

**STANDING COMMITTEE ON LAW AND JUSTICE  
FIRST REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME  
SUPPLEMENTARY QUESTIONS - icare**

- 1. The NSW Bar Association submitted that a small number of cases have seen protracted disputes over scheme eligibility of which a large number are driven by insurers. The Association suggested that the right for insurers to be engaged in a third round of dispute be removed. What is icare's view on this?**

***Answer:***

Insurers do play a role in lodging disputes about eligibility. A total of 56 eligibility disputes have been resolved since the scheme commenced in 2006. Just over half (57 per cent, or 32 disputes) were lodged by the CTP insurer. The remaining 43 per cent (24 disputes) were lodged by the participant or their legal representative. In a very small number of cases, determinations made in respect to disputes about eligibility can lead to review applications and further judicial review in the courts.

In the ten year history of the scheme, icare is aware of two cases regarding eligibility issues that have involved judicial review in the courts and taken significant time and cost to resolve. As per Lifetime Care's legislative dispute resolution process, both cases involved a dispute about eligibility resolved by an Assessment Panel, and then a review of the dispute about eligibility by a Review Panel.

icare does not have the power to restrict access to any one type of party to a dispute. Any change that would restrict insurers' ability to lodge disputes through the existing mechanisms would require legislative change.

In the first instance, icare is happy to explore the issue of protracted disputes about eligibility and how this can be avoided, within the current legislative framework with SIRA, the NSW Bar Association and CTP insurers.

- 2. In relation to the independence of scheme participants, how many participants are currently receiving an annual (or other periodic) payment such as to permit them to enjoy a degree of independence in expending funds and does icare set a goal to increase this number over the next 1-2 years?**

***Answer:***

A total of 14 participants are currently self-managing their attendant care services. icare is working with a further 39 Lifetime Care (LTC) scheme participants who have expressed interest in self-managing some, or all, of their supports. icare expects that an additional six participants will move to self-managing some, or all, of their supports by the end of July 2017 - bringing the total number to 20.

While icare expects the number of LTC scheme participants self-managing some, or all, of their supports will increase over time, we have not set targets for self-management. It is our preference to provide participants and their families with a choice in the possibilities available to them, including the timing and uptake of self-management as an option.

icare has established a range of self-management options to maximise the opportunity for all participants to self-manage some, or all, of their supports, in accordance with their preferences and skills to self-manage. To achieve this, icare is finalising contracts with four service providers who will provide support to participants to undertake self-management through the provision of training, support, advice and insurance protection. This support also includes human resources advice for participants who are directly employing their attendant care workers.

icare is undertaking the following activities to promote self-management options:

- Published a new page on its website called "*Managing your supports*", which includes information about self-management options including:
  - an information sheet and two handbooks for participants considering self-management; and
  - one handbook for participants who wish to directly employ their attendant care workers.
- icare recognises that participants are the best advocates to promote self-management, and is working on sharing the stories of participants who are successfully self-managing so that other participants will benefit. This includes publishing participant stories in the upcoming LTC scheme participant magazine "*Shine*" and developing a video of a participant who is directly employing attendant care workers.
- Coordinators continue to work with participants and nominees who have expressed an interest in self-management to discuss whether self-management will suit them and identify the supports and capacity-building needed to enable them to undertake self-management.

**3. In relation to utilisation of funds, over a twelve month period, what was the total amount allocated under Care Plans and what percentage was actually spent?**

**Answer:**

In the 2015/16 financial year:

- icare approved approximately \$159 million in treatment, rehabilitation and attendant care services for LTC scheme participants.
- The scheme spent \$114.8 million on services.
- The utilisation rate was 72.2 per cent of all services approved in this financial year.

The difference between the approved amount and utilised amount is influenced by factors including:

- the participant's recovery, where the approved care assumed the needs to be static over the plan period;
- personal choice and willingness to engage in services at the level recommended by their treating team; and
- change in needs or circumstances (such as living arrangements) over the duration of a plan period.

**4. In relation to vocational rehabilitation, how many of the current scheme participants are capable of some form of employment, how many are employed, and how many have received assistance from icare to find or maintain employment?**

**Answer:**

A total of 58 per cent (714 participants as at May 2017) of participants are of working age and have some capacity for employment.

As of 31 May 2017, 32 per cent of this group are in employment. Nearly half of this group (49 per cent) received specific **vocational services** funded by the LTC scheme in the last three years to assist them to either find or maintain employment. Vocational rehabilitation services can include:

- providing vocational counselling to determine a realistic work goal that the participant wants to pursue and is able to pursue;
- developing a plan to return to work;
- assisting participants to commence pre-vocational activities to start the return to work process;
- assisting participants to develop required skills through suitable training courses and on-the-job experiences;
- supporting the participant to locate and commence a work experience program;
- assisting the participant to find suitable employment;
- providing ongoing support at the participant's workplace so they can learn the required tasks of the job; and/or
- providing equipment to support training or return to work.

All participants who have returned to work have received some form of assistance from icare to return to work or remain employed. This varies from intensive assistance from vocational rehabilitation providers, to less intensive assistance in the form of monitoring and psychological support from the participant's case manager to assist in the return to work process.

icare is working on several initiatives for the remaining 68 per cent of participants who are not employed, but have some current or future capacity for employment, which includes the In – Voc program for spinal cord injury and Vocational Intervention program for brain injury as outlined in Question 5. It is also developing a tailored severe-injury Work Options Plan assessment process for vocational providers to use when assisting participants to explore possible return to work opportunities.

We are also starting an initiative in late 2017 to provide additional vocational-related support to participants in high school, which will involve the participant, their families and schools. This is designed to maximise readiness for employment by linking participants and their families with specialist vocational services much earlier than currently occurs.

It will assist these participants in planning subject selection and skill development, to increase their potential and maximise opportunities to find sustainable employment in an area that they want to work in. These participants will also have an existing relationship with vocational specialists to support them to find employment opportunities once they leave school.

**5. How many scheme participants are currently unemployed and capable of and looking for employment, and what success has icare had in rehabilitating them into the workplace?**

**Answer:**

icare supports and encourages participants to return to some form of employment. However, the actual number of participants at any time who are employed, or who have a goal to return to work, varies due to factors including:

- the participant's pre-injury work skills;
- their financial circumstances and whether they have made a CTP or workers' compensation claim;
- their adjustment to injury;
- their access to transport; and
- where they live.

It is estimated that at any point in time, at least 200 participants who have been recently injured are actively involved in physical or cognitive rehabilitation and may not be ready, or have chosen not to, consider employment options.

Our Lifetime Care Coordinators and Case Managers have regular My Plan reviews with participants, where employment goals are discussed with those who have a capacity to engage in work. icare's vocational initiatives are designed to enable as many of our working age participants, with some capacity to return to work, to attempt a return to some form of employment.

icare has undertaken a range of very successful initiatives to assist participants, and other patients in inpatient units in NSW who have sustained a brain injury or spinal cord injury, into the workplace.

**In-Voc for spinal cord injury**

In-Voc is an early intervention vocational program, which began in 2011, and is available to all in-patients of the three spinal units in NSW. LTC scheme participants are 30 per cent of overall admissions.

The employment outcome results of In-Voc have been very positive. In the first three years of the program, 147 patients received In-Voc services (30 per cent of these patients are LTC scheme participants). A total of 42 per cent returned to employment, 11 per cent returned to volunteer work and four per cent returned to study 12 months after the date of their spinal cord injury.

Prior to the implementation of In-Voc, the return to work rate for participants with a spinal cord injury was approximately 25 per cent. Excluding those studying, participants in paid employment and volunteer work is now 53 per cent, which means the In- Voc Program has doubled the return to work rate.

**Vocational Intervention Program for brain injury**

The Vocational Intervention Program for people with a brain injury is a two-year project that is due for completion in September 2017. The program trialled two types of vocational interventions in three geographical areas of NSW and was available to any patient involved with a participating brain injury rehabilitation program in NSW.

The two types of vocational intervention trialled within the Vocational Intervention Program aim to:

- assist people who had work to return to, to commence their return to work earlier; or
- provide an opportunity for people who did not have work to return to, to undertake a 12 week unpaid work trial, and to explore if return to work was possible.

A total of 78 intervention programs were trialled across three geographical areas. The early outcome data from the program is very promising:

- As at May 2017, 24 intervention programs were completed. A total of 83.3 per cent of these patients are in some form of paid employment three months after intervention, compared with 41 per cent of them in a control group. At this early stage, this program has also doubled the return to work rate when compared with the control group.

Other projects following on from these successful initiatives that will support participants to gain and maintain employment include:

- icare is partnering with Royal Rehab to develop a strategy to assist people with a spinal cord injury continue to work towards employment goals once they are discharged from rehabilitation. The project will address a gap in services for some participants as a result of In-Voc services ceasing 12 weeks after discharge, and allow access to vocational support to those participants who may not be ready to consider employment while an inpatient. This strategy will also provide additional support for existing participants with spinal cord injury living in the community who are not yet working but have some capacity to work.
- icare is working closely with the Agency of Clinical Intervention's Brain Injury Rehabilitation Directorate to expand the Vocational Intervention Program to all people with a brain injury in NSW, and to develop a specialist brain injury skilled return to work network in NSW.

**6. What has been icare's goal for vocational rehabilitation over the last two years and has it been successful in achieving that goal? What is the goal for the next twelve months to two years and what measurements will be made of its success in achieving that goal?**

***Answer:***

icare's goals for vocational rehabilitation over the past two years have been:

- to ensure all participants with a capacity to return to work are provided with an opportunity to consider commencing a return to work;
- to implement and embed early intervention vocational programs in rehabilitation settings for brain injury and spinal cord injury across NSW;
- for all working age participants, who may have capacity to return to work, to have a Work Options Plan to assist them identify meaningful employment goals; and
- to improve the return to work rate for participants of working age to 40 per cent.

Return to work rates for people with spinal cord injury and severe brain injury nationally and internationally is difficult to measure, but is approximately 30 to 40 per cent. Over the next two years, icare's goal is to continue to move the rate of return to work of our participants with a capacity to work to over 40 per cent.

## **7. What is icare doing to ensure that scheme participants and their families are properly advised about their right to challenge and dispute Care Plans?**

icare gives participants and their families' information about challenging and disputing decisions with every decision made.

icare provides assistance to participants and their families in the following ways:

- Coordinators phone participants whenever there is a partial approval or non-approval decision made. This is to explain the reasons for this decision and to make sure participants know their options to dispute it if they wish to. This extends to Coordinators helping participants lodge a dispute, or Coordinators lodging disputes on a participant's behalf.
- icare has a team, independent from the operational areas of the LTC scheme, which assists participants and their families to lodge disputes and complaints. This provides participants with someone they can talk to - external to their Coordinator - with advice and information about how to lodge a dispute and throughout the disputes process.
- icare recently established a support and advocacy service to provide additional, external, independent advice to participants and their families on their options. The service employs three specialist disability advocacy service providers, who are well accustomed to dealing with people with acquired disability such as traumatic brain injury and spinal cord injury.

icare is in the process of promoting the support and advocacy service, which includes revising our website and information provided with all written decisions. The support and advocacy service, and how to dispute a decision made, will also be featured in the next edition of the participant newsletter *Shine*.

## **8. What is icare's knowledge as to the degree of dissatisfaction with issued Care Plans where no challenge is being raised?**

It is difficult to quantify whether or how many participants are unhappy with decisions made by icare and decided not to dispute a partial- or non-approval decision. icare recognises it is important that participants feel able to challenge a decision made and receive support as needed, which is why the support and advocacy service has been established.

icare approves the vast majority of requests for services. For example, in the financial year 2015/16:

- \$114.8 million was spent on services for participants.
- \$159 million of services were approved.
- A total of \$3.2 million of services were not approved equating to approximately two per cent of the total value (\$162.2 million) of services requested.
- Eight complaints were resolved about treatment and care funding decisions (some of which may have been resolved via lodging a dispute).
- Of the 13,000 service decisions made, 21 disputes were received about participants' treatment and care needs.

icare's most recent LTC scheme participant survey results (2016) indicate only a small number of participants are dissatisfied, and the vast majority of participants (90 per cent) are satisfied with the scheme and how it meets their needs.

## **9. What isn't working well within the scheme, what could work better, and what legislative or structural changes does the scheme need?**

### **Answer:**

icare sought extensive feedback from participants over the past year through its annual LTC Scheme Participant Survey, the Customer Experience Design research project and the co-design workshops as part of the Optimal Care program. From participants' perspective, their pain points include:

- Delays and difficulties with the approval process
- Time taken to receive equipment
- Needs not met/ inadequate service providers
- Time taken for home modifications
- The needs of family members are not taken into account.

When asked what could work better, participants have responded that they would like:

- Improved communication and contact with icare
- icare to speed up approvals and reduce delays
- More information about how things work and services available.

icare's Optimal Care program initiatives address these concerns including expanding pre-approved services and developing a new process to fast track approvals. icare has used a co-design approach using human-centred design principles to develop these solutions with participants, their families, staff and services providers.

Other initiatives include, improving the contact and communication we have with participants and product and service bundling. icare intends for these initiatives to be rolled out progressively over the next 12 months.

### **Legislative or structural changes**

icare's suggestions for legislative changes that could improve the scheme include:

- The inclusion of objects or principles for the operation of the scheme, which would assist in guiding decision-making under the legislation. icare has always included principles for decision-making in its statutory guidelines. Amending the legislation to include objects and principles would be a clear statement of icare's commitment to person-centred and individualised decision making and service delivery.
- Strengthening icare's powers to request information would benefit all those affected by eligibility decisions, and minimise delays in decision making that arise from incomplete applications or a lack of required documentation (such as medical information and reports).

Delays in obtaining this information from the insurer or solicitor can delay the decision on eligibility. Delays in obtaining information can also delay the resolution of a dispute about eligibility, when an Assessment Panel requests (but cannot compel) information from a party to the dispute. Currently icare can only request, but cannot compel, parties such as insurers to provide information, which can mean that insurers and participants' legal representatives choose not to provide information unfavourable to their position.

- A review of definitions in the legislation to describe treatment and care needs and services funded under the LTC scheme, which in some areas is not in keeping with more contemporary language used in the disability service sector and other disability insurance schemes such as the NDIS.

**10. The Australian Lawyers Alliance (ALA) submitted that CTP insurers have a financial incentive to put claimants into the LTCS Scheme that there is no restriction in number or in time on applications by insurers for a person to be included as a lifetime participant in the Scheme. They submit an insurer should only be able to make one application. What is icare's view on this?**

**Answer:**

This proposal would allow injured persons or their legal representatives to make more than one application to the scheme, while restricting insurers to one application. icare suggests the implications of this proposal are:

- The LTC scheme's legislation does not allow it to restrict the number of applications that can be made to the scheme, regardless of who applies. Restricting an insurer to make only one application to the scheme would require legislative change.
- It could disadvantage injured persons and insurers in circumstances where they are found ineligible for the scheme following an application made by the CTP insurer. The injured person's condition could change and they may later be eligible on the basis of new medical information. In this circumstance, the injured person could apply to the scheme, however the CTP insurer would be prevented from applying to the scheme again on their behalf.
- If an insurer has made one application to the scheme on an injured person's behalf, their only remaining option to attempt to change this decision would be to dispute a previous decision about eligibility. An increase in the number of applications for disputes about eligibility is likely to result. There is a six-month time frame in the statutory guidelines for disputes about eligibility. icare does have discretion to extend this timeframe. It is also likely that icare would receive requests to accept late dispute applications received outside the six-month timeframe.

As part of the Guidelines review, icare has consulted with stakeholders about including a three-year time frame post-accident for application to the scheme. Whilst this time frame could be extended in exceptional circumstances, it could serve as a disincentive for a CTP insurer to lodge an application more than three years after the accident.

**11. ALA members regularly encounter clients who refuse to accept treatment and claim that they are fine. What mechanisms does icare use to address such cases?**

**Answer:**

icare acknowledges that it is problematic when participants decline services that could help them, however accepts that if a participant has capacity, they have a right to refuse treatment and services.



icare works collaboratively with people involved in the participant's life, such as their treating health team and family members, whenever there are concerns of this kind. icare has a communication protocol and actively maintains regular contact with participants to ensure that they are aware of the services available to them, in the event that they change their mind and decide to accept treatment or services at a later time. This can extend to discussions with the team and family members about guardianship applications.

On rare occasions, refusal of treatment has led to a guardianship application being made either by a member of the participant's treating health team or by icare.

Participants who are reluctant to engage with icare may choose to self-manage their supports. icare introduced a range of self-management options in December 2016 allowing participants (or their appointed nominee), whose needs have stabilised, to self-manage some or all of their supports including their attendant care services.

**12. The ALA seeks clarity on the responsibility, capacity and willingness of icare to seek guardianship orders where there are none in place, in appropriate circumstances. This is most relevant where the participant has not been through legal proceedings (and so has not received advice from a lawyer). Where there is no one else, the ALA believes that it should be icare's role to make such applications. What is icare's view on this?**

**Answer:**

icare agrees with the ALA and has made several guardianship applications in appropriate circumstances. This has occurred where there were significant concerns and no other person could make an application.

Guardianship applications relating to participants are generally made by a wide range of people in the participant's life, including family members and members of the treating health team. When requested, icare has also provided information to the Guardianship Division of NCAT. icare works collaboratively with the NSW Trustee and Guardian, which is represented on icare's Lifetime Care stakeholder Reference Group.

**13. What steps has icare has taken to ensure it has capacity to cope with the additional workload as a result of:**

- **LTCSA recent takeover of the claims management of catastrophic injuries under the workers' compensation scheme**
- **the anticipated role under the new CTP scheme as the relevant insurer for all medical treatment and care provided more than five years after the motor accident concerned**
- **the implementation of the National Injury Insurance Scheme which will see the Lifetime Care and Support Scheme become a very large part of icare?**

**Answer:**

icare commenced work in mid-2015 on transitioning the management of workers with severe injuries from the workers compensation scheme to the LTC scheme. The Workers Care program involved a progressively staged transition of workers into the program, working collaboratively with workers compensation scheme agents. This approach ensured workers were well supported through the transition and also ensured that icare could build its capability to support the increasing number of injured workers. In 2016 and 2017, icare progressively recruited additional staff in its Sydney and Parramatta offices for the Workers Care program.

icare has also commenced preliminary planning for the new cohort of injured persons who will receive services under the new CTP scheme. icare will become the relevant insurer required to pay statutory benefits for treatment and care provided more than five years after the motor accident.

Much of the preparatory work before the new legislation commences will involve:

- actuarial modelling for levy setting;
- contributing to the development of the new Motor Accident Guidelines, as delegated under the *Motor Accident Injuries Act 2017*; and
- working with SIRA and insurers to clarify issues relating to the transfer of claimants from being managed by CTP insurers to being managed by icare.

The preparations that icare is undertaking include leveraging how it planned for its existing service expansion to deliver better care services to those severely injured in the workplace through the newly established Workers Care program. The Workers Care program is in the process of expanding to include those severely injured who are currently managed by icare self insurance through the Treasury Managed Fund workers compensation scheme for NSW Government employees. icare will review its expansion approaches to these initiatives, in conjunction with working with SIRA and insurers, in facilitating its new role in the CTP scheme

icare would seek to take a similar staged approach to the implementation of the National Injury Insurance Scheme for other cohorts.