



New South Wales

**Joseph Tripodi**

Minister for Finance Minister for Infrastructure Minister for Regulatory Reform  
Minister for Ports & Waterways

Our Refs: 09/230

Ms Lynn Lovelock  
Clerk of the Parliaments  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Lovelock

I refer to the first report of the Standing Committee on Law and Justice on the Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

I am pleased to advise that the Government response to the recommendations contained in the Standing Committee's first report has now been finalised. I therefore enclose three (3) copies of the Government response for tabling.

Yours sincerely



**JOE TRIPODI MP**  
**MINISTER FOR FINANCE**

04 MAY 2009

*Received at 3:00pm  
Tuesday 4 May 2009*

## **Government Response to the 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**

### **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.*

#### Response

The Government supports the intent of this recommendation. Accordingly, the Government will amend the Act to extend the two year interim participation period from two to five years in the case of a child aged less than three years at the time of the motor accident. This reform will ensure that more accurate assessments of the lifelong care needs of children aged under three years can be made.

A Bill is currently being drafted and is expected to be introduced into Parliament during the 2009 Budget Session.

### **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.*

#### Response:

A robust independent review system is built into the Lifetime Care and Support Scheme. The *Motor Accidents (Lifetime Care and Support) Act 2006* provides a number of mechanisms to allow for the independent review of decisions regarding an injured person's eligibility for, and participation in, the Lifetime Care and Support scheme. This includes:

- Disputes about whether a motor accident injury suffered by a person satisfies the criteria specified in the *Lifetime Care and Support Guidelines* for eligibility for participation in the scheme may be referred to an Assessment Panel, comprising three independent medical or health professionals, for determination. The determination of the Assessment Panel may be referred for review by a Review Panel in certain circumstances. The Review Panel comprises three independent medical or health professionals (who were not members of the Assessment Panel) who may confirm the determination of the Assessment Panel or revoke that determination and substitute its own determination.

- Disputes about whether an injury is a 'motor accident injury' may be referred to the Principal Claims Assessor, who is to convene a panel of three independent claims assessors, drawn from the legal profession and with experience in personal injury claims, to determine the dispute. The Lifetime Care and Support Authority will pay the reasonable legal costs of the injured person as assessed by the panel. In accordance with section 105(2) of the *Motor Accidents Compensation Act 1999*, a claims assessor is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the assessor, nor can the Authority or any public servant overrule or interfere with any such decision of the claims assessor in respect of any such assessment.
- Disputes about the treatment and care needs of participants in the Scheme may be referred to an assessor, who is an independent medical or health professional, for determination. An assessor's determination of a dispute about the treatment and care needs of a participant may be referred for review by a Review Panel, comprising independent medical and health professionals, in certain circumstances.

The Lifetime Care and Support Authority is currently preparing a paper on the provision of advocacy services in the Lifetime Care and Support Scheme in consultation with the Lifetime Care and Support Advisory Council and the various stakeholders who are involved in providing advice and advocacy to individuals with severe injuries, such as the NSW Brain Injury Association, People With Disabilities Australia Incorporated and Spinal Cord Injuries Australia. The Lifetime Care and Support Authority anticipates that the paper will be submitted to the Lifetime Care and Support Advisory Council for approval by 30 December 2009.