

## **Update on Government Responses to the Standing Committee on Law and Justice's Recommendations in relation to the 4<sup>th</sup> Review of the Exercise of the Functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council**

### **Recommendation 1**

That the Legislative Council amend the resolution designating the Standing Committee on Law and Justice with responsibility for supervising the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council, so that the Committee will be required to report to the House in relation to the exercise of its functions under that resolution at least once every two years.

#### **Response:**

The Authority supports the recommendation to enable biennial review of the exercise of functions of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council. This will allow the Authority time to implement and review changes in response to recommendations between reviews.

#### **Update:**

Biennial review is now occurring.

### **Recommendation 2**

That the Government pursue a stand-alone amendment to section 45 of the *Motor Accidents (Lifetime Care and Support) Act 2006* to include two participant representatives on the Lifetime Care and Support Advisory Council.

#### **Response:**

An amendment to section 45 of the *Motor Accidents (Lifetime Care and Support) Act 2006* to include two participant representatives on the Lifetime Care and Support Advisory Council is under consideration.

In the meantime, the Lifetime Care and Support Advisory Council will consider ways of seeking participant input into Council matters at their next meeting.

#### **Update:**

The *Safety, Return to Work and Support Act 2012* (SWRS Act) was assented in June 2012 and amended the *Motor Accidents (Lifetime Care and Support Act) 2006* to abolish the Lifetime Care and Support Board and Advisory Council. While the *Safety, Return to Work and Support Board Act 2012* provides for the establishment of advisory committees by the Minister, none have been established to date.

The Authority has established a Participant Reference Group whose role is to act as a consultative body to the General Manager. The membership is representative of Scheme participants with regard to age, gender, residential locations and injury types.

The Participant Reference Group commenced meeting in late 2013 and will meet three to four times in 2014. The first meeting in 2014 presented the Participant Reference Group with the results and recommendations of the 2013 participant survey and reported on projects including the Direct Funding of the Attendant Care trial.

The Authority has also convened a LTCS Reference Group with representatives from specialist medical services, disability advocacy groups and the NSW Trustee and Guardian. This group provides additional advice on initiatives, guidelines and systemic changes in disability support.

### **Recommendation 3**

That the Lifetime Care and Support Authority evaluate the current medical assessment tools used to assess eligibility criteria, and investigate and report on any alternative and/or additional tools or strategies that may be appropriately used to avoid inequity in Scheme eligibility. The Authority should consult with stakeholders during this process.

#### **Response:**

The Authority is supportive of reviewing the medical assessment tools applied in the Scheme to determine eligibility however is mindful that following on from the Productivity Commission's report on Disability Care and Support, Australian governments agreed to start work immediately to lay the foundations for a National Disability Insurance Scheme (NDIS) including a project to research and evaluate assessment tools for an NDIS.

The Authority intends to review its own eligibility assessment tools following the results of this project in order to ensure that they are aligned with the tools that will be used in the NDIS. The Authority welcomes feedback from clinicians about the eligibility assessment tools while this other review is being undertaken, and will seek advice from the Lifetime Care and Support Advisory Council on this matter.

#### **Update:**

The tools used for eligibility assessment form part of the criteria within the LTCS Guidelines which are regularly reviewed. The Authority has consulted with clinicians on its previous Advisory Council and the Australian Medical Association (AMA) about the appropriateness of the tools used to assess eligibility. This has not resulted in recommendations for more suitable eligibility assessment tools than the FIM assessment currently in use.

The minimum benchmarks for the National Injury Insurance Scheme for motor vehicle accidents are based on FIM (Functional Independence Measure). The South Australian Lifetime Support Scheme uses FIM for eligibility of brain injuries in a similar method to NSW. The Authority considers that the FIM is appropriate for severe injuries, such as those covered by the Lifetime Care and Support Scheme.

### **Recommendation 4**

That the Lifetime Care and Support Authority should review the adequacy of the Accident Advice Support Grant on an annual basis and at minimum annually increase the grant to meet increases in the Consumer Price Index.

#### **Response:**

The Authority developed the Accident Advice Support Grant in good faith to give injured persons and their families access to accident investigations, vehicle investigations or legal assistance as part of their application, or before an eligibility determination to the Scheme is made. The Scheme has not been funded to pay participant legal costs and they are not payable under the Act.

The Authority has reviewed the usage of the grant from its inception to March 2012. The grant has been accessed on two occasions and the Authority has concluded that the amount remains adequate. As Part 3 of the Act stipulates that no legal costs are payable by the Authority, the Authority is unwilling to increase the grant.

**Update:**

The legislation does not provide for payment of legal costs, with the exception of disputes about motor accident injury under Part 3, Division 2-of the *Motor Accidents (Lifetime Care and Support) Act 2006*. No legal costs are payable by the Authority with respect to legal services provided to an injured person or an insurer in connection with disputes about eligibility (see Part 3, Division 1, section 18) or treatment or care needs assessments (see Part 4, section 29).

The Authority plans to consult with the NSW Law Society and NSW Bar Association in relation to the Grant.

In complex cases where the circumstances of the motor accident are unclear or require investigation, the Authority requests additional information and/or legal advice before making an eligibility decision.

**Recommendation 5**

That the Lifetime Care and Support Authority work with the Brain Injury Rehabilitation Directorate and other stakeholders to examine the feasibility of a more robust and independent dispute resolution process for disputes concerning eligibility and treatment.

**Response:**

The Authority maintains that its current dispute resolution process is independent and robust. The dispute process is largely dictated by Part 3 of the Act and the Authority has established the process for dispute resolution in accordance with the Act.

Disputes about injury, treatment, rehabilitation and care are best dealt with by experts in the relevant medical and allied health fields. The Disputes Assessors engaged by the Authority are employed by a range of institutions or private practices and are selected for their skills and experience in treatment and rehabilitation of people with brain and spinal cord injury.

The Authority acknowledges that it pays Disputes Assessors directly for the assessments they perform but has determined that this is necessary in order to ensure such experts are willing to undertake this work. The Act requires that the Authority appoints Disputes Assessors. Where a participant wishes to have a Dispute Assessor's decision reviewed, this is referred to the Motor Accidents Authority's Medical Assessment Service who manage the review process independent of the Authority.

The Brain Injury Rehabilitation Directorate has suggested the Authority should refer disagreements about treatment decisions to an external professional prior to the escalation of a dispute. However, the Authority has already appointed 'approved assessors' who are external professionals. A number of approved assessors come from the specialist brain and spinal cord injury units while others are private practitioners.

The Authority already routinely requests these external professionals to provide independent advice about rehabilitation and care needs of Scheme participants where there is disagreement with the participant or their treating team about a requested service. This assessment can already occur prior to a formal dispute.

The Authority has always endeavoured to resolve potential disputes informally as this is more likely to preserve the Authority's relationship with the participant and is less costly. However, Section 24 of the Act dictates that if a participant wishes to dispute a decision, the Authority must refer the dispute to a Disputes Assessor for determination.

**Update:**

The Authority met with the NSW Brain Injury Rehabilitation Directorate in 2012, which did not provide any additional feedback or recommendations relating to the dispute resolution process.

**Recommendation 6**

That the Lifetime Care and Support Authority collaborate with the Brain Injury Rehabilitation Directorate, the State Spinal Cord Injury Service, the Children's Hospital at Westmead and other service providers to simplify and standardise forms with a view to minimising the duplication of information and limiting the administrative burden on service providers.

**Response:**

The Authority commits to continuing discussions with the Brain Injury Rehabilitation Directorate, the State Spinal Cord Injury Service, the Children's Hospital at Westmead and other service providers to identify agreed ways of minimising the duplication of information and limiting the administrative burden on providers.

The Authority has always offered to fund suitably qualified external case management services as a way to relieve the burden on the rehabilitation units. The Authority's experience is that private case managers are generally willing and able to provide this service.

If the rehabilitation units remain unhappy with current funding arrangements, the Authority will consider other processes for funding the units to provide the services our participant's require such as a bulk-billing agreement similar to that between the Authority and NSW Health for acute hospital services. An arrangement such as this would remove the need for prior approval of services by the Authority and the associated paperwork.

In declaring this commitment to minimising paperwork, the Authority is mindful that the result of recent litigation around care will necessitate an increase in documentation required from service providers to protect the Scheme from this un-costed expense.

**Update:**

Since the Committee's Fourth Review, the Authority has continued to work collaboratively with the Brain Injury Rehabilitation Directorate, the State Spinal Cord Injury Service, the Children's Hospital at Westmead and other service providers to identify agreed ways of minimising the duplication of information and limiting the administrative burden on providers.

The Authority reviewed its forms in 2012 and implemented training programs for service providers on assessing care needs and is developing a Work Options Plan for a participant.

The Authority also revised all of its information sheets and its existing training program for service providers, which aims to assist in the understanding of the Authority's forms and process requirements. The Authority is currently undertaking a review of its Community Living Plan process and forms and is in the process of consulting with service providers on proposed changes.

## **Recommendation 7**

That the Lifetime Care and Support Authority work with the State Spinal Cord Injury Service and the Brain Injury Rehabilitation Directorate directly to develop methods for improved communication between clinicians and the Authority and to act on the concerns of service providers and to put in place a system whereby clinicians receive meaningful responses to the concerns they raise.

### **Response:**

The Authority commits to continuing quarterly meetings with the Brain Injury Rehabilitation Directorate and State Spinal Cord Injury Services where it will include methods for communication between clinicians and the Authority on the agenda.

The Authority will be encouraging clinicians to make use of the Authority's existing process for providing feedback and making a complaint to the Authority where they have a concern about an individual participant or coordinator. This process has not been routinely used by clinicians despite it being widely publicised and available since the Authority's inception. The Authority's complaints handling process dictates that the person will be provided a written response to their concern within 10 working days. Use of this formal process will ensure clinicians receive a response to their concern and will enable the Authority to monitor trends or issues in service delivery.

### **Update:**

Since the Fourth Review, the Authority has continued meeting regularly with the NSW State Spinal Cord Injury Service and the NSW Brain Injury Rehabilitation Directorate. The State Spinal Cord Injury Service completed a survey of its members about recent experience of the LTCS forms and processes in October- November 2012. After two iterations of the survey, no major issues were identified for the Authority to address.

The Authority is responsive to feedback from clinicians about the Scheme and its processes. For example, the Authority is currently revising the approval process for equipment funding for participants with spinal cord injury in response to feedback from clinicians. The Authority has developed a position document to further define the indications, processes and responsibilities in relation to the decision to purchase or hire equipment, and to outline key considerations in the review of requests for equipment for hospital discharge.

The Authority revised its Discharge Services Notification process in 2012 to ensure that its current system of pre-approved services for adults and children was meeting the needs of participants, service providers and the Authority. The Authority is currently undertaking work in relation to expansion of pre-approved services.

## **Recommendation 8**

That the Lifetime Care and Support Authority develop and then employ effective mechanisms to better inform both general practitioners and acute treating teams of the Lifetime Care and Support Scheme and report to the Committee on these mechanisms in its next review.

### **Response:**

The Authority wrote to the Australian Medical Association in December 2011 to invite their support in developing appropriate communication methods with general practitioners about the Scheme and followed this up with an email in March 2012.

A meeting date was planned for April 2012 to discuss the best way forward however due to unavailability of relevant staff at both AMA and the Authority this was postponed and a date is still to be fixed.

The Authority considers general practitioners to be critical to managing the long term medical needs of participants and providing early intervention by identifying and treating common injury related health issues. Presently, the Authority funds case management services to support participants to attend GP appointments to provide collaborative service provision and ensure the GP is aware of the Scheme and the services that they can bill the Authority for.

The Authority will continue to engage major trauma centres to raise awareness of the Scheme. There is no limit on the time from the accident that a person can apply to be in the Scheme.

### **Update:**

The Authority met with the Australian Medical Association in July 2012. This meeting did not identify any changes to the Authority's existing mechanisms of informing general practitioners and acute treating teams about the Scheme.

In 2012 the Authority undertook a comprehensive revision of its information sheets in order to inform service providers about the Scheme in plain English. The Authority has also undertaken significant work on its Approved Case Manager program since the Fourth Review, and further clarification about the role and functions of the Case Manager have assisted to ensure that general practitioners and treating teams are aware of the Scheme.

### **Recommendation 9**

That the Lifetime Care and Support Authority ensure that it provides, as part of its induction training for Lifetime Care and Support Coordinators, information on respect for expert clinician decisions and treatment recommendations notwithstanding coordinators' previous skills and experience.

### **Response:**

The Authority will continue to reinforce the importance of obtaining expert clinical opinion in its induction training for new coordinators. This training is delivered in the context of making reasonable and necessary decisions and the responsibilities of coordinators and service development and review officers as delegated officers under the Public Finance and Audit Act 1983. The key messages of this training are outlined below:

- The Motor Accidents (Lifetime Care and Support) Act 2006 provides that the Authority is to pay the reasonable expenses for the treatment and care needs of a participant in the Scheme that are related to their motor accident injury and are reasonable and necessary in the circumstances.
- Coordinators need the documented clinical opinion and justification for this opinion from the participant's treating team in order to execute these responsibilities properly.
- Clinicians recommending a service or equipment for a participant are in the best position to provide the reasons why they are recommending it.
- The reasonable and necessary criteria supports best practice; its application will provide assurance that the service recommended is the best option available to the participant and will meet their needs.

- Clinicians may recommend services for a participant that may be reasonable and necessary but are not motor accident injury related. For example, a doctor could recommend medication for hypertension that the participant had before the accident but the Authority cannot fund this because it is not injury related.
- Similarly, clinicians may recommend services that are reasonable and necessary and injury related but they are not treatment, rehabilitation or care as defined by the Act. For example, a case manager might identify a participant's need for weekly transport to attend his social club but the Authority cannot fund this because it is not a treatment or rehabilitation service.
- Coordinators need to ensure they only expend funds in accordance with the limits of their authorisation and with due economy.
- Funding decisions made by the Authority are auditable under the Public Finance and Audit Act 1983.
- The Authority has made a commitment to ensure the sustainability of the Scheme. The sustainability of the Scheme is dependent on good clinical information and decision making with respect to reasonable and necessary treatment, rehabilitation and attendant care services.

**Update:**

As the LTCS Scheme grows the Authority has an increasing demand for staff, including coordinators. The coordinators have a variety of backgrounds from the health and disability sector. They require varying periods to become familiar with the requirements of the role. In late 2013, the Authority commenced a training needs analysis to identify future opportunities to develop the skills and capabilities of coordinators and Authority staff, and this work is continuing in 2014.

**Recommendation 10**

That the Lifetime Care and Support Authority consult with the Children's Hospital at Westmead to develop an agreed protocol to enable discussion of a participant's appropriate treatment options with clinicians prior to any discussion with a participant's family.

**Response:**

The Authority has been regularly meeting with the Children's Hospital at Westmead to discuss service provision to Scheme participants and will continue to do so. The Authority will consult with the Children's Hospital at Westmead to develop an agreed protocol for communication around participants' treatment and care options and how to transition participants to appropriately qualified community based providers. In developing this protocol the Authority will seek to ensure:

- Participants' access to reasonable and necessary treatment and care is maintained at all times.
- Participant choice of provider is paramount; participants may tell the Authority if they wish to change providers and can expect to have this acted upon.
- The Authority and its funded providers will meet their own duty of care to the participant at all times and in particular will meet their responsibilities under the Children and Young Persons (Care and Protection) Act 1998.

- Clinicians and management of the Children’s Hospital at Westmead will know how to make a complaint or provide feedback to the Authority and how they can expect that complaint will be managed.
- The Authority will strive to ensure its lifelong relationship with participants remains positive while executing its responsibilities under the Act.

**Update:**

Following meetings with the Children’s Hospital Westmead, the Authority has agreed to a process where the coordinator and Children’s Hospital Westmead case manager meet with the treating health team, participant and family for joint case discussions. Decisions about selecting appropriate providers, and transitioning participants to community-based providers, occur on a case-by-case basis to ensure individual needs are met.

**Recommendation 11**

That the Lifetime Care and Support Authority investigate options for permitting participants to be discharged from hospital to interim accommodation, prior to long-term accommodation having been secured.

**Response:**

The Authority has always provided participants treatment and care in interim or transitional environments where a rehabilitation unit or case manager has identified this is the most suitable option for the participant. The participant’s discharge destination is not a decision that the Authority makes as it does not fund direct accommodation costs. The Authority commits to continuing to investigate and develop appropriate discharge options for participants.

**Update:**

The Authority provides services to participants on a case by case basis, including assistance to identify suitable accommodation following hospital discharge. The Authority has established links with transitional and supported accommodation providers. The Authority also pays for transitional accommodation for participants when a major home modification is in progress.

The Authority recognises that suitable accommodation for participants with high support needs is limited. To meet the care needs which the Authority is responsible for the Authority has purchased and modified a small number of houses for participants with high support needs. Ten participants are tenants in these houses with the tenancy managed by a community housing association.

The Authority funds participants’ care and support (provided by an approved attendant care provider on the Authority’s panel) and other rehabilitation costs as required on an individual basis. The Authority has purchased and modified houses in Revesby, Blacktown, Liverpool and Rosemeadow for this purpose, and two properties are in development at Coffs Harbour and Ermington.



## **Recommendation 12**

That the Lifetime Care and Support Authority clarify its guidelines and consider the extent to which the Authority will pay for treatment and care services while a participant is on holiday or overseas in order to balance the needs of participants with the scope and capacity of the Scheme.

### **Response:**

The Authority will fund participant's treatment and care needs to a similar level that they would receive in NSW if they are travelling interstate or overseas. Part 8 Attendant Care of the Lifetime Care and Support Guidelines addresses attendant care while the participant is not at home. The Authority is currently reviewing this section of the Guidelines.

Where possible, attendant care support should be sourced from the destination unless the participant has a need for attendant care during the travel itself. The Authority will fund attendant care to travel on holidays and like all care services, these are considered on a case by case basis depending on the participant's needs and circumstances. In the past the Authority has funded travel costs and support of two attendant care workers where there was a demonstrated need.

Airfares for participants are not treatment, rehabilitation or care therefore the Authority will not fund these.

### **Update:**

The Authority has revised Part 8 of the LTCS Guidelines (Attendant Care) to provide further clarification about funding attendant care services when a participant is away from home, for example, when on holiday or away from their usual place of residence. The revised Guidelines were gazetted in May 2012.

## **Recommendation 13**

That the Lifetime Care and Support Authority publish its guidelines on recreation and leisure activities and clarify its policy on funding for the transport of participants and carers to and from recreation and leisure activities.

### **Response:**

The Council have recently endorsed the draft guideline on recreation and leisure and the Authority will now seek to have it gazetted. Once this has been achieved the guidelines will be published on the Authority's website.

The Authority also plans to fund a project by the Rehabilitation Studies Unit to assist clinicians in identifying and planning meaningful activities for participants with a brain injury.

The Scheme is only funded to pay for travel to treatment and rehabilitation therefore the Authority is unable to pay for participant travel to recreation and leisure activities. The Authority will fund an attendant care worker's fares if they are supporting a participant to an activity using public transport.

The Authority's experience is that there is a great need for more transport options for participants, as is the case for people with a disability more generally.

### **Update:**

As part of finalising the draft guideline on access to recreation and leisure activities, the Authority recognised that the services funded to assist participants to access recreation and leisure activities were already the subject of existing parts of the statutory guidelines, such as Attendant Care (Part 8) and Equipment (Part 13). The Authority has therefore decided not to proceed with gazettal of a Guideline.

The Authority has continued to develop its communication pathways with participants and service providers about how the Authority can support participants to access recreation and leisure activities. These include revisions of information sheets, the participant newsletter Shine and the newsletter Momentum for Approved Case Managers.

The Authority continues to fund other types of support for participants to access and engage in recreation and leisure activities, such as attendant care workers, adaptive or modified equipment, and other rehabilitation services (such as case management and occupational therapy) that may assist participants to identify and participate in suitable recreation and leisure activities.

The Authority recognises the importance of recreation and leisure activities and meaningful activity as part of return to participating in the community following a severe injury. The Authority is currently funding a project to assist clinicians in identifying and planning meaningful activities for participants with a severe brain injury.

### **Recommendation 14**

That the Lifetime Care and Support Authority liaise with the Department of Education and Training and review the issues raised by the Children's Hospital Westmead as set out in paragraph 6.112 of this Report to improve and clarify the process of obtaining educational support for child participants in the Scheme, with a view to accepting and implementing those recommendations as appropriate.

### **Response:**

The Authority has been continuing discussions with the Department of Education and Communities (DEC) to improve the process for obtaining educational support for participants who are students in the Scheme. The Authority has also been consulting with the Association of Independent Schools of NSW and Catholic Education Commission of NSW for their input.

The Authority's guidelines for funding education support have not changed since they were first introduced. The Authority will consider a funding teacher's aide and other learning support on a case by case basis depending on the participant's injury related need for such services. Options for funding supports through DEC must be exhausted before the Authority will consider funding education supports.

The Authority considers teachers and educators are the experts in education, therefore requires the participant's school to make a request for education supports. Case managers and other therapists are often funded to liaise with schools regarding a participant's injury related needs, therefore it is expected these requests are made by the school in collaboration with the participant's treating health team.

The Authority will consult DEC and the Association of Independent Schools of NSW and Catholic Education Commission of NSW on how to best inform and train teachers in how to complete the Authority's forms. Schools routinely ask for teacher release time to enable planning around the student's needs which would include completing the required paper work. The Authority expects that coordinators will play a key role in assisting schools to complete the forms if needed. The Authority will continue to liaise with the Children's Hospital at Westmead and Sydney Children's Hospital about planned changes to requesting education services.

**Update:**

In 2012 the Authority liaised with the Children's Hospital Westmead and Sydney Children's Hospital in revising its processes for requesting education support. This included revision of the Education Support Request form with input from the Department of Education and Communities and teachers from public, Catholic and independent schools. The Authority implemented the revised process and forms for requesting education support in 2012.