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STANDING COMMITTEE ON LAW AND JUSTICE

2018 review of the Lifetime Care and Support Scheme

Report 70

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2018 review of the Lifetime Care and Support Scheme

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Table of contents

	Terms of reference	v
	Committee details	vi
	Chair’s foreword	vii
	Recommendations	viii
	Conduct of inquiry	ix
Chapter 1	Overview	1
	Oversight role of the committee	1
	Overview of the Lifetime Care and Support Scheme	1
	icare	2
	SIRA	3
	Scheme performance	3
	Participants	3
	Customer satisfaction	4
	Complaints	5
	Disputes	5
	Recent initiatives	6
	Committee comment	7
Chapter 2	Progress on recommendations from the 2016 review	9
	2016 Recommendation 1: Reporting on the transfer of claimants from the insurance system into new CTP Care Program	9
	2016 Recommendation 2: Promoting greater self-management of care	10
	2016 Recommendation 3: Enhancing understanding of the scheme in regional and cross border hospitals	11
	2016 Recommendation 4: Insurer obligations to provide information for decisions about eligibility	12
	2016 Recommendation 5: Limiting repeated disputes about decisions	13
	Committee comment	13
Chapter 3	Issues arising during the inquiry	15
	Maintaining service standards in the context of the NDIS	15

	Committee comment	17
	icare's fee structure	17
	Committee comment	18
	Preparations for the CTP Care Program	19
	Role of icare and SIRA	19
	How the program will work	19
	Projected participants	20
	Funding	20
	Implementation	21
	Avoiding cost shifting	22
	Committee comment	22
	Improving customer experience	22
	Proposal to enable claims against road authorities as a means of improving road surfaces	24
	Committee comment	25
Appendix 1	Submissions	27
Appendix 2	Witnesses	28
Appendix 3	Minutes	29

Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.

2. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have the authority to investigate a particular compensation claim, and
 - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.¹

¹ *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

Committee details

Committee members

The Hon Natalie Ward MLC	Liberal Party	<i>Chair</i>
The Hon Lynda Voltz MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon David Clarke MLC	Liberal Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Daniel Mookhey MLC	Australian Labor Party	
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Chair's foreword

Evidence received in this 2018 review of the Lifetime Care and Support (LTCS) Scheme indicates that the scheme is functioning effectively under the management of Insurance and Care NSW (icare), and in the context of the State Insurance Regulatory Authority's (SIRA's) regulation of the Compulsory Third Party (CTP) insurance system. This is reflected in the high rates of customer satisfaction and low rates of dispute in Lifetime Care services, as well as the wide range of icare's recent initiatives focused on improving participant experience and outcomes.

The effective performance of the scheme is also reflected in icare and SIRA's progress in implementing recommendations of the committee's 2016 review, as well as the limited range of issues raised in the submissions and hearings for this review.

The committee's one recommendation to the NSW Government is that while the implementation of the National Disability Insurance Scheme occurs, icare must ensure that it continues to maintain its high standards in respect of care providers, given the inherently higher levels of disability among LTCS Scheme participants.

On behalf of the committee I sincerely thank all those who participated in the inquiry, via written submissions and public hearings. I thank my committee colleagues for their collaborative approach to the review. I also acknowledge the support provided by the secretariat staff, Stephanie Galbraith, Samuel Griffith, Merrin Thompson and Janina Moaga.

I commend the report to the Parliament.



The Hon Natalie Ward MLC
Committee Chair

Recommendations

Recommendation 1

17

That while implementation of the National Disability Insurance Scheme occurs, icare must ensure that it continues to maintain its high standards in respect of care providers, given the inherently higher levels of disability among Lifetime Care and Support Scheme participants.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 3 submissions.

The committee held one public hearing at Parliament House in Sydney.

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

Chapter 1 Overview

This chapter provides an overview of the Motor Accidents (Lifetime Care and Support) Scheme (the LTCS Scheme), including the role of this committee in oversight of the scheme. It also explains the roles of Insurance and Care NSW (icare) and the State Insurance Regulatory Authority (SIRA) in the administration of the scheme.

Oversight role of the committee

- 1.1 In accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the operations of the LTCS Scheme are required to be supervised by a committee of the Legislative Council.²
- 1.2 The Standing Committee on Law and Justice has been designated as the committee to undertake this oversight role, and is required to report to the Legislative Council about the scheme at least once every two years. The committee is also required to supervise the operation of the other insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, including the Compulsory Third Party (CTP) Scheme, the Workers Compensation Scheme and the Workers Compensation (Dust Diseases) Scheme.³
- 1.3 The committee's 2016 review of the LTCS Scheme was published in August 2017.⁴ This 2018 review was conducted concurrently with a review of the Workers Compensation (Dust Diseases) Scheme, with that report published separately in February 2019.
- 1.4 Information on the committee's previous reviews, including reports and government responses, is available on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Overview of the Lifetime Care and Support Scheme

- 1.5 The LTCS Scheme provides lifelong treatment, rehabilitation and personalised care services to people severely injured in a motor vehicle accident in New South Wales, regardless of who was at fault.⁵ Injuries can include traumatic brain injury, spinal cord injury, amputation, severe burns and blindness. The scheme commenced operation on 1 October 2006 for children and 1 October 2007 for adults.⁶
- 1.6 The LTCS Scheme pays for the expenses of scheme participants in respect of their assessed treatment and care needs arising from a motor vehicle accident injury, and which are reasonable and necessary in the circumstances.⁷ These services include hospital and medical treatment

² *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

³ *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

⁴ Standing Committee on Law and Justice, NSW Legislative Council, *First review of the Lifetime Care and Support Scheme* (2017).

⁵ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 61.

⁶ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council, First Report* (2008), p xi.

⁷ *Motor Accidents (Lifetime Care and Support) Act 2006*, s 11A.

(including pharmaceuticals); rehabilitation; ambulance and other transport; respite care and attendant care services; aids, appliances and prostheses; education and vocational training, and modifications to a person's home, transport, workplace and education facility.⁸

- 1.7** Initially, adult participants enter the scheme on an interim basis for a period of up to two years, because of the possibility of recovery and ongoing improvement in the injured person's condition. If their ongoing eligibility for the scheme is established, the person is accepted as a lifetime participant. Children are not assessed for lifetime participation before the age of five years.⁹ On average, 180 interim participants enter the scheme each year and 120 continue as lifetime participants.¹⁰
- 1.8** The scheme is funded through the Medical Care and Injury Services Levy paid by NSW motorists when they purchase CTP insurance. Funds collected in a year fund the lifetime cost of participants injured in that year, such that the scheme is fully funded to meet its future liabilities.¹¹

icare

- 1.9** icare is a public financial corporation governed by an independent board of directors and was established in 2015 under the *State Insurance and Care Governance Act 2015* to consolidate the state's insurance and care schemes. icare administers the LTCS Scheme on behalf of the LTCS Authority, known as Lifetime Care.
- 1.10** icare also provides insurance and care services to participants in a number of schemes, providing services on behalf of the relevant authorities, as follows:
- the Dust Diseases Care Scheme, for the Workers Compensation (Dust Diseases) Authority (known as Dust Diseases Care) – providing treatment and compensation for injured workers with a dust disease
 - the NSW Workers Compensation Scheme, for the Workers Compensation Nominal Insurer (known as Workers Insurance) – providing workers insurance cover to 284,000 employers and 3.4 million employees
 - the NSW Self Insurance Corporation (known as Insurance for NSW) – providing self insurance to NSW Government agencies through the Treasury Managed Fund and other managed funds
 - the Home Building Compensation Fund (known as HBCF) – protecting homeowners from incomplete or defective residential building work and where a builder becomes insolvent, dies, or disappears
 - the Building Insurers' Guarantee Fund, for the Building Insurers Guarantee Corporation (known as BIG Corp), established as a rescue package for consumers of residential builders affected by the 2001 collapse of HIH and FAI insurance

⁸ *Motor Accidents (Lifetime Care and Support) Act 2006*, s 5A; Submission 3, icare, p 1.

⁹ icare, *Lifetime Care: The Lifetime Care and Support Guidelines 2018*, p 13.

¹⁰ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 61.

¹¹ Submission 3, icare, p 1.

- the Sporting Injuries Compensation Authority (known as Sporting Injuries Insurance) – providing no-fault cover to sporting groups under the NSW Sporting Injuries Insurance Scheme.¹²

1.11 In accordance with the *State Insurance and Care Governance Act 2015*, icare's other functions include monitoring the performance of the insurance and compensation schemes.¹³

SIRA

1.12 The State Insurance Regulatory Authority, known as SIRA, is the state's independent insurance regulator. Like icare, SIRA was established under the *State Insurance and Care Governance Act 2015* which separated insurer and regulatory functions.

1.13 SIRA regulates motor accidents CTP insurance, workers compensation insurance and related activities, and home building compensation. It administers legislation and regulations and holds insurers accountable for compliance with conduct, claims management, premium, prudential, and other requirements. It also provides certain independent dispute resolution services, and administers specific regulatory obligations of employers, vehicle owners and service providers in the statutory schemes including the LTCS Scheme.¹⁴

1.14 Section 8(3) of the *Motor Accidents (Lifetime Care and Support) Act 2006* provides that SIRA may direct the licensed CTP insurer for a person's CTP claim to make an application for the person to become a participant in the LTCS Scheme, and the insurer must comply with such a direction.¹⁵

Scheme performance

1.15 In this section the report considers the performance of the LTCS Scheme, including participant numbers and injury types, customer satisfaction, complaints and disputes.

Participants

1.16 According the icare annual report, LTCS participant numbers continue to increase in line with projections. As of October 2018 there were 1,345 participants, of whom 289 were interim participants, and 1056 lifetime participants,¹⁶ as set out in Table 1 below. This represents an increase of 98 participants on the previous year.¹⁷

¹² icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), pp 9, 70, 72; icare, *Our story*, <https://www.icare.nsw.gov.au/about-us/our-story/#>.

¹³ *State Insurance and Care Governance Act 2015*, s 10.

¹⁴ Submission 2, State Insurance Regulatory Authority, pp 3-4.

¹⁵ *Motor Accidents (Lifetime Care and Support Act) 2006*, s 8.

¹⁶ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 61.

¹⁷ icare, *Insurance and Care NSW: Annual Report 2016-17*, (2017), p 68.

Table 1 Participant numbers by injury type, October 2018¹⁸

Participant numbers by injury type				
Lifetime Care and Support Scheme	Brain	Spinal	Other	Total
Interim	244	40	5	289
Lifetime	773	253	30	1056
Total	1017	293	35	1345

Customer satisfaction

- 1.17** icare measures customer satisfaction via a yearly participant survey and ongoing collection of net promoter scores (NPS)¹⁹, whereby, after each interaction, customers are invited to rate the quality of their experience. According to icare, both indicate high levels of customer satisfaction, which remain consistent across the scheme.
- 1.18** Lifetime Care achieved a participant satisfaction rate of 90 per cent in both its 2017 and 2016 surveys, with the 2018 survey in progress at the time icare provided its submission to this review.²⁰ The NPS results have indicated a progressive increase in customer satisfaction over the year, as reflected in Table 2 below.

Table 2 Net promoter score 2017-18: customer feedback on quality of interactions with icare staff and experience of icare services²¹

Month	Lifetime Care
July 2017	37.7
August 2017	45.9
September 2017	49.0
October 2017	51.2
November 2017	45.2
December 2017	38.5
January 2018	38.5
February 2018	48.6
March 2018	51.9
April 2018	51.7

¹⁸ icare, *Insurance and Care NSW: Annual Report 2017-18*, 2018, p 61.

¹⁹ The Net Promoter Score is an index ranging from -100 to 100 that measures the willingness of customers to recommend icare's projects or services to others. See icare, *Insurance and Care NSW: Annual Report 2017-18*, 2018, p 32.

²⁰ Submission 3, icare, p 5.

²¹ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 33.

Month	Lifetime Care
May 2018	53.7
June 2018	57.4

Complaints

- 1.19** icare collects data on the complaints it receives, most of which relate to individual claims or scheme policies, with complaints defined as 'any expression of dissatisfaction from an external source made to or about icare related to our products, services, staff or the handling of a complaint, where a response or resolution is expected or legally required'.²²
- 1.20** During 2017-18 there was a 20 per cent reduction in the number of frontline (level 1) complaints received (194 in 2017-18 compared to 245 in 2016-17) in respect of the LTCS Scheme. There was also a 13 per cent reduction in the number of escalated (level 2) complaints (20 in 2017-18 compared to 23 in 2016-17). Most complaints received were from participants and related to the level of service received from icare and service providers, and to funding decisions. Frontline complaints were open for an average of two business days, while escalated complaints were open for an average of 22 business days.²³

Disputes

- 1.21** Disputes arising in respect of LTCS decisions relate to treatment and care needs, eligibility and motor accident injury. In 2017-18 Lifetime Care made more than 16,500 funding decisions and received 17 disputes (less than 0.1 per cent of the total) about treatment and care needs, seven less disputes than in the previous year. These took an average of 46 business days to resolve.
- 1.22** In the same year it made more than 220 eligibility decisions and received seven disputes (2 per cent of the total, three more than the total in the previous year, taking an average of 150 business days to resolve. No dispute applications about motor accident injury were received.²⁴
- 1.23** The outcomes for eligibility and treatment and care needs disputes for 2017-18 are set out in Table 3.

²² icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 123.

²³ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), pp 124.

²⁴ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 124.

Table 3 Outcomes of disputes 2017-18²⁵

Outcomes of eligibility disputes		Outcomes of treatment and care needs disputes	
Decision upheld	2	Decision upheld	8
Decision overturned	3	Decision overturned	3
Withdrawn	1	Decision varied	3
In progress	1	Withdrawn	1
Total	7	In progress	2
		Total	17

Recent initiatives

1.24 The icare submission outlined a number of icare's initiatives in respect of the LTCS Scheme since the previous review, which are summarised below. icare has:

- developed a Safeguarding Framework to effectively manage risk and ensure the safety of participants and workers, aimed at keeping participants and workers safe in their home environment, strengthening existing safeguards and supports, and maximising independence through a range of initiatives to promote choice and control
- developed a Restrictive Practice Authorisation Policy to ensure the protection and promotion of participants' human rights
- implemented a Service Provider Quality Assurance Framework taking a risk based approach for relationships with different service provider groups
- commenced a review of the service delivery model for Lifetime Care and the Dust Diseases Care Schemes (see paragraph 3.40)
- completed a review of the LTCS Guidelines to
 - reflect changes to the scheme to make it more flexible and person centred, including the development and review of participant planning processes (My Plan)
 - reflect scheme experience
 - ensure the guidelines remain effective
- published a plain English version of the guidelines called 'companions', for participants, families and others
- established the Empowered Living Program, aimed at promoting participants' and workers' awareness of and access to new-to-market assistive technology solutions to enable greater independence and enhance quality of life
- established a partnership with the NSW Agency for Clinical Innovation to pilot a vocational program to support people with a brain injury to return to work

²⁵ icare, *Insurance and Care NSW: Annual Report 2017-18*, (2018), p 124.

- reviewed and released the third edition of the guidelines on the support needs of adults with spinal cord injuries
- collaborated with disability organisations to develop new peer support programs and expand existing programs
- established three psychiatry fellowships in brain injury for advanced trainees, in partnership with the University of Sydney's Brain Mind Centre, the Royal Australian and New Zealand College of Psychiatry and the Northern Sydney Local Health District, with the ultimate aim of providing better treatment and access to specialist interventions for people with brain injury and their families
- hosted workshops with community members in Dubbo and Tamworth exploring possible solutions to connect people with disabilities in remote locations with their community via transport.²⁶

1.25 Other initiatives since the previous review aimed at improving icare's delivery of customer focused services include:

- the introduction of a customer liaison function and risk based decision making framework, resulting in quicker low risk decisions (see paragraph 3.41)
- recruitment of specialist home modifications staff to provide additional oversight of complex home modifications
- review of the My Plan individualised planning tool, which helps participants to plan for the things they want to do and achieve
- appointment of a new integrated panel of approved attendant care providers for use in Lifetime Care, Dust Diseases Care and the Workers Care Program, with a greater number of providers on the panel.²⁷

Committee comment

1.26 The Lifetime Care and Support Scheme is functioning effectively under the management of icare and in the context of SIRA's regulation of the CTP insurance system. This is reflected in the high rates of customer satisfaction and low rates of disputes about Lifetime Care's services, as well as the wide range of icare's recent initiatives focused on improving participant experience and outcomes.

1.27 The effective performance of the scheme is also reflected in icare and SIRA's progress on the recommendations from the committee's 2016 review (discussed in chapter 2) and the limited range of issues raised in the submissions and hearing for this review (chapter 3).

²⁶ Submission 3, icare, pp 1-4.

²⁷ Submission 3, icare, p 5.

Chapter 2 Progress on recommendations from the 2016 review

This chapter documents actions taken by Insurance and Care NSW (icare) and the State Insurance Regulatory Authority (SIRA) in respect of the recommendations outlined in the committee's 2016 review of the Lifetime Care and Support Scheme (LTCS Scheme).

2016 Recommendation 1: Reporting on the transfer of claimants from the insurance system into new CTP Care Program

That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should:

- a) assess claims management by insurers prior to transfer;
- b) publish all results of mismanagement by insurers; and
- c) publish the quantum recovered by insurers.

- 2.1** The *Motor Accidents Insurance Act 2017* established a new function for icare that will provide treatment and care for compulsory third party (CTP) claimants who have long term needs beyond five years as a result of a motor accident. While most eligible participants will transition to icare at the five year point, some can be transferred earlier, by agreement with their CTP insurer.²⁸ This new function is known as the CTP Care Program. While icare manages the operation of the program, SIRA, as the regulator, has overall responsibility for implementation and for the reporting recommended by the committee.²⁹
- 2.2** The government supported the recommendation in principle, which was aimed at preventing mismanagement of claimants while they are in the insurance system, and thus also cost shifting into the new program. The *Motor Accidents Injuries Act 2017* (MIA Act) gave SIRA powers to publish information about licensed insurers, including about their compliance with the Act.³⁰
- 2.3** In November 2018 SIRA and icare noted that they are working together closely to plan for the transition of participants into the new scheme and to ensure that insurers facilitate a smooth transition for each injured person.³¹ SIRA is taking a lead role in mapping customer experience, subsystem changes for both agencies, and monitoring, reporting and compliance actions with insurers.³²

²⁸ Submission 3, icare, p 2.

²⁹ Submission 3, icare, p 7; Submission 2, State Insurance Regulatory Authority, p 7.

³⁰ Correspondence from Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, to the Clerk of the Parliaments, providing government response to the first review of the Lifetime Care and Support Scheme, 27 February 2018, p 1.

³¹ Submission 2, State Insurance Regulatory Authority, p 7; Submission 3, icare, p 2.

³² Submission 2, State Insurance Regulatory Authority, p 7.

- 2.4** SIRA committed to publishing information on transfer arrangements to ensure a smooth transition for the injured person in its annual reports, commencing in its 2017-18 report,³³ which stated:

SIRA and the Lifetime Care and Support Scheme (LTCS) have established a steering committee which ensures people severely injured in a motor accident in NSW are transferred efficiently, easily and in an informed way to the LTCS.

The steering committee will oversee the implementation of guidelines, reporting and monitoring frameworks to oversee the transition by insurers to ensure customer and maximum health outcomes are achieved by participants.³⁴

- 2.5** Ms Carmel Donnelly, Chief Executive of SIRA, advised the committee that, 'We have had very little to report so far but we will do so; so that will be transparent.'³⁵

- 2.6** Preparations for the commencement of CTP Care are further examined in the following chapter.

2016 Recommendation 2: Promoting greater self-management of care

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.

- 2.7** The government supported this recommendation, with a commitment to promoting greater self-management and providing participants with a range of options for how their treatment and care needs can be met. The government response also noted that in addition to expanding and promoting self-management models, icare is enhancing its digital systems to enable participants to access their plans and information about approved services online, as well as order items of equipment. Furthermore, icare will continue to promote initiatives to improve participant access to low-cost items such as equipment, and will expand its pre-approval equipment program to include repairs and maintenance.³⁶
- 2.8** In November 2018 icare advised that self-management has been an option for LTCS participants since December 2016, and that ongoing support is provided to those who are interested in self-managing any or all of their supports through a direct funding arrangement. icare reported that, as expected, growth in the numbers of participants choosing to self-manage is slow but steady. As at 30 June 2018, 32 participants were managing some or all of their supports, and Lifetime Care has been working with another 43 participants who have expressed

³³ Submission 2, State Insurance Regulatory Authority, p 7.

³⁴ State Insurance Regulatory Authority, *State Insurance Regulatory Authority: Annual Report 2017-18*, (2018), p 40.

³⁵ Evidence, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 25 January 2018, p 74.

³⁶ Government response to the first review of the Lifetime Care and Support Scheme, 27 February 2018, p 1.

an interest in managing their own supports to help them decide whether this is a path they want to pursue. To date, participants have chosen to manage a range of supports including their attendant care, cleaning, gardening, equipment maintenance, repairs and replacement, physiotherapy, massage and continence supplies.³⁷

- 2.9** icare is now promoting self-management through feature stories in the participant magazine, *Shine*; and has recently developed a video, “Managing your own supports: Greg’s story”, available on the icare website on a page dedicated to informing participants about self-management. icare anticipates that ordering of equipment, repairs and maintenance will be available in early 2019.³⁸

2016 Recommendation 3: Enhancing understanding of the scheme in regional and cross border hospitals

That the Lifetime Care and Support Authority work with regional hospitals and cross border hospitals to facilitate a better understanding of the Lifetime Care and Support Scheme and its application to those patients who have been catastrophically injured in a motor vehicle accident.

- 2.10** The government supported this recommendation, underscoring a commitment to ensuring that anyone severely injured in a motor accident does not miss out on applying to the scheme due to a lack of information. To this end:

icare will continue to liaise with regional and interstate trauma hospitals about its application processes, and will continue to offer training about the Lifetime Care and Support Scheme. icare has also strengthened its relationships with brain injury rehabilitation units in regional NSW who may receive referrals from regional and interstate trauma hospitals. This is to ensure that the regional brain injury rehabilitation units are also able to identify potential participants and provide information and assistance about the application process.³⁹

- 2.11** icare subsequently advised that it had implemented a number of initiatives to enhance knowledge of the scheme in regional and cross border hospitals. It has:
- developed a suite of free e-learning courses about the LTCS Scheme, available on the icare website, which provides an overview and introduction to the scheme including eligibility and application processes, with other courses covering attendant care, case management and planning (My Plan) and other aspects of the scheme
 - delivered training to major trauma hospitals and brain injury rehabilitation units in the Hunter region
 - completed a roadshow across metropolitan and regional New South Wales with workshops on the changes to its planning process My Plan

³⁷ Submission 3, icare, p 7.

³⁸ Submission 3, icare, p 8.

³⁹ Government response to the first review of the Lifetime Care and Support Scheme, 27 February 2018, pp 1-2.

- worked with the NSW Health Agency for Clinical Innovation to strengthen relationships with brain injury units in hospitals, including those in regional areas.⁴⁰

2016 Recommendation 4: Insurer obligations to provide information for decisions about eligibility

That the NSW Government consider providing icare with legislative power to compel insurers to provide the information it needs to make decisions regarding scheme eligibility and treatment and care needs.

- 2.12** The government supported this recommendation in principle, welcoming any change that supports prompt and accurate decisions about eligibility and reduces delays that might cause distress to injured persons and their families. It noted that the MIA Act currently provides SIRA with the ability to make guidelines in relation to matters required by the Act. The guidelines explain the regulation of CTP insurance premiums and set SIRA's expectations of insurers when fulfilling their obligations.⁴¹
- 2.13** SIRA subsequently advised that it has revised and published two sets of guidelines addressing this recommendation, the effectiveness of which it will continue to monitor:
- the statutory Lifetime Care and Support Guidelines, which now require that the CTP insurer cooperate with the LTCS Authority where appropriate, to ensure that the injured person's treatment, rehabilitation and care are not unduly impacted by providing medical information to the Authority as soon as possible when requested
 - the Motor Accident Guidelines relating to claimants under the MIA Act who are also LTCS participants, which now require that insurers provide information to icare, including prior to potential adverse decisions being made.⁴²
- 2.14** In addition, icare reported that during 2018 it met with both SIRA and CTP insurers to clarify roles and responsibilities when a CTP claimant becomes a Lifetime Care participant and to ensure ongoing and effective communication between the parties. icare noted that it will continue to liaise with CTP insurers, in collaboration with SIRA, to monitor this communication and further facilitate timely and efficient applications to Lifetime Care as needed.⁴³

⁴⁰ Submission 3, icare, p 8.

⁴¹ Government response to the first review of the Lifetime Care and Support Scheme, 27 February 2018, p 2.

⁴² Submission 2, State Insurance Regulatory Authority, p 8.

⁴³ Submission 3, icare, p 9.

2016 Recommendation 5: Limiting repeated disputes about decisions

That the NSW Government put a legislative limitation on the number of times that a party can seek to dispute a decision by the Lifetime Care and Support Authority to not accept an injured person into the scheme.

- 2.15** The government supported this recommendation in principle, pending further review, noting that icare will consult with key stakeholders about options not involving legislative change:

Any initiative restricting a party's ability to dispute an eligibility decision would require stakeholder consultation and legislative change. icare will explore the issue of protracted disputes about eligibility with SIRA, legal stakeholders, CTP insurers and the Lifetime Care Participant Reference Group, to examine how these issues could be addressed within the current legislative framework.⁴⁴

- 2.16** icare consulted with its stakeholders on this issue in August and November 2018.⁴⁵ Ms Suzanne Lulham, General Manager, Care Innovation and Excellence, Care and Community, icare, subsequently advised that, 'there did not seem to be a big push to do anything in that area', with perhaps only one application for eligibility returning repeatedly each year.⁴⁶ SIRA representatives confirmed that this number accorded with their understanding of the issue.⁴⁷

Committee comment

- 2.17** Progress has been made by icare and SIRA in addressing the recommendations of the committee's 2016 review of the Lifetime Care and Support Scheme.

⁴⁴ Government response to the first review of the Lifetime Care and Support Scheme, 27 February 2018, p 2.

⁴⁵ Submission 3, icare, p 9.

⁴⁶ Evidence, Ms Suzanne Lulham, General Manager, Care Innovation and Excellence, Care and Community, icare, 25 January 2016, p 62.

⁴⁷ Evidence, Ms Donnelly, 25 January 2019, p 75.

Chapter 3 Issues arising during the inquiry

This chapter examines the key issues identified during the committee's 2018 review: maintaining the Lifetime Care and Support (LTCS) Scheme's high service standards in the context of the National Disability Insurance Scheme (NDIS); ensuring parity of fees between those schemes; preparations for the new CTP Care Program to commence in 2020; and improving customer experience. It also considers a proposal to enable claims against road authorities as a means of improving road surfaces.

Maintaining service standards in the context of the NDIS

- 3.1** The committee explored with icare its systems for maintaining high standards of care among LTCS Scheme care providers, in the context of the significant increase in demand for workers that is accompanying the commencement of the NDIS.
- 3.2** Ms Suzanne Lulham, General Manager, Care Innovation and Excellence, Care and Community, icare, advised the committee that attendant care providers must comply with the Australian Community Industry Standard (ACIS), a service quality framework with a half yearly reporting requirement, in order to be eligible for the LTCS Scheme's panel of providers. As ACIS is a very broad standard designed to encompass the full range of care user needs, providers must also meet additional requirements under their contract with icare with respect to matters such as reporting and auditing.⁴⁸
- 3.3** icare initiated the ACIS standard several years ago and it has subsequently become the basis for the NDIS quality framework. icare has continued with the ACIS standard because the national standard did not exist when icare entered into its contracts with providers. Ms Lulham indicated that anecdotal feedback from attendant care providers is that the ACIS standard 'is perhaps a little bit higher' than that for the NDIS.⁴⁹
- 3.4** Nevertheless, Ms Lulham confirmed that icare will soon implement an auditing program to address some things that it considers 'are not quite picked up in the ACIS standard', such as in respect of staff training and the specific competencies of attendant care workers. For example, icare has developed competencies in respect of the delivery of services to people with brain injury, given that three quarters of LTCS clients are in that group and because their needs are, by definition of their eligibility for the Scheme, very high. The audit will include how these are being implemented.⁵⁰
- 3.5** Ms Lulham reported that icare intends, when it next reviews its contracts, in mid 2020, to decide how it should align with the NDIS quality framework (noting that the intention would simply concern alignment, not enforcement, as it would not be the role of the relevant NDIS agency to enforce standards in respect of LTCS Scheme). She assured the committee that if icare were to align with the national standard, it would continue to require additional standards to protect the needs of its participants:

⁴⁸ Evidence, Ms Suzanne Lulham, General Manager, Care, Innovation and Excellence, Care and Community, icare, 25 January 2019, p 55; Telephone conversation between Ms Lulman and inquiry manager, 5 February 2019.

⁴⁹ Evidence, Ms Lulham, 25 January 2019, pp 55-56.

⁵⁰ Evidence, Ms Lulham, 25 January 2019, p 55.

We may [adopt the national standard] but if we did do that, and it is a really big if at this stage ... we would then do specific competencies around brain injury, spinal cord injury and palliative care.⁵¹

3.6 Ms Lulham further advised that icare's contracts with providers require compliance with fair wage and other relevant policies, even where providers outsource to contractors.⁵² icare later provided more detail on its contract requirements:

- The contract itself requires that the provider pay staff under the relevant award and all conditions of same.
- Providers may only accept referrals and work where they can source and provide workers suitably trained to meet the needs of the individual icare participant service category, that is, physical assistance, high clinical needs, or cognitive and behavioural support.
- The contract stipulates that subcontracted work has the same expectations and the responsibility sits with the panel provider to ensure these expectations are met.
- In recognition of the complex needs of Lifetime Care participants, icare will pay for training of support workers specific to the participant, based on his or her assessed needs.⁵³

3.7 icare also identified the following additional requirements:

- The tender application/procurement process to establish the current panel of approved attendant care providers specifically required an outline of the support structures in place for attendant care workers and information on the induction and recruitment requirements for staff.
- All programs funded by icare must also have a care coordinator to oversee the program and to support staff as well as communication with icare.⁵⁴

3.8 As to how compliance with wages and conditions requirements might be enforced throughout a contract chain, Ms Lulham indicated that this may be included in icare's audits when they commence.⁵⁵ icare later provided further information on its intentions with regard to quality assurance auditing of contracted providers:

Most quality organisational and service factors are reviewed under the ACIS certification process and annual surveillance audit. However, icare considers there is scope to gain further assurance through a governance program that could include site visits to examine specific services to individual participants (e.g. confirmation of delivery and attendance at training paid for by icare and confirmation of payment against appropriate awards conditions). icare would apply this to a sample of the panel providers over time without duplicating on the ACIS certification process, which is already very thorough. The overall annual governance and audit program would adopt a risk-based approach to these visits, guided by standard sampling methodology.⁵⁶

⁵¹ Evidence, Ms Lulham, 25 January 2016, p 56.

⁵² Evidence, Ms Lulham, 25 January 2019, p 57.

⁵³ Answers to questions on notice, icare, received 7 February 2019, p 2.

⁵⁴ Answers to questions on notice, icare, p 2.

⁵⁵ Evidence, Ms Lulham, 25 January 2019, p 57.

⁵⁶ Answers to questions on notice, icare, p 2

- 3.9** In respect of the potential issue of loss of staff among icare providers to the NDIS sector because of the former group's higher level of skills, Ms Lulham indicated that icare is monitoring this carefully and anticipates some effect, but has not yet noticed significant pressure. She further noted 'anecdotal feedback from the attendant care providers that it is not that they cannot get the workers, but they have to spend a lot more time training them up; they are not coming in [as] skilled as they might have in the past.'⁵⁷

Committee comment

- 3.10** icare must ensure that it continues to maintain its high standards of care among LTCS Scheme care providers, both generally and in the context of the significant increase in demand for workers accompanying the commencement of the NDIS. The committee welcomes icare's intention to maintain additional requirements in respect of brain injury, spinal cord injury and palliative care, should it move to align with the NDIS standards.

Recommendation 1

That while implementation of the National Disability Insurance Scheme occurs, icare must ensure that it continues to maintain its high standards in respect of care providers, given the inherently higher levels of disability among Lifetime Care and Support Scheme participants.

icare's fee structure

- 3.11** Ms Lyn Franco, Chief Executive Officer of the Australian Community Industry Alliance (ACIA, formerly the Attendant Care Industry Association), the peak body for disability and aged care service providers, told the committee that care providers report a positive working relationship with senior managers in icare, and that the accreditation system is working well. Providers appreciate icare's work to integrate its different services, including the integration of the Dust Diseases and LTCS Schemes that is still progressing. Providers also welcome the re-establishment of case management within icare, which is enabling better communication between providers, participants and icare.⁵⁸
- 3.12** Ms Franco reported concerns on the part of some care providers about icare's fee structure, arising from the fact that many providers claim from both the LTCS scheme and the NDIS. She noted that a lack of parity has arisen with the introduction of a new NDIS fee structure from 1 February 2019, which appears to have increased the fees paid for some complex NDIS services by around 5.6 per cent. In addition, Ms Franco advised that the two different fee structures causes confusion, which she suggested could be addressed by additional communication on the part of icare.⁵⁹
- 3.13** Ms Lulham responded, explaining that up until recently icare and NDIS fees were 'fairly close together' although the NDIS fees were higher in some areas and icare funded things that the

⁵⁷ Evidence, Ms Lulham, 25 January 2019, p 57.

⁵⁸ Evidence, Ms Lyn Franco, Chief Executive Officer, Australian Community Industry Alliance, 25 January 2019, pp 4 and 6.

⁵⁹ Evidence, Ms Franco, 25 January 2019, pp 4-5.

NDIS did not.⁶⁰ She acknowledged that the February increase in NDIS rates will reduce parity, but advised that icare will review its fees in July 2019, and in the meantime will examine the differences and identify strategies to ensure that the LTCS Scheme retains its providers.⁶¹ Following the hearing, icare confirmed that, "To date, icare's panel providers have not reported any effect on their ability to source suitable people to be employed as support workers."⁶²

3.14 Separately, icare advised that it has been monitoring any upward pressure on fees and is feeding this information into its estimation of levies for the scheme.⁶³

3.15 Ms Lulham also reported that having recognised low take up of the LTCS Scheme's substantial fee loading to recompense providers for their work in respect of participants with complex needs, icare has proactively educated providers about the availability of the loading, and correspondingly, has seen greater take up.⁶⁴

3.16 Following the hearing, the ACIA advised that the growing concerns about fee parity among care providers are actually causing some to consider the viability of 'certain markets', and further underlined 'gaps in understanding' among providers about fees:

There is a growing concern that the capacity of a skilled workforce will not be able to meet the demands of a growing home and community market across both disability and aged care services. We are aware that providers are reviewing the viability of certain markets and making decisions on future service provision in those markets based on comparisons of the hourly rate provided in the fee schedules of Lifetime Care and Support and NDIS Attendant Care Services without perhaps taking into consideration other available service payments such as Support Coordination and Certification renewal payments. In addition, there are gaps in understanding by providers of entitlements for claiming payments for participants.⁶⁵

3.17 On this basis, the ACIA recommended an 'independent inquiry' into the payment schedule for attendant care services prior to the annual review scheduled for mid 2019 'to provide increased transparency and comparisons with other funded programs in the disability services sector.'⁶⁶

Committee comment

3.18 On the evidence provided it appears that icare is aware of and addressing issues that some care providers perceive in respect of parity between icare and NDIS fees. It is important that icare's fees maintain equivalence with those of the NDIS. The committee welcomes icare's review of its fee structure to occur in July 2019, as well as the work it will do in the meantime to examine the fee differences and identify strategies to ensure that Lifetime Care retains its providers. The committee also welcomes icare's efforts to proactively inform providers about the fees for which

⁶⁰ Evidence, Ms Lulham, 25 January 2019, p 59.

⁶¹ Evidence, Ms Lulham, 25 January 2019, p 59.

⁶² Answers to questions on notice, icare, p 1.

⁶³ Answers to pre-hearing questions on notice, icare, received 15 January 2019, p 6.

⁶⁴ Evidence, Ms Lulham, 25 January 2019, p 59.

⁶⁵ Answers to questions on notice, Australian Community Industry Alliance, received 7 February 2019, p 2.

⁶⁶ Answers to questions on notice, Australian Community Industry Alliance, p 2.

they may be eligible. icare is encouraged to continue this work, so that the fee system is as clear and user friendly to providers as possible.

Preparations for the CTP Care Program

3.19 As noted in the previous chapter, the *Motor Accidents Insurance Act 2017* (MIA Act) established a new function for icare that will provide treatment and care for CTP claimants who have long term needs beyond five years as a result of a motor accident, but who are not catastrophically injured and are not participants in the LTCS Scheme. Funded via the Motor Accident Injuries Treatment and Care Benefits Fund (MAITCB Fund), this is referred to as the CTP Care Program.⁶⁷ Under the program participants will receive rehabilitation and injury management support on an ongoing basis throughout their lifetime, providing them with greater certainty than if they remained in the insurance system.⁶⁸ The program is expected to commence in 2020.⁶⁹

Role of icare and SIRA

3.20 The LTCS Authority, as the 'relevant insurer', acts as insurer to manage and pay for the injured person's statutory benefits for treatment and care. On behalf of the LTCS Authority, icare manages the program's operation.

3.21 As the regulator, SIRA has overall responsibility for implementing the new program, for monitoring and compliance actions, for implementation of guidelines, and for reporting.⁷⁰

How the program will work

3.22 CTP Care participants will not become participants in the LTCS Scheme itself. Rather, participants will enter icare's new service model under CTP Care, which has attributes of the Lifetime Care operating model that will be tailored to meet their specific needs.

3.23 For injured people who are not mostly at fault and do not have soft tissue or minor psychological injuries, reasonable medical and attendant care costs will be payable for life, if needed.

3.24 Insurers will be responsible for claimant medical and care costs for up to five years, and the LTCS Authority will be responsible for those costs after five years. While most eligible participants will transition to icare at the five year point, some can be transferred earlier, if the authority is satisfied that the injured person's needs are likely to exceed five years and the person is not eligible for the LTCS Scheme. If such a transfer is required, the LTCS Authority will enter into an agreement with the CTP insurer to assume responsibility.⁷¹

⁶⁷ Submission 3, icare, p 2; Answers to pre-hearing questions on notice, SIRA, received 14 January 2019, p 1.

⁶⁸ Answers to pre-hearing questions on notice, SIRA, p 1.

⁶⁹ Answers to pre-hearing questions on notice, SIRA, p 2.

⁷⁰ Submission 3, icare, p 2; Answers to pre-hearing questions on notice, SIRA, p 2.

⁷¹ Submission 3, icare, p 2; Answers to pre-hearing questions on notice, SIRA, pp 1-2.

Projected participants

- 3.25** icare advised that as of January 2019, its projections are that around 450 people a year will receive treatment and care beyond five years. However, this is a point in time estimate of active cases. The number may be higher due to people who only require one-off or intermittent support, and is expected to change over time in line with movements in the number of vehicle registrations.⁷²
- 3.26** Ms Lulham advised that icare anticipates that although technically some participants could enter the CTP Care Program in December 2019, at the very earliest, participants will enter in March 2020. These would be interim participants in the LTCS Scheme whose brain injury has recovered but who have significant orthopaedic injuries, who will be proactively moved into the new program at the appropriate time. Ms Lulham stated, 'March next year ... is the deadline we are working towards.'⁷³

Funding

- 3.27** The CTP Care Program is to be funded via a levy paid by motorists alongside their CTP insurance premium. Each year icare will inform SIRA of the aggregate amount of levy to be contributed to the MAITCB Fund, and these amounts are expected to change annually. icare expects the first year cost of the program to be approximately \$58 million:

icare expects the fully funded present value of future treatment and care costs, claims management costs, case management costs, and operating expenses paid from the Motor Accidents Injury Treatment and Care Benefits Fund (MAITCB Fund) to be approximately \$58 million for persons injured over the period 1 December 2017 to 30 November 2018.⁷⁴

- 3.28** The committee asked how insurers' liabilities are to be costed, for example, whether the amount paid by insurers will be determined by a formula set out in guidelines or via negotiation, or both. Mr John Nagle, Chief Executive of icare, stated that as of January 2019, this was under discussion:

That is part of the discussions. This is very much based on our understanding of the injuries and the cost. We will have to get the data to be able to understand that. We are using that information to set the overall costs. Knowing the insurance industry, I am sure there will be an element of negotiation.⁷⁵

- 3.29** icare representatives explained that insurer liabilities will only apply where an individual transfers prior to the five year mark. If it is at the five year point, the cost is already accounted for in the levy and the reduction in the CTP premium associated with it.⁷⁶ Asked whether it was preferable

⁷² Answers to pre-hearing questions on notice, icare, p 4.

⁷³ Evidence, Ms Lulham, 25 April 2019, p 62; See also evidence, Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, SIRA, 25 January 2019, pp 72-73.

⁷⁴ Answers to pre-hearing questions on notice, icare, p 4.

⁷⁵ Evidence, Mr John Nagle, Chief Executive, icare, 25 January 2019, p 62.

⁷⁶ Evidence, Dr Nick Allsop, Acting Chief Financial Officer, icare, 25 January 2018, p 63.

for clients expected to transfer into the program to be transferred sooner rather than later, Ms Lulham confirmed that icare 'would prefer that.'⁷⁷

3.30 In response to a question about the adequacy of the estimated \$58 million, Dr Nick Allsop, Acting Chief Financial Officer, icare, verified this figure but noted that the estimation was made in the absence of data, such that a significant degree of uncertainty is attached to it. Dr Allsop explained that under the old CTP system claims were resolved prior to five years with lump sum settlements, so no one actually received treatment and care beyond five years. In the absence of records of those who would have reached the threshold and participated beyond it, icare has had to use information from the Australian Capital Territory and New Zealand. If additional funds are necessary, future levies can change.⁷⁸

Implementation

3.31 icare and SIRA representatives both emphasised that they are actively working together towards the expected start up date of March 2020.⁷⁹ Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, SIRA, noted that the work program to establish CTP Care has a number of objectives:

- quick and easy transition for participants from the insurers into the program
- easy access and information for all parties
- maximising social and health outcomes
- ensuring sustainability in terms of payments.⁸⁰

3.32 Ms Maini identified a number of streams of work to date, focusing on:

- customer experience
- data and reporting
- the future operating model
- implementation.⁸¹

3.33 Ms Maini further noted that SIRA is developing guidelines according to clear milestones, and confirmed that potential cohorts of participants have been identified.⁸²

3.34 Mr Nagle told the committee that from icare's perspective, one of the challenges to accompany the advent of CTP Care is the 'cultural change' that participants will experience, moving out of

⁷⁷ Evidence, Ms Lulham, 25 January 2019, p 63.

⁷⁸ Evidence, Dr Allsop, 25 January 2019, p 63.

⁷⁹ Evidence, Mr Nagle and Ms Lulham, 25 January 2019, p 62; Evidence, Ms Maini, 25 January 2019, p 72.

⁸⁰ Evidence, Ms Maini, 25 January 2019, p 72.

⁸¹ Evidence, Ms Maini, 25 January 2019, p 72.

⁸² Evidence, Ms Maini, 25 January 2019, pp 72-73.

the adversarial insurance industry and into a system that is designed to support them. He assured the committee that icare is mindful of that shift.⁸³

Avoiding cost shifting

- 3.35** In its 2016 review the committee, via its first recommendation, sought to address the potential issue of cost shifting by insurers into the CTP Care Program (see paragraphs 2.1 to 2.6). In the current review the committee asked icare representatives about their efforts to scrutinise the treatment participants receive in the CTP insurance system before they transfer into CTP Care, so as to avoid cost shifting on the part of insurers. Ms Lulham advised that while this issue was not yet solved, icare and SIRA were 'very cognisant' of the potential for cost shifting, and were working together to determine the framework and guidelines needed to prevent it.⁸⁴
- 3.36** Similarly, SIRA representatives emphasised that they were actively working to 'ensure that insurers meet their obligations to drive really early recoveries', including by 'putting reporting frameworks in place to make sure that [insurer action inconsistent with early rapid recovery of injured people] does not happen.'⁸⁵ Specifically, Ms Maini told the committee of a provision in the guidelines to this end:

We also have in the guidelines a provision that allows for if a claim transfers over and there has been—I would not describe it as mismanagement—a delay in actively managing that claim, Lifetime Care can recover as well.⁸⁶

- 3.37** As noted in the previous chapter, Ms Carmel Donnelly, Chief Executive of SIRA, assured the committee that while SIRA has very little to report on in relation to the program to date, it is committed to fulfilling the committee's recommendation that the SIRA annual reports include details on a transfer strategy (see paragraph 2.5).⁸⁷

Committee comment

- 3.38** On the evidence received, it would appear that both icare and SIRA are planning appropriately for the commencement of the CTP Care Program in early 2020 with suitable transparency and accountability as envisaged in the 2016 recommendation.

Improving customer experience

- 3.39** The committee asked icare representatives about icare's recent improvements to the customer experience of the LTCS Scheme. Mr Nagle emphasised that icare is actively focused on customer engagement and improving customer experience:

⁸³ Evidence, Mr Nagle, 25 January 2019, p 51.

⁸⁴ Evidence, Ms Lulham, 25 January 2019, p 62.

⁸⁵ Evidence, Ms Maini, 25 January 2019, pp 73-74; See also evidence, Ms Carmel Donnelly, Chief Executive, SIRA, 25 January 2019, p 73.

⁸⁶ Evidence, Ms Maini, 25 January 2019, p 74.

⁸⁷ Evidence, Ms Donnelly, 25 January 2019, p 74.

The creation of icare has really allowed us to scale all of our expertise and I suppose buying power, in many respects, to apply our best ability to improve customer experience. So everything we do we actually measure as we go. We engage with our customer. We engage in customer design. We ask them what the pain points are. We then talk them through what we see as solutions. We then implement those solutions and then track their responses. But in many cases what we have been able to do is move away from just concentrating purely on process, which is what the old organisations used to do to really focus on the customer and what is the right outcome for that customer. By doing that we have managed to use our existing staff, our existing [subject matter experts] who have the knowledge and understanding of the issues, and just empower them to make faster decisions.⁸⁸

3.40 icare confirmed that it has started work on a new service delivery model across several schemes including Lifetime Care:

The new service delivery model recognises that individual experiences can vary depending on the attributes of the individual customer, overlays impacting on their overall status and well-being, and triggers that pop up suddenly influencing their immediate circumstances and journey of living with their injury.

For Lifetime Care, this work is reflective of the growth and maturation of the Scheme, with increasing number of participants who have been living with their injury for more than five years. By 2023, the number of Lifetime Care and Workers Care participants will grow by 50 per cent and the cohort of participants over 55 years will double in size.

Revision of the service delivery model is also in preparation for the new cohort of CTP claimants with ongoing needs. These customers will have less severe injuries and support requirements compared to current Lifetime Care participants, requiring a new service approach.

Implementation of the proposed model will be staged, commencing with participants whose needs have stabilised. icare is engaging with staff and stakeholders throughout the process of transition, including case managers and service providers.⁸⁹

3.41 icare further noted that it has continued to improve its person centred service delivery through the introduction of a customer liaison function and new risk based decision making framework supporting frontline staff to make principle based decisions faster and more consistently, resulting in 80 per cent of low risk service requests now being made within one day.⁹⁰

3.42 Mr Chris Koutoulas, icare's Interim Group Executive, Care and Community, explained that customer service officers 'have an integral role to play from the commencement of the [participant's] whole interaction with icare', with their role being to help navigate the system and the application process. He stated that icare's work on faster decision making has focused on two areas: eligibility and access to the scheme itself; and access to actual care and support services.⁹¹

⁸⁸ Evidence, Mr Nagle, 25 January 2019, p 60.

⁸⁹ Submission 3, icare, pp 2-3.

⁹⁰ Submission 3, icare, p 5.

⁹¹ Evidence, Mr Chris Koutoulas, Interim Group Executive, Care and Community, icare, p 60.

- 3.43** Mr Nagle noted that icare has also been working across all its schemes to address natural language, with most of its key forms and information available in eight community languages. It is also working with SBS Radio with a view to including translated information on podcasts and so on.⁹²

Proposal to enable claims against road authorities as a means of improving road surfaces

- 3.44** The Motorcycle Council of NSW (MCC) offered a proposal intended to improve road surfaces around the state and thereby reduce accidents among motorcycle riders. According to the MCC, 21 per cent of motorcycle single vehicle crashes involve some form of road surface hazard, such as potholes and loose surfaces.⁹³

- 3.45** The MCC noted that all Australian road authorities (both state authorities and local councils) have signed up to the Safe System approach to road safety, which requires them to provide infrastructure preventing fatal or serious injury.⁹⁴ Thus it suggested that road authorities should have adequate maintenance programs in place to identify and repair areas with gravel and pothole hazards. Correspondingly, the MCC proposed that in the event of a crash where the road authority has not met its Safe System obligations, the road authority should be liable for the cost to the LTCS Scheme:

When a motorcycle crashes as the result of a road surface hazard, the road authority concerned has failed in their commitment to provide a Safe System. The Road Authority should therefore reimburse the LTCS Scheme the cost of providing the rider with life time care and support.⁹⁵

- 3.46** Mr Brian Wood, Secretary of the MCC, proposed that 'hitting them in the hip pocket' would encourage road authorities to fulfill their Safe System responsibilities, referring to a case under the CTP scheme to illustrate how the system might work:

I am aware of a crash where the Roads and Maritime Services [RMS] took responsibility. This occurred in the driveway of a service centre on the M1. While the claim was being handled through the CTP scheme, the RMS were to reimburse the CTP scheme.

So the costs in this case were borne by the RMS, not by CTP policies ... I see no reason why it could not be applied in other similar cases, not only with CTP but also for LTCS. I would like to urge that the Committee encourage the LTCS authority to pursue those costs where there is another road authority that has responsibility for the crash.⁹⁶

- 3.47** Mr Wood submitted that road authorities should not be able to 'hide behind the Civil Liability Act' and say that they were not aware of a hazard, because as asset managers, they should be aware of the conditions of their roads. Mr Wood submitted that the RMS, being responsible for 20 per cent of the state's roads, has road inspectors, while local councils, responsible for the

⁹² Evidence, Mr Nagle, 25 January 2018, p 60.

⁹³ Submission 1, Motorcycle Council of NSW, p 3.

⁹⁴ Submission 1, Motorcycle Council of NSW, p 3.

⁹⁵ Submission 1, Motorcycle Council of NSW, p 3.

⁹⁶ Evidence, Mr Brian Wood, Secretary, Motorcycle Council of NSW, 25 January 2019, p 10.

other 80 per cent, have many different employees using roads in their work roles, who should be looking for defects and reporting them, on the basis that safety is the responsibility of all employees in many organisations.⁹⁷

- 3.48** Asked to respond to the MCC's proposal, icare raised reservations about both its premise and utility:

Lifetime Care is a no-fault scheme and does not explore the circumstances of the accident. The small amount that could be recovered from third parties such as local council, does not warrant the investigation of motor accidents and launching recovery proceedings against third parties. The legal and investigation costs are likely to minimise any amount the scheme would recover.⁹⁸

Committee comment

- 3.49** The committee notes the frustration expressed by the Motorcycle Council of NSW that road authorities are not meeting their obligations under the Safe System approach to road safety. The committee understands the logic that behavioural change on the part of road authorities could be achieved by them bearing the financial costs of inaction.
- 3.50** However, the committee is concerned about a number of implications arising from the proposal. First, the proposal fundamentally diverges from the LTCS Scheme's no fault principle, and its concomitant avoidance of litigation, which itself carries high financial costs. The scheme originated to replace the complex, adversarial and time consuming system that often worked against injured people's interests, with a cooperative system that effectively works on a supply chain basis and in which the needs of the injured person are front and centre.
- 3.51** In addition, the committee is concerned that many councils simply lack the funds for road maintenance, and that the legal liability envisaged in the proposal may well be overly punitive, with the perverse effect of adding to those costs and further diminishing councils' ability to meet their road safety obligations.
- 3.52** For each of these reasons the committee does not support the proposal.

⁹⁷ Evidence, Mr Wood, 25 January 2018, pp 10-11.

⁹⁸ Answers to questions on notice, icare, p 2.

Appendix 1 Submissions

No.	Author
1	Motorcycle Council of NSW
2	State Insurance Regulatory Authority
3	icare

Appendix 2 Witnesses

Date	Name	Position and Organisation
Friday 25 January 2019		
Macquarie Room	Ms Lyn Franco	Chief Executive Officer, Australian Community Industry Alliance
Parliament House, Sydney	Mr Brian Wood	Secretary, Motorcycle Council of NSW Inc
	Mr John Nagle	Chief Executive Officer and Managing Director, icare
	Dr Nick Allsop	Interim Group Executive, Organisational Performance/Chief Finance Officer, icare
	Mr Chris Koutoulas	Interim Group Executive, Care and Community, icare
	Ms Suzanne Lulham	General Manager, Care, Innovation and Excellence, Care and Community, icare
	Ms Carmel Donnelly	Chief Executive, State Insurance Regulatory Authority (SIRA)
	Mr Darren Parker	Acting Executive Director Workers Compensation and Home Building Regulation, SIRA
	Ms Mary Maini	Executive Director Motor Accidents Insurance Regulation, SIRA
	Dr Petrina Casey	Director Health Strategy, SIRA

Appendix 3 Minutes

Minutes no. 29

23 August 2018

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney, 9.02 am

1. Members present

Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos 27 and 28 be confirmed.

3. ***

4. 2018 review of the Dust Diseases and Lifetime Care and Support Schemes

4.1 Inquiry timeline

Resolved, on the motion of Ms Voltz: That the committee adopt the following timeline:

- submission closing date of 4 November 2018
- a hearing be scheduled in early December 2018, subject to the secretariat canvassing member availability.

Resolved, on the motion of Mr Shoebridge: That government witnesses be provided with pre-hearing questions on notice and be requested to provide a general update on the progress of matters since the government response was tabled for the last review.

5. ***

6. ***

7. ***

8. Adjournment

The committee adjourned at 5.05 pm.

Tina Higgins

Clerk to the Committee

Minutes no. 38

Friday 25 January 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.51 am

1. Members present

Mrs Ward, *Chair*
Ms Voltz, *Deputy Chair*
Mr Clarke
Mr Mookhey
Mr Khan
Mr Shoebridge (from 8.55 am)

2. Previous minutes

Resolved, on the motion of Mr Khan: That minutes no. 37 be confirmed

3. Correspondence

The committee noted the following items of correspondence:

Received

- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, letter providing additional documents for the reviews of the CTP and workers compensation schemes
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing NSW Motor Accidents CTP scheme – Draft interim scheme performance report from December 2017 to June 2018 for the review of the CTP scheme
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing the Claims administration manual for the review of the CTP scheme
- 19 November 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing Draft workers compensation guidelines for the review of the workers compensation scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, letter providing additional documents for the review of the CTP scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, providing the Review of the NSW CTP Green Slip Scheme under the Motor Accident Injuries Act 2017 report for the review of the CTP scheme
- 10 December 2018 – Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Committee Chair, providing Peer review of advice provided by Ernst & Young on a review of experience for the NSW CTP Green Slip Scheme for the review of the CTP scheme
- 9 January 2019 – Ms Dahbo Wheeler, Executive Assistant, Australian Medical Association, to secretariat, email declining invitation to appear at public hearing on 25 January 2019 for the review of the Dust Diseases Scheme
- 15 January 2019 – Mr Tony Jones, Policy & Advocacy Manager, Spinal Cord Injuries Australia to secretariat, email declining invitation to appear at public hearing on 25 January 2019 for the review of the Lifetime Care and Support Scheme.

Resolved, on the motion of Mr Khan: That the committee keep the correspondence from Ms Carmel Donnelly dated 19 November 2018 confidential.

4. Report deliberative dates

The committee noted the following report deliberative dates:

- Workers Compensation and CTP schemes – Wednesday 6 February 2019
- Lifetime Care and Support and Dust Diseases schemes – Thursday 21 February 2019.

5. 2018 review of the Lifetime Care and Support Scheme**5.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: 1 to 3.

5.2 Answers to pre-hearing questions

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

- answers to pre-hearing questions by SIRA, received from Ms Carmel Donnelly, Chief Executive, 14 January 2019
- answers to pre-hearing questions by icare, received from Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk and Governance, 15 January 2019.

6. ***

7. 2018 reviews of the Lifetime Care and Support Scheme and Dust Diseases Scheme

7.1 Answers to questions and supplementary questions

Resolved, on the motion of Mr Khan:

- That, following the receipt of the transcript, members have 24 hours to submit supplementary questions to the secretariat
- That witnesses return answers to questions on notice and supplementary questions by Thursday 7 February 2019.

7.2 Public hearing

Witnesses, the public and the media were admitted.

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

The following witness was sworn and examined:

- Ms Lynn Franco, Chief Executive Officer, Australian Community Industry Alliance.

The evidence concluded and the witness withdrew.

7.2 The following witness was sworn and examined:

- Mr Brian Wood, Secretary, Motorcycle Council of NSW Inc.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Natasha Flores, Industrial Officer, WH&S and Workers Compensation, Unions NSW
- Mr Mark Morey, Secretary, Unions NSW
- Mr Ben Kruse, Legal Industries Officer, CFMMEU

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Joanne Wade, Practice Group Leaders, Slater and Gordon representing the Australian Lawyers Alliance
- Mr Gerard McMahon, Partner, Turner Freeman Lawyers, representing the Australian Lawyers Alliance

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Rod Smith, Awareness and Support Co-ordinator, Bernie Banton Foundation

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- A/Professor Deborah Yates, Staff Specialist, St. Vincent's Hospital, representing the Thoracic Society of Australia and New Zealand

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John Nagle, CEO and Managing Director, icare
- Dr Nick Allsop, Interim Group Executive, Organisations Performance/ CFO, icare
- Mr Chris Koutoulas, Interim Group Executive, Care and Community, icare
- Ms Suzanne Lulham, General Manager, Care, Innovation and Excellence, Care and Community, icare

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, SIRA
- Mr Darren Parker, Acting Executive Director Workers Compensation and Home Building Regulation, SIRA
- Ms Mary Maini, Executive Director Motor Accidents Insurance Regulation, SIRA
- Dr Petrina Casey, Director Health Strategy, SIRA.

Dr Casey tendered the following documents:

- 'SIRA Consultations on the feasibility of the national dust disease collection system',
- 'CTP Care, Program Plan December 2018'.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

7.3 Tendered documents

Resolved on the motion of Ms Voltz: That the committee accept and publish the following document tendered during the public hearing:

- 'SIRA Consultations on the feasibility of the national dust disease collection system', tendered by Dr Petrina Casey
- 'CTP Care, Program Plan December 2018', tendered by Dr Petrina Casey.

8. ***

9. ***

10. Adjournment

The committee adjourned at 4.30 pm, until 9.30 am, Wednesday 6 February 2019, Macquarie Room, Parliament House (CTP and Workers Compensation report deliberative).

Samuel Griffith
Committee Clerk

Minutes no. 39

Wednesday 6 February 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 1.35 pm

1. Members present

Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

2. Apologies

Mr Shoebridge

3. Previous minutes

Resolved, on the motion of Mr Clarke: That the draft minutes no. 38 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the dust diseases scheme
- 5 February 2019 – Email and proposed amendments to the Chair's draft report for the 2018 review of the Workers compensation scheme, as provided to the secretariat by Mr Shoebridge.

Sent

- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the dust diseases scheme.

Resolved, on the motion of Mr Clarke: That the committee keep the following items of correspondence confidential:

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the dust diseases scheme
- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the dust diseases scheme.

Resolved, on the motion of Mr Mookhey: That the secretariat, on behalf of the committee, write to confidential submission author no. 2 concerning their correspondence.

5. ***

6. ***

7. ***

8. Next meeting

The committee adjourned at 2.16 pm, until Thursday 21 February 2019 (report deliberative for Lifetime Care and Dust Diseases reviews).

Tina Higgins

Clerk to the Committee

Draft minutes no. 40

Thursday 21 February 2019

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney at 1.37pm

1. Members present

Mrs Ward, *Chair*

Mr Amato (substituting for Mr Clarke)

Mr Khan

Mr Mookhey
Mr Shoebridge

2. Apologies

Mr Clarke
Ms Voltz

3. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 39 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 4 February 2019 – Ms Lyn Franco, Chief Executive, Australian Community Industry Alliance, seeking corrections and clarifications to her transcript of evidence from 25 January 2019 for the review of the Lifetime Care and Support Scheme
- 5 February 2019 – Letter from Mr Rod Smith, Bernie Banton Foundation, providing transcript corrections to his evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- 7 February 2019 – Email from Mr Gerard McMahon, representing the Australian Lawyers Alliance, providing transcript corrections to his evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- 11 February 2019 – Email from Ms Jacky Dawkins, Thoracic Society of Australia and New Zealand providing transcript corrections to Associate Professor Deborah Yates' evidence from 25 January 2019 for the review of the Dust Diseases Scheme
- ***
- 21 February 2019 – Letter from the Hon Natasha MacLaren-Jones, Government Whip, advising that the Hon Lou Amato MLC will substitute for the Hon David Clarke MLC at the meeting on 21 February 2019.

Sent

- 11 February 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Amato: That the committee keep the following item of correspondence confidential, at the suggestion of the secretariat:

- 11 February 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the Dust Diseases Scheme.
- ***

5. 2018 review of the Lifetime Care and Support Scheme

5.1 Answers to questions on notice and supplementary questions

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

- Ms Lyn Franco, Chief Executive Officer, Australian Community Industry Alliance, received 6 February 2019
- Mr Brian Wood, Secretary, Motorcycle Council of NSW, received 1 February 2019
- Ms Clemency Morony, Head of Ministerial and Parliamentary Support Risk, icare, received 7 February 2019
- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, received 7 February 2019.

5.2 Consideration of Chair's draft report

The Chair submitted her draft report entitled *2018 review of the Lifetime Care and Support Scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Mookhey: That the first sentence of paragraph 3.10 be amended by omitting 'On the evidence provided, icare is taking an active and comprehensive approach to ensure it maintains' and inserting instead, 'icare must ensure that it continues to maintain its'.

Resolved, on the motion of Mr Mookhey: That Recommendation 1 be amended by omitting after 'icare', 'should continue to ensure that its high standards in respect of care providers are maintained' and inserting instead, 'must ensure that it continues to maintain its high standards in respect of care providers'.

Resolved, on the motion of Mr Khan: That all references to 'CTP Care Scheme' be amended to 'CTP Care Program'.

Resolved, on the motion of Mr Khan: That:

- the draft report as amended be the report of the committee and that the committee present the report to the House;
- the transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- the report be tabled on 26 February 2019.

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8. Adjournment

The committee adjourned at 2.20 pm, *Sine die*.

Stephanie Galbraith
Committee Clerk

