

**FIRST REVIEW OF THE EXERCISE OF THE FUNCTIONS
OF THE
LIFETIME CARE AND SUPPORT AUTHORITY OF NEW
SOUTH WALES
AND THE
LIFETIME CARE AND SUPPORT ADVISORY COUNCIL OF
NEW SOUTH WALES**

Organisation: The Law Society of NSW
Name: Mr Hugh Macken
Position: President
Telephone: 02 9926 0333
Date received: 1/05/2008

A separate submission has also been lodged for the Ninth Review of the MAA and MAC and is available for download from that inquiry web page.



**The Law Society
of New South Wales**

170 Phillip Street, Sydney NSW 2000
Australia; DX 362 Sydney
Tel (02) 9926 0333 Fax (02) 9231 5809
ACN 000 000 699 ABN 98 696 304 966
www.lawsociety.com.au

Our Ref: HM:SRC:MotorAccidents2008(F6.D27)(6555)

29 April 2008

Mr Simon Johnston
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

BY FAX: 9230 3416

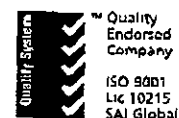
Dear Mr Johnston

Re: Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

I refer to the letter from the Hon Christine Robertson MLC dated 10 March 2008 inviting the Law Society to participate in the first review of the exercise of the functions of the Lifetime Care and Support (LTCS) Authority and the Lifetime Care and Support Advisory Council.

It is noted that the LTCS Scheme is now fully operational, with children participants from 1 October 2006 and with adult participants from 1 October 2007. This is the first occasion where submissions have been called into the functions of Scheme. In preparation of this submission the Law Society recognises that the Scheme remains in its early days, and only a small proportion of catastrophically injured have, in fact, joined the Scheme.

The Law Society was consulted widely during the consultative phase of 2005. The Law Society, jointly, with the Australian Lawyers Alliance retained independent actuarial advice, namely a detailed report from Cumpston Sarjeant Pty Ltd. That report that was submitted to the Motor Accidents Authority of New South Wales on 19 December 2005. The report significantly eroded a number of the methodologies and findings as stated in the John Walsh report of Price Waterhouse Coopers, the LTCS costing study in June 2005, adopted by the Motor Accidents Authority, and the New South Wales Government. A number of concerns were considered in comprehensive correspondence from the Motor Accidents Authority to the then President of the New South Wales Law Society on 21 February 2006.



The Law Society of
New South Wales is a
constituent body of the
Law Council
of Australia



Bearing in mind the time frame, and the fact that the Scheme is now operational the Law Society of New South Wales makes the following submissions for consideration by your Committee:

1. Opting Out

The Law Society remains implacably opposed to that aspect of the LTCS Scheme which denies those catastrophically injured persons with requisite mental capacity, an ability to opt out and manage their own financial affairs. The Scheme fails to respect the autonomy of the injured person. The Scheme effectively takes away the rights of the catastrophically injured, who are entitled to lump sum compensation, to manage their compensation. This principle remains in stark contradistinction to the Government's stated intentions during 2001 and 2002 concerning personal responsibility vis a vis the Tort Law Reform debate.

2. Review of Decisions

The LTCS Scheme has been effectively set up to abolish the role of lawyers in assisting the catastrophically injured to contest bureaucratic decisions. A range of decisions should remain open to challenge, such decisions which would ultimately detract from the quality of life of a catastrophically injured person. Such decisions include eligibility at first instance, and whether a person should remain within the Scheme at the expiration of two years. Further, decisions on the levels of care, the adequacy of care, the personnel or agencies to implement care and treat regimes should also be subject to review.

Allowing such major decisions to be only made by Medical Assessors or staff employed by the Motor Accidents Authority significantly detracts from procedural fairness and transparency within the scheme. The Law Society, as a bare minimum, recommends the amendment of the Legislation so as to allow due and proper appeal processes.

3. Children and At Fault Persons

The Law Society fully supports the existing legislation in relation to its capacity to deal with children and at fault parties. This support has been fully provided since consultations in 2005 and the Law Society is of the view that social justice issues have been more than adequately met with this aspect of the Scheme.

4. Costings

Costings issues were addressed in the report of Cumpston Sarjeant Pty Ltd of December 2005. The report addressed considerable uncertainties including the assumptions that were utilised by Price Waterhouse Coopers, the difficulties in assessing eligibility criteria and, in turn, the actual numbers that may be expected to be admitted into the Scheme, offsets from the current CTP Scheme and possible savings on the cost of capital and reinsurance.

In media releases by the New South Wales Government, all commentary pointed to a \$20 increase in green slip premiums across the board. In early 2008, however, there were a number of media reports indicating that some

CTP insurers had been charging well above the \$20 increase, with reports demonstrating increases of \$80 to an excess of \$100 to be applied to the support of the Scheme. The Law Society notes that the Auditor General will monitor the costings of the Scheme as it develops and, further, any fluctuations in green slip premiums.

Thank you for inviting the Law Society to participate in the first review of the exercise of the functions of the LTCS Authority and the LTCS Advisory Council. Should you require any further assistance in relation to certain aspects to the submission, or generally, please do not hesitate to contact me.

Yours sincerely



Hugh Macken
President