

Standing Committee on Law and Justice

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

First Report

Ordered to be printed 30 October 2008

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.

Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council: First Report / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2008. – xvii, 98 p. ; 30 cm. (Report ; no. 37)

Chair: Hon Christine Robertson, MLC.
“October 2008”.

ISBN 978192186292

1. Lifetime Care and Support Authority of NSW.
2. Lifetime Care and Support Scheme (N.S.W.)
3. Lifetime Care and Support Advisory Council (N.S.W.)
4. Traffic accident victims—Services for—New South Wales.
 - I. Title
 - II. Robertson, Christine.
 - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 37

363.125 (DDC22)

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Terms of reference

1. That, in accordance with section 68 of the Motor Accidents (Lifetime Care and Support) Act 2006, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise 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 under the Act.
2. That the terms of reference of the committee in relation to these functions be:
 - (a) to monitor and review the exercise by the authority and council of their functions,
 - (b) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authority or council or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed, and
 - (c) to examine each annual or other report of the authority and council and report to the House on any matter appearing in, or arising out of, any such report.
3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once each year.
4. That nothing in this resolution authorises the committee to investigate a particular participant, or application for participation, in the Lifetime Care and Support Scheme provided for by the Motor Accidents (Lifetime Care and Support) Act 2006.¹

¹ *LC Minutes* No. 5, 30 May 2007, Item 3

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The Hon David Clarke MLC	Liberal Party	<i>Deputy Chair</i>
The Hon John Ajaka MLC	Liberal Party	
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Chair's foreword

It is rare for an entirely new socio-legal program to be established, particularly one so ambitious as the Lifetime Care and Support Scheme.

The Scheme sets a new benchmark in care and support for adults and children who are catastrophically injured in motor vehicle accidents, not only in New South Wales, but also in other jurisdictions, both nationally and internationally.

The Scheme has been thoughtfully designed to meet the immediate and enduring needs of participants and their families. It is underpinned by human rights principles and a sophisticated and equitable funding arrangement.

Like various stakeholders to this First Review of the Lifetime Care and Support Authority (LTCSA) and Lifetime Care and Support Advisory Council (LTCSAC), the Law and Justice Committee enthusiastically welcomes the Scheme and congratulates the NSW Government on its establishment. In our role in reviewing the exercise of the functions of the Motor Accidents Authority (MAA) and Motor Accidents Council (MAC), the Committee identified several years ago the desirability of a system of structured damages in lieu of compensation to meet the long-term care needs of people who are catastrophically injured. It is with great satisfaction that we now see such a system up and running.

The LTCS Scheme has the potential to have a profoundly positive impact on participants and their families by facilitating the highest standards of medical care and rehabilitation in the short term – thereby potentially improving participants' injury outcomes – and then delivering a coordinated and flexible system of long term care and support for the rest of their lives. Whilst pursuing these goals, the LTCSA and its Board of Directors have a responsibility to ensure the prudent management of the Scheme's significant funds.

This First Review of the LTCSA and LTCSAC has focused on the very early implementation of the Scheme, which is still in its infancy. Future annual reviews will continue to explore emerging issues as implementation progresses. The Committee will keenly observe the extent to which the Scheme meets its potential to improve outcomes for participants within a prudential framework.

This review has benefited greatly from the input of a range of stakeholders: legal representatives, medical and rehabilitation staff, motorists, and very importantly, disability and carer groups. In addition, representatives of the LTCSA and LTCSAC gave us extensive information on the Scheme and valuable insights into it. As a result, the Committee has made two recommendations and identified a number of emerging issues that we will monitor as implementation proceeds. On behalf of the Committee I express our gratitude to all review participants for their significant contributions.

I thank my Committee colleagues for their informed and collaborative approach to the review, underpinned by their own desire to see the Scheme live up to its potential, for the benefit of participants. I also express my thanks to the Committee secretariat for their highly professional support.



Hon Christine Robertson MLC
Committee Chair

Executive summary

Chapter 1 – Introduction

The Lifetime Care and Support (LTCS) Scheme is a NSW Government scheme administered by the Lifetime Care and Support Authority (LTCSA) that provides treatment, rehabilitation and care for people who have been catastrophically injured in a motor vehicle accident in New South Wales. The Scheme commenced operation on 1 October 2006 for children and 1 October 2007 for adults.

The Scheme evolved out of the Motor Accidents Authority (MAA) administered Motor Accidents Compensation Scheme which provides compulsory third party (CTP) insurance for people injured in motor accidents in this State.

This is the Law and Justice Committee's First Review of the LTCS Scheme. The Review was conducted concurrently with the Committee's Ninth Review of the MAA and Motor Accidents Council (MAC). As the Scheme is still in its infancy, this *First Report* is relatively brief and preliminary. It concentrates on setting out the elements of the Scheme, on documenting its performance to date, and examining a range of emerging issues identified by review participants and by the Committee itself, a number of which we suggest should be monitored as the Scheme's implementation proceeds. The Committee plans to conduct more in-depth reviews as the Scheme matures, as its performance takes shape, and as emerging issues become more apparent.

The Committee received submissions from a number of stakeholders and heard evidence from representatives of the LTCSA and LTCS Advisory Council (LTCSAC), the Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate, Law Society of NSW, NSW Bar Association and Insurance Council of Australia. In addition, detailed information was gathered through a process of written questions and answers. The Committee expresses its thanks to all who participated in this Review.

Chapter 2 – The Lifetime Care and Support Scheme and Lifetime Care and Support Authority

Chapter 2 provides an overview of the LTCS Scheme, the LTCSA and the LTCSAC. It sets out the Scheme's key functions and the background to its establishment, then documents provisions for Scheme eligibility, interim and lifetime participation, LTCS Coordination, the principles informing LTCS planning, and review and dispute resolution. It also documents arrangements for the Scheme's governance and funding, and explains its interface with the Motor Accidents Compensation Scheme.

The Committee congratulates the NSW Government on the establishment of the LTCS Scheme, noting the very valuable provisions it makes for lifelong treatment, rehabilitation and care for people who are catastrophically injured in motor accidents in New South Wales, regardless of who was at fault in the accident. Having taken evidence during numerous reviews of the MAA about the desirability of a structured yet flexible system of lifetime care and support in lieu of compensation, the Committee is very pleased to see such a Scheme now in place in this State. We consider the LTCS Scheme a model for other jurisdictions.

The Committee endorses the goals of the Scheme and the principles underpinning it, both of which affirm the rights and dignity of the injured person, and which will ensure a holistic approach to their needs, care and support. We also commend the LTCSA, LTCSAC and MAA for their substantial work in designing the Scheme and commencing its implementation.

Chapter 3 – Scheme performance

Our report notes a number of the Authority's activities in its first year and documents utilisation of the Scheme to date. It sets out Scheme expenditure to April 2008, then uses a number of case studies to illustrate participants' needs and the treatment and care that they are receiving via the Scheme. It then considers the mechanisms that the LTCSA is putting in place to monitor Scheme performance.

Given the short time that the LTCS Scheme has been operational, the information available on its performance is inevitably preliminary. Nevertheless, on the basis of that information, the Committee concludes that the Scheme has performed satisfactorily to date. We look forward to monitoring performance in greater detail, and with greater certainty, in future reviews.

The Committee notes that expenditure to date on participants' care and support is a mere fraction of the amount projected for the year, but appreciates that this is a reflection of the fledgling state of the Scheme. We note that the surplus has been invested for future use.

We are pleased to observe that the LTCSA is working to establish systems for data collection, performance monitoring and quality assurance, and again we look forward to examining these systems as they are bedded down and start to inform the work of the Authority.

Chapter 4 – Emerging issues

Various issues concerning the LTCS Scheme's early implementation emerged during the Committee's Review. The Scheme commenced a little over a year ago and is not expected to reach maturity for 30 years. In the meantime those administering it have a significant responsibility to ensure its effective implementation, most especially because of the profound impact that the Scheme will have on the health, wellbeing and quality of life of participants, both now and over their entire life course.

The Committee notes the very positive response among stakeholders to the establishment of the Scheme, along with the reported successes of the implementation process to date, and the collaborative action that the Authority is taking to address issues as they emerge. We also note the Authority's work to engage stakeholders in the design and roll-out of the Scheme, which will continue to be vital to its effective implementation over the years to come.

Concerns about potential gaps in eligibility and about the Scheme's eligibility criteria were raised during the Review. In the Committee's view, issues concerning the potential extension of eligibility are inevitably complex and it would be premature to draw firm conclusions at this stage. We will observe with interest the extent to which this becomes a contested issue as the Scheme matures, as well as what claims are made in respect of eligibility, and any particular gaps that become more problematic in time.

Similarly, it will be interesting to see whether rehabilitation providers' concerns regarding the need for greater clarity about the intended target group of the Scheme continue to be an issue over time. It may be that the boundaries of eligibility are tested in the Scheme's initial period, and in turn, better defined in practical terms. The Committee considers that the extent to which eligibility becomes an issue, and over what period, should have a bearing on how soon any review of eligibility criteria should take place.

A number of review participants highlighted the Authority's responsibility to ensure that all those who are eligible for the Scheme do actually enter it in a timely way. The Committee is satisfied that the LTCSA is investing significant effort into ensuring this, most notably through widespread ongoing training for hospital and rehabilitation staff. The Authority has acknowledged that entry via the

orthopaedic system is the weaker area of its net, but has also indicated that it is seeking to address this weakness. We further note that the Authority appears to be effectively harnessing the resources of the health system in this respect. Again, the Committee will monitor this issue over time.

The LTCSA advised the Committee that on the basis of advice from paediatric experts that it is almost impossible to assess the long term care needs of very young children, the Authority has identified the need to extend the interim participation period for this group. The Committee sees value in this proposal and accepts the medical rationale for it. Accordingly, we recommend that the Minister for Finance seek an amendment to the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide that children less than three years of age when injured are not assessed for lifetime participation until they are aged at least five years.

The Law Society of NSW raised a concern about the inability of participants to opt out of the Scheme and manage their own care and support if they so wish. The Committee acknowledges the philosophical position of the Law Society in respect of this issue but considers it a matter of policy on which we have not yet formed an opinion. We note that no disability groups have raised this with us to date and will watch with interest as to whether this issue becomes more contentious as the Scheme matures.

A number of emerging issues relating to the provision of services to Scheme participants arose in evidence. Specifically, these concerned service gaps and innovation, supported accommodation and attendant care. The Committee is satisfied that the service provision aspects of the Scheme's early implementation are proceeding in a considered and planned manner, with due consideration being given to ensuring responsiveness to the range of individual needs to be addressed over time.

Given that attendant care is expected to make up the largest proportion of care provided under the Scheme, it will be vitally important that it is appropriately remunerated, well planned for and effectively and efficiently delivered. The Committee is pleased to observe that the LTCSA is seeking to address an identified gap in supported accommodation and we will monitor its work in this area over time. It will be important for the Authority to watch for other emerging gaps in services over the coming years and to proactively address them.

Several strategies were proposed to ensure appropriate support for family carers of LTCS participants. The Committee acknowledges the substantial contribution that carers and other family members make in the recovery, care and support of people who are injured in motor accidents. We encourage the LTCSA in its strategies to ensure that carers are recognised and actively supported within the Scheme.

Health service staff reported that the advent of the Scheme has seen a significant increase in paperwork. The Committee acknowledges the important role of area health service staff in the Scheme's operation, as well as the additional demands that the Scheme is placing on them. While recognising the need for the Authority's decisions about individual participants to be well substantiated and transparent, we encourage the LTCSA in its work to streamline administrative processes and reduce duplication as far as possible, so that the right balance is struck between transparency and utility.

While acknowledging the additional work arising from the Scheme, we consider that decisions as to how area health services should spend the revenue gained via Scheme reimbursement are a matter for those area health services. The Committee will make enquiries as to the administration of this aspect of the program with NSW Health and will return to this issue during next year's review.

Rehabilitation staff also raised a concern about ambiguity in the role of LTCS Coordinators *vis a vis* clinical staff. The Committee notes that the role of LTCS Coordinator is central to the operation of the Scheme and considers it understandable that there be an initial period of adjustment and change on the part of treatment and rehabilitation staff associated with the advent of the LTCS Coordinator role. We further note that the Authority has recognised and is responding to this. We will watch with interest whether this is resolved over time or becomes a greater cause for concern.

Noting the significant impact that decisions within the Scheme have on confirmed and prospective participants, as well as the substantial sums of money involved, the Committee sought advice from the LTCSA on the mechanisms in place to ensure transparency and accountability in decision-making about individual participants, as well as in payments to care and equipment providers. The Committee considers that the significant transparency and accountability mechanisms built into the Scheme are sound and that funding in respect of decisions is appropriately safeguarded.

Stakeholders commented on the importance of ensuring that information about the Scheme is accessible to people with a disability. The Committee notes the Authority's work to provide accessible information, and encourages it in its efforts to further ensure this.

The Committee acknowledges the efforts of the LTCSA in advising participants of their rights within the Scheme. At the same time, we believe that further consideration should be given to the most appropriate mechanism for review of Scheme decisions, and to the desirability of an independent advice and advocacy service, in order to ensure that participants enjoy adequate procedural rights. The Committee considers that it would be valuable to make use of the LTCSAC's advisory role in respect of this issue. Accordingly, we recommend that the Authority, in consultation with the LTCSAC, formally consider the range of options for independent review of decisions, and the provision of independent advice and advocacy to potential and actual participants, with a view to recommending the preferred option(s) for both.

During the Review the Insurance Council of Australia raised a concern that decisions in respect of care and support in the LTCS Scheme may impact upon CTP insurers, and it sought a formal role in such decision-making. The Committee will watch with interest the boundary issues in respect of the LTCS and CTP Schemes with a view to whether they need to be addressed. We are mindful that in clarifying what is and is not a treatment, rehabilitation or care expense, the LTCSA and MAA must fairly balance the interests of LTCS participants, CTP claimants and insurers.

A significant issue explored during this First Review, and which will no doubt inform future reviews, is that of the actuarial estimations for the financial liabilities of the Scheme. The Committee notes the Law Society's concerns, informed by an independent actuarial review of the LTCSA's cost estimations, that those costings may not be accurate, and that participants' entitlements might be ultimately be affected. Nevertheless, at this stage the Committee accepts the Authority's advice that in the absence of sound and comprehensive data it reasonably based its estimates on a number of inherently uncertain assumptions. We also note that the Authority has been candid about this fact. In addition, the Authority has indicated that its assumptions and estimates are revised annually, based on the experience of the Scheme. The Committee further notes the Authority's assurance that participants' entitlements cannot be reduced as more and more people enter the Scheme; rather, liabilities will be fully funded each year by the levy on green slips and by investment income.

Notwithstanding these assurances, the Committee will monitor the Scheme's financial liabilities over time. In managing the Scheme's estimated and real financial position, due consideration needs to be

given to the significant sums of money involved, the entitlements of and outcomes for participants, and the imposition on NSW motorists via the Medical Care and Injury Services Levy.

Concerns were raised during the Review about the cost to motorists of the Medical Care and Injury Services Levy and about the rating system by which individual motorists' levies are calculated. In addition, stakeholders sought greater transparency through the itemisation of each of the charges comprising premiums. The Committee addressed this last issue in the report of our Ninth Review of the MAA and MAC, recommending that the MAA, in consultation with the MAC, consider by 30 June 2009 the advantages and feasibility of further itemisation of the Medical Care and Injury Services Levy on CTP green slips. The Committee trusts that the information provided by the Authority addresses the concerns in this area and clarifies the administration of the levy.

In conclusion, the Committee considers that many of the issues raised during this First Review of the LTCSA and LTCSAC are perhaps to be expected during the establishment of such a substantial and complex Scheme as this.

We note that the Authority has been open in acknowledging some of the Scheme's teething problems and has displayed a readiness to consult and work with stakeholders to address them. It remains to be seen which of these issues dissipate as the Scheme's implementation proceeds, and which coalesce into areas specifically needing further examination and action.

At this stage the Committee considers that the Scheme's implementation is proceeding well. Once again, we note the profound and positive outcomes that the Scheme is intended to bring about for participants, and the model that it represents for other jurisdictions, not only in its goals, but also in its design and administration. Again, the Committee acknowledges the significant work of both the LTCSA and LTCSAC, as well as the MAA, in establishing the Scheme and commencing its implementation.

The Committee will watch the Scheme with great interest as it continues to unfold, and we look forward in time to hearing the views of participants about how the Scheme is working for them.

Summary of recommendations

Recommendation 1

40

That the Minister for Finance seek an amendment to the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide that children less than three years of age when injured are not assessed for lifetime participation in the Lifetime Care and Support Scheme until they are aged at least five years.

Recommendation 2

55

That the Lifetime Care and Support Authority, in liaison with the Lifetime Care and Support Advisory Council, formally consider the range of options for independent review of decisions and the provision of independent advice and advocacy in respect of applicants, interim participants and lifetime participants in the Lifetime Care and Support Scheme. This should include the development of recommendations as to the desirability of and the most appropriate mechanisms for each.

Acronyms and abbreviations

The Authority	Lifetime Care and Support Authority
CTP	Compulsory third party
LTCSA	Lifetime Care and Support Authority
LTCSAC	Lifetime Care and Support Advisory Council
LTCS Scheme	Lifetime Care and Support Scheme
MAA	Motor Accidents Authority
MAC	Motor Accidents Council
The Scheme	Lifetime Care and Support Scheme

Chapter 1 Introduction

In this chapter the Committee outlines its role in reviewing the Lifetime Care and Support Authority (LTCSA) and the Lifetime Care and Support Advisory Council (LTCSAC) and describes the process of this First Review of the LTCSA and LTCSAC.

The Lifetime Care and Support Scheme

- 1.1 The Lifetime Care and Support (LTCS) Scheme is a NSW Government scheme administered by the LTCSA that provides treatment, rehabilitation and care for people who have been catastrophically injured in a motor vehicle accident in New South Wales. The Scheme commenced operation on 1 October 2006 for people under the age of 16 and on 1 October 2007 for people aged 16 and over.²
- 1.2 Details of the aims and structure of the LTCS Scheme are provided in Chapter 2.

The Committee's role

- 1.3 Section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) requires a Legislative Council committee to supervise the exercise of the functions of the LTCSA and LTCSAC. The Standing Committee on Law and Justice was appointed on 30 May 2007 to fulfil this function and report to the House at least once a year.³ This is the Committee's First Review of the LTCSA and LTCSAC.
- 1.4 The LTCS Scheme evolved out of the Motor Accidents Authority (MAA) administered Motor Accidents Compensation Scheme which provides compulsory third party (CTP) insurance for people injured in motor accidents in New South Wales. Similarly, the Committee's role in monitoring the exercise of the functions of the LTCSA evolved out of its same role with respect to the MAA and the Motor Accidents Council (MAC).

Conduct of the inquiry

- 1.5 The Committee resolved to commence this First Review on 5 March 2008.

Focus of this review

- 1.6 The Committee decided not to conduct a review of the Scheme's operations in 2006-2007 because the Scheme only commenced in October 2006. As the Scheme is still in its infancy, this *First Report* is relatively brief and preliminary. It concentrates on setting out the elements of the Scheme and on documenting performance to date, along with a range of emerging

² Lifetime Care and Support Authority, *The Lifetime Care and Support Scheme: Information for new participants*, July 2007, p 1

³ *LC Minutes* No 5, 30 May 2007, Item 3, p 81

issues identified by review participants and by the Committee itself, a number of which we suggest should be monitored as the Scheme's implementation proceeds. The Committee plans to conduct more in-depth reviews as the Scheme matures, as its performance takes shape, and as emerging issues become more apparent.

- 1.7 This First Review was conducted concurrently with the Committee's Ninth Review of the MAA and MAC. That Review was the subject of a separate report published in September 2008.⁴

Submissions

- 1.8 The Committee continued the practice undertaken in recent reviews of the MAA and MAC to call for public submissions by way of advertisements in major metropolitan newspapers. As with the MAA and MAC reviews, the Committee also wrote directly to a number of stakeholders, inviting them to make a submission.
- 1.9 The Committee received nine submissions. Those individuals and organisations who made a submission are listed in Appendix 1.

Public hearing

- 1.10 The Committee held a public hearing on 20 June 2008 at which Mr David Bowen, Chief Executive Officer of the LTCSA, Mr Richard Grellman, Chairman of the LTCSA Board, Mr Dougie Herd, Chairman of the LTCSAC, Mr Neil Mackinnon, Acting Director Service Delivery and Mr Stephen Payne, Director of Corporate Services and Chief Financial Officer of the Office of the Motor Accidents Authority (OMAA)⁵ gave evidence.
- 1.11 The Committee also heard from a panel of witnesses representing the Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate: Dr Adeline Hodgkinson, Chair; Mr Jeremy Gilchrist, Manager of the Southern Area Brain Injury Service; Dr Joe Gurka, Staff Specialist and Medical Director at Westmead Brain Injury Rehabilitation Unit; and Mr Matthew Frith, Team Leader of the Kaleidoscope Hunter Children's Network Paediatric Brain Injury Rehabilitation Team.
- 1.12 Representatives of the Law Society of NSW, the NSW Bar Association and the Insurance Council of Australia appeared. A full list of witnesses is provided in Appendix 2.

Questions on notice

- 1.13 Following the practice developed over the various reviews of the MAA and MAC, the Committee forwarded a number of written questions on notice to the LTCSA prior to the

⁴ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council – Ninth Report*, Report 36, September 2008

⁵ The OMAA provides personnel, finance and other corporate services to the LTCSA under a service agreement.

hearing. The questions were based on the LTCSA's *Annual Report 2006-2007* and issues raised in a number of submissions.

- 1.14** The LTCSA provided detailed responses to the Committee's questions which other stakeholders, in turn, were asked to respond to in the hearing and in further questions on notice. This enabled significant depth of consideration of the issues.
- 1.15** The Committee expresses its thanks to all those who participated in this year's Review.

Structure of the report

- 1.16** This report is comprised of four chapters. This first chapter outlines the Committee's role in reviewing the LTCSA and LTCSAC and sets out the process undertaken by the Committee during its Review.
- 1.17** Chapter 2 provides an overview of the LTCS Scheme and its administering body, the LTCSA. It briefly looks at how the Scheme was established and how it interacts with the Motor Accidents Compensation Scheme.
- 1.18** Chapter 3 considers the performance of the Scheme from its commencement through to May 2008, shortly before the Committee conducted its hearing. It documents the utilisation of the Scheme to date, sets out Scheme expenditure to April 2008 and provides a number of case studies to illustrate participants' needs and their treatment and care under the Scheme.
- 1.19** In Chapter 4 the Committee considers the various issues that arose during the Review in respect of the Scheme. Given that it is so early in the life of the Scheme, the Committee notes the issues, documents the evidence taken with respect to them, and flags them as matters to be monitored as implementation proceeds.

Chapter 2 **The Lifetime Care and Support Scheme and the Lifetime Care and Support Authority**

This chapter provides an overview of the Lifetime Care and Support (LTCS) Scheme, its administering body, the Lifetime Care and Support Authority (LTCSA), and the consultative body, the Lifetime Care and Support Advisory Council (LTCSAC). It notes the Scheme's key functions and the policy background to its establishment, then documents arrangements for Scheme eligibility, interim and lifetime participation, LTCS Coordination, the principles informing LTCS planning, and review and dispute resolution provisions. The chapter then sets out arrangements for the Scheme's governance and funding and explains its interface with the Motor Accidents Authority (MAA) administered Motor Accidents Compensation Scheme.

The Committee concludes by congratulating the NSW Government on the establishment of the Scheme and commending the LTCSA, LTCSAC and MAA for their work in designing the Scheme and commencing its implementation.

What the Scheme does

- 2.1** The LTCS Scheme provides 'lifelong treatment, rehabilitation and attendant care services to people severely injured in motor accidents in NSW, regardless of who was at fault in the accident'.⁶ The Scheme represents a major departure from the Motor Accidents Compensation Scheme in that, rather than providing monetary compensation for injury, the LTCSA coordinates and pays for the treatment and care services that are reasonable and necessary to meet the needs of participants.⁷ In addition, the Scheme extends cover to those who were at fault in their accident and to those where no person was at fault.⁸ The Scheme covers catastrophic injuries including spinal cord injury, serious traumatic brain injury, severe burns and bilateral amputations.⁹
- 2.2** The Scheme commenced on 1 October 2006 for people under the age of 16 and on 1 October 2007 for people aged 16 and over.¹⁰
- 2.3** In his second reading speech on the bill to establish the Scheme, the then Minister for Finance, the Hon John Della Bosca MLC noted that the LTCS Scheme aims to provide 'a practical and compassionate safety net for the victims of motor vehicle accidents', along with

⁶ LTCSA, *Annual Report, 2006-2007*, p 44

⁷ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, July 2007, p 1

⁸ NSWPD (*Legislative Council*), 4 April 2006, p 21919

⁹ NSWPD (*Legislative Council*), 4 April 2006, p 21921

¹⁰ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 1

‘security to the injured person and their family, and the comforting knowledge that the necessary treatment, rehabilitation and care will be provided’.¹¹

- 2.4 As stated in the LTCSA *Annual Report 2006-2007*, the goal of the Scheme is to make sure that ‘people catastrophically injured in motor accidents in NSW are treated with respect and dignity and have the maximum possible choices, opportunities and quality of life’.¹²

The Scheme’s genesis

- 2.5 At the time of the 1999 reforms to the Motor Accidents Compensation Scheme, the then Minister for Finance foreshadowed the Government’s intention to consider the introduction of a no fault lifetime care scheme in NSW.¹³
- 2.6 The Standing Committee on Law and Justice itself played an instrumental role in the Scheme’s genesis. The issue of long term care for the very seriously injured was raised during a number of the Committee’s reviews of the MAA and MAC.¹⁴ Recommendation 12 of the Committee’s Sixth Review of the MAA and MAC called for further research into damages for people catastrophically injured in motor accidents, and the possible benefits of introducing structured damages for such individuals.¹⁵
- 2.7 In that Sixth Review the Committee noted concerns on the part of review participants that damages were not lasting the lifetime of people with catastrophic injuries. We also noted in evidence that flexible, long term support for people was needed, in particular for young people who would require support over very long periods and whose needs are more than likely to change over time. Concerns were also raised that lump sum compensation for lifetime care and support is difficult to estimate and manage when awarded.¹⁶
- 2.8 The NSW Government released its LTCS Plan in June 2005, proposing that all people catastrophically injured in motor vehicle accidents in NSW would receive the medical care and support services they require throughout their life, regardless of who was at fault in the accident. Extensive consultation with key stakeholders was undertaken as the Plan was finalised.¹⁷
- 2.9 In his second reading speech on the Motor Accidents (Lifetime Care and Support) Bill, the then Minister explained the background to the establishment of the LTCSA, placing it firmly within the context of reforms to the MAA:

¹¹ NSWPD (*Legislative Council*), 4 April 2006, p 21919

¹² LTCSA, *Annual Report, 2006-2007*, p 15

¹³ NSWPD (*Legislative Council*), 4 April 2006, p 21919

¹⁴ For example, NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council – First Report*, Report 13, June 2000, pp 3-4

¹⁵ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council – Sixth Report*, Report 27, May 2005, p xv

¹⁶ *Sixth Report*, p 62

¹⁷ NSWPD (*Legislative Council*), 4 April 2006, p 21920

The Government's 1999 reforms to the CTP insurance scheme have achieved a more affordable, more effective, more efficient and fairer motor accidents scheme ... It is against this background that the Government now proposes to improve the coverage provided to injured people in the motor accidents scheme by establishing a Lifetime Care and Support scheme for the catastrophically injured, providing a special no-fault benefit for children under 16 years of age, and by extending compensation to those injured in inevitable or blameless accidents.¹⁸

Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)

2.10 The Scheme was established under the *Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)*, which is divided into eight parts:

- Part 2 sets out the care, treatment and support to be paid for by the Authority, the Scheme's eligibility criteria, its application and acceptance processes, provisions for the approval of treatment and care providers, and the effect of the Scheme on motor accidents compensation claims
- Part 3 deals with dispute resolution processes
- Part 4 governs treatment and care needs assessment
- Part 5 governs payment to hospitals, doctors and other medical services
- Part 6 deals with the administration of the LTCS Scheme and the roles of the LTCSA and LTCSAC
- Part 7 sets out how the Scheme is funded
- Part 8 makes miscellaneous provisions, including for a Committee of the Legislative Council to supervise the Scheme, Authority and Advisory Council.¹⁹

Eligibility

2.11 To be eligible to participate in the LTCS Scheme, a person's injury must result from an accident involving a motor vehicle insured under the NSW compulsory third party (CTP) scheme, as prescribed by the *Motor Accidents Compensation Act 1999*. This covers:

- a person injured in or by a registered motor vehicle anywhere in NSW.
- a person injured in or by an uninsured vehicle on a road or road related area where the vehicle is capable of registration.²⁰

2.12 The LTCS Scheme does not cover injuries arising from the use or operation of a motor vehicle that is not capable of registration, nor from the use or operation of an unregistered and uninsured vehicle on private property.²¹

¹⁸ NSWPD (*Legislative Council*), 4 April 2006, p 21919

¹⁹ *Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)*

²⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 4-5

²¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 5

- 2.13** Eligibility for the Scheme is determined on the basis of medical assessment. Different eligibility criteria are set out in respect of spinal cord injuries, serious traumatic brain injuries, severe burns, bilateral amputations and permanent blindness. Additional criteria involving the Functional Independence Measure (FIM) or WeeFIM (for children) are used to assess self-care, mobility, locomotion, communication, social interaction and cognitive functions.²² Eligibility for the Scheme requires particular FIM or WeeFIM scores that are dependant on the age of the participant.
- 2.14** Spinal cord injuries refer to a traumatic lesion of the neural elements of the spinal canal that results in a permanent neurological deficit.²³
- 2.15** A person suffering from a brain injury is considered eligible if they had more than one week of post traumatic amnesia. If this is not applicable, there must be either evidence of very significant impact to the head causing a coma for longer than one hour or a significant brain imaging abnormality.²⁴
- 2.16** A person suffering from severe burns is eligible if there are either full thickness burns greater than 40 per cent (30 per cent for children under 16), inhalation burns causing long term respiratory impairment or full thickness burns to the hand, face or genital area.²⁵
- 2.17** If a person suffers from multiple amputations of the upper and/or lower extremities at or above the fingers, and/or adjacent to or above the knees, they are eligible to participate in the Scheme.²⁶
- 2.18** Permanent blindness refers to a person who has lost sight in both eyes and is considered legally blind.²⁷

Assessors

- 2.19** The LTCSA has selected professionals, called ‘Approved Assessors’, who have expertise in working with people with a brain injury, spinal cord injury, burns, blindness or amputations, or people with severe disability. An Approved Assessor may be used when:
- the participant does not have any existing service providers;
 - the participant’s existing service providers (such as the treating health team) request the assessment; or
 - an expert opinion is required that cannot be provided by the participant’s existing service providers.²⁸

²² The Hon Della Bosca MLC, 4 April 2006, p 21921; LTCSA, *Lifetime Care and Support Guidelines*, NSW Government Gazette, 28 September 2007, p 7513

²³ LTCSA, *Lifetime Care and Support Guidelines*, p 7513

²⁴ LTCSA, *Lifetime Care and Support Guidelines*, p 7513

²⁵ LTCSA, *Lifetime Care and Support Guidelines*, p 7514

²⁶ LTCSA, *Lifetime Care and Support Guidelines*, p 7514

²⁷ LTCSA, *Lifetime Care and Support Guidelines*, p 7514

Provisions

- 2.20** Once a participant is accepted into the Scheme, the LTCSA will pay for treatment, rehabilitation and care services that are reasonable and necessary to help meet their needs and achieve their goals. Medical treatment services may include doctors, hospitals and medication. Rehabilitation may include physiotherapy, occupational therapy, speech pathology, social work, psychology, equipment to assist in daily living and home and vehicle modification. Care services refer to personal or respite care, childcare, domestic assistance and educational or vocational support.²⁹

Entry into the Scheme

- 2.21** The LTCSA's initial notification process involves hospital staff, trauma coordinators, brain injury teams, spinal units, social workers and community teams assisting the injured person and their family to notify the LTCSA if they believe the injuries sustained would make the person eligible for the Scheme. Notification can be made via either a phone call or by sending a completed Severe Injury Advice Form.
- 2.22** On receipt of the Advice Form, a Coordinator meets with the injured person and their family to explain the Scheme and the application process. A more detailed Application Form requests information about the motor accident, as well as a medical certificate completed by a treating specialist. The application is then assessed and the injured person and treating team are informed of the commencement date for interim participation.³⁰

Interim participation and lifetime participation

Interim participation

- 2.23** All participants are accepted into the Scheme initially as interim participants for two years, during which the LTCSA pays for treatment, rehabilitation and care. The interim period exists because of possible recovery and improvements that may occur during that time.³¹

Interim reviews and lifetime participation

- 2.24** At least two months before the end of the interim period, interim participants are assessed to see if they are eligible for lifetime participation. This is to be conducted close to the end of the interim period so the LTCSA has the most up-to-date information about participants' medical status and possible recovery. Once accepted as a lifetime participant, the LTCSA will provide

²⁸ LTCSA, *Approved Assessors*, <www.lifetimecare.nsw.gov.au/default.aspx?MenuID=32> (accessed 25 September 2008)

²⁹ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 2

³⁰ LTCSA, *Answers to pre-hearing questions on notice*, 19 June 2008, p 3

³¹ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 1

support and pay for treatment, rehabilitation and care related to the motor accident injury, for the rest of the participant's life.³²

- 2.25** A new Application Form, including a new medical certificate, must be submitted to the LTCSA for lifetime participation to the Scheme. The medical certificate, including the FIM or WeeFIM scores, must be completed within two months of the date that interim participation is due to end. The injured person must still meet the eligibility criteria set out in the *LTCS Guidelines* to qualify for lifetime participation.³³
- 2.26** When assessing an interim participant for lifetime participation, the Assessor considers whether, even if a participant can self-care in the short term, they may require further care in the future, for instance at transition points in their life such as moving from school into the workforce.³⁴
- 2.27** Because the Scheme is still in its very early days, no one has yet been accepted as a lifetime participant. According to the LTCSA, it is presumed that the great majority of participants will remain in the Scheme for life.³⁵

LTCS Coordination

- 2.28** All participants in the LTCS Scheme are assigned a LTCS Coordinator who acts as the primary point of contact between the participant, service providers and the LTCSA. The Coordinator's role is to provide potential participants with information about the Scheme and the application process. The role also involves facilitating the development, implementation and review of discharge, community living and LTCS Plans, and coordinating the delivery of services, including liaison with government and non-government organisations.³⁶
- 2.29** There are three types of plan that the Coordinator helps the participant develop. The LTCS Plan is concerned with meeting the individual participant's current and future needs and aspirations; the Community Discharge Plan focuses on facilitating the move between hospital to home; and the Community Living Plan outlines necessary services for the ongoing support of the participant. This last plan is regularly reviewed.³⁷
- 2.30** The LTCSA's *Coordinator Competencies* (2008) also outlines the Coordinator's role in supporting choice and decision-making by participants.³⁸

³² LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 1

³³ LTCSA, *Lifetime Care and Support Guidelines*, p 7515

³⁴ Mr David Bowen, Chief Executive Officer, LTCSA, Evidence, 20 June 2008, pp 12-13

³⁵ Mr Bowen, Evidence, 20 June 2008, pp 12-13

³⁶ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 2

³⁷ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 2

³⁸ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 13

Participant planning principles

2.31 Part 5 of the *LTCS Guidelines* discusses key planning principles that underpin the development of the LTCS Plan and the assessment of Scheme provisions. These principles are:

- the participant is central to all planning and decision making about treatment, rehabilitation and care
- treatment, rehabilitation and care services should develop the individual's participation, independence and life roles
- effective rehabilitation, treatment and care delivery involves communication and cooperation with the participant, their family, service providers and the Authority.
- any proposed services must address the participant's needs
- participant's needs are identified through a comprehensive assessment of their abilities, limitations and desired participation goals. The assessment will consider any potential facilitators and barriers to achieving the goals
- assessments should be conducted using standardised tools wherever possible
- proposed services are reasonable and necessary.³⁹

Review and dispute resolution provisions

2.32 The Act makes provisions for the LTCSA to review decisions regarding the eligibility and treatment, rehabilitation and care needs of applicants and participants. The Authority is to notify people in writing of why a particular decision has been made and advise them what they can do if they disagree with the decision.⁴⁰ If a person disagrees with a decision they are to be advised to contact their LTCS Coordinator or the Assessments Manager who can assist the person and discuss their options. Wherever possible, the LTCSA is to endeavour to resolve the issue informally, however, this might not be possible and a formal dispute may be lodged in writing within 28 days of advice that a service has not been approved.⁴¹

2.33 The Authority is to appoint three Assessors who have not assessed the person before to form the decision making panel to discuss a dispute in respect of Scheme eligibility. The panel is to jointly make a legally binding decision that both the individual and Authority must accept. In coming to this decision, the Assessors may question the person and talk to people involved in their care. The decision may take some months, depending on the information available.⁴²

³⁹ LTCSA, *Lifetime Care and Support Guidelines*, p 7541

⁴⁰ LTCSA, *Dispute resolution*, www.lifetimecare.nsw.gov.au/default.aspx?MenuID=28 (accessed 25 September 2008)

⁴¹ LTCSA, *The Lifetime Care and Support Scheme: Information for new participants*, p 3

⁴² LTCSA, *Resolving disputes about eligibility: A guide for applications to the LTCS Scheme*, September 2007

2.34 The injured person, or someone on their behalf, can lodge a dispute about treatment, rehabilitation and care. This is a very similar process to that of eligibility disputes, however, in this instance there is only a single independent Assessor.⁴³

Governance

2.35 The LTCS Scheme is administered by the LTCSA, which is in turn advised and monitored by the LTCSAC. This section outlines the respective roles of the LTCSA, LTCSAC and LTCSA Board.

LTCSA

2.36 The functions of the LTCSA are set out in the *Motor Accidents (Lifetime Care and Support) Act 2006*. The LTCSA coordinates and funds the provisions of care, treatment and rehabilitation for lifetime term support and other services for participants. In addition, among other things, the Authority:

- monitors the operation of the Scheme and conducts research and collects statistics in relation to its operation
- advises the Minister on the administration, efficiency and effectiveness of the Scheme and publicises and disseminates information
- provides administrative support, advice and recommendations to the LTCSAC
- monitors and provides support and funding for research and education services relating to care, treatment, rehabilitation and lifetime support for people who are catastrophically injured in motor accidents.⁴⁴

2.37 Personnel, finance and other corporate services are provided by the Office of the Motor Accidents Authority (OMAA), under a service agreement.

2.38 The LTCSA has a Board of Directors consisting of the Chief Executive Officer of the Authority and four part-time Directors. One of the Directors is the Chairperson of the Board and the other is the Deputy Chairperson.⁴⁵

2.39 The Board has the function of determining the administrative policies of the Authority and in exercising that function it must ensure that, as far as practicable, the activities of the Authority are carried out properly and efficiently.⁴⁶

⁴³ LTCSA, *Resolving disputes about treatment and care needs: A guide for participants of the LTCS Scheme*, September 2007

⁴⁴ *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW), s 43

⁴⁵ *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW), s 34

⁴⁶ *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW), s 39

LTCSAC

- 2.40** The LTCSAC's primary role is to monitor the operation of the services provided by the LTCSA by advising and making recommendations to the Authority on the LTSC Guidelines, and keeping them under review. In addition, the Council can provide advice to the LTCSA or the Minister on any matter relating to the Scheme that it considers appropriate.⁴⁷
- 2.41** In evidence, the Chairman of the LTCSAC, Mr Dougie Herd, stated that the Council is small and comprises of six members.

... three of those are medical practitioners and experts in their fields of brain injury and spinal cord injury. We have a representative of the non-government sector through the Brain Injury Association of NSW with that particular expertise. We have someone who has a long history of working in the care and support agencies that provide, through the association, support to people with a disability who would benefit from the Authority's services. I obviously have a personal and professional interest, as I am a person with spinal cord injury of some 24 years.⁴⁸

Funding

- 2.42** Part 7 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) sets out how the Scheme is funded. Funding is provided through the Medical Care and Injury Services Levy paid by motorists when they purchase a CTP green slip insurance policy. Licensed insurers collect the Levy on behalf of the Authority. The Act states that levies must be set so as to fund the full cost of providing lifetime care and treatment to Scheme participants, and meet other Scheme expenses. This fully funded requirement is consistent with the Motor Accidents Compensation Scheme.⁴⁹
- 2.43** The Act further provides that the Authority's determination of the levy contributions must be made in accordance with independent actuarial advice. Importantly, the Act 'specifically prohibits any Ministerial direction in the exercise of the Board or the Authority's functions with respect to setting the full funding amount or the levy contributions required from motorists to achieve this'.⁵⁰

Interface with the Motor Accidents Compensation Scheme

- 2.44** The Motor Accidents Compensation and LTCS Schemes, although separate, do interact. If the person eligible for the LTCS Scheme was injured through the fault of another driver or vehicle owner then they may also bring a CTP claim. In these circumstances the LTCS Scheme will meet the lifelong treatment, care and support needs while the CTP claim will

⁴⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 13-14

⁴⁸ Mr Dougie Herd, Chairman, LTCSAC, Evidence, 20 June 2008, pp 15-16

⁴⁹ NSWPD (*Legislative Council*), 4 April 2006, p 21919

⁵⁰ NSWPD (*Legislative Council*), 4 April 2006, p 21919

provide lump sum compensation for any other economic losses, such as lost income and loss of future earning capacity, and for non-economic loss (pain and suffering).⁵¹

- 2.45** The *Motor Accidents Compensation Act 1999* (NSW) provides that the CTP insurer dealing with the claim is no longer required to meet any of the person's treatment and care expenses as those expenses are now to be met solely by the LTCS Scheme.⁵² The Act also excludes a lifetime participant in the LTCS Scheme from recovering economic loss damages for any treatment and care needs from the Motor Accidents Compensation Scheme.⁵³

Committee comment

- 2.46** The Committee congratulates the NSW Government on the establishment of the LTCS Scheme, noting the very valuable provisions it makes for lifelong treatment, rehabilitation and care services to people who are catastrophically injured in motor accidents in New South Wales, regardless of who was at fault in the accident. The Committee took evidence during its numerous reviews of the MAA and MAC about the desirability of a structured yet flexible system of care and support for people with severe injuries in lieu of compensation, and for the provision of care and support over the injured people's lifetime. We are thus very pleased to see such a Scheme now in place in this State and consider the LTCS Scheme a model for other jurisdictions.
- 2.47** The Committee endorses the goals of the Scheme and the principles which underpin LTCS plans and provisions, which affirm the rights and dignity of the injured person and ensure a holistic approach to their needs, care and support.
- 2.48** The Committee also commends the LTCSA, LTCSAC and MAA for their substantial work in designing the Scheme and commencing its implementation.

⁵¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 6

⁵² NSWPD (*Legislative Council*), 4 April 2006, p 21919

⁵³ NSWPD (*Legislative Council*), 4 April 2006, p 21919

Chapter 3 Scheme performance

In this chapter the Committee considers the performance of the Lifetime Care and Support (LTCS) Scheme from its commencement in October 2006 through to May 2008, shortly before the Committee conducted its hearing for this First Review. As noted in Chapter 1, in fulfilling its role to supervise the exercise of the functions of the Lifetime Care and Support Authority (LTCSA) and Lifetime Care and Support Advisory Council (LTCSAC), the Committee is to consider the performance of the Scheme and the Authority.

The chapter notes a number of the Authority's activities in its first year and documents the utilisation of the Scheme to date, with a focus on participants' characteristics. It then sets out Scheme expenditure to April 2008, before using a number of case studies to illustrate participants' needs and the treatment and care that they are receiving via the Scheme. The chapter then considers the mechanisms that the Authority is putting in place to monitor Scheme performance over time.

Whilst acknowledging that the information available at this early stage of the LTCS Scheme is unavoidably preliminary, the Committee concludes that on the basis of that information, the Scheme has performed satisfactorily to date.

The Authority's first year

3.1 The LTCSA commenced operation in July 2006. According to the Authority's *2006-2007 Annual Report*, its first year of operation necessarily focused on the establishment of the Scheme and the Authority itself:

The past financial year has primarily involved establishing the best and most efficient means of operating the scheme, recruiting staff, implementing service provider agreements with attendant care organisations, and developing information material so that families and medical staff know and understand how the scheme works and how best to access services.

Other key initiatives throughout the reporting year included training LTCS coordinators so they can better assist participants in developing LTCS plans. Procedures for developing discharge and community living plans were developed, trialled and finalised, and training programs and resource material including case studies and workshop exercises, were developed for service providers.⁵⁴

Scheme utilisation to May 2008

3.2 The Authority provided information to the Committee on utilisation of the LTCS Scheme from its commencement in October 2006 through to May 2008. It did this via answers to pre-hearing questions on notice and in material tabled at the hearing.

⁵⁴ LTCSA, *Annual Report, 2006-2007*, pp iii-iv

Participants

- 3.3 As of May 2008 there were 76 interim participants in the Scheme, 56 of whom were male and 20 female. Of the 76, 14 were children, 10 of whom entered the Scheme in its first year. The remaining 62 interim participants were adults.⁵⁵

Type and severity of injury

- 3.4 The overall group included 55 individuals with traumatic brain injury, 20 with spinal cord injury and one with bilateral amputations. In respect of these injuries, the Authority noted:

Many of the participants with very severe injuries are still undergoing in-patient hospital treatment and their specific needs are being assessed. As an indication of need there are five people with tetraplegia resulting in complete loss of function of upper and lower limbs. This includes one participant who requires a ventilator to fully provide respiratory function. At this stage it is estimated that 16 of the adults with traumatic brain injury will require at least 15 hours of care each day.⁵⁶

- 3.5 Of the 55 who experienced brain injury, the severity of those injuries is captured in Table 3.1, using the standardised Care and Needs Scale (CANS).⁵⁷

Table 3.1: Severity of brain injury among LTCS Scheme participants as at May 2008⁵⁸

Care and Needs Scale	No. of participants
7 – Cannot be left alone	16
6 – Can be left alone for a few hours	1
5 – Can be left alone for part of the day but not overnight	4
4 – Can be left alone for part of the day and overnight	13
3 – Can be left alone for a few days a week	13
2 – Can be left alone almost all week	4
1 – Can live alone but needs intermittent (less than weekly) contact	2
0 – Can live in the community, totally independently	0
Total	55

- 3.6 The severity of spinal cord injury among participants is categorised according to the spinal cord injury level. Injury to the cervical spine (C1-7) results in loss of arm and leg function.

⁵⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 1; LTCSA, 'Lifetime Care and Support Authority', Powerpoint slides tabled at hearing, 20 June 2008, p 1

⁵⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 1

⁵⁷ LTCSA, 'Lifetime Care and Support Authority', Powerpoint slides tabled at hearing, 20 June 2008, p 7

⁵⁸ LTCSA, 'Lifetime Care and Support Authority', Powerpoint slides tabled at hearing, 20 June 2008, p 7; Care and Needs Scale, 29 November 2007, p 1

Complete injury at the C1-3 level impairs respiratory function such that the person may require mechanical ventilation and 24 hour care. This is called tetraplegia. Injury to the thoracic (T1-12), lumbar (L1-5) or sacral (S1-5) spine impairs leg and trunk function, and bladder, bowel and sexual function can also be impaired. This is called paraplegia.⁵⁹ The severity of spinal cord injury among the 20 participants with such injury is set out in Table 3.2 below.

Table 3.2: Severity of spinal cord injury among LTCS Scheme participants as at May 2008⁶⁰

Spinal cord injury level	No. of participants
C1-3	2
C4	2
C5	4
C6	0
C7	0
T1-6	3
T7-11	4
T12-S5	5
Total	20

Role in accident

3.7 Of the 76 interim participants, their role in the motor accidents that caused their injuries was as follows: 21 drivers, 20 passengers, 17 motor cycle riders, 14 pedestrians, three cyclists and one motorbike pillion passenger.⁶¹

Location

3.8 In respect of the location where participants reside:

- 51 per cent reside in Sydney and the surrounding area
- 16 per cent in the Hunter
- 7 per cent in the Illawarra
- 10 per cent in the Murray/Murrumbidgee/South Eastern areas

⁵⁹ LTCSA, 'Lifetime Care and Support Authority', Powerpoint slides tabled at hearing, 20 June 2008, p 6; Personal communication between Principal Council officer and Mr Neil Mackinnon, Manager, Service Coordination, LTCSA, 19 September 2008

⁶⁰ LTCSA, 'Lifetime Care and Support Authority', Powerpoint slides tabled at hearing, 20 June 2008, p 6

⁶¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 1

- 13 per cent in the Mid-North Coast/Northern/Richmond Tweed areas
- 3 per cent in the North Western area.

3.9 In addition, two participants reside interstate and one overseas.⁶²

Comparison with projected utilisation

3.10 The Committee sought the LTCS Authority's view on how actual utilisation of the Scheme compared to that which was projected for the same period. The Authority responded:

The actual participant numbers in the Lifetime Care and Support Scheme are very close to the projected annual incidence of 125. The difference apparent at this early stage are the lower than expected applications for children. The predicted annual incidence for ages 0-14 years was 25. Since 1 October 2007, four participants in this age group have been accepted as interim participants. This lower incidence is consistent with recent data from the New South Wales Institute of Trauma and Injury Management.⁶³

Treatment and care provided to date

3.11 The Committee sought de-identified case studies of actual Scheme participants as an indication of the needs of participants and the treatment and care they are receiving under the Scheme. The LTCSA provided four such case studies, as set out below.

Case Study A

Participant A is a 15-year-old who was a passenger in a motor vehicle accident. Participant A sustained a severe brain injury, orthopaedic injuries and spent six weeks in a paediatric hospital. Participant A has recurrent headaches, experiences fatigue, has cognitive and behavioural disabilities as a result of the injury, and has returned home to live with family.

The Lifetime Care and Support Authority is funding a case manager to coordinate ongoing rehabilitation, 10 hours of attendant care assistance per day, ongoing medical management of the right upper limb and migraines, multidisciplinary therapy, a teacher's aide at school, transport assistance and counselling.

A Compulsory Third Party claim has also been lodged.⁶⁴

Case Study B

Participant B was the rider in a motorbike accident and sustained a severe brain injury. Participant B has been receiving specialist brain injury rehabilitation services for the past seven months, and is

⁶² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 1

⁶³ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 1

⁶⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 6-8

currently in a Community Living Unit. Participant B has impaired cognition including memory impairment, reduced mobility and difficulty with regulating behaviour.

The LTCSA is funding brain injury rehabilitation services and an additional 12 hours per day of attendant care worker support due to Participant B's need for one to one support in most activities. Participant B is receiving physiotherapy, occupational therapy, speech therapy, sexuality counselling, social work and psychology intervention. The Authority is also funding support for Participant B's family to learn how to effectively manage challenging behaviours.

There is no Compulsory Third Party claim.⁶⁵

Case Study C

Participant C is a 50-year-old who was involved in a single vehicle motorbike accident. Participant C sustained paraplegia (complete T10) as a result of the accident. Participant C underwent intensive spinal cord injury rehabilitation for approximately four months. Participant C is now independent in a Community Living Unit using a wheelchair and other specialised equipment. Unable to return to a two-storey flat, Participant C is currently living in a rented wheelchair-accessible apartment.

The LTCSA purchased specialised equipment enabling Participant C to be discharged from hospital. This includes a wheelchair and seating system, a wheeled shower and toileting chair, and other small items to facilitate independence. The Authority is also funding accommodation at the wheelchair-accessible apartment, a house-hunting service and occupational therapy to assess suitable long term accommodation, assistance with transport, driving lessons and attendant care services.

There is no Compulsory Third Party claim.⁶⁶

Case Study D

Participant D is a 17-year-old who was a rear seat passenger in motor vehicle accident with a truck. Participant D sustained severe brain injury and was treated in a brain injury unit for approximately four months. Participant D is now eight months post-injury and has been discharged home to live with their mother, in a rural area of New South Wales.

Participant D continues to have reduced memory, organisation, planning, and problem solving skills. Participant D is independently mobile and requires supervision in self care. Participant D has significant speech problems and difficulty reading due to their brain injury.

The LTCSA is providing 67 hours per week of attendant care to assist in managing the day including self care activities, attending appointments and school. The Authority is also funding case management to coordinate ongoing rehabilitation, speech therapy, occupational therapy, physiotherapy and clinical psychology. The participant was a highly accomplished musician, but due to the brain injury is no longer able to read music. The Authority is paying for music lessons and has also funded a laptop computer and special software as an adjunct to the speech therapy.

Participant D also has a Compulsory Third Party claim.⁶⁷

⁶⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 6-8

⁶⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 6-8

⁶⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 6-8

Expenditure to date

2006-2007

- 3.12 The LTCSA 2006-2007 *Annual Report* provides an income statement for that year, the first year of the Scheme's operation, replicated in Table 3.3 below. As noted elsewhere in this report, the Scheme commenced operation on 1 October 2006. It was operational only in respect of children during the 2006-2007 financial year.

Table 3.3: LTCS Authority: Income statement for the year ended 30 June 2007⁶⁸

	Notes*	2007 \$,000
Revenue		
Compulsory third party (CTP) premium levy	2(e)/8	132,651
Community Participation Project Grants	2(e)	840
Interest income	9	1,572
TOTAL revenue		135,063
Expenses		
Participants' care and support expenses	10	38,156
Personnel services	2(c)/11	1,306
Operating expenses	12	959
Rehabilitation, road safety grants and sponsorships		197
Other expenses	13	443
TOTAL expenses		41,061
Surplus for the year		94,002

* This column refers to notes that accompany the financial statements in the LTCSA *Annual Report 2006-2007*, set out on pages 24-36 of that publication. The *Annual Report* states that the notes form an integral part of the financial statements. This table should be considered in tandem with those notes.

- 3.13 The LTCSA subsequently advised that surplus funds have been invested for future use by the Scheme under a memorandum of understanding with NSW Treasury Corporation.⁶⁹
- 3.14 A breakdown of participants' care and support expenses was also provided in the *Annual Report*, as set out in Table 3.4 :

Table 3.4: LTCS participants' care and support expenses, 2006-2007⁷⁰

⁶⁸ LTCSA, *Annual Report, 2006-2007*, p 23

⁶⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 9

⁷⁰ LTCSA, *Annual Report, 2006-2007*, p 32

Expenses	\$,000
Attendant care	402
Hospital	53
Medical	54
Home modifications	5
Vehicle modifications	2
Total expenses	516
Provision for participants' care and support services	37,640
Total	38,156

2007-2008

- 3.15** In October 2007 adults began to be accepted into the Scheme, so the 2007-2008 financial year saw provisions to both children and adults. In its answers to questions prior to the hearing, the Authority provided a breakdown of expenditure on care and support from 1 July 2007 to 30 April 2008, as set out in Table 3.5:

Table 3.5: LTCS participants' care and support expenses, 1 July 2007 to 30 April 2008

Expenses	\$,000
Attendant care	49.8
Hospital	1,432.1
Medical	478.6
Equipment	19.4
Home modifications	43.7
Total expenses	\$2,023.6

- 3.16** Asked to compare actual expenditure to that which was projected, the LTCSA responded that as the expenditure data represents only seven months of operation it is too early to comment on whether the actual expenditure matches projected expenditure. The Authority explained that payments made to date have a high proportion of hospital treatment because this reflects the early period of injury recovery amongst those first entering the Scheme, and that it is expected that attendant care will be the major component of expenditure in the future.⁷¹

⁷¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 1-2; Personal communication between Principal Council officer and Mr Neil Mackinnon, Manager, Service Coordination, LTCSA, 19 September 2008

Monitoring and quality assurance

- 3.17 Having presented all the information available to us on the performance of the LTCS Scheme to date, the Committee now turns to considering the mechanisms that the LTCSA is establishing to monitor Scheme performance over time.

Data

- 3.18 In relation to the data it will collect over time and how that data will be put to use, the Authority advised the Committee:

The Lifetime Care and Support Authority will have a unique data set that will provide important information on disabling injury, treatment, recovery and costs. The data about participants will be used to inform policy development, identify service gaps and target areas of service development. This will include areas of injury prevention, regional service requirements and specialist service provision.

The data will also enable the Authority to provide feedback on service performance to providers.

Such data will also assist in shaping the Authority's operations for future planning of staffing including location of the Authority officers.⁷²

Monitoring

- 3.19 The Committee sought information from the Authority on how it intended to monitor service quality and effectiveness, participant outcomes, and equity of access and outcome.

Quality and effectiveness

- 3.20 In relation to monitoring quality and effectiveness, the Authority indicated that it is establishing key performance indicators in policy development and contractual arrangements. It is also examining different quality assurance systems in order to determine which system will best meet the Authority's needs in terms of business arrangements and clinical outcomes. It is expected that a quality assurance system will be selected and an implementation plan in place by the end of 2008.⁷³

- 3.21 The Authority noted that preliminary research has found that existing quality systems tend to be designed for business environments, whilst any quality system chosen by the LTCSA should ideally reflect the Authority's role within the disability or health sectors.⁷⁴ Its intention is that ideally, the quality assurance program will ensure:

- quality services are delivered to participants
- services are timely, appropriate and matched to participants' needs

⁷² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 24-25

⁷³ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 22

⁷⁴ LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 3

- cost effectiveness and accountability for Scheme funding
- compliance with the Authority's guidelines, policies and timeframes.⁷⁵

3.22 The Authority advised that, in the meantime it has developed competencies for LTCS Coordinators, along with process pathways for LTCS Scheme processes, both of which will form part of the specific quality measures of any quality assurance system to be implemented. Other internal processes subject to monitoring include decisions made by approval officers and the time from receipt of application to eligibility decision.⁷⁶

3.23 In addition, external processes, which are the responsibility of external providers, are monitored in respect of agreed timeframes. These include attendant care contracts, discharge list provision, continence product provision, and timelines for providers to complete acquittal and evaluation forms for equipment. Further, contracted providers such as attendant care providers have quality indicators as part of their Service Provider Agreement.⁷⁷

3.24 In relation to attendant care, which as noted above will form the major component of care provided to participants, the Authority advised:

As part of its quality assurance program for external providers, the Lifetime Care and Support Authority has established key performance indicators for the delivery of attendant care services. Attendant care providers are required to meet performance indicators specified in their contract, for example, how they comply with the Disability Service Standards or establish attendant care programs for participants being discharged from hospital. Attendant care providers are also required to submit half yearly reports on their risk management systems, interruptions to service delivery and on the training of their staff.

The Authority has also provided funds to the Attendant Care Industry Association to develop standards for the attendant care industry. These standards have been piloted and will soon be finalised. All attendant care providers on the Authority's list of approved attendant care providers have agreed to implement these standards and enrol in the accompanying audit program.⁷⁸

3.25 The Authority also suggested that its complaints mechanism fulfils a monitoring role, with any complaints to be investigated with a view to systemic improvements.⁷⁹

3.26 Finally, quality and effectiveness are to be monitored from participants' perspective through a participant satisfaction survey.⁸⁰

⁷⁵ LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 2

⁷⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 22

⁷⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 22-23; LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 2

⁷⁸ LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 2

⁷⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 23

⁸⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 23

Participant outcomes

- 3.27** The Authority advised that in order to monitor participant outcomes, it is currently investigating appropriate tools being used in clinical practice. It is also liaising with the Transport Accident Commission in Victoria and the Accident Compensation Corporation in New Zealand in an attempt to use common measures, where possible, to allow further comparisons between groups. In addition, the Authority stated:

A number of standardised and non-standardised outcomes measures will be collected in order to evaluate the Lifetime Care and Support Scheme. The collection of this information will allow the Lifetime Care and Support Authority to compare groups of participants in the Scheme as well as evaluate the impact of the Scheme on the World Health Organisation's International Classification of Functioning, Disability and Health domains of activities and participation.

Standardised outcome measures were selected with the input of the Lifetime Care and Support Advisory Council and include measures specific to spinal cord injury and brain injury. Specific measures address quality of life, participation in life roles and specific areas such as challenging behaviours.⁸¹

Equity of access and outcome

- 3.28** In addressing how equity of access is to be monitored, the Authority pointed out that Scheme eligibility is based on the objective assessment of injury and impairment by clinicians trained in such assessment, in particular through using the Functional Independence Measure (FIM). In addition, the Authority advised that:

Discussions on the use of Scheme outcome measures with similar jurisdictions in Australia and New Zealand are shaping the Authority's approach to outcomes in individual participant satisfaction and achievement and overall Scheme outcomes. Establishing these health outcome measures will also assist in establishing measures of cost effectiveness.⁸²

Committee comment

- 3.29** The Committee notes that given the short time that the LTCS Scheme has been operational, the available information on Scheme performance to date is inevitably preliminary. Nevertheless, on the basis of that information, the Committee considers that the Scheme has performed satisfactorily to date. The Committee looks forward to monitoring performance in greater detail, and with greater certainty, in future reviews.
- 3.30** The Committee notes that the expenditure to date on participants' care and support is a mere fraction of the amount projected for the year, but appreciates that this is a reflection of the fledgling state of the Scheme. We note that the surplus has been invested for future use. Issues in relation to the estimated financial liabilities of the Scheme, and the surplus funds, are discussed in detail in Chapter 4.

⁸¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 23

⁸² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 22-24

- 3.31** We are pleased to observe that the LTCSA is working to establish systems for data collection, performance monitoring and quality assurance, and again we look forward to examining these systems as they are bedded down and start to inform the work of the Authority.

Chapter 4 Emerging issues

The Lifetime Care and Support (LTCS) Scheme commenced a little over a year ago and is not expected to reach maturity for another 30 years. In the meantime its administrators have a significant responsibility to ensure its effective implementation, most especially because of the profound impact that the Scheme will have on the health, wellbeing and quality of life of its participants, both in the short term and over their entire life course.

This chapter begins by observing stakeholder perceptions of the Scheme generally, and their feedback on its initial implementation. The bulk of the chapter then reports the oral and written evidence taken by the Committee about a number of issues that have emerged during the Scheme's early implementation. These include issues in relation to: eligibility for the Scheme and entry into it; interim participation arrangements for young children; opt-out and self-purchasing provisions; provision of services to participants; supports for family carers; administration and paperwork; the role of LTCS Coordinators; transparency, accountability and access to information; review of decisions and access to independent advice; interface with the Motor Accidents Compensation Scheme; estimated financial liabilities; and premiums. It also notes some of the challenges and responsibilities that accompany the Scheme's administration.

At this preliminary stage in the life of the Scheme it is not the Committee's intention to draw strong conclusions about the majority of these issues, but rather simply to note them, to document the evidence we have taken with respect to them, and to flag them as matters to be monitored as the Scheme unfolds and takes shape over the coming years.

Stakeholder perceptions

Welcoming the Scheme

- 4.1 The establishment of the LTCS Scheme was widely and enthusiastically welcomed by inquiry stakeholders on the basis of the positive outcomes it is expected to deliver for Scheme participants.
- 4.2 People with Disability (PWD), a national disability rights and advocacy organisation, noted the significant impact that the Scheme will have on the lives of participants and endorsed the principles on which the Scheme is based:

PWD would firstly like to congratulate the NSW Government on the establishment of a scheme for the lifetime care and support of persons who have been catastrophically injured as a result of motor accidents in NSW. The provision of such supports and services is essential to ensuring people with disability are supported to continue to lead active and meaningful lives following such an event.

The principles that underpin this Scheme, its assessment processes, provision of treatment, rehabilitation and attendant care supports have been well formulated. PWD fully supports the principles as reflected in the Scheme's vision and its Participant Planning Principles which state that it is essential that recipients of this Scheme:

- are treated with respect and dignity and have maximum possible choices, opportunities and quality of life;
- remain central and active in the decision making and planning of their care; and
- receive treatment, rehabilitation and care services which promote ... their ongoing independence and participation in life roles.⁸³

4.3 Similarly, in its submission, the Disability Council of NSW, whose role is to advise the NSW Government on issues affecting people with disability and their families, applauded the Scheme's establishment. Highlighting the Scheme's high standard of provision for participants, it called for the consideration of a national scheme to ensure that people across Australia acquiring a catastrophic injury in motor vehicle accidents enjoy the same protections and do not have 'to bear the financial hardship of funding lifelong care and support services.'⁸⁴ For the same reasons it called for the expansion of the LTCS Scheme to those who experience catastrophic injury other than via a motor vehicle accident.⁸⁵

4.4 Legal stakeholders also praised the establishment of the LTCS Scheme. In evidence, Mr Ross Letherbarrow SC, Chair of the NSW Bar Association's Common Law Committee, stated that:

[T]he Bar Association thinks this is an excellent piece of social legislation. It is something for which the community should be very grateful to the Government and the Parliament for bringing in because it provides care for people who otherwise would not get any ... the Bar Association commends the legislative authority for this scheme. It is an excellent idea.⁸⁶

4.5 In addition, Youthsafe, the peak body in New South Wales for the prevention of serious injury among young people commented that 'substantial efforts have gone into the establishment of the Lifetime Care and Support Authority, which is a commendable and important development in managing serious injury due to road trauma.'⁸⁷

4.6 Finally, the Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate (GMCTBIRD), which manages the network of brain injury rehabilitation clinicians in New South Wales, welcomed injection of resources accompanying the LTCS Scheme. It commended the Scheme for providing services that people would otherwise not be eligible for and for facilitating appropriate treatment, enhancing equity of access to services, and delivering social justice for participants.⁸⁸

⁸³ Submission 9, People With Disability Australia (PWD), pp 2-3

⁸⁴ Submission 6, NSW Disability Council, p 3

⁸⁵ Submission 6, p 3

⁸⁶ Mr Letherbarrow SC, Chair, Common Law Committee, NSW Bar Association, Evidence, 20 June 2008, p 30

⁸⁷ Submission 2, Youthsafe, p 3

⁸⁸ Submission 3, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate (GMCTBIRD), p 2; Mr Jeremy Gilchrist, Manager, Southern Area Brain Injury Service and Member, GMCTBIRD, Evidence, 20 June 2008, p 40. Brain injury rehabilitation units manage brain injury rehabilitation after the acute hospital stay and provide for inpatient rehabilitation as well as follow-up through the process of long-term community management. The GMCTBIRD

Implementation

4.7 As the body representing a large network of rehabilitation clinicians interacting with the LTCS Authority on a daily basis in the care and treatment of individual Scheme participants, the GMCTBIRD was well placed to comment on the Scheme's implementation to date. It advised the Committee that overall, the LTCS Scheme is meeting the Directorate's expectations, and is also 'promoting a drive for equitable service provision in areas not covered' by the LTCS Authority in its negotiations with the Department of Ageing, Disability and Home Care and NSW Health.⁸⁹

4.8 It went on to report a number of 'successes' of the Scheme to date:

- greater availability of services to more people with significant rehabilitation and care needs
- increased recognition that family members may require counseling and assistance in their role in caring for the injured person
- a more comprehensive approach to the care of catastrophically injured people than that in the compulsory third party (CTP) and WorkCover schemes
- the commitment to ensuring clients receive timely care and services
- an excellent, widespread education approach prior to the Scheme's commencement
- a willingness to work with rehabilitation providers to find appropriate solutions to problems as they arise.⁹⁰

4.9 The case study of Participant 5 below, provided by Mr Jeremy Gilchrist, Manager of the Southern Area Brain Injury Service and Member of GMCTBIRD, points to the significant benefits that the LTCS Scheme is providing to individual participants in terms of their care, rehabilitation and ongoing support.

Case study E

Participant E is a 20-year-old man injured in a high speed motor accident. He was the front-seat passenger in a car being driven by a learner-driver. At the time, he held a provisional licence, so that he should not have been supervising a learner, and as such had some liability in the accident. In the accident he sustained a very severe head injury, had a Glasgow Coma Score of 5 at the scene, so was unconscious. He was airlifted to a hospital in Sydney. Initial CT scans showed multiple contusions; he had a severe injury. He was in an intensive care unit for 40 days. He was initially minimally responsive and had a post traumatic amnesia, with significant confusion, for 128 days.

Functionally, Participant E requires assistance with mobility. He has difficulty with activities of daily living tasks, such as toileting, meal preparation and feeding. He has significant cognitive problems, such as with memory, and he requires constant prompting to do things in his day. However, he has made significant improvements during his time at the hospital. Because of his improvements, Participant E is

oversees the clinical network of brain injury rehabilitation clinicians and co-ordinates policy, service evaluation and future directions of the network of brain injury rehabilitation services.

⁸⁹ Submission 3, p 2

⁹⁰ Submission 3, p 2

now in the process of being discharged from the hospital in Sydney to the transitional living unit of a brain injury rehabilitation service in a rural hospital near where he lives. While there, his rehabilitation will continue, with a greater focus on enabling him to return home.

As Participant E was admitted to a brain injury unit at a major metropolitan hospital, he entered the LTCS Scheme soon after his injury and early in his admission.

Participant E's LTCS Coordinator is now working closely with the brain injury rehabilitation service to ensure his needs are met. The rehabilitation service carried out a home visit before Participant E arrived from Sydney and is in the process of obtaining equipment for weekend leave and his eventual discharge home. According to Mr Gilchrist, prior to the LTCS Scheme, such early planning would not have been possible. Instead, clients such as Participant E would be reliant on the limited public system and would have difficulty accessing equipment and other care services.

Hopefully, because of this early intervention with the LTCS Scheme and the resources available through it, Participant E will return home sooner than he would have otherwise, and his injury outcomes will be much better.⁹¹

4.10 In addition, the GMCTBIRD noted a number of issues that have arisen during the early implementation phase of the Scheme, each of which is documented in subsequent sections of this chapter. The Directorate indicated that in response to these emerging issues it had collaborated with the LTCS Authority in establishing a Brain Injury Rehabilitation LTCS Implementation Committee to address process issues arising from the implementation of the Scheme.⁹²

4.11 The Implementation Committee meets every three months and is comprised of Senior LTCS Authority staff and various representatives of the brain injury rehabilitation network. According to the GMCTBIRD, issues addressed to date include:

- the paperwork required of treating staff, and the need for revision of forms
- eligibility and what the Scheme covers
- equipment prescription guidelines
- training in the LTCS assessment measures
- alignment between the LTCS data dictionary and the brain injury rehabilitation program clinical data set
- practical issues such as accessing supported accommodation and the assessment of patients not admitted to the brain injury rehabilitation program.⁹³

4.12 The GMCTBIRD went on to state that the Implementation Committee has addressed various issues and improved practice, and that it expects such positive outcomes will continue.⁹⁴

⁹¹ Mr Gilchrist, Evidence, 20 June 2008, p 40

⁹² Submission 2, p 2

⁹³ GMCTBIRD, Answers to questions on notice, 27 August 2008, p 1

⁹⁴ GMCTBIRD, Answers to questions on notice, 27 August 2008, p 2

4.13 In evidence, Dr Joe Gurka, Medical Director of the Brain Injury Unit at Westmead Hospital and a member of the GMCTBIRD, reported that in addition to the formalised structure of the Implementation Committee, the LTCSA has encouraged informal resolution of local issues as they arise:

The Lifetime Care and Support Authority has also encouraged us to talk directly with the various co-ordinators attached to our programs and try to resolve local problems directly that way, and I think there is scope to do that. I think there is a willingness on both sides to try to improve things as it goes.⁹⁵

4.14 The GMCTBIRD's submission further observed that liaison with LTCS staff about issues arising during implementation will continue to be important, as will 'the [i]ncorporation of individually negotiated solutions to LTCS processes'.⁹⁶

4.15 Like the GMCTBIRD, both PWD and the Disability Council observed that a flexible approach to addressing individual participants' needs will be very important as implementation proceeds. The Disability Council called on the Authority to ensure that services are flexible and focused on the needs of the client. It also underscored the importance of practical empowerment of participants by ensuring that they have a say in any decision-making about the services they will receive.⁹⁷

4.16 Similarly, PWD called for services to remain responsive to individual participants' needs as they change over the life course:

It is essential that the provision of services and supports remain flexible and responsive to a person's ever changing life changes and choices. This is particularly critical given that seventy per cent of participants in this Scheme will be less than 30 years of age at the time of their injury.⁹⁸

4.17 More broadly, PWD pointed to other human rights principles that it argued must inform the Scheme's implementation:

A human rights based framework must be reflected in the administration and provision of the LTCS Scheme. As the Australian Government draws closer to its ratification of the UN Convention on the Rights of Persons with Disabilities it is essential that Australia's State, Territory and Commonwealth Agencies, as well as the broader community, take practical steps to comply with the Convention and implements its obligations. In practice this means that the LTCS Scheme must recognise and comply with all elements of the Convention including the recognition that people with disabilities are entitled to enjoy all human rights on an equal basis with others and are enabled to participate fully in society ...

The services and supports provided to an individual must be based on the least restrictive alternative principle. That is, a person has the right to be treated and cared for as far as possible in the community, and afforded the right to treatment and

⁹⁵ Dr Gurka, Evidence, 20 June 2008, p 44

⁹⁶ Submission 2, p 3

⁹⁷ Submission 6, p 3

⁹⁸ Submission 9, pp 2-3

support suitable to their individual needs, preferences, culture and so on. At the same time, adequate resources must be provided to ensure effective care and support within the community.⁹⁹

Consultation

4.18 In light of the important stake that people with disabilities and other groups including treatment, rehabilitation and care providers have in the LTCS Scheme, the Committee asked the Authority about the role of the Lifetime Care and Support Advisory Council (LTCSAC) and its other consultative processes.

4.19 In response, the Authority noted the monitoring and advisory role of the LTCSAC, whose membership includes people with disability as well as medical and other experts in the fields of brain injury and spinal cord injury (as noted in Chapter 2). The Authority went on to report that consultation had occurred in relation to the *LTCS Guidelines* and a range of other matters:

The Authority has actively sought feedback from stakeholders in the development and review of the Guidelines that articulate the overall operation and major areas of service provided by this Scheme and provided this together with draft guidelines for consideration by the Council.

Stakeholders are frequently sought for working groups, advisory committees, and development activities such as the Supported Accommodation Forum on May 7 2008. Representatives from the Spinal Cord Injury Directorate; Brain Injury Directorate; Department of Ageing Disability and Home Care, New South Wales Health, New South Wales Department of Housing, the Disability Council of New South Wales, and WorkCover New South Wales ... attended the Forum.

The Authority is mindful of the ongoing need to be open to broad consultation particularly the disability sector as the scheme matures.¹⁰⁰

4.20 Mr Herd, Chair of the LTCSAC, articulated the Advisory Council's role as he sees it in providing informed input with the ultimate goal of quality support for participants:

Our role is simply to give advice. It is to draw on our expertise, to listen to what the staff have to say, to try to make sense of that and to embrace our responsibilities as given to us by Parliament ... to offer advice, give direction and comment upon areas such as the Guidelines ... [W]ith the benefit of that experience and knowledge, connecting to communities of people with a disability, to government and non-government service providers ... [we] try to make sure that we understand both what is in the interests of the people with a disability who are going through what, for them, has to be said are completely unimagined life-changing circumstances of such a profound nature that often they find themselves incapable of making decisions without the support, guidance and assistance of professional staff, family members and others around them. We draw on that experience in a way that hopefully will lay down a solid platform for the future.¹⁰¹

⁹⁹ Submission 9, pp 2-3

¹⁰⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 13-14

¹⁰¹ Mr Dougie Herd, Chairman, Lifetime Care and Support Advisory Council, Evidence, 20 June 2008, pp 16-17

Committee comment

- 4.21** The Committee notes the very positive comments from a range of stakeholders about the establishment of the Scheme, the reported successes of the implementation process to date, and the collaborative action that the Authority is taking to address implementation issues as they have emerged. We also note the Authority's consultative strategies to engage stakeholders in the design and roll-out of the Scheme, which will continue to be vital to its effective implementation over the years to come.
- 4.22** This chapter now turns to considering each of the issues that have emerged during the Scheme's early implementation and which arose during this First Review of the LTCSA and LTCSAC.

Scheme eligibility

- 4.23** Two particular issues concerning eligibility for the LTCS Scheme arose during the Review. The first concerned potential gaps in eligibility, while the second related to the Scheme's eligibility criteria.

Potential gaps

- 4.24** The Committee sought information from the LTCS Authority about which groups are not eligible for entry into the Scheme and was advised that neither the CTP Scheme nor the LTCS Scheme cover injuries arising from the use or operation of a motor vehicle which is not capable of registration or from the use or operation of an unregistered and uninsured vehicle on private property.¹⁰² In evidence, Mr David Bowen, Chief Executive Officer of the LTCS Authority, advised that motorised bicycles, mini-bikes, motocross bikes and quad bikes are not capable of registration, and that as a result, anyone injured as a result of an accident involving those vehicles would be ineligible for the Scheme. On the other hand, motorised personal transporters such as those ridden by some frail older people and people with a disability have exempt registration if they are below a certain engine size, and are captured by the LTCS Scheme.¹⁰³ In addition, Mr Bowen advised that of the three applications for the Scheme rejected to date, one was for a person injured whilst riding a mini-bike, and another, a motorised bicycle.¹⁰⁴
- 4.25** When asked by a Committee member whether there might be an argument for extending eligibility to people injured whilst riding motorised pushbikes, Mr Bowen acknowledged that such an argument might exist, but suggested that there is more of a 'grey area' as to what constitutes a motorised pushbike, as distinct from an ordinary pushbike. He then implied that the boundaries of the Scheme might never be resolved, stating:

I suppose you could argue to extend it from there to pushbikes. Then it could be argued: Why are people who are on other types of things not in the Scheme? Or, if

¹⁰² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 5

¹⁰³ Mr Bowen, Chief Executive Officer, LTCSA, Evidence, 20 June 2008, p 14

¹⁰⁴ Mr Bowen, Evidence, 20 June 2008, p 14; LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 5. The third person was not sufficiently injured.

they just fall over in the street, how is that different from someone just falling off a pushbike?¹⁰⁵

4.26 Mr Bowen further clarified that if a person in a vehicle not capable of registration is involved in an accident with a registered motor vehicle, and it is the fault of the former, they are not eligible for the LTCS Scheme. Correspondingly, what vehicle the person at fault was using remains a key issue.¹⁰⁶

4.27 In answers to questions on notice the Authority advised that in order for a person to be eligible, the injury must also arise from the *use or operation* of a motor vehicle. Thus a person in a motor vehicle who is hit by a projectile (such as a rock) is not eligible for either the CTP or LTCS Scheme. The Authority also advised that both it and the Motor Accidents Authority (MAA), at the request of the Minister Assisting the Minister for Finance, are examining this gap in coverage.¹⁰⁷

Medical assessment

4.28 The GMCTBIRD submission raised a separate but related issue concerning the medical eligibility criteria used to govern entry into the Scheme. It called for the instruments being used to assess eligibility to be evaluated:

The eligibility criteria used for the LTC&S Scheme [that is, the Functional Independence Measure Score; Post Traumatic Amnesia Score] need to be evaluated to determine whether they appropriately identify the target group and appropriately exclude those not intended to be covered by the scheme. This will be particularly important after the two-year interim period.¹⁰⁸

4.29 When asked about this concern in evidence, Dr Adeline Hodgkinson, Chair of the GMCTBIRD, reported that there has been some confusion over eligibility for the LTCS Scheme. She explained that there was an issue of exactly when assessment should occur, given that its timing may have some bearing on eligibility. She explained that as a measurement, the length of post-traumatic amnesia is clear and not subject to change. By contrast, a Functional Independence Measure (FIM) score, which is used to determine Scheme eligibility, is assessed at the particular time the person is seen and as such, may differ over time. It is also used widely in rehabilitation wards but not in orthopaedic wards.¹⁰⁹

4.30 She provided a case study to illustrate her concerns:

This was a 55-year-old lady ... a pedestrian hit by a truck in March [who] sustained very severe injuries. She had a not so severe head injury, but frontal contusions ... her Glasgow Coma Score [GCS], which is a measure of coma at the scene, was only 14 and she was confused and had a [post traumatic amnesia] for a period of 8 days. This

¹⁰⁵ Mr Bowen, Evidence, 20 June 2008, p 14

¹⁰⁶ Mr Bowen, Evidence, 20 June 2008, p 14

¹⁰⁷ LTCSA, Answers to pre-hearing questions on notice, p 5

¹⁰⁸ Submission 3, p 2

¹⁰⁹ Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Liverpool Hospital and Chair, GMCTBIRD, Evidence, 20 June 2008, p 41

means, according to the criteria, that she would be eligible for Lifetime Care if her functional status was also impaired. But ... she also sustained fractured ribs, bilateral hip fractures, pelvic fracture, sacral fracture, a fracture of one orbit, fracture to the jaw and the spine as well as the skull and the ankle and fibula. So, she was really very severely injured.

She spent a long time in the orthopaedic ward, and then her rehabilitation was planned to occur in a private hospital after the CTP claim had been accepted. Her function at the point of discharge was not subject to a formal assessment, however she did have some impairment in her memory, some dizziness, she was anxious and depressed, and had difficulty understanding documents. She required assistance in walking and self-care. She has now been discharged home from that private rehabilitation service and referred to the Brain Injury Unit. This gives rise to some issues. At this stage she is independent with aids and equipment, so with walking frames and with rails in the shower she is independent. So a Functional Independence Measure [FIM], assessing her now, would not mean that she would be eligible for the Lifetime Care and Support Scheme. However, if she had been assessed at an early stage, two months ago, she would have been eligible and possibly accepted into the Scheme.¹¹⁰

4.31 Dr Hodgkinson went on to suggest that the case study pointed to a lack of clarity about the intended target group for the Scheme, stating that it raised questions such as:

What is the scope of the Scheme? Is it intended to support someone like this? They do not have a very severe head injury, however catastrophically injured at the point in time, so what is the issue here? Should this person be included in the Lifetime Care and Support Scheme or not? I think that is a question of what is the target group of the Scheme? Should this person be included or excluded? ... There is an interim phase for two years, and then [eligibility] can be re-assessed. But if, in looking back at the patient, that this person, but for the awareness of the Scheme may have been accepted, then that may be important then to accept someone like that into the Scheme, based on what evidence you have in the notes that this person has had a severe injury.¹¹¹

4.32 The Committee sought the LTCS Authority's view of the GMCTBIRD's suggestion that the eligibility criteria for the Scheme be evaluated to determine whether they appropriately identify the target group and exclude others. The Authority responded by acknowledging the crucial role of the criteria and suggesting that any review should take place after more participants had entered the Scheme and gone on to be assessed for lifetime participation:

The eligibility criteria are a fundamental aspect of the Lifetime Care and Support Scheme and must be objective and fair. As the Scheme included adults injured after 1 October 2007 and has been operational for seven months, it is anticipated that any such review can only occur after the total number of participants in the Scheme has grown and there is information on the assessment of interim participants for lifetime participation. Any review will occur in consultation with key stakeholders.¹¹²

¹¹⁰ Dr Hodgkinson, Evidence, 20 June 2008, p 41

¹¹¹ Dr Hodgkinson, Evidence, 20 June 2008, p 41

¹¹² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 5

Committee comment

- 4.33** Issues concerning a potential extension of eligibility for the LTCS Scheme are inevitably complex and the Committee agrees that while any extension may address a potential gap, in doing so it may lead to arguments for further extension. On the other hand, there is the fundamental issue of fairness at play. For example, we consider that, on the face of it, it would seem fair for people hit by a projectile whilst in a motor vehicle to be covered by both the CTP and LTCS Schemes. However, it would be premature for the Committee to draw firm conclusions at this stage. The Committee will observe the extent to which eligibility for Lifetime Care and Support becomes a contested issue as the Scheme matures, as well as what claims are made in respect of that eligibility, and any particular gaps that become more problematic in time.
- 4.34** Similarly, it will be interesting to see whether the GMCTBIRD's concerns regarding the need for greater clarity about the intended target group of the Scheme, in terms of the extent of their injuries, continues to be an issue over time, or whether it will be limited to the initial period of implementation. It may be the case that the boundaries of eligibility are tested in the Scheme's initial period and in turn, better defined in practical terms. The extent to which eligibility becomes an issue, and over what period, will have a bearing on how soon any review of eligibility criteria should take place.

Entry into the Scheme

- 4.35** A closely related issue is the Authority's responsibility to ensure that all those who are eligible for the LTCS Scheme do actually enter it in a timely way.
- 4.36** In its submission the Disability Council of NSW highlighted the need for timely entry and called for ongoing training of hospital staff to ensure this:

Council would like to ensure that there are systems developed and implemented in order to capture eligible clients of the Scheme immediately after they have acquired catastrophic injury as a consequence of a motor vehicle accident. Our view is that there would need to be periodic training and education within hospitals in order to avoid a client potentially being overseen.¹¹³

- 4.37** In evidence, Mr Neil Mackinnon, Manager of Service Coordination at the LTCS Authority, described the 'net' used to bring people into the Scheme and noted that those with milder injuries are most at risk of falling through it:

The net which, I guess, catches people with very severe brain injury in New South Wales is very good. They do come into the brain injury programs, and we are very much across those programs. The people most at risk of missing the Scheme are people with milder injuries who may just meet the criteria, who may have an orthopaedic injury that is treated, but not the head injury. They may well be picked up in reviews some time later by a brain injury specialist, if they are referred on. Our net to catch those folks is comprised of the trauma co-ordinators in the major hospitals, the intensive care unit social workers and those kinds of folk, whom we are

¹¹³ Submission 6, p 2

continuing to educate. We ran out a very wide education program over the last year, and we continue to provide that.¹¹⁴

4.38 Mr Gilchrist of the GMCTBIRD indicated that there was one case of which he was aware, where the person was not captured in a timely way because he or she entered the hospital system via an orthopaedic ward and continued treatment in a regional hospital. Mr Gilchrist's evidence also pointed to the informal educative role that some brain injury rehabilitation staff have taken on in relation to the Scheme:

We have one other case at the moment where we had someone admitted, not to a brain injury unit but to an orthopaedic ward, where they did not know about the Lifetime Care Scheme, and then that person went to a regional hospital, where they did not know about the Lifetime Care Scheme ... Since we have had that issue ... we have sent our staff out to [the rural hospital where this occurred] to talk to them about the Scheme. Well, we talked to the social workers there, so their social workers are aware of it. I think probably across the board brain injury services are informing different areas about the Scheme ...¹¹⁵

4.39 In pre-hearing questions on notice the Committee asked the Authority what it is doing to ensure that all eligible persons do or will participate in the Scheme, and whether the Authority will provide training to hospital and rehabilitation staff about the Scheme on an ongoing basis.

4.40 In its response the LTCS Authority noted a number of mechanisms it has put in place to ensure effective entry into the Scheme:

- Training sessions have been provided in brain injury and spinal cord injury rehabilitation units and major trauma hospitals throughout New South Wales and interstate in order to ensure that clinical staff involved in the early treatment of severe injuries are aware of how to notify the Authority of a potential participant. The training addresses the Scheme and its procedures and is occurring both on an ongoing basis and on request.
- Information sessions have also been provided to Guardianship Tribunal members and members of the Law Society.
- Information is distributed through relevant newsletters such as that of the NSW Brain Injury Rehabilitation Directorate.
- The Authority publishes an e-newsletter distributed to approximately 700 subscribers.
- The process of notification of a potential participant has been simplified such that hospital staff, the injured person or their family can telephone the Authority to provide information. This telephone notification supplements the Severe Injury Advice Form.

¹¹⁴ Mr Neil Mackinnon, A/Director, Service Delivery, LTCSA, Evidence, 20 June 2008, p 13

¹¹⁵ Mr Jeremy Gilchrist, Manager, Southern Area Brain Injury Service and Member, GMCTBIRD, Evidence, 20 June 2008, p40

- The BIRDLTCS Implementation Committee has been established to ensure ongoing communication between the Authority and the NSW Brain Injury Program services.¹¹⁶

4.41 Given that entry into the Scheme is based on assessment by treating medical specialists and other approved assessors, the Committee sought advice from the LTCS Authority as to whether access to such professionals been an issue to date (for example, in non-metropolitan areas), and if so, how is it being dealt with. The Authority responded that it is monitoring this issue and working to ensure access in all geographical areas:

The Lifetime Care and Support Authority is monitoring the service needs of participants residing in regional and remote areas to ensure that appropriate service providers are engaged to meet participants' needs. A small number of participants reside in remote areas, and in cases to date, experienced service providers from metropolitan areas have been engaged to travel to the participant's home to supplement local services.

Where the participant's treating health team have not been able to complete assessments, the Authority has utilised Lifetime Care and Support approved assessors and home modifications assessors. They provide the Authority with high quality advice and state-wide coverage. The Authority will continue to consider participant geographical area and service needs when recruiting assessors.¹¹⁷

Committee comment

4.42 The Committee is satisfied that the LTCS Authority is investing significant effort into ensuring that those who are eligible for the Scheme enter it in a timely fashion. This is being done through numerous complementary mechanisms, most significantly through widespread ongoing training for hospital and rehabilitation staff. The Authority has acknowledged that entry via the orthopaedic system is the weaker area of its net, but has also indicated that it is seeking to address this weakness. We further note that the Authority appears to be effectively harnessing the resources of the health system in this respect, and that brain injury rehabilitation staff, and perhaps others, appear to be generous in their efforts to educate other hospital staff who might come into contact with people eligible for the Scheme.

4.43 The Committee will monitor this issue over time as implementation proceeds to ensure that the Scheme is operating effectively to capture those who are entitled to its provisions in a timely manner.

Interim participation of young children

4.44 An important issue that has emerged during the early period of the Scheme's implementation concerns the participation of young children. At the hearing, Mr Bowen, Chief Executive Officer of the LTCS Authority, reported that paediatric experts had raised an issue that:

¹¹⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 3-4

¹¹⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 15

It is nearly impossible to assess the [long term] care needs of a child with a brain injury where the child has been injured when aged less than five years, and the two-year interim period will not be sufficient.¹¹⁸

4.45 As a result, Mr Bowen advised that the Authority has ‘already identified that if the child is under five at the point of injury we should extend the interim participation period for five years.’¹¹⁹

4.46 In information provided prior to the hearing, the Authority indicated that legislative change would be necessary for this to occur, and that such a change was currently under consideration. It stated:

The effect of the amendment is to extend the interim participation period for children under the age of three years at the time of the motor accident.

Children injured when less than five years will not be assessed for lifetime participation until they are five or have been an interim participant for two years. This will allow the Lifetime Care and Support Authority to make its determination regarding lifetime participation at an age where a standardised assessment tool can be administered.¹²⁰

4.47 Asked for further information on why this was desirable, the Authority explained that at present, standardised assessment of children under three years is not possible, and that the long term effects of an injury are very difficult to predict before a child reaches the age of five:

The current eligibility criteria for children under the age of three years at the time of assessment is a medical certificate by a specialist, certifying that the child will probably have permanent impairment due to the injury resulting in the need for daily attendant care services.

For those over three years old, this component of the assessment is replaced by the WeeFIM, the paediatric version of the Functional Independence Measure (FIM) which captures whether the child has an ongoing care need due to the injury. No standardised assessment is possible for children injured under the age of three years.

The paediatric rehabilitation physicians at the children’s hospitals have indicated that it is extremely difficult to predict the likely outcome of brain injury on a child under the age five years. Although it is possible to do a WeeFim assessment for children aged three to five, the physicians feel uncomfortable relying on such small differences between a child who attains age appropriate norms and a child who does not, to predict whether the child will have lifelong care needs.¹²¹

¹¹⁸ Mr Bowen, Evidence, 20 June 2008, p 18

¹¹⁹ Mr Bowen, Evidence, 20 June 2008, p 18

¹²⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 28-29

¹²¹ LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 3

Committee comment

- 4.48** The Committee sees value in the proposal that the eligibility process for children under the age of three at the time of their motor accident be amended so that a decision about their lifetime participation does not occur until the child is at least five years of age. We accept the medical rationale for this proposal and recommend that the requisite legislative change be sought.
-

Recommendation 1

That the Minister for Finance seek an amendment to the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide that children less than three years of age when injured are not assessed for lifetime participation in the Lifetime Care and Support Scheme until they are aged at least five years.

Opt out and self-purchasing provisions

- 4.49** A further issue related to eligibility for the LTCS Scheme is a concern held by the Law Society of NSW since the inception of the Scheme: that participants be able to opt out of the Scheme if they so wish. The Society's submission argued that the absence of provision for this fails to respect the rights of participants and goes against the Government's intentions in related areas of law:

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.¹²²

- 4.50** The Committee notes that during the second reading debate on the Motor Accidents (Lifetime Care and Support) Bill, the then Minister indicated that subsection 6(3) of the Act specifically provides for the LTCS Authority to enter into an arrangement with a Scheme participant to enable them to self-manage their care where they are competent and wish to do so.¹²³

- 4.51** The Committee sought clarification from the Authority on whether individuals can receive compensation in lieu of LTCS and manage their own affairs, and if so, how this would work in practice. The Authority responded that it is presently developing the processes to implement subsection 6(3) to enable participants to self-manage their care. It went on to state:

The process will require a careful assessment of the participant and their service needs. The funds will then be regularly transferred from the Authority to the

¹²² Submission 4, Law Society of NSW, p 2

¹²³ NSWPD (*Legislative Council*), 4 April 2006, p 2919

participant for the express purpose of purchasing the services as required. This will enable the participant to manage their own affairs with the protection that if their circumstances change they can have their needs reviewed or cease self-management.¹²⁴

- 4.52** In turn, the Committee sought the Law Society's response to the Authority's advice. The Society pointed out that section 8 of the Act provides insurers with the power to bring injured people within the Scheme without their consent, and the MAA with the power to direct an insurer to bring people within the Scheme. It also noted that self-managed care is not the same as being able to fully opt-out of the Scheme, maintaining that this is a fundamental right:

The LTCS Authority's response to [the Committee's question] is only relevant to self-managed care and does not address the fundamental issue of a claimant being able to opt-out of the Scheme in its entirety. The strong view of the Law Society remains that injured people with the relevant capacity should be able to opt-out of the Scheme. This has been the Law Society's standing submission since the Scheme was first proposed. It is as much a civil rights issue as anything else: people should have the right to accept personal responsibility for managing their own future.¹²⁵

- 4.53** On a related issue concerning self-managed care, the Committee asked the Authority to respond to concerns on the part of the Disability Council that LTCS arrangements might affect participants' eligibility for Centrelink payments and/or concession cards.¹²⁶

- 4.54** The Authority responded:

Participation in the Scheme does not affect a participant's eligibility for Centrelink payments or concession cards. At present, participants who are unable to work because of their injury are in receipt of Centrelink Benefits.

The Lifetime Care and Support Authority is developing the process for funds transfer to participants for self-purchasing. The Authority has preliminary information regarding the exemption that can be sought from the Commonwealth where funds are for purchasing treatment and care. This will be included in the implementation of any self-purchasing arrangements.¹²⁷

Committee comment

- 4.55** The Committee acknowledges the philosophical position of the Law Society in respect of participants' inability to fully opt out of the LTCS Scheme and manage their own care and support. This is a matter of policy on which the Committee has not formed an opinion at this stage. We note that no disability groups have raised this as an issue with the Committee to date. We will watch with interest as to whether this issue becomes more contentious as the Scheme matures.

¹²⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 29

¹²⁵ Law Society of NSW, Response to post-hearing questions on notice, 9 July 2008, pp 4-5

¹²⁶ Submission 6, p 2

¹²⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 30-31

- 4.56 The Committee welcomes the Authority's advice that the implementation of any self-purchasing arrangements will include information about exemptions from the Commonwealth Government in respect of funds for purchasing treatment and care.

Service provision

- 4.57 A number of emerging issues in respect of the provision of services to Scheme participants arose during this First Review of the Scheme. These issues concerned service gaps and innovation, supported accommodation and attendant care. The evidence taken in relation to each is explored in turn below.

Service gaps and innovation

- 4.58 The Committee noted that the LTCSA's *2006-2007 Annual Report* states that as implementation proceeds, service gaps will be identified and addressed.¹²⁸ Aware of significant and longstanding gaps in the broader disability support system that may impact upon Scheme participants, the Committee sought information from the Authority on gaps that it has identified to date and the action being taken in relation to them.
- 4.59 The Authority indicated that it has a Service Development and Policy team whose role is to identify and address gaps in service provision, and reported that supported accommodation has been identified as a service gap for some participants. With regard to action being taken to address this gap, the Authority stated that it held a forum with accommodation providers in May 2008, where the necessary range of accommodation options to meet Scheme participants' needs was explored. It went on to report that models of supported accommodation are currently being examined in order to identify, clearly articulate and meet Scheme participants' service requirements.¹²⁹
- 4.60 The LTCSA also advised that it has established a working party with key stakeholder representatives to develop supported accommodation guidelines that comply with the Disability Service Standards, quality frameworks, appropriate philosophies and building regulations.¹³⁰
- 4.61 In addition, the Committee sought information on any examples of innovative service models emerging to meet participant needs. Along with work in relation to supported accommodation, the Authority noted a number of other innovations it has developed, including:
- a Discharge Equipment List enabling clinicians in brain and spinal units, without pre-approval from the Authority, to order from a specified supplier low cost, commonly prescribed items necessary for hospital discharge
 - a process for improved delivery of educational support services for participants at school, in order to deliver services such as teacher's aids

¹²⁸ LTCSA, *Annual Report, 2006-2007*, p 10

¹²⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 18

¹³⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 18

- two major projects currently in the ethics approval phase:
 - the Young Adults Transition Study, which will examine the benefit of additional support for people with brain injury in their final year at school and in the transition to adult health, educational and vocational services
 - the School Support for Adolescents with Brain Injury Study, which will involve a survey of current school support practice with the view to developing a best practice model of intervention in the school setting
- a targeted vocational support intervention for people who have not returned to work following injury as a final part of the Community Participation Project for people with spinal cord injury.¹³¹

Supported accommodation

4.62 Prompted by a concern held by PWD about a particular congregate care facility, the Committee sought the LTCS Authority's view on congregate care as a model of supported accommodation for people with disability. Mr Bowen advised that a range of care models, including congregate care, are necessary to meet the needs of Scheme participants:

Our view is that, as a funder of care, the accommodation and care packages are integral, and our primary concern is to give participants in this Scheme a choice. Sometimes their personal circumstances and the level of their injury limit that choice ... But we are quite committed, for example, to make sure that people, particularly young people, are not forced into nursing homes, so we have a responsibility to look at care. My own view is that there is no single care model that fits everybody, and that people will want to live in a range of different circumstances.¹³²

4.63 Mr Dougie Herd, Chairman of the LTCS Advisory Council, who himself has a spinal cord injury, agreed that choice and providing a range of options to suit individual participants needs are very important principles for the Scheme. He spoke about the range of accommodation needs that he anticipated participants would have:

It is also pretty clear that the overwhelming majority of people who will come through the Scheme will return to some kind of independent community living, with support, funded through the Authority, provided often by non-government organisations. A small number of people will spend shorter or longer periods of time living with others in what might be a form of congregate care, but we are not talking about large institutions. We might be talking about a small group home, with three or four people. And that might be for a period of time. Most people with spinal cord injury probably will find themselves living back at home pretty quickly, subject to the Authority getting in place the support that is needed.

People with a brain injury might have a more complex path back into the community, and they might go through more than one form of accommodation, and they might live in a variety of accommodation forms from a rehabilitation unit, to a small group home, perhaps into a family home, perhaps living independently. But it will be determined by the [individual's] care plan. The majority, I would have thought, over

¹³¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 21-22

¹³² Mr Bowen, Evidence, 20 June 2008, p 16

the life of the Scheme—however long that might be—will find themselves living essentially in independent circumstances.¹³³

Attendant care

- 4.64** Attendant care services support people with a disability in their home and community, and include providing assistance with personal care such as showering or dressing, caring for family members, attending training or work and support with leisure activities.¹³⁴ The Committee notes that the Authority anticipates that attendant care will become the major component of expenditure as the Scheme matures.¹³⁵
- 4.65** The Committee asked the Authority for more information about the systems it was establishing to provide personal care of appropriate quality to LTCS Scheme participants.
- 4.66** The Authority responded that it had undertaken an expression of interest process for the provision of attendant care, in which certification by a recognised external quality system was a mandatory requirement for selection. Twenty providers have been appointed to a ‘panel’, ensuring coverage across the State through both larger and smaller, non-profit and for-profit organisations. According to the Authority, providers were assessed on their demonstrated experience or capacity to deliver services to all or specific client groups.¹³⁶
- 4.67** The Authority also reported that it will monitor the quality of attendant care service provision to Scheme participants through individual program reviews, half-yearly reporting by providers, and auditing against key performance indicators twice during the three-year contract cycle.¹³⁷
- 4.68** In its submission, the GMCTBIRD noted a concern among brain injury rehabilitation staff that rates of payment for attendant care may not be adequate:
- Although it is [too] early to properly assess, the rates set for attendant care services may be insufficient to ensure that appropriately qualified and experienced staff with adequate support and agency coordination are used. This will be of concern in situations where a participant with challenging behavioural impairments requires a high degree of carer skill and agency management support.¹³⁸
- 4.69** The Committee sought a response to this suggestion from the Authority, who replied in detail, again noting that demonstrated experience or capacity to deliver attendant care services was a core component of the attendant care provider expression of interest process. Providers were explicitly asked about their capacity to deliver services for people with brain injury and spinal cord injury. Providers’ training plans for staff and risk management systems were also examined.¹³⁹

¹³³ Mr Herd, Evidence, 20 June 2008, p 16

¹³⁴ LTCS Authority, *Attendant Care: Information for Participants of the Lifetime Care and Support Scheme*, p 1

¹³⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 1-2

¹³⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 19

¹³⁷ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 19

¹³⁸ Submission 2, p 2

¹³⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 19

- 4.70** The Authority advised that in addition to the hourly rate of attendant care, it also funds training for attendant care providers that is specific to the needs of individual participants and over and above the baseline competencies of an attendant care worker. The amount of training hours allocated is based on a recommendation of the individual's Care Needs Assessment and is assessed as the participant's needs change. This training also addresses behaviour management strategies for participants with challenging behaviours. In addition, the Authority will fund a member or members of the specialist treating team to provide this training.¹⁴⁰
- 4.71** The Authority further noted that it funds a service establishment fee, up to \$870, to pay for the non-direct attendant care services, such as service coordination, that are involved in setting up new or revised quality attendant care programs.¹⁴¹
- 4.72** It also explained that the Authority's Schedule of Fees for approved attendant care providers, set from the commencement of the Scheme for children, was raised by 3.5 per cent at the commencement of the Scheme for adults. In addition, the overnight sleepover rate rose significantly from \$85 per shift to \$135.78. The Schedule of Fees is to be reviewed each year for the period of the next contract cycle (three years). In addition, the Miscellaneous Home Care Workers Award, used to calculate the attendant care fee, was increased in September 2007 by approximately 3.4 per cent and backdated to 1 August 2007.¹⁴²

Committee comment

- 4.73** The Committee is satisfied that the service provision aspects of the Scheme's early implementation are proceeding in a considered and planned manner, with due attention given to ensuring responsiveness to the range of individual needs to be addressed via the Scheme over time.
- 4.74** Given that attendant care is expected to make up the largest proportion of care provided under the Scheme, it will be vitally important that it is appropriately remunerated, well planned for and effectively and efficiently delivered. The Committee is pleased to observe that the LTCS Authority is seeking to address the identified gap in supported accommodation and we will monitor its work in this area over time. It will also be important for the Authority to watch for other emerging gaps in services over the coming years and to proactively address them.

Supports for family carers

- 4.75** In its submission, Carers NSW, the peak organisation for carers of people with disability, mental illness, chronic conditions and frail older people, recommended a number of strategies to ensure appropriate support for family carers of LTCS participants, including that:
- the LTCS Authority and MAA websites use the term 'carer' or 'family carer' appropriately, to assist family members to identify their caring role

¹⁴⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 20

¹⁴¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 20

¹⁴² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 20

- the websites provide information on the availability of support services for carers
- the ‘Carers Linked in Caring’ pilot support program for carers of people with traumatic brain injury or spinal cord injury, run in partnership with Carers NSW and the MAA, receive continuous funding
- LTCS coordinators, health professionals and service providers receive education about carers’ needs and the importance of working collaboratively with them
- training be made available to carers to support them in their caring role, particularly during the consumers’ transition from health care setting to home.¹⁴³

4.76 The Committee sought the Authority’s response to these proposals, with the LTCSA indicating that it recognised the role of carers and the need to support them:

The Lifetime Care and Support Authority recognises the important role of carers in the recovery and ongoing care and support following injury. The Authority agrees that training carers to assist in the transition from hospital to home is important and integral for satisfactory outcomes. The Authority strives to actively encourage participant and family involvement in order to best assist participants in their roles at home and in the community.¹⁴⁴

4.77 The Authority reported that the ‘Resources and research’ section of its web site includes information for family carers and health professionals about brain and spinal cord injuries, and that the inclusion of additional resources for family carers (such as a link to the Carers NSW web site) will be considered in the next review of website content. The LTCSA also undertook to review the use of the term ‘carer’ and ‘family carer’ in its documentation and publications for the purposes of clarity and appropriate acknowledgement of the importance of carers.¹⁴⁵

4.78 In respect of project funding, the LTCSA noted that it did not receive an application for funding from Carers NSW in the current grant round, and that previous funding was from the Motor Accidents Authority. Finally, the Authority indicated its preparedness to discuss any of these issues with Carers NSW.¹⁴⁶

Committee comment

4.79 The Committee acknowledges the substantial contribution that carers and other family members make in the recovery, care and support of people who are injured in motor accidents. We encourage the LTCS Authority in its strategies to ensure that carers are recognised and actively supported within the Scheme.

¹⁴³ Submission 1, Carers NSW, p 7

¹⁴⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 30

¹⁴⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 30

¹⁴⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 30

Administration and paperwork

4.80 As noted in the section focusing on implementation earlier in this chapter, health service staff have reported that increased administration and paperwork have arisen as issues in the early period of the Scheme's operation. In its submission, the GMCTBIRD stated:

The implementation of the LTC&S Scheme has increased the accountability and paperwork faced by the NSW Brain Injury Rehabilitation Program (BIRP) resulting in greater amounts of non-clinical activity.¹⁴⁷

4.81 Dr Hodgkinson spoke to this issue at the hearing, reporting that some of the LTCSA forms required duplicate information:

The forms expected to be completed are sometimes repetitive, so that a form requesting equipment may repeat the same information requesting another form requesting therapy, and the same form requesting care and attendant care ... at the moment, it is quite cumbersome.¹⁴⁸

4.82 Her colleague, Dr Gurka, went on to explain that while rehabilitation clinicians have long been required to complete paperwork for insurance claims, the anticipated number of LTCSA Scheme participants, as well as the various forms required by the LTCSA, is expected to place significantly more pressure on rehabilitation staff:

Paperwork is not something new to those of us working in the area of brain injury rehabilitation and those working in catastrophic injury. We have had to comply with procedures of insurance companies under the CTP scheme before. I guess the advent of Lifetime [Care] means that the number of people in our units now who are actually going to be funded through this Scheme has approximately doubled compared with the number of people we have previously managed with an insurance claim. So the paperwork, while it is not new for us to have to do it, is going to depend on a much higher number of patients. The actual procedures that we will need to follow with Lifetime [Care] will mean there are a larger number and greater variability in all the different forms that have to be filled out than there were under the old CTP scheme. So, even when we get more familiar with the paperwork and more used to it, there will still be a significantly greater load.¹⁴⁹

4.83 Accordingly, the GMCTBIRD suggested that additional hospital and community-based staff are required to manage the greater treatment and administrative workload. In addition, it recommended that the Scheme's extensive paperwork be reviewed in order to reduce duplicate processes, improve formatting and address ambiguous terminology.¹⁵⁰ Both Dr Hodgkinson and Dr Gurka suggested that the revenue raised by area health services in lieu of the services provided to Scheme participants be used to employ additional staff.¹⁵¹

¹⁴⁷ Submission 3, p 2

¹⁴⁸ Dr Hodgkinson, Evidence, 20 June 2008, p 42

¹⁴⁹ Dr Joe Gurka, Staff Specialist and Medical Director, Westmead Brain Injury Rehabilitation Unit and Member, GMCTBIRD, Evidence, 20 June 2008, p 42

¹⁵⁰ Submission 3, p 3

¹⁵¹ Dr Hodgkinson and Dr Gurka, Evidence, 20 June 2008, p 42

4.84 Specifically responding to the concerns in the GMCTBIRD submission, in its answers to pre-hearing questions on notice the LTCSA Authority explained that having the necessary information to make decisions about participants, for example on forms such as the Care Needs Assessment and Community Living Plan, is crucial.¹⁵² It conceded that increased paperwork and administration has been an issue among area health service staff, whilst also pointing out the essential role that such staff play in the Scheme's operation:

Part of the clinical activity of staff working in brain injury rehabilitation is to advise the Authority of the participant's needs in relation to treatment, rehabilitation and care. The staff members are expert in their field and the most appropriate clinicians to advise the Authority of individual participant's needs for hospital discharge and treatment in the community.¹⁵³

4.85 The Authority also noted that as 'significant providers of essential services for participants' the Authority now pays area health services for services provided to Scheme participants, in accordance with the current NSW Health policy directive and associated fee schedule. In addition, discussions between the Authority and NSW Health have led to a draft specific policy directive and fee schedule for the designated brain and spinal cord injury units.¹⁵⁴ It went on to report on a number of measures to assist clinical staff with the necessary paperwork:

The procedures for requesting services were revised several times prior to [the Scheme's commencement for adults on] 1 October 2007. Training for the units commenced in May 2007 with a final version of most forms for use in the scheme published in August 2007. Forms with completed examples were used in the training for service providers to assist in completing the necessary documentation. The Coordinators have also commenced and continue to provide support to the treating teams in the completion of documentation.¹⁵⁵

4.86 The Authority also noted several other measures to streamline processes with regard to the prescription and provision of equipment. In conclusion, the LTCSA advised that it intends to review documentation and procedures within the next year, and in doing so, will consult with stakeholders:

The Authority will work towards a system that meets participants' needs, is not arduous for clinicians and provides the Authority with the information needed to review requested services and ensure accountability and transparency of decisions. A review of the documentation and all procedures is planned. The review will occur within the next 12 months and feedback will be sought from all stakeholders prior to any amendments.¹⁵⁶

4.87 The Committee was also advised that the Authority is planning an online system for lodgement of participant information which may address some duplication.¹⁵⁷

¹⁵² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 3

¹⁵³ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 27

¹⁵⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 27

¹⁵⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 27-28

¹⁵⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 28

¹⁵⁷ Dr Hodgkinson, Evidence, 20 June 2008, p 42

Committee comment

- 4.88** The Committee acknowledges the important role of area health service staff in the operation of the LTCS Scheme, as well as the significant additional demands that the Scheme is placing on them. While recognising the need for the Authority's decisions about individual participants to be well substantiated and transparent, we encourage the Authority in its work to streamline administrative processes and reduce duplication as far as possible, so that the right balance is struck between transparency and utility.
- 4.89** Again, while acknowledging the additional work arising from the Scheme, we consider that decisions as to how area health services should spend the revenue gained via Scheme reimbursement are a matter for those area health services. Nevertheless, the Committee will make enquiries as to the administration of this aspect of the program with NSW Health and will return to this issue during next year's review.

The role of LTCS Coordinators

- 4.90** In its submission, the GMCTBIRD raised a further concern that has emerged during the Scheme's early period of implementation about the role of LTCS Coordinators:

LTC&S coordinators are involved in the process early and this has led to confusion for some applicants and carers (and sometimes school staff) about the role of all the people they meet. The timing and nature of the LTC&S Scheme staff involvement could be improved.¹⁵⁸

- 4.91** The Committee sought more information about this at the hearing. Dr Hodgkinson gave an example of a patient with severe head injuries whose family was understandably traumatised and distressed, where the LTCS Coordinator took on a more therapeutic role than may, with the benefit of hindsight, have been desirable:

There was a lot of emotional and practical support actually provided by the Lifetime Care Coordinator in almost a therapeutic role. So that by the time the patient was transferred to us for rehabilitation the role of the Lifetime Care Coordinator was perhaps misunderstood. Instead of coordinating a scheme, they were viewed as a person critical to the rehabilitation of that person at a clinical level. I think this continued to be an issue perhaps because it was not as openly stated as that until we then, towards the end of the person's rehabilitation, addressed it as a specific issue and looked at mechanisms by which we could avoid that sort of thing happening in future. I think that accounts for one of the ways in which we can see that the coordination of the Scheme role can overlap with the clinical role, particularly when you have a family in distress who are asking for help.¹⁵⁹

- 4.92** Similarly, Dr Gurka observed that there is some ambiguity in the role of LTCS Coordinators *vis a vis* clinical staff:

I think there are still a lot of unclear issues on both sides about exactly what the roles of different people within the clinical teams might be, and how they may conflict with

¹⁵⁸ Submission 2, p 2

¹⁵⁹ Dr Hodgkinson, Evidence, 20 June 2008, p 42

or complement the roles of the Coordinator. So I think that there is still a lot of work that needs to be done in terms of us trying to improve clarity around those roles and reducing the confusion that can arise. There have been a lot of cases where that has happened, to the detriment of the clinical cases. But, again, I think that just needs more work.¹⁶⁰

4.93 Once more, the LTCS Authority acknowledged that there has been an issue here:

Uncertainty regarding the role of the Lifetime Care and Support Coordinators and role of case management within this Scheme was an initial concern from health professionals. The Authority has attempted to address this issue in training, by developing ‘frequently asked questions’ on the role of the Coordinator and by developing the Coordinators’ competencies ... rehabilitation unit meetings to discuss rehabilitation plans include the Coordinator and other meeting are held to discuss the overall issues and implementation of Lifetime Care and Support-related processes.¹⁶¹

4.94 Responding specifically to the assertions in the GMCTBIRD submission about confusion in relation to the role of LTCS Coordinators and the way that they engage with families and rehabilitation staff, in its answers to written questions prior to the hearing, the Authority highlighted the central role of LTCS Coordinators in the Scheme’s operation. It reported that that role is continually being refined, and elaborated on the development of LTCS Coordinator competencies to inform Coordinators’ work:

The role of the Lifetime Care and Support Coordinator is fundamental to the Lifetime Care and Support Scheme operation. The early involvement of Coordinators is necessary to facilitate access to the Scheme, provide information and gather initial information about the participant. The Coordinator’s role is new for health care providers and others who provide services for participants. The Coordinator provides a single point of contact for participants, their representatives and their service providers on any participant related matter. The Coordinators attend hospital case conferences, school meetings and home visits to meet participants and plan or review services. They provide an important and necessary oversight of the services being provided to participants.

In 2008 a document defining the Lifetime Care and Support Coordinator Competencies was developed. It is being utilised in staff recruitment, orientation and ongoing training. Issues regarding Coordinators’ communication and their role are addressed in regular meetings with the Paediatric Brain Injury Team Coordinators, the Lifetime Care and Support – Brain Injury Rehabilitation Directorate Implementation Committee and in meetings held with all the major brain and spinal injury services.

The timing and purpose of the Coordinators involvement is being refined through continued development of the processes where they are engaged with participants and service providers.¹⁶²

¹⁶⁰ Dr Gurka, Evidence, 20 June 2008, p 44

¹⁶¹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 26-27

¹⁶² LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 15-16

Committee comment

- 4.95** The Committee notes that the role of LTCS Coordinator is central to the operation of the Scheme and considers it understandable that there be an initial period of adjustment and change on the part of treatment and rehabilitation staff associated with the advent of the LTCS Coordinator role. We further note that the Authority has recognised and is responding to this. We will watch with interest to ascertain whether this is resolved over time or becomes a greater cause for concern.

Transparency, accountability and access to information

- 4.96** Noting the significant impact that decisions within the Scheme have on confirmed and prospective participants, as well as the significant sums of money involved, the Committee sought advice from the LTCS Authority on the mechanisms in place to ensure transparency and accountability in decision-making about individual participants, as well as in payments to care and equipment providers.
- 4.97** The Authority advised that decisions concerning reasonable and necessary treatment, rehabilitation and care are made by LTCS Authority officers who do not have direct contact with participants. Decisions are based on the written request before the approval officer, and in reviewing the request, the officer documents how the request is reasonable and necessary, and how it complies with LTCS guidelines and where relevant, industry guidelines.¹⁶³
- 4.98** In circumstances where the request is not clear, the Authority will hold a meeting of three persons (two assessments officers and the LTCS Coordinator), to discuss the merits of the request and make a final determination. A certificate is issued to the participant stating the reasons why services are, or are not, approved.¹⁶⁴
- 4.99** In relation to financial payments, the Authority advised the Committee that financial delegations are in place for all officers able to approve rehabilitation, treatment and care expenses. The process for approval of payments for services is as follows: service providers invoice the Authority in arrears, with the LTCS Coordinator reviewing the invoice, and once satisfied that services have been delivered and match the prior approval, recommending the invoice be approved. This is then approved for payment by the approval officer, the Manager Service Coordination or Director Service Delivery.¹⁶⁵
- 4.100** The Authority further stated:

Systems are in place to assist the Coordinators to ensure services have been delivered. The Common Equipment Prescription Guidelines state who is suitable to prescribe equipment that is complex and specialised. After the equipment is provided to participants, it must then be acquitted by the prescriber prior to payment being authorised.

¹⁶³ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 16

¹⁶⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 16

¹⁶⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 16-17

The Lifetime Care and Support panel of Attendant Care providers have been selected and contracted to deliver quality services to the Scheme participants for an agreed fees schedule. This allows participant choice in service providers and ensures the quality of service provision. Attendant Care providers also must submit an Attendant Care Activity Statement outlining the services delivered in the invoice period which is reviewed prior to payment.

The Authority monitors expenditure on a per client basis as well as by line items and service provider.¹⁶⁶

4.101 In its submission, the Disability Council of NSW noted the importance of ensuring that information about the Scheme is accessible to people with a disability. It pointed out that MAA and LTCSA annual reports are available electronically but only in PDF format, noting that PDF documents are not accessible for synthetic speech screen readers and subsequently preclude people with vision impairment from electronic access to this information.¹⁶⁷

4.102 Asked about the steps it is taking to ensure that information relating to the LTCS, including annual reports, is accessible to all interested parties, including those with disabilities, the LTCS Authority noted a number of key information resources:

- a set of brochures and fact sheets about the Scheme, translated into a several community languages
- the Authority's website
- the Authority's electronic newsletter.¹⁶⁸

4.103 It went on to state that consideration is given to the information needs of individual participants and their families:

For individual participants or their family the Authority considers participants' disabilities and their individual accessibility requirements when providing information. An example is enlarging all text for a participant with significant visual impairment from a brain injury or translating information brochures and correspondence for parents of a child participant. Other services such as Telephone typewrite and the National Relay Service are available.¹⁶⁹

4.104 The Authority also indicated that it is working to ensure that its web-based information is accessible:

One area of communication that requires further development is the compatibility of some documents on the website for synthetic speech screen readers. The Authority, together with the Office of the Motor Accidents Authority who provides the Authority with its website technology, undertake to ensure that access to our websites is freely available to all individuals. Accordingly, the Office of the Motor Accidents Authority are reviewing current practices for publishing information on websites and will be adopting The Web Content Accessibility Guidelines 1.0 published by the

¹⁶⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 17

¹⁶⁷ Submission 6, p 2

¹⁶⁸ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 17

¹⁶⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 17-18

Worldwide Web Consortium (W3C) and referenced by the Government Chief Information Officer.¹⁷⁰

Committee comment

- 4.105** The Committee notes the significant transparency and accountability mechanisms built into the Scheme to ensure that decisions about potential and actual participants are sound and that funding in respect of those decisions is appropriately safeguarded. We also acknowledge the Authority's significant work to provide information in an accessible form, and encourage it in its efforts to further ensure accessible communication via the internet.

Review of decisions and independent advice and advocacy

- 4.106** Both the Law Society of NSW and the NSW Bar Association noted concerns in their submissions about the Scheme's dispute resolution processes. Those processes are explained in Chapter 2.
- 4.107** The Law Society contended that the LTCS Scheme's non-judicial review mechanisms detract from the procedural fairness and transparency of the Scheme. It recommended that the legislation be amended to allow a proper appeals process in respect of decisions about interim and lifetime participation, as well as about care and support to be provided and who it will be provided by.¹⁷¹
- 4.108** Similarly, the NSW Bar Association argued that participants have a right to proper review, whilst noting that the nature of their disability may mean that they are disadvantaged in exercising that right. The Association then pointed to the desirability of independent legal representation and/or advice for participants:

Participants in the Scheme who are dissatisfied with the assessment of their care needs have a right of review. However, in order to fully exercise review rights it may be necessary to collate materials, present submissions and even demonstrate that there has been a "*material error*" in an initial assessment. In short, the appeal rights are not easily accessed by the average citizen, let alone a participant in the Scheme who may be suffering from a brain injury.

There are no costs recoverable for legal representation in these disputes with the LTCS Authority. The Association has previously advocated that some form of legal representation or advisory service be made available to LTCS participants so that they are able to exercise their review rights. The Standing Committee is invited to ask what steps have been taken in this direction to ensure fair and open access to review rights for Scheme participants.¹⁷²

- 4.109** In evidence, Mr Andrew Stone of the NSW Bar Association elaborated on the Association's concern for independent advice and advocacy:

¹⁷⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 17-18

¹⁷¹ Submission 4, p 2

¹⁷² Submission 7, NSW Bar Association, p 8

We are not saying we necessarily want to get lawyers involved in that process and create legal fees and so on. All we want is for there to be some sort of advisory service, or independent person, who can act as an assistant to somebody who says, “Look, I’m not happy with the care plan I’ve got; I would like to challenge it. How do I go about doing that? Who will help me fill in the forms? Who will help me get the letter from my GP saying that I need X amount of this medication, rather than the amount they have allowed?” Who is providing the assistance to somebody who wants to make some challenge to the bureaucratic assessment of their needs?¹⁷³

- 4.110** PWD also emphasised the need for independent advice and advocacy for Scheme participants, pointing to the broader information and advice needs that arise from sudden and traumatic injury:

It is well understood that the majority of people who will become recipients of this Scheme will acquire their disability suddenly. As a result, they may have little experience of services and supports available to people with disability, or understanding of how to combat the effects of discrimination which are common to people with disability. For these reasons access to independently funded advocacy support is critical to ensuring LTCS recipients are able to navigate their treatment, rehabilitation and future care services.¹⁷⁴

- 4.111** The Committee sought a response from the Authority to the Law Society’s concerns about non-judicial review. The Authority pointed out that legislative change is a matter for the Government to consider. It went on to underscore the expert clinical nature of decision-making about participants and noted that such decisions are made on a continual basis within the Scheme:

It is noted, however, that a person’s eligibility to participate in the Lifetime Care and Support Scheme is based on their injury and is dependent upon both the severity of the injury sustained and its impact on the person’s functional capacity, that is, their need for assistance and supervision in day-to-day living. These assessments require clinical and medical decisions to be made by relevant experts in the areas of catastrophic injury management.

Similarly, the assessment or the review of an assessment of a participant’s treatment and care needs involve consideration of medical, rehabilitation, care and support issues, requiring the expertise of medical practitioners and other health professionals, attendant care and rehabilitation specialists. These assessments are undertaken regularly through the person’s life as frequently as changing circumstances require. They are not a single, one-off assessment locking the injured person into a fixed entitlement.¹⁷⁵

- 4.112** Asked if there have been any disputes as yet, the Authority advised that there have been none to date, whether in respect of LTCS Scheme eligibility, motor accident injury or the treatment and care needs of participants. It further advised that information brochures and fact sheets

¹⁷³ Mr Andrew Stone, Representative, NSW Bar Association, Evidence, 20 June 20087, pp 29-30

¹⁷⁴ Submission 9, pp 2-3

¹⁷⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 25-26

have been developed to provide information about the dispute process and that they are available on Authority's website.¹⁷⁶

- 4.113** In turn, the Law Society responded to the Authority. It acknowledged that many decisions will be made over the course of a person's participation in the Scheme, but maintained that an appropriate mechanism must be in place to accommodate those times when a person wishes to challenge a decision, and that this mechanism should extend to the availability of an external review. It stated:

As the legislation currently stands, all disputes are to be determined by assessors appointed by the Authority. Once those internal reviews have been exhausted, the only remedy available would be to seek a judicial review in the Supreme Court. An appropriate suggestion may be to provide an avenue of appeal to the Administrative Decisions Tribunal. This would require legislative amendment.¹⁷⁷

Committee comment

- 4.114** The Committee acknowledges the efforts of the LTCS Authority in advising participants of their rights within the Scheme. At the same time, we consider that further consideration should be given to the most appropriate mechanism for review of decisions within the Scheme, and to the desirability of an independent advice and advocacy service, in order to ensure that participants enjoy adequate procedural rights. While we note that decision-making in respect of participants is an ongoing process within the Scheme, we consider that certain decisions, most particularly in relation to interim and lifetime participation, and also about entitlement to various care and support arrangements, will have great significance for the individuals involved.
- 4.115** The Committee considers that it would be valuable to make use of the LTCSAC's advisory role in respect of this issue, and in doing so, to draw on its members' expertise.
- 4.116** Accordingly, we recommend that the LTCS Authority, in consultation with the LTCSAC, formally consider the range of options for independent review of decisions (including judicial review), and the provision of independent advice and advocacy to potential and actual participants, with a view to recommending the preferred option(s) for both.

Recommendation 2

That the Lifetime Care and Support Authority, in liaison with the Lifetime Care and Support Advisory Council, formally consider the range of options for independent review of decisions and the provision of independent advice and advocacy in respect of applicants, interim participants and lifetime participants in the Lifetime Care and Support Scheme. This should include the development of recommendations as to the desirability of and the most appropriate mechanisms for each.

¹⁷⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 25

¹⁷⁷ Law Society of NSW, Response to post-hearing questions on notice, 9 July 2008, p 4

Interface with the Motor Accidents Compensation Scheme

- 4.117** During the review an issue arose in relation to the interface between the LTCS Scheme and the Motor Accidents Compensation Scheme.
- 4.118** When the Committee asked the Insurance Council of Australia about its perceptions of the Scheme's implementation to date, the Council noted insurers' limited involvement in this Scheme whilst going on to note a concern that decisions in respect of care and support in the LTCS Scheme may have implications for CTP insurers:

We suggest however that some of the LTCS Scheme's care arrangements are likely to set precedents for claims in the CTP scheme generally. Therefore, we consider that we are a stakeholder in that process and we would like to be involved in determining what sort of care will be provided. We believe that this has a flow-on effect to the CTP scheme in which our insurers operate.

We remain keen to work with the LTCSA as the scheme progresses. We are also participating in ongoing dialogue with MAA and the LTCSA to ensure that there is no duplication of services for those participants in the Scheme and that insurers are also included in any significant changes to the operation of the Scheme.¹⁷⁸

- 4.119** In evidence, Mr Philip Cooper, Chair of the Motor Accidents Insurance Standing Committee, elaborated on insurers' desire to be involved in decision making that might affect them:

The MAA and the Lifetime Care and Support Authority have been quite transparent [in the process of determining what will be the sort of care and support provided under the LTCS Scheme] ... and have allowed us to be involved in that process—but not at the clinical side in terms of actual treatment that participants receive, because that is not really appropriate for us anyway. But they have been quite good in involving us. It is just that there is not a formal process to have us involved, and since we are potentially stakeholder in the outcome, we would like to have some formal involvement in that process.¹⁷⁹

- 4.120** In information provided to the Committee prior to the hearing, the Authority acknowledged that the 'boundary issues' between the two Schemes were being discussed with the Motor Accidents Authority and NSW CTP claims managers¹⁸⁰ but did not provide further details of these discussions.
- 4.121** The Committee sought more information on this issue following the hearing, with the LTCS Authority explaining in response how LTCS Scheme participants' CTP claims are dealt with. The Authority also reported that it is currently working with insurers to clarify the definition of treatment, care and rehabilitation expenses:

Approximately 50 per cent of Lifetime Care and Support participants will also have a Compulsory Third Party claim. The Lifetime Care and Support Scheme pays for all the participant's treatment, rehabilitation and care expenses. The Compulsory Third

¹⁷⁸ Insurance Council of Australia, Response to post-hearing questions on notice, 18 July 2008, p7

¹⁷⁹ Mr Philip Cooper, Chair, Motor Accidents Insurance Standing Committee, Insurance Council of Australia, Evidence, 20 June 2008, p 35

¹⁸⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 3

Party insurer will compensate the claimant for their other expenses and losses arising from the injury including lost income and the loss of future earning capacity. As some of these other expenses are paid early in the claim period, at the same time the insurer is paying for rehabilitation, these expenses have in the past been called “rehabilitation” expenses by the insurer. An example of such an expense is the storage cost of furniture while the claimant is in hospital.

The Lifetime Care and Support Authority, the Motor Accidents Authority and the Compulsory Third Party insurers are currently clarifying what is and is not a treatment, rehabilitation or care expense. For example, travel to medical appointments by the participant and accompanying family member is considered as an appropriate medical expense, but travel and accommodation costs for extended family members is more problematic. Removal expenses because the participant has to move from their pre-injury home or the expenses involved in looking for injury-accessible accommodation are considered as appropriate rehabilitation expenses associated with the participant’s resettlement into their community.¹⁸¹

Committee comment

- 4.122** Again the Committee will watch with interest the boundary issues in respect of the LTCS and CTP Schemes with a view to whether they become important matters for resolution as the Scheme’s implementation proceeds. We are mindful that in clarifying what is and is not a treatment, rehabilitation or care expense, the LTCS Authority and Motor Accidents Authority must fairly balance the interests of LTCS participants, CTP claimants and insurers.

Estimated financial liabilities

- 4.123** A significant issue explored during this First Review, and which will no doubt inform future reviews, is that of the actuarial estimations for the financial liabilities of the LTCS Scheme.
- 4.124** The estimations of Scheme costs were made by the Scheme’s actuary, Mr John Walsh of PricewaterhouseCoopers.¹⁸² The Authority has been clear that the estimations are by nature uncertain. Its *2006-2007 Annual Report* states:

The accuracy of the liability for future participants’ care and support services is impacted by the inherent uncertainty of the estimation. This includes the very new nature of the Scheme, and the fact that the valuation is based on a wide range of information, from a cross-section of data sources. A large number of assumptions have been made in the valuation, and only time will test the appropriateness of these assumptions.¹⁸³

¹⁸¹ LTCSA, Answers to post-hearing questions on notice, 21 July 2008, p 1

¹⁸² Mr Bowen, Evidence, 20 June 2008, p 13

¹⁸³ LTCSA, *Annual Report, 2006-2007*, p 31

- 4.125** The Committee sought specific information on the assumptions built into the estimations, with the Authority advising that assumptions were made in respect of:
- the expected claim incidence including type of injury, age at onset and severity of disability
 - estimated average claim size including attendant care service support, equipment, home and vehicle modification and hospital and medical services
 - mortality rates
 - economic assumptions such as inflation rate indicators and outlook on future investment returns
 - LTCS Authority claims management expenses including case management, service coordination and service provision.¹⁸⁴
- 4.126** The Authority also advised that in turn, these assumptions drew on a number of sources, including:
- reference to the catastrophic injury claims experience of the Victorian Transport Accident Commission
 - comparison with data from a variety of external sources including the Australian Spinal Cord Injury Register, the NSW Trauma Registry, NSW Health, the Brain Injury Outcome Study and NSW spinal units
 - literature review of spinal cord injury and brain injury mortality
 - LTCS operating experience to 30 June 2007.¹⁸⁵
- 4.127** The Law Society drew attention to the Scheme’s actuarial estimations in its submission to the Committee’s review. It advised that in 2005, during the consultative phase prior to the commencement of the Scheme, the Law Society and Australian Lawyers Alliance engaged Cumpston Sarjeant Consulting Actuaries to examine and comment on the PricewaterhouseCoopers costings. The Cumpston Sarjeant findings were subsequently forwarded to the Motor Accidents Authority for consideration.¹⁸⁶
- 4.128** The Law Society noted its underlying concern that if the estimates proved inadequate, benefits to participants ‘will be cut back so that budgets can be met’.¹⁸⁷ It provided the Committee with a copy of the Cumpston Sarjeant report, which concluded that:

There are major uncertainties in [the] cost estimates for the proposed benefits ... These include uncertainties about the numbers likely to be deemed eligible, their life expectancies, the hours of care required, life cycle adjustments, and future investment returns and inflation.

¹⁸⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 8

¹⁸⁵ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 8

¹⁸⁶ Submission 4, p 2

¹⁸⁷ Law Society of NSW, Response to post-hearing questions on notice, 9 July 2008, p 4

Walsh estimates that benefits and expenses will cost \$66 a vehicle, less \$46 of offsets and savings from the current scheme, giving a net cost of \$20 per vehicle. But there are considerable uncertainties in the offsets and savings, making the \$20 net cost very uncertain.

My attempt to replicate Walsh's estimate of long-term care benefits gave \$339 m pa, compared with Walsh's estimate of \$241m ... This requires investigation.

Walsh's gross estimate of \$66 per vehicle is higher than the \$45 estimated from Victorian data ... and \$41 from Tasmanian data ...

The proposed statutory trust may eventually grow to about \$8 billion in 30/6/05 values ...¹⁸⁸

- 4.129** At the hearing the Committee asked the Authority to respond to the Law Society's concerns. Mr Bowen again acknowledged the inherent uncertainty of the estimations and the untested assumptions on which they were made. He suggested that the Scheme's actuary would himself note this uncertainty, which was unavoidable:

[Mr Walsh] would, I am sure, indicate to you that there is some uncertainty around the valuation because he was compiling it from a range of different data sources. Unfortunately, there is no single data source from which we can extract the numbers of people who are catastrophically injured each year as a result of motor vehicles. We have a reasonable idea from some of the major trauma data, but the costs associated with the level of severity relate to where the critical work has happened.¹⁸⁹

- 4.130** The Authority advised that each year its actuary will review the assumptions and revise the estimations accordingly, in light of the experience of the Scheme:

The Board of Directors of the Lifetime Care and Support Authority engages an external actuarial expert to estimate, on an annual basis, scheme liability as at the end of the financial year and for the year ahead. The Board will regularly monitor the movement of the estimated liability between actuarial estimations and make adjustments as necessary ... the assumptions are changed based on actual experience.¹⁹⁰

- 4.131** In evidence Mr Bowen informed the Committee that the Authority's assumptions in relation to the number of children entering the Scheme had already been revised:

We have just had a further liability report from our actuaries, and we are changing some of those assumptions. For example, the very noticeable indicator, after nearly two years of operation, is that the number of children entering the Scheme has been well below that which was expected. So much so that we have reviewed all of the data there, and it seems to have been a significant change. It is a sort of good news story: there have been far fewer children being catastrophically injured as a result of motor vehicle accidents over the past two years than were so injured over the preceding five

¹⁸⁸ Cumpston Sarjeant Pty Ltd Consulting Actuaries, Report on Lifetime Care and Support prepared for the Law Society of NSW and Australian Lawyers Alliance, 14 December 2005, p 1, appended to the Law Society of NSW, Response to post-hearing questions on notice, 9 July 2008

¹⁸⁹ Mr Bowen, Evidence, 20 June 2008, p 15

¹⁹⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 9

years. We were so out of kilter that we went back and rechecked all of the data for those five years. We thought that, based on that, the assumption that we went in with was reasonable, but going forward we have reduced the expected children entering the Scheme by a third, which is great news, and hopefully that trend will continue.¹⁹¹

- 4.132** Mr Bowen reported that despite the rate of catastrophic injury among children having been very consistent over recent years, less children than expected have entered the Scheme thus far. He explained that the evidence suggests there has been both a reduction in casualty levels among children, as well as a ‘very significant reduction’ in the number of children catastrophically injured:

We went back five or six years, and in any given six-month period there was an average of 16. And the range never fell; it was at least 12 and no more than 20. So it was in the range of 12 to 20, with an average of 16. In the first year of the operation of the scheme we had 9 children enter in one full year. We have had 4 or 5 since.¹⁹²

- 4.133** Dr Hodgkinson concurred that on the basis of her knowledge of trauma injury data, there are less injuries occurring among children as a result of motor accidents, and those injuries are less severe. She surmised that drought, rising petrol prices and road safety awareness measures might all have contributed to this trend.¹⁹³

- 4.134** Mr Bowen indicated that the precise factors behind the marked drop in respect of children were not clear:

We would like to think—putting my Motor Accidents Authority hat on—that there have been some road safety contribution there. The school zone has, I think, increased general community awareness, not only about children in school zones but being aware of children as pedestrians and bicyclists in road area. Urban zones would have reduced accidents, and certainly taking a lot of low-severity accidents out may be contributing as well. But there is no one thing that I can say has caused it. But it is quite a profound drop.¹⁹⁴

- 4.135** Returning to the broader issue of estimations, Mr Bowen further reported that the LTCS Authority is currently working with its actuaries to develop a ‘life cost estimator’ by which to calculate anticipated care and support costs for individual Scheme participants:

What we would like to be able to do is take a person, have knowledge of their injury and the severity of their injury, along with a reasonable assessment of their needs, their current age and their life expectancy, making some allowance for transition points, and then we can build up something that provides us with both a cash flow indicator of their immediate needs in the first five years, and a budget for them over life, just so that we can make sure that expenditure of the Authority is benchmarked against something like that. Hopefully, that will roll back around and validate the actuarial assumptions and lead to some changes in that going forward.¹⁹⁵

¹⁹¹ Mr Bowen, Evidence, 20 June 2008, p 13

¹⁹² Mr Bowen, Evidence, 20 June 2008, p 15

¹⁹³ Dr Hodgkinson, Evidence, 20 June 2008, p 43

¹⁹⁴ Mr Bowen, Evidence, 20 June 2008, p 15

¹⁹⁵ Mr Bowen, Evidence, 20 June 2008, pp 13 -14

- 4.136** In light of the Law Society's concerns, prior to the hearing the Committee asked whether the Authority anticipated that it will become more difficult over time to satisfy participants' entitlements as the available pool of funds is necessarily shared by more people. The Authority responded that the liabilities of the Scheme will be fully funded by the levy on motorists:

No, the Motor Accidents (Lifetime Care and Support) Act 2006 provides that the Lifetime Care and Support Scheme is to be funded by a levy on Green Slips that fully funds the present and likely future liabilities of the participants in the Scheme determined (at least annually) by the Board of Directors in accordance with independent actuarial advice.

The available funds are those, which together with investment income, will meet the lifetime needs of scheme participants. Each year the Lifetime Care and Support Authority collects the additional amount required to meet the additional lifetime costs of people catastrophically injured that year.¹⁹⁶

- 4.137** The Committee also asked about the substantial surplus of over \$94 million in 2006-2007¹⁹⁷ (as noted in Chapter 3), and the surpluses anticipated for some years to come. Specifically, it sought information on what has been and will be done with surplus funds, and the Board's investment strategy for the Scheme. The Authority responded that it had entered into a formal arrangement with NSW Treasury Corporation:

On 27 May 2008, the Board of Directors of the Lifetime Care and Support Authority entered into a Memorandum of Understanding with and engaged New South Wales Treasury Corporation to manage the Lifetime Care and Support Fund cash balances. The adopted investment strategy utilises the Hour-Glass investment facilities and nominated cash and bond portfolios. The Authority's investment powers are subject to the provisions of the Public Authorities (Financial Arrangements) Act 1987 and the Public Authorities (Financial Arrangements) Regulation 2005.¹⁹⁸

- 4.138** It went on to report that the LTCS Board has noted that the current surplus is primarily a product of the lower than expected number of children entering the Scheme. On this basis, the assumption for future years has been reduced and any surplus will be taken into account in setting future year levies.¹⁹⁹
- 4.139** Finally, the Authority noted that at this stage the Fund does not retain any prudential margin. While the Board is satisfied that the Scheme is fully funded it has reserved its position in relation to introducing a prudential margin in the future.²⁰⁰

Committee comment

- 4.140** The Committee notes the concern on the part of the Law Society about the adequacy of the methodologies informing the estimated financial liabilities of the LTCS Scheme, and that these

¹⁹⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, pp 14-15

¹⁹⁷ LTCSA, *Annual Report, 2006-2007*, p 23

¹⁹⁸ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 9

¹⁹⁹ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 9

²⁰⁰ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 9

concerns were on the basis of an actuarial review that the Society commissioned. At this stage we accept the Authority's advice that in the absence of sound and comprehensive data it reasonably based its estimates on a number of assumptions, which are inherently uncertain, and we also note that the Authority has been candid about this fact. In addition, the Authority has indicated that its assumptions and estimates are revised annually, based on the experience of the Scheme. The Committee further notes the Authority's assurance that individual participants' entitlements cannot be reduced as more and more people enter the Scheme; rather, liabilities will be fully funded each year into the future by the levy on green slips, along with investment income.

- 4.141** Notwithstanding these assurances, the Committee will monitor the Scheme's financial liabilities over time. In managing the Scheme's estimated and real financial position, due consideration needs to be given to the significant sums of money involved, the entitlements of and outcomes for participants, and the imposition on NSW motorists via the Medical Care and Injury Services Levy.

The Medical Care and Injury Services Levy and premiums

- 4.142** Some specific concern about the Medical Care and Injury Services Levy and CTP premiums emerged during the course of the review.
- 4.143** Soon after the commencement of the Committee's review, concerns were published in the media that although premium prices had been anticipated to rise by around \$20 with the advent of the Scheme, in some cases they had risen by substantially more than that.²⁰¹ The Committee asked the Authority to comment on the premium rises that had occurred, particularly in light of the substantial surpluses anticipated in the early years of the Scheme.
- 4.144** The Authority responded that when the Deputy Premier introduced the Motor Accidents (Lifetime Care and Support) Bill 2006 and accompanying legislation, he indicated that the increase in assistance for people injured in motor vehicle accidents to be provided by the new LTCS Scheme, along with the children's special benefit and the blameless accident provision, were expected to have an estimated 'average \$20 per Green Slip policy net cost impact for motorists'.²⁰² In addition, it stated that since the introduction of the Medical Care and Injury Services Levy from 1 October 2006, the average green slip total price across all vehicle classes has increased from \$312 as at 30 September 2006 to \$321 as at 31 March 2008, representing a net increase of \$9. The Authority went on to assert:

The Medical Care and Injury Services levy which is explicitly listed in the Green Slip includes items such as bulk billing for ambulance and hospital payments, Motor Accidents Authority and Roads and Traffic Authority administrative costs, and a significant part of the cost of the Lifetime Care and Support Scheme which were all previously part of the Compulsory Third Party premium. It appears that some motorists incorrectly understand that the levy represents the increase in premium.

²⁰¹ 'Emma's \$20 injury levy now \$200: Green slip scandal', *The Daily Telegraph*, 17 March 2008, p 11

²⁰² *NSWPD (Legislative Assembly)*, 9 March 2006, quoted in LTCSA, Answers to pre-hearing questions on notice, 19 July 2008, p 10

Individual policy holders for sedans will have generally experienced changes in premiums over this period ranging from a reduction of up to \$10 to an increase of up to \$20. The lower than expected increase in premium is a product of a high level of competition in the Compulsory Third Party scheme.

Some motorists will have experienced increases above this range but this is a result of changes to premium pricing by insurers and not the result of scheme changes.²⁰³

4.145 The Authority also indicated that over time it will collect data that will become the primary information used to set levy relativities as between different classes of vehicles and different zones.²⁰⁴

4.146 In its submission, the NSW Motorcycle Council asserted that the ‘rating’ of individual vehicles in the determination of the levy is inequitable and goes against the ‘blameless’ and ‘no-fault’ principles of the Scheme.²⁰⁵ The Committee asked the Authority to clarify the rationale for such ratings within the Scheme. The Authority provided an explanation of the risk rating system and defended it as the most equitable way to fund the Scheme:

Green Slip premiums meet the cost of providing motor accident scheme benefits to injured people. The insurer premium paid by a motorist is risk rated. The Lifetime Care and Support Scheme was established on the basis that premiums are determined by claim cost having regard to the type of vehicle and zone, from which relativity tables are created which set the broad pricing parameters. Individual rating factors are then used by Compulsory Third Party insurers to set the actual price. There is a cap on premiums to ensure that they remain affordable.

The Lifetime Care and Support levy is set using the same principle with a different levy rate for different classes of vehicles and zones, having regard to the vehicle which caused the accident giving rise to the catastrophic injury. The effect of this is to minimise subsidies between different classes of motorists.

A flat fee or levy would be of benefit to those motorists in high risk groups such as the owners of large motorcycles but would require much higher payment from motorists in low risk groups who would, in effect, be providing a significant subsidy. The Lifetime Care and Support Authority believes that the risk rating approach is the most equitable basis to fund the scheme.²⁰⁶

4.147 The Motorcycle Council went on to suggest that the need to fully fund the Scheme may lead to price fixing of base CTP premiums by insurers, or alternatively, may encourage the MAA to approve higher CTP premium prices lodged by insurers, and that either way, CTP insurers stand to gain ‘unearned windfall profits’.²⁰⁷ The Committee asked the Authority to respond to these suggestions, with the Authority assuring us in response that all levy funds, while collected by insurers, are passed on to the LTCSA on a regular basis, using an audited process:

²⁰³ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 10

²⁰⁴ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 11

²⁰⁵ Submission 5, Motorcycle Council of NSW, p 4

²⁰⁶ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 11

²⁰⁷ Submission 5, p 4

While the levy is collected by the Compulsory Third Party licensed insurers, they do not retain the funds which, as prescribed by the Motor Accidents (Lifetime Care and Support) Act 2006, must be paid to the Authority. Levy collections are paid to the Lifetime Care and Support Authority on a monthly basis. In July each year, Compulsory Third Party licensed insurers are required to provide the Authority with an independent audit report certifying that levy amounts collected in the immediate past financial year have been correctly remitted to the Authority.

The Motor Accidents Authority does not set Compulsory Third Party premiums but may disallow a filed premium if it either will not fully fund Compulsory Third Party liabilities, or if it is excessive.²⁰⁸

- 4.148** Finally, the Motorcycle Council also called for greater transparency of green slips, whereby they set out each of the charges comprising the premium, including the Medical Care and Injury Services Levy.²⁰⁹ In addition, an individual who made a submission to the Committee's review, Mr Rod Moore, asserted:

I am compelled in any case to ask why LTCS levies are tacked on to CTP insurance policies and the quantum linked to such policies when the levy has nothing whatsoever to do with insurance. It is a not-at-fault levy on all road users.

Why should it not be transparently attached to the vehicle registration documentation as a flat levy not linked to CTP. The current method clearly attempts to camouflage the levy within CTP fees.²¹⁰

Committee comment

- 4.149** The Committee addressed this last issue in relation to itemisation of green slips in the report of our Ninth Review of the MAA and Motor Accidents Council (MAC), conducted in conjunction with this First Review of the LTCSA and LTCSAC. We recommended that the MAA, in consultation with the MAC, consider by 30 June 2009 the advantages and feasibility of further itemisation of the Medical Care and Injury Services Levy on CTP green slips.²¹¹
- 4.150** The Committee trusts that the information provided by the Authority in response to the Motorcycle Council addresses the Council's concerns and clarifies the administration of the levy.

Challenges and responsibilities

- 4.151** In concluding this chapter, the Committee notes the evidence we received from representatives of the LTCSA and LTCSAC about the significant challenges and responsibilities that accompany their role in establishing and commencing the implementation

²⁰⁸ LTCSA, Answers to pre-hearing questions on notice, 19 June 2008, p 12

²⁰⁹ Submission 5, p 5

²¹⁰ Submission 8, Mr Rod Moore, p1

²¹¹ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and Motor Accidents Council – Ninth Report*, Report 36, September 2008, pp 83-85

of a brand new, visionary scheme that will have a profound impact on its participants both immediately and well into the future.

- 4.152** Mr Herd drew on his personal experience to highlight the challenging task ahead for the Authority in implementing this innovative scheme:

I would like to demonstrate one of the responsibilities that we have, and which we take seriously. I will put it this way. When I had my accident 25 years ago one of the first questions I asked my consultant was: What is my life expectancy? I thought that was a reasonable question to ask. He said, "Well, Dougie, the reality is that you probably have a normal life expectancy." I was 27 when I had my injury, and that means I would have perhaps 50 years in a wheelchair. Who knows what it is going to be like for someone with a spinal cord injury 40 or 50 years from now, but those are the kinds of questions that we are having to ask ourselves, because, fortunately, God willing, I will be here when I am 75 years old. That is a new and steep learning curve for all of us. We forget that.

I am 51 years old, but when I was born the life expectancy of a person with my level of spinal cord injury was about six weeks, because there were all kinds of complications that would enter into the equation. The Authority is doing a difficult thing, in new territory, and in a new way, and our job at the [Advisory Council] is to try to make the best contribution we can to that developing service, as it emerges out of a good idea, without too much evidence to support what it is doing.²¹²

- 4.153** Mr Herd also spoke of the challenges of making broad and informed decisions about the Scheme when the number of participants is so small at this stage:

I think we are not quite sure what we are doing, because it is so very early. Although the costs are very large per capita, the numbers of people involved are very small. We do not have either the economies of scale or the vast numbers of people that would enable us to look at big trends. We are talking about 14 children in 18 months. I do not think we have got a trend line yet. All it would take is one bad year, two years from now, to seriously upset some of the questions that we are asking ourselves, or the answers we are finding. Although the numbers of adults are much more stable and predictable, we are still dealing in such small numbers that it is a challenge to get it right.²¹³

- 4.154** Mr Herd also pointed to the Advisory Council's guiding principles for the Scheme's administration:

I think that is where our advice as a Council to the Authority goes: that, as much as is humanly possible, we should find ways of supporting people to live in the community, but what should drive the level and quality of the support is what the individual needs at any point in their life as an injured person.²¹⁴

- 4.155** Mr Richard Grellman, Chairman of LTCS Board, shared the Board's perspective, noting its confidence in the principles underpinning the Scheme and the work done to estimate the demands to be placed on it:

²¹² Mr Herd, Evidence, 20 June 2008, p 17

²¹³ Mr Herd, Evidence, 20 June 2008, p 17

²¹⁴ Mr Herd, Evidence, 20 June 2008, p 16

From the Board's perspective, we feel similarly challenged. As [Mr Herd] mentioned, we are feeling our way to a large extent. We are all absolutely satisfied that the philosophy that underpins the scheme is absolutely right. This is the best way to support people with catastrophic injury. What that might look like, and the costs that sit beside the provision of those services are matters that we are just measuring and living with. We have built our models based on historical analysis in terms of the sorts of numbers of participants that we might receive into the Scheme, and the sorts of costs that we think we might incur to support those participants ...²¹⁵

- 4.156** Mr Grellman went on to note the national and international interest in the Scheme as a model of provision for people who are catastrophically injured in motor accidents:

We are working together [with the Advisory Council] to try to advance the functionality and the integrity of the Scheme, which, incidentally, is seen not only within Australia but internationally as a very interesting and bold model. We are receiving a high level of interest from other jurisdictions in Australia and indeed internationally, asking: How is it going? What is happening? What is the balance sheet developing like? What are your participants feeling about the sort of support they are getting? So it is a very interesting and, I think, so far all the signs are that it will be a very successful model.²¹⁶

Conclusion

- 4.157** In this chapter the Committee has documented the various issues raised during this First Review of the LTCSA and LTCSAC. These issues have emerged during the early implementation of the Scheme and many of them are perhaps to be expected in the establishment of such a substantial and complex Scheme as this, which will have far-reaching effects on the lives of the individuals who are eligible for it. We note that the Authority has been open in acknowledging some of the teething problems and has displayed a readiness to consult and work with stakeholders to address them. It remains to be seen which of these issues dissipate as the Scheme's implementation proceeds, and which coalesce into areas specifically needing further examination and action.
- 4.158** At this stage the Committee considers that the Scheme's implementation is proceeding well. Once again, the Committee notes the profound and positive outcomes that the Scheme is intended to bring about for participants, and the model that it represents for other jurisdictions, not only in its goals, but also in its design and administration. Again, the Committee acknowledges the significant work of both the LTCSA and LTCSAC, as well as the MAA, in establishing the Scheme and commencing its implementation.
- 4.159** The Committee will watch the Scheme with great interest as it continues to unfold, and we look forward in time to hearing the views of participants about how the Scheme is working for them.

²¹⁵ Mr Grellman, Evidence, 20 June 2008, p17

²¹⁶ Mr Grellman, Evidence, 20 June 2008, p17

Appendix 1 Submissions

No	Author
1	Ms Elena KATRAKIS (Carers NSW)
2	Ms Anne DEANS (Youthsafe)
3	Dr Adeline HODGKINSON (Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate)
4	Mr Hugh MACKEN (Law Society of NSW)
5	Mr Guy STANFORD (NSW Motorcycle Council)
6	Mr Andrew BUCHANAN (Disability Council of NSW)
7	Ms Anna KATZMANN SC (NSW Bar Association)
8	Mr Rod MOORE
9	Mr Matthew BOWDEN (People with Disability Australia Incorporated)

Appendix 2 Witnesses

Date	Name	Position and Organisation
20 June 2008, Room 814-815	Mr David BOWEN	Chief Executive Officer, Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council
Parliament House	Mr Richard GRELLMAN AO	Chairman, Lifetime Care and Support Authority Board
	Mr Dougie HERD	Chairman, Lifetime Care and Support Advisory Council
	Mr Neil MACKINNON	A/Director, Service Delivery, Lifetime Care and Support Authority
	Mr Stephen PAYNE	Director, Corporate Services and Chief Financial Officer, Office of the Motor Accidents Authority
	Mr Hugh MACKEN	President, Law Society of NSW
	Mr Scott ROULSTONE	Junior Vice President and Chair, Injury Compensation Committee, Law Society of NSW
	Mr Ross LETHERBARROW SC	Chair, Common Law Committee, NSW Bar Association
	Mr Andrew STONE	Member, Common Law Committee, NSW Bar Association
	Mr Philip COOPER	Chair, Motor Accidents Insurance Standing Committee, Insurance Council of Australia
	Mrs Mary MAINI	Chair, CTP Claims Managers Committee, Insurance Council of Australia
	Dr Adeline HODGKINSON	Director, Brain Injury Rehabilitation Unit, Liverpool Hospital and Chair, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
	Mr Jeremy GILCHRIST	Manager, Southern Area Brain Injury Service and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
	Dr Joe GURKA	Staff Specialist and Medical Director, Westmead Brain Injury Rehabilitation Unit and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
	Mr Matthew FRITH	Team Leader, Kaleidoscope Hunter Children's Network Paediatric Brain Injury Rehabilitation Team and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate

Appendix 3 Tabled documents

1. PowerPoint presentation entitled 'Lifetime Care & Support Authority', tabled by Mr David Bowen, Chief Executive Officer, Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.
2. Two case studies of rehabilitation patients participating in the Lifetime Care and Support Scheme, tabled by Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Liverpool Hospital and Chair, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate.
3. One case study of a child who is a rehabilitation patient participating in the Lifetime Care and Support Scheme, tabled by Mr Matthew Frith, Team Leader, Kaleidoscope Hunter Children's Network Paediatric Brain Injury Rehabilitation Team and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate.

Appendix 4 Minutes

Minutes No. 10

Wednesday 5 March 2008

Members' Lounge, Parliament House, Sydney at 2:15 pm

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

Mr Ajaka

Ms Hale

Ms Fazio

2. ***

3. Ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council

Resolved, on the motion of Mr Donnelly: That the Committee commence arrangements for the conduct of its ninth review of the exercise of the functions of the MAA and MAC and its first review of the exercise of the functions of the LTCSA and LTCSAC.

Resolved, on the motion of Mr Clarke: That the reviews and the call for submissions be advertised in the *Sydney Morning Herald* and the *Daily Telegraph* on a date to be confirmed by the Secretariat after consultation with the Chair.

Resolved, on the motion of Ms Fazio: That the Secretariat distribute to the Committee for their consideration a list of stakeholders to be invited to participate in the reviews, and that, after input from the Committee received by 12 March 2008, the stakeholders be invited to make submissions to the reviews.

Resolved, on the motion of Mr Ajaka: That the reviews be held concurrently.

Resolved, on the motion of Mr Clarke: That the Committee seek a briefing from officers of the MAA, MAC, LTCSA and LTCSAC on a date to be confirmed by the Secretariat after consultation with the Committee, the MAA and the LTCSA.

Resolved, on the motion of Ms Fazio: That the Committee hold public hearings on a full day and half day to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses and that the following be invited to appear as witnesses: representatives of the MAA, MAC, LTCSA, LTCSAC, Law Society of NSW, NSW Bar Association, Insurance Council of Australia and any other witnesses determined by the Chair.

Resolved, on the motion of Mr Ajaka: That a questions on notice process be conducted prior to the hearings as has occurred in previous reviews of the MAA and MAC.

4. ***

5. Adjournment

The Committee adjourned at 2.28 pm until 10.00 am, Friday 11 April 2008.

Merrin Thompson
Clerk to the Committee

Minutes No. 12

Thursday 15 May 2008

Member's Lounge, Parliament House, Sydney at 2:15 pm

1. Members presentMs Robertson (*Chair*)Mr Clarke (*Deputy Chair*)

Mr Donnelly

Mr Ajaka

Ms Fazio

2. Apologies

Ms Hale

3. *****4. Publication of correspondence**

The Committee noted the following items of correspondence received and sent:

Received

- 18 April 2008, letter to Committee Secretariat from Ms Helen Rowell, General Manager, Diversified Institutions Division, Australian Prudential Regulation Authority (APRA), indicating APRA will not be making a submission to the ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.
- 30 April 2008, letter to Chair from Mr John Driscoll, General Manager Policy, Consumer Directorate, Insurance Council of Australia, indicating that the Insurance Council of Australia will not be making a submission to the first review of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.

Sent

- 7 March 2008, 42 letters from the Committee Chair to various stakeholders inviting them to make a submission to the ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.

Resolved, on the motion of Mr Ajaka: That the correspondence of Mr Hugh Macken, President, NSW Law Society, received 15 May 2008, be published on the Committee website.

5. Ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council**a. Publication of submissions**

The Committee considered submissions 1-7 of the MAA review and 1-6 of the LTCSA review.

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publications of Submission Nos 2 to 7 to the MAA Review and Submission Nos 1 – 6 to the LTCSA Review, and that they be placed on the Inquiry website.

Resolved on the motion of Ms Fazio: That the Committee secretariat develop, in collaboration with the Chair, a list of potential witnesses for the public hearing to be held 20 June 2008 and circulate the list to members for information and suggested additions.

6. ***

7. **Adjournment**

The Committee adjourned at 2:25pm until 9:30 am, 20 June 2008, in the Jubilee Room, Parliament House

Simon Johnston
Clerk to the Committee

Minutes No. 13

Tuesday 3 June 2008

Member's Lounge, Parliament House, Sydney at 2:25 pm

1. **Members present**

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Donnelly

2. **Minutes**

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 12 be confirmed.

3. **Publication of correspondence**

The Committee noted the following items of correspondence sent:

Sent

- 21 May 2008, letter from the Chair to the Hon John Della Bosca MLC, Minister for Finance, forwarding written questions on notice for the MAA/MAC and LTCSA/LTCSAC Reviews and inviting witnesses to attend the public hearing on 20 June 2008.

4. **Ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council**

4.1 **Publication of submissions**

The Committee considered Submission Nos 8 and 9 to the MAA review and Submission Nos 7 and 8 to the LTCSA review.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publications of Submission Nos 7 and 8 to the LTCSA Review, and that they be placed on the Inquiry website.

5. **Adjournment**

The Committee adjourned at 2:27pm until 9:30 am, 20 June 2008, in the Jubilee Room, Parliament House

Simon Johnston
Clerk to the Committee

Minutes No. 14

Friday 20 June 2008

Room 814/815, Parliament House, Sydney at 9.20am

1. **Members present**

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Donnelly

Mr Ajaka
Ms Hale

2. Apologies

Ms Fazio

3. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No 13 be confirmed.

4. Correspondence

Received

- 19 June 2008, letter from Mr David Bowen, General Manager, Motor Accidents Authority and Chief Executive Officer, Lifetime Care and Support Authority, attaching answers to written questions on notice provided on 21 May 2008.

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to written questions on notice received from the Motor Accidents Authority and Lifetime Care and Support Authority on 19 June 2008, and that they be placed on the Inquiry website.

5. Ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

5.1 Publication of submissions

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submission No 10 to the MAA/MAC Review and Submission No 9 to the LTCSA/LTCSAC Review, and that they be placed on the Inquiry website.

5.2 Return of answers to questions on notice

Resolved, on the motion of Mr Clarke: That the Committee request witnesses to return answers to questions taken on notice at the public hearing of 20 June 2008 by Friday 11 July 2008.

5.3 Allocation of question time for witnesses

Resolved, on the motion of Ms Hale: That the Committee hear evidence relating to the ninth review of the MAA and MAC in the first part of each hearing session, and subsequently hear evidence relating to the first review of the LTCSA and LTCSAC in the second part of each session, as appropriate.

6. Public hearing - Ninth review of the Motor Accidents Authority and Motor Accidents Council and first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr David Bowen, General Manager, MAA and MAC
- Mr Richard Grellman, Chairman, MAA Board and MAC, MAA and MAC
- Ms Carmel Donnelly, Assistant General Manager, MAA and MAC.

Mr Bowen tendered the following documents:

- PowerPoint presentation entitled 'Premium composition before and after LTC'

- Report entitled ‘Compulsory Third Party Insurance Review of Premium Relativities from 1 July 2008’ prepared for the MAA by Finity consultants

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Dougie Herd, Chairman, LTCSAC
- Mr Neil Mackinnon, A/Director, Service Delivery, LTCSA
- Mr Stephen Payne, Director, Corporate Services and Chief Financial Officer, Office of the MAA

The following witnesses were examined on former oath:

- Mr David Bowen, Chief Executive Officer, LTCSA and LTCSAC
- Mr Richard Grellman, Chairman, LTCSA Board

Mr Bowen tabled a PowerPoint presentation entitled ‘Lifetime Care & Support Authority’.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Hugh Macken, President, Law Society of NSW
- Mr Scott Roulstone, Junior Vice President, Law Society of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ross Letherbarrow SC, Chair, Common Law Committee, NSW Bar Association
- Mr Andrew Stone, Member, Common Law Committee and Member, NSW Bar Association.

Mr Letherbarrow tabled a document entitled ‘Response to submissions made by Insurance Council of Australia’.

The evidence concluded and the witnesses withdrew.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to the Committee to publish the documents tendered during the public hearing:

- PowerPoint presentation entitled ‘Premium composition before and after LTC’, tabled by Mr David Bowen, General Manager, MAA and MAC
- PowerPoint presentation entitled ‘Lifetime Care & Support Authority’, tabled by Mr David Bowen, Chief Executive Officer, LTCSA and LTCSAC
- ‘Response to submissions made by Insurance Council of Australia’, tabled by Mr Ross Letherbarrow SC, Chair, Common Law Committee, NSW Bar Association.

The following witnesses were sworn and examined:

- Mr Philip Cooper, Chair, MAISC Executive Committee, Insurance Council of Australia.
- Ms Mary Maini, Chair, CTP Claims Managers Committee, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Liverpool Hospital and Chair, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
- Mr Jeremy Gilchrist, Manager, Southern Area Brain Injury Rehabilitation Service and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
- Dr Joe Gurka, Staff Specialist and Medical Director, Westmead Brain Injury Rehabilitation Unit and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
- Mr Matthew Frith, Team Leader, Kaleidoscope Hunter Children's Network Paediatric Brain Injury Rehabilitation Team and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate.

Dr Hodgkinson tabled a document containing two case studies of rehabilitation patients participating in the LTCS scheme.

Mr Frith tabled a document containing one case study of a child rehabilitation patient participating in the LTCS scheme.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Cameron Player, Assistant General Manager, Motor Accidents Assessment Service, MAA
- Ms Belinda Cassidy, Principal Claims Assessor, Claims Assessment and Resolution Service, MAA
- Ms Helen Wall, Assessor, Claims Assessment and Resolution Service, MAA
- Mr Colin Stoten, Assessor, Claims Assessment and Resolution Service, MAA.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to the Committee to publish the documents tendered during the public hearing:

- Two case studies of rehabilitation patients participating in the LTCS scheme, tabled by Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Liverpool Hospital and Chair, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate
- One case study of a child who is a rehabilitation patient participating in the LTCS scheme, tabled by Mr Matthew Frith, Team Leader, Kaleidoscope Hunter Children's Network Paediatric Brain Injury Rehabilitation Team and Member, Greater Metropolitan Clinical Taskforce Brain Injury Rehabilitation Directorate.

7. Adjournment

The Committee adjourned at 3:36pm.

Merrin Thompson
Clerk to the Committee

Minutes No. 15

Monday 4 August 2008

Room 1102, Parliament House, Sydney at 11am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Ajaka

Mr Donnelly

Ms Fazio

2. Apologies

Ms Hale

3. Minutes

Resolved, on the motion of Mr Ajaka: That draft Minutes No. 14 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

Responses to questions on notice arising from the 20 June evidence to the ninth review of the Motor Accidents Authority and the Motor Accidents Council and the first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council:

- 9 July 2008, letter to Committee Secretariat from Mr Hugh Macken, President, The Law Society of New South Wales.
- 15 July 2008, letter to Committee Secretariat from Mr Alistair McConnachie, Director, The New South Wales Bar Association.
- 22 July 2008, letter to Committee Chair from Mr David Bowen, General Manager, Motor Accidents Authority and Chief Executive Officer, Lifetime Care and Support Authority.
- 22 July 2008, letter to Committee Chair from Mr John Driscoll, General Manager Policy, Insurance Council of Australia.

Proposed terms of reference:

- 31 July 2008, From the Hon John Hatzistergos MLC, Attorney General, to the Chair, proposing terms of reference in regard to legislation on altruistic surrogacy in NSW.

Sent

- 27 June 2008, Letters from the Secretariat to The Law Society of New South Wales, The New South Wales Bar Association, Insurance Council of Australia, the Greater Metropolitan Clinical Taskforce, the Motor Accidents Authority and the Lifetime Care and Support Authority requesting the return of answers to questions taken on notice by 11 July.

5. Ninth review of the Motor Accidents Authority and Motor Accidents Council; First review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the following answers to written questions on notice:

- The Law Society of New South Wales
- The New South Wales Bar Association
- Insurance Council of Australia
- Motor Accidents Authority
- Lifetime Care and Support Authority.

6. ***

7. ***

8. Adjournment

The Committee adjourned at 11.25am.

Madeleine Foley
Clerk to the Committee

Minutes No. 16

Thursday 28 August 2008

Room 1102, Parliament House, Sydney at 8:35 am

1. Members present

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Donnelly
Mr Ajaka
Ms Fazio

2. Apologies

Ms Hale

3. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 15 be confirmed.

4. Publication of correspondence

The Committee noted the following item of correspondence received:

- 27 August 2008, Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Greater Metropolitan Clinical Taskforce to the Committee secretariat, providing answers to questions on notice for the first review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice provided by Dr Adeline Hodgkinson, Director, Brain Injury Rehabilitation Unit, Greater Metropolitan Clinical Taskforce.

5. *****6. Adjournment**

The Committee adjourned at 9:01 am *sine die*.

Madeleine Foley
Clerk to the Committee

Minutes No. 17

Wednesday 24 September 2008

Members Lounge, Parliament House, Sydney at 1:00 pm

1. Members present

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Donnelly

Mr Ajaka
Ms Fazio
Ms Hale

2. Minutes

Resolved, on the motion of Mr Clarke: That draft Minutes No. 16 be confirmed.

3. ***

4. ***

5. Adjournment

The Committee adjourned at 1.15 pm sine die.

Merrin Thompson
Clerk to the Committee

Draft Minutes No. 18

Wednesday 22 October 2008

Members Lounge, Parliament House, Sydney at 1:00 pm

1. Members present

Ms Robertson (*Chair*)
Mr Clarke (*Deputy Chair*)
Mr Donnelly
Mr Ajaka
Ms Fazio
Ms Hale

2. Minutes

Resolved, on the motion of Mr Ajaka: That draft Minutes No. 17 be confirmed.

3. ***

4. ***

5. Adjournment

The Committee adjourned at 1.20 pm until 27 October 2008.

Merrin Thompson
Clerk to the Committee

Draft Minutes No. 19

Monday 27 October 2008

Room 1102, Parliament House, Sydney at 9.05 am

1. Members present

Ms Robertson (Chair)
Mr Clarke (Deputy Chair)
Mr Donnelly
Mr Ajaka
Ms Hale

2. Apologies

Ms Fazio

3. First Review of the exercise of the functions of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council**3.1 Consideration of the Chair's draft report**

The Chair submitted her draft report titled 'Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council: First Report', Report 37, which, having been circulated was taken as being read.

The Committee proceeded to consider the draft report in detail.

Executive summary read.

Resolved, on the motion of Mr Donnelly: That the executive summary be adopted.

Chapter 1 read.

Resolved, on the motion of Ms Hale: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion Mr Ajaka: That Chapter 2 be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Clarke: That Chapter 3 be adopted.

Chapter 4 read.

Resolved, on the motion of Mr Donnelly: That recommendation 1 be adopted.

Resolved, on the motion of Mr Clarke: That recommendation 2 be adopted.

Resolved, on the motion of Mr Donnelly: That Chapter 4 be adopted.

Resolved, on the motion of Mr Donnelly: That the Committee Secretariat correct any typographical and grammatical errors in the report prior to tabling.

Resolved, on the motion of Ms Hale: That the report, as amended, be the report of the Committee and be presented to the House, together with transcripts of evidence, submissions, tabled documents, minutes of proceedings, answers to questions on notice and correspondence relating to the inquiry, in accordance with Standing Order 230.

4. ***

5. ***

6. Adjournment

The Committee adjourned at 10.40 am until 5 November 2008.

Merrin Thompson
Clerk to the Committee

