendant care whilst an inpatient in hospital, capital costs for purchasing a house and/or a motor vehicle, and differences between overseas cost of care and the cost of care had the care provision occurred in NSW.¹³³
- 3.59** According to the Insurance Council of Australia, such claims are 'contrary to the initial intention of the LTCS Scheme', which was for all such treatment and care to be covered under that Scheme. They suggested that this anomaly was a consequence of ambiguous wording in Section 130A of the Act, which states:

130A No damages for expenses covered by Lifetime Care and Support Scheme

No damages may be awarded to a person who is a participant in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* for economic loss in respect of the treatment and care needs ... of the participant that relate to the motor accident injury in respect of which the person is a participant in that Scheme and that are provided for or are to be provided for while the person is a participant in that Scheme.¹³⁴

¹²⁹ Submission 13, p 8.

¹³⁰ Answers to pre-hearing questions on notice, LTCSA, Question 34, p 26.

¹³¹ Submission 14, Insurance Council of Australia, p 10.

¹³² Submission 14, p 10.

¹³³ Submission 14, p 10.

¹³⁴ Submission 14, pp 10-11.

- 3.60** The Insurance Council of Australia noted that, while the section states what an LTCS participant *cannot* claim under the Motor Accidents Scheme, it does not specify what they *can*. Therefore, according to the Council, the section is open to the interpretation that:
- ... if a participant in the LTCS Scheme can prove that his or her treatment and care needs are not being met in full by the LTCS Scheme, the participant remains entitled to claim the cost of any treatment and care needs which are not covered from the CTP insurer.¹³⁵
- 3.61** As a result, the Insurance Council of Australia identified the potential for delays to be experienced by LTCS participants in receiving appropriate treatment and care if some aspects of their treatment can only be resolved through the courts as part of a litigated CTP claim. In suggesting so, the Council also highlighted the inconsistencies between the Scheme's approaches to dispute resolution, as mechanisms under the LTCS Scheme do not provide for legal action.¹³⁶
- 3.62** Furthermore, the Insurance Council of Australia argued that, because the LTCS Scheme is funded by a levy specifically set for the purposes of covering treatment and care expenses for the catastrophically injured, such expenses should be paid out of that levy and not the CTP premiums supporting the Motor Accidents Scheme. The Council stated that if confusion over the appropriate pathways to claim treatment and care continued, this would likely 'put pressure on the cost of CTP greenslips in NSW'.¹³⁷
- 3.63** The Insurance Council of Australia concluded that the inconsistencies in the operation of the LTCS and Motor Accidents Schemes could only be resolved by amending the Act, suggesting that an amendment was needed to 'clarify that no additional damages can be claimed for treatment and care apart from those available under the LTSC Scheme'. The Council proposed that the amendment explicitly state that LTCS participants may only claim for 'damages for non-economic loss, past economic loss due to loss of earnings, and future economic loss due to the deprivation or impairment of earning capacity', under the Motor Accidents Scheme.¹³⁸
- 3.64** When asked to respond on the Insurance Council of Australia 's comments, the LTCSA acknowledged that there is a view that some services outside of the LTCS Scheme might provide grounds to seek damages under the Motor Accidents Scheme, but expressed concern that some participants would refuse care in order to actively pursue a CTP claim. The LTCSA advised that, if the claim was successful and the participant then sought care under the LTCS Scheme, then that participant would effectively be 'double dipping'.¹³⁹
- 3.65** The LTCSA agreed that if, for example, attendant care was approved under the LTCS Scheme but was declined by the participant, then that participant should not be able to seek lump sum damages under the Motor Accidents Scheme.¹⁴⁰

¹³⁵ Submission 14, p 11.

¹³⁶ Submission 14, p 11.

¹³⁷ Submission 14, p 11.

¹³⁸ Submission 14, p 11.

¹³⁹ Answers to pre-hearing questions on notice, LTCSA, Question 33(a), pp 25-26.

¹⁴⁰ Answers to pre-hearing questions on notice, LTCSA, Question 33(a), pp 25-26.

- 3.66** The LTCSA also recognised the Insurance Council of Australia's concerns over the wording used in the Act and acknowledged that 'it may be necessary to clarify the original intent of Section 130A'. The LTCSA indicated that this was already under consideration.¹⁴¹

Committee comment

- 3.67** The LTCS and Motor Accidents Schemes share a unique and complex relationship, the full extent of which is still to be realised given the relative infancy of the LTCS Scheme. The Committee recognises the concerns raised by stakeholders about the interaction between the Schemes, specifically in the area of treatment, rehabilitation and care expenses covered by the each of the Schemes.
- 3.68** The Committee notes the comments of the ICA with regard to claims being made to its CTP insurers for items and services outside the scope of the LTCS Scheme but not clearly within the scope of the Motor Accidents Scheme. The Committee understands that this confusion may be the result of ambiguous wording within the *Motor Accidents Compensation Act 1999*. This was also acknowledged by the LTCSA which advised that it is currently considering the issue.
- 3.69** As the relationship between the LTCS and Motor Accidents Schemes will require further clarification over time the Committee will monitor this issue closely in the next Review.
- 3.70** In the meantime, the Committee recommends that the MAA, in consultation with the LTCSA, examine whether CTP claims are being made for treatment, rehabilitation and care expenses that should be claimed under the LTCS Scheme and if so, to consider whether an amendment is required to the *Motor Accidents Compensation Act 1999* to appropriately address the potential for duplicating claims and awarded damages.

Recommendation 1

That the Motor Accidents Authority, in consultation with the Lifetime Care and Support Authority, examine whether Compulsory Third Party claims are being made for treatment, rehabilitation and care expenses that should be claimed under the Lifetime Care and Support Scheme and, if so, consider whether an amendment is required to the *Motor Accidents Compensation Act 1999* to address the potential for duplicating claims and awarded damages.

Membership of the Lifetime Care and Support Advisory Council

- 3.71** The Lifetime Care and Support Advisory Council (LTCSAC) is comprised of eight members, including the Chief Executive Officer of the LTCSA.¹⁴²
- 3.72** During the Second Review, it was proposed that the membership of the LTCSAC be expanded to include participant and social worker representatives.¹⁴³

¹⁴¹ Answers to pre-hearing questions on notice, LTCSA, Question 33(b), p 26.

¹⁴² Standing Committee on Law and Justice, Report 40, p 51.

¹⁴³ Standing Committee on Law and Justice, Report 40, p 51.

- 3.73** The Committee expressed support for this suggestion, noting that it would be appropriate for participants to be directly represented on the Council and that allied health workers should be given the opportunity to serve on the Council given the significant contribution and role they have within the Scheme.¹⁴⁴
- 3.74** Furthermore, the Committee considered it apt that a participant and family carers working group be established to provide support to the participant representative. It was envisioned that such a group would examine participant and carer issues which the participant representative could then report to the LTCSAC.¹⁴⁵
- 3.75** As such, the Committee made the following recommendations:
- That the Minister for Finance review the membership of the Lifetime Care and Support Advisory Council to consider including representatives of Lifetime Care and Support Scheme participants and allied health workers and professionals and, if necessary, seek an amendment to the *Motor Accidents (Lifetime Care and Support) Act 2006*.
- That the Lifetime Care and Support Authority create and facilitate a participant and family carers working group that can support the participant representative on the Lifetime Care and Support Advisory Council.¹⁴⁶
- 3.76** In response to these recommendations, the NSW Government advised that the LTCSA was keen to have participant representation on the LTCSAC and that it proposed to include two participant representatives. The NSW Government also advised that the LTCSA had plans to convene two forums for participants in 2010 which it hoped would identify participant and family carer issues for the LTCSAC to consider.¹⁴⁷
- 3.77** With regard to allied health representation on the Council, the NSW Government indicated that it did not view this recommendation as necessary by noting that the LTCSAC membership as set out by the Act already includes two health practitioners and two representatives concerned with the treatment, rehabilitation and care of injured people.¹⁴⁸
- 3.78** The Brain Injury Rehabilitation Directorate's submission to the Committee's current review welcomed the NSW Government's advice that two participant representatives would be sought for inclusion in the LTCSAC.¹⁴⁹
- 3.79** During the current Review, Mr David Bowen, the Executive Director of the LTCSA, informed the Committee that the LTCSA has started a process to set up participant forums, which are designed to identify participant representative for the LTCSAC:

¹⁴⁴ Standing Committee on Law and Justice, Report 40, p 53.

¹⁴⁵ Standing Committee on Law and Justice, Report 40, p 53.

¹⁴⁶ Standing Committee on Law and Justice, Report 40, p 54.

¹⁴⁷ NSW Government, Government Response to the Standing Committee on Law and Justice, *Second Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 2.

¹⁴⁸ NSW Government response to the Standing Committee on Law and Justice, Report 40, p 2.

¹⁴⁹ Submission 7, Brain Injury Rehabilitation Directorate, p 3.

We have set up a process to establish some participant forums. That is designed to get a participant representative on the [LTCSA] Council—which is a recommendation of this Committee—and to provide another element of feedback to the Authority on what people think they need and what gaps they have identified on their journey through acute care rehabilitation and back into the community.¹⁵⁰

- 3.80** When asked how the plans for participant representation on the Council were progressing, Mr Douglas Herd, the Chair of the LTCSAC, advised that the Council has been committed to moving towards participant representation but that it has not taken place as yet because it requires an amendment to the Act, which sets out the membership of the LTCSAC.¹⁵¹
- 3.81** Moreover, Mr Herd indicated that, as the Scheme was still in its early stages, some participants were at the very most only two years from acquiring their injury. As such, he advised that it was only now that the participant base was becoming 'mature enough in their journey... to begin to express a desire to participate in the oversight of the agency'. Mr Herd expected that in the next year or so, participants would be directly represented on the Council.¹⁵²
- 3.82** Further to Mr Herd's evidence, the LTCSA confirmed that participant representation would be included when changes are next made to the Act. In the meantime, the Authority advised that it would continue to seek feedback from participants on the administration and operation of the Scheme.¹⁵³

Committee comment

- 3.83** The Committee is pleased that the NSW Government has accepted its recommendation for participant representation on the LTCSAC, and notes the LTCSA's proposal for two participant representatives to be included in the Advisory Council.
- 3.84** The Committee recognises that legislative amendment is required to change the membership of the LTCSAC and notes that the LTCSA has confirmed that participant representation would be included when changes are next made to the Act. As such, the Committee looks forward to observing the progress of participant representation in its next Review.
- 3.85** The Committee notes, however, that there has been no commitment to establishing a participant and family carers' working group to support the participant representatives on the LTCSAC, as recommended in the *Second Review Report*.
- 3.86** While participant representation has not yet been formalised, the Committee maintains that supporting participant representatives on the Advisory Council through a working group is important and therefore encourages the LTCSA to establish such a group when participant representatives have, via legislative amendment, been included in the LTCSAC.

¹⁵⁰ Mr David Bowen, Executive Director, LTCSA, Evidence 21 June 2010 p 71.

¹⁵¹ Mr Douglas Herd, Chair, LTCSAC, Evidence, 11 June 2010, p 17.

¹⁵² Mr Herd, Evidence, 11 June 2010, p 17.

¹⁵³ Answers to pre-hearing questions on notice, LTCSA, Question 30, p 25.

Chapter 4 Entry into the Scheme, dispute resolution and other issues

This chapter examines a number of issues raised by stakeholders in the current Review including buying-in and opting-out of the Scheme, injuries caused by accidents not covered by the Scheme, the assessment tools used to determine medical eligibility for the Scheme and the review of decisions and dispute resolution mechanisms. Support for participants in the early stages of the Scheme and access to independent advice and advocacy is also examined. Some of these issues were raised in the Committee's past reviews and have been identified as issues of ongoing concern during this review.

Buying-in to the Scheme

- 4.1** As mentioned in Chapter 2, the *Motor Accidents (Lifetime Care and Support) Amendment Act 2009* (hereafter referred to as 'the Amendment Act') was assented to on 9 June 2009. In addition to extending the interim participation of children less than three years of age, the Amendment Act gave effect to legislative change to enable a person who was injured in a motor accident before the commencement of the LTCS Scheme to use their awarded lump sum compensation to buy-in to the Scheme.
- 4.2** Under the Amendment Act, an injured person may buy-in to the Scheme if they meet the eligibility criteria and pay an amount determined by the LTCSA to fund their future treatment and care needs.¹⁵⁴
- 4.3** It should be noted that the amended version of Section 7A of the *Motor Accidents (Lifetime Care and Support) Act 2006* (hereafter referred to as 'the Act'), which will allow for the buy-in, has not yet commenced.¹⁵⁵ The Committee understands that this provision will commence after the methodology for buying-in to the Scheme and the associated guidelines have been finalised by the LTCSA.¹⁵⁶
- 4.4** Concerns relating to the buy-in provisions were first raised by stakeholders as part of the Second Review. Among the issues identified was the concern that an accident victim's lump sum compensation may be inadequate to cover the real commercial cost of providing a lifetime of care, principally due to the five per cent discount rate that courts are required to apply.¹⁵⁷ As a result, the NSW Bar Association suggested that the no one would be in a position to buy-in to the Scheme.¹⁵⁸
- 4.5** In response to these concerns, the LTCSA advised the Committee that it would commission a review of court verdicts in motor vehicle personal injury matters, with the view to using the

¹⁵⁴ *Motor Accidents (Lifetime Care and Support) Amendment Act 2009*, Sch 1.

¹⁵⁵ *Motor Accidents (Lifetime Care and Support) Act 2006*, see Historical Notes.

¹⁵⁶ Legislative Council, Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 69.

¹⁵⁷ Standing Committee on Law and Justice, Report 40, p 69.

¹⁵⁸ Standing Committee on Law and Justice, Report 40, p 70.

results to construct a buy-in methodology.¹⁵⁹ In the *Second Review Report* the Committee undertook to follow up on this issue in future reviews.

- 4.6 As part of the current Review, the LTCSA was asked to report on the outcome of its commissioned review. The LTCSA advised that, although only four cases had sufficient information to examine, 'it was clear that the lump sum amounts awarded for future care vary significantly'.¹⁶⁰ The LTCSA also commented that there was not always a strong correlation between the level or severity of injury or care need and the amount awarded.¹⁶¹
- 4.7 Mr David Bowen, the Executive Director of the LTCSA, explained that of the four cases reviewed, two people with spinal cord injury had more than sufficient damages to be able to buy-in to the Scheme. The remaining two cases involved people with brain injury and of these, one was awarded damages borderline to making it affordable to buy-in to the Scheme, while the other received insufficient damages to buy-in. Mr Bowen speculated that this inconsistency 'probably reflects the fact that courts grapple with the difficulty of assessing care needs associated with cognitive and behavioural disabilities'.¹⁶²
- 4.8 The LTCSA advised that guidelines for buying-in to the Scheme have been drafted and include the way in which the LTCSA would enter into an agreement with a participant to fund them for a period.¹⁶³
- 4.9 The Committee was informed that the draft guidelines had been circulated to stakeholders, including the NSW Bar Association, for comment and that useful feedback had been returned to the LTCSA.¹⁶⁴ The Brain Injury Rehabilitation Directorate (BIRD) advised that it had also contributed to the guidelines, noting that a significant number of their clients had received insufficient lump sum compensation to buy-in to the Scheme.¹⁶⁵
- 4.10 Mr Bowen informed the Committee that the draft guidelines would be put to the LTCSAC at its next meeting, after which the LTCSA expects to start receiving applications.¹⁶⁶ No further update on this issue was received by the Committee prior to tabling this report.

Committee comment

- 4.11 The Committee notes that, at the time this report was being finalised, the buy-in option is not currently available to Scheme participants. We understand, however, that this option will take effect once the LTCSA has finalised its buy-in methodology and guidelines.

¹⁵⁹ Standing Committee on Law and Justice, Report 40, p 71.

¹⁶⁰ Answers to pre-hearing questions on notice, Lifetime Care and Support Authority (LTCSA), Question 6, p 3.

¹⁶¹ Answers to pre-hearing questions on notice, LTCSA, Question 6, p 3; Mr David Bowen, Executive Director, LTCSA, Evidence, 11 June 2010, p 18.

¹⁶² Mr Bowen, Evidence, 11 June 2010, p 19.

¹⁶³ Answers to pre-hearing questions on notice, LTCSA, Question 6, p 3; Mr Bowen, Evidence, 21 June 2010, p 72.

¹⁶⁴ Mr Bowen, Evidence, 11 June 2010, pp 18-19.

¹⁶⁵ Submission 7, Brain Injury Rehabilitation Directorate, p 1.

¹⁶⁶ Mr Bowen, Evidence, 11 June 2010, p 18.

- 4.12** The Committee recognises the concerns of stakeholders in both past and current Reviews in relation to the potential for accident victims to be awarded insufficient lump sum compensation to buy-in to the Scheme.
- 4.13** The Committee notes that these concerns have been acknowledged and investigated by the LTCSA and that, while court-awarded amounts can vary significantly, some accident victims have been awarded sufficient amounts to buy-in to the Scheme. The Committee is also mindful of the LTCSA's comments regarding the limitations of the court system in assessing care needs associated with cognitive and behavioural disabilities, and that there is not always a strong relationship between the level of injury and the amount awarded.
- 4.14** The Committee encourages the LTCSA to continue to work to ensure that the buy-in option is available and effective for those who are able to take it. The LTCSA has indicated that its guidelines for buying-in to the Scheme are in the processes of approval by the LTCSAC. The Committee looks forward to receiving stakeholder and participant feedback on the progress of this provision in future reviews.

Opting-out of the Scheme

- 4.15** Raised in both past reviews, the ability for participants to opt-out of the Scheme was again identified as an issue in the current Review. In particular, the suggestion that a lump sum payment be available to participants wishing to exit the Scheme was strongly urged by one Scheme participant and his family during this Review.¹⁶⁷
- 4.16** The NSW Law Society argued during the First Review that the absence of a provision to enable participants to opt-out of the Scheme fails to respect their rights, and that self-managed care or purchasing provisions, as set out in the Act, are not the same as being able to fully opt-out of the Scheme.¹⁶⁸ In response, the LTCSA focused on the option of self-managed care and advised that it was developing a process to implement subsection 6(3) of the Act which provides for the LTCSA to enter into an agreement with a participant to allow them to self-manage their care.¹⁶⁹
- 4.17** When the Committee revisited the issue during its Second Review, the LTCSA stated that it was identifying participants who are competent and capable, and may be interested in exploring self-management.¹⁷⁰
- 4.18** The issue was not raised as a concern by other stakeholders, including disability groups, in either the First or Second Review.¹⁷¹ Nevertheless, in its *Second Review Report* the Committee acknowledged the Law Society's comments and indicated it would monitor the issue carefully.¹⁷²

¹⁶⁷ Submission 4, Mr David Harris, p 1; Submission 5, Mr Mark Harris, p 2.

¹⁶⁸ Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – First report*, Report 37, October 2008, pp 40-41.

¹⁶⁹ Standing Committee on Law and Justice, Report 37, p 41.

¹⁷⁰ Standing Committee on Law and Justice, Report 40, p 30.

¹⁷¹ Standing Committee on Law and Justice, Report 37, p 41; Standing Committee on Law and Justice, Report 40, p 30.

¹⁷² Standing Committee on Law and Justice, Report 40, p 30.

- 4.19** As part of the current Review, the ability of participants to opt-out of the Scheme was identified as an important issue, by one Scheme participant as well as the legal profession and a disability group. The matter generated significant discussion about participant choice.
- 4.20** Mr Mark Harris, a Scheme participant with a spinal cord injury, together with his wife Ms Nicky Harris and his father, Mr David Harris, appeared before the Committee to argue strongly in support of giving mentally competent participants the opportunity to exit the Scheme and manage their own care. Mr Mark Harris argued that participants wishing to opt-out of the Scheme should receive a lump sum payment:
- My recommendations are that paraplegics that were not at fault, have not suffered a severe head injury, require very little care and are perfectly capable of managing their finances should have the option of opting out of LTCSA and receiving, instead, a lump sum payment...¹⁷³
- 4.21** While the Committee is unable to investigate a particular participant as part of its Review, we have included detail of the experiences of Mr Harris and his family in our report in order to show why some participants may wish to opt-out of the Scheme and to identify any systemic issues that may exist.¹⁷⁴
- 4.22** Mr Mark Harris and his family cited a number of reasons for wanting to opt-out of the Scheme, including a series of negative experiences with the Scheme which had left them feeling frustrated and powerless.¹⁷⁵ For example, Mr David Harris described the LTCSA's initial refusal of a tennis wheelchair for his son, who was an active tennis player before his accident. Mr David Harris argued that the tennis chair was a 'key part of Mark's rehabilitation' but was only approved after persistent arguing on the Harris' part and an independent medical expert who ruled in Mr Mark Harris' favour.¹⁷⁶
- 4.23** Ms Harris also explained that she had been promised funded accommodation shortly after her husband's accident which was later withdrawn, describing the experience as the first in a 'series of broken promises'.¹⁷⁷ Mr Mark Harris advised of his chemist withdrawing services because of delays in payment by the LTCSA, and said he felt 'left out of the picture' because of the limited contact he has had with his LTCS coordinator.¹⁷⁸
- 4.24** According to Mr David Harris, the opportunity to exit the Scheme would be nothing more than allowing a mentally able person control of their own life without the frustrations and delays incurred with requests to the Authority.¹⁷⁹ This sentiment was echoed by his son, who stated that by receiving a lump sum payment, participants would not have to go through 'these indignities' for the rest of their lives.¹⁸⁰ The Harris' also suggested that anecdotally other

¹⁷³ Submission 5, p 2.

¹⁷⁴ The Committee's terms of reference, Item 4 prohibits the Committee from investigating a particular participant, or application for participation. The Committee therefore has not asked the LTCSA to directly comment on Mr Harris' participation in the Scheme or the precise complaints he has raised.

¹⁷⁵ Mr Mark Harris, Evidence, 21 June 2010, p 20.

¹⁷⁶ Mr David Harris, Evidence, 21 June 2010, p 18.

¹⁷⁷ Ms Nicky Harris, Evidence, 21 June 2010, p 19.

¹⁷⁸ Submission 5, p 2; Mr M Harris, Evidence, 21 June 2010, p 20.

¹⁷⁹ Submission 4, p 1.

¹⁸⁰ Submission 5, p 2.

Scheme participants had experienced similar difficulties and shared a common desire to exit the Scheme.¹⁸¹

- 4.25** Other stakeholders also expressed support for an opt-out provision when their views were sought by the Committee. For example, Ms Mary Macken, the President of the NSW Law Society, stated that the catastrophically injured with capacity have a right to be given the opportunity to manage their own future:

We reiterate that those [catastrophically injured] persons should be given an opportunity to opt-out of the LTCS Scheme in circumstances where they have capacity. Issues do crop up in relation to privacy concerns and the capacity and rights of people to manage their own futures. It is our submission that people who have the capacity should be able to take their money and manage it themselves ... they should be given the opportunity to do that.¹⁸²

- 4.26** Similarly, Mr Gregory Killeen, a Policy and Advocacy Officer with Spinal Cord Injuries Australia (SCIA), expressed the view that participants should be given the option to exit the Scheme, provided that proper guidelines were put in place to restrict the way any awarded money could be invested.¹⁸³

- 4.27** Mr Mark Harris acknowledged the potential pitfalls of being awarded a lump sum and the risk of spending the entitlement well short of the injured person's lifetime. To address these concerns, he suggested that participants who choose to opt-out of the Scheme could receive an amount upfront but be restricted from accessing a portion of the lump sum payment, receiving only the interest earned from this amount. The injured person would then be guaranteed some income whilst still having access to a significant amount of their money upon maturity.¹⁸⁴

- 4.28** Mr Harris explained that by giving participants this opportunity and setting up this type of provision, participants could be given some sense of independence and control:

By setting up a rule such as this the patients have a chance to regain some independence in their lives and have control over their money while not posing a risk of running out of money and having to rely on Government benefits.¹⁸⁵

- 4.29** Mr Sean Lomas, the Policy and Advocacy Manager with SCIA, expressed a similar view, citing a study conducted in the United Kingdom which found that those with a disability given the support and finances to source their own treatment and care services not only led to lower long-term costs but better personal experiences moving forward:

... a study was conducted in the United Kingdom a few years ago involving two separate groups of disabled people. One was empowered with enough money to source services, equipment or anything else they needed. The other group was rationed—that is, kept on bread and water. Those on the bread and water system

¹⁸¹ Ms Harris, Evidence, 21 June 2010, p 23; Mr Harris, Evidence, 21 June 2010, p 23.

¹⁸² Ms Mary Macken, President, Law Society of NSW, Evidence, 11 June 2010, p 20.

¹⁸³ Mr Gregory Killeen, Policy and Advocacy Officer, Spinal Cord Injuries Australia, Evidence, 21 June 2010, p 47.

¹⁸⁴ Submission 5, p 3; Mr Harris, Evidence, 21 June 2010, pp 22-23.

¹⁸⁵ Submission 5, p 3.

ended up costing the State far more than those who had been empowered with funds.¹⁸⁶

- 4.30** While supporting the principle of allowing participants to exit the Scheme, Mr Killeen noted that income earned on assets and interest raises taxation issues. As an alternative, he suggested that in addition to awarding a nominal amount to participants upfront, mechanisms could be built into the Scheme so that it would operate much in the same way as an insurance policy does, thereby avoiding excessive administration:

Is it the current situation where somebody who is injured, they make a claim against somebody, there is an insurance company behind them, and does not the insurance company have to accept that client up-front and then there is an agreement where certain amounts of money are paid up to or approved to cover the cost of certain things... there is a certain amount of liability on the insurance company? We are going from that scheme to this current Lifetime Care Scheme. Why is some of that not built into the Lifetime Care Scheme, where there is some money being provided up-front? Why all this paperwork? The lives for these people who are newly injured and their families is not all a bed of roses up-front. So who wants to be dealing with all this paperwork?¹⁸⁷

- 4.31** The Committee also heard from other Scheme participants and participant family members during its public hearings and asked them to comment on the idea of opting-out of the Scheme. In general these three individuals expressed that they were satisfied with the way the Scheme currently operates and its methods of providing treatment and care.
- 4.32** For example, Mr Daniel Strbik, the father of an 11 year old Scheme participant, expressed caution and stated that he was happy to be in a Scheme where his daughter's needs were provided for:

As you know, with solicitors it is a drawn-out process. We are happy to be in a Scheme where she is looked after and funding is provided to her at this time when it is necessary.¹⁸⁸

- 4.33** Likewise, Mr Ian Franklin, the father of a 22 year old Scheme participant, stated that he favoured the Scheme in its current form and perceived it as an appropriate needs-based system:

I still like the idea of it being needs based. If Jonathon has a need, they approve it and it is done. There are no grey areas. He might like a car and then we get into whether he really needs one, how bad is the injury and so on. It goes on and on and I would not want to do that.¹⁸⁹

- 4.34** Moreover, Mr Franklin suggested that a lump sum payment would have significant legal and administrative implications, and was not convinced it was a good idea:

I think I am happy with the Scheme the way it is. I would not want to take a lump sum. I think that would then introduce a whole new layer of bureaucracy. Once

¹⁸⁶ Mr Sean Lomas, Policy and Advocacy Manager, Spinal Cord Injuries Australia, Evidence, 21 June 2010, p 55.

¹⁸⁷ Mr Killeen, Evidence, 21 June 2010, p 56.

¹⁸⁸ Mr Daniel Strbik, Evidence, 21 June 2010, p 29.

¹⁸⁹ Mr Ian Franklin, Evidence, 21 June 2010, p 33.

money starts becoming big, all these solicitors and everything would be coming around. I would not want it to become a de facto third party scheme. Here, it is good. You have the need, you can demonstrate the need, and it is taken care of for you. Just to sort of give you money and let you run away, certainly I do not think that is a good idea.¹⁹⁰

- 4.35** Mr Lyndon Wait, a Scheme participant, also said that he was 'very happy' with the Scheme.¹⁹¹ However, he stated that he could not form an opinion about receiving a lump sum payment without knowing the terms of how it would work and whether all of the relevant factors would be considered:

It is a hard one about identifying the goalposts in regards to payout—whether it is based on my medical requirements as a minimal or whether it entails pain and suffering. I guess my capacity earn money is much reduced and whether that is factored into that, I do not know. There are so many things that need to be factored in. I am now restricted up to the working age of 75 to be provided for, and I do not know whether that payment is based on that period. Without knowing the goalposts of payments, it is a hard one for me to answer.¹⁹²

- 4.36** In offering this perspective, Mr Wait highlighted the issue of participant choice and being informed of the options so that a decision could be made about remaining in the Scheme or opting-out.¹⁹³
- 4.37** This perspective was shared by the Australian Lawyers Alliance which alluded to participant choice when expressing its concerns about the absence of participant consent when applying for the Scheme. According to the Alliance, 'the principal thrust of the NSW Government's tort law reform program has been to enhance personal responsibility'.¹⁹⁴ The Alliance argued, however, that the opportunity to adopt personal responsibility for their future has not been extended to the catastrophically injured because, as set out in Section 8(2) of the Act, an application by an insurer for a claimant to participate in the Scheme does not require the consent of the injured person.¹⁹⁵ The Alliance concluded that the injured, therefore, has no choice but to 'spend a lifetime having to approach the LTCSA every time their treatment needs alter'.¹⁹⁶
- 4.38** The Australian Lawyers Alliance recommended that the Act be amended to require the consent of the injured person to become a participant in the Scheme, effectively making the Scheme voluntary (noting that a vote to amend the Act to require a claimant's consent to participation in the Scheme was defeated in the Legislative Council in 2006 when the Act was first introduced).¹⁹⁷
- 4.39** For some of the participant carers who appeared before the Committee, however, participant choice was not as important as the security of knowing that the appropriate treatment and

¹⁹⁰ Mr Franklin, Evidence, 21 June 2010, p 29.

¹⁹¹ Mr Lyndon Wait, Evidence, 21 June 2010, p 28.

¹⁹² Mr Wait, Evidence, 21 June 2010, p 30.

¹⁹³ Mr Wait, Evidence, 21 June 2010, p 35.

¹⁹⁴ Submission 11, Australian Lawyers Alliance, p 6.

¹⁹⁵ *Motor Accidents (Lifetime Care and Support) Act 2006*, s 8(2).

¹⁹⁶ Submission 11, p 7.

¹⁹⁷ Submission 11, pp 1 and 6.

care was available and assured for their children. Mr Strbik expressed that providing an option was neither necessary nor appropriate for lifetime care, even if a participant such as his daughter had turned 18 years of age.¹⁹⁸ For Mr Franklin, having a choice 'might be a good idea' but he did not believe that being given that choice any time up to two or three years after the accident would elicit a reasoned and well-thought out decision.¹⁹⁹

4.40 In response to the discussion about an option to exit the Scheme, Mr David Bowen, the Executive Director of the LTCSA, explained that the Scheme was designed in such a way to prevent the lump sum option in recognition of the fact that for many people who were awarded such a payment, the funds ran out well before their lifetime forcing them to seek financial support elsewhere.²⁰⁰ As Mr Bowen stated:

It is not necessarily the case that they did not spend them or manage them properly, but they simply ran out. The person fell back into the disability support system. In essence, they double dipped into the system.²⁰¹

4.41 Mr Bowen commented that a great deal of consideration was given to an opt-out clause when the Act establishing the Scheme was first introduced to Parliament. He also noted that other compensation schemes have moved away from allocating lump sum payments and cited the example of a worker's compensation claim, where claimants receive a periodic payment for care and support rather than a lump sum amount.²⁰²

4.42 Mr Bowen reiterated the LTCSA's response to this issue in previous Reviews, by emphasising the principles of self-management and individual funding that underlie section 6(3) of the Act, which permits the LTCSA to enter into arrangements with Scheme participants to manage their own care.²⁰³ Mr Bowen stated that the self-management system empowers its participants and gives them more control:

I personally favour moving towards that individualised funding scheme. I think it gives people far more control. We are in favour of that. We do want to have the capacity to allow people, who are capable of doing so, to self-manage their affairs. We are supportive of that.²⁰⁴

4.43 While the Scheme does not allow a full opting-out of the Scheme with a lump sum payment for life, Mr Bowen explained that the LTCSA can assess the value of care for a period of time and negotiate appropriate periodic payments. Mr Bowen advised that this has been confirmed by the Crown Solicitor's Office, which indicated that a system of periodic payments under the Scheme was viable and could be constructed.²⁰⁵

4.44 The LTCSA informed the Committee that it was in the process of developing guidelines to allow participants to receive periodic payments. The LTCSA stated that, on the advice of the

¹⁹⁸ Mr Strbik, Evidence, 21 June 2010, p 36.

¹⁹⁹ Mr Franklin, Evidence, 21 June 2010, p 35.

²⁰⁰ Mr Bowen, Evidence, 21 June 2010, p 69.

²⁰¹ Mr Bowen, Evidence, 21 June 2010, p 69.

²⁰² Mr Bowen, Evidence, 21 June 2010, p 69.

²⁰³ Mr Bowen, Evidence, 21 June 2010, p 69; See also, Answers to pre-hearing questions on notice, LTCSA, Question 7, p 4.

²⁰⁴ Mr Bowen, Evidence, 21 June 2010, p 69.

²⁰⁵ Mr Bowen, Evidence, 21 June 2010, p 69.

Crown Solicitor's Office, it was seeking a class ruling from the Australian Taxation Office to ensure that any payments made to participants to manage their own care are not regarded as income for taxation purposes. Furthermore, the LTCSA advised that it needed to obtain an exemption under the relevant legislation to ensure that such payments are not subject to the social security income test. The LTCSA reported that these processes are underway.²⁰⁶

- 4.45** When asked if he knew of the self-management option and whether he would consider it as an alternative to a lump sum payment, Mr Mark Harris stated that he was not aware of such an option but nevertheless did not agree with it. He argued that such a system would not allow for 'out of the ordinary expenses'. Mr Harris explained:

The first I heard of [periodic payments to cover costs for self-managed care] was when I received these questions. I do not agree with it because it does not allow for any out of the ordinary expenses, so if something happened, say I hurt myself and I needed to go and get special medication or see a specialist, I would then have to pay that and then I would be out of pocket, and some of the reimbursements are taking six-plus weeks to get back to me. I have a big mortgage over my head and I cannot afford to make these.²⁰⁷

Committee comment

- 4.46** The Committee notes that the issue of opting-out of the Scheme has developed since the last Review and we expect that, as the Scheme matures and more participants are accepted into the Scheme, this issue will continue to be raised as an issue of relevance to the future of the Scheme.
- 4.47** The Committee notes the arguments presented by Mr Mark Harris and his family in support of being given the opportunity to opt-out the Scheme and receive a lump sum payment. Their position was shared by the NSW Law Society and Spinal Cord Injuries Australia. The Harris' experiences valuably serve to illustrate that some LTCS Scheme participants are likely to be dissatisfied with the nature of the Scheme and various aspects of its administration. The Scheme is designed to assist people who suffer serious and lifelong injuries as a result of motor accidents and where those negative experiences can be minimized they should be.
- 4.48** On the basis of the information presented to the Committee to date, however, it is not clear that providing participants with the ability to opt-out of the Scheme is in the best interests of their lifelong care and treatment and we note that it is, in fact, contrary to the Scheme's rationale.
- 4.49** The Committee is mindful that this issue was subject to significant deliberation when the Scheme was first proposed. Indeed, one of the primary rationales for establishing the Scheme was to address the serious risks involved with managing large sums of money over long periods of time. This problem was recognised by the Committee in its Sixth Review of the Motor Accidents Authority, where the Committee expressed concern that damages were not lasting the lifetime of people with catastrophic injuries.²⁰⁸ The Committee subsequently

²⁰⁶ Answers to pre-hearing questions on notice, LTCSA, Question 7, p 4.

²⁰⁷ Mr Harris, Evidence, 21 June 2010, pp 24-25.

²⁰⁸ Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council - Sixth Report*, Report 27, May 2005, pp 60-64.

recommended that the Motor Accidents Authority investigate the issue, to which the NSW Government responded by referring to the proposal to create the LTCS Scheme.

- 4.50** The Committee agrees with the point made by stakeholders about the need to respect participant choice. In this regard, the Scheme contains an option through which participants can exercise control and independence by managing their own care. The LTCSA has advised that it is working toward putting mechanisms in place for when this option becomes available, including holding discussions with the Australian taxation Office. We are advised that the LTCSA is seeking further advice to inform its guidelines and to ensure that participants wishing to self-manage are not disadvantaged.
- 4.51** We are satisfied that the LTCSA is exercising its functions appropriately in relation to this issue and will continue to closely monitor this issue in future reviews.
- 4.52** The Committee does not wish to in any way diminish the frustrations experienced by the Harris family in drawing this conclusion. We greatly appreciate the time they took to talk to the Committee about their concerns and their hopes in regard to the issue of opting-out of the Scheme, as well as other issues they raised. The Committee is encouraged by the cooperative way in which the LTCSA participates in the Committee's reviews and the way in which the Government responds to our recommendations to say that in so far as the Harris' family's experiences reveal systemic issues that warrant changes to the Scheme or its administration, as discussed in other parts of this report, their participation in the Committee's inquiry has been extremely valuable.
- 4.53** The Committee also notes that the other Scheme participants and participant carers who appeared before the Committee did not share the Harris' strong views about the desirability of an opt-out provision. It is hoped that as the Scheme matures and participant experiences are utilized to refine the administration of the Scheme, the self-management option (when it is made available) will be seen as an adequate and more appropriate alternative to fully opting-out.

Injuries caused by accidents not covered by the Scheme

- 4.54** Since the First Review, issues concerning potential gaps in eligibility for the LTCS Scheme have been raised. These relate specifically to whether accidents involving vehicles not capable of registration would be covered by the Scheme, and whether accidents involving projectiles, pedestrians and cyclists should be covered by the Scheme.²⁰⁹ In addition, further concerns were identified in the Second Review relating to the development of a tiered system of care, where people with similar injuries receive different levels of support depending on how their injury was acquired. These issues were all picked up again during this Third Review and are examined in this section.

²⁰⁹ Standing Committee on Law and Justice, Report 40, p 23.

Accidents involving vehicles not capable of registration

- 4.55** In the First Review, the LTCSA advised that vehicles not capable of registration, such as motorised bicycles, mini-bikes and quad bikes, are ineligible to be covered by the Scheme.²¹⁰ The LTCSA confirmed during the Second Review that these same vehicles were not covered by the LTCS Scheme or the Motor Accidents Scheme, and noted that no new gaps in eligibility had been identified.²¹¹
- 4.56** During the Second Review, the Committee was informed that eligibility relating to motor accidents was not always straight forward and that the LTCSA sometimes called on the expertise of forensic engineers and barristers to assist in decisions of eligibility. The LTCSA cited the example of a person involved in a motorbike accident that took place at Oran Park, in relation to whom the LTCSA sought advice about eligibility.²¹²
- 4.57** This uncertainty about whether some accidents involving vehicles incapable of registration are covered by the Scheme was again raised in the current Review, by the Motorcycle Council of NSW which advised that it was aware of at least one accident involving a child and an unregistered motorcycle which *was* covered by the Scheme.²¹³

Accidents involving projectiles, pedestrians and cyclists

- 4.58** In the *First Review Report*, the Committee acknowledged the complexities associated with extending eligibility for the Scheme but noted that the fundamental issue of fairness must be considered. The Committee commented that, for example, it would seem fair for people being hit by a projectile whilst in a registered motor vehicle to be covered by both the Motor Accidents Scheme and LTCS Scheme.²¹⁴
- 4.59** While the Committee received only a small amount of evidence on this issue, including additional concerns about the ineligibility of cyclists and pedestrians struck by cyclists for the Scheme, the Committee made the following recommendation in the *Second Review Report*, with the view to using its outcomes to consider the issue in a future review:

That the Minister for Finance request the Lifetime Care and Support Authority or the Motor Accidents Authority, as appropriate, to conduct research into the issue of people hit by a projectile whilst in a registered motor vehicle including:

- the number of incidents in NSW
- number and severity of injuries resulting from these incidents and

²¹⁰ Standing Committee on Law and Justice, Report 37, p 33.

²¹¹ Standing Committee on Law and Justice, Report 40, p 23.

²¹² Standing Committee on Law and Justice, Report 40, p 23.

²¹³ Submission 12, Motorcycle Council of NSW, p 5; Mr Guy Stanford, Member, Motorcycle Council of NSW, Evidence, 11 June 2010, p 62. The Motorcycle Council cited the accident to support its argument that funding of the Scheme should not rest solely on registered vehicle owners but be extended to a broader cross-section of the community since the Scheme covers such a wide range of people. This argument has been examined in the Committee's report on its Tenth Review of the motor Accidents Authority, also tabled in October 2010.

²¹⁴ Standing Committee on Law and Justice, Report 37, p 36.

- the potential impact on the Lifetime Care and Support and Compulsory Third Party Schemes, if these incidents were to be covered.²¹⁵

- 4.60** In response to this recommendation in March 2010, the NSW Government advised that the Motor Accidents Authority (MAA) had been asked to progress this recommendation and was expecting to finalise its research later this year.²¹⁶
- 4.61** As part of the current Review, the LTCSA was asked to report on any developments relating to eligibility for the Scheme, in particular, for cyclists, pedestrians struck by cyclists and people struck by a projectile while driving in a motor vehicle.²¹⁷ The LTCSA advised that the definition of 'motor accident' used in the Scheme is defined in the *Motor Accidents Compensation Act 1999* and that no changes have been made to this definition.²¹⁸ As such, these groups continue to be ineligible for the Scheme.²¹⁹
- 4.62** The LTCSA did note, however, that while definitions have not changed under the *Motor Accidents Compensation Act 1999*, the issue has been referred to the MAA for consideration. The LTCSA also indicated that it considers it 'appropriate' for accidents involving cyclists, pedestrians struck by cyclists and people struck by a projectile while driving in a motor vehicle to be included in the Scheme.²²⁰
- 4.63** The MAA confirmed that, as noted in the Government response to the *Second Review Report*, it was still finalising its research into accidents involving projectiles.²²¹

A tiered system of care

- 4.64** During the Second Review, the Committee heard from stakeholders who were concerned that the implementation of the LTCS Scheme has resulted in a 'three-tiered' system, where injured persons with similar levels of impairment receive different levels of equipment and support depending on how they obtained their injuries.²²²
- 4.65** The *Second Review Report* noted that a national disability long-term care and support scheme has been proposed in order to provide care and treatment for people not covered by an existing insurance scheme, such as the LTCS Scheme. The Committee noted that advocacy organisations, such as the National People with Disabilities and Carer Council, suggested that such a scheme would go some way to addressing the concerns of a tiered system.²²³

²¹⁵ Standing Committee on Law and Justice, Report 40, p 27.

²¹⁶ NSW Government, Government Response to the Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 1.

²¹⁷ Answers to pre-hearing questions on notice, LTCSA, Question 3, p 2.

²¹⁸ Answers to post-hearing questions on notice, LTCSA, Question 1, p 1.

²¹⁹ Answers to post-hearing questions on notice, LTCSA, Question 1, p 1.

²²⁰ Answers to post-hearing questions on notice, LTCSA, Question 1, p 1.

²²¹ Answers to pre-hearing questions on notice, Motor Accidents Authority (MAA), Question 48, p 25.

²²² Standing Committee on Law and Justice, Report 40, p 25.

²²³ Standing Committee on Law and Justice, Report 40, p 25.

- 4.66** This concern was again raised in this current Review by the State Spinal Cord Injuries Service (SSCIS), which argued that the creation of a tiered system continues to be an issue for clinicians who are faced with managing tensions between patients with similar needs but are receiving different levels of support. SSCIS offered to continue working between the major insurance schemes, such as the LTCS Scheme and Motor Accidents Scheme, to harmonise their processes, procedures and service guidelines.²²⁴
- 4.67** As part of the current Review, the LTCSA indicated that proposals noted in the *Second Review Report* to extend service provision to people with catastrophic injuries not acquired through a motor accident have been used to establish and inform the feasibility study currently being undertaken into a national disability insurance scheme.²²⁵ An update on the initiative to create a national disability long-term care and support scheme is provided in Chapter 2.

Committee comment

- 4.68** The Committee recognises that determining eligibility for the LTCS Scheme is not always clear and notes the comments made by the LTCSA that expert advice is sometimes sought to assist in decision making. The Committee is satisfied that the LTCSA undertakes the necessary measures to ensure that accidents involving vehicles that do not clearly fall within the Scheme are considered reasonably and fairly.
- 4.69** The Committee acknowledges that cyclists, pedestrians struck by cyclists and people struck by a projectile while driving in a motor vehicle continue to be ineligible for the Scheme and notes the comments of the LTCSA that it was supportive of including these people in the Scheme. We also note that the process started by the MAA after our Second Review recommendation to examine the issue of people injured through projectiles thrown at motor vehicles is ongoing. We look forward to the results of that work.
- 4.70** The Committee also recognises the concerns raised about a tiered system of treatment and care for injured people with similar levels of impairment. The Committee notes that this issue would be addressed with the development of a national disability long-term care and support scheme. The Committee will follow the development of this scheme with interest.

Medical eligibility criteria and assessment tools

- 4.71** As outlined in Chapter 2, in addition to the requirement that an injury must have been the result of a registered motor vehicle accident, eligibility for the Scheme is also dependent on the type and severity of injury, which is determined on the basis of medical assessment.²²⁶
- 4.72** The Functional Index Measure (FIM) for adults and WeeFIM for children, which measures whether a person is independent in an activity or requires assistance, is the main tool used to assess medical eligibility to enter the LTCS Scheme.²²⁷ This measure is used in addition to the specific eligibility criteria set out for the different injuries covered by the Scheme, such as

²²⁴ Submission 8, State Spinal Cord Injuries Service, p 2.

²²⁵ Answers to pre-hearing questions on notice, LTCSA, Question 4, pp 2-3.

²²⁶ Standing Committee on Law and Justice, Report 37, p 7.

²²⁷ Standing Committee on Law and Justice, Report 40, p 28.

spinal cord injuries and serious traumatic brain injuries. A detailed explanation of Scheme eligibility can be found in the *First Review Report*.²²⁸

- 4.73** During the First Review, BIRD raised issues relating to Scheme eligibility and the tools used to assess medical eligibility criteria. Specifically, BIRD suggested that the medical assessment tools used to assess criteria need to be evaluated. At the time, the LTCSA indicated that any evaluation should take place after more participants had entered the Scheme and had gone on to be assessed for lifetime participation.²²⁹
- 4.74** The Committee followed up on this issue as part of the Second Review, during which the LTCSA advised that, while an evaluation had not taken place, the medical tools used to assess potential participants were working well. Nevertheless, the LTCSA suggested that it was receptive to other objective and reliable assessment tools as an alternative to the FIM.²³⁰
- 4.75** As part of the Second Review, the Department of Rehabilitation at the Children's Hospital at Westmead raised concerns about the limitations of the WeeFIM assessment tool in determining lifetime participation for children with brain injuries and suggested that the Paediatric Care and Needs Scale (PCANS) for 5-18 year olds be used as an additional tool to aid in this assessment. The LTCSA advised that, at the time, an evaluation of the PCANS tool was one of their current research projects.²³¹
- 4.76** In the current Review, BIRD again raised the issue of evaluating the medical tools used to assess eligibility criteria for the Scheme. In particular, Dr Adeline Hodgkinson, the Co-Chair of BIRD, drew attention to those participants with brain injury who, after the two-year interim period, do not show clear signs of extreme disability. For these participants, Dr Hodgkinson questioned whether the current assessment tools are both valid and sufficient, and suggested that further investigation of these tools was needed:

Brain injury can often have quite significant improvements and at the point two years post injury there are some who are clearly extremely disabled and remain in the Scheme, and there is not really a lot of dispute about those, but it is more the people who are at a higher level where the tool we are using to assess whether they are in or out of the Scheme needs to be tested as to whether this is truly the right way to measure those people who will need extensive care and those who will not ... I think it should be something that is carefully looked at in case the tool that we are using is too blunt or whether additional measures are required.²³²

- 4.77** During this current Review, the LTCSA was asked to provide an update on the medical assessment tools currently in use, and specifically, the use of these tools for children. The LTCSA advised that the FIM continues to be used for assessment of eligibility to the Scheme. The LTCSA also informed the Committee that 'the FIM has been used to adequately assess for the lifetime participation of the small number of children who have ongoing needs', and that it is not considering an alternative assessment tool for children.²³³

²²⁸ Standing Committee on Law and Justice, Report 37, pp 7-8.

²²⁹ Standing Committee on Law and Justice, Report 37, p 36.

²³⁰ Standing Committee on Law and Justice, Report 40, p 28.

²³¹ Standing Committee on Law and Justice, Report 40, p 28.

²³² Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, Evidence, 21 June 2010, pp 8-9.

²³³ Answers to pre-hearing questions on notice, LTCSA, Question 5, p 3.

- 4.78** Vision Australia raised a separate but related issue concerning the medical eligibility criteria for people who have acquired permanent blindness through a motor vehicle accident. Vision Australia suggested that the eligibility criteria be amended so that people with severe vision loss who do not necessarily qualify as being legally blind are eligible for the Scheme.²³⁴
- 4.79** Vision Australia recommended that the same classification for vision impairment under the World Health Organisation's International Statistical Classification of Disease and Related Health Problems be used by the LTCSA in its determination of eligible injured persons. Vision Australia argued that when a person is confronted with sudden and severe blindness, they too require 'support and care with their daily living in order to maintain independence and dignity'.²³⁵
- 4.80** When asked to respond to Vision Australia's comments, the LTCSA informed the Committee that it was unaware of any issues with the current definition of permanent blindness but encouraged Vision Australia to discuss its concerns and any proposed changes to the eligibility criteria for vision impairment with the LTCSA.²³⁶

Committee comment

- 4.81** The Committee notes that the medical assessment tools used to assess eligibility for the Scheme have not changed since the Scheme began in 2006. The LTCSA is of the view that these tools are appropriate and are being used adequately.
- 4.82** We note, however, that these tools have not been evaluated since the Scheme's implementation. The Committee is also aware that, while the PCANS tool was suggested as an additional tool for assessing eligibility criteria for children, the LTCSA has not provided an update on the PCANS research project it was reportedly undertaking during the Second Review.
- 4.83** The Committee agrees with the comments made by the Brain Injury Rehabilitation Directorate that a further investigation of the assessment tools currently being used is needed, and considers now to be an appropriate time to undertake such an evaluation, given that the Scheme has matured enough for more participants to be assessed for lifetime participation.
- 4.84** The Committee recommends, therefore, that the LTCSA evaluate the current medical assessment tools used to assess eligibility criteria, and investigate and report on any alternative and/or additional tools that may appropriately be used, including the Paediatric Care and Needs Scale.

²³⁴ Submission 15, Vision Australia, p 3.

²³⁵ Submission 15, p 3.

²³⁶ Answers to pre-hearing questions on notice, LTCSA, Question 28, p 24.

Recommendation 2

That the Lifetime Care and Support Authority evaluate the current medical assessment tools it uses to assess eligibility for the Lifetime Care and Support Scheme, and investigate and report on any alternative and/or additional tools that may be used, including the Paediatric Care and Needs Scale.

- 4.85** The Committee also notes the concerns of Vision Australia about the way in which vision impairments are assessed in terms of eligibility for the Scheme. The LTCSA, in response to those concerns being raised as part of this Review, encouraged Vision Australia to discuss its concerns and any proposed changes to the eligibility criteria for vision impairment with the LTCSA.
- 4.86** The Committee agrees that this is an appropriate course of action but recommends that the LTCSA take a proactive approach to this issue and seek to meet with Vision Australia to discuss its concerns. The Committee will monitor this issue in future reviews.
-

Recommendation 3

That the Lifetime Care and Support Authority meet with Vision Australia to discuss concerns regarding the assessment of vision impairment in terms of eligibility for the Lifetime Care and Support Scheme.

Review of decisions and dispute resolution

- 4.87** A number of issues relating to the review of decisions and dispute resolution mechanisms were raised by stakeholders including the independence of these processes, whether legal costs should be covered by the Scheme and improvements that could be made.

Review mechanisms

- 4.88** As described in Chapter 2, the LTCSA is required by the Act to provide mechanisms which allow for decisions relating to participation in the Scheme to be reviewed or disputed if an applicant or participant does not agree with the LTCSA's decision.²³⁷ The LTCSA provides these mechanisms in two distinct areas: eligibility (including what is deemed a 'motor accident injury') and treatment, rehabilitation and care needs.

Eligibility

- 4.89** Decisions about eligibility involve determining whether a participant satisfies the severe injury criteria to participate in the Scheme. As such, decisions about eligibility are medical-based.²³⁸

²³⁷ It should be noted that these mechanisms are distinct from the processes available to participants to make a complaint about the LTCSA or a service or product funded by the LTCSA.

²³⁸ LTCSA, *Resolving disputes about eligibility: A guide for applications to the LTCS Scheme*, September 2007.

- 4.90** Applicants who disagree with the LTCSA over decisions about eligibility are given the opportunity to have their decision reviewed by lodging a formal dispute with the Authority. Once received, the LTCSA refers the dispute to a panel of three independent dispute assessors who form an Assessment Panel.²³⁹
- 4.91** As disputes about eligibility to the Scheme are essentially medical disputes, all dispute assessors are medical and allied health professionals. The LTCSA advised that these professionals are not employees of the LTCSA, but rather are individually appointed to this role under the Act.²⁴⁰
- 4.92** Further review mechanisms are also available under the Act relating to the decisions of an Assessment Panel. If the grounds for review within the Act are met, the dispute can be referred to a Review Panel of another three independent dispute assessors.²⁴¹
- 4.93** Decisions about 'motor accident injury' are another type of decision about eligibility and relate specifically to whether an injury arises from a 'motor accident'. This means determining whether the motor accident or motor vehicle meets definitions under the *Motor Accidents Compensation Act 1999* in order to be covered by the LTCSA Scheme. As such, decisions about 'motor accident injury' are legal-based.
- 4.94** Applicants wishing to dispute decisions about 'motor accident injury' have the opportunity to do so, however, these disputes are referred to the Principal Claims Assessor of the Motor Accidents Authority (MAA), who will convene and appoint a panel of three claims assessors to determine the matter.²⁴²
- 4.95** As disputes about 'motor accident injury' are essentially legal disputes, the panel of claims assessors is comprised of legal professionals (solicitors and barristers) with experience in personal injury claims. Once made, their decision is final and legally binding.²⁴³

Treatment, rehabilitation and care needs

- 4.96** Decisions about treatment, rehabilitation and care needs involve determining whether the services sought by a participant are reasonable and necessary to help them meet their needs and achieve their goals. For example, participants may request services to assist them to be more independent, return to work or study, or participate in the community.²⁴⁴
- 4.97** Participants who disagree with the LTCSA over decisions about their treatment, rehabilitation and care needs can, in the first instance, request the LTCSA to reconsider its decision by

²³⁹ LTCSA, *Resolving disputes about eligibility, A guide for applications to the LTCSA Scheme*, September 2007; Answers to pre-hearing questions on notice, LTCSA, Question 11(a), p 11.

²⁴⁰ Answers to pre-hearing questions on notice, LTCSA, Question 11(a), p 11; Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Question 1, p 1.

²⁴¹ Answers to pre-hearing questions on notice, LTCSA, Question 11(a), p 11; Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Questions 1.

²⁴² Answers to pre-hearing questions on notice, LTCSA, Question 11(a), p 11.

²⁴³ Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Question 1, p 1; NSW Government, Government Response to the Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 37, October 2008, p 2.

²⁴⁴ LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCSA Scheme*, September 2007.

having another staff member review it. This is considered an informal approach to resolving the matter as the LTCSA may contact other people involved with the participant to discuss the issues and agree on solutions together.²⁴⁵

4.98 If the issue is not resolved participants may lodge a formal dispute with the LTCSA, which is referred to a single independent dispute assessor.²⁴⁶

4.99 As with the assessors appointed to review decisions about eligibility, assessors of disputes about requests for treatment, rehabilitation and care needs are medical and allied health professionals. Assessors for treatment and care disputes are chosen based on their relevant health or medical expertise in relation to the injury or issue in dispute. For example, a dispute about a participant's physiotherapy treatment would be referred to a physiotherapist.²⁴⁷

4.100 These professionals are also not employees of the LTCSA but individually appointed to the role under the Act.²⁴⁸

Issues raised by stakeholders

4.101 Issues relating to the independent review of decisions and dispute resolution were raised during the Committee's First Review. In the *First Review Report*, the Committee recommended that the LTCSA and LTCSAC formally consider the range of options available to applicants and participants wishing to dispute a decision about their eligibility, or treatment, rehabilitation and care needs, with a view to recommending the preferred option for both.²⁴⁹

4.102 In response, the NSW Government stated that a 'robust independent review system' was built into the LTCS Scheme and that the existing mechanisms did allow for applicants and participants to pursue action regarding decisions made about their eligibility and care.²⁵⁰

4.103 Despite this response, stakeholders again raised the issue in the Second Review, drawing particular attention to the challenges faced by brain injury participants in exercising their right to a review of decisions made about their care.²⁵¹

4.104 While the Committee focused on addressing concerns about accessing independent advice and advocacy in the *Second Review Report*, the Committee did acknowledge the specific difficulties for brain injured participants in engaging these processes and encouraged the LTCSA to further consider the issue.²⁵²

²⁴⁵ Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Question 1, p 1; LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCS Scheme*, September 2007.

²⁴⁶ Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Question 1, p 1; LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCS Scheme*, September 2007.

²⁴⁷ Answers to pre-hearing questions on notice, LTCSA, Question 11(a); LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCS Scheme*, September 2007.

²⁴⁸ Answers to pre-hearing questions on notice, LTCSA, Question 11(a).

²⁴⁹ Standing Committee on Law and Justice, Report 37, p 55.

²⁵⁰ Government Response to the Standing Committee on Law and Justice, Report 37, p 1.

²⁵¹ Standing Committee on Law and Justice, Report 40, pp 20-22.

²⁵² Standing Committee on Law and Justice, Report 40, p 22.

4.105 During the current Review, stakeholders suggested that the review of decisions and dispute resolution processes available under the Scheme still required improvement. In particular, questions were raised about the independence of these processes and whether legal costs incurred during disputes about eligibility and treatment, rehabilitation and care should be covered under the Scheme.

4.106 The Australian Lawyers Alliance, for example, argued that, in appointing its own dispute assessors, the LTCSA does not provide participants the opportunity to dispute a decision to 'a body external to the Authority'.²⁵³ The Alliance concluded that 'this is a major weakness of the Scheme and is inherently unjust'.²⁵⁴

4.107 Dr Andrew Morrison, representing the Australian Lawyers Alliance, argued that the system is not one of 'proper independence':

The only appeal from decisions is to a tribunal appointed by the Authority itself. They say that it is an external independent tribunal but that is rubbish. They appoint the tribunal and they pay the tribunal. It has no proper independence. There is no right of review unless you take a case to the Supreme Court.²⁵⁵

4.108 Dr Morrison acknowledged the efforts of the LTCSA in caring for the injured, commenting that 'they bend over backwards to take a generous interpretation of their own guidelines', but suggested that 'that may not always be the case'. He asserted that participants who have legal rights under the Act should be given the means to enforce those rights and that, for participants, this means not having to rely on 'those, who in effect, are in the employ of the Authority'.²⁵⁶

4.109 The LTCSA maintained, however, that its dispute assessors are not an 'internal' panel and are independent from the LTCSA, being drawn from a wide range of medical, health and rehabilitation settings in public and private organisations. As explained by Mr David Bowen, the Executive Director, LTCSA:

We try to get the assessors who have the standing within their own profession, so for any dispute we try to deal with the relevant college or professional association to try to get a group of assessors who have high standing so that their decisions are well accepted.²⁵⁷

4.110 The LTCSA further explained its regard for having its disputes resolved by independent experienced professionals:

The Authority considers that it is vital that disputes about treatment and care needs are resolved by experienced professionals, independent of the Authority, with the relevant health or medical background.²⁵⁸

²⁵³ Submission 11, p 4.

²⁵⁴ Submission 11, p 4.

²⁵⁵ Dr Andrew Morrison, NSW member, Australian Lawyers Alliance, Evidence, 11 June 2010, p 46.

²⁵⁶ Dr Morrison, Evidence, 11 June 2010, p 46.

²⁵⁷ Mr Bowen, Evidence, 21 June 2010, p 75.

²⁵⁸ Answers to pre-hearing questions on notice, LTCSA, Question 11(a), p 11; Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Question 1, p 1.

- 4.111** The Australian Lawyers Alliance also raised concerns about legal costs associated with disputes about eligibility and treatment, rehabilitation and care not being covered by the Scheme. In this regard, Dr Morrison stated that '... in respect of the legal costs under the Lifetime Care Scheme, it is of very grave concern that only in respect of the definition of "motor accident" are costs recoverable.'²⁵⁹
- 4.112** Dr Morrison argued that it is a 'gross injustice' that participants are not financially supported if they wish to pursue legal action in the Supreme Court.²⁶⁰
- 4.113** The LTCSA confirmed that only legal costs for disputes about legal issues are recoverable under the Scheme. It further advised that legal costs for other disputes, such as those about eligibility and treatment and care needs, are not recoverable because the Act stipulates so and that these decisions concern medical or clinical issues, not legal issues.²⁶¹
- 4.114** Mr Bowen advised that the LTCSA would pay for costs, such as travel expenses and medical reports, in a dispute about a medical issue found in the participant's favour but stated that even then such occasions would be rare because the LTCSA does not operate in such a way that requires participants to gather substantial amounts of evidence to support their argument. In addition, Mr Bowen stated: 'I do not think that these are essentially legal disputes'.²⁶²
- 4.115** The LTCSA also informed the Committee that, while participants are able instruct lawyers to assist with disputes, it generally did not consider it necessary for participants to seek legal assistance for disputes about treatment and care on account of the dispute's complexity. The LTCSA did note the potential for disputes about eligibility to become complex but maintained that it is able to provide individualised assistance without the need for legal support.²⁶³
- 4.116** The LTCSA provided the example of one participant with a brain injury who lodged a dispute and did not have legal representation. The participant declined the assistance of an independent advocate and other forms of support during the process, and indicated that the dispute process was easy to follow and understand.²⁶⁴
- 4.117** In addition to these issues, other stakeholders suggested ways in which the review of decisions and dispute resolution could be improved.
- 4.118** For example, Australian RehabWorks recommended the use of approved assessors earlier on in the review and dispute process and on a more frequent and less formal basis, with the view to curbing the number of formal disputes being initiated.²⁶⁵
- 4.119** Similarly, BIRD suggested improvements to how issues could be approached before being escalated to a formal dispute. It proposed implementing a 'transparent documented process' involving discussion between the LTCSA and rehabilitation services to negotiate and identify a mutually agreeable outcome on what is a 'reasonable and necessary' service with and for the

²⁵⁹ Dr Morrison, Evidence, 11 June 2010, p 46.

²⁶⁰ Dr Morrison, Evidence, 11 June 2010, p 46.

²⁶¹ Answers to questions on notice taken during evidence, LTCSA, Question 3, p 3.

²⁶² Mr Bowen, Evidence, 21 June 2010, p 74.

²⁶³ Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Questions 4 and 5, pp 3 - 4.

²⁶⁴ Answers to questions on notice taken during evidence 11 June 2010, LTCSA, Questions 4, p 3.

²⁶⁵ Submission 3, Australian RehabWorks Pty Ltd, p 3.

participant. According to BIRD '[s]uch a process would precede the dispute resolution process and may consequently negate the need for the dispute resolution process.'²⁶⁶

- 4.120** BIRD argued that such a process would be of particular significance to participants with brain injury:

The development of a transparent, known process may alleviate misunderstandings and misinterpretation of documentation and avoid participants with severe brain injuries/their person responsible being placed in the position of having to decide whether or not to initiate dispute resolution processes with the LTCSA.²⁶⁷

- 4.121** BIRD also suggested further refinements to the dispute resolution process, such as clarifying the LTCSA's decision and the rationale for their decision in their correspondence to participants, and advising relevant service providers of a dispute outcome.²⁶⁸

- 4.122** In discussing the review of decisions and dispute resolution, the LTCSA acknowledged the challenges of coming to a resolution that all parties are agreeable to. However, Mr Neil Mackinnon, the A/Director of Service Delivery with LTCSA assured that the LTCSA did not promote a 'take it or leave it' approach. He explained the evolving nature of a dispute within the context of home modifications:

Take it or leave it? No, I think it is about persisting and trying to see whether there is something we can do right now to help and then maybe come back and revisit other aspects of the project later. We have done that on a number of occasions.²⁶⁹

- 4.123** Mr Bowen also advised that, unlike litigation, the decisions made on a medical basis, such as those relating to treatment and care needs, are 'open to ongoing and continuing review'.²⁷⁰

- 4.124** In all instance, the LTCSA advised that it provides individualised assistance and contact at all stages of the review and resolution process, through correspondence, phone calls and face to face meetings, to ensure that participants are well informed.²⁷¹

Committee comment

- 4.125** The Committee notes the concerns raised by stakeholders about the review and dispute resolution mechanisms currently in place under the Scheme. The Committee is mindful of the concerns expressed by the Australian Lawyers Alliance over the extent which these mechanisms are independent from the Authority.

- 4.126** While the LTCSA does appoint its own dispute assessors, the Committee understands that it does so from a selection of external professionals. As such, the Committee is satisfied that independent and appropriately qualified professionals with the relevant expertise are chosen to assess disputes about eligibility and treatment, rehabilitation and care under the Scheme.

²⁶⁶ Submission 7, pp 6-7.

²⁶⁷ Submission 7, p 7.

²⁶⁸ Submission 7, p 6.

²⁶⁹ Mr Neil Mackinnon, Acting Director, Service Delivery, LTCSA, Evidence, 21 June 2010, p 76.

²⁷⁰ Mr Bowen, Executive Director, LTCSA, Evidence, 21 June 2010, p 73.

²⁷¹ Answers to questions on notice taken during evidence 21 June 2010, LTCSA, Questions 5, p 4.

- 4.127** The Committee also notes the remarks of the LTCSA that its decisions are open to ongoing and continuing review, and that it has adopted an approach of persisting and pursuing a resolution agreeable to all parties involved so that issues are not escalated to formal disputes.
- 4.128** The Committee also acknowledges the concerns that legal costs incurred for disputes about eligibility and treatment, rehabilitation and care are not recoverable under the Scheme. Nevertheless, the Committee recognises and accepts the LTCSA's advice that such disputes rarely, if at all, necessitate the need for legal assistance and that the Scheme is designed in such a way as to minimise the need for legal representation.
- 4.129** The Committee will continue to monitor this issue in future reviews and expects that further issues pertaining to the review of decisions and dispute resolution may arise as the Scheme develops.
- 4.130** The Committee would also like to note that the ability of brain injured participants to exercise its right to review was not raised as an issue in the current Review, despite the previous concerns of stakeholders in the past Reviews. The Committee remains concerned about these participants and reiterates its comments from the *Second Review Report* which encourage the LTCSA to further consider this issue.

Support for participants in the early stages

- 4.131** During the Review the need for further information and support that could be provided to Scheme participants, particularly at the early stages of the being introduced to the Scheme, was raised. The suggestion of establishing a participant support group was discussed during the Committee's hearings.
- 4.132** For example, Mr Lyndon Wait, a lifetime participant in the Scheme, advised that it was difficult at first to understand the processes and make the most of the Scheme. He said that '... it did take quite a few months to work that out and to utilise the Scheme. Once you know the motions of it and the processes, from this point or probably within maybe 6 to 12 months it was quite easy.'²⁷²
- 4.133** Mr Wait commented that it would be helpful to receive a reference booklet, or have access to a group that could provide further details of the Scheme:

When my Lifetime coordinator visited, basically it was more verbal, and just about what the Scheme can offer. There was documentation, obviously, to fill out, but I found most of my research was basically off the net about what the Scheme offered and what I may be offered. I do not know whether at that stage there was a reference booklet in regards to it, or whether there is one now; I am not too sure. But something like that definitely would have helped—maybe just a small booklet outlining what the Scheme did and what it would provide. There were a lot of things that were unclear about whether it was minimal or what. At that stage we did not really know. But, as you say, if there was maybe a group, which could elaborate on the services, yes, it would be beneficial.²⁷³

²⁷² Mr Wait, Evidence, 21 June 2010, p 28.

²⁷³ Mr Wait, Evidence, 21 June 2010, p 29.

- 4.134** Mr Harris, another lifetime participant, agreed that a support group would be a good idea, stating: 'I think there should be some sort of group like that, especially in the beginning when all of this is going on, all the traumatic things that we have to deal with.'²⁷⁴
- 4.135** Mr Gregory Killeen, the Policy and Advocacy Officer for Spinal Cord Injuries Australia, also supported the suggestion that a resource kit or information booklet be available for participants:
- The information, someone suggested that they did not know much about the Scheme. They were verbally told a number of things about the Scheme but did not know much about it. I would strongly support a recommendation that a resource kit, a booklet, be put together so participants are handed that by the case manager or social worker when they are ready to get an understanding of what they can expect and how it operates.²⁷⁵
- 4.136** The LTCSA was asked by the Committee if they would consider developing a resource kit for new participants to the Scheme. In response Mr Neil MacKinnon, the A/Director of Service Delivery for LTCSA, explained that a reasonable amount of information is provided to new participants, 'We certainly give people brochures about the Scheme and particular things as they arise. They get a fair amount of written information.'²⁷⁶
- 4.137** In response to the suggestion regarding a support group for participants in the initial stages, Mr David Bowen, the CEO of the LTCSA, advised that while support groups were not raised as an issue in the satisfaction survey, he would be happy to look at the issue again.²⁷⁷ Mr Bowen also noted that peer support groups had operated through the spinal and brain injury units which the Authority has funded in the past.²⁷⁸

Committee comment

- 4.138** The Committee acknowledges the importance of providing potential Scheme participants with appropriate information about the Scheme, and the difficulties inherent in a person being able to process this information in the early stages of dealing with their injuries. The LTCSA's response indicates that appropriate information has been produced and is made available.
- 4.139** The Committee notes that the suggestion of the creation of a participant support received the support of those participants who were asked to comment on it during the Review. The suggestion also received a positive response from Mr Bowen who indicated his willingness to look into this issue. The Committee therefore recommends that the LTCSA examine the desirability and feasibility of establishing a peer support group for new participants to the Scheme.

²⁷⁴ Mr Harris, Evidence 21 June 2010, p 24.

²⁷⁵ Mr Killeen, Evidence, 21 June 2010, p 57.

²⁷⁶ Mr Mackinnon, Evidence, 21 June 2010, p 71.

²⁷⁷ Mr Bowen, Evidence, 21 June 2010, p 71.

²⁷⁸ Mr Bowen, Evidence, 21 June 2010 p 71.

Recommendation 4

That the Lifetime Care and Support Authority consider establishing a peer support group for new participants to the Scheme and consult with participants about the requirements for this group.

Access to independent advice and advocacy

- 4.140** During the Committee's first Review concerns were raised about independent advice and advocacy for Scheme participants. In its *First Review Report*, the Committee recommended that the LTCSA, in liaison with the LTCSAC, consider the range of options for the provision of independent advice and advocacy in respect of all participants in the Scheme.²⁷⁹ The Government response to that recommendation advised that the LTCSA was preparing a discussion paper on the provision of advocacy services in consultation with the LTCSAC and various stakeholders.²⁸⁰
- 4.141** During the Committee's Second Review, and following the release of its discussion paper on advocacy, the LTCSAC endorsed the approach that a well-established disability advocacy network already existed, which Scheme participants could access. This approach was supported by the LTCSA which stated that a new advocacy body was not necessary due to the existing advocacy services available. In response to the particular concerns relating to brain injured participants accessing advocacy services, the LTCSA commented that it would include information in training sessions for service providers about how participants can access advocacy services.
- 4.142** The Committee noted the ongoing concerns of stakeholders about independent advice and advocacy in its *Second Review Report*. The Committee acknowledged the work of the LTCSA to address these concerns and accepted its approach to this issue. The Committee remained concerned, however, about the ability of brain injured participants to initiate contact with advocacy groups and encouraged the LTCSA to further consider the issue.²⁸¹
- 4.143** During the Committee's current review, the LTCSA advised that information regarding advocacy has been published on its website and that it had been in contact with advocacy groups:

Since the Second Review, the Authority has developed a fact sheet about advocacy which is available on the Authority's website. The Authority has spoken to a number of advocacy groups to explain the Scheme including the NSW Disability Authority Advocacy Network and to inform them that information about their services have been disseminated to the Scheme's participants.²⁸²

²⁷⁹ Standing Committee on Law and Justice, Report 37, p 55.

²⁸⁰ Government Response to the Standing Committee on Law and Justice, Report 37, p 2.

²⁸¹ Standing Committee on Law and Justice, Report 40, p 22.

²⁸² Answers to pre-hearing questions on notice, LTCSA, Question 16, p 16.

- 4.144** The LTCSA *Annual Report 2008/2009* also provides information about the updates to information about advocacy services:

The Authority developed and circulated a paper on the provision of advocacy services to participants in the Scheme. Feedback from stakeholders highlighted that there is already a well-established advocacy network for people with disabilities. The Authority has subsequently promoted access to existing advocacy services and produced a participant brochure about advocacy in the Scheme.²⁸³

- 4.145** Despite these initiatives, one stakeholder informed the Committee of its ongoing concerns about access to independent advice and advocacy. In this regard the Australian Lawyers Alliance, acknowledged the advocacy information published by the Authority but noted the lack of *legal* services that were nominated:

Of the services nominated as providing advocacy to people with a disability in NSW, only one is a legal service (Sydney Regional Aboriginal Corporation Legal Service). Australian Lawyers Alliance submits that for an advocate to be in the position to assist in protecting an individual's rights, that person must have a clear understanding of what those rights are.²⁸⁴

- 4.146** The Australian Lawyers Alliance highlighted the difficulty of brain injured participants and carers from non-English speaking backgrounds to contact advocacy groups and advocate for themselves:

The Australian Lawyers Alliance remains concerned about the ability of catastrophically injured persons, particularly of brain-injured participants, to initiate contact with advocacy groups, to fully appreciate their rights under the Scheme and the implications of decisions made by the LTCSA. It is not realistic to expect, for example, the non-English speaking parents of a catastrophically injured child to be able to fully understand, let alone draw up submissions in relation to, any inadequacy in a care plan developed by an assessor.²⁸⁵

- 4.147** The Australian Lawyers Alliance argued for the need for advice to be provided by people with expertise in providing legal services to catastrophically injured persons and argued that the Act effectively restricts access to legal services by restricting legal costs:

The Australian Lawyers Alliance strongly supports the need for independent advice and advocacy for participants. It is preferable that this advice and advocacy be by those who have training and specific expertise in providing legal services to catastrophically injured persons.

The Act effectively restricts access to legal services. Section 18 of the Act provides that no legal costs are payable by the Authority in respect of a dispute regarding eligibility for the Scheme. Section 29 of the Act provides that no legal costs are payable with respect to disputes concerning treatment and care assessments.

²⁸³ LTCSA, *Annual Report 2008/09*, p 9.

²⁸⁴ Submission 11, pp 2-3.

²⁸⁵ Submission 11, pp 2-3.

It is only where there is a dispute about whether an injury is a "motor accident injury" that there is an entitlement to recover costs for legal representation. This means that participants are effectively left without access to specialist legal advice.²⁸⁶

- 4.148** In response to the Australian Lawyers Alliance's views, the LTCSA noted that the sections of the Act referred to by the Alliance relate to medical decisions and that legal costs are in fact recoverable for disputes about the legal issue of whether an accident was a motor vehicle accident:

Sections 18 and 29 address decisions about medical or clinical issues, not legal issues, for example the level of function of the injured person, whether the injured person has a permanent neurological deficit or whether a participant requires speech therapy. Whether the accident was a "motor accident" is a legal question and legal costs are recoverable for disputes about these questions.²⁸⁷

- 4.149** The LTCSA also noted that it has developed the Accident Advice Support Grant to assist with access to legal advice:

The Authority has assisted with access to legal advice by developing the Accident Advice Support Grant. The Grant provides one-off funding of \$5000 to facilitate access to legal and accident investigation advice when an injured person needs assistance to obtain information about their motor accident or motor vehicle at the time of their application to the Scheme. The Committee should note that this information is usually obtained by the Authority and shared with the injured person. The Grant may also be used after an injured person receives the Authority's decision that an application is unsuccessful on the basis that the motor accident or motor vehicle is not covered by the Scheme.²⁸⁸

Committee comment

- 4.150** The Committee acknowledges the work undertaken by LTCSA to provide more information to participants about advocacy networks and services. The LTCSA has shown that it is responsive to the concerns of stakeholders and has taken steps to improve access to advice and advocacy services.
- 4.151** The Committee agrees with the view of the Australian Lawyers Alliance that participant's and their carers must be able to understand their legal rights and access legal advocacy services. The Committee recognises the Authority's comments that legal costs are recoverable for disputes about legal questions, rather than medical or clinical issues. The creation of the Accident Advice Support Grants is a positive step in improving access to legal advice and accident investigation advice by Scheme participants.

²⁸⁶ Submission 11, p 3.

²⁸⁷ Answers to pre-hearing questions on notice, LTCSA, Question 17, p 16.

²⁸⁸ Answers to pre-hearing questions on notice, LTCSA, Question 17, p 16.

- 4.152** The Committee recommends that the LTCSA consult with legal organisations to identify additional legal advocacy groups with expertise in providing advice to people with disabilities to include in its information about advocacy services on its website.

Recommendation 5

That the Lifetime Care and Support Authority consult with legal organisations to identify additional legal advocacy groups with expertise in providing advice to people with disabilities to include in its information about advocacy services on its website.

Chapter 5 Administration and other issues

This Chapter examines issues that were raised by stakeholders relating to various aspects of the Lifetime Care and Support Scheme's administration. These issues include the new discharge procedures for Scheme participants, the administration and resource burden on health service providers and associated revenue issues, the approval process for treatment, rehabilitation and care services and privacy concerns. This Chapter also looks at issues raised in relation to LTCS Coordinators, who play a vital function in the Scheme's provision of treatment and care. Many of the issues examined in this Chapter are related and some are ongoing from the Committee's previous Reviews.

Discharge procedures

- 5.1 During the current Review, the LTCSA advised that a working party developed a new adult discharge procedure, which was introduced in March 2010. The aim of the new procedure is to streamline the discharge processes:

The working party developed a new procedure with the aim of streamlining the processes for discharge and to minimise paperwork completed by service providers during this phase. The Authority has preapproved a number of services for a participant to access on discharge. This allows service providers to start delivering preapproved services immediately, without needing to wait for the Authority's approval.²⁸⁹

- 5.2 A number of stakeholders involved in the current Review commended the new adult discharge procedures. For example, the Brain Injury Rehabilitation Directorate (BIRD) commented that 'already apparent is an improvement in the continuum of care from inpatient to home for participants with some reduction in the administrative workload experienced by NSW BIRP clinicians during this phase of rehabilitation.'²⁹⁰

- 5.3 Similar comments were made by the State Spinal Cord Injury Service (SSCIS) which noted that the new discharge procedures had reduce paperwork:

We would like to applaud the introduction of the Discharge Services Notification Form as it has streamlined some of the paper processes and acknowledged that people with a catastrophic injury will require a range of interventions on return to home.²⁹¹

- 5.4 The Royal Rehabilitation Centre Sydney, also supported the new discharge procedures which have increased approval times and in turn, improved a number of services:

New processes and procedures such as the Discharge Service Notification Form have allowed for much faster approval of service needs for clients by the LTCSS

²⁸⁹ Answers to pre-hearing questions on notice, Lifetime Care and Support Authority (LTCSA), Question 10, p 9.

²⁹⁰ Submission 7, Brain Injury Rehabilitation Directorate, p 1. The Brain Injury Rehabilitation Directorate works under the auspices of the Agency for Clinical Innovation which was formally called the Greater Metropolitan Clinical Taskforce.

²⁹¹ Submission 8, State Spinal Cord Injury Service (SSCIS), p 2.

coordinator, which in turn has improved the timeliness of equipment provision and the arrangement of post-discharge activities and support arrangements.²⁹²

- 5.5 BIRD also advised that the need to introduce a similar process for paediatric discharge procedures, so that there is no interruption between rehabilitation and returning to home, has been acknowledged by the LTCSA:

LTCS has acknowledged that there is a need to complete a similar process for paediatric rehabilitation services for children and young people who often have significantly reduced inpatient rehabilitation stays before returning to the family home so providing the level of detail required to complete the current forms in the timeframes provided before discharge can be problematic. This can result in a period of time where rehabilitation is provided before approval is received. It is anticipated that a review of the process and pathway will improve completion of LTCS processes and reduce the burden on clinicians while ensuring that the continuum of care is maintained for participants.²⁹³

- 5.6 Although there were no direct questions put to the LTCSA in relation to procedures for paediatric discharge, the Committee notes that the June 2010 *LTCS E-news* announced a new paediatric discharge procedure, effective from 1 July 2010.

Committee comment

- 5.7 The Committee acknowledges the work that has been undertaken by the LTCSA to introduce new adult discharge procedures to ensure that a continuum of care exists for patients between rehabilitation and home and paper work is minimised for service providers. It is clear from stakeholder comments that this has been a successful initiative. The Committee acknowledges the importance of continuum of care for both adults and children and notes the new paediatric discharge procedure that came into effect in July this year.

Administrative/resource burden and revenue issues

- 5.8 Stakeholders have advised that the introduction of the LTCS Scheme has significantly increased the administration work required by clinicians which in turn has decreased the amount of time that they have available for patients. Stakeholders argued that additional administrative resources would reduce the burden on clinicians and discussion on this issue focused on the way in which revenue from the Scheme is returned to service providers.

Administration and resource burden

- 5.9 The administration and resource burden that the LTCS Scheme has placed on Area Health Services was raised in the Committee's previous two reviews. During the current Review stakeholders acknowledged that there have been improvements made in this area over the last 12 months but that further improvement was required.

²⁹² Submission 10, Royal Rehabilitation Centre Sydney, p 2.

²⁹³ Submission 7, p 1.

Previous reviews

- 5.10** Concerns were raised by submission makers in the First Review about increased administration and paperwork required by the Scheme. In response, the Authority advised that it was undertaking several measures to streamline procedures and that it would review documentation and procedures.²⁹⁴
- 5.11** During the Second Review, the Committee was advised that the procedures for requesting treatment, rehabilitation and care had been revised by the LTCSA, resulting in the standardisation of the format of forms. While Stakeholders acknowledged that there had been some improvements, there were still concerns raised about the administrative burden of the Scheme.²⁹⁵
- 5.12** During the Second Review, the Committee was advised by the Minister for Health, that NSW Health would review the impact of the Scheme on health services' resources, including an assessment and analysis of the administrative demands of the Scheme. In its *Second Review Report*, the Committee recommended that in conducting its review NSW Health should consider the comments of stakeholders who participated in the Committee's Second Review.²⁹⁶ The Government response (received in March 2010) noted that the Committee's recommendation was accepted, that the review had been undertaken and that the final report was expected shortly.²⁹⁷

NSW Health Review of the impact of the LTCS Scheme

- 5.13** During the current Review, the Committee was advised that NSW Health had completed its review of the impact of the LTCS Scheme on health resources. The review involved a survey tool which was sent to the Chief Executives of each Area Health Services in September 2009. The survey requested information on the administration of LTCS revenue and the impact of the Scheme on administrative and clinical processes within each Service.²⁹⁸ NSW Health advised that the survey tool 'reflected issues raised during the [Committee's] Second Annual Review of the LTCS Authority'.²⁹⁹

²⁹⁴ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – First report*, Report 37, October 2008, pp 47-48.

²⁹⁵ NSW Legislative Council, Standing Committee on Law and Justice, *Second Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, pp 39-42.

²⁹⁶ Standing Committee on Law and Justice, Report 40, pp 42-44.

²⁹⁷ NSW Government, Government response to the Standing Committee on Law and Justice, *Second Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 2.

²⁹⁸ Tabled document, NSW Health, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, March 2010, p 1. The survey elicited seven responses from the eight Area Health Services.

²⁹⁹ Submission 17, NSW Health, p 2.

5.14 The main findings of the survey, set out in the March 2010 *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme* (hereafter referred to as the 'NSW Health Review Report') were as follows:

- There is currently no standard or consistent approach to administering and managing LTCS revenue across the Area Health Services, nor is there agreement that LTCS revenue should be protected and directed to services for LTCS participants.
- There has been a clear and significant impact on AHS service provision as a result of the LTCS Scheme, including an increase in administrative and clinical workload.
- There is need for additional resources in the form of additional administrative and clinical staff to assist in meeting the needs of LTCS participants.³⁰⁰

The review found that some Brain Injury and Spinal Cord Injury Rehabilitation Services experienced difficulties administering revenue from the scheme. These difficulties were related to new and more stringent requirements of the LTCS which NSW Health systems were not designed to meet. It was identified that upgraded financial systems are being rolled out in each Area Health Service. The upgraded systems have the potential to better meet the administrative requirements of LTCS.

The Agency for Clinical Innovation has also reported that some LTCS processes have been streamlined to minimise the impact on clinical workloads.

The Agency for Clinical Innovation, the Department of Health and the Lifetime Care and Support Authority will continue to work together to ensure processes are appropriately aligned to maximise health outcomes for scheme participants.³⁰¹

Stakeholder concerns raised in current Review

5.15 A number of stakeholders involved in the Committee's current Review acknowledged the work undertaken by the LTCSA to review and improve some of Scheme's forms and processes. The streamlining of LTCSA and EnableNSW³⁰² paperwork was particularly noted, as was the new adult discharge procedures (discussed in paragraphs 5.1-5.7).

5.16 The LTCSA's equipment procedures have been developed in partnership with EnableNSW as part of the Common Equipment Prescriber Guidelines Project. Ms Frances Monypenny, the Manager of the SSCIS, recognised that 'there has been an enormous amount of work done by Lifetime Care and EnableNSW to try to standardise, so that they both request the same sort of paperwork.'³⁰³

5.17 Similar comments were made in the SSCIS submission which stated: '[w]e would also applaud work by both LTCS and Enable NSW towards aligning their application and paperwork requirements, considerably reducing clinician confusion and frustration.'³⁰⁴

³⁰⁰ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, pp 1-7.

³⁰¹ Submission 17, NSW Health, p 2.

³⁰² EnableNSW is responsible for the administration of the NSW Health disability support programs including the Aids and Equipment Program known as the PADP: www.enable.health.nsw.gov.au

³⁰³ Ms Frances Monypenny, Manager, State Spinal Cord Inquiry Service, Evidence, 21 June 2010, p 8.

³⁰⁴ Submission 8, p 2.

- 5.18** Mr Stephen Lowndes, the Chief Executive Officer of the Royal Rehabilitation Centre Sydney, also commended the improvements in administration made over the last year:

There has been a significant improvement in the administrative processes. I am keen to say that. There has been a lot of good collaboration, particularly over the last 12 months or so, and we seem to have ironed out a lot of issues that we did have.³⁰⁵

- 5.19** Ms Monypenny, also acknowledged the recent improvements to the Scheme, noting the development of the Discharge Services Notification Form, in particular:

Over the past 12 months the Scheme has continued to evolve with further development and clarification of supportive policies, guidelines, systems, procedures and forms regarding issues such as eligibility criteria, treatment, rehabilitation and care needs assessment, services that will be funded, dispute resolution and so on. In particular, the introduction of the Discharge Services Notification form has streamlined some of the paper processes for clinicians and acknowledges that people with catastrophic injury will commonly require a range of services available on return home.³⁰⁶

- 5.20** While, as the preceding comments illustrate, stakeholders acknowledged the efforts of the LTCSA to streamline some of the Scheme's administrative processes and procedures, there remains a general concern among submission makers about the administrative and resource burden created by the introduction of the Scheme. The impact of these burdens on the amount of time clinicians spend with their patients was particularly emphasised.

- 5.21** This accords with the NSW Health Review Report which found, that, 'the greatest impacts to its system were related to administration associated with the Scheme. All respondents advised that administrative burden had significantly reduced clinician time with patients.'³⁰⁷

- 5.22** The Brain Injury Service, Kids Rehab, The Children's Hospital Westmead, described the burden placed on the health services due to the additional administration requirements of the Scheme as 'enormous':

Lifetime Care and Support requirements continue to place an enormous burden on Public Health Services:

a. Ongoing issues related to provision and repeated provision of justification for care, services and rehabilitation for clients with extremely well documented needs. Documentation continues to be an extremely time consuming practice for simple to the most complex of care needs.

b. Time of staff in written and verbal correspondence with the Lifetime care Coordinators in regard to requests for services and submission writing. The Lifetime Care participants are a very small portion of our total clients numbers, yet continue to take up significant amounts of case management time without provision of staff to compensate for this increase demand for coordination and paperwork.³⁰⁸

³⁰⁵ Mr Stephen Lowndes, Chief Executive Officer, Royal Rehabilitation Centre Sydney, Evidence, 21 June 2010, p 11.

³⁰⁶ Dr Joseph Gurka, Medical Director, Westmead Brain Injury Service, Evidence 21 June 2010, p 2.

³⁰⁷ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 6.

³⁰⁸ Submission 13, Brain Injury Service, Kids Rehab, The Children's Hospital at Westmead, p 9.

- 5.23** The SSCIS commented that the requirements of LTCSA distracts clinicians from their primary responsibilities of providing rehabilitation and can delay treatment and care for clients:

Clinicians continue to report the significant burden imposed by the bureaucratic requirements of LTCSA involving paperwork forms distracting them from direct clinical responsibilities of providing rehabilitation to patients.³⁰⁹

- 5.24** Ms Monypenny of the SSCIS advised that the Scheme has generated additional administrative work which is not being appropriately supported. Subsequently, clinicians have taken on the additional administration at the expense of clinical time with the patient:

The clinicians see that there is an increased workload in relation to lifetime care clients. At this stage we are not 100 per cent clear what the expectations for that fee are so the clinicians continue to provide the service as they would for everybody else in the ward in a fair and equal manner. However, the paperwork has created an increased workload and they see it as increasing maybe 10 to 20 per cent, taking away from their clinical time. It means they are taking 10 to 20 per cent of their precious clinical time away from contact with the client because they have to fill in the paperwork.³¹⁰

- 5.25** BIRD explained that the increased workload resulting from the introduction of the Scheme has reduced clinical time, impacting on the provision of therapy for patients:

The requirements of LTCSA have continued to significantly increase the workload of service provider health professionals across the WBIRS, the Inpatient, Transitional Living Unit, Community Rehabilitation and Outreach teams. Although LTCSA forms and processes have been revised, the amount of time team members spend on meeting the requirements of the Authority remains very high to the extent that clinical time and intensity of therapy for patients has been compromised. Familiarity of forms and processes after working in the scheme for 2.5 years has only marginally reduced the time spent in these activities.³¹¹

- 5.26** A number of stakeholders argued that additional administration resources are required to meet the increased load placed on services due to the Scheme, with one stakeholder suggesting that this could be achieved if service providers received the revenue from the Scheme directly.

- 5.27** In this regard, Dr Gurka of the Westmead Brain Injury Service, while recognising that the increase in paperwork as a result of the Scheme was inevitable, advised that additional resourcing was necessary to meet the increased demand placed on the service providers by the Scheme:

I would like to make the point that it does not really matter to what extent we do that, the Scheme is always going to be an increased workload for service providers no matter how streamlined the process has become and how acceptable they end up becoming for us, so in terms of going back to your earlier question, I think it would be really good to see the opportunity for all services to get some equitable resourcing to meet that additional service demand to meet the administrative requirement

³⁰⁹ Submission 8, p 2.

³¹⁰ Ms Monypenny, Evidence, 21 June 2010, pp 3-4.

³¹¹ Submission 7, p 6.

because there is no doubt that clinical time has been compromised by the introduction of this scheme, and there is a limit to how much the Scheme is going to be able to change that for us, I believe, so the onus then goes on to the Scheme and/or health to look at how our resources can be improved to meet additional demand.³¹²

- 5.28** Similar comments were made by BIRD, which recommended that the LTCSA and NSW Health explore the equitable resourcing of services to meet the demands of the Scheme:

It is important to note that there was no additional resourcing of service providers to cope with the additional load resulting from the implementation of the Scheme. To protect the clinical time therapy staff needs to give to patients/clients, it is crucial for our service to have additional resources to assist with LTCS matters.

Recommendation: The Authority explores with the NSW Dept of Health ways in which the specialised Brain Injury Programs can be equitably resourced to meet the demands of the LTCSA without compromising therapy programs. This is a high priority given the potential for LTCS to be expanded to include all patients/clients of the WBIRS in the future.³¹³

- 5.29** The clinicians view was put forward by Ms Monypenny who explained that a portion of the revenue from the Scheme should be used to provide additional support:

Their [clinicians] view is that if we are getting that revenue, part of that revenue should be allocated to provide support mechanisms to help fill that gap [left by clinicians completing paperwork], either by extra clinicians or someone who can do the paperwork.³¹⁴

- 5.30** Ms Monypenny also suggested that individual services should be responsible for the distribution of revenue:

I guess each service would be able to identify where that revenue would best be targeted in supporting their clinicians because some services have maybe more administrative support so whether it be to increase the clinician hours or to increase the case coordination hours while they are an inpatient, or whether it be to do the paperwork. Obviously the paperwork has to be completed by clinicians because it is making an assessment on the client.³¹⁵

- 5.31** While the Authority did not provide a detailed response to the impact of the LTCS Scheme on health services resources, it did confirm that 'the money the Authority pays for the services does not return to the units but to the Area Health Services.'³¹⁶ Revenue issues are examined in detail in the next section.

³¹² Dr Gurka, Evidence, 21 June 2010, p 8.

³¹³ Submission 7, p 6.

³¹⁴ Ms Monypenny, Evidence, 21 June 2010, p 4.

³¹⁵ Ms Monypenny, Evidence, 21 June 2010, p 4.

³¹⁶ Answers to post-hearing questions on notice, LTCSA, Question 2, p 1.

Revenue issues

- 5.32** This section examines concerns raised by stakeholders about the return of revenue generated through the LTCS Scheme to service providers within the public health system. This discussion should be read in the context of the preceding examination of the administrative and resource burden created by the Scheme (paragraphs 5.16-5.30).

Previous reviews

- 5.33** This issue was first raised during the Committee's second Review where representatives from some public health services raised their concerns that revenue is not returned to the specific units who provide services to LTCS participants.³¹⁷
- 5.34** As described in the *Second Review Report*, service providers invoice the LTCSA for services they provide to LTCS participants. The LTCSA then reimburses the service provider.³¹⁸ However, it was identified that for some public health services, this reimbursement is provided to the overarching Area Health Service instead of the actual health unit, such as an individual brain rehabilitation unit at a particular hospital. LTCS revenue is therefore absorbed into the general funding pool for the Area Health Services to determine its use.³¹⁹
- 5.35** Some service providers within the public health system argued that the implications of this practice were significant and wide-reaching. For example, it was suggested that the quality of their service provision was being compromised because the additional administrative and clinical demands presented by the Scheme were not being appropriately supported through targeted resources and revenue. Moreover, one provider argued that, by default, a lot of LTCS revenue was supporting public hospital services for people who are not Scheme participants.³²⁰
- 5.36** As such, these stakeholders, as well as the LTCSA, proposed that a memorandum of understanding or a 'contract agreement' between NSW Health and the LTCSA would address these revenue issues. While the Committee acknowledged that the suggestion had merit, the Committee was advised that NSW Health was conducting a review of the impact of the LTCS Scheme on health services resources. The Committee indicated it would consider the outcome of that review before revisiting the issue.³²¹
- 5.37** NSW Health has completed its review of the impact of the LTCS Scheme on health resources and the main findings of the review are outlined in paragraph 5.13-5.14.

Stakeholder concerns raised in current Review

- 5.38** During the Committee's current Review, submission makers advised that the revenue concerns identified during the Second Review continue to be an issue. This was highlighted by the NSW Agency for Clinical Innovation (formerly known as the Greater Metropolitan Clinical Taskforce), which includes SSCIS and BIRD.

³¹⁷ Standing Committee on Law and Justice, Report 40, pp 54-57.

³¹⁸ Standing Committee on Law and Justice, Report 40, p 54.

³¹⁹ Standing Committee on Law and Justice, Report 40, pp 54-55.

³²⁰ Standing Committee on Law and Justice, Report 40, p 55.

³²¹ Standing Committee on Law and Justice, Report 40, pp 55-56.

- 5.39** The SSCIS acknowledged that there has been some improvement in the invoicing of LTCSA by Area Health Services since the second Review.³²² However, Dr Adeline Hodgkinson, the Co-Chair of BIRD, advised that the revenue generated under the Scheme continues to be pooled as part of general funding for Area Health Services, and confirmed that funding is still not being directed back into specific services:

The [LTCS] revenue is raised by the Area Health Service. They are the only people authorised to issue invoices apart from the schedule 3 hospitals. That revenue goes into general revenue. It may be marked as being received because of our bills but it very much goes into one big bucket called general revenue. It is not directed to our service.³²³

- 5.40** Ms Monypenny, the Manager of SSCIS, suggested that the current practice is jeopardising the ability of spinal cord injury services to meet the needs of participants in the future:

... we are extremely concerned by the fact that there is no agreement in place with Area Health Services or expectation by NSW Health that revenue generated under the Scheme be directed towards provision of services to Lifetime Care participants but, rather, cross-subsidising other services, which in our view is jeopardising the viability of specialised spinal cord injury services to meet the expectations of the lifetime care support authority in the future.³²⁴

- 5.41** SSCIS expressed particular concern over comments made by NSW Health in its review report, which indicated that the protection of revenue for Scheme participants was never an express intention during the establishment of the Scheme nor a current requirement under the LTCS Scheme Fees Policy:

Of particular concern to SSCIS is the recent advice from NSW Health in their review of the impact of LTCSS ... that during the establishment of the LTCSA 'there was no express intention (in legislation, explanatory memoranda or regulation) that revenue generated by NSW Health under the Scheme should be protected for services for Scheme participants only' and that the LTCS Scheme Fees Policy ... 'does not require revenue to be directed to LTCS services'.³²⁵

- 5.42** At least three of the Area Health Services who responded to the Health review advised that they did not have any procedures in place to ensure that LTCS revenue was protected and directed to the services for Scheme participants.³²⁶

- 5.43** According to Dr Gurka, the Medical Director at Westmead Brain Injury Service, NSW Health's comments present an apparent conflict with their practice of setting revenue targets, which in turn has affected the ability of some units to meet client need:

... whilst Health says that it was never intended for the revenue to go back to directly support participants I find it hard to reconcile that with the practice of them then setting us a revenue target to achieve if that is not going to be the case. It does eventually affect services you provide to clients because the revenue targets that are

³²² Submission 8, p 4; Ms Monypenny, Evidence, 21 June 2010, p 3.

³²³ Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, Evidence, 21 June 2010, p 5.

³²⁴ Ms Monypenny, Evidence, 21 June 2010, p 2.

³²⁵ Submission 8, p 4.

³²⁶ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 1.

set are unrealistic and beyond what you will ever raise. When there is a shortfall it basically means, at Western Sydney, we have not been given the okay to keep our staff establishment to the level it needs to be to provide services. So, there has actually been a downgrading of services at Western Sydney in the brain injury program and we are now struggling to meet the client need. It is definitely affecting health.³²⁷

- 5.44** Dr Adeline Hodgkinson who is also the Director of Brain Injury Rehabilitation Service at Liverpool Hospital agreed, stating that, in some areas, unrealistic revenue targets have seen services shrink and their capacity to earn limited as a consequence of targets not being met:

... to have a situation, with Western Sydney in particular, where they are set an unrealistic revenue target they will never meet and are then penalised because they do not meet it and their service is shrunk and their capacity to earn revenue is even less, is really crazy thinking. It seems particularly the case at certain area health services. There are currently eight area health services so it is not a consistent theme but it is certainly a huge problem where it occurs.³²⁸

- 5.45** While a number of respondents to the NSW Health Review indicated that setting revenue targets had some benefit, most identified potential disadvantages or concluded that there was no benefit in setting revenue targets because the LTCS Scheme provided only part of the work of the service and that the number of injuries vary over time, making it difficult to predict revenue and achieve targets.³²⁹

- 5.46** Dr Hodgkinson also commented on NSW Health's advice that revenue was never intended to be returned to the specific health unit who provided the service and generated the income. She advised that there was initially a clear intention for funding to be returned as part of an expenditure budget for their brain injury program:

They have said that at the inception of the Lifetime Care and Support Scheme there was no plan to return the funding to the services providing that funding. However, at the beginning of the brain injury rehabilitation program there was a clear intention that moneys set aside from revenue would be included in the expenditure budget of the brain injury program so that it became part self-funding with a set expenditure budget and protection of that expenditure budget from other constraints in the area health services.³³⁰

- 5.47** According to Royal Rehabilitation, an affiliated health organisation that forms part of the public health service and provides rehabilitation services to LTCS participants, its *direct billing* arrangement with the LTCSA has worked well in addressing the transparency issues raised by BIRD and SSCIS. Mr Lowndes, the CEO of Royal Rehabilitation, explained that this arrangement has provided for a much more efficient and effective service:

... it does go to the point that the current arrangement we have where there is a direct billing arrangement for services provided is much more efficient, much more transparent and much more effective. That is because while there is significant administrative cost in the processing and the paperwork involved with Lifetime Care and Support clients, at least that is a cost that we absorb and are recompensed, if you

³²⁷ Dr Gurka, Evidence, 21 June 2010, p 4.

³²⁸ Dr Hodgkinson, Evidence, 21 June 2010, p 5.

³²⁹ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 1.

³³⁰ Dr Hodgkinson, Evidence, 21 June 2010, p 4.

like, from the Lifetime Care and Support payments. I think where those payments go through NSW Health and Area Health, again, there is a lack of transparency. But I am not convinced that the full amount of that rebate is passed on.³³¹

- 5.48** Royal Rehabilitation expressed strong support for direct funding and service purchase arrangements between the LTCSA and its service providers to ensure better management and administration of LTCS funds:

Royal Rehab strongly supports direct funding and service purchase arrangements between LTCSS and the service providers, together with appropriate audit and reconciliation controls, rather than funding through Area Health Services in respect to health related services, for reasons of greater transparency and efficiency in the application of funds to LTCSS clients.³³²

- 5.49** The NSW Health Review Report recommended that the existing fee structures and fee levels be examined to ensure that the full cost of case management for LTCS participants is reimbursed. The report also indicated that a lump sum payment provided by the LTCSA would enable specialised services to meet their particular requirements.³³³

- 5.50** Mr David Bowen, the Executive Director of LTCSA, informed the Committee that the amount the LTCSA pays for the bed-day rate and specialist and allied health services is well in excess of any comparable amount that a private medical fund or Medicare would pay.³³⁴ He argued that, as such, the reimbursements paid by the LTCSA should be sufficient to cover any additional demands associated with the care of its participants:

... so I believe that we are paying sufficient to enable those units to do all of the work, which includes, from our point of view, a reasonably modest amount of paperwork and, operating fairly much under template agreements, for us to be able to properly certify and verify that the service has been provided and that it is reasonable and necessary. Otherwise we will have problems with the Auditor-General.³³⁵

- 5.51** The LTCSA acknowledged that the issue may not be one of appropriate reimbursement of costs but rather, the administration of that reimbursement and its return to the front-line service provider.³³⁶ As expressed by Mr Bowen, 'the issue is we are paying that into the Area Health Service but it is not necessarily finding its way back to the units'.³³⁷

- 5.52** Mr Bowen advised that once reimbursements were paid to an Area Health Service, he was not aware of where that money was directed to, but indicated that because a significant proportion of brain injury and spinal units support LTCS participants, the LTCSA 'would like to see the money going back those units'.³³⁸

³³¹ Mr Lowndes, Evidence, 21 June 2010, p 10.

³³² Submission 10, pp 2-3.

³³³ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, pp 2 & 5.

³³⁴ Mr David Bowen, Executive Director, LTCSA, Evidence, 21 June 2010, p 78.

³³⁵ Mr Bowen, Evidence, 21 June 2010, p 78.

³³⁶ Answers to post-hearing questions on notice, LTCSA, Question 2, p 2.

³³⁷ Mr Bowen, Evidence, 21 June 2010, p 78.

³³⁸ Mr Bowen, Evidence, 21 June 2010, p 78.

- 5.53** Mr Bowen expressed a willingness to work with public health service providers to come to an agreement with NSW Health about how best to address these revenue issues:

... I would say that we are quite happy to work with the Brain Injury Directorate and the spinal directorate on an approach to the Health Department to make sure the services that are being paid for go to those areas that are providing it. It is a pretty straightforward purchaser-provider arrangement. We think that would facilitate those units being better able to service the needs of our participants.³³⁹

Committee comment

- 5.54** The Committee acknowledges the ongoing concerns about administrative burdens and revenue issues and recognises that, since our last Review, the outcomes of the NSW Health review of the impact of the LTCS Scheme on health resources have confirmed these issues.
- 5.55** The Committee commends the efforts of the LTCSA to streamline processes and reduce paperwork and notes that some increase in administrative and processing work is to be expected with the introduction of the Scheme. It is a concern, however, that the Scheme requirements seem to be impacting on clinician time spent with patients, including Scheme participants.
- 5.56** The Committee notes the specific concerns of SSCIS and BIRD regarding the need for revenue and resources to be allocated back to the health units providing services to LTCS participants rather than the overarching Area Health Service. It appears that the direct billing and funding arrangements between the LTCSA and Royal Rehabilitation is a particularly useful model for ensuring transparency and efficiency in the reimbursement of costs.
- 5.57** While the Committee notes the comments of NSW Health that it is not required to protect the revenue raised through the LTCS Scheme for the benefit of LTCS participants, the Committee is of the view that the front-line service providers and the Scheme participants they service should be the primary beneficiary of the revenue generated under the Scheme.
- 5.58** The Committee also notes that, as suggested by the LTCSA, the reimbursements provided under the Scheme should be sufficient to address additional administrative demands. The Committee understands, however, that, as acknowledged by the CEO of the LTCSA, this is very much dependent on the appropriate management of these reimbursements.
- 5.59** The Committee therefore reiterates its conclusion in the *Second Review Report* that the suggestion of having a memorandum of understanding or possible 'contract agreement' between the LTCSA and NSW Health to clarify expectations and ensure an appropriate return of revenue would be of significant value. The Committee welcomes the willingness of the LTCSA to work with service providers and NSW Health towards an agreement on revenue issues.
- 5.60** The Committee recommends that the Minister for Health and the Minister for Finance enter into a memorandum of understanding or contract agreement clarifying the administration of LTCS revenue within the public health system, to ensure that money reimbursed for services is returned to the relevant units. In determining the most appropriate terms of that agreement,

³³⁹ Mr Bowen, Evidence, 21 June 2010, p 78.

consultation should take place with the LTCSA and service providers, including those who have contributed to the Committee's review on this issue.

Recommendation 6

That the Minister for Health and the Minister for Finance enter into a memorandum of understanding or contract agreement clarifying the administration of LTCS revenue within the public health system, to ensure that money reimbursed for services is returned to the relevant health care units. In determining the most appropriate terms of that agreement, consultation should take place with the LTCSA and service providers, including those who have contributed to the Committee's Third Review on this issue.

Financial systems

5.61 In addition to the findings regarding the increased administration resulting from the LTCS Scheme, the NSW Health Review Report also identified difficulties experienced by Area Health Services in submitting claims for reimbursement within specified timeframes. Contributing factors that were outlined in the report included:

- the complexity of the new system.
- incompatibility with existing billing systems.
- inconsistent billing practices between clinicians.
- increased administrative requirements involved in processing LTCS clients.
- limited administrative resources and over load for clinical staff.³⁴⁰

5.62 The Committee notes that the aforementioned problems were not shared by all Area Health Services and that four of the seven that responded advised that claims were able to be submitted within timeframes, although one response noted that if several referrals were received at once this would impact on their capacity to manage the workload.³⁴¹

5.63 The Brain Injury Service, Kids Rehab, The Children's Hospital Westmead outlined similar issues with invoicing and billing, explaining that Kids Rehab does not have the resources to meet the LTCSA requirements:

Financial Support – It is not currently within the resources of Kids Rehab, The Children's Hospital Westmead to meet the requirements of the LTCSA in regards to invoicing requirements and code changes for billing purposes for services. The commencement of the LTCSA did not come with additional financial management support which has not been addressed sufficiently to allow satisfaction for either organisation.³⁴²

³⁴⁰ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 4.

³⁴¹ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 4.

³⁴² Submission 13, p 9.

- 5.64** The NSW Health Review Report commented that existing accounting systems are being upgraded to meet LTCSA requirements and recommended that the Authority consider providing payment to cover the upgrades:

GMCT BIRD is working with services to upgrade existing accounting systems (Hosbil) to make these compatible with LTCS requirements.

There will be a cost implication in upgrading systems to meet LTCS requirements. The Department of Health notes that when NSW Brain Injury Rehabilitation Program services were established, the MAA provided a lump sum payment to cover the cost of infrastructure development. It is recommended that the LTCSA consider providing a lump sum payment to cover the cost of upgrades to meet their particular requirements.³⁴³

- 5.65** BIRD supported the recommendation that the LTCSA provide a lump sum payment to specialised services and suggest that it is implemented over two years involving a NSW Health financial project officer to ensure consistency across the State:

The [NSW Health Review] Report included a number of recommendations and we offer additional comment ... That LTCS provides a lump sum payment to enable specialised services to meet their particular requirements for billing, reporting and clinician involvement for data and administration system development. This recommendation is supported and we would suggest it is implemented over a 2 year period by involving a project officer with NSW Health financial systems knowledge to collaborate on resolving fees, billing and financial systems to achieve consistency across the state network to ensure billing matches services.³⁴⁴

- 5.66** In response to the Committee's request for comment on the NSW Health Review Report, the LTCSA advised that 'all Area Health Services are now able to raise invoices for services provided by Brain and Spinal Cord Injury Units'.³⁴⁵ The Authority did not provide any further response to this issue or NSW Health's recommendation to provide a lump sum payment to assist in the system upgrades.

Committee comment

- 5.67** The Committee notes the concerns raised in the NSW Health Review regarding difficulties in submitting claims for reimbursement within required timeframes. The Committee also recognises the importance of compatibility and consistency within and between billing systems. KidsRehab has also experienced difficulties with invoicing and billing.
- 5.68** While the Committee did not receive a great deal of information about this emerging issue, we do feel that it is appropriate for the LTCSA to give consideration to the recommendation in the NSW Health Review Report to provide a lump sum payment to health service providers to cover the cost of system upgrades to meet Scheme requirements.

³⁴³ Tabled document, *Report on the NSW Health review of the impact of the Lifetime Care and Support Scheme*, p 4.

³⁴⁴ Submission 7, p 2.

³⁴⁵ Answers to post-hearing questions on notice, LTCSA Question 2, p 1.

Recommendation 7

That the Lifetime Care and Support Authority give consideration to the recommendation put forward by NSW Health in its *Report on the NSW Health Review of the Impact of the Lifetime Care and Support Scheme* to provide a lump sum payment to health service providers to cover the cost of system upgrades to meet the requirements of the LTCS Scheme.

Approval process for treatment, rehabilitation and care services

- 5.69** Scheme participants and some service providers raised concerns with aspects of the LTCS Scheme's approval process for treatment, rehabilitation and care services. Delays in approval, delays in the delivery of services and equipment, and the need to notify service providers were identified as problematic. A further issue raised related to the inability to access a participant's cumulative history and the duplication of information that is subsequently required for approvals.

Delays in approval process

- 5.70** The *LTCS Guidelines* state that 'the Authority will acknowledge all applications in writing within 10 working days of receipt of the complete Application Form' and that 'applicants will receive the Authority's determination in writing, including reasons for the decision.'³⁴⁶
- 5.71** The LTCSA's first participant survey, which was discussed in Chapter 3, was conducted to measure participant satisfaction with the Scheme. Overall, participants expressed satisfaction with the Scheme, however, twenty seven per cent reported problems with services, with one of the main concerns being delays with approval for or access to services. Minimising delays with approvals and access to services was one of the key areas identified for improvement.³⁴⁷
- 5.72** A number of Review stakeholders drew the Committee's attention to delays experienced in obtaining approvals from the LTCSA.
- 5.73** For example, Mr Mark Harris, a lifetime participant in the Scheme, told the Committee that delays in having his requests processed and approved by the LTCSA have caused unnecessary frustration and upset, for himself and his family.³⁴⁸ Mr Harris provided an example of the delay he experienced in getting approval for a tennis wheelchair to illustrate his assertion.³⁴⁹
- 5.74** According to Dr Joseph Gurka, the Medical Director of the Westmead Brain Injury Service, there have been many situations where the time frame for approval has exceeded 10 days and this may be due to large workloads on the LTCS Coordinators:

We have had lots of examples where, despite the delegation of a certain amount of authority to the Coordinators, we are still waiting beyond the 10 days to get responses

³⁴⁶ LTCSA, *Lifetime Care and Support Guidelines*, 2010, Part 1, p 7, accessed 29 October 2010 <www.lifetimecare.nsw.gov.au/Guidelines_and_Policies_for_Professionals.aspx>

³⁴⁷ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

³⁴⁸ Submission 5, Mr Mark Harris, pp 2-3.

³⁴⁹ Submission 5, pp 2-3.

on some very simple, basic things ... Just simple things like having a pharmacy account finalised, some items of equipment that are not that complex. We are still chasing responses to some of these requests, even beyond the 10 days. So it does not appear to be just a delegation issue. It appears as though there might be a workload issue on the side of the Coordinators that they are finding it difficult to respond to requests in a timely fashion.³⁵⁰

5.75 In response to the Committee seeking clarification on the frequency of these delays, Dr Gurka, advised that although these delays have been a common occurrence, it has only been recently that delays have become more frequent.³⁵¹

5.76 This view accords with the submission from BIRD which stated that there has been an increase in the number of requests that have taken longer than 10 days for approval. BIRD also advised that on some occasions LTCSA Coordinators have not received email requests:

An increased trend has been noted that submitted requests are taking LTCSA longer than 10 days to make a decision, requiring follow up by clinicians. A number of instances have arisen in which LTCSA Coordinators have not received requests which have been submitted in a timely manner via the required email address.³⁵²

5.77 BIRD recommended that the '... LTCSA review both the approval processes and reliability of the email address for electronic submission of requests.³⁵³

5.78 Mr Neil MacKinnon, the A/Director of Service Delivery for the LTCSA advised that the 10 day time frame is the target for all approvals but that this timeframe may be extended if additional information about the request is required:

The 10 day timeframe is certainly our target. We aim to try to get it under that. The complication with that timeframe is where we are seeking further information from whoever has made the request and that may stretch it out at times beyond the 10 days. The complication is for the participant, I think, who sees that overall timeframe of when the therapist says, "I'm going to do a request for x", to when it actually arrives, involves a supply chain as well as a decision chain.³⁵⁴

5.79 With regard to additional information, the *LTCS Guidelines* state that 'the Authority may require information additional to that provided by the applicant in the Application Form before the form can be regarded as complete.³⁵⁵

5.80 The LTCSA also advised that following feedback from service providers, it is reviewing all procedures and forms for requesting treatment, rehabilitation and care. A number of forms have been revised and are now being piloted.³⁵⁶ The Discharge Services Notification Form is an example of this, and as discussed in paragraphs 5.1-5.17, service providers have commented on the faster approval of services that this new discharge process has introduced.

³⁵⁰ Mr Gurka, Evidence, 21 June 2010, p 3.

³⁵¹ Mr Gurka, Evidence, 21 June 2010, p 3.

³⁵² Submission 7, p 7.

³⁵³ Submission 7, p 7.

³⁵⁴ Mr Neil MacKinnon, A/Director, Service Delivery, LTCSA, Evidence, 11 June 2010 p 17.

³⁵⁵ LTCSA, *LTCSA Guidelines*, Part 1, p 7.

³⁵⁶ LTCSA, *Annual Report, 2008-2009*, p 10.

- 5.81** BIRD acknowledged that 'benefits have ensued from the refinements to the approval process' however, explained that, at times, a quicker response is required than the 10 day time frame. BIRD recommended that the LTCSA establish a prioritisation system:

LTCSA currently has a 10-day timeframe to assess and decide on requests/applications. On occasions, it is essential that a more timely decision is made because of e.g. a need to facilitate a timely discharge and/or engage other services e.g. builder, care agency.

Recommendation: The LTCSA establishes a prioritization system to enable urgent requests to be approved in less than 10 days.³⁵⁷

- 5.82** The LTCSA noted that for urgent requests, where the participant may be at risk of imminent harm or adverse outcome, LTCS Coordinators have sufficient delegation to approve outside of the 10 day process:

To ensure fairness and timeliness for all participants, the Authority has committed to provide a response to participants regarding requests within 10 working days. In order to prioritise urgent requests, the LTCS Coordinators have sufficient financial delegation to approve any reasonable and necessary services where the participant may be at risk of imminent harm or adverse outcome, outside of the usual 10 day process. The Authority continues to work with the discharging units to reinforce the need for early planning for participants so that requests for services or equipment do not become urgent.³⁵⁸

- 5.83** Furthermore, Mr David Bowen, the Executive Director of the LTCSA reiterated that there is a mechanism for a three-day decision in very urgent matters.³⁵⁹

- 5.84** Dr Hodgkinson agreed that the LTCSA have been able to respond to crisis situations where there is real risk but commented that this is not the only way in which a rapid decision is required. Dr Hodgkinson explained that LTCSA is unable to provide a rapid response when patients are moving quicker than the Scheme and provided the following example:

So in the situation of a patient with a severe brain injury who may come to our ward, one of the clinical circumstances of severe brain injury is that they may improve very quickly, very rapidly, from a physical point of view and want to be home with their family as soon as possible.

Although they may need care and therapy, within two weeks of an admission they will be ready for discharge. It is against their interests to keep them in for another 10 days or two weeks waiting for approvals, and any capacity we have to guess what their needs may be when they arrive is often inaccurate. When you first see a patient within the first day you only have a feeling for what they may need, not be able to complete a care and needs assessment. It is that need to respond rapidly. So the lifetime care's discharge procedures have addressed that for therapy needs—occupational therapy, physiotherapy have now pre-approved hours which addresses that issue, but it is more the care that may be needed. Where a person may go home and be expected to

³⁵⁷ Submission 7, p 7.

³⁵⁸ Answers to pre-hearing questions on notice, LTCSA, Question 10, p 8.

³⁵⁹ Mr Bowen, Evidence, 11 June 2010, p 17.

participate in their family with support and may need quite substantial hours of care in order to continue to improve, that is being delayed.³⁶⁰

- 5.85** The Committee noted that two weeks in hospital may not be enough time to authorise long term service provision for patients who recover 'physically' in a short amount of time. One option to resolve this problem, which was canvassed by the Committee, was to develop an interim emergency process. Dr Hodgkinson agreed, adding that 'initial estimates for hours of care could be changed in the first month once a Case Manager had accurately assessed the situation.'³⁶¹

Delays in delivery of equipment and services

- 5.86** A separate but related issue raised in the participant survey was delays experienced in the delivery of equipment and services. The LTCSA reported that 37 per cent of respondents agreed that long delays were experienced waiting for services to be approved, with 'anecdotal evidence suggesting delays were in the order of months, rather than weeks'.³⁶²
- 5.87** The LTCSA responded to the accounts of lengthy delays for equipment and services advising that 'given the requirement for LTCS to respond to requests within ten days of receiving them, the delays reported in the survey may be from service providers and misattributed to the Authority.'³⁶³
- 5.88** The LTCSA also advised that delivery times were dependant on the supplier and the customisation required, while the time frames for services relied on the availability and locality of the participant and service provider:

Delays in the delivery of services and equipment may occur for a number of reasons. With regard to equipment, the delivery time will depend on the supplier and the level of customisation that is required. Most equipment suppliers estimate a 6-8 week delivery time for customised equipment.

The provision of services will depend on the availability of the participant and the provider. For services that are provided on a regular basis, there is little (if any) delay in provision. A delay may occur if a specialist provider needs to travel (for example to a rural area) to assess or review a participant. However, this is negotiated between the provider, the participant and their Case Manager.³⁶⁴

- 5.89** The LTCSA also explained that the shortage in specialist services and equipment, especially in rural and remote areas is further impacting on delivery times. In situations where there have been unforeseen delays, there are mechanisms in place to source different providers.

It should be noted that there is an overall lack of specialist services and equipment suppliers to meet the needs of people with brain and spinal cord injury. This is

³⁶⁰ Dr Hodgkinson, Evidence 21 June 2010, pp 2-3.

³⁶¹ Dr Hodgkinson, Evidence, 21 June 2010, p 3.

³⁶² Answers to pre-hearing questions on notice, LTCSA, Question 8, p 6.

³⁶³ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 6.

³⁶⁴ Answers to post-hearing questions on notice, LTCSA, Question 3, p 2.

particularly so in rural and remote areas. As such, some delays in the delivery of equipment or services are unavoidable.³⁶⁵

5.90 The LTCSA went on to describe the mechanisms in place where there are unforeseen delays:

The Authority requests that Case Managers advise the LTCS Coordinators if there has been an unforeseen delay in the delivery of equipment or a service. The Coordinator may request that the Case Manager source a different supplier or provider if it is determined to be in the best interest of the participant.

The Authority's panel of attendant care providers are regularly monitored to ensure that participants receive the care they need in a timely manner.³⁶⁶

5.91 BIRD explained that when equipment is delayed there is a means to hire equipment in the interim. However, BIRD outlined the difficulties and duplication involved in requesting this interim equipment and recommended that the LTCSA accept a request for purchase and hire on the same form:

Delays continue to be experienced in the availability of equipment that has been approved by LTCSA for purchase for a participant, eg. due to ordering, delivery time and other issues. In these scenarios, we request hire of equipment on a short term basis until the definitive equipment is available. LTCSA currently requires resubmission of the request forms for the hire which contains the same information including justification as the original request for the definitive equipment. The Authority will not accept a request for purchase and hire on the same request form. This results in unnecessary duplication of work.

Recommendation: The Authority accepts the original requests as justification for equipment hire without the need for repeat paperwork.³⁶⁷

Notification process

5.92 The final aspect of the approval process raised as a concern in the current Review relates to the notification of approvals. One stakeholder advised that there is no process to directly advise service providers and suppliers of approvals, suggesting that there should be a formal process to ensure all parties are informed of decisions.

5.93 In this regard, BIRD commented that rehabilitation service providers are not informed directly about the outcome of an application:

Rehabilitation services are informed of the outcome of a request or application submitted and justified by them, via receipt of a copy of the certificate/letter from the Authority to the participant.³⁶⁸

5.94 BIRD recommended that the LTCSA should communicate directly with the rehabilitation service providers regarding the outcomes of requests submitted by them suggesting that '...

³⁶⁵ Answers to post-hearing questions on notice, LTCSA, Question 3, p 2.

³⁶⁶ Answers to post-hearing questions on notice, LTCSA, Question 3, p 2.

³⁶⁷ Submission 7, p 9.

³⁶⁸ Submission 7, p 7.

this can be done via the approval section at the end of the LTCS forms or by letter on LTCSA letterhead.³⁶⁹

- 5.95** BIRD also explained that there is no formal process to inform suppliers of the LTCSA approval of their services and that presently the already busy, rehabilitation team members inform suppliers.

There continues to be no formal system for LTCSA to inform suppliers such as equipment suppliers, private therapists or other service providers eg lawn mowing businesses, organizations providing relative accommodation, of LTCSA approval of their services. Currently rehabilitation team members inform such suppliers which increases their workload. It is inappropriate for suppliers to receive a copy of a participant's certificate when this certificate contains confidential clinical information which is not all relevant to the supplier and thus could breach the privacy act. Suppliers have indicated that they require formal notification of approval of their services – preferably documented on LTCSA letterhead before they will provide a service or equipment item.³⁷⁰

- 5.96** BIRD again provided a recommendation that formal notification procedures are developed:

Recommendation: The Authority provides formal notification of approval to suppliers either by letter on LTCSA letterhead or via the approval section at the end of LTCS request forms. This formal notification can be returned to the rehabilitation service, (as recommended in (5.74)) and the rehabilitation service can in turn forward these on to the relevant suppliers. It will be important that there is an approval letter per each supplier.³⁷¹

- 5.97** In response to these concerns, the LTCSA advised that as required by Part 4 of the Act, the Authority provides the outcome of its assessment in a 'certificate'. The certificate is 'sent to the participant to outline which services have been approved by the Authority and which services have not been approved.' The reasons why the services are, or are not, approved are included on the certificate.³⁷²

- 5.98** The LTCSA also commented that a copy of the certificate is sent to the Case Manager who will notify all parties of the decision. The LTCSA also advised that it is only when there is no Case Manager will the supplier receive the purchase order directly:

The Authority issues the certificate to the participant to notify them of the outcome of the request - whether it is approved or not approved. A copy of this certificate is automatically sent to the participant's Case Manager and it is the Case Manager's role to inform individual providers of the outcome. In cases where the Case Manager has not submitted the request, a copy of the certificate is sent to the requestor and the Case Manager. Only when a participant does not have a Case Manager will the Authority forward the "purchase order" directly to the supplier.³⁷³

³⁶⁹ Submission 7, p 7.

³⁷⁰ Submission 7, p 7.

³⁷¹ Submission 7, p 7.

³⁷² Answers to pre-hearing questions on notice, LTCSA, Question 10(b), p 9.

³⁷³ Answers to post-hearing questions on notice, LTCSA, Question 4, p 3.

Inability to access cumulative participant history

- 5.99** Another concern raised in the current Review is that current processes do not allow for the LTCSA to draw on a participant's cumulative history, including information relating to other requests, when service providers are completing requests for participants. It was suggested that, as a consequence, there is no broader understanding of a person's needs and each request is made by a person is assessed in isolation, potentially resulting in lengthy delays for approval.
- 5.100** In this regard, the Brain Injury Service, Kids Rehab, The Children's Hospital Westmead, commented on the significant amount of work that service providers need to carry out to meet the LTCSA requirements as independent information is included on every submission made:

The stated requirement of LTCSA is that every submission made must house free standing information regarding the client's medical history, current status and requested needs. This necessitates a significant administrative burden for service providers who for the Brain Injury Service are clinicians who carry a much wider workload than just participants of the LTCS ... There is a loss of continuity and client medical and social history that is not easily communicated from one submission to another without necessitating significant reproduction of the most basic medical and social facts related to the client. There is apparently no provision for LTCSA to draw on the long and detailed cumulative history of the client from previous submissions and requests, and subsequently is reflected in repetitive written communication between LTCS and service providers.³⁷⁴

- 5.101** Kids Rehab also highlighted the financial cost on service providers in having to collect additional details, stating that 'the effort to provide the vast quantity of additional detail does not rationally equal the cost of the actual service being provided'.³⁷⁵
- 5.102** Ms Anna Castle-Burton, the Director of Australian Rehab Works, did not however find the obligation as onerous, noting that the information required is specific for each request and therefore each application should be completed individually:

I understand the issue coming from Kids Rehab in relation to not repeating the same information, but we feel that the forms and the systems that we are required to use all have such different purposes that often the information that you need to highlight in a particular application is different from form to form. For instance, if you are filling in an equipment request, the information that you may want to highlight out of a participant's history may be different from if you are filling in a service request. Generally we find that the basic information, that is, the participant's address, details, et cetera, is very easily just copied over from form to form. As this is our core business we do not find that part onerous, and we feel that there should not be pro-formas in filling out the forms; they should be specific to whatever request or service you are asking for.³⁷⁶

³⁷⁴ Submission 13, p 4.

³⁷⁵ Submission 13, p 4.

³⁷⁶ Ms Anna Castle-Burton, Director, Australian RehabWorks, Evidence, 21 June 2010, p 39.

- 5.103** The LTCSA explained that, while efforts to minimise the information required from providers continues to be monitored, an adequate amount of information is necessary for accurate, consistent and prompt approvals of requests:

The Authority has endeavored to minimise the amount of information it requires from providers, however, sufficient information is required so that the Authority can determine if the request is reasonable and necessary and consistent with Lifetime Care and Support Guidelines. The Authority must ensure that the Scheme is affordable. Therefore, written documentation from service providers is required to ensure that the Authority's funding is being spent in an appropriate way to best meet participant's needs. The Authority asks that the providers ensure that sufficient information is included in each request so that decisions can be made without unnecessary delay. This is particularly so with children whose needs change more quickly than adults.³⁷⁷

- 5.104** The LTCSA also advised that where 'insufficient information to make a decision is provided, or where clarification is needed, the LTCSA will endeavor to locate the required information from its records and/or from the LTCS Coordinator's knowledge of the participant.'³⁷⁸

- 5.105** In addition, the LTCSA advised that options are being considered that will resolve the duplication of information by each service provider:

All information relating to a participant, including requests and correspondence, is stored in the participant's file within the Authority's case management system ... options are being explored to prevent providers having to repeat information that is already on the Authority's file.³⁷⁹

Committee comment

- 5.106** The Committee notes the advice of stakeholders that service providers are experiencing some delays in the approval of requests from the LTCSA. We do understand, however, that the Authority requires a 'complete' application before the approval process can begin and encourages better communication by the LTCSA to applicants on the process for approval.
- 5.107** The Committee is concerned that some participants are experiencing extensive delays in receiving equipment. We acknowledge that delays are, at times, unavoidable due to customisation of equipment and the location of the client. To reduce the impact on Scheme participants, the Committee recommends that the LTCSA improve the process for interim equipment hire and consider the suggestion put forward by BIRD to reduce the duplication of forms required by accepting original equipment orders as justification for hire.

³⁷⁷ Answers to pre-hearing questions on notice, LTCSA, Question 22, p 21.

³⁷⁸ Answers to pre-hearing questions on notice, LTCSA, Question 22, p 21.

³⁷⁹ Answers to post-hearing questions on notice, LTCSA, Question 7, p 4.

Recommendation 8

That the Lifetime Care and Support Authority improve the process for interim equipment hire and consider the suggestion put forward by the Brain Injury Rehabilitation Directorate to reduce the duplication of forms required by accepting original equipment orders as justification for hire.

- 5.108** The Committee recognises the importance of Scheme participants receiving necessary equipment and services in a timely manner. The Committee encourages the LTCSA to streamline processes for notification of service providers and suppliers where possible and will revisit this issue if it is raised in subsequent reviews.
- 5.109** The Committee acknowledges the need to reduce the amount of time spent completing approval applications. We note, however, the importance of providing accurate information for each specific request and the benefit of building a whole picture of an applicant, ensuring that social and medical continuity is maintained. The Committee notes that the LTCSA is considering options to reduce the duplication of information by each service provider. We will consider this issue in the next review.

Privacy

- 5.110** During the Review concerns were raised with regards to privacy and confidentiality issues, with one inquiry participant expressing dissatisfaction that the Scheme's processes require participants to repeatedly and unnecessarily share personal information in order to have their requests processed.
- 5.111** In his submission, Mr Mark Harris, a lifetime participant in the Scheme, commented on the lack of privacy in the LTCS, explaining that 'anytime I require any medication or tests done I have to let several people know and they have to pass this information onto more people.'³⁸⁰ In evidence, Mr Harris further explained his embarrassment at having to share his information with so many people:

... there is having to share all my private information with so many people. As my dad mentioned, I have lost all my dignity with what I have been through. It is like starting again as a baby. Then to have everybody talking about it, it seems everybody knows your business and it is quite embarrassing.³⁸¹

- 5.112** Ms Nicky Harris, Mr Harris' wife, also commented that the lack of privacy had exposed their lives to a range of people:

Our lives are always on show to everybody. There are always so many people who have to be involved in everything, our personal lives and private matters— Coordinators, occupational therapists, Case Managers, doctors. We feel we should only have to discuss these things with medical professionals.³⁸²

³⁸⁰ Submission 5, p 2.

³⁸¹ Mr Mark Harris, Evidence, 21 June 2010, p 20.

³⁸² Ms Nicky Harris, Evidence, 21 June 2010, p 20.

5.113 The concern about privacy was not one that was shared by all the other Scheme participants or carers of participants who appeared before the Committee. For example, Mr Daniel Strbik, whose daughter is a lifetime participant in the Scheme and Mr Lyndon Wait, a participant, both advised that they had not experienced any issues in relation to privacy and the use of their personal information.³⁸³

5.114 Mr Ian Franklin, the father and carer of his 22 year old son who is a lifetime participant, explained that he saw it as necessary for those involved to understand the situation and to have relevant information:

The people who need [the information] are the doctors and those involved in the operations. It is good idea to have the coordinator, because she has the history and she knows what is going on. We have not had to repeat the story to 35 different people. We did not have to explain the situation to the builders. Obviously he knew Jonathon was a paraplegic. Other than that everybody has been professional. People have simply wanted to know what needs to be done and how the modifications can be done to achieve that. There have been no privacy issues.³⁸⁴

5.115 A separate but related issue was raised in the submission from the Brain Injury Service, Kids Rehab, The Children's Hospital Westmead, concerning the interface between health care facilities and the LTCSA in regard to the sharing of personal information about the participant and their family:

The decision as to what sensitive client and family information should be included in documentation to the LTCSA has been a challenge, as is determining to what degree personal information is required by LTCSA to make an informed decision relevant to a request. This issue may be addressed by provision of further clarification regarding 'ownership' of client information and the role of the LTCSA in the lives of the participants.³⁸⁵

5.116 Whilst the LTCSA was not questioned directly in relation to privacy issues, the Committee does note that the LTCSA has a privacy policy on their website.

Committee comment

5.117 The Committee acknowledges the importance of privacy for all participants in the Scheme. Whilst not all participants and carers involved in the Committee's Review held concerns about privacy, one participant and his family have clearly been greatly affected by what they feel to be the intrusion into their privacy by the requirements of the Scheme. Privacy is an important aspect of a person's care and treatment and is fundamental to the success of any government assistance scheme. We will be interested to see if privacy concerns feature in our future reviews so as to indicate that there is a systemic issue to be examined.

5.118 The Committee notes the concern on the part of the Brain Injury Service, Kids Rehab, The Children's Hospital Westmead, about the 'ownership' of client information. As there was only

³⁸³ Mr Daniel Strbik and Mr Lyndon Wait, Evidence, 21 September 2010, p 35.

³⁸⁴ Mr Ian Franklin, Evidence, 21 September 2010, p 35.

³⁸⁵ Submission 13, p 9.

a small amount of information presented on this issue during this Review the Committee will monitor this and other issues about privacy and confidentiality in further Reviews.

LTCS Coordinators

5.119 Issues relating to the role of LTCS Coordinators were raised in the Committee's past two Reviews and have again been identified in the current Review.

5.120 In the main, however, these issues were raised in the overall context of positive comments about the work of LTCS Coordinators and improvements that had been made in relation to their role and their work since the Scheme commenced. Some stakeholders simply reported very positive experiences with LTCS Coordinators, such as the Director of Australian RehabWorks, Ms Louise Castle-Burton, who described a positive working relationship with LTCS Coordinators:

We have had positive experiences with the Lifetime Care Coordinators that we have worked with. We find that the relationship is, as I have said a number of times, a supportive and collaborative relationship. There is a focus on working together towards the betterment of the participant. They are open to feedback and they are open to discussion, which is helpful as a provider. Working with people with traumatic brain injury is not the easiest line of work. They have often got difficult behaviours and things come up in practice and in providing them with treatment all the time. So it is useful to have somebody to talk through those issues and the ways to manage a particular case. We have always found the Coordinators we work with to be very supportive and to help us work through a particular issue with clients. We have not had any negative interaction.³⁸⁶

Role of LTCS Coordinators

5.121 All LTCS Scheme participants are assigned an LTCS Coordinator who will act as the primary point of contact between the participant, service providers and the LTCSA. Coordinators have three main areas of service:

- to understand the individual participant's needs
- administer the case file, and
- ensure participants are receiving quality services.³⁸⁷

5.122 LTCS Coordinators come from a variety of backgrounds and have extensive experience working with people with disabilities in the community and their families.³⁸⁸

5.123 Scheme participants will also have a Case Manager while involved with a rehabilitation unit. LTCS Coordinators and Case Managers do not have the same role, although at times some duties may overlap. A Case Manager will generally be responsible for developing and organising community discharge and/or community living plans, and are likely to be involved

³⁸⁶ Ms Castle-Burton, Evidence, 21 June 2010, p 44.

³⁸⁷ Answers to pre-hearing question on notice, LTCSA, Question 21, p 19.

³⁸⁸ For further information see the LTCSA publication, *Frequently Asked Questions: LTCS Coordinators*, which can be found on the LTCSA website at: www.lifetimecare.nsw.gov.au//Scheme_Participants_FAQs.aspx.

during the patient's rehabilitation. A LTCS Coordinator will have 'a lifelong relationship with a participant and will assist the participant to develop life roles and participation throughout stages of life.'³⁸⁹

Previous Reviews

- 5.124** During the Committee's First Review one stakeholder advised that there was uncertainty about the role of the LTCS Coordinator, particularly in relation to the work of clinical staff and Case Managers. The LTCSA acknowledged the uncertainty and advised of the steps it had taken to clarify their role and train Coordinators. In the *First Review Report* the Committee noted the important role of the LTCS Coordinators and that the Authority was responding to the concerns.³⁹⁰
- 5.125** During the Second Review stakeholders raised issues relating to a general confusion of the role of the LTCS Coordinator, the time at which Coordinators are introduced to potential participants and their families, particularly child participants, and inconsistencies in the application of the *LTCS Guidelines* by different Coordinators.³⁹¹
- 5.126** In its *Second Review Report*, the Committee noted that there was still ongoing confusion related to the role of the LTCS Coordinator and that it could be due to the infancy of the Scheme, the continuing growth of the number of participants and the number of Coordinators. The Committee encouraged the LTCSA to continue to work with service providers to clear up this confusion to ensure Scheme participants and their families receive clear messages about the Scheme and its services. The Committee recommended that, with regard to potential child participants, the LTCSA consult with the treating rehabilitation team regarding the appropriate timing for the introduction of the LTCS Coordinator.³⁹² This recommendation and the Government's response to it is examined in Chapter 2 (paragraphs 2.43-2.46).

Stakeholder concerns raised in current Review

- 5.127** During the current review stakeholders raised the following issues in relation to the role and effectiveness of LTCS Coordinators:
- Confusion about their role, particularly in relation to clinicians and Case Managers
 - Inconsistency in knowledge of Coordinators
 - Difficulties in communicating with Coordinators.

Role of Coordinators

- 5.128** The first issue raised in relation to LTCS Coordinators during the current Review is the tension created by confusion about the role of the Coordinator in relation to the roles of clinicians and Case Managers.

³⁸⁹ For further information see the LTCSA publication, *Frequently Asked Questions: LTCS Coordinators*, which can be found on the LTCSA website at: www.lifetimecare.nsw.gov.au//Scheme_Participants_FAQs.aspx.

³⁹⁰ Standing Committee on Law and Justice, Report 37, pp 49-51.

³⁹¹ Standing Committee on Law and Justice, Report 40, pp 44-49.

³⁹² Standing Committee on Law and Justice, Report 40, pp 48-49.

5.129 For example, the SSCIS advised that '... clarification of the expectations and delineation between the role of clinicians as managers of patient care and the role of the Coordinators as the administrators of the Scheme is required.'³⁹³

5.130 Ms Monypenny, the Manager of the SSCIS referred to the tension that can exist due to the overlapping boundaries between clinicians, LTCS Coordinators and Case Managers:

The other key thing that needs further work is that we understand, because it clearly says on the website what the role of a LTCS Coordinator is and now with the new guidelines for the private Case Managers, where the boundary is between the clinicians and the Coordinators and the Case Managers because that overlap and lack of understanding creates an enormous amount of tension.³⁹⁴

5.131 The SSCIS has called for more work to be done to clearly outline the '[r]ole and responsibilities of the LTCS Coordinator and the private Case Managers while the participant is an inpatient, and continue to promote consistent communication pathways and processes between them and the treating clinicians and the expectations of the treating teams in relation to the provision of service to the LTCSS.'³⁹⁵

5.132 The Royal Rehabilitation Centre Sydney reported that, while there has been '... significant improvements in communication and collegiate planning between Coordinators and Case Managers, resulting in much better client support programs and outcomes', areas of tension still exist:

... there are still areas of tension which arise over the often conflicting roles and expectations of clinicians and allied health professionals in determining the nature and efficacy of the care and support program in consultation with the client, and the role of the Coordinator in facilitating access to such services. These tensions are particularly evident in specialist areas of spinal cord injury care and managements. Continued dialogue, education and mutual understanding of roles is to be encouraged by all parties, and the active involvement of service providers in the formulation of policies and guidelines is acknowledged and encouraged.³⁹⁶

5.133 The CEO of Royal Rehabilitation Centre Sydney, Mr Stephen Lowndes, noted that when the LTCS Scheme was first introduced there was a lot of tension with his service in terms of differing views about patient needs and care. He also noted that there had been considerable improvement in those working relationships:

However, through ongoing consultation and collaboration and, I guess, a bit of a change in perspective from our own Case Managers there has been improvement. We have Case Managers as well, and that is particularly where the difficulties have arisen. Our Case Managers, in fairness, are looking at health-related services particularly and Lifetime Care and Support probably is looking at it more expansively. There has been considerable improvement in those working relations.³⁹⁷

³⁹³ Submission 8, p 2.

³⁹⁴ Ms Monypenny, Evidence, 21 June 2010, p8; Answers to questions taken on notice 21 June 2010, SSCIS, pp 1-5.

³⁹⁵ Answers to questions taken on notice 21 June 2010, SSCIS, p 3.

³⁹⁶ Submission 10, pp 1- 2.

³⁹⁷ Mr Lowndes, Evidence, 21 June 2010, p 12.

- 5.134** Others who took part in the Committee's Review reported that they did not experience problems in terms of the relationship between LTCS Coordinators and Case Managers. For example, Mr Lyndon Wait, a Scheme participant and Mr Ian Franklin and Mr Daniel Strbik, who are both carers of Scheme participants, all reported that they had not had any difficulties in terms of relationship between their LTCS Coordinators and Case Managers.³⁹⁸ In this regard, Mr Franklin said:

I had no difficulties at all either. It looks like there is a good relationship between our coordinator and the Case Manager. The coordinator always emails me what is going on, what approvals have been approved, so that I am aware exactly what is going on. So there are no difficulties.³⁹⁹

Knowledge of Coordinators

- 5.135** Some stakeholders also pointed to deficiencies and inconsistencies in the knowledge of Coordinators, particularly in terms of their understanding of some specific disabilities such as brain injuries.
- 5.136** For example, Mr Mark Harris, a Scheme participant, suggested that Coordinator knowledge could be improved:

I believe there are definitely some people working with Lifetime Care who are very caring and are very good at their job. A couple of people I have spoken to there have been very helpful. I just think that perhaps some of the Coordinators might need a bit more training or a bit more general knowledge of how to deal with these types of people.⁴⁰⁰

- 5.137** Australian RehabWorks, a private rehabilitation service that works with fifteen LTCS Scheme participants, spoke of the differing levels of knowledge among Coordinators, particularly in relation to highly specialized areas such as traumatic brain injury:

We have found a variable level of knowledge between the different Coordinators at LTCS, ranging from those who are very experienced in complex issues relating to traumatic brain injury and spinal cord injury through to Coordinators with a more rudimentary knowledge of this highly complex and specialized area. We appreciate dealing with Coordinators that have a high level of knowledge and understanding of the subtleties of treating a person with a traumatic brain injury and these cases then to run smoothly and without difficulty. It becomes more time-consuming and sometimes frustrating to deal with a coordinator who has limited understanding of such subtleties as it requires more time for us to provide education and justification as to a particular service level or equipment.⁴⁰¹

- 5.138** Australian RehabWorks advised that it has had positive experiences working with LTCS Coordinators but recommended that "... there be more uniformity with the skills of the Coordinators to ensure efficiency in providing treatment services to the participants."⁴⁰²

³⁹⁸ Mr Wait, Mr Franklin and Mr Strbik, Evidence, 21 June 2010, p 28.

³⁹⁹ Mr Franklin, Evidence, 21 June 2010, p 28.

⁴⁰⁰ Mr Harris, Evidence, 21 June 2010, p 23.

⁴⁰¹ Submission 3, Australian RehabWorks Pty Ltd, pp 2-3.

⁴⁰² Ms Castle-Burton, Evidence, 21 June 2010, p 38; Submission 3, p 4.

- 5.139** The SSCIS noted that the concerns it had raised in the Committee's previous reviews about inconsistencies among Coordinators is still ongoing '... with issues arising in variation in training, background and philosophy of the Coordinators resulting in ongoing complexities in advice, approval and relationships.'⁴⁰³
- 5.140** SSCIS noted that a lack of relevant skills and experience among Coordinators (and Case Managers) can lead to health problems:
- Lack of skills and experience in SCI is evidence in some of the Case Managers and private therapists who may have considerable experience in their profession, but perhaps not an understanding of spinal specific issues. Health problems arising in spinal cord injury are often not body system specific, but inter-related systems which requires a range of approaches and professional disciplined working together. There is a difficulty for Case Managers and LTCSS Coordinators to appreciate the health implications of the underlying consideration which can occur in an unpredictable way. Consequently, this results in poor and limited responsiveness to risk management.⁴⁰⁴
- 5.141** The SSCIS recommended that '...providing greater clarity, transparency and consistency in requirements and processes would be very valuable for clinicians and Case Managers alike.'⁴⁰⁵
- 5.142** The SSCIS also noted that it has been working closely with the LTCSA to provide feedback on the development of new procedures and guidelines and that additional communication forums have been established including the SSCIS & LTCSA Liaison Committee.⁴⁰⁶
- 5.143** The SSCIS argued that 'further work is required by the LTCSA to ensure all their Coordinators have the correct education, supervision and communication channels to achieve greater consistency in their interactions and communication with, and information delivery to, specialist providers'. The SSCIS advised that it has offered to assist the LTCSA with education and training programs for LTCS Coordinators in relation to spinal specific issues.⁴⁰⁷
- 5.144** The Paediatric Brain Injury Rehabilitation Team (PBIRT) at John Hunter Children's Hospital also noted inconsistencies in the knowledge of LTCS Coordinators as problematic noting that '[t]he introduction of more Coordinators across Newcastle and Sydney has demonstrated some inconsistencies about knowledge of procedures within LTCS and inconsistent communication between the Case manager, families and LTCS.'⁴⁰⁸ PBIRT recommended '[t]raining with LTCS Coordinators to improve consistency of information between service providers.'⁴⁰⁹

Communication with Coordinators

- 5.145** A further issue raised by some stakeholders concerned difficulties experience by clinicians and participants in being able to communicate effectively with LTCS Coordinators.

⁴⁰³ Submission 8, p 2.

⁴⁰⁴ Submission 8, p 3

⁴⁰⁵ Submission 8, p 2.

⁴⁰⁶ Submission 8, p 3.

⁴⁰⁷ Submission 8, p 3.

⁴⁰⁸ Submission 18, Paediatric Brain Injury Rehabilitation Team (PBIRT), John Hunter Children's Hospital, p 2.

⁴⁰⁹ Submission 18, p 2. PBIRT made a number of other recommendations in relation to LTCS Coordinators: see Submission 18, p 3.

5.146 For example, while BIRD acknowledged the 'overall collaborative working and communication that occurs regarding LTCS participants and their needs', it identified problems with access to Coordinators:

Challenges are however noted in being able to consistently access Coordinators via telephone and/or email in a timely manner, with variability in response times. From a rehabilitation perspective, this can impact negatively on ongoing service provision due to potential delays in being able to address participant needs. This is particularly a concern when the need to liaise with a Coordinator is regarding an urgent issue.⁴¹⁰

5.147 BIRD recommended that the LTCSA '... review the overall availability of Coordinators to attend to phone/email enquiries, on a daily basis'. It also recommended that the LTCSA should '... review processes for service providers to be able to contact Coordinators for issues of an urgent nature, including options for contacting an alternative Coordinator, when the participant's nominated Coordinator is unavailable due to other commitments or on leave.'⁴¹¹

5.148 Mr Mark Harris, a Scheme participant, referred to difficulties that he had encountered in being able to make contact with his Coordinator, stating that this had the effect of making him '... feel there is a power that controls what I can and cannot do and can and cannot get and yet I do not seem to be able to have any interaction with them. It makes me feel left out of the picture'.⁴¹²

5.149 PBIRT, in advising the Committee of a number of issues associated with LTCS Coordinators, highlighted problems with communication between brain injury teams, families of Scheme participants and Coordinators:

The PBIRT still identify weaknesses in the allocation of Coordinators to geographical areas. John Hunter Children's Hospital receives children from rural areas outside the major areas of Newcastle, Port Stephens and Lower/Upper Hunter. For children who are from North Coast or New England coordinators are allocated from the Sydney office and because of distance to the hospital PBIRT have noticed difficulties with the current arrangement.

- Delays once notification is for eligibility is completed and the Coordinator contacts the family.
- Reliance on PBIRT to provide more detailed information about the Scheme
- Family's not receiving contact from a Coordinator - less understanding of the current stressors placed on the family and the needs of the family.
- PBIRT staff explaining the request for services procedure, assisting parents with the expense form procedure while their child is in hospital and Coordinators contacting PBIRT to provide feedback to the family instead of direct communication.⁴¹³

⁴¹⁰ Submission 7, p 10.

⁴¹¹ Submission 7, p 10.

⁴¹² Mr Harris, Evidence, 11 June 2010, p 20.

⁴¹³ Submission 18, p 3.

- 5.150** PBIRT made a number of recommendations to improve the work of LTCS Coordinators including that Coordinators should meet with families early on to explain the Scheme and its processes and to take responsibility for assisting parents with navigating the financial expense form.⁴¹⁴
- 5.151** Others reported very positive experiences with communicating with LTCS Coordinators. For example, Mr Lyndon Wait, a Scheme participant and Mr Ian Franklin and Mr Daniel Strbik who are both carers of Scheme participants reported that they had not had any difficulties in being able to communicate effectively with their LTCS Coordinators.⁴¹⁵

LTCSA response

- 5.152** The Committee raised the stakeholder concerns about the LTCS Coordinators with the LTCSA. The LTCSA responded by providing information about the role of the Coordinators and advising of a number of initiatives designed to improve the effectiveness of the Coordinators.
- 5.153** The LTCSA described the relationship between the role of the Coordinator and the Case Manager as follows:

Lifetime participants of the Scheme will have a life-long relationship with the Authority through a LTCS Coordinator, regardless of the model of case management being utilised at any time on the participant's continuum of rehabilitation. The coordinator will recognise when a Case Manager needs to be engaged to assist a participant address an identified goal. The Coordinator may also assist the participant in their selection of a Case Manager.⁴¹⁶

- 5.154** The LTCSA noted that the role of an LTCS Coordinator may differ depending on a particular participants needs:

The role of the LTCS Coordinator may vary across participants depending on the model of case management being delivered, the needs/preferences of the participant and the experience and expertise of the particular Case Manager involved.⁴¹⁷

- 5.155** The LTCSA acknowledged that there is overlap between the roles of the LTCS Coordinator and the Case Manager but stated that flexibility in the roles is desirable:

While there is some inherent overlap between the role of the coordinator and the role of the Case Manager, it is expected that, in practice, the roles will be determined by what best meets the participant's needs, and what constitutes efficient, cost-effective management of their program. Some flexibility between the two roles is therefore desirable, and enhances the Authority's ability to provide services to participants according to individual circumstances and needs.⁴¹⁸

⁴¹⁴ Submission 18, p 3.

⁴¹⁵ Mr Wait, Mr Franklin and Mr Strbik, Evidence, 21 June 2010, p 28.

⁴¹⁶ Answers to pre-hearing question on notice, LTCSA, Question 21, p 19.

⁴¹⁷ Answers to pre-hearing question on notice, LTCSA, Question 21, p 19.

⁴¹⁸ Answers to pre-hearing question on notice, LTCSA, Question 21, p 19.

- 5.156** With regard to the training and experience of Coordinators and Case Managers, the LTCSA advised that while no specific clinical experience is required they do rely on specialist advice:

The experience and background of Coordinators with respect to spinal cord injury is varied. There is no specific clinical experience requirement for recruitment. Case Managers also vary in their experience with spinal cord injury. It is important that Coordinators and Case Managers have the skill to understand the concerns, motivations and broad needs of the participant and their clinicians and service providers to implement recommendations successfully. Case Managers and Coordinators rely on specialist therapist and medical practitioners to provide advice about specific spinal cord needs.⁴¹⁹

- 5.157** The LTCSA also advised that it is willing to discuss the provision of education and training by SSCIS for Coordinators and Case Managers.⁴²⁰

- 5.158** Mr Neil MacKinnon, the A/Director of Service Delivery with LTCSA, informed the Committee that four additional Coordinators are to be recruited and that the allocation of work among Coordinators is monitored.⁴²¹

- 5.159** Mr David Bowen, the Executive Director of the LTCSA, advised that Coordinators are now working in teams and that a regional office has been set up in Newcastle and soon to be set up in Parramatta:

We are restructuring the way in which we provide our coordination services. ... we have moved to have our Coordinators working in teams. We set up a regional office in Newcastle and we are about to open an office in Parramatta. We are having a look at what is the best long-term arrangement to provide coordinated support for people, particularly in rural and regional areas. They have a Case Manager in the area, but it depends upon the level of contact they need with a coordinator whether we place people out there or whether we contract people in the local area to provide that type of service. That is an important change in the last 12 months.⁴²²

- 5.160** In relation to the regional Newcastle office, PBIRT advised that '[t]he change of location of LTCS coordinators to Newcastle has been a recent welcomed change that is supported by the PBIRT. Coordinators located in Newcastle have allowed for a smoother transition to eligibility to the Scheme and better awareness for parents of what LTCS is and how it works for the families.'⁴²³

- 5.161** In relation to communication and contact, the LTCSA's participant satisfaction survey (described in Chapter 3) found that:

Approximately a quarter of respondents (24 per cent) suggested improving or increasing communication or contact. The qualitative research found a phone call every 2 to 3 months for the Coordinator to 'check-in' would be sufficient and may help to clarify the Authority's role and processes⁴²⁴

⁴¹⁹ Answers to pre-hearing question on notice, LTCSA, Question 21, p 20.

⁴²⁰ Answers to pre-hearing question on notice, LTCSA, Question 21, p 20.

⁴²¹ Mr Mackinnon, Evidence, 21 June 2010, p 70.

⁴²² Mr Bowen, Evidence, 11 June 2010, p 13.

⁴²³ Submission 18, p 2.

⁴²⁴ Answers to pre-hearing questions on notice, LTCSA, Question 8, p 5.

5.162 With regard to the availability of Coordinators and the speed with which they can respond to telephone and email queries, the LTCSA advised that recent recruitment has increased the number of Coordinators to 23 and that they '... have been equipped to operate while out of the office at meeting in hospitals and in participants homes. They have remote network access and mobile phones'.⁴²⁵

5.163 With regard to the arrangements in place when a Coordinator is on leave or otherwise absent from work the LTCSA advised:

The Authority Office is staffed during office hours and Coordinators are rostered to provide leave cover. The LTCS case management system is accessed and used by all staff to store and provide up to date information on requests for services. The Authority operates a "requests" email mailbox for all requests and a general enquiries mailbox for other matters. These email boxes are cleared regularly during the working day with messages redirected to appropriate staff.⁴²⁶

Committee comment

5.164 The Committee commends the work that the LTCSA has done since our last Review to clarify the role of LTCS Coordinators and improve the support that they provide to Scheme participants. These recent improvements have been acknowledged by stakeholders.

5.165 The Committee notes that three of the four Scheme participants and participant carers who appeared at the public hearings for this Review, reported that their experiences with their Coordinator has been very positive, which accords with the results of the LTCSA's participant satisfaction survey.

5.166 The preceding discussion demonstrates, however, that a number of issues are ongoing and further work is required to address them. Stakeholders have expressed concern that some of these issues can lead to poorer health outcomes for Scheme participants.

5.167 The relationship between the roles of LTCS Coordinators, clinicians and Case Managers remains problematic for some of the key providers to LTCS Scheme participants. We note the advice of the LTCSA that the boundaries between these roles may need to be flexible in order to enable the best treatment and care arrangements to be determined and delivered to individual participants. It is clear however, that improvements to the way in which these roles interact still need to be made.

5.168 To some extent these matters are indicative of the relatively young age of the LTCS Scheme. The LTCSA has shown that it is aware of stakeholders concerns, is open to feedback and is working to resolve them. In this regard the Committee is able to conclude that the LTCSA is exercising its responsibilities appropriately.

⁴²⁵ Answers to pre-hearing questions on notice, LTCSA, Question 20, p 18.

⁴²⁶ Answers to pre-hearing questions on notice, LTCSA, Question 20, p 18.

- 5.169** Several practical suggestions have been made by stakeholders during this Review to assist the continued refinement and improvement of the role of the LTCS Coordinators, including:
- That the LTCSA work with providers to assist them to understand the different role and responsibilities of LTCS Coordinators and Case Managers.
 - That there be more uniformity with the skills and knowledge of the Coordinators to ensure efficiency and consistency in providing treatment services to the participants.
 - That the LTCSA review the overall availability of Coordinators to attend to phone/email enquiries on a daily basis.
 - That the LTCSA review processes for service providers to be able to contact Coordinators for urgent issues, including options for contacting an alternative Coordinator if the participants nominated coordinator is unavailable.
 - That the LTCSA accept the offer made by the SSCIS to provide training and education for Coordinators and Case Managers.
- 5.170** With regard to this last point, the Committee notes that the LTCSA has already advised that it is willing to discuss the provision of education and training by SSCIS for Coordinators and Case Managers.⁴²⁷
- 5.171** The Committee recommends that the LTCSA review the comments and the suggestions to improve the effectiveness of LTCS Coordinators made by those who took part in this Review (as set out in paragraphs 5.127-5.124 of this Report), with a view to accepting and implemented them as appropriate.

Recommendation 9

That the Lifetime Care and Support Authority review the suggestions and recommendations to improve the effectiveness of Lifetime Care and Support Coordinators made by stakeholders who participated in the Committee's Third Review, as set out in Chapter 5 of the Committee's report, with a view to accepting and implemented them as appropriate.

⁴²⁷ Answers to pre-hearing question on notice, LTCSA, Question 21, p 20.

Chapter 6 Treatment, rehabilitation and care services

This Chapter considers the issues raised by stakeholders relating to the treatment, rehabilitation and care services provided to LTCS Scheme participants. First, the requirement that services be 'reasonable and necessary' is examined. Issues identified in relation to home modifications, accessible housing and supported accommodation are then explored. Attendant care issues and support for family carers are also considered as are concerns raised by stakeholders about recreation and leisure activities and educational support for children.

'Reasonable and necessary' services

- 6.1** As described in Chapter 2, the LTCSA coordinates and pays for treatment, rehabilitation and care services that are 'reasonable and necessary' to meet the needs of participants as a result of their injury from a motor accident.
- 6.2** The LTCSA makes its decisions on a case by case basis and considers the following criteria when assessing what services it will and will not pay for:
- benefit to the participant
 - appropriateness of the service or request
 - appropriateness of the provider
 - relationship of the service or request to the participant's injury, and
 - cost effectiveness considerations.⁴²⁸
- 6.3** A number of stakeholders in the current Review have called for what is considered by the LTCSA to be 'reasonable and necessary' medical treatment, care and support to be more explicitly defined.
- 6.4** For example, the Brain Injury Service, Kids Rehab, The Children's Hospital at Westmead argued that clarification is needed regarding what is deemed 'reasonable and necessary'. Kids Rehab asserted that insufficient rationale and inconsistent decisions are sometimes provided by the LTCSA, particularly when deciding upon services of care for lifelong, permanent changes to life skills that cannot be rehabilitated to their pre-accident functioning.⁴²⁹
- 6.5** According to Kids Rehab "[t]he decision making process does not allow understanding of what medical or rehabilitation basis a well documented and evidenced submission for a service is accepted or rejected'.⁴³⁰
- 6.6** To demonstrate this assertion, Kids Rehab cited the example of two participants who both had a severe brain injury and an upper limb disability, who received different responses from the LTCSA to applications to receive professional waxing services. The first participant had an initial significant reduction in upper arm limb ability which was expected to resolve sufficiently

⁴²⁸ LTCSA, *What is treatment, rehabilitation and care? Information for participants of the Lifetime Care and Support Scheme*, 2009, pp 1-2.

⁴²⁹ Submission 13, Brian Injury Services, Kids Rehab, The Children's Hospital at Westmead, p 6.

⁴³⁰ Submission 13, p 6.

for her to complete the task independently. This participant was approved the waxing service until her upper limb function was restored. The second participant, who had an unresolvable upper limb tremor, was denied the service completely despite evidence that the tremor could not be treated or resolved.⁴³¹

- 6.7** Kids Rehab also questioned the extent to which the ways a participant chooses to engage in the community or access a service is considered when decisions are made about what is reasonable and necessary for their rehabilitation, treatment and care. They also argued that, in their experience, LTCS Coordinators have used their own life experience as the benchmark for what they would consider to be a 'reasonable' request for services.⁴³²
- 6.8** Kids Rehab therefore requested clarification "... regarding the decision making process for care and services".⁴³³
- 6.9** Vision Australia proposed that expenses associated with the support and care of a person who has suffered sudden blindness, such as ongoing medical costs, mobility and equipment training, and counseling for the injured person and their family, should be included in the definition of what is 'reasonable and necessary' under the Scheme.⁴³⁴
- 6.10** The LTCSA responded to this suggestion by noting that all of the services and items mentioned by Vision Australia *are* included in the definition of treatment and care services currently covered and funded by the Scheme.⁴³⁵

Committee comment

- 6.11** The Committee acknowledges that clearer guidance on what is considered 'reasonable and necessary' treatment, rehabilitation and care has been sought by some stakeholders in the current Review. As noted in Chapter 2 (paragraph 2.60) interpreting what is 'reasonable and necessary' is fundamental to the operation of the Scheme.
- 6.12** The Committee is mindful that defining specific services as being 'reasonable and necessary', could have the effect of limiting the intent of the Act through the application of the *LTCS Guidelines* (this issue is discussed further in Chapter 2, paragraph 2.59-2.62). As such, the Committee is of the view that the LTCSA's current approach of making its decisions on a case by case basis, with consideration of the individual circumstances involved, is appropriate.
- 6.13** Notwithstanding this, the Committee encourages the LTCSA to maintain consistency, transparency and fairness in its decisions about 'reasonable and necessary' treatment, rehabilitation and care. Being open about the rationale behind these types of decisions will assist in alleviating stakeholder concerns that decisions are sometimes imprudent or inconsistent. The Committee therefore recommends that the LTCSA should ensure that sufficient information as to the reasons why a particular form of treatment, rehabilitation or service has been rejected is provided to those who make applications for services on behalf of

⁴³¹ Submission 13, p 6.

⁴³² Submission 13, p 7.

⁴³³ Submission 13, p 6.

⁴³⁴ Submission 15, p 3-4.

⁴³⁵ Answers to pre-hearing questions on notice, LTCSA, Question 29, p 24.

participants, to enable them to understand the basis of the decision and to promote consistency.

Recommendation 10

That the Lifetime Care and Support Authority ensure that sufficient information as to the reasons why a particular form of treatment, rehabilitation or service has been rejected is provided to the application maker, to enable them to understand the basis of the decision and to promote consistency.

Home modifications

- 6.14** During the current Review, concerns were raised about approvals for home modifications under the Scheme. Stakeholders questioned the approval criteria for home modifications and highlighted delays in having applications approved in rural NSW.
- 6.15** The LTCSA advised that applications for home modifications go through the following process:
- For minor modifications the assessing occupational therapist (OT) sends the LTCSA an assessment report on the required modification, an authority from the home owner to install the modification and two quotes. The request then progresses through the standard LTCSA approval process for any treatment, rehabilitation and care request.
 - For major home modification (ie. involving structural changes to the home and entrances, likely to require more than one tradesperson, council approval and cost more than \$10,000) the LTCSA appoints a specialised OT and building project manager.
 - The OT meets with the participant and/or family and liaises with the treating team to obtain a clear understanding of the participant's functional status and needs. A joint home visit is then completed by the OT and project manager and a report and scope of works agreed to by the participant and/or family is submitted to the LTCSA.
 - The recommendations and scope of works are assessed by the LTCSA against the reasonable and necessary criteria. If approved, partially or in full, the project manager develops the project plan. If not approved the LTCSA Coordinator meets with the participant and/or family to discuss reasons for non approval and to consider alternatives.
 - Once the modification is completed the approved assessor and project manager undertake a joint visit to ensure the work has been completed according to the OT's recommendations and Australian Building Standards. A final evaluation and acquittal summary is submitted to the Authority by the project manager advising of their approval for LTCSA to provide final payment to the builder.⁴³⁶
- 6.16** Spinal Cord Injuries Australia (SCIA) emphasised the benefits of modifications being made to participants own homes commenting that: 'familiarity of surroundings and ease of access to

⁴³⁶ Answers to pre-hearing questions on notice, LTCSA, Question 9(a), pp 6-7.

social networks, as well as a greater sense of belonging are all things that can bring better life outcomes to a person with a spinal cord injury and to a person with an acquired brain injury.⁴³⁷

6.17 SCIA raised concerns that some applications for home modifications were being rejected by the LTCSA based on the monetary value rather than on the modification itself:

We have heard anecdotally of instances where large and time consuming home modification assessments have been undertaken only to result in almost immediate rejections based upon the dollar value at the bottom of the applications rather than on the proposed modifications. We recognise that some home modifications can be costly but also recognise the great benefits that an individual receives from living in their own home in their own community.⁴³⁸

6.18 As a solution to this issue, SCIA outline two proposals:

- The introduction of an LTCSA home modifications panel to review the highest 5 per cent cost applications. This panel could meet monthly or as required. The remaining 95 per cent should receive pre-approval pending standard process.
- There should be an appeals process to ensure that applications cannot simply be rejected.⁴³⁹

6.19 Mr Gregory Killeen, the Policy and Advocacy Officer for SCIA explained the 'pre-approval pending' process that was recommended by SCIA as follows:

... The idea would be to have some pre-approved money which could allocate up to 20,000, 30,000, 40,000, 50,000 for a renovation, just to try to speed up the process with the pre-approval. If someone owns a home, or is renting privately, they will be able to get action much quicker. I am aware of one situation where applications went in January and the modifications are just being undertaken this month [June].⁴⁴⁰

6.20 Mr David Bowen, the Executive Director of the LTCSA, responded to the anecdotal evidence regarding decisions about home modifications being based on a monetary threshold by advising that, while there is an indicative amount of \$250,000, the *LTCS Guidelines* make it clear that this amount is not prescriptive.⁴⁴¹ Mr Bowen advised that in some circumstances desired modifications are not possible due to physical rather than monetary reasons:

There will be circumstances where, because of the severity of injury and, for example, if a person has lived all of their life in the one location, then of course you will make the very best efforts to modify that house. But the reality is that some places are not modifiable, just physically not modifiable. We have had people living in units where you could not get permission from the strata owners or the like to do the modifications so it tends to be physical limitations rather than monetary limitations.⁴⁴²

⁴³⁷ Submission 2, Spinal Cord Injuries Australia, p 9.

⁴³⁸ Submission 2, p 8.

⁴³⁹ Submission 2, p 8.

⁴⁴⁰ Mr Gregory Killeen, Policy and Advocacy Officer, Spinal Cord Injuries Australia, Evidence, 21 June 2010, p 48.

⁴⁴¹ Mr David Bowen, Executive Director, LTCSA, Evidence, 21 June 2010, p 74.

⁴⁴² Mr Bowen, Evidence, 21 June 2010, p 74.

6.21 The LTCSA advised that there is no threshold value above which applications are automatically rejected and commented that all applications for home modifications are reviewed against the reasonable and necessary criteria, of which cost effectiveness is only one factor:

All requests for home modifications are reviewed against the Authority's reasonable and necessary criteria regardless of the requested dollar value of the modifications - as with any other treatment or service that is requested. Cost effectiveness is one of five factors considered by the Authority in all decision making about what is "reasonable and necessary".⁴⁴³

6.22 The LTCSA noted that it has declined home modification requests in circumstances where more suitable and cost effective solutions are available:

The Authority has declined to pay for home modifications on the basis of cost effectiveness when the cost of the modifications has been estimated to be higher than the value of the home and when alternative, more suitable and cost effective options could be identified.⁴⁴⁴

6.23 In response to the first proposal put forward by SCIA, the Authority advised that pre-approval pending status is not necessary as cost is only one of five factors used to assess home modifications:

The Authority does not consider this is necessary. The cost of the modification is only one of the considerations the Authority takes account of when deciding whether a modification is reasonable and necessary. Other factors may be more important, such as how long the participant intends to live in that dwelling, the age of the participant (e.g. whether the participant is likely to move out of home in the next 12 months), who owns the home, whether it is a legal structure or whether the cost of the modification exceeds the value of the property.⁴⁴⁵

6.24 The Authority responded to the second of SCIA's proposals by confirming that there are in fact avenues for appeal for applicants whose application is rejected:

A participant may dispute the Authority's decision about their treatment and care needs if the Authority has partially approved or not approved a request for home modifications.

The Committee should note that it is not always possible for the Authority to approve a home modification that is requested for a participant. This can be due to factors that are outside of the Authority's control, such as:

- the participant is a tenant and the owner of the home does not give permission; or
- the existing home does not comply with required building or construction codes or council regulations and thus would result in an illegal structure.⁴⁴⁶

6.25 Review of decisions and dispute resolution mechanisms are examined in Chapter 4.

⁴⁴³ Answers to pre-hearing questions on notice, LTCSA, Question 9(b), p 7.

⁴⁴⁴ Answers to pre-hearing questions on notice, LTCSA, Question 9(b), p 7.

⁴⁴⁵ Answers to pre-hearing questions on notice, LTCSA, Question 9(a), p 8.

⁴⁴⁶ Answers to pre-hearing questions on notice, LTCSA, Question 9(c), p 7.

6.26 The Paediatric Brain Injury Rehabilitation Team (PBIRT) at John Hunter Children's Hospital raised issues with home modifications for families in rural areas of NSW, particularly with regards to children and young people in hospital awaiting home modifications.

6.27 PBIRT acknowledged the complexities involved in approving major home modifications in rural areas, however, advised that extensive procedures for approval of modifications increases a stay in hospital which, in the case of young people, can have a negative impact on rehabilitation:

When a young person is in hospital and the family are from rural areas of NSW additional stresses can occur such as family fragmentation, economic stress, increased emotional trauma and increased risk of depression.⁴⁴⁷

6.28 PBIRT provided an example where a hospital stay was increased due to procedures associated with home modifications:

In the case of the young person and family admitted to John Hunter Children's Hospital length of stay was increased due to procedures associated with home modifications. These included:

- Delays in approval for home modification assessments
- Use of an approved assessor to conduct a home modification assessment after a local qualified Occupational Therapist was approved to conduct a home modification assessment and had submitted an appropriate report
- An approved assessor was used from Sydney for a home outside of Tamworth
- An approved assessor assessment was conducted without input from the local Occupational Therapist in Tamworth
- Lengthy delays occurred between each stage of development with the home modifications using the approved assessor
- Expectation that family attend meetings in Sydney to discuss home modifications
- An approved assessor working in isolation and not utilising local and inpatient Occupational Therapy services
- The need for interim accommodation (longer than four months) while home modifications were determined and conducted.⁴⁴⁸

6.29 A number of changes were recommended by PBIRT to minimise a young person's stay in hospital:

- Once the cognitive and physical complexities of the client are flagged with the LTCS Co-ordinator then a decision should be made regarding whether it is best to use an approved assessor or if a local Occupational Therapist would be sufficient to conduct the assessment. This would ensure one person is nominated and responsible and recommendations can be implemented sooner.
- The approved assessor be encouraged to liaise regularly with the local Occupational Therapist and hospital based Occupational Therapist during this time so the two teams are aware what is happening for the young person and family.

⁴⁴⁷ Submission 18, Paediatric Brain Injury Rehabilitation Team, John Hunter Children's Hospital, pp 1-2.

⁴⁴⁸ Submission 18, pp 1-2.

- Home modifications made a priority and decisions for approvals or non approvals for each stage of the home modification be made as quick as possible so the discharge can occur as promptly as possible.⁴⁴⁹

6.30 Due to the timing of the Committee's Questions on Notice process, the LTCSA was not asked to respond directly to the issues and recommendations put forward by PBIRT in the Review.

Committee comment

6.31 The Committee acknowledges the importance of LTCS participants living in their own homes where possible and agrees that the monetary cost of a modification alone should not determine the approval of an application. The Committee is satisfied that the LTCSA reviews all applications to ensure that the modifications are reasonable and necessary and notes that the *LTCS Guidelines* stipulate that cost is only one of five factors taken into consideration when assessing an application.

6.32 The Committee notes the concerns raised by PBIRT and is concerned that delays can negatively impact on a young person's rehabilitation, particularly in rural areas. The Committee concurs with PBIRT's suggestion that home modifications should be a priority and that decisions on applications for home modification should be made as quick as possible so the discharge can occur as promptly.

6.33 The Committee encourages the LTCSA to continue to work to streamline the decisions regarding home modifications so that participants can return to home as quickly as possible. The Committee will revisit this issue during the next review.

Accommodation

6.34 Two separate but related accommodation issues were identified by stakeholders in the current Review. First, the availability of supported accommodation, ie. properties suitable for 'high need' participants who require 24 hour care. Second, the availability of wheelchair accessible housing.

Supported accommodation

6.35 Issues related to supported accommodation for LTCS Scheme participants were raised in the Committee's previous two Reviews and were also the focus of some discussion during the current Review.

6.36 In the Committee's first Review, concerns about the availability of supported accommodation for participants were raised and at that time the LTCSA advised that it was seeking to address this issue.⁴⁵⁰

⁴⁴⁹ Submission 18, p 2.

⁴⁵⁰ Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – First report*, Report 37, October 2008, pp 43-44.

- 6.37** Concerns related to supported accommodation were raised again in the Second Review, in particular, the length of time taken to organise accommodation. While the LTCSA outlined a range of models for supported accommodation that had been using, the Committee remained concerned about the impact that delays in arranging accommodation have on hospitals and rehabilitation wards accommodating participants in the interim.
- 6.38** The Committee supported a suggestion put forward by the Greater Metropolitan Clinical Taskforce that relevant parties should continue to liaise and work together to find solutions for participants requiring supported accommodation. The Committee recommended that the LTCSA examine the role and membership of the supported accommodation expert advisory group to improve its effectiveness.⁴⁵¹
- 6.39** In the NSW Government response to the *Second Review Report*, Minister Daley commented that the LTCSA was working to improve options for supported accommodation and review the role of the expert advisory group.

In relation to the issues raised about the availability of supported accommodation more broadly, the Review report notes that Lifetime Care and Support Authority has undertaken a number of steps to improve accessibility including developing relationships with community housing providers who are assisting with accommodation for participants. Furthermore, the Authority has purchased two houses for participants with very high support needs. Two to three participants will share each house and the care.

The Authority will consider how the supported accommodation expert advisory group might play a more effective role in advising on issues related to supported accommodation.⁴⁵²

- 6.40** In its submission to the current Review, the Brain Injury Rehabilitation Directorate (BIRD) commented that, while there has been progress in establishing options for supported accommodation, it remains an issue for people with a Terminal Brain Injury (TBI):

Supported accommodation remains an issue of concern for people with TBI who are unable to return to their pre injury living arrangements. The expert advisory group has not been reconvened. There is a gap in housing availability as a hospital discharge destination and a gap in service providers to manage the transition from hospital based rehabilitation and treatment to community living arrangements.

Although progress has been made by LTCSA in increasing supported accommodation options, the options remain extremely limited and there is an urgent need for expansion. This has resulted in an increased length of stay in the Inpatient Unit or TLU for some participants which also has the potential to impair their rehabilitation.⁴⁵³

⁴⁵¹ Legislative Council, Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 33.

⁴⁵² NSW Government, Government Response to the Standing Committee on Law and Justice, *Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 40, September 2009, p 1.

⁴⁵³ Submission 7, Brain Injury Rehabilitation Directorate, pp 1 and 8.

- 6.41** BIRD recommended that to overcome these problems, the LTCSA should establish partnerships with the Department of Housing:

Recommendation: The Authority urgently establishes/expands partnerships with Department of Housing and other private agencies to have a range of solutions and options across geographical areas for participants in need of modified housing and supported accommodation. LTCSA to establish a clear referral system, process and criteria for participants who require this style of accommodation.⁴⁵⁴

- 6.42** The Royal Rehabilitation Centre Sydney commented on availability of supported accommodation in its submission suggesting that '[i]mprovements to the Scheme should be pursued which continue to provide active rehabilitation support to home-based or supported accommodation clients after an in-patient phase.'⁴⁵⁵

- 6.43** In response to the recommendations proposed by BIRD, Mr Neil Mackinnon, the A/Director of Service Delivery for the LTCSA, advised that while a partnership with the Department of Housing had been explored, there is greater potential in partnering with community housing associations who can undertake the management requirements for the property while the LTCSA provides the care and support:

We had lengthy discussions with the Department of Housing early on in the process of setting up the Scheme, but we actually found that the most responsible group to deal with are community housing associations. We are actually working quite closely now with one of those groups. They are very much in touch with the Commonwealth money for development of affordable housing for people. They are great to partner with. They are very interested in creating places for people to live and responding to our requirements. That is where we see the future for us. By having partnerships with housing associations, we can directly put people in touch with a housing provider where we are the partner who provides the care and support for the person and they are the manager of the property. They help identify and modify the property, collect the rent, maintain it—the whole extent—and we provide the care and support to really maintain a suitable tenancy arrangement for the housing provider.⁴⁵⁶

- 6.44** Mr Mackinnon advised that organisations such as Affordable Community Housing often have the flexibility required to assist with finding solutions to urgent accommodation needs of Scheme participants.⁴⁵⁷

- 6.45** The LTCSA acknowledged that there is a shortage of supported accommodation in NSW, particularly for people with brain injury, and that this shortage is delaying the discharge from hospital for all patients with serious injuries.⁴⁵⁸

⁴⁵⁴ Submission 7, p 8.

⁴⁵⁵ Submission 10, Royal Rehabilitation Centre Sydney, p 2.

⁴⁵⁶ Mr Neil Mackinnon, A/Director, Service Delivery, LTCSA, Evidence, 11 June 2010, p 11.

⁴⁵⁷ Mr Mackinnon, Evidence, 11 June 2010, p 16.

⁴⁵⁸ Answers to pre-hearing questions on notice, LTCSA, Question 12(b), p 12.

6.46 The Authority outlined its group housing proposal for participants with high needs which will assist in meeting the Scheme's immediate needs for accommodating participants requiring 24 hour care:

- The Authority has, to date, purchased two houses, one at Revesby and one at Rosemeadow and modified them for four participants, two participants in each house.
- The four participants pay rent and contribute to the running costs of the house, the Authority pays for all care and therapy services required.
- The four participants share their care which in turn leads to savings of between \$1,500 to \$2,000 per week.
- The Authority has purchased land at Liverpool and is currently looking for land in Penrith and the Mount Druitt/Blacktown area.⁴⁵⁹

6.47 Mr Bowen, the Executive Director of the LTCSA, noted that the group housing proposal provides benefits to participants in terms of social interaction and also provides cost savings to the Authority:

We have two group houses already up and running. In each case there are two people with very high needs who are co-located. They are co-located only after a lot of consultation with their families to make sure they will be compatible. It provides a benefit to the Authority in that we reduce our total care needs. So, there is a saving, which makes the investment easy on economic returns. And it provides a good option for the person in that there is some social interaction; they are not locked up at home.⁴⁶⁰

Accessible housing

6.48 SCIA commented on the difficulties in locating wheelchair accessible housing when Scheme participants are ready to return home from hospital:

Locating wheelchair accessible housing to purchase or rent has historically been a challenge and has always impacted on a person's transition from hospital to home, regardless of whether a person is a homeowner, living with family or extended family, renting privately or in public housing etc.⁴⁶¹

6.49 Mr Sean Lomas, the Policy and Advocacy Manager for SCIA, explained that the inability to move out of hospital due to the lack of accessible housing is one of the biggest issues for Scheme participants that the SCIA encounters:

You may have seen that the large part of our submission is around housing and trying to address that. That is one of the biggest issues that comes to us by Lifetime Care Scheme participants and people within the spinal units themselves. It comes down to the inability to be able to transition out. I have just successfully advocated for a lady who has been in hospital for two years. It is a very long complex issue, but it has not

⁴⁵⁹ Answers to pre-hearing questions on notice, LTCSA, Question 12(b), p 12; Answers to post-hearing questions on notice, LTCSA, Question 5, p 3.

⁴⁶⁰ Mr Bowen, Evidence 11 June 2010, p 12.

⁴⁶¹ Submission 2, p 5.

been good because she has not been able to find a property to be able to get out. Everybody has been trying endlessly to get her out. We ended up having to find a house-finding service. Even then they took some time trying to find somewhere to get her out. There just are not the properties out there. What properties are there are just not known about.⁴⁶²

6.50 Two main reasons for the difficulties in locating wheelchair accessible housing were outlined by SCIA. First, SCIA identified that there is not enough accessible housing being built, commenting that the current state and federal targets of ten per cent for universal design housing and zero per cent for wheelchair accessible housing are inadequate.⁴⁶³ Second, SCIA noted that the accessible properties that are available are not always known about due to the lack of a register or database.⁴⁶⁴

6.51 To minimise the difficulties in locating accessible housing SCIA recommended that the LTCSA should advocate to increase the accessible housing stock and develop a registry of existing accessible housing:

- The LTCSA should advocate for the NSW Government to support an increase in the percentage of accessible properties being built under the recently announced federal government funded public housing initiative. In addition, the LTCSA should work alongside housing developers to ensure that there are enough private accessible dwellings available in the market place.⁴⁶⁵
- The development of a registry of existing accessible public and private properties should be given consideration as a priority of the LTCSA.⁴⁶⁶

6.52 Mr Lomas suggested that the issue of a register of accessible housing should be addressed by the LTCSA given that accessible housing affects participants in the Scheme:

Really someone needs to pick up the baton and run with updating [the housing register]. We put in our submission a variety of different sources or ways that we think the information could be renewed and brought up to date. In relation to the issue of whether it is done by ourselves as an organisation—I could cry poor and I could say that we have no money to develop something like that—we would love to look at a project like that, if it was all worked out alongside the Lifetime Care Scheme to develop something. But it is something that affects the Lifetime Care Scheme clients, so they have buy-in to this as an issue.

If it is as simple as understanding where the accessible properties are and understanding where the properties are being built—such as properties for the elderly or people with disabilities—then a simple database will make everybody's life a whole lot easier.⁴⁶⁷

⁴⁶² Mr Sean Lomas, Policy and Advocacy Manager, Spinal Cord Injuries Australia, Evidence, 21 June 2010, p 49.

⁴⁶³ Submission 2, p 6.

⁴⁶⁴ Submission 2, p 5.

⁴⁶⁵ Submission 2, p 6.

⁴⁶⁶ Submission 2, p 5.

⁴⁶⁷ Mr Lomas, Evidence, 21 June 2010, p 49.

- 6.53** The LTCSA responded to the recommendation that it should consider the development of a register for accessible properties by advising that, 'the Authority does not consider that its role is to maintain a registry of wheelchair accessible housing.'⁴⁶⁸
- 6.54** In response to the recommendation that the LTCSA should promote an increase in the development of accessible properties, the LTCSA commented that, 'the Authority broadly supports any proposal to increase the amount of accessible public housing stock.'⁴⁶⁹
- 6.55** In evidence, Mr David Bowen, the Executive Director of the LTCSA, expressed readiness to report further on the issue of accessible housing:

... it is definitely an issue that requires work to identify the accessible housing that is currently available and to peer back on the Commonwealth Government's affordable housing initiative to make sure that a significant proportion of that is built as accessible housing, bearing in mind that accessibility for people with disabilities often has the same criteria as accessibility for people with aged needs. We will undertake to report further on that.⁴⁷⁰

Committee comment

- 6.56** The Committee acknowledges that the LTCSA is continuing to address the issue of accommodation for participants and commends the establishment of group housing for participants requiring 24 hour care. The Committee also notes the potential for the LTCSA to work with community housing associations and encourages the Authority to pursue this partnership.
- 6.57** The Committee recognises the concerns of SCIA in relation to the difficulties in locating accessible housing for LTCS Scheme participants and that both the lack of sufficient accessible housing stock and the absence of an accessible properties register contribute to this situation.
- 6.58** The Committee accepts the advice of the LTCSA that it is not its role to establish a register or database for accessible properties in NSW. We note, however, that a clearer understanding of the availability and location of accessible housing in NSW would be of great benefit to the LTCS Scheme participants. The Committee notes the readiness of Mr Bowen to report further on the issue of accessible housing. The Committee will include this issue as a particular focus in its Fourth Review of the LTCSA in 2011.

Attendant care

- 6.59** Attendant care services support people with a disability in their home and community and include providing assistance with personal care such as showering or dressing, caring for family members, attending training or work and support with leisure activities.⁴⁷¹ Attendant care is a major component of the LTCS Scheme's service provision and expenditure.

⁴⁶⁸ Answers to pre-hearing questions on notice, LTCSA, Question 26, p 23.

⁴⁶⁹ Answers to pre-hearing questions on notice, LTCSA, Question 27, p 24.

⁴⁷⁰ Mr Bowen, Evidence, 21 June 2010, p 76.

⁴⁷¹ Standing Committee on Law and Justice, Report 37, p 44.

- 6.60** Stakeholders raised concerns with attendant care services provided by the LTCS Scheme in both of the Committee's previous reviews, in particular, the length of time to organise the care and the quality of the care. In the *Second Review Report* the Committee stated that it was satisfied with the steps taken by the LTCSA to improve the delivery and quality of attendant care services but advised that the issue would be revisited in this current Review.⁴⁷²
- 6.61** In the current Review the Committee heard from a number of stakeholders who described several concerns about attendant care services provided by the LTCS Scheme. These concerns included: overdependence on carers, pay issues, care teams being disbanded when a participant is admitted to hospital and delays in carer recruitment.
- 6.62** For example, SCIA raised concerns with the high level of care provided to some participants, suggesting that this level of care may foster participants' overdependence on carers. SCIA advised that it has been made aware of a number of clients that have moved from hospital to home with 24/7 care and noted that 'whilst not familiar with the personal history of these individuals, speaking for hundreds of members with a SCI, this level of care seems quite out of the ordinary.'⁴⁷³
- 6.63** SCIA argued that this level of care has both a financial impact on the Scheme and can delay a participant's personal development:
- Apart from the financial impact on the LTCS, there is also a concern that over providing prescribed care services can cause individual personal development to be stymied. This can prevent the person from becoming as independent as possible. The provision of 24/7 care recreates hospital levels of care in the community and continues the 'patient' experience.⁴⁷⁴
- 6.64** To assist in the independence of participants living in the community, SCIA suggested that regular evaluations of care requirements are undertaken for people living with a spinal cord injury. SCIA also proposed that a sliding scale of care is introduced where 24/7 care is required in the initial transfer to home.⁴⁷⁵ SCIA recommended that, 'the LTCSA should commit to an evaluation of appropriate care hours with the aim of ensuring that the goal of fostering independence is achieved.'⁴⁷⁶
- 6.65** In relation to pay issues, the Royal Rehabilitation Centre Sydney proposed that higher attendant care rates should be paid to carers when client needs are complex and staff with higher skills are required.⁴⁷⁷
- 6.66** The LTCSA responded to this proposal by explaining that the nature of the Scheme, ie support for severely injured people, means that the majority of participants needs are complex and that job descriptions and the relevant State awards were taken into account when setting the Attendant Care Rates.⁴⁷⁸

⁴⁷² Standing Committee on Law and Justice, Report 37, pp 44-45; Standing Committee on Law and Justice, Report 40, pp 34-35.

⁴⁷³ Submission 2, p 9.

⁴⁷⁴ Submission 2, p 9.

⁴⁷⁵ Submission 2, p 9.

⁴⁷⁶ Submission 2, p 10.

⁴⁷⁷ Submission 10, Royal Rehabilitation Centre Sydney, p 2.

⁴⁷⁸ Answers to pre-hearing questions on notice, LTCSA, Question 15, p 15.

6.67 The LTCSA advised that the new national award has now been introduced and that it is monitoring closely the current wage claim and will seek advice from the Attendant Care Industry Association regarding the most appropriate level of worker to meet the needs of the Scheme's participants.⁴⁷⁹

6.68 In addition to the work done in establishing the Attendant Care Rates, the LTCSA also outlined the new Care Coordinator Fee that has been introduced by the Authority:

In October 2009 the Authority introduced a "Care Coordinator Fee" for the attendant care provider. This provides funding for programs that require a higher administrative component and longer term services from a Care Coordinator. This has been very well received by the panel of providers.⁴⁸⁰

6.69 A further attendant care issue was identified by the State Spinal Cord Injury Service (SSCIS) which raised concerns regarding the disbanding of attendant care teams when a participant enters hospital, suggesting that the care team should continue to provide support during the hospital stay:

The experience of SSCIS members and an area of great concern and frustration is the situation where Attendant Care providers disband the client's attendant care team when the person is admitted to hospital. The recruitment and training of a new care team places significant additional and unnecessary workload on clinicians, and stress on the client and their families, significantly increases their length of stay in hospital, and reduces bed availability for new patients with SCI.⁴⁸¹

6.70 To address this issue, SSCIS recommended that the LTCSA should negotiate to allow a participant's attendant care team to continue to provide support during hospital stay:

SSCIS request that the LTCSS consults with Area Health Services and negotiates agreement from them that the client's attendant care team continue to provide support to the activities of daily living of their client during their hospital stay. Where this is not possible due to the acuity and severity of the patient's illness, agreement is reached with the Attendant Care provider that the team will not be disbanded.⁴⁸²

6.71 The LTCSA confirmed that 'while a participant is in the hospital the Authority pays a bed day rate which is inclusive of all services required for their stay.'⁴⁸³ In this regard the *LTCS Guidelines*, Part 8 (Attendant Care) state:

... the Authority does not fund attendant care while a participant is in hospital. The cost of care while a participant is in hospital is the responsibility of that facility, which is funded by the Authority via the bed day rate.⁴⁸⁴

6.72 Mr Mackinnon, the A/Director of Service Delivery with the LTCSA, advised that in the case of a planned admission, the carer team, many of whom would be from the casual workforce,

⁴⁷⁹ Answers to pre-hearing questions on notice, LTCSA, Question 15, p 15.

⁴⁸⁰ Answers to pre-hearing questions on notice, LTCSA, Question 15, p 15.

⁴⁸¹ Submission 8, State Spinal Cord Injury Service, p 5.

⁴⁸² Submission 8, p 5.

⁴⁸³ Answers to pre-hearing questions on notice, LTCSA, Question 15, p 15.

⁴⁸⁴ LTCSA E-News, Issue 44, 9 September 2010, p 2.

is given leave or might be reassigned, but that as far as possible after the hospital visit the carers are brought back.⁴⁸⁵

6.73 The LTCSA advised, however, that there have been unique circumstances where the LTCSA has paid for attendant care in hospital:

While a participant is in the hospital the Authority pays a bed day rate which is inclusive of all services required for their stay. Despite this, on occasion the Authority has paid for attendant care teams to provide services while a participant is in hospital. Decisions to fund this care are made on a case by case basis, and consider the length of time the participant is in hospital, the clinical needs of the participant, the training needs of the attendant care team, the service provider's capacity to deploy workers to another service, or where a service provider expresses a concern over staff retention. Examples of when this has been funded is for a participant with a very severe brain injury (requiring 24-hour attendant care) who was staying in hospital for a short period; and for a participant who was ventilated prior to discharge home to facilitate training the new care team.⁴⁸⁶

6.74 Further areas of concern about attendant care were identified by BIRD in its submission as follows:

WBIRS continues to experience a range of concerns regarding the provision of attendant care services to participants The key ongoing concerns are:

- Delays in carer recruitment and inadequate training, including concerns relating to LTCSA funding participant specific training;
- Confusion and lack of clarity about attendant carer roles and appropriate tasks;
- Professional behaviour;
- Inconsistency in program implementation;
- Issues with the timetables required for the Care Needs Assessment;
- Communication channels between service providers, LTCS and care agencies;
- Lack of clarity about responsibility for attendant carer expenses.⁴⁸⁷

6.75 BIRD provided a number of recommendations to address its concerns:

LTCSA continues current action to gather information about the provision of attendant care.

LTCSA to review and improve the process and time frames of implementing care from the time a Care Needs Assessment is submitted to the ongoing implementation and reassessments of care in the home.

LTCSA to liaise with ACiA and BIRS about establishing improved education programs in TBI which aim to improve the core knowledge and skills of carers working with participants who have a brain injury.

LTCSA facilitates a forum to explore current issues relevant to the provision of attendant care services and establishes a working group to address these issues.⁴⁸⁸

⁴⁸⁵ Mr Mackinnon, Evidence, 11 June 2010, p 16.

⁴⁸⁶ Answers to pre-hearing questions on notice, LTCSA, Question 15, p 15.

⁴⁸⁷ Submission 7, p 8.

6.76 While the Committee did not ask the LTCSA for responses on all of the concerns raised by BIRD, an update was requested on particular issues such as, time taken to organise care, quality of care and carer recruitment and training.

6.77 With regards to the time taken to organise an attendant care program, the LTCSA commented that it takes a minimum of four to six weeks to set up a quality program. This timeframe allows for the completion of advertising, interviews, criminal checks and training to ensure that the attendant care workers meet the specific needs of the participant.⁴⁸⁹

6.78 In addition, the LTCSA also advised of work that has been carried out with the Attendant Care Industry Association to ensure that the attendant care provider has ample time to set up a quality program for the participant's specific needs:

The Authority has worked with the Attendant Care Industry Association to run workshops and to inform the discharging units on what is required to establish a program so that the referring team can allow an appropriate amount of time setting up the attendant care program. The Authority regularly communicates with the brain and spinal cord injury units to promote the necessity to plan for discharge as early as possible when attendant care is involved. This allows the attendant care provider an appropriate amount of time to establish a quality program that can be tailored for the individual needs of the participant.⁴⁹⁰

6.79 The LTCSA responded to concerns surrounding the quality of care reporting that the recent participant survey from 2009 found that eighty eight per cent of participants who had received attendant care in the last three months were satisfied with the level of care. Additionally, independent audits that were carried out on the panel of attendant care providers against the performance measures for quality, July 2009 to August 2009, found that the participating providers satisfactorily met the requirements of the Authority's Performance Measures.⁴⁹¹

6.80 In addition, the LTCSA informed the Committee of the support it has provided to the work carried out to develop standards for the attendant care industry:

The Authority provided \$181,600 to the Attendant Care Industry Association (ACIA) to develop standards specific to the attendant care industry and an auditing program. This has now been developed and is known as the Attendant Care Industry Quality System Standard. It is a requirement of the current contract that attendant care providers are actively working towards achieving this certification. The Authority has also offered a one off grant of \$7500 to each of the panel of providers once they have achieved certification.⁴⁹²

6.81 In response to concerns surrounding delays in carer recruitment the LTCSA advised that 'the attendant care industry continues to report difficulties recruiting attendant care workers in remote areas of NSW and the northern beaches area of Sydney'.⁴⁹³

⁴⁸⁸ Submission 7, pp 8-9.

⁴⁸⁹ Answers to pre-hearing questions on notice, LTCSA, Question 13(a), p 13.

⁴⁹⁰ Answers to pre-hearing questions on notice, LTCSA, Question, 13(a), p 13.

⁴⁹¹ Answers to pre-hearing questions on notice, LTCSA, Question 13(b), p 13.

⁴⁹² Answers to pre-hearing questions on notice, LTCSA, Question 13(b), p 14.

⁴⁹³ Answers to pre-hearing questions on notice, LTCSA, Question 13(c), p 14.

- 6.82** Regarding delays in carer recruitment, the LTCSA also described the fundamental skills required and the comprehensive training provided to attendant care providers for individual participants:

The Authority is keen to ensure that attendant care workers have the skills to provide services to Scheme participants. The Authority works closely with the Attendant Care Industry Association to monitor the new national award and any competencies for attendant care workers that arise from this award.

It is a requirement of the Authority's contract with its attendant care providers that the workers have core skills relevant to the injury related needs of the participants they are servicing, for example specific skills required to care for people with spinal cord injury or brain injury. In addition to this the Authority funds training specific to the participant's needs during the establishment of the program. These are those skills that are specific to the individual participant, for example how to implement a behavioural support program or stretching program. An additional allocation of participant focused training can also be approved on a case-by-case basis when there is a significant change in participant need that warrants an additional funding allocation.⁴⁹⁴

- 6.83** The LTCSA also informed the Committee about steps taken since the last Review to improve service delivery, including the development of the attendant care extranet and the introduction of certification to the Attendant Care Industry Association's quality system:

The Authority launched the attendant care provider extranet for its panel of providers. This functions as a tool to facilitate communication and as a hub for resources, such as training information for spinal cord injury and brain injury. This was launched in March 2010 and was well received by the panel of providers.

It is a mandatory requirement that the panel of providers obtain certification to the Attendant Care Industry Association's quality system (Attendant Care Industry Management System Standard). In the half yearly report each provider was required to report on their progress to towards achieving this certification.⁴⁹⁵

Committee comment

- 6.84** The Committee acknowledges the various concerns of raised by stakeholders regarding attendant care services provided by the LTCS Scheme, including overdependence on carers, rates of pay and disbanding of care teams, carer recruitment and training, and others.
- 6.85** The Committee notes that the LTCSA has taken a considerable number of steps to address a range of issues regarding attendant care including among other things the background work undertaken before setting the Attendant Care Rates, the new the new Care Coordinator Fee, the inclusion of attendant care in the *LTCSA Guidelines*, the development of the attendant care extranet and the support it has provided to the development of standards for the attendant care industry.

⁴⁹⁴ Answers to pre-hearing questions on notice, LTCSA, Question 13(c), p 14.

⁴⁹⁵ Answers to pre-hearing questions on notice, LTCSA, Question 13(d), p 14.

- 6.86** As attendant care is one of the major components of the LTCS Scheme it may take some time for problems to fully emerge and for the LTCSA to respond accordingly. The steps the LTCSA has already taken in the area of attendant care will no doubt assist in resolving some of the issues identified by stakeholders in the Review.
- 6.87** The Committee is able to conclude that the initiatives that the LTCSA has already undertaken and those still underway in relation to attendant care show that the Authority is focused on attendant care as an important issue and is responding appropriately.
- 6.88** The Committee encourages the LTCSA in its ongoing work in the area of attendant care to take into consideration the valuable feedback provided by stakeholders through the Committee Review process, as set out in this Chapter. The Committee will revisit issues surrounding attendant care in its next Review.

Support for family carers

- 6.89** Stakeholders raised two issues in regards to support for family carers: financial support for family carers; and suggested improvements to the way in which families are identified and supported as carers by the LTCSA.
- 6.90** Currently the LTCS Scheme pays for some support for families of participants including counseling, child care, cleaning services and travel and accommodation when accompanying participants.⁴⁹⁶
- 6.91** The *LTCSA Guidelines* state, however, that the employment of and, therefore direct payment to, family members or friends for providing attendant care is not encouraged and will only occur when all other alternative options have been considered. The intent behind this policy is to maintain a functional family unit (see *Second Review Report* for further detail).⁴⁹⁷

Financial support for family carers

- 6.92** In the Committee's Second Review, the issue of financial support for family members who care for LTCS participants was raised. In the *Second Review Report*, the Committee heeded the comments that were made by the LTCSA, LTCSAC and social workers on the potentially negative impact of the Scheme funding family members to be carers. The Committee noted that the Commonwealth Carers Allowance is available to family carers of participants who meet the criteria for that allowance and encouraged the LTCSA to advise family carers of the Commonwealth carers allowance when appropriate.⁴⁹⁸
- 6.93** The issue of unpaid family assistance was brought to the Committee's attention again in the current Review by the Australian Lawyers Alliance. The Alliance commented that although the Scheme covers all care needs, many families will choose to provide some care on an unpaid basis, making the family member 'an unpaid subsidizer of the LTCS Scheme'.⁴⁹⁹

⁴⁹⁶ LTCSA, *Lifetime Care and Support Guidelines 2010* (hereafter referred to as '*LTCS Guidelines*'), pp 11 and 39 accessed 30 October 2010, <www.lifetimecare.nsw.gov.au/Guidelines_and_Policies_for_Professionals.aspx>

⁴⁹⁷ *LTCS Guidelines*, pp 46-48; Standing Committee on Law and Justice, Report 40, p 36.

⁴⁹⁸ Standing Committee on Law and Justice, Report 40, p 39.

⁴⁹⁹ Submission 11, Australian Lawyers Alliance, pp 4-5.

6.94 The following examples of situations where families may choose to provide voluntary care were provided by the Australian Lawyers Alliance:

(a) The family may choose not to have a carer in the home for 24 hours to look after a young child but may prefer to cover overnight care needs in exchange for some privacy.

(b) A parent may choose to give up or restrict their work hours in order to accompany their brain-injured child to school rather than use a paid carer.⁵⁰⁰

6.95 In order to understand this issue better, the Committee asked the Scheme participants and carers who appeared at the public hearings about their experiences with family care.

6.96 Mr Ian Franklin and Mr Daniel Stribik, both carers of lifetime participants in the Scheme, advised that their circumstances meant that family members did not need to become full time carers. Mr Stribik also advised that his wife receives a weekly Commonwealth Carers Allowance, and Mr Franklin commented that flexible employment has provided him with the opportunity to work from home.⁵⁰¹

6.97 Mr Lyndon Wait, a lifetime participant, advised that his wife was required to become a full time carer and while LTCSA paid for flights and accommodation when he was first injured, the amount of leave that his wife required eventually led to her losing her job. Mr Wait told the Committee that there was no compensation received from the Scheme for this.⁵⁰²

6.98 Mr Mark Harris, a lifetime participant, advised that as his wife is from New Zealand she is not entitled to the Commonwealth Carers Allowance, despite having to leave her job to care for Mr Harris. Mr Harris highlighted the pressures of providing fulltime care as follows:

The biggest problem of all is the stress it puts on not just me but also my wife. She has to do so much around the house, all the cleaning and everything. It has got so bad at the moment that she has had to leave her job. We do not get any support from Lifetime Care for her being the carer. There is nothing there, yet she does so much.⁵⁰³

6.99 The Australian Lawyers Alliance suggested that the LTCSA should consider providing payment to suitably trained family members for the provision of voluntary care:

Consideration should be given to family members being paid for the provisions of care services, subject to the family member having undergone suitable training. This may involve family members being formally employed and receiving work benefits (such as superannuation and workers' compensation cover), although whether the employment would be by the injured party, a contractor or the LTCSA would need to be the subject of consideration.⁵⁰⁴

⁵⁰⁰ Submission 11, p 5.

⁵⁰¹ Mr Daniel Stribik and Mr Ian Franklin, Evidence, 21 June 2010, p 31.

⁵⁰² Mr Lyndon Wait, Evidence, 21 June 2010, p 30.

⁵⁰³ Mr Mark Harris, Evidence, 21 June 2010, p 21.

⁵⁰⁴ Submission 11, p 5.

6.100 BIRD praised the Authority for acknowledging the impact of catastrophic injury on the family unit and for approving services for family members:

We continue to be pleased with the preparedness of the Authority to acknowledge the impact of catastrophic injury, particularly brain injury, on the family unit and approve services for family members. Such services are crucial to the rehabilitation outcomes of patients/clients.⁵⁰⁵

6.101 BIRD recommended that the LTCSA should continued its '... support of services for the family unit as a vital component of the rehabilitation program of the person with the injury.'⁵⁰⁶

6.102 The LTCSA did not respond in the current Review to the concerns raised by the Australian lawyers Alliance about paid family care. The Committee notes, however, the comments that the LTCSA made in relation to this issue in the Committee's *Second Review Report* that, on the basis of advice received from the disability community and case managers, in order to maintain functional family relationships the Authority should not pay for family members to become carers (except in rare circumstances, ie rural and remote areas).⁵⁰⁷

Identifying and supporting family carers

6.103 A new issue raised by Carers NSW relates to the way that families are identified and supported as carers by the LTCSA. Carers NSW highlighted the importance of carers being able to access clear and relevant information about the services provided by the LTCSA, in acknowledgement of the integral role that carers play in supporting people who have been injured as a consequence of a motor vehicle accident.⁵⁰⁸

6.104 Carers NSW defines the term 'carer' as: ... 'any individual who provides unpaid care and support to a family member or friend who has a disability, mental illness, drug and alcohol dependencies, chronic condition, terminal illness or who is frail'.⁵⁰⁹

6.105 Carers NSW made four suggestions to improve the quality of access to information for carers:

- modify the language used by the LTCSA when referring to the family of injured people
- provide clear information on support services for carers
- establish an ongoing support group for carers of people with traumatic brain or spinal cord injury, and
- educate health professionals as part of the LTCS Scheme regarding carers needs.

⁵⁰⁵ Submission 7, p 4.

⁵⁰⁶ Submission 7, p 4.

⁵⁰⁷ Standing Committee on Law and Justice, Report 40, p 36.

⁵⁰⁸ Submission 16, Carers NSW, pp 2-3. Carers NSW made its submission jointly to this Review of the LTCSA and the Committee's Tenth Review of the Motor Accidents Authority.

⁵⁰⁹ Submission 16, p 1.

- 6.106** Carers NSW noted that the LTCSA annual reports and website '... use the term "family" when referring to those involved in the support of a loved one', and congratulated the LTCSA '... in recognising the inclusion of the family in providing support to a loved one with catastrophic injuries'.⁵¹⁰
- 6.107** However, Carers NSW encouraged the use of the term 'carer' or 'family carer' instead of 'family member', in order to more clearly recognise the role that carers play in the support and rehabilitation of injured family members.⁵¹¹
- 6.108** Carers NSW also suggested that the LTCSA website should provide clearer information '... to assist family carers to learn about and access appropriate services for their needs, different from those of the person for whom they care'.⁵¹² Carers NSW indicated that the LTCSA could provide details of carer support services such as Commonwealth Respite and Carelink Centres, as well as information on Carers NSW, on the LTCSA's website.⁵¹³
- 6.109** Carers NSW also suggested the creation of an information booklet for carers, to assist families to better understand their caring role for family members who have been injured in a motor vehicle accident, and to provide information on the support services that are available to assist carers in this role:

Another suggestion could be a specific booklet about what to expect in a caring role in caring for someone severely injured as a result of road accident or catastrophic injury. A general information booklet will assist families to understand and cope with a range of unfamiliar systems and what to expect in navigating the systems and support available.⁵¹⁴

- 6.110** The third suggestion from Carers NSW related to the establishment of a support group for carers of people with traumatic brain or spinal cord injury. Carers NSW advised that between August 2004 and December 2005, the Motor Accidents Authority (MAA) provided funding to Carers NSW to conduct the 'Carers Linked in Caring Project (CLIC) – A Support Program for Carers of People with Traumatic Brain or Spinal Cord Injury'.⁵¹⁵ Carers NSW noted that the evaluation of the pilot CLIC program showed that the program was beneficial in supporting this group of carers. Carers NSW indicated that it would welcome a partnership with the MAA and the LTCSA to operate the CLIC program on an ongoing basis.⁵¹⁶
- 6.111** The final suggestion from Carers NSW concerned the education of health professionals to support carers needs. Carers NSW commented that the role of carers is not understood and outlined the need for awareness throughout the LTCS Scheme:

Feedback from carers indicates that there is a lack of understanding at all levels of the role of carers and impact of caring in a range of human service settings. In particular, carers often feel that their knowledge and experience is not sufficiently acknowledged or used in health and care planning. Education to health professionals, service

⁵¹⁰ Submission 16, p 2.

⁵¹¹ Submission 16, p 2.

⁵¹² Submission 16, p 3.

⁵¹³ Submission 16, p 3.

⁵¹⁴ Submission 16, p 3.

⁵¹⁵ Submission 16, p 3.

⁵¹⁶ Submission 16, p 3.

providers and LTCS Coordinators regarding carer awareness is vital to ensure there is a clear understanding of the support needs of carers, how to work with them, and provide relevant information, resources and referrals that support individual carer needs.⁵¹⁷

Committee comment

- 6.112** The Committee acknowledges the vital role that family carers play in our community and in providing support, love and care to LTCS Scheme participants.
- 6.113** The Committee notes the suggestion made by the Australian Lawyers Alliance to provide payment to family members who are caring for participants. The Committee's position has not changed from the last Review when it accepted the LTCSA's advice that it does not pay family members to become carers due to the potential negative impact on functional family relationships. The Committee also notes that the Commonwealth Carers Allowance is available in appropriate circumstances.
- 6.114** The Committee notes that Carers NSW has identified a number of ways to improve access to information on the services provided by the LTCSA for family carers. These measures included modifying the language used by the LTCSA when referring to carers, providing clear information on the support services that are available to carers and raising the awareness of the importance of carers across the Scheme.
- 6.115** The Committee recommends that the LTCSA consult with carers' advocacy groups to examine the feasibility of modifying the language used by the LTCSA on its website and in official publications when referring to the family of Scheme participants and providing clear information on the support services available for family carers.

Recommendation 11

That the Lifetime Care and Support Authority consult with carers' advocacy groups to examine the feasibility of modifying the language used on the Lifetime Care and Support Authority website and in official publications when referring to the family of Lifetime Care and Support Scheme participants and providing clear information on the support services available for carers.

Recreation and leisure activities

- 6.116** Several stakeholders suggested that there should be greater access to and cover for recreation and leisure activities under the Scheme. In particular, it was suggested that greater consideration of funded transport for participants to engage in recreation and leisure activities is needed.
- 6.117** This issue was first raised in the Committee's Second Review. During that Review, stakeholders highlighted the importance of recognising recreation and leisure activities as a

⁵¹⁷ Submission 16, p 4.

significant part of the rehabilitation and socialisation of participants, particularly those who are not able to return to vocational employment or education as a result of their injury.⁵¹⁸

6.118 Stakeholders argued that the definition of recreation and leisure used by the LTCSA was restrictive and therefore prevented some participants from engaging in recreation and leisure activities that would otherwise improve their life circumstances because the cost would fall onto them and/or their family.⁵¹⁹

6.119 The Committee acknowledged these concerns and therefore recommended in its *Second Review Report*:

That the Lifetime Care and Support Authority:

- carefully consider the role that recreation and leisure has in the psychosocial rehabilitation of participants and reconsider funding the cost of recreation and leisure activities (and not just access to the activity), especially for those participants who are not able to return to vocational employment or education, and
- when interpreting the definition of recreation and leisure, a broad approach be taken so that, where appropriate, it includes unusual activities that may be of particular interest and therapeutic value to participants.⁵²⁰

6.120 As noted in the *Second Review Report*, the LTCSA released a consultation paper titled *Leisure and recreation in the Lifetime Care and Support Scheme* in March 2009, which resulted in a set of draft guidelines for access to and funding of leisure and recreation activities.

6.121 The NSW Government responded to the Committee's recommendations by stating that the LTCSA would pay for recreation and leisure and access to it when there is a therapeutic benefit from the activity and it is part of a rehabilitation program. Furthermore, the NSW Government advised that the LTCSA was continuing to work on the recreation and leisure guidelines, and would consider the role and funding for recreation and leisure in this context.⁵²¹

6.122 As part of the current review, BIRD commended the LTCSA on the release of its consultation paper, stating that the Authority's recognition of leisure as an important life role is 'highly valued'.⁵²² BIRD also expressed its support for the scope of the Committee's recommendation, noting that the recommendation went some way towards addressing the importance of recreation and leisure as an avenue to achieve psychosocial rehabilitation goals.⁵²³

6.123 BIRD commented, however, that for some participants, psychosocial rehabilitation strategies need to be maintained long term and that this should to be considered when developing guidelines that are responsive to the circumstances of all participants. BIRD therefore offered to play an active role in the development of the LTCA's guidelines. It also put forward the

⁵¹⁸ Standing Committee on Law and Justice, Report 40, pp 57-61.

⁵¹⁹ Standing Committee on Law and Justice, Report 40, pp 57-61.

⁵²⁰ Standing Committee on Law and Justice, Report 40, p 61.

⁵²¹ Government Response to the Standing Committee on Law and Justice, Report 40, p 3.

⁵²² Submission 7, p 4.

⁵²³ Submission 7, p 3.

recommendation that the LTCSA accept responsibility to financially support goal-oriented programs which facilitate participants' skills and engagement in leisure activities.⁵²⁴

6.124 SCIA also suggested during the current review that changes were required to the LTCSA's current approach to assessing requests in relation to recreation and leisure activities.⁵²⁵

6.125 Highlighting the benefits of exercise, SCIA recommended that the LTCSA amend its policy on access to recreation and leisure activities by stating that it 'will fund' such activities, rather than 'may fund', where a clear and demonstrated interest in that activity is shown. SCIA argued that a demonstrated interest in an activity ensures that the activity is fair and genuine and that the participant will have an ongoing commitment to it.⁵²⁶

6.126 A further issue that was raised in the current review in relation to the approval of recreation and leisure activities was that of transportation to these activities to be funded under the Scheme. This was of particular concern to a number of stakeholders who argued that facilitating transport for participants to these activities would foster a sense of independence.

6.127 For example, Australian RehabWorks advised that community-based neuro-rehabilitation participation in recreation and leisure programs form a major part of some participants' weekly activity program. Australian RehabWorks argued that, by funding taxi transportation, participants would be given the opportunity to access necessary recreation and leisure activities without using attendant care support.⁵²⁷

6.128 Ms Anna Castle-Burton, the Director of Australian RehabWorks explained that without funding for transport participants cannot access activities that would be of significant benefit to participants:

We have had many participants who, had they been able to use taxi, could have accessed increased social and leisure opportunities. They have not required an attendant carer to accompany them but they have required the transport for mobility or location issues but have not been able to access appropriate leisure... [because] they cannot afford it... and also the funding of the taxi is only for treatment and rehabilitation. We found that just the limitation in us trying to meet goals of independence and long-term restoration of function that we feel that if there was some expansion of taxi vouchers for attendance at leisure and social activities that that would be of significant benefit to participants.⁵²⁸

6.129 SCIA also proposed that transportation for recreation and leisure activities be funded under the Scheme with Mr Sean Lomas, the SCIA's Policy and Advocacy Manager, suggesting that the fact that it was not is perhaps reflective of a more systemic problem – 'the divorce between the policy-setting room and the practice room'.⁵²⁹

⁵²⁴ Submission 7, p 4.

⁵²⁵ Submission 2, p 7.

⁵²⁶ Submission 2, p 7.

⁵²⁷ Submission 3, Australian RehabWorks, p 3.

⁵²⁸ Ms Anna Castle-Burton, Director, Australian RehabWorks, Evidence, 21 June 2010, p 45.

⁵²⁹ Mr Lomas, Evidence, 21 June 2010, p 51.

- 6.130** Mr Gregory Killeen, a Policy and Advocacy Officer with the SCIA, added that for participants to miss out on social or exercise opportunities because of the cost of transport was both restrictive and unresponsive to the needs of participants:

It seems a bit restrictive if someone wants to do something social or exercise-wise, and what is impeding that is the cost of transport. I would certainly suggest that there should be some scope to fund transport provided by a taxi or some community transport provider, or some other means. People have enough issues to restrict them from socialising, exercising and recreational activities. It would not be a proactive stance.⁵³⁰

- 6.131** In response to the discussion of funding recreation and leisure activities and transport under the Scheme, the LTCSA acknowledged the complexities of the issue and noted that within the LTCSAC there have been differences of opinion as to the to the level of support that should be provided with respect to recreational activities. Mr David Bowen, the Executive Director of the LTCSA, commented that '[t]his is something that has exercised the Advisory Council quite a bit'.⁵³¹

- 6.132** Mr Bowen noted that the LTCSA pays for transport costs and a carer when they are required to assist a person to attend recreational activities:

At the moment we provide transport costs and also pay for a carer when they are needed to attend recreational activities with the person but with some exceptions we do not pay for the person's own fees to participate in a recreational activity. We are looking at that.⁵³²

- 6.133** The LTCSA advised that an inclusive approach to recreation and leisure activities would have 'significant cost implications' for the Scheme.⁵³³ Mr Bowen, noted that this was an issue that the LTCSA Board will eventually need to consider, and suggested it might only be resolved through a practical but conditional solution:

It is a matter that will eventually have to go to the Board because it has some funding implications for the Authority as well. Just putting aside an amount of about \$1,000 a year per participant but then projecting forward over their lifetime adds up to quite a sizeable amount. It may be that that is the simplest way to do it rather than worrying about saying they can do this or that. We will just say they have a certain amount available to them to support recreational activities and they can spend it where they like. That is probably the pragmatic solution to all of this rather than trying to get down into the nitty gritty.⁵³⁴

- 6.134** Mr Bowen acknowledged that recreation and leisure 'is a very big question and I cannot see that it has been resolved anywhere' (referring to similar schemes in other jurisdictions).⁵³⁵

⁵³⁰ Mr Killeen, Evidence, 21 June 2010, pp 51 and 52.

⁵³¹ Mr Bowen, Evidence, 21 June 2010, p 77.

⁵³² Mr Bowen, Evidence, 21 June 2010, p 77.

⁵³³ Answers to pre-hearing questions on notice, LTCSA, Question 24(a), p 22.

⁵³⁴ Mr Bowen, Evidence, 21 June 2010, p 77.

⁵³⁵ Mr Bowen, Evidence, 21 June 2010, p 77.

- 6.135** With regard to the recreation and leisure guidelines that the Committee was informed during the Second Review were being developed (see paragraph 4.105-4.106), the LTCSA advised this year that '...the feedback received on the draft Guideline was varied with many and differing views proffered'.⁵³⁶
- 6.136** The LTCSA informed the Committee that it had subsequently withdrawn the guidelines in order to take an alternative approach to the issue, by considering the needs of a participant as a whole and assessing these in relation to all of their activities, the participant's capacity, and local and community resources.⁵³⁷ In the interim, the LTCSA noted, it '...continues to pay for recreation and leisure when it is part of a rehabilitation program'.⁵³⁸

Committee comment

- 6.137** The Committee recognises the significant progress that has been made by the LTCSA to ensure that participants have access recreation and leisure activities. The Committee is particularly encouraged by the NSW Government's response to its recommendations from the last Review which has resulted in recreation and leisure activities of therapeutic and rehabilitative benefit now being covered by the Scheme.
- 6.138** The Committee notes that the LTCSA has withdrawn its draft guidelines on recreation and leisure in order to pursue a more holistic approach to assessing and meeting the needs of participants. The Committee is interested to learn more about this approach and the stakeholder response to it in the next Review and will carefully observe the issue as it progresses.
- 6.139** The Committee also notes the particular concerns raised over funding for transport to recreation and leisure activities, and acknowledges the comments made by stakeholders about the positive impact that greater and easier access to recreation and leisure activities may have on participants and their well being. The ability to get to an activity deemed 'reasonable and necessary' seems to the Committee to be intrinsic to a participant's ability to undertake that activity and therefore the cost of transport should be part of the approval.
- 6.140** The Committee is mindful, however, of the comments made by the LTCSA about the financial implications of taking a broader approach to funding recreation and leisure, including transportation. The Committee understands that the LTCSA has considered the issue extensively and encourages it to continue investigating options that recognise and balance the needs of participants with the scope and capacity of the Scheme. The Committee recommends that the issue of transport be appropriately considered in its new holistic approach to meeting the needs of Scheme participants in terms of recreational and leisure activities.

⁵³⁶ Answers to pre-hearing questions on notice, LTCSA, Question 24(a), p 22.

⁵³⁷ Answers to pre-hearing questions on notice, LTCSA, Question 24(a), p 22.

⁵³⁸ Answers to pre-hearing questions on notice, LTCSA, Question 24(a), p 23.

Recommendation 12

That the Lifetime Care and Support Authority, in developing its new approach to the issue of recreational and leisure activities provided by the Lifetime Care and Support Scheme include consideration of the provision of funding for transport, and publish the details of the new approach as soon as possible.

Educational support for children

- 6.141** Brain Injury Services, Kids Rehab, The Children's Hospital Westmead, called for the LTCS Scheme to provide more educational support to participants in the form of teacher's aides or tutors.⁵³⁹ Kids Rehab noted that submissions for teacher's aides must be heavily justified and argued that funding for teacher's aides should be provided on a yearly basis.
- 6.142** Kids Rehab also suggested that 'further dialogue between the LTCSS and the Department of Education and training may be beneficial to further negotiate how support for students should be funded and monitored long term within educational facilities.'⁵⁴⁰
- 6.143** In response to Kids Rehab's concerns, the LTCSA informed the Committee that it is not the main funder of educational support services, but rather it 'tops up' the educational support services the participant receives:

The Authority funds educational support that is additional to those services the participant is entitled to under applicable state or federal legislation. The Authority should not be seen as the main funder of educational support services, rather our funding "tops up" the services the participant receives through the various educational support services.⁵⁴¹

- 6.144** The LTCSA elaborated that requests for educational support services are completed by the school and that the Authority provides funds only if other sources have been exhausted:

It should be noted that requests for education support services are completed by the school, rather than a clinician. This ensures that the most up to date information and progress is reported to the Authority and assists in clarifying the school's role as a provider of services. This also allows the Authority to ensure that all other sources of funding have been excluded prior to the Authority funding education support services.⁵⁴²

- 6.145** With regard to Kids Rehab's suggestion that funding should be provided on a yearly basis the LTCSA advised that where a participants educational needs have stabilized a longer period can be considered:

LTCS participants needing educational support services should have their support requirements reviewed in line with their rehabilitation goals and individual educational

⁵³⁹ Submission 13, pp 7-8.

⁵⁴⁰ Submission 13, pp 7-8.

⁵⁴¹ Answers to pre-hearing questions on notice, LTCSA, Question 23, p 22.

⁵⁴² Answers to pre-hearing questions on notice, LTCSA, Question 23, p 22.

plan (IEP). Due to age, development and changing expectations in the school setting, this review should occur regularly, particularly during the early years following injury and at key transitions. Typically educational support services are approved for a period of 1-2 school terms. In cases where a participant's educational needs have stabilised the Authority is willing to consider approving services for longer period.⁵⁴³

Committee comment

- 6.146** The issue of the provision of educational support has been raised for the first time in this review and only a small amount of information was presented in relation to it. The Committee notes the important role that educational support plays in long term habilitation of children with brain injuries. The Committee also notes the advice of the LTCSA that is not the primary funder of educational support for LTCS Scheme participants. We encourage the LTCSA to work with organizations such as Kids Rehab to ensure that the responsibilities of the LTCSA in relation to the provision of educational support are well understood and so that any opportunities that may exist, within the scope of the LTCSA's role, for improving access to educational support for Scheme participants can be identified.

⁵⁴³ Answers to pre-hearing questions on notice, LTCSA, Question 23, p 22.

Appendix 1 Submissions

No	Author
1	Dare to Do Australia
2	Spinal Cord Injuries Australia
3	Australian RehabWorks Pty Ltd
4	Mr David Harris
4a	Mr David Harris
5	Mr Mark Harris
6	Youthsafe
7	Brain Injury Rehabilitation Directorate
8	State Spinal Cord Injury Service
9	Enable NSW
10	Royal Rehabilitation Centre Sydney
11	Australian Lawyers Alliance
12	Motorcycle Council of New South Wales Incorporated
13	Kids Rehab, The Children's Hospital at Westmead
14	Insurance Council of Australia
15	Vision Australia
16	Carers NSW
17	NSW Health
18	Paediatric Brain Injury Rehabilitation Team (PBIRT), John Hunter Hospital
19	Ms Tania Panopoulos

Appendix 2 Witnesses

Date	Name	Position and Organisation
Friday 11 June 2010 Room 814/815 Parliament House, Sydney	Mr David Bowen	Executive Director, Lifetime Care and Support Authority (LTCSA)
	Mr Nicholas Whitlam	Chairman, LTCSA Board
	Mr Douglas Herd	Chairman, Lifetime Care and Support Authority Council (LTCSAC)
	Mr Neil Mackinnon	A/Director, Service Delivery, LTCSA
	Ms Mary Macken	President, Law Society of NSW
	Mr Timothy Concannon	Member, Personal Injury Compensation Committee, Law Society of NSW
	Ms Jnana Gumbert	NSW Branch President, Australian Lawyers Alliance
	Dr Andrew Morrison SC	NSW Member, Australian Lawyers Alliance
	Ms Mary Maini	Chair, CTP Claims Managers Committee, Insurance Council of Australia
	Mr Anthony Mobbs	Member, Motor Accident Insurance Policy Committee, Insurance Council of Australia
Monday 21 June 2010 Room 814/815 Parliament House, Sydney	Dr Adeline Hodgkinson	Co-Chair, Brain Injury Rehabilitation Directorate
	Dr Jo Gurka	Director, Brain Injury Program, Brain Injury Rehabilitation Directorate
	Ms Frances Monypenny	Manager, State Spinal Cord Injury Service
	Mr Stephen Lowndes	Chief Executive Officer, Royal Rehabilitation Centre Sydney
	Mr Mark Harris	LTCS Scheme participant
	Ms Nicky Harris	Wife of Mark Harris
	Mr David Harris	Father of Mark Harris

Mr Daniel Strbik	LTCS Scheme participant carer
Mr Ian Franklin	LTCS Scheme participant carer
Mr Lyndon Wait	LTCS Scheme participant
Ms Anna Castle-Burton	Director, Australian RehabWorks
Mr Sean Lomas	Policy and Advocacy Manager, Spinal Cord Injuries Australia
Mr Gregory Killeen	Policy and Advocacy Officer, Spinal Cord Injuries Australia
Mr David Bowen	Executive Director, LTCSA
Mr Nicholas Whitlam	Chairman, LTCSA Board
Mr Neil Mackinnon	A/Director, Service Delivery, LTCSA

Appendix 3 Tabled documents

Monday 21 June 2010

Public Hearing, Room 814/815, Parliament House

1. Opening statement, tabled by Mr David Harris
2. Series of letters from pharmacy to Lifetime Care and Support Authority (LTCSA) regarding outstanding payments for Mark Harris, tabled by Mr David Harris
3. Document outlining difficulties experienced with finding suitable rental accommodation, tabled by Ms Nicky Harris
4. Document entitled '*How I will use my lump sum payout*', tabled by Mr Mark Harris
5. Document entitled '*Tennis chair approval*', tabled by Mr Mark Harris
6. Document outlining difficulties experienced with the LTCSA and providing recommendations, tabled by Mr Mark Harris.

Appendix 4 Minutes

Minutes No 39

Thursday 25 February 2010

Members' Lounge, Parliament House, Sydney, at 10.30 am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Ajaka

Mr Donnelly

Ms Hale

Ms Voltz

2. ***

3. ***

4. ***

5. ***

6. 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

Resolved, on the motion of Mr Ajaka: That:

- The Committee commence its tenth review of the exercise and functions of the MAA and MAC and its third review of the exercise and functions of the LTCSA and LTCSAC and that the reviews be held concurrently.
- The commencement of the reviews be publicised on the Committee's web site and through a press release during the second week of March 2010.
- The reviews and the call for submissions be advertised in the *Sydney Morning Herald* and *Daily Telegraph* on Wednesday 10 March 2010.
- The Secretariat distribute to the Committee for consideration a list of stakeholders to be invited to participate in the reviews, and that, after input from the Committee is received by 5 March 2010, the stakeholders be invited to make submissions to the reviews.
- The Committee hold one full day and one half day of hearings on dates to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses.
- Representatives of the MAA, MAC, LTCSA and LTCSAC be invited to appear as witnesses along with any other witnesses determined by the Secretariat in consultation with the Chair and the Committee.
- Questions on notice process be conducted prior to the hearings as has occurred in previous reviews of the MAA and LTCSA.

7. Adjournment

The Committee adjourned at 10.57 am *sine die*.

Madeleine Foley

Clerk to the Committee

Minutes No 42

Tuesday 11 May 2010

Room 1136, Parliament House, Sydney, at 2.00 pm

1. Members present

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Ajaka
Mr Donnelly
Ms Voltz

2. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes Nos 40 and 41 be confirmed.

3. ***

4. ***

5. 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC**5.1 Correspondence**

The Committee noted the following item of correspondence sent:

- 10 March 2010 – From Chair to Hon Michael Daley MP, Minister for Finance, advising of the commencement of the 10th Review of the MAA and the 3rd Review of the LTCSA.

The Committee noted the following items of correspondence received:

- 13 April 2010 – From Mr Stephen O'Neill, Executive Director, Home Care Branch, Department of Ageing, Disability & Home Care, to the Chair, advising that the Department does not intend to lodge a submission to the inquiries
- 30 April 2010 – From Mr Alastair McConnachie, Acting Executive Director, NSW Bar Association, to the Chair, providing a copy of a letter to Ms Carmel Donnelly, General Manager, MAA, regarding legal costs regulations
- 3 May 2010 – From Hon David Campbell MP, Minister for Transport and Roads, to the Chair, regarding the input of the RTA to the inquiries.

5.2 Publication of submissions

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of:

- LTCSA3: Submissions 1-4 and 6-15 and supplementary submission 4a, and partial publication of submission 5.
- MAA10: Submissions 1-8.

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of:

- LTCSA3: Submission 5.

6. ***

7. Adjournment

The Committee adjourned at 2.10 pm until Monday 31 May 2010, at 9.30 am.

Teresa McMichael
Clerk to the Committee

Minutes No 43

Wednesday 2 June 2010

Members' Lounge, Parliament House, Sydney, at 1.05 pm

1. Members present

Ms Robertson (*Chair*)
 Mr Donnelly
 Ms Hale
 Ms Voltz

2. Minutes

Resolved, on the motion of Ms Hale: That draft Minutes No 42 be confirmed.

3. *****4. 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC****4.1 Submissions**

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of:

- LTCSA3: Submissions 16-18.
- MAA10: Submissions 4a and 9.

4.2 Answers to pre-hearing questions on notice

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of the answers to the pre-hearing questions on notice from:

- Lifetime Care and Support Authority
- Motor Accidents Authority.

5. *****6. Adournment**

The Committee adjourned at 1.10 pm until Friday 11 June, at 9.30 am.

Madeleine Foley

Clerk to the Committee**Minutes No 44**

Friday 11 June 2010

Room 814-815, Parliament House, Sydney, at 9.30 am

1. Members present

Ms Robertson (*Chair*)
 Mr Clarke (*Deputy Chair*)
 Mr Ajaka
 Mr Donnelly
 Ms Voltz

2. Apologies

Ms Hale

3. Public hearing – 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

The witnesses, the public and media were admitted.

The Chair made an opening statement regarding procedural matters.

The following witnesses from the Motor Accidents Authority and Motor Accidents Council were sworn and examined:

- Ms Carmel Donnelly, General Manager, MAA
- Ms Geniere Aplin, Chairperson, MAA Board and MAC.

Ms Donnelly tendered the following documents:

- Compulsory Third Party Insurance Review of Premium Relativities from 1 July 2010, report, Motor Accidents Authority, Finity Consulting Pty Limited 2010; and
- Correspondence from Taylor Fry, Consulting Actuaries to Ms Carmel Donnelly, regarding Hindsight estimates of insurers' profits referred to in submissions to the Standing Committee on Law and Justice from the Australian Lawyers Alliance ("ALA") and the NSW Bar Association ("NSW BA"), dated 10 June 2010.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council were sworn and examined:

- Mr David Bowen, Executive Director, LTCSA
- Mr Nicholas Whitlam, Chairman, LTCSA Board
- Mr Dougie Herd, LTCSAC Chairman
- Mr Neil Mackinnon, Acting Director, Service Delivery, LTCSA.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Law Society of NSW were sworn and examined:

- Ms Mary Macken, President
- Mr Tim Concannon, Member, Personal Injury Compensation Committee.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Bar Association were sworn and examined:

- Mr Alastair McConnachie, A/Executive Director
- Mr Andrew Stone, Member, Personal Injury Compensation Committee.

Mr Stone tendered the following documents:

- Summary of Insurer Profitability Projections, MAA Scheme Performance Reports 2003-4 to 2008-9.
- Correspondence from NSW Bar Association to Ms Carmel Donnelly, General Manager, MAA, re *Doumit v Jabbs Excavations Pty Limited*, dated 17 November 2009.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Australian Lawyers Alliance were sworn and examined:

- Ms Jnana Gumbert, NSW Branch President
- Dr Andrew Morrison SC, NSW Member.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Insurance Council of Australia were sworn and examined:

- Ms Mary Maini, Chair, CTP Claims Managers Committee
- Mr Tony Mobbs, Member, Motor Accident Insurance Policy Committee.

Mr Mobbs tendered the following document:

- Graph, 'Time from Underwriting Date (years)'.

The evidence concluded and the witnesses withdrew.

The following witness from the Motorcycle Council of NSW was sworn and examined:

- Mr Guy Stanford, Member and former Chairman.

Mr Stanford tendered the following document:

- Positioned for Safety 2010, A Motorcycle Safety Strategic Plan 2007-2010, report, Motorcycle Council of NSW Incorporated.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.15 pm. The public and the media withdrew.

4. Deliberative meeting

4.1 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

Minutes

Resolved, on the motion of Mr Ajaka: That draft Minutes No 43 be confirmed.

Correspondence

The Committee noted the following item of correspondence received:

- 9 June 2010 – From Mr Tom Bathurst SC, President, NSW Bar Association to the Chair regarding answers to questions provided by the Motor Accidents Authority.

Publication of tendered documents

Resolved, on the motion of Mr Ajaka: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following documents tendered during the public hearing:

- Compulsory Third Party Insurance Review of Premium Relativities from 1 July 2010, report, Motor Accidents Authority, Finity Consulting Pty Limited 2010; and
- Correspondence from Taylor Fry, Consulting Actuaries to Ms Carmel Donnelly, regarding Hindsight estimates of insurers' profits referred to in submissions to the Standing Committee on Law and Justice from the Australian Lawyers Alliance ("ALA") and the NSW Bar Association ("NSW BA"), dated 10 June 2010.
- Summary of Insurer Profitability Projections, MAA Scheme Performance Reports 2003-4 to 2008-9, tendered by Mr Andrew Stone, Member, Common Law Committee, NSW Bar Association and Member, MAC
- Correspondence from NSW Bar Association to Ms Carmel Donnelly, General Manager, MAA, re *Doumit v Jabbs Excavations Pty Limited*, dated 17 November 2009.
- Graph, 'Time from Underwriting Date (years)', tendered by Mr Mobbs, Member, Motor Accident Insurance Policy Committee, Insurance Council of Australia
- Positioned for Safety 2010, A Motorcycle Safety Strategic Plan 2007-2010, report, Motorcycle Council of NSW Incorporated, tendered by Mr Stanford, former Chairman and member, Motorcycle Council of NSW.

Witnesses

Resolved, on the motion of Ms Voltz: That the Committee invite the witnesses who appeared today to represent the MAA and the MAC and the LTCSA and the LTCSAC to appear again before the Committee on Monday 21 June at a time to be confirmed by the Secretariat.

Deliberative date

Resolved, on the motion of Mr Donnelly: That the Committee set aside Monday 25 October 2010 to deliberate on the Chair's draft report for the 3rd Review of the LTCSA and the LTCSAC and the 10th Review of the MAA and the MAC.

4.2 ***

4.3 ***

5. Adjournment

The Committee adjourned at 4.30 pm *sine die*.

Rachel Callinan

Clerk to the Committee

Minutes No 45

Monday 21 June 2010

Room 814-815, Parliament House, Sydney, at 9.30 am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*) (at 10.15 am)

Mr Ajaka

Mr Donnelly

Ms Voltz

Ms Hale (until 3.25 pm)

2. Public hearing – 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

The witnesses, the public and media were admitted.

The Chair made an opening statement regarding procedural matters.

The following witnesses from the Brain Injury Rehabilitation Directorate and State Spinal Cord Injury Service were sworn and examined:

- Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate
- Dr Jo Gurka, Director, Brain Injury Program, Brain Injury Rehabilitation Directorate
- Ms Frances Monypenny, Manager, State Spinal Cord Injury Service.

The evidence concluded and the witness withdrew.

The following witness from the Royal Rehabilitation Centre Sydney was sworn and examined:

- Mr Stephen Lowndes, Chief Executive Officer.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Mark Harris, LTCS Scheme participant
- Ms Nicky Harris, Wife of Mark Harris
- Mr David Harris, Father of Mark Harris.

Mr David Harris tendered the following documents:

- Opening statement
- Series of letters from pharmacy to Lifetime Care and Support Authority regarding outstanding payment for Mark Harris.

Ms Nicky Harris tendered the following documents:

- Opening statement
- Document outlining difficulties experienced with finding suitable rental accommodation.

Mr Mark Harris tendered the following document:

- How I will use my lump sum payout
- Tennis chair approval
- Document outlining difficulties experienced with the LTCSA and providing recommendations.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Daniel Strbik, LTCS Scheme participant carer
- Mr Ian Franklin, LTCS Scheme participant carer
- Mr Lyndon Wait, LTCS Scheme participant.

The evidence concluded and the witnesses withdrew.

The following witness from the Australian RehabWorks was sworn and examined:

- Ms Anna Castle-Burton, Director.

The evidence concluded and the witness withdrew.

The following witnesses from Spinal Cord Injuries Australia were sworn and examined:

- Mr Sean Lomas, Policy and Advocacy Manager
- Mr Gregory Killeen, Policy and Advocacy Officer.

Mr Lomas advised that he wished to retract point 4 in Spinal Cord Injuries Australia submission (Submission 2).

The evidence concluded and the witnesses withdrew.

The following witness from the MAA, the MAA Board and the MAC were sworn and examined:

- Ms Carmel Donnelly, General Manager, MAA
- Ms Geniere Aplin, Chairperson, MAA Board and Chief Executive Officer, MAC.

Ms Aplin tendered the following document:

- Establishment, structure and operation of the Compensation Authorities Staff Division of the NSW Government Service.

The evidence concluded and the witnesses withdrew.

The following witness from the LTCSA & LTCSAC were sworn and examined:

- Mr David Bowen, Executive Director, LTCSA
- Mr Nicholas Whitlam, Chairman, LTCSA Board

- Mr Neil Mackinnon, A/Director, Service Delivery Chief Executive Officer, LTCSA.

The public hearing concluded at 4.15 pm. The public and the media withdrew.

3. Deliberative meeting

3.1 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

Correspondence

The Committee noted the following item of correspondence received:

- 21 June 2010 – From NSW Health to the Director, enclosing the Report on the NSW Health Review of the Impact of the Lifetime Care and Support Scheme, March 2010.

Resolved, on the motion of Ms Voltz: That the Committee publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1) the document from NSW Health titled: Report on the NSW Health Review of the Impact of the Lifetime Care and Support Scheme, March 2010.

Publication of tendered documents

Resolved, on the motion of Ms Voltz: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following documents tendered during the public hearing:

- Series of letters from pharmacy to Lifetime Care and Support Authority regarding outstanding payments for Mark Harris, tendered by Mr David Harris.
- Document outlining difficulties experienced with finding suitable rental accommodation, tendered by Ms Nicky Harris.
- Document, How I will use my lump sum payout, tendered by Mr Mark Harris.
- Document, Tennis chair approval, tendered by Mr Mark Harris.
- Document outlining difficulties experienced with the LTCSA and providing recommendations, tendered by Mr Mark Harris.
- Establishment, structure and operation of the Compensation Authorities Staff Division of the NSW Government Service, tendered by Ms Geniere Aplin, Chairperson, MAA Board and Chief Executive Officer, MAC.

3.2 ***

4. Adjournment

The Committee adjourned at 5.19 pm until Tuesday 29 June 2010, at 9.30 am.

Rachel Callinan

Clerk to the Committee

Minutes No 47

Monday 19 July 2010

Christine Robertson's Office, Parliament House, Sydney, at 4.05 pm

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

2. Apologies

Mr Ajaka

Ms Hale
Ms Voltz

3. ***

4 **10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC**

4.1 Answers to questions on notice

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from:

- NSW Bar Association
- Australian Lawyers Alliance
- Motorcycle Council of NSW
- State Spinal Cord Injury Service.

5 ***

6 **Adjournment**

The Committee adjourned at 4.10 pm until Wednesday 11 August 2010, at 9.30 am.

Rachel Callinan
Clerk to the Committee

Minutes No 48

Wednesday 11 August 2010

Jubilee Room, Parliament House, Sydney, at 9.30 am

1. **Members present**

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Ajaka
Mr Donnelly
Ms Voltz
Ms Hale (from 9.45am)

2. ***

3. **Deliberative meeting**

3.1 Minutes

Resolved, on the motion of Mr Donnelly: That Draft Minutes No 47 be confirmed.

3.2 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

3.2.1 Correspondence

The Committee noted the following items of correspondence received:

- 25 June 2010 – From Ms Anna Castle-Burton, Director, Australian RehabWorks, regarding clarification to the transcript
- 12 July 2010 – From Mr Sean Lomas, Spinal Cord Injuries Australia, enclosing an amended submission and material requested by the Committee
- 13 July 2010 – From Mr Mark Harris, LTCSA participant, providing additional information.

3.2.2 Publication of answers to questions on notice

Resolved, on the motion of Mr Clarke: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice and additional questions received from:

- Spinal Cord Injuries Australia
- Motor Accidents Authority
- Insurance Council of Australia
- Westmead Brain Injury Rehabilitation Service
- Law Society of NSW.

3.3 ***

3.4 ***

4. ***

5. Adjournment

The Committee adjourned at 4.05 pm until Thursday 12 August 2010, at 10.45 am.

Rachel Callinan

Clerk to the Committee

Minutes No 50

Friday 13 August 2010

Video conference

Waratah Room, Parliament House, Sydney at 11.25 am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

Ms Hale

2. Apologies

Mr Ajaka

Ms Voltz

3. ***

4. Deliberative - 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC**Publication of answers to questions on notice**

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice and additional questions received from:

- Lifetime Care and Support Authority of NSW (12 August 2010).

5. Adjournment

The Committee adjourned at 12.40 pm *sine die*.

Cathryn Cummins

Clerk to the Committee

Minutes No 51**Monday 20 September 2010**

Room 1102, Parliament House, Sydney at 10.00 am

1. Members present

Ms Robertson (*Chair*)
 Mr Clarke (*Deputy Chair*)
 Mr Ajaka
 Mr Donnelly
 Mr Shoebridge
 Ms Voltz

2. *****3. *******4. Minutes**

Resolved, on the motion of Mr Donnelly: That Draft Minutes No. 46, 48, 49 and 50 be confirmed.

5. 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC**5.1 Publication of answers to questions on notice and correspondence**

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of:

- Answers to questions on notice provided by the LTCSA on 17 June 2010.
- Email from Ms Amy Mai to Senior Council Officer, 16 September 2010 providing a breakdown of LTCSA participants' care and support expenses to 30 June 2010.

6. *****7. *******8. Adjournment**

The Committee adjourned at 10.50am until Monday 25 October 2010 at 9.30am, Room 1102.

Rachel Callinan

Clerk to the Committee**Draft Minutes No 54**

Monday 8 November 2010

Room 1102, Parliament House, Sydney, at 2.00 pm

1. Members present

Ms Robertson (*Chair*)
 Mr Ajaka
 Mr Donnelly
 Ms Voltz

2. Minutes

Resolved, on the motion of Ms Voltz: That Draft Minutes No 53 be confirmed.

3. 10th Review of the MAA and the MAC and 3rd Review of the LTCSA and the LTCSAC

3.1 Submission

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submission No 19.

3.2 Chair's draft report

The Chair's tabled her draft report entitled Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – Third Report, which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Ms Voltz: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Ajaka: That Chapter 2 be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Donnelly: That Recommendation 1 be adopted.

Resolved, on the motion of Ms Voltz: That Chapter 3 be adopted.

Chapter 4 read.

Resolved, on the motion of Mr Ajaka: That Recommendation 2 be adopted.

Resolved, on the motion of Mr Donnelly: That Recommendation 3 be adopted.

Resolved, on the motion of Ms Voltz: That Recommendation 4 be adopted.

Resolved, on the motion of Mr Ajaka: That Recommendation 5 be adopted.

Resolved, on the motion of Mr Donnelly: That Chapter 4 be adopted.

Chapter 5 read.

Resolved, on the motion of Ms Voltz: That Recommendation 6 be adopted.

Resolved, on the motion of Mr Ajaka: That Recommendation 7 be adopted.

Resolved, on the motion of Mr Donnelly: That Recommendation 8 be adopted.

Resolved, on the motion of Ms Voltz: That Recommendation 9 be adopted.

Resolved, on the motion of Mr Ajaka: That Chapter 5 be adopted.

Chapter 6 read.

Resolved, on the motion of Mr Donnelly: That Recommendation 10 be adopted.

Resolved, on the motion of Ms Voltz: That Recommendation 11 be adopted.

Resolved, on the motion of Mr Ajaka: That Recommendation 12 be adopted.

Resolved, on the motion of Mr Donnelly: That Chapter 6 be adopted.

Resolved, on the motion of Ms Voltz: That the draft report be the report of the Committee and presented to the House according to Standing Order 226(1).

Resolved, on the motion of Mr Ajaka: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry, except for documents kept confidential by resolution of the Committee.

Resolved on the motion of Mr Donnelly: That the Committee Secretariat corrects any typographical and grammatical errors prior to tabling.

The Chair advised that the Chair's Foreword and the media release announcing the tabling of the Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council – Third Report would be circulated to the Committee via email.

3. Adjournment

The Committee adjourned at 2.15 pm until 9.30 am on Monday 22 November 2010 in Room 1102.

Rachel Callinan
Clerk to the Committee