

28 June 2017

The Hon Shayne Mallard MLC  
Committee Chair  
Legislative Council Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
**SYDNEY NSW 2000**

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**RE: FIRST REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME**

Suncorp thanks the Law and Justice Committee for the opportunity of giving evidence on Friday 2 June 2017 in respect to the Lifetime Care and Support Scheme (LTCS scheme). We now provide responses to questions taken on notice at hearing. We respond to the questions in the order they appear in the transcript of hearing, plus the supplementary question.

**The LTCS scheme eligibility process – page 28 of the transcript**

In our evidence, we indicated that the LTCS scheme eligibility process works well for most claims. However, it is our experience that certain claims are at risk of not being captured by the process, resulting in delayed responses to the necessary early intervention to ensure recovery is maximised.

Typically these claims include multiple injuries, including mild to moderate head injury and a myriad of other unusual circumstances, where the treatment is provided in regional areas. These regional areas often lack full facilities offered by metropolitan hospitals.

It is our observation that whilst a head injury is recorded, the injured person may be discharged into the community, without engaging the Lifetime Care and Support Authority (LTCSA), even though the person may be eligible as a scheme participant. It is only when we contact the injured person, sometime later when a claim form is lodged, that we discover the person is not managing his/her post discharge medical appointments and treatment.

By this time, crucial time is lost in properly assessing and providing suitable services for brain damage, particularly if it is mild to moderate brain damage. This is compounded by the difficulties insurers may experience in obtaining relevant medical records from the regional facilities, which take time. The delay is often further complicated when the injured person is legally represented.

Suncorp is unable to provide statistics on the number of cases that fall through the eligibility process. However, our best estimate is that it represents about five to ten percent of cases. In any event, the number is small in context of the overall scheme.

In the effort to continually improve the customer experience, we believe ongoing education is required at hospital facilities including (but not limited to) John Hunter, Lismore, Wollongong, Wyong, and cross border hospitals to ensure appropriate support pathways are established with the LTCSA before discharge from hospital.

To illustrate the types of cases that may not be captured by the eligibility process, we provide four de-identified examples.

- *Example One*

A mid-aged adult injured as a result of a motor vehicle accident was transferred to hospital. No family members were known during the hospital stay and it appears the person had other complex medical issues that were pre-existing.

The person passed a post traumatic amnesia test at discharge, although we question whether an appropriate assessment could be made as to whether this person would cope on discharge in the absence of a family history of pre-accident functionality.

We became aware of this case three months after the accident when the CTP claim form was received. We had difficulties contacting this person due to this person's complex social needs. Despite our best efforts and a subsequent non motor vehicle accident, we were not able to have the person assessed for LTCS services. Sadly, the person died two years post accident.

- *Example Two*

A young adult suffered multiple injuries after a high speed motor vehicle accident and was transferred to hospital. This person had an eight day post traumatic amnesia period surpassing the seven day eligibility threshold for LTCS services. The person also had other symptoms suggestive of brain damage.

However, the person was discharged with an ongoing referral to a brain injury unit but the LTCSA was not engaged prior to discharge. We first became aware of this claim when a CTP claim form was lodged 18 days post hospital discharge.

At this time, despite our best efforts, the person and family resisted LTCS services, despite the fact the person would almost certainly have been eligible. The fact that the LTCSA was not engaged prior to discharge, combined with conflicting advice about LTCS services (possibly from the injured person's legal adviser) together with the young person not wanting to complicate his/her life, added unnecessary complications to the situation.

This person ultimately struggled with employment and relationships. Approximately ten months post accident the person's functional testing based on functional independence measure (FIM) numbers meant an application to the LTCS scheme did not proceed. If the LTCS services were involved earlier, it might have eased the struggles of this person earlier. Although this person's condition did ultimately improve, it is possible that their condition could have plateaued or deteriorated and the failure to engage the LTCSA early could have had significant negative consequences.

- *Example Three*

An elderly person who was living independently prior to the motor vehicle accident was transferred to hospital initially and then to a nursing home after the accident. In hospital it was clear this person had moderate to severe head injury. LTCS services were not considered during the hospital stay allegedly because of the person's age, despite the fact the person would be eligible.

The family ultimately took the person out of the nursing home to care for him/her at home but needed significant assistance. Initially, we had difficulties obtaining a medical certificate from the hospital and the family received legal advice not to co-operate with the LTCSA. This person was eventually accepted as an interim participant, six months post accident after considerable unnecessary stress.

- *Example Four*

A young adult suffered major injuries including severe brain injury from a motor vehicle accident where the person was considered to be at fault. The person was transferred from a NSW hospital to a cross border hospital and discharged without engaging the LTCSA.

We arranged a FIM assessment four months post accident. The person was accepted as an interim participant five months post accident and ultimately accepted as a lifetime participant. We believe it was obvious this person would be eligible as a LTCS participant prior to the transfer to the cross border hospital.

### **The appeal process for eligibility decisions – page 32 of the transcript**

Currently, the LTCSA will make a decision as to whether an injured person is eligible for LTCS services, either as an interim or lifetime participant. If this decision is disputed, either the injured person, their representative such as a family member or a solicitor or an insurer may lodge a eligibility dispute.

The eligibility dispute must be lodged within six months of receiving the certificate of the decision. The eligibility dispute will then proceed to an Assessment Panel (the Panel), made up of medical and health professionals with extensive experience of working with people with severe injuries. The decision of the Panel is legally binding.

A review of the Panel's decision is possible only in certain circumstances, such as if

- there is a change in the injured person's condition, which occurred or first became apparent after the dispute was referred to the Panel and potentially has a material effect on the determination;
- there is additional relevant information about the injured person's injury not reasonably available before the dispute was referred to the Panel and potentially has a material effect on the determination;
- the decision is not made in accordance with the LTCSA Guidelines; and/or
- the decision is demonstrably incorrect in a material respect.

The injured person, the LTCSA and an insurer may lodge a review within six months of receiving the Panel's decision. The application, submissions and all documentation are referred to the Medical Assessment Reviews Manager (MARM) of Insurance and Care NSW (iCare). MARM then determines if a review of the Panel's decision should proceed and if so, the matter is considered by the Review Panel, made up approved assessors who have not been involved in the original assessment.

There is a third level of appeal available by way of Administrative Review by the Supreme Court.

Suncorp contends it is entirely appropriate that insurers be involved in the first two levels of the eligibility dispute, particularly in circumstances where the injured person's condition has materially changed or information was not readily available before the original assessment. Insurers are intimately involved in providing CTP services to injured persons. Accordingly, insurers are in a unique position to assess whether the injured person is likely to require LTCS services.

In respect to an appeal to the Supreme Court, it is not an appeal avenue Suncorp takes lightly and we are not aware that this appeal avenue has been pursued by Suncorp. We understand other insurers have taken this appeal route.

## What is efficacious about reducing the two-year interim period down? – page 33 of the transcript

Suncorp is of the view that liability of the LTCSA should be extended from the date of the eligibility decision to the date of accident. The benefits of extending liability are to –

- ensure all potential LTCS participants are captured, particularly those with mild to moderate brain damage;
- remove any potential financial incentives to delay treatment and/or rehabilitation until the eligibility decision is made; and
- divert essential services early after the accident to maximise recovery earlier.

An alternative approach has also been suggested. That is to extend the LTCSA's liability to the date of application as a scheme participant. This is certainly an excellent first step to take. However, for completeness, Suncorp's position is that from a policy perspective –

- the Medical Care and Injury Services (MCIS) levy is applied to CTP premiums to fund the LTCS scheme services;
- the LTCS scheme is based on a recovery model with a focus on early intervention;
- these funds should be applied from the date of accident, where they would have the most impact on maximising recovery;
- it may potentially better streamline the Department of Health's recovery processes for the cost of hospital and other services; and
- it better aligns with the policy of CTP insurers' liability when liability is accepted for the claim<sup>1</sup> and for workers compensation recoveries.<sup>2</sup>

To be accepted as an interim participant, the criteria for injury needs to be satisfied. In respect to traumatic brain injury, the criteria is specific.<sup>3</sup> Eligibility as a lifetime participant requires the same specific criteria for brain injury to be satisfied, as assessed by medical experts.

The timing of the lifetime assessment should coincide with the accepted medical experts' opinion that traumatic brain injuries stabilise two years following an accident (as opposed to the date of the eligibility decision). As you may be aware, with brain injury a significant improvement or deterioration may occur without any logical reason or cause.

If the LTCSA determines that a person meets the criteria for participation in the scheme two years after the accident, the reality is, that person's brain injury has stabilised and will remain stable into future. Theoretically, if that same person were to be assessed a further two years down the track, their assessment should be similar.

However, we have seen circumstances where a person fails to meet the brain injury criteria two years post accident but subsequently legal representatives lodge a common law claim asserting a level of disability suggesting the person would be eligible as a lifetime participant. This raises the question as to whether the eligibility decision has been based on incomplete information. Clearly, this anomaly will dissipate from December 2017 under the new CTP scheme when common law claims for care and support are provided on an ongoing basis (no lump sums).

<sup>1</sup> *Motor Accidents Compensation Act 1999* - Sections 81 & 83

<sup>2</sup> *Workers Compensation Act 1987* – Section 151Z

<sup>3</sup> Lifetime Care & Support Authority – Lifetime Care and Support Guidelines -

[https://www.lifetimecare.nsw.gov.au/\\_data/assets/pdf\\_file/0020/45029/LTCS-Guidelines-December-2014.pdf](https://www.lifetimecare.nsw.gov.au/_data/assets/pdf_file/0020/45029/LTCS-Guidelines-December-2014.pdf)

## How are the costs of ambulance, hospital and other services under the current scheme? – pages 33/34 of the transcript

In the hypothetical situation where a person suffers catastrophic injuries from a motor vehicle accident; is taken by ambulance to the nearest hospital, spends four weeks in intensive care, and two months in hospital rehabilitation before being discharged, the cost of these services is currently met by a component of the MCIS that is applied to the CTP premium. Other components of the MCIS levy fund the LTCS and State Insurance Regulatory Authority (SIRA) operations.

The component of the MCIS levy that goes to payment of hospital and other services is subject to a bulk billing agreements with NSW Health. The practicalities of the bulk billing arrangements are complex.

The NSW Health policy directive states bulk billing arrangements apply to all LTCS patient services<sup>4</sup> and all motor vehicle patients.<sup>5</sup> It further states -

*'NSW Ministry of Health administers charging under the bulk billing arrangements from hospital /facility activity data recorded and conveyed via the Health Information Exchange (HIE) and disseminates this revenue to LHDs as appropriate. Hospitals / facilities / Local Health Districts (LHD) should ensure that LTCS activity is accurately identified and coded to ensure that appropriate charging occurs.'*

Clearly, LHD will not accurately identify and code service costs, if the LTCSA is not engaged prior to discharge.

## Supplementary question - The Australian Lawyers Alliance noted in their submission that some participants refuse to accept their injury and any assistance. What is your experience of this and what role does the insurer have in supporting these people and encouraging their participation in the scheme?

We repeat comments made in our original submission that: -

- participation into the LTCS scheme is not mandatory;
- an insurer can refer a claimant to the scheme; and
- the SIRA may direct an insurer to make an application on behalf of a claimant, without consent of the claimant.<sup>6</sup>

In our lodged submission, Suncorp indicated there were instances where injured people have declined to participate in the application process. In most cases, the LTCSA co-ordinator has been able to contact the injured person directly and advised them of their entitlements with the end result they do apply to participate.

However, there remains the odd occasion where contact has been problematic and/or the injured person continues to decline to be involved with the LTCS scheme. In our experience, it is where injured persons have legal representation that we have the greatest challenge. Arguably, these challenges will diminish when the new CTP scheme restricts lump sum entitlements for care and support from December 2017.

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<sup>4</sup> NSW Health - *Lifetime Care & Support (LTCS) Scheme – Charging Policy and Rates for Designated Units*, 16 June 2016 - [http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2016\\_023.pdf](http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2016_023.pdf);

<sup>5</sup> NSW Health - *Health Services Act 1997 - Scale of Fees for Hospital and Other Services*, 16 June 2016 - [http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2016\\_024.pdf](http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2016_024.pdf)

<sup>6</sup> Motor Accidents (Lifetime Care and Support) Act 2006 – Section 8 - [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/macasa2006394/s8.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/macasa2006394/s8.html)

## **Conclusion**

Suncorp trusts our responses to questions taken on notice illuminate the relevant issues for Committee members for their deliberations. As stated previously, we believe the LTCS scheme is operating effectively in an overall sense and is in a financially sound position. Our comments go to the question of -

'how can we get a good scheme running even better?'

Should you wish to discuss any of the points raised in this submission, please contact me on

Yours faithfully

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