Submission No 3

FIRST REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME

Organisation: Suncorp

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The Hon Shayne Mallard MLC
Committee Chair
Legislative Council Standing Committee on Law and Justice
Parliament House
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RE: FIRST REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME

Suncorp welcomes the opportunity to participate in the Law and Justice Committee First Review of the Lifetime Care and Support Scheme (LTCS scheme).

Executive Summary

In respect to the LTCS scheme services, Suncorp offers the following comments: -

1. Suncorp has an interest in promoting the success of publicly underwritten lifetime care and disability schemes, working in tandem with outcome based competitively underwritten personal injury schemes, as part of a holistic package aimed at fostering social and financial independence early after a medical or injury event;

2. The LTCS scheme should continue to be based on insurance principles;

3. Continued education in regional areas on the correct completion of the medical certificate needed for entry into the LTCS scheme is required;

4. Consider extending the liability of the Lifetime Care and Support Authority from the date of accident instead of from the date of determination of eligibility into the LTCS scheme;

5. Consider running the two-year interim period from the date of accident instead of from the date of determination of eligibility into the LTCS scheme;

6. Enhancing the transfer process out of the LTCS scheme after assessment;

7. Continued education between claimants and lawyers on the benefits of the LTCS scheme, for those likely to be found eligible.

About Suncorp

Suncorp offers a range of financial products and services including banking, general insurance, compulsory third party (CTP) insurance, workers' compensation insurance, life insurance and superannuation across Australia and New Zealand.

Suncorp has about 13,500 employees and relationships with eight million customers. Suncorp is a top 20 ASX-listed company with $96 billion in assets.

Suncorp provides a wide range of insurance products to small and medium sized businesses as well as to corporate customers. These products are distributed nationally, both directly and indirectly, through intermediaries.

Suncorp provides workers compensation insurance in most available jurisdictions around Australia. CTP insurance is provided in New South Wales, the Australian Capital Territory, Queensland and from 1 July 2016, South Australia. Within the New South Wales CTP scheme, Suncorp operates under the GIO and AAMI brands.

Suncorp has consistently taken a leadership role within the industry to advocate necessary reform to statutory schemes. We have published several white papers covering competitive underwriting, scheme design and no-fault lifetime care. As Australia's largest private personal injury insurer, we take this role seriously and continue to support reform that improves the lives of our customers. Copies of these white papers are available upon request.

This submission is made on behalf of Suncorp's Personal Injury Portfolio and Products division.

Suncorp in the Community

Suncorp's community-focused activity is centred on risk management, injury prevention, social participation and quality of care for those who are injured or have a disability. We value the communities in which we live and work, and have entered into partnerships with a range of organisations that are also dedicated to making a difference in the lives of people who have been affected by personal injury.

Our community partners include Youngcare, Adapted Physical Activity Program, James Cook University, Advance Queensland, Queensland Police, RYDA and Fatality Free Friday. Suncorp also works with youth education initiatives such as the P.A.R.T.Y. Program and has a partnership with the Driver Education Centre of Australia, which aims to address some of the root causes of severe personal injury on Australian roads.

Youngcare

Formed in 2005, Youngcare is a not-for-profit organisation that aims to raise awareness and funds to provide more appropriate accommodation options for young people with high care needs. With an estimated 7,500 young Australians currently living in aged care nursing homes, and limited alternatives available, Youngcare set out to build Australia's first age-appropriate facility.

In December 2007, Youngcare's first apartment building opened in Brisbane and now provides a home for 16 young people living with high care needs. Since then, apartments have also been built on the Gold Coast and are soon to be built in Sydney.

One of the major causes of young people needing high level care is acquired brain injury, often the result of a motor vehicle accident. In January 2007, Suncorp CTP insurance partnered with Youngcare to increase awareness of the organisation's work and to help raise much-needed funds.

Suncorp continues to support Youngcare, including taking part in the Youngcare Simpson Desert Challenge, to raise money for age-appropriate care and housing.

Scheme Design

Suncorp continues to advocate for a holistic approach to personal injury schemes, based on principles of fairness, outcomes and affordability. To this end, Suncorp supports the publicly underwritten National Disability Insurance Scheme (NDIS) and National Injury Insurance Scheme (NIIS) and the LTCS scheme - as recovery based models underpinned by insurance principles.

Insurance principles require –

- actuarially estimating the cost of reasonable and necessary supports of the target population;
- reserving on a 'fully funded' basis, whereby funds collected in a period cover the anticipated lifetime costs resulting from the injuries sustained in that period;
- minimising support costs over a participant's lifetime - by investing in people early to build their capacity to help them pursue their goals and aspirations resulting in greater outcomes later in life; and
- investing in research and encouraging innovation.

Lifetime care schemes are social welfare schemes, aimed at maximising social and financial independence early after a medical or trauma event in a person's lifetime. Suncorp maintains that social welfare schemes such as the NDIS, NIIS and the LTCS scheme are best served in a publicly underwritten environment.

This is because of the lifetime nature of the services required. Insurers would be obliged to hold a large amount of capital for a considerable amount of time to pay for these services. This would ultimately make the services unaffordable. Further, the relatively small number of catastrophic injuries justifies a single operator to maximise scale benefits.

In respect to non-catastrophic type claims, it is Suncorp's position that these claims are better served in a competitive underwritten environment.[1] Competitive neutrality is vital however, to ensure entities offering insurance cover and claims service are operating in the same regulatory environment. Further, it is Suncorp's view that statutory scheme design should be based on a recovery model,[2] similar to that used in the NDIS, NIIS and the LTCS scheme.

A recovery model better supports people becoming socially and financially independent earlier after a medical or trauma event. It also better supports the Federal Government's initiatives to counter the productivity challenges facing Australia due to its ageing workforce moving into retirement.[3]

The LTCS scheme in New South Wales is based on this recovery model in a publicly underwritten environment, funded through a Medical Care and Injury Services levy paid by motorists upon purchase of a CTP policy.

Suncorp supports the current scheme design for the LTCS scheme. As envisaged by the national disability reform agenda, the LTCS scheme may be expanded or rolled into a NIIS model to include catastrophic injuries from all accident classes, once separate funding sources are established for each accident class.

LTCS Scheme Performance

As of 30 June 2016, the LTCS scheme is performing well and is financially sustainable, with a reported funding ratio of 150 per cent and scheme efficiency ratio of 91.6 per cent.[4]

During this reporting time, the LTCS scheme had 1,143 participants, of which 315 were interim participants and 828 were lifetime participants.[5] Males between the ages of 15 to 54 years feature highly in these statistics.

This raises two areas for potential enhancements, the Lifetime Care and Support Authority (LTCSA) could focus on. First, aggressive educational programs identifying risky behaviours and encouraging behavioural changes of the male target audience, in an effort to prevent accidents in the first place or at the very least minimise the impact of the accidents.

[1] Suncorp – *Insurance Insights, States in the injury business, November 2014* - https://www.icare.nsw.gov.au/sites/default/files/icare-annual-report-volone-2015-16.pdf; http://www.suncorpgroup.com.au/sites/default/files/pdf/news/States%20in%20the%20injury%20business%20-%20Suncorp%20white%20paper%20Nov%202014.pdf

[2] Suncorp – *Insurance Insights, The mechanics of motor injury schemes, October 2013*

[3] The Australian Government Treasury – *2015 Intergenerational Report, 5 March 2015* - http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report

[4] Icare – Annual Report 2015-2016 page 74 - https://www.icare.nsw.gov.au/sites/default/files/icare-annual-report-volone-2015-16.pdf

[5] Icare – Annual Report 2015-2016 at page70 - https://www.icare.nsw.gov.au/sites/default/files/icare-annual-report-volone-2015-16.pdf

Secondly, to explore enhancements in early intervention - through the investment of the latest medical/rehabilitation practices working together with the best practice procedural pathways to deliver early intervention - to minimise the need to enter the scheme as a life participant.

It is reported that as of 30 June 2016, about 180 people entered the scheme each year as interim participants, and after two years 120 continued as lifetime participants.[6] There may be potential to elevate interim participants to a level of recovery and independence that does not require entry into the scheme as a life participant and this should be explored.

Enhancements of Procedural Pathways

Procedural pathways that could benefit from enhancements are identified below.

1. *Application process for participation into the LTCS scheme*

Suncorp has experienced instances where the relevant documents, specifically medical certificates are not completed with sufficient information to permit a decision on eligibility into the LTCS scheme. This represents a problem for claimants as it potentially delays appropriate early medical/ rehabilitation intervention, as insurers and/or LTCS scheme co-ordinators attempt to gain sufficient information to understand the nature and severity of the injury and assess whether the eligibility criteria would be met for entry into the LTCS scheme.

This observation is made in respect to regional hospitals and general practitioners who complete the medical certificate after hospital discharge. It is preferable that the application is received whilst the claimant is still in hospital. Enhancements in the application process should be explored, particularly in regional hospitals and with regional general practitioners.

2. *Eligibility for interim participation and LTCS scheme's liability*

Currently, the LTCSA is liable for costs from the date the claimant is formally accepted as a participant of the scheme, whether as an interim or lifetime participant. It is suggested that the LTCSA be liable for costs from the date of the accident that caused the injury regardless of the date of the determination.

This rationale is consistent with the approach applicable to insurers in respect of liability for damages. If an insurer takes three months to issue a Section 81 Notice admitting liability,[7] the insurer is liable for damages from the date of accident and not from the date of the decision to admit liability.

Currently, claimants and insurers are prejudiced whilst the LTCSA makes its determination on eligibility. In practice the insurer is obliged to fund all reasonable and necessary treatment, rehabilitation and care needs for eligible claimants as soon as a claim is made. If the claimant's injuries ultimately meet the criteria for participation in the LTCS scheme, the insurer does not but should have a right of recovery for the section 83 expenses[8] paid.

Adjusting the date of liability would ensure that insurers invest in all possible treatment early in the process, maximising the opportunity of expediting long-term recovery and capacity building. Any incentive for insurers to curtail or delay particularly expensive treatments on the expectation that liability would imminently transfer to the LTCSA would be removed, which is in the best interests of participants.

Further, the ability of the LTCSA to exercise its right to seek an independent medical opinion regarding the claimant's eligibility should be considered. There have been instances where a complete application form has been received confirming the claimant's eligibility for participation in the scheme, but an independent assessment was nevertheless sought, even in circumstances where the insurer had qualified an occupational therapist from the LTCSA's panel to conduct the functional independence measure (FIM) assessment.

[6] Icare – Annual Report 2015-2016 at page70 - https://www.icare.nsw.gov.au/sites/default/files/icare-annual-report-volone-2015-16.pdf
[7] *Motor Accidents Compensation Act 1999* - Section 81 - http://www.austlii.edu.au/au/legis/nsw/consol_act/maca1999298/s81.html
[8] *Motor Accidents Compensation Act 1999* - Section 83 - http://www.austlii.edu.au/au/legis/nsw/consol_act/maca1999298/s83.html

3. The Interim participation period

Currently a claimant is accepted as an interim participant for two years commencing on the date they are formally accepted into the scheme. The two-year period is designed to cover appropriate medical and rehabilitation intervention leading to maximum medical improvement for traumatic brain injuries, at which point the participant is capable of being assessed for lifetime participation within the scheme.

It is suggested that the two-year period should run from the date of accident causing the relevant injuries. This change would promote earlier resolution of the claim for the claimant. The claimant should be able to expect that their injury would have stabilised within the two-year period after the accident for the purposes of assessing their future pathway within the CTP and the LTCS schemes.

During the two-year interim period, the LTCSA usually gives insurers regular updates on whether the participant will be transferred out of the scheme. However, there have been instances where Suncorp has received very little notice of a transfer.

This represents a problem for continuity of service delivery, as insurers require time to notify multiple stakeholders and third party service providers of the transfer. We suggest enhancements to the transfer process, to ensure continuity in service delivery is not impacted.

4. Resisting participation in the LTCS scheme

Participation into the LTCS scheme is not mandatory. An insurer can refer a claimant to the scheme and the State Insurance Regulatory Authority may direct an insurer to make an application on behalf of a claimant, without consent of the claimant.[9]

However, Suncorp has identified instances where the claimant has declined to participate in the application process. In most cases, the LTCSA co-ordinator has been able to make direct contact with the claimant and advised them of their entitlements with the end result the claimant does apply to participate.

However, there has been the odd occasion where contact has been problematic and the claimant continues to decline to be involved with the LTCS scheme. It appears that some lawyers actively discourage their clients against entering the scheme, based on a long-standing common law compensation mindset. Arguably, this is not the best outcome for the claimant.

Further, it places insurers in a difficult position, because as stated previously, insurers are obliged to fund all reasonable and necessary treatment, rehabilitation and care needs for eligible claimants as soon as a claim is made. However, insurers do not have a right of recovery from the LTCS scheme, even if the claimant were to be found eligible as a participant, at a later time.

Suncorp suggests that where these instances arises, there should be a collaborative approach between the LTCSA, claimants, their lawyers and insurer to ensure claimants have an opportunity to understand the benefits in participating in the scheme. Suncorp repeats its previous recommendation that insurers be given the right to recover section 83 expenses from the date of accident, notwithstanding the delay in the eligibility determination.

Further, it is recommended that insurers refer claimants potentially eligible for scheme benefits to the LTCSA for assessment, notwithstanding any denials of liability made by the insurer, to prevent delays in delivering scheme benefits.

[9] Motor Accidents (Lifetime Care and Support) Act 2006 – Section 8 - http://www.austlii.edu.au/au/legis/nsw/consol_act/macasa2006394/s8.html

Conclusion

Overall the LTCS scheme is operating effectively and is in a financially sound position. Suncorp offers areas of improvements to ensure claimants are identified and benefit from the important early medical and rehabilitation intervention available.

Apart from enhancing strategies to reduce road accidents that cause catastrophic injuries, the aim is to elevate the claimant to the maximum functional capacity early after the accident. Suncorp's suggestions go to enhancing current processes to ensure the desired outcomes are achieved.

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

Yours faithfully

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