



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:PWrl1385951

26 July 2017

Ms Donna Hogan
Principal Council Officer | Upper House Committees
Parliament of New South Wales
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email:

Dear Ms Hogan,

**Law & Justice Committee - First review of dust diseases and lifetime care and support
- Question on notice - 28 June 2017 - Evidence of T Concannon**

The Law Society refers to the evidence given by its witness, Tim Concannon, on 28 June 2017.

A question on notice was asked during that session, namely:

Mr DAVID SHOEBRIDGE: Mr Concannon, we had a series of submissions which raised concerns about insurers having repeated goes to try to put a claimant into the Lifetime Care and Support Scheme because of their financial interests. Do you see that in practice?

Mr CONCANNON: I do on a regular basis. As I said in my opening address, the real issue is particularly when it happens two to three years down the track and therefore has a significant delaying effect on the associated common law claim. If you look at a number of those cases that I referred to in the opening addresses, the matter of Cruse I think was an original application by the claimant that was then rejected in terms of participation in the scheme and then the insurer had a couple of goes. So regrettably I think there has to be some cap on the number of goes you can have, particularly I would have thought on the part of the insurer, particularly if there is a financial incentive for them to transfer the liability to the scheme.

Mr DAVID SHOEBRIDGE: I suppose that is what I am getting to. What is the reasonable cap? Should they have one unlimited go and then only an additional go if there is some kind of exceptional change in circumstances? What is the kind of limitation you would be recommending or do you want to take that on notice?

Mr CONCANNON: I think I would have to take that on notice because it is probably a policy decision on the part of the Law Society as to which way we would recommend that.

Mr DAVID SHOEBRIDGE: If you are taking that on notice, the concern—

The Hon. TREVOR KHAN: I am not being critical, but you came here identifying the problem of these repeated claims. Does the Law Society have any position as to how you address the repeated claims?

The Law Society notes that the current position is that the number of disputes which can be lodged by either party concerning eligibility for the LTCS scheme is unlimited. However, either party has a right to lodge an application disputing that decision within six months¹ and this dispute will then be determined by an Assessment Panel. Either party then has the right to lodge a review application within a further six months² provided specified grounds are satisfied.³

The Law Society considers that each of these six month time limits should be reduced to three months, but that the existing system for dispute applications and reviews for eligibility disputes should otherwise be maintained.

The Law Society also considers that the number of de novo applications which can be lodged by either party should be limited to a maximum of two (including the initial application). In addition, the party lodging the second application should be required to establish exceptional circumstances (which would include a significant deterioration in the medical condition).

Please do not hesitate to contact _____ if you would like any further information.

Yours sincerely,

Päuline Wright
President

¹ Clause 1 of Part 2 to the *Lifetime Care and Support Guidelines*

² Clause 12 of Part 2 to the *Lifetime Care and Support Guidelines*

³ Section 15 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW)