

Standing Committee on Law and Justice

# **First review of the Lifetime Care and Support scheme**

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## Terms of reference

1. That, in accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
  - (a) Workers' Compensation Scheme
  - (b) Workers' Compensation (Dust Diseases) Scheme
  - (c) Motor Accidents Scheme
  - (d) Motor Accidents (Lifetime Care and Support) Scheme.
2. In exercising the supervisory function outlined in paragraph 1, the committee:
  - (a) does not have the authority to investigate a particular compensation claim, and
  - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

## Committee details

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### Committee members

<b>The Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Lynda Voltz MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon David Clarke MLC</b>	Liberal Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Daniel Mookhey MLC</b>	Australian Labor Party	
<b>Mr David Shoebridge MLC</b>	The Greens	

### Contact details

<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lawandjustice">www.parliament.nsw.gov.au/lawandjustice</a>
<b>Email</b>	<a href="mailto:lawandjustice@parliament.nsw.gov.au">lawandjustice@parliament.nsw.gov.au</a>
<b>Telephone</b>	02 9230 2620

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## Chair's foreword

The Law and Justice committee's first examination of the Lifetime Care and Support scheme began in 2007, when it reviewed the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and the Lifetime Care and Support Advisory Board. Since then, the committee has conducted a further five reviews, including this current review.

Since the last report, issued in 2014, there has been significant legislative change to the New South Wales insurance and care schemes, resulting in the establishment of two new organisations, Insurance and Care New South Wales (icare) and the State Insurance Regulatory Authority (SIRA). icare became responsible for providing services to the administrator of the scheme, the Lifetime Care and Support Authority. SIRA, as the state's insurance regulator, determines the Medical Care and Injury Services levy that funds the operation of the scheme. This is the committee's first review of the scheme since these changes.

During this review, the committee had the opportunity to hear from both icare and SIRA in relation to their new functions. In addition, the committee received evidence from those closely involved in providing assistance to those catastrophically injured in motor vehicle accidents, including attendant care providers, health professionals, legal specialists, and insurers.

The evidence suggests that the scheme is performing well. Administratively, new customer service initiatives, such as My Plan, have been introduced in response to feedback from scheme participants and stakeholders. As a result, services are increasingly client focussed and approval times for services are more efficient. Financially, the scheme is suitably funded and viable, while expenditure on treatment and care services for participants remains high.

There continues to be scope for improvement and the committee's recommendations to the government recognise this, particularly in relation to communication and promotion of the scheme to ensure those that would benefit from the scheme are given adequate information. In addition, we have identified that icare's ability to make quick and informed decisions would be greatly enhanced if it was provided with legislative powers to obtain the information it needs.

On behalf of the committee I would like to thank all the stakeholders who participated in this review for their contribution. I would also like to extend my thanks to my committee colleagues for their enthusiasm, support and thoughtful perspectives on the evidence provided. Finally, I thank the committee secretariat for their hard work and assistance.



Hon Shayne Mallard MLC  
**Committee Chair**

## Recommendations

### Recommendation 1

19

That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should:

- a) assess claims management by insurers prior to transfer;
- b) publish all results of mismanagement by insurers; and
- c) publish the quantum recovered by insurers.

### Recommendation 2

48

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.

### Recommendation 3

57

That the Lifetime Care and Support Authority work with regional hospitals and cross border hospitals to facilitate a better understanding of the Lifetime Care and Support scheme and its application to those patients who have been catastrophically injured in a motor vehicle accident.

### Recommendation 4

57

That the NSW Government consider providing icare with legislative power to compel insurers to provide the information it needs to make decisions regarding scheme eligibility and treatment and care needs.

### Recommendation 5

66

That the NSW Government put a legislative limitation on the number of times that a party can seek to dispute a decision by the Lifetime Care and Support Authority to not accept an injured person into the scheme.



## Conduct of review

The terms of reference for the review were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 11 submissions.

The committee held 2 public hearings at Parliament House in Sydney.

Review related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



# Chapter 1 Overview

This chapter provides an overview of the Motor Accidents (Lifetime Care and Support) scheme, including the role of the committee in overseeing the scheme. The chapter also describes the roles of Insurance and Care NSW and the State Insurance and Regulatory Authority in the administration of the scheme.

## Oversight role of the committee

- 1.1 In accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Motor Accidents (Lifetime Care and Support) scheme (the LTCS scheme) are required to be supervised by a committee of the Legislative Council.<sup>2</sup>
- 1.2 The Standing Committee on Law and Justice has been designated as the committee to undertake this role. The resolution requires the committee to report to the Legislative Council in relation to the scheme at least once every two years. The same resolution also requires the committee to supervise the operation of the other insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, including the Compulsory Third Party scheme, the workers compensation scheme and the Workers' Compensation (Dust Diseases) scheme.<sup>3</sup>
- 1.3 The committee reported on the workers compensation scheme in March 2017 and the Motor Accidents (Compulsory Third Party) scheme in August 2016. The review of the Workers' Compensation (Dust Diseases) scheme was conducted concurrently with this review. Those outcomes will be published in a separate report in August 2017.
- 1.4 Although this report is entitled *First review of the Lifetime Care and Support scheme*, the committee has been monitoring and reviewing the scheme since 2007, initially under the auspices of the *Motor Accidents (Lifetime Care and Support) Act 2006*,<sup>4</sup> then under the *Safety, Return to Work and Support Board Act 2012*.<sup>5</sup>
- 1.5 The committee last examined the LTCS scheme in 2014 and reported on it in the *Fifth Review of the exercises of the functions of the Lifetime Care and Support Authority*.<sup>6</sup> The NSW Government response to the recommendations resulting from that review is examined in chapter 4.
- 1.6 Information on the committee's previous reviews, including reports, can be found on the committee's website at [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice).

<sup>2</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

<sup>3</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

<sup>4</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 68.

<sup>5</sup> *Safety, Return to Work and Support Board Act 2012*, s 11.

<sup>6</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority* (2014).

## Overview of the Lifetime Care and Support scheme

- 1.7** The LTCS scheme provides support for people severely injured in a motor vehicle accident in New South Wales, regardless of who was at fault. Injuries can include traumatic brain injury, spinal cord injury, amputations, severe burns or permanent blindness.<sup>7</sup> The scheme commenced operation on 1 October 2006 for children and on 1 October 2007 for adults.<sup>8</sup>
- 1.8** The scheme pays for the reasonable expenses of scheme participants in relation to their treatment and care needs as they relate to injury incurred in the motor vehicle accident.<sup>9</sup> Treatment and care needs include medical and dental treatment, rehabilitation, ambulance transportation, respite care, attendant care services, aids, appliances, prostheses, educational and vocational training, and modifications to home, workplace, education facility and transport.<sup>10</sup>
- 1.9** Initially, adult participants enter the scheme on an interim basis for a period of up to two years, during which time the person's health might improve, affecting their ongoing eligibility. Before the end of the interim period the participant will be assessed to determine their status for lifetime participation.<sup>11</sup> Approximately 180 interim participants join the scheme each year but it is estimated only 120 will continue as lifetime participants after the two year period. Children are not assessed for lifetime participation until they are five years old.<sup>12</sup>
- 1.10** The scheme is funded through the Medical Care and Injury Services (MCIS) levy (discussed in more detail at 1.24 – 1.29) which is paid by motorists when they purchase a Compulsory Third Party (CTP) green slip insurance policy. The levy is reviewed and adjusted regularly to ensure that the scheme is financially viable and able to fund the lifetime care and treatment of scheme participants.<sup>13</sup>

### icare

- 1.11** icare is a public financial corporation governed by an independent board of directors that delivers insurance and care services to eligible people under the Lifetime Care and Support Authority (LTCSA), as well as the New South Wales workers compensation scheme, the Dust Diseases Authority, the New South Wales Self Insurance Corporation (SICorp) and New South Wales Sporting Injuries Compensation Authority.<sup>14</sup>
- 1.12** icare provides insurance for more than 284,000 employers and 3.4 million employees, and controls \$180 billion of state assets. It is responsible for providing care and support services

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<sup>7</sup> icare, *Insurance and Care Annual report 2015-16*, 2016, p 70.

<sup>8</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council First Report* (2008), p xi.

<sup>9</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 11A.

<sup>10</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 5A.

<sup>11</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines* (2015), p 7.

<sup>12</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 70.

<sup>13</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 70.

<sup>14</sup> icare, *About icare* (2017), <https://www.icare.nsw.gov.au/about-icare#gref>.

for over 5,000 participants and dependants in the Lifetime Care and Dust Diseases Care schemes.<sup>15</sup>

**1.13** In accordance with the *State Insurance and Care Governance Act 2015*, icare has the following functions:

- to act for, and provide services to the Workers Compensation Nominal Insurer (Workers Insurance)
- to provide services to any scheme administered by the following entities (the Relevant Authorities)
  - the Workers Compensation (Dust Diseases) Authority (Dust Diseases Care)
  - the Lifetime Care and Support Authority (Lifetime Care)
  - the NSW Self Insurance Corporation (Self Insurance)
  - the Sporting Injuries Compensation Authority (Sporting Injuries Insurance)
- to enter into agreements or arrangements on behalf of Workers Insurance or the Relevant Authorities
- to monitor the performance of the insurance and compensation schemes to which it provides services
- to determine the investment strategies for the investment of any scheme fund belonging to Workers Insurance or the Relevant Authorities, and to report to the Minister every six months on the investment performance of each scheme fund, and
- any other function conferred or imposed on it under any relevant Act.<sup>16</sup>

**1.14** icare provides insurance and care services through its five service lines: Dust Diseases Care, Home Building Compensation Fund (HBCF), Lifetime Care, Self Insurance, and Workers Insurance (including sporting injuries).<sup>17</sup>

**1.15** icare launched the icare foundation in November 2016 which plans to invest \$100 million over the following five years on programs to prevent injury and improve outcomes for people injured at work and in motor vehicle accidents. The foundation is described as a social venture and it will partner with business and community organisations in conducting research and developing initiatives to improve care, treatment and support services.<sup>18</sup>

**1.16** The foundation's current projects include:

- partnering with Spinal Cord Injuries Australia to bring Neuromoves, an exercise program for people with neurological conditions, to regional areas in New South Wales
- expanding the Australian Paralympic Committee Speakers Program to provide injury prevention and workplace safety training
- working with Carers NSW to provide support programs for families and carers of seriously injured people

<sup>15</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 26.

<sup>16</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 30.

<sup>17</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, pp 10-11.

<sup>18</sup> icare, *icare Foundation*, <https://www.icare.nsw.gov.au/icarefoundation>.

- working with the Mental Health Commission to raise awareness and provide support, particularly in small businesses.<sup>19</sup>

## **LTCSA**

**1.17** The LTCSA was established as a statutory body on 1 July 2006 under the *Motor Accidents (Lifetime Care and Support) Act 2006* and is responsible for the administration of the LTCS scheme.<sup>20</sup> As mentioned earlier, the LTCSA is a service line of icare. Its functions are to:

- monitor the operation of the scheme, and in relation to this conduct research and collect statistics
- provide advice to the Minister on the administration, efficiency and effectiveness of the scheme
- promote the scheme and publish information
- develop and regularly review the scheme's guidelines.<sup>21</sup>

**1.18** In addition, the LTCSA monitors and provides care, treatment, rehabilitation, long term support and other services for scheme participants. The LTCSA also provides support and funding for research, education and service improvements.<sup>22</sup>

## **SIRA**

**1.19** The State Insurance Regulatory Authority (SIRA) is the state's independent insurance regulator and is responsible for the supervision of insurers, including the approval of their premium, licencing and policy frameworks. SIRA also monitors the financial solvency and performance of the three compulsory insurance schemes: workers compensation, motor accidents injury compensation and home building compensation.<sup>23</sup>

**1.20** In relation to the LTCS scheme, SIRA has two principal roles:

- setting the MCIS levy which, as mentioned previously, funds the LTCS scheme
- determining disputes that have arisen as a result of LTCSA decisions in relation to treatment and care needs, motor vehicle injury requirements, and LTCS scheme eligibility.<sup>24</sup>

**1.21** In addition, SIRA and icare work together on a number of joint scheme initiatives, described at paragraphs 1.30-1.32.

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<sup>19</sup> Media release, Hon Dominic Perrottet MP, Minister for Finance, Services and Property, '\$100M to tackle serious workplace and road injury', 21 November 2016.

<sup>20</sup> icare, *Insurance and Care Annual report 2015-16*, 2016, p 70.

<sup>21</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s43.

<sup>22</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s43.

<sup>23</sup> SIRA, *State Insurance Regulatory Authority Annual Report 2015-16*, 2016, p 4.

<sup>24</sup> Tabled document, SIRA. *SIRA statement*, 28 June 2017, p 2.

1.22 SIRA is comprised of three branches that provide the abovementioned regulatory and dispute resolution services:

- Motor Accidents Insurance Regulation which has replaced the former Motor Accidents Authority and its role as regulator of the compulsory third party personal injury insurance scheme.
- Workers and Home Building Compensation Regulation which has assumed the functions of the former WorkCover in relation to regulating and administering the New South Wales workers compensation system. It is also responsible for home building compensation regulatory functions.
- Dispute Resolution Services which undertakes the dispute resolution functions of the former Motor Accidents Authority and Workcover, including NSW CTP Lifetime Care Dispute Reviews.<sup>25</sup>

### ***Dispute resolution for LTCS scheme decisions***

1.23 As mentioned, SIRA performs a role in the resolution of certain disputes arising from the LTCS scheme. These disputes are:

- disputes regarding an applicant's medical eligibility to enter the scheme – disputes of this nature will initially be reviewed by an independent assessment panel organised by the LTCSA. If the outcome is still disputed, the applicant, the insurer or the LTCSA can apply, under certain circumstances, for an external review by SIRA's Motor Accidents Medical Assessment Service (MAS).
- disputes regarding treatment and care needs – this type of dispute will initially be reviewed by a dispute assessor appointed by the LTCSA. If the decision of the assessor is disputed an application for review can be made through SIRA's MAS.
- disputes about whether an accident is a motor accident injury, as defined under s 3B of the *Motor Accidents Compensation Act 1999* – decisions made by the LTCSA that are disputed are referred to SIRA's Motor Accidents Claims Assessment and Resolution Service (CARS).<sup>26</sup>

### ***Determination of Medical Care and Injury Services levy***

1.24 As mentioned earlier, the LTCS scheme is funded through the MCIS levy. The levy, which is put forward by icare and set by SIRA, is collected and expended for:

- public hospital and ambulance costs of all road victims
- the expenditure incurred by the LTCS scheme in its administration, and delivery of support and services to scheme participants
- the operation of SIRA in administering the *Motor Accidents Compensation Act* and in its exercise of functions in connection with LTCS scheme.<sup>27</sup>

<sup>25</sup> SIRA, *State Insurance Regulatory Authority Annual Report 2015-16*, 2016, p 11.

<sup>26</sup> Answers to pre-hearing questions, SIRA, 19 May 2017, pp 1-2.

<sup>27</sup> See, *Motor Accidents (Lifetime Care and Support) Act 2006*, s 48; SIRA, *Calculating your cost*, <http://www.sira.nsw.gov.au/green-slips/how-green-slip-prices-are-set/calculating-your-green-slip-cost>.

- 1.25** The levy is collected through the NSW Motor Accidents CTP insurance scheme. A portion of the levy is transferred into the Lifetime Care and Support Authority Fund (LTCSF) while another portion is allocated to SIRA's Motor Accidents Operational Fund (MAF).<sup>28</sup>
- 1.26** The MAF or SIRA component of the levy is a fixed percentage which is reviewed and adjusted by the SIRA Board. The LTCS scheme component of the levy is variable and the percentage is dependent on vehicle class and geographical location. The levy must be set at an amount to ensure both funds are sufficiently funded.<sup>29</sup>
- 1.27** SIRA explained the process it undertakes when reviewing and setting the levy:
- In reviewing the levy, SIRA commissions an actuarial analysis of the levy to take into account the expenditure needs of both Funds, the current balance in each Fund, the underlying relativities in each scheme, the forecast number of vehicles in the NSW fleet, and the anticipated future CTP insurer average premium. icare communicates the LTCSF funding needs to SIRA, supported by relevant actuarial analysis, which is taken into account when setting the levy.<sup>30</sup>
- 1.28** In calculating the LTCSF funding needs, icare takes into account the costs that have been incurred and the anticipated costs for each participant for the rest of their lives. The cost of providing this care will vary and depend on the participant's age when they enter the scheme and the nature and severity of their injury. Care needs may also increase as the participant ages.<sup>31</sup>
- 1.29** The most recent review of the levy occurred in the final quarter of 2016 during which the MAF levy rate was reduced by 0.25 per cent to 9.25 per cent and the LTCS levy rate was reduced by 0.9 percent. This resulted in an average reduction of 1.1 percent to the overall MCIS levy rates. These adjustments took effect on 15 January 2017.<sup>32</sup>

### ***Joint initiatives of SIRA and icare relating to the LTCS scheme***

- 1.30** icare and SIRA are joint contributors to research initiatives, including the John Walsh Centre for Rehabilitation Research. The centre focuses on research and education to improve skills, knowledge and experience in injury related disability.<sup>33</sup> The centre is currently conducting an extensive project to examine the recovery of people seriously injured in motor vehicle accidents.<sup>34</sup>

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<sup>28</sup> Answers to pre-hearing questions, SIRA, p 3.

<sup>29</sup> Answers to pre-hearing questions, SIRA, p 3.

<sup>30</sup> Answers to pre-hearing questions, SIRA, p 3.

<sup>31</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 9.

<sup>32</sup> SIRA, *CTP scheme quarterly report – March 2017*, <https://www.sira.nsw.gov.au/resources-library/green-slip-resources/publications/scheme-reports/nsw-motor-accidents-ctp-scheme-quarterly-report>.

<sup>33</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 15.

<sup>34</sup> SIRA, *State Insurance Regulatory Authority Annual Report 2015-16*, 2016, p 30.



- 1.31** SIRA also supports icare's Vocational Intervention Program which aims to provide early intervention vocational rehabilitation services to people who have a brain injury.<sup>35</sup> The program is currently focussed on two pilots:
- Fast Track Intervention – provides assistance to people to enable a return to their pre-injury jobs
  - New Track Intervention –provides workplace training opportunities to give participants new skills that will help them secure employment.<sup>36</sup>
- 1.32** Further information on the Vocational Intervention Program is provided in chapter 3.

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<sup>35</sup> SIRA, *State Insurance Regulatory Authority Annual Report 2015-16*, 2016, p 30.

<sup>36</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 79.



## Chapter 2      Developments since the previous review

Since the 2014 review of the exercise of the functions of the Lifetime Care and Support Authority there have been substantial changes to the legislative, structural and governance arrangements pertaining to the administration of the scheme. The impacts of these changes are discussed in this chapter. The introduction of the *Motor Accident Injuries Act 2017* is also discussed, particularly in relation to the additional administrative responsibilities the Lifetime Care and Support Authority will assume as a result of its implementation.

### Motor Accidents (Lifetime Care and Support) Amendment Act 2014

- 2.1**      The *Motor Accidents (Lifetime Care and Support) Amendment Act 2014* was principally enacted to allow the Lifetime Care and Support Authority (LTCSA) to manage the ongoing treatment and care needs of the ACT Lifetime Care and Support scheme participants on behalf of the ACT Lifetime Care and Support Scheme Commissioner.<sup>37</sup>
- 2.2**      The amending legislation was drafted to ensure any similar agreements could be entered into in the future by regulation. In his second reading speech, the Hon Dominic Perrottet, Minister for Finance and Services stated:
- [The] new section 43A has been drafted broadly to allow the Government potentially to enter into arrangements with other relevant authorities operating care and support schemes that provide for the treatment and care of catastrophically injured people in the future. When the Government decides to enter into an arrangement with another care and support scheme, the bill allows for the relevant scheme to be specifically prescribed by regulation.<sup>38</sup>
- 2.3**      The LTCSA commenced administration of the ACT Lifetime Care and Support scheme from 1 September 2015.<sup>39</sup>
- 2.4**      In addition to this amendment, the *Motor Accidents (Lifetime Care and Support) Amendment Act* increased the flexibility of the LTCSA in meeting the costs of the treatment and care needs of participants. Section 11AA of the Act provides the LTCSA with the option of contributing to alternative expenditure incurred by or on behalf of the participant, if it is considered cost effective.<sup>40</sup>
- 2.5**      In his second reading speech, the Minister explained that this amendment could be used as an alternative option by the LTCSA if it was considered more economical. He provided the following examples:

Examples of how this provision might be useful include where a participant would have to purchase a vehicle suitable to modify—or more usually get a loan to make that purchase—so that the authority can pay for appropriate modifications, but the

<sup>37</sup>      *Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15* (2015), p 244.

<sup>38</sup>      Dominic Perrottet, Second reading speech: Motor Accidents (Lifetime Care and Support) Amendment Bill 2014, 22 October 2014.

<sup>39</sup>      icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 81.

<sup>40</sup>      *Motor Accidents (Lifetime Care and Support) Amendment Act 2014*, s 11AA(1)

authority may instead make a reasonable contribution to the cost of purchasing a vehicle that is already suitably modified as a cost effective alternative treatment and care need.

This provision could also enable the authority to make a reasonable contribution to the cost of purchasing a home that incorporates necessary modifications for a participant instead of paying a prohibitive amount for those modifications to be made to the participant's existing home.<sup>41</sup>

**2.6** The Law Society of New South Wales raised concerns at the time with the New South Wales Government that this amendment could ‘operate in unintended ways with unforeseen circumstances’, and could result in the LTCSA using ‘less beneficial cheaper options’. The Law Society suggested that the section ‘be amended to provide a requirement that the participant’s consent be obtained.’<sup>42</sup>

**2.7** The Lifetime Care and Support Guidelines (the guidelines) were subsequently amended to incorporate s 11AA and specified that the LTCSA could consider alternative expenditure where:

...the treatment, care, support or service outcome for the participant will more probably than not be at least equally beneficial to the outcome for the participant that would result from the payment of the expenses to meet the initial assessed treatment and care need.<sup>43</sup>

**2.8** The guidelines also require the LTCSA to consult and obtain the agreement of the participant or their caregiver that the alternative expenditure will meet the approved treatment and care need. If the participant is not capable of providing this agreement, the authority will not proceed unless it is in the best interests of the participant.<sup>44</sup>

**2.9** icare submitted that the addition of s 11AA was proving beneficial to both participants and the LTCSA:

The ‘alternative expenditure option’ in section 11AA has been of substantial benefit to participants and to Lifetime Care. It allows Lifetime Care to satisfy its liability to pay for expenses incurred in relation to an injured person’s treatment and care in a more cost effective and flexible manner, resulting in a more person-centred service. Lifetime Care has used this provision to achieve greater flexibility for 14 participants to date, primarily in the areas of home and vehicle modifications.<sup>45</sup>

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<sup>41</sup> Dominic Perrottet, Second reading speech: Motor Accidents (Lifetime Care and Support) Amendment Bill 2014, 22 October 2014.

<sup>42</sup> The Law Society of New South Wales, *Correspondence from Ros Everett, President, The Law Society of New South Wales to the Hon Dominic Perrottet MP, Minister for Finance and Services, 29 October 2014*, <https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/910414.pdf>.

<sup>43</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines* (July 2015), p 81.

<sup>44</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines* (July 2015), p 81.

<sup>45</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 3.

## State Insurance and Care Governance Act 2015

- 2.10** In August 2015, the New South Wales Government announced significant reforms to the state's insurance and compensation schemes with the purpose of improving benefits and support for injured workers, reducing premiums for employers with good safety records, and clearly separating the functions of insurance regulation and scheme administration.<sup>46</sup>
- 2.11** Accordingly, the *State Insurance and Care Governance Act 2015* commenced on 1 September 2015, amending or repealing a number of Acts, including the repeal of the *Safety, Return to Work and Support Board Act 2012*<sup>47</sup> and the abolition of the Safety, Return to Work and Support Board.<sup>48</sup> The Board was responsible for overseeing the functions of the Lifetime Care and Support Authority, the Motor Accidents Authority and the WorkCover Authority.
- 2.12** The *State Insurance and Care Governance Act* enabled the constitution of two separate New South Wales Government agencies, Insurance and Care NSW (icare) and the State Insurance Regulatory Authority (SIRA).<sup>49</sup> In addition, SafeWork NSW was established as the state's independent workplace safety regulator.<sup>50</sup> The creation of the three agencies and the clear separation of insurance and regulatory functions was expected to provide a 'far more transparent and accountable system.'<sup>51</sup>
- 2.13** icare stated that its establishment as a single governance model has increased the capability of all schemes and created value for scheme participants.<sup>52</sup> In relation to the Lifetime Care and Support (LTCS) scheme, icare has implemented a number of initiatives designed to improve service delivery, including:
- self-management options to allow participants more autonomy in managing their supports
  - tailored and person focussed planning
  - use of the Net Promoter Score, a feedback tool, to identify services deficiencies
  - strengthening connections with providers, community groups, carer's and families through programs.<sup>53</sup>
- 2.14** These initiatives and other new programs implemented by icare will be discussed in more detail in chapter 3.

<sup>46</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 23.

<sup>47</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 114.

<sup>48</sup> *State Insurance and Care Governance Act 2015*, Sch 4, s 3

<sup>49</sup> *State Insurance and Care Governance Act 2015*, ss 4 and 17.

<sup>50</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 23.

<sup>51</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 23.

<sup>52</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

<sup>53</sup> Answers to pre-hearing questions, Mr Bhatia, p 1.

## National Disability Insurance Scheme

- 2.15** Since its commencement on 1 July 2013, the National Disability Insurance Scheme (NDIS) has been progressively implemented across New South Wales. The relevant Minister announced on 1 July 2017 that the NDIS was fully available across New South Wales, noting the lead role that New South Wales had taken in its implementation.<sup>54</sup>
- 2.16** The NDIS has a flexible funding model for its scheme participants. Mr David Bowen, Chief Executive Officer, National Disability Insurance Agency (NDIA) described it as an outcomes based framework:
- ... our plans start with the goals and aspirations of the individuals and the outcomes that are to be achieved and then look at the supports to help the person achieve those outcomes.<sup>55</sup>
- 2.17** Mr Bowen explained that there are three categories of funding provided: core support funding (personal care and transport), capacity building funding, and capital funding. The individual has full flexibility in how they use their core support funding. It can be used for domestic assistance, transport, or participation in recreational or community activities.<sup>56</sup>
- 2.18** In contrast, the LTCS scheme is more restrictive in its funding model. Funding is provided for reasonable and necessary treatment, rehabilitation and care services as they relate to the individual's motor accident injuries. In most cases, the individual's case manager will submit an application for a service to the LTCSA and it will be assessed and delivered as appropriate. There is some capacity for the individual to pay for services personally such as travel to treatment and rehabilitation appointments.<sup>57</sup>
- 2.19** The roll out of the NDIS across New South Wales has resulted in some issues which were raised by stakeholders during this review. Some of these relate to the different funding models of the schemes. This is very obvious to individuals who are concurrently entitled to benefits under both the LTCS scheme and the NDIS. Stakeholders suggested that poor communication between the administrators of the schemes has exacerbated these issues.

### *Participation in both schemes*

- 2.20** The Hunter Brain Injury Service described the circumstances of a client who was receiving support under the NDIS for a mental health condition. The individual was subsequently injured in a motorbike accident and accepted under the LTCS scheme as an interim participant.<sup>58</sup>

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<sup>54</sup> Media release, Hon Ray Williams MP, Minister for Disability Services and Minister for Multiculturalism, 'NDIS now available throughout NSW', 1 July 2017.

<sup>55</sup> Evidence, Mr David Bowen, Chief Executive Officer, National Disability Insurance Agency, 28 June 2017, p 44.

<sup>56</sup> Evidence, Mr Bowen, 28 June 2017, p 45.

<sup>57</sup> Lifetime Care and Support Authority, *Types of Support*, 2016, <https://www.lifetimecare.nsw.gov.au/participants-and-carers/types-of-support>.

<sup>58</sup> Submission 6, Hunter Brain Injury Service, p 2.

- 2.21** Ms Rachel Morris, the individual's case manager at the Hunter Brain Injury Service, was successfully managing his entitlements under both schemes when she was incorrectly told that the injured person could only receive benefits under either the NDIS or the LTCS, not both schemes:

As a case manager I was able to clearly delineate between the two different conditions and make requests that were relevant for the motor vehicle accident and allow the mental health sector and the NDIS to deal with the mental health issues. But we were given this notification locally that NDIS would no longer be relevant for anybody who is in the lifetime scheme and that was all going to be absorbed.<sup>59</sup>

- 2.22** Mr Don Ferguson, Group Executive, Integrated Care, icare acknowledged there had been some confusion in cases such as this. He added that information exchanged between front line staff was not always consistent with decisions made at a more senior level:

What we have encountered is that some of the experience at the front line is not necessarily consistent with the conversations we have had at a more senior level with our counterparts. We have had some confusion for individuals; we have had some level of fairly specific advice given that we would not agree with so we have needed to start working at a much more cooperative level, at a more senior level, with the NDIA in order to make sure that we can work through those issues.<sup>60</sup>

- 2.23** Mr Ferguson stated that in situations where an individual has entitlement under both schemes, he would envision that services would be provided by the most appropriate scheme relevant to the person's condition, with the other scheme making a financial contribution:

... if the need is specifically related to the motor vehicle accident, then the Lifetime Care and Support Scheme is the appropriate scheme in which to have those needs met. If that person also has an intellectual disability and we have examples of that, then some sort of cost-sharing arrangement between the two schemes would be appropriate.<sup>61</sup>

- 2.24** Mr Ferguson added that 'trying to forensically differentiate' which scheme is responsible for what expense was not in the best interests of the client.<sup>62</sup> Mr Vivek Bhatia, Chief Executive Officer, icare, agreed that sending a person 'from pillar to post trying to find the right agency to support them for which need' was not fair.<sup>63</sup>

- 2.25** However, in regard to cost sharing, Mr Bowen stated that legislatively individuals with entitlements under both schemes would still need to apply to both the NDIA and the LTSCA:

They will have to go to each scheme separately because they have separate and distinct statutory entitlements—one under State legislation and one under Commonwealth legislation.<sup>64</sup>

<sup>59</sup> Evidence, Ms Rachel Morris, Occupational Therapist, Hunter Brain Injury Service, 2 June 2017, p 41.

<sup>60</sup> Evidence, Mr Don Ferguson, Group Executive, Integrated Care, icare, 2 June 2017, p 58.

<sup>61</sup> Evidence, Mr Ferguson, 2 June 2017, p 59.

<sup>62</sup> Evidence, Mr Ferguson, 2 June 2017, p 59.

<sup>63</sup> Evidence, Mr Vivek Bhatia, Chief Executive Officer, icare, 2 June 2017, p 59.

<sup>64</sup> Evidence, Mr Bowen, 28 June 2017, p 40.

***Gap in services while transitioning between schemes***

- 2.26** Another issue raised related to participants leaving the LTCS scheme following recovery but continuing to need support through the NDIS.
- 2.27** There was a concern that there may be a gap in services if a person left the LTCS scheme but subsequently needed services through the NDIS. Ms Morris, Hunter Brain Injury Service was told that a person who was in the LTCS scheme could not apply for the NDIS scheme. Further, the NDIS application process was currently taking between six to 12 months and a person who had exited the LTCS scheme could be without support services during that time.<sup>65</sup>
- 2.28** Mr Bowen, however, stated that an individual could make an application to join the NDIS at any time.<sup>66</sup> The individual's care plan with the NDIS, however, could not be started until they had exited the LTCS scheme. Finalisation of the care plan could take approximately 21 days, leaving that person without support during this period.<sup>67</sup>
- 2.29** Mr Bhatia, noted that icare was working with the NDIA to ensure that these periods without support do not occur, and if they do, ensuring the person is not left without services. Mr Bhatia added that icare would underwrite any gap in services that the person experiences.<sup>68</sup>
- 2.30** Mr Bowen expressed the view that it would be very unusual for a person to exit the LTCS scheme with a support need that then met the requirements of the NDIS:

The NDIS requires that a person has a permanent disability, so they will meet that criteria, and a substantial functional impairment in one of a list of different domains. The person will need assistance with activities virtually on a day-to-day basis to qualify for NDIS. So I am really grappling with the circumstances where someone has exited lifetime care because they have made a recovery and they no longer need that support...<sup>69</sup>

- 2.31** Mr Bowen informed the committee that NDIA and icare are finalising a memorandum of understanding to share information on individuals in both schemes. Having this information available would assist in minimising any gaps between services:

If they are in the lifetime care scheme then part of the arrangements that were set up in the memorandum of understand [MOU] will allow for that data sharing so that we all have prior knowledge of the person.<sup>70</sup>

- 2.32** In addition, NDIA staff would be available to help the person make their application to minimise the period they were without support.<sup>71</sup>

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<sup>65</sup> Evidence, Ms Morris, 2 June 2017, p 38.

<sup>66</sup> Evidence, Mr Bowen, 28 June 2017, p 41.

<sup>67</sup> Evidence, Mr Bowen, 28 June 2017, p 42.

<sup>68</sup> Evidence, Mr Bhatia, 2 June 2017, p 58.

<sup>69</sup> Evidence, Mr Bowen, 28 June 2017, p 42.

<sup>70</sup> Evidence, Mr Bowen, 28 June 2017, p 42.

<sup>71</sup> Evidence, Mr Bowen, 28 June 2017, p 42.



*Variation in funding models*

- 2.33** As mentioned earlier, the committee received evidence of the differences between the two schemes, particularly in relation to how funding is provided and the autonomy of scheme participants in expending their funds. Dr Adeline Hodgkinson, Co-Chair, NSW Agency for Clinical Innovation Brain Injury Rehabilitation described the disparities between the schemes:

... the NDIS has a different structure and a different focus. A lot of it is choice and control for the disabled in the community. They do not take over any medical costs; they are all assumed to be met by Medicare, whereas Lifetime Care will pay for necessary medical and rehabilitation costs. That is a benefit that Lifetime Care has over the NDIS. Lifetime Care have been very clear that it does not pay for recreational activities. It will pay for a carer for someone to attend the movies or to attend church, but it will not pay for transport to get to church or transport to get to a recreational venue, or membership of an organisation which would be for recreation, whereas the NDIS would pay for those things. That would be part of the flexible funding arrangement and they would be eligible to use their transport allowance how they wished and there would be no restrictions on it.<sup>72</sup>

- 2.34** Mr Andrew Stone, New South Wales Bar Association also noted that participants in the NDIS are given a greater level of independence than is currently available under the LTCS scheme:

Certainly the National Disability Insurance Scheme [NDIS] ... is very much based around participant choice and independence; in other words, give people a budget and trust them to spend it. I know that has been something that Lifetime Care has been working on.<sup>73</sup>

- 2.35** Mr Stone advocated for a more flexible approach for LTCS scheme participants who have capacity to self manage their treatment and support services:

I think you need a mix. You are always going to need some people who need hands on intervention to get the best out of the scheme. There will be others who ought to be being encouraged to be independent, and it is about getting the right mix.<sup>74</sup>

- 2.36** Mr Ferguson noted that the two schemes had very different client groups in terms of capacity but the LTCSA was committed to providing a more flexible model that offered a self-funding option that was similar to the NDIS:

We are already adopting a similar approach. So we have been trialling for a while an approach that is called self managed funding for self-directed care. We have done that in a pilot way. Everybody in the lifetime care scheme has a very severe injury; the NDIS has a much broader base so there are possibly many more people that it may be more immediately suitable for.<sup>75</sup>

<sup>72</sup> Evidence, Dr Adeline Hodgkinson, Co-Chair, NSW Agency for Clinical Innovation Brain Injury Rehabilitation, 2 June 2017, p 37.

<sup>73</sup> Evidence, Mr Andrew Stone, New South Wales Bar Association, 2 June 2017, p 6.

<sup>74</sup> Evidence, Mr Stone, 2 June 2017, p 6

<sup>75</sup> Evidence, Mr Ferguson, 2 June 2017, p 55.

- 2.37** Ms Barbara Merran, Founding President and Advisor, Attendant Care Industry Association, commented on this new model of service delivery that is providing more autonomy for LTCS scheme participants:

There are a number of participants of the Lifetime Care scheme who are managing their own funds and buying services from the providers, and that has been a very interesting thing. The ones who have taken over the management of their service delivery with the funds are still using the same providers they were using under the scheme. We have also had a number where the family have taken on the management and then found it too difficult and given it back to Lifetime Care and said, "Look, we thought we could do this but we can't, it's too complicated, it's too hard and it takes up too much time".<sup>76</sup>

- 2.38** The self-managed funding pilot will be discussed in more detail in chapter 4.

*Committee comment*

- 2.39** The committee acknowledges that there are communication issues between the NDIS and the LTCSA that need attention, and notes with concern that scheme participants are being given wrong advice. Accurate information is critical for front line staff responsible for service delivery to participants of the schemes. The committee supports the collaboration between the NDIA and icare and is hopeful that the data sharing between the agencies will prevent gaps for participants transitioning between the schemes. The committee encourages icare and the NDIA to continue working closely together to discuss problems and resolve issues.

## **Motor Accident Injuries Act 2017**

- 2.40** The *Motor Accident Injuries Act 2017* was assented to on 4 April 2017. It is described as 'an Act to establish a new scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents; and for other purposes'.<sup>77</sup>

- 2.41** In his second reading speech, the Hon Victor Dominello MP, Minister for Finance, Services and Property, explained the function of the bill:

The bill establishes a hybrid scheme. It delivers statutory benefits for injured road users with injuries other than soft tissue or minor psychological injuries, regardless of fault, while retaining the right to claim modified common law damages for those able to establish fault. The Lifetime Care and Support Scheme for severely injured people is not affected by the reforms.<sup>78</sup>

- 2.42** Although the LTCS scheme will not be altered by the Act, the LTCSA will assume responsibility for injured people with particular injuries after five years:

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<sup>76</sup> Evidence, Ms Barbara Merran, Founding President and Advisor, Attendant Care Industry Association, 2 June 2017, p 16.

<sup>77</sup> Parliament of New South Wales, Motor Accident Injuries Bill 2017, <https://www.parliament.nsw.gov.au/bills/Pages/Profiles/motor-accident-injuries-bill-2017.aspx>.

<sup>78</sup> Victor Dominello, Second reading speech: Motor Accident Injuries Bill 2017, 9 March 2017.

For injured people who are not mostly at fault and do not have soft tissue or minor psychological injuries, reasonable medical and commercial attendant care costs will be payable for life, if needed. Insurers will be responsible for claimant medical and care costs for up to five years and the Lifetime Care and Support Authority will be responsible for those costs after five years.<sup>79</sup>

**2.43** The Law Society of New South Wales noted the additional workload this would cause the LTCSA and questioned the planning processes in play to ensure the authority will cope.<sup>80</sup>

**2.44** Mr Stone, New South Wales Bar Association pointed out that the administrative and care responsibilities of the LTCSA will increase substantially following the introduction of the *Motor Accident Injuries Act*:

...move five years into the future and every motor accident victim in New South Wales will be a member of the scheme because what is proposed under the Motor Accident Injuries Act is that after five years of an insurer meeting your treatment and care needs, provided you have more than a minor injury and provided you were [not mostly] at fault, these are the people who will then take over and administer your rights for life. Over time it is about to become a much bigger scheme and its efficient operation will remain of relevance to a much broader number of motor accident victims.<sup>81</sup>

**2.45** Mr Stone estimated that an additional four to five thousand people a year could become the responsibility of the LTCSA as a result of the legislation.<sup>82</sup>

**2.46** The Insurance Council of Australia submitted that it was essential that processes were in place to facilitate the seamless transfer of injured people to the responsibility of the LTCSA:

Clear processes and guidelines will be imperative to make this transfer as simple as possible. Without these, there is a risk that the transfer of liability to the LTCSA could become a point of friction in the scheme. This would be detrimental for all parties concerned but particularly for the injured claimant.<sup>83</sup>

**2.47** icare advised that discussions commenced with SIRA before the legislation was passed and consultation is continuing to ensure that the LTCSA is prepared when it becomes the insurer for those people transitioning from compulsory third party (CTP) insurers. The first transfers could occur from December 2019, with the majority expected to occur from December 2022, effectively between three to five years from the initial accident claim.<sup>84</sup>

**2.48** icare noted that its primary focus in relation to the legislative change is currently on levy setting, but a range of planning processes were also underway, including:

- actuarial modelling for levy setting

<sup>79</sup> Victor Dominello, Second reading speech: Motor Accident Injuries Bill 2017, 9 March 2017.

<sup>80</sup> Submission 10, The Law Society of New South Wales, p 1.

<sup>81</sup> Evidence, Mr Stone, 2 June 2017, p 2.

<sup>82</sup> Evidence, Mr Stone, 2 June 2017, p 2.

<sup>83</sup> Submission 4, Insurance Council of Australia, p 2.

<sup>84</sup> Answers to additional questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 4.

- development of new Motor Accident Guidelines in collaboration with SIRA
- working with SIRA and CTP insurers to clarify issues relating to the transfer of claimants.<sup>85</sup>

**2.49** icare added that it would continue to work closely with SIRA as the regulator with overall responsibility for implementing the new scheme systems and processes.

**2.50** The new legislation has increased the regulatory powers of SIRA to ensure participants have been given appropriate treatment and care services during the five year period in which the CTP insurer is responsible. SIRA will conduct a review of the injured person's care and services three years after the accident:

...firstly the legislation has given us a three-year review. I think it is really important that happens at the three-year point so it is before the five years. It is before people are going into that new system. We get an opportunity in a very formal sense to see whether SIRA is doing its job properly or whether the insurers are doing their job or indeed any of the other service providers and it allows us to correct things before they end up in lifetime care.<sup>86</sup>

**2.51** In situations where there is evidence that an insurer has not provided the treatment and care services it should have to participants, icare has a statutory right to recover any extra costs that should have been expended by the insurer.<sup>87</sup> During evidence Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA explained:

...in the legislation there is a final safety valve where the Lifetime Care and Support Authority will have what is sometimes called a true-up position. That will enable them to recover from insurers. If there has been any mismanagement of that claim despite all of those processes in place they will have a right of recovery back against the insurer for any extra costs that arise that ought to have been costs that the insurer expended. There are a number of really important aspects of this legislation. I think that is where it is a really well designed piece of legislation because it allows for a number of pressure points that mean that if we see that there is a claim that is not being handled well there are ways to deal with it, but absolutely the insurer does not get off the hook because of those final safety valve provisions.<sup>88</sup>

**2.52** During the five year period, injured participants will have access to dispute processes if they believe their insurer is not providing reasonable treatment and care services. Mr Cameron Player, Executive Director, Dispute Resolution Services, SIRA, elaborated:

...I think it is important to draw the Committee's attention to the fact that the claimants have significant rights during that period. Leading up to that five-year period, if there is a dispute with the insurer around treatment and care and whether it

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<sup>85</sup> Answers to additional questions on notice, Mr Bhatia, p 4.

<sup>86</sup> Evidence, Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA, 28 June 2017, p 28

<sup>87</sup> Answers to questions on notice, SIRA, 21 July 2017, p 2.

<sup>88</sup> Evidence, Mr Nicholls, 28 June 2017, p 28.

is reasonable or necessary, the claimant has the right to seek to have a decision which is binding on the insurer made by the dispute resolution service around that.<sup>89</sup>

**2.53** SIRA advised that it is working with icare and other stakeholders on an implementation strategy for the new legislation, and in regard to the development of guidelines and processes:

SIRA has met with icare to discuss their responsibilities to claimants beyond five years. Substantial resolution of the arrangements will be finalised in the second half of 2017, noting that the new arrangements do not get implemented until 2022 unless earlier with the agreement of the insurer and LTCSA. SIRA will be establishing a working group, initially with icare, to develop guidelines and processes and information requirements.<sup>90</sup>

***Committee comment***

**2.54** The committee notes that SIRA and icare are using the long lead time afforded by the *Motor Accident Injuries Act 2017* in regard to the transfer of injured participants to the LTCS scheme after five years, and planning accordingly to ensure the LTCSA is equipped to deal with the impact of a significantly increased workload. The committee strongly encourages icare and SIRA to continue their consultation with stakeholders in the development of the associated guidelines and processes. Detailed annual reports on the progress in transitioning to the new scheme should be provided by both agencies.

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**Recommendation 1**

That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should:

- a) assess claims management by insurers prior to transfer;
  - b) publish all results of mismanagement by insurers; and
  - c) publish the quantum recovered by insurers.
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<sup>89</sup> Evidence, Mr Cameron Player, Executive Director, Dispute Resolution Services, SIRA, 28 June 2017, p 30.

<sup>90</sup> Answers to questions on notice, SIRA, p 2.



## Chapter 3 Scheme performance and initiatives

This chapter examines the performance of the Lifetime Care and Support scheme since the committee's fifth review of the exercise of the functions of the Lifetime Care and Support Authority. This chapter also looks at activities and projects undertaken by the LTCSA since the fifth review to improve services and outcomes for scheme participants.

### Scheme performance

**3.1** The performance of the Lifetime Care and Support (LTCS) scheme has been assessed by reviewing annual report data from the 2015/16 reporting period and the results of the participant satisfaction surveys conducted in 2014, 2015 and 2016.

#### Scheme statistics

**3.2** The icare Annual Report 2015/16 provides an overview of scheme data, including participant numbers, injury types, age, sex, and geographical location of participants. As at 30 June 2016, there were 1,143 participants in the LTCS scheme, representing slightly higher numbers than projected.<sup>91</sup> Scheme participation increased by approximately 10 per cent from 1,036 participants in 2015.<sup>92</sup>

**3.3** As mentioned in chapter 1, participants initially enter the scheme on an interim basis for up to two years before they are assessed for lifetime participation. Of the scheme's 1,143 participants, 315 were interim participants and 828 were lifetime participants.<sup>93</sup>

**3.4** There are currently 327 female participants which equates to approximately 29 per cent of total participants.<sup>94</sup> Young males are the most highly represented of all scheme participants with 816 male participants from all age groups and approximately 350 males between 15 and 34 years old.<sup>95</sup>

**3.5** The majority of scheme participants are young: 132 participants are under the age of 16 and 42 per cent are aged between 15 and 34 years old.<sup>96</sup>

<sup>91</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 70.

<sup>92</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Authority Annual Report 2014/15*, 2015, p 16.

<sup>93</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 70.

<sup>94</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 71.

<sup>95</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 71.

<sup>96</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 71.

3.6 Table 1 provides a breakdown of the type of injury sustained by scheme participants.

**Table 1 Scheme participant injury type – as at 30 June 2016<sup>97</sup>**

Injury type	Total	%
Traumatic brain injury	852	74
Spinal cord injury	263	23
Amputations	24	2
Burns	3	<1
Vision loss	1	<1
<b>Total</b>	<b>1,143</b>	<b>100</b>

3.7 Table 2 identifies the role participants played in the accident, for example, whether they were a driver, pedestrian, passenger or cyclist.

**Table 2 Participant role in the accident<sup>98</sup>**

Role in accident	Total	%
Driver	370	32
Pedestrian	261	23
Motorcycle rider	227	20
Passenger	227	20
Cyclist	41	4
Pillion passenger	6	<1
Other	11	1
<b>Total</b>	<b>1,143</b>	<b>100</b>

3.8 Table 3 details the geographical location of all 1,143 scheme participants. As can be seen, the vast majority of scheme participants live in Sydney.<sup>99</sup>

**Table 3 Participants place of residence – as at 30 June 2016<sup>100</sup>**

Place of residence			
Blue Mountains	8	North Western	19
Central West	77	Northern	45
Far West	7	Richmond Tweed	30

<sup>97</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 71.

<sup>98</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 70.

<sup>99</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 72.

<sup>100</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 72.



<b>Place of residence</b>			
Hawkesbury	2	South Eastern	15
Hunter	146	Sydney	466
Illawarra	78	Central Coast	54
Mid North Coast	63	Wollondilly	8
Murray	13	Interstate	54
Murrumbidgee	30	Overseas	28

### **Participant satisfaction survey results**

- 3.9** The Lifetime Care and Support Authority (LTCSA) annually conducts a client satisfaction survey of scheme participants for quality improvement purposes. Not all participants are surveyed, instead a sample is selected that is representative of locations, age groupings and length of time in the scheme. The survey, conducted by a psychologist, includes both a qualitative and quantitative component.<sup>101</sup>
- 3.10** The following table provides a comparative summary of the survey results over the last three years.

**Table 4 Participant survey results summary<sup>102</sup>**

<b>Measure</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2015/16 comparison</b>
Overall satisfaction with the scheme	90	77	82	Improved
Problems with service providers in the last three months	23	38	19	Improved
Problems with LTCSA in the last three months	17	15	11	Stable
Unprompted awareness of coordinators	80	86	83	Improved
Contact with coordinator in the past six months	64	64	70	Stable
Per cent with Community Living Plan Goals	50	55	61	Stable
Per cent agree 'I feel part of the community'	84	79	78	Stable
Per cent agree 'I feel I have enough time with friends'	83	79	82	Stable
Goals cover things you most want to work	91	80	-	Improved

<sup>101</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 77.

<sup>102</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 3.

on 'Completely/quite a lot'				
Per cent agree 'I feel I am progressing too slowly with my goals (in my Community Living Plan)	25	21	42	Stable
Per cent agree 'Considering my stage of rehabilitation, I am happy with how much I get out into the community'	86	78	81	Improved
Per cent who have at least fortnightly contact with their case manager	46	31	47	Improved
Per cent satisfied with the time it takes to get equipment	78	63	-	Improved
Per cent satisfied with the time it takes to access services	91	76	-	Improved
'I have enough to say about what services and equipment I receive'	94	80	69	Improved

- 3.11** The table indicates that satisfaction with the scheme has increased over the past three years with a current overall satisfaction level of 90 per cent.<sup>103</sup>
- 3.12** The results for community participation are positive with 86 per cent of scheme participants happy with how much interaction they have with the community. This is an improvement from the 2014 review which reported only 74 per cent of participants were happy with the level of community participation they were experiencing.<sup>104</sup>
- 3.13** Although the figures in Table 4 are mostly positive with many service aspects showing improvement, it is notable that 17 per cent of participants have experienced problems with the LTCSA in the last three months and only 64 per cent of participants have had contact with their coordinator in the past six months. icare does acknowledge that while there have been noticeable improvements in communication over the past seven years of survey data, more could be done by the LTCSA to improve communication with scheme participants.<sup>105</sup>
- 3.14** icare advised that the LTCSA had taken a number of actions to improve communication with scheme participants, including:
- development, implementation and continued enhancement of a communication protocol for co-ordinator contact with participants
  - establishment of three Participant Reference Groups in Sydney, Newcastle and Parramatta in 2016 to facilitate regular opportunities to engage with participants in their local area
  - consultation with participants on their preferred method for communication

<sup>103</sup> Answers to pre-hearing questions on notice, Mr Bhatia, p 3.

<sup>104</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth Review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), p 20.

<sup>105</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 77.

- active consultation with over 44 participants and family members across Integrated Care (29 Lifetime Care participants) as part of icare's Optimal Care program to help co-design a range of service improvements
- commencement of redesigning the icare website with participant and family member involvement in website testing.<sup>106</sup>

*Committee comment*

- 3.15** The committee is pleased that the participants surveyed reported a high level of satisfaction with the scheme overall, and that there has been an increase in satisfaction level for the time it takes to access equipment and services. The results indicate that participants are generally satisfied with the level of input they have in relation to the services and equipment they are provided. The committee notes that the LTCSA has recognised that its communication with scheme participants could be enhanced, and commends the authority's efforts to continue to improve its communication with participants.

### Service delivery and initiatives

- 3.16** During this review, the committee received evidence from stakeholders regarding all aspects of the services provided by the LTCSA. Ms Barbara Merran, Founding President and Advisor, Attendant Care Industry Association commented favourably on the services provided by the authority:

For me, the scheme has really demonstrated that it has been positive for the participants, and I think for our society, I really have not had one problem, nor has the Attendant Care Industry Association [ACIA], with the Lifetime Care Authority at all, and our participants, I think, have the best service delivery of any other scheme anywhere that I have ever seen.<sup>107</sup>

- 3.17** Ms Danielle Bennett, President, Attendant Care Industry Association, specifically praised the LTCSA Attendant Care Unit:

I was going to talk about how great the attendant care unit is and the dedication that they do give, not only to the attendant care industry but to providers. When there are escalation of issues within a program, you need extra support or the coordinator has changed, you can always go to the attendant care unit and they are a dedicated team of five now, I think. They are specifically in the interest of the service providers, and managing the contracts and performance of those providers.<sup>108</sup>

- 3.18** Ms Rachel Morris, Occupational Therapist, Hunter Brain Injury Service also spoke highly of the LTCSA staff she deals with in the Hunter region:

I love the Lifetime Care scheme because the clinicians and the co-ordinators really understand exactly what they are doing.

<sup>106</sup> Answers to pre-hearing questions, Mr Bhatia, p 15.

<sup>107</sup> Evidence, Ms Barbara Merran, Founding President and Advisor, Attendant Care Industry Association, 2 June 2017, p 17

<sup>108</sup> Evidence, Ms Danielle Bennett, President, Attendant Care Industry Association, 2 June 2017, p 20.

...

We have a great relationship with the Lifetime Care scheme office there. We have bounced around ideas with how we can support participants so they do not fall of the cliff, as you are suggesting.<sup>109</sup>

**3.19** The Attendant Care Industry Association also noted its appreciation of the capacity building forums that are conducted by the LTCSA:

Quarterly Service Provider forums are conducted to keep providers up to date on new initiatives within the industry and upcoming changes to the Scheme. Additional forums are also set up to provide training on specific tools that Lifetime Care has developed to assist service providers in building their capacity.<sup>110</sup>

**3.20** Carers Australia NSW commended icare for its increasing awareness of carers issues and noted that icare staff are ‘well informed and enthusiastic to learn how to better support families within the scheme.’<sup>111</sup>

**3.21** icare has proactively sought feedback on services through mechanisms such as the participant survey (mentioned previously), the Customer Experience Design project and the Optimal Care Program. The Customer Experience Design project sought customer feedback on how best to design and deliver the services they receive.<sup>112</sup> The Optimal Care Program uses ‘human-centred design principles to collaborate with participants, their families and ... internal staff to design, build and test solutions’.<sup>113</sup>

**3.22** From these initiatives, icare was able to identify the following issues requiring improvement:

- delays and difficulties with the approval process
- time taken to receive equipment
- quality of service provision from providers
- time taken for home modifications
- needs of family members not taken into account.<sup>114</sup>

**3.23** icare stated that it is confident that many of these concerns are being addressed through current initiatives, including fast tracking approvals and expanding the number of items that can be pre-approved.<sup>115</sup>

<sup>109</sup> Evidence, Ms Rachel Morris, Occupational Therapist, Hunter Brain Injury Service, 2 June 2017, p 39.

<sup>110</sup> Submission 5, Attendant Care Industry Association, pp 5-6.

<sup>111</sup> Submission 1, Carers Australia NSW, p 1.

<sup>112</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 6.

<sup>113</sup> Answers to pre-hearing questions, Mr Bhatia, p 5.

<sup>114</sup> Answers to supplementary questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare 30 June 2017, p 7

<sup>115</sup> Answers to supplementary questions on notice, Mr Bhatia, p 7

**3.24** For instance in relation to approvals, My Plan, developed by icare during 2016, provides a streamlined process that allows predictable services to be bundled and approved. My Plan has replaced the Community Living Plan previously completed for scheme participants to outline their goals and treatment and care needs. According to icare, My Plan has had a positive impact on service approvals with a reduction in approval times from an average of 6.3 days to 2.75 days.<sup>116</sup>

**3.25** Ms Merran provided an example of how the pre-approval process has been applied in situations where scheme participants require standard items for common conditions:

It was all preapproved prior to the scheme starting and it involved specialist rehab doctors and providers and the authority to determine, look, if someone is ventilated they automatically are going to get two ventilators, two suction devices, portable things. So it is just a tick and flick.<sup>117</sup>

**3.26** icare referred to another new initiative it is implementing that will provide faster approval for several requested services:

Based on participants' experiences and input, Lifetime Care is also working on a new initiative, a dedicated, phone-based service request facility for participants to directly access fast-track approvals for a range of services and other related healthcare requests such as replacement aids and equipment, and regular pharmaceutical needs.<sup>118</sup>

**3.27** icare submitted that at times approval processes are delayed because the required supporting documentation has not been provided, and that if it was given additional legislative powers to obtain information, this could impact positively on decision making times:

Delays in obtaining this information from the insurer or solicitor can delay the decision on eligibility. Delays in obtaining information can also delay the resolution of a dispute about eligibility, when an Assessment Panel requests (but cannot compel) information from a party to the dispute. Currently icare can only request, but cannot compel, parties such as insurers to provide information, which can mean that insurers and participants' legal representatives choose not to provide information unfavourable to their position.<sup>119</sup>

### **Review of the Lifetime Care and Support Guidelines**

**3.28** The Lifetime Care and Support Guidelines are issued under s 58 of the *Motor Accidents (Lifetime Care and Support) Act 2006* and provide a prescriptive basis for decisions relating to scheme eligibility, services, and requests for services.<sup>120</sup>

**3.29** The LTCSA is currently reviewing the guidelines with the intention of:

<sup>116</sup> Answers to pre-hearing questions, Mr Bhatia, p 11.

<sup>117</sup> Evidence, Ms Merran, 2 June 2017, p 18.

<sup>118</sup> Answers to pre-hearing questions, Mr Bhatia, p 12.

<sup>119</sup> Answers to supplementary questions on notice, Mr Bhatia, p 7.

<sup>120</sup> Lifetime Care and Support Authority, *Guidelines, Policy and Legislation*, 2016, <https://www.lifetimecare.nsw.gov.au/lifetime-care-and-support-scheme/guidelines,-policies-and-legislation>.

- including changes that have resulted from the introduction of My Plan
- making the guidelines easier to read
- ensuring the experience the LTCSA has gained since the scheme commenced is incorporated
- making sure the guidelines support sound and person-centred decision making
- adding new services that are already being funded under the scheme such as dental treatment.<sup>121</sup>

**3.30** icare has consulted extensively during the guidelines review with stakeholders including the Participant Reference Groups, the Lifetime Care Reference Group and legal organisations.<sup>122</sup>

**3.31** Mr Don Ferguson, Group Executive, Integrated Care, added that icare was very appreciative of the feedback that has been provided by the legal advocates in relation to the review of the guidelines:

Could I start by noting that with the review of our guidelines we take seriously the process of consultation. We get enormous value from the feedback that we get from a whole range of stakeholders, including some of the people who have been here this morning, who take great interest in providing us very detailed feedback—similarly with the New Bar Association and the Australian Lawyers Alliance.<sup>123</sup>

**3.32** The NSW Bar Association noted that it had provided a submission to the LTCSA in relation to the review strongly supporting a number of the proposed changes but raising concerns in relation to others.<sup>124</sup>

**3.33** During evidence, Mr Andrew Stone, NSW Bar Association, advised the committee that his biggest concern was the proposal to remove the discretionary power of the LTCSA to waive the guidelines in certain circumstances:

There was a discretion to waive the guidelines in an individual case if it was reasonable to do it. They are looking at removing that clause, which is the final discretionary protection against an unjust outcome in the guidelines. I would be particularly disappointed if that final protection for people was removed. It is rarely utilised, if ever, but it is knowing that there is longstop provision, that there is someone you can tell, "This set of rules does not work for me". Here is why it is fair in the circumstances. "Can someone exercise a discretion or power to help me out?" I am concerned about the removal of that.<sup>125</sup>

**3.34** Mr Ferguson noted that the feedback provided by the NSW Bar Association on this issue was being considered:

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<sup>121</sup> Answers to pre-hearing questions, Mr Bhatia, p 16.

<sup>122</sup> Answers to pre-hearing questions, Mr Bhatia, p 16.

<sup>123</sup> Evidence, Mr Don Ferguson, Group Executive, Integrated Care, icare, 2 June 2017, pp 53-54.

<sup>124</sup> Submission 8, New South Wales Bar Association, pp 1-2.

<sup>125</sup> Evidence, Mr Andrew Stone, NSW Bar Association, 2 June 2017, p 8.

We have taken that on board and we are looking at how we might be able to maintain it. So that is something that we are in agreement with and we are pleased to look at ensuring that we retain that discretion. What we do not want to end up with is black and white letter of law decision-making. That is exactly opposite the direction we are going. That discretion power is really important.<sup>126</sup>

- 3.35** Further to this, icare confirmed that it will endeavour to retain its discretionary power in the revised guidelines:

As clarified in evidence given at the hearing, icare is working on the preferred wording to retain its discretions in its statutory guidelines relating to funding of treatment and care needs for participants. This will include defining the process for how the discretion can be exercised. icare intends to consult with stakeholders on its revised guidelines, which will include the discretionary clauses, commencing in July 2017.<sup>127</sup>

- 3.36** Another concern Mr Stone noted was that the proposed guidelines state that assistance would not be provided to scheme participants for looking after children conceived after their accident:

For example, the proposed new guidelines, and I am hoping they back down on some of these, say they will not meet the cost of assisting you with a child that you choose to have after the accident. I have a real issue about the authority telling people, in particular a young couple or a young paraplegic father, "Your wife desperately wants children as part of her relationship with you, but if you go ahead and have a child, we will not help you be a paraplegic dad."<sup>128</sup>

- 3.37** Ms Genevieve Henderson, Australian Lawyers Alliance was also involved in discussions with the LTCSA in relation to the guidelines review. She was concerned the proposals would increase the restrictiveness of the current guidelines:

I have been part of some of these meetings with Lifetime Care about the regulations and, as I understand, they are becoming more and more prescriptive of the guidelines. They say the purpose of that is to give certainty to the participant about what they can and cannot apply for. As you become more prescriptive, you become proscriptive, and if they remove the reasonable and necessary overlay, then it becomes quite draconian and the examples we are raising become obvious. They are becoming more and more detailed in what they will and will not allow you to apply for, but the effect is they are cutting things out and there have been unintended consequences.<sup>129</sup>

- 3.38** icare is in the final stages of the guidelines review and draft guidelines relating to rehabilitation, participants living overseas, aids and appliances (equipment), home modifications, workplace and educational facility modifications, prostheses, ambulance transportation, medical treatment including pharmaceuticals, and dental treatment were forwarded to stakeholders for consultation in June 2017.<sup>130</sup>

<sup>126</sup> Evidence, Mr Ferguson, 2 June 2017, p 55.

<sup>127</sup> Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 8.

<sup>128</sup> Evidence, Mr Stone, 2 June 2017, p 9.

<sup>129</sup> Evidence, Ms Genevieve Henderson, Australian Lawyers Alliance, 2 June 2017, p 10.

<sup>130</sup> Answers to pre-hearing questions, Mr Bhatia, p 17.

- 3.39** The revised guidelines will be circulated to stakeholders for final feedback prior to gazettal.<sup>131</sup>
- 3.40** icare has submitted that although the principles for decision making are included in the statutory guidelines, it would be beneficial to amend the legislation to include a clear statement of icare's commitment to person-centred and individualised decision making and service delivery.<sup>132</sup>
- 3.41** icare has also suggested the definitions in the legislation describing treatment and care needs could be amended to use the more contemporary language used in the disability service sector and other disability insurance schemes such as the NDIS.<sup>133</sup>

#### *Committee comment*

- 3.42** The committee commends icare's consultative approach in reviewing the Lifetime Care and Support Guidelines. The committee believes that the administrators of the guidelines should be allowed to exercise some discretion in their decision making and is pleased that icare is intending to retain this power in the new guidelines. The committee encourages the LTCSA to continue consultation with stakeholders during the final stages of reviewing the guidelines.

#### *Payments to family members*

- 3.43** A limitation of the current guidelines highlighted by stakeholders is that there is no provision to facilitate payments to family members in their capacity as carers. Mr Stone acknowledged that this stance was based on a premise that had some merit:

The resistance to paying family members to do anything has been foundational bedrock of the scheme. It comes from the good point of view that we do not want family members to be carers, we want them to be family members, we will provide paid care where it is required.<sup>134</sup>

- 3.44** icare submitted that it does not pay family members because it creates a financial nexus between the family member and the participant. icare explained that this position has been informed following consultation with disability organisations who have advised against family payments.<sup>135</sup>
- 3.45** Ms Merran believed that this stance by the LTCSA was based on risk mitigation. Family members are generally not insured against personal injury or other mishaps. However, she was aware that on occasion in remote areas family members have been paid but steps were taken to ensure adequate protections were in place:

What they have done where there have been family members paid—and I am not saying there are many but there have been—it has been with involvement of the treating doctor, the treating team and the family member has worked through a

<sup>131</sup> Lifetime Care and Support Authority, *Review of the Lifetime Care and Support Guidelines*, 2016, <https://www.lifetimecare.nsw.gov.au/lifetime-care-and-support-scheme/guidelines,-policies-and-legislation/review-of-the-lifetime-care-and-support-guidelines>.

<sup>132</sup> Answers to supplementary questions on notice, Mr Bhatia, p 7.

<sup>133</sup> Answers to supplementary questions on notice, Mr Bhatia, p 7.

<sup>134</sup> Evidence, Mr Stone, 2 June 2017, p 8.

<sup>135</sup> Answers to questions on notice, Mr Bhatia, p 5.



provider organisation. As a family member you cannot get workers compensation and things like that; professional indemnity and public liability. They get them to draw in a provider organisation that provides them with all those insurances, education and support.<sup>136</sup>

- 3.46** Ms Cebalo said there were also minimum training certifications a family member would need to acquire to be authorised to provide services:

Training is relevant to the need of the individual. If one somebody is on a ventilator and has percutaneous endoscopic gastrostomy feeds and a suprapubic catheter or severe brain injury there are training packages that workers have to complete and be signed off. Discharging hospitals are heavily involved in the initial training and it is designed by the rehab doctors and their teams around the specific things a person will require. You have to be signed off as competent to deliver those things.<sup>137</sup>

- 3.47** Mr Stone argued that the LTCSA needed to exercise a degree of flexibility in relation to family payments, as in some cases it is the most financially suitable and sensible option:

I will give you an example. A solicitor rang me and said, "I have a brain-injured client who lives in Cootamundra. He needs to go to Wagga for a medical appointment once a month". There is no public transport between the two. "Currently his sister is taking a day off work a month and driving him to Wagga and back. It is helpful that she is there to explain what happens at the appointment, but she is missing a day a month. She has asked Lifetime Care can they make up her wage for the day and they have said, 'No'. What can we do?" I said, "You will not get anywhere with that."

...

The sister said, "I am not doing it". Next week Lifetime Care will supply a car. There are no cars in Cootamundra, so it will have to come from Wagga, and if need be an attendant carer in the car, will come from Wagga to Cootamundra, pick him up, drive him back to Wagga, wait to the end of his appointment and take him back to Cootamundra again. They would rather write a \$3,000 cheque a month for that than write a \$250 cheque to his sister because one of their ironclad rules is "we will not pay family members".<sup>138</sup>

- 3.48** In responding to this particular example, icare advised that the travel expenses for scheme participants travelling to or from treatment, rehabilitation and care appointments are paid or reimbursed under the Participant Travel Policy. The family member would be reimbursed for motor vehicle expenses via a cents per kilometre method. icare also noted that the Participant Travel Policy is currently being reviewed:

icare is currently reviewing its Participant Travel Policy to ensure it applies a more nuanced approach to decision making, including providing more flexibility in how a participant's travel need can be met.<sup>139</sup>

<sup>136</sup> Evidence, Ms Merran, 2 June 2017, p 19.

<sup>137</sup> Evidence, Ms Cebalo, 2 June 2017, p 22.

<sup>138</sup> Evidence, Mr Stone, 2 June 2017, p 7.

<sup>139</sup> Answers to questions on notice, Mr Bhatia, p 7.

- 3.49** In relation to lost wages of family members, icare raised the possibility that they may be recoupable through the CTP scheme:

Reimbursement of a family member's lost wages in some situations may be a compensable expense in the CTP scheme for participants who have an accepted CTP claim. Accordingly, icare may need to consult with SIRA and CTP insurers to ensure that family members are not accessing funded reimbursement or compensation for the same expense under both schemes, which could jeopardise their sustainability.<sup>140</sup>

- 3.50** While confirming the position that the LTCSA should not pay family members, Mr Ferguson noted there are some situations where approval is given:

That was really in relation to the line we take in terms of paying family members, there are exceptions—we have examples of exceptions where we have either difficulty in finding a care provider to provide that support because of rural and remote locations; and we have an individual who has particular language difficulties and the only person who is able to communicate effectively with them is a family member.<sup>141</sup>

- 3.51** icare also noted that it is working on a new decision making framework that will consider the circumstances of the individual and the family members:

... icare recognises the importance of individualised and nuanced decision making and agrees that this is something we can improve on. icare is currently working on an updated decision-making framework, which will move away from prescriptive decision making towards an approach which is risk-based, individualised and flexible.<sup>142</sup>

- 3.52** In addition, icare said it would consider the issue of reimbursing carers who attend medical appointments with children or with other scheme participants in certain circumstances:

Part of this review will consider how to reimburse a parent's attendance at a medical appointment for a child participant if evidence demonstrates that the parent has lost income as a result of that attendance. This approach would also need to be extended to others with caring responsibilities, such as a participant's partner, in circumstances where the participant lacks legal capacity and it is reasonable for a spouse or partner to attend an appointment. icare intends to include a discretion relating to this issue in its statutory guideline for attendant care services.<sup>143</sup>

### *Committee comment*

- 3.53** The committee acknowledges the reasoning behind limiting payments to family members. However, the committee does agree with the evidence provided that on occasion it can be the most sensible option. The committee notes icare's position on creating a more considered approach to decision making that will take into account the circumstances of individuals. The committee also acknowledges the importance of a framework to guide decision making and ensure the financial viability of the scheme.

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<sup>140</sup> Answers to questions on notice, Mr Bhatia, p 8.

<sup>141</sup> Evidence, Mr Ferguson, 2 June 2017, p 54.

<sup>142</sup> Answers to questions on notice, Mr Bhatia, p 5.

<sup>143</sup> Answers to questions on notice, Mr Bhatia, p 5.

### Vocational rehabilitation

- 3.54** A majority of scheme participants, 58 per cent, are capable of undertaking some level of employment. Of these, 32 per cent are in employment and 49 per cent are using vocational services funded through the scheme. Vocational services can include vocational counselling, training and on the job experiences, job seeking assistance and equipment to support training or return to work.<sup>144</sup>
- 3.55** icare has funded an early intervention program, In-Voc, for spinal cord injury scheme participants since 2011. The program has achieved very positive return to work results since its inception:
- In the first three years of the program, 147 patients received In-Voc services (30 per cent of these patients are LTC scheme participants). A total of 42 per cent returned to employment, 11 per cent returned to volunteer work and four per cent returned to study 12 months after the date of their spinal cord injury.
- Prior to the implementation of In-Voc, the return to work rate for participants with a spinal cord injury was approximately 25 per cent. Excluding those studying, participants in paid employment and volunteer work is now 53 per cent, which means the In- Voc Program has doubled the return to work rate.<sup>145</sup>
- 3.56** The In-Voc program is delivered to participants while they are still in hospital. icare and Royal Rehab are working together to extend the program to participants who are not able to complete the program while in hospital.<sup>146</sup>
- 3.57** Another rehabilitation program is the Vocational Intervention Program (mentioned in chapter 1 at 1.31) for brain injury participants which involved two trial initiatives in three regions across New South Wales. The program is designed to assist participants to return to their pre-injury workplace, or if that is not an option, to participate in an unpaid work trial for 12 weeks.<sup>147</sup>
- 3.58** Over the past two years, 78 interventions were trialled and 24 were completed. According to icare, the results have been very positive:
- A total of 83.3 per cent of these patients are in some form of paid employment three months after intervention, compared with 41 per cent of them in a control group. At this early stage, this program has also doubled the return to work rate when compared with the control group.<sup>148</sup>
- 3.59** icare is liaising with the Agency for Clinical Intervention to further expand the program across New South Wales and to develop a specialist brain injury skilled return to work plan.

<sup>144</sup> Answers to supplementary questions, Mr Bhatia, p3.

<sup>145</sup> Answers to supplementary questions, Mr Bhatia, p4.

<sup>146</sup> Answers to supplementary questions, Mr Bhatia, p4.

<sup>147</sup> Answers to supplementary questions, Mr Bhatia, pp 4-5.

<sup>148</sup> Answers to supplementary questions, Mr Bhatia, p 5.

**3.60** icare will provide participants who are capable of returning to work with a Work Options Plan and aims to improve the return to work rate for working age participants to 40 per cent.<sup>149</sup>

### **Attendant care services**

**3.61** Attendant care services such as personal care, domestic and nursing care services for scheme participants are provided by Attendant Care Providers who are selected by the LTCSA. All providers must be certified to the Attendant Care Industry Association Standard.<sup>150</sup>

**3.62** Attendant care providers must record all adverse events and provide appropriate notifications. A half yearly report must be submitted to the LTCSA detailing all adverse events and strategies to improve services and reduce risks.<sup>151</sup>

**3.63** The Attendant Care Industry Association (ACIA) believes that the current reporting process is inadequate as it relies too much on the discretion of the service provider to report an incident. The ACIA suggested that the LTCSA provide a more prescriptive reporting process that detailed those incidents requiring notification and specified timeframes for notification. The ACIA recommended that the following incidents be mandatorily notifiable to the LTCSA:

- death or harm to a participant
- harm to a support worker
- harm to a child in the home where supports are being provided
- the participant going to hospital
- an assault involving the support worker or participant
- a change in the overall health of the participant.<sup>152</sup>

**3.64** In addition, the ACIA recommended that the LTCSA adopt a requirement that is similar to the NDIS which requires providers to have a complaints management system in place that is maintained.<sup>153</sup>

**3.65** In relation to the ACIA recommendations, icare reported that a review of safeguarding practices was conducted in 2016. The review focused on strengthening processes that would ensure participant safety. The review made a number of recommendations to improve attendant care provider reporting processes, including providing a clear definition of an adverse event. The LTCSA is implementing these recommendations and will work to strengthen its oversight and monitoring of service provider activity. In addition, the LTCSA is developing a provider management framework:

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<sup>149</sup> Answers to supplementary questions, Mr Bhatia, p5.

<sup>150</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 79.

<sup>151</sup> Answers to pre hearing questions, Mr Bhatia, p27.

<sup>152</sup> Answers to questions on notice, Ms Natasha Cebalo, General Manager, Attendant Care Industry Association, 29 June 2017, pp 4-5.

<sup>153</sup> Answers to questions on notice, Ms Cebalo, p 5.

A provider management framework is also under development that outlines roles and expectations in managing issues and concerns around provider performance, with clear escalation pathways for management of adverse events or provider quality issues. This framework is also developing an audit program to assist in identification of provider performance issues.<sup>154</sup>

### ***Committee comment***

- 3.66** The committee commends the LTCSA for the work it continues to do in providing vocational rehabilitation services to LTCS scheme participants. The committee is pleased to see the positive results that are being achieved through both the In-Voc and Vocational Intervention programs. The committee looks forward to hearing more about the expansion of the Vocational Intervention Program during its next review of the scheme.
- 3.67** The safety of scheme participants is paramount and we are therefore pleased that the LTCSA is working to improve processes to ensure adverse incidents are reported and managed.

## **Disputes and complaints**

- 3.68** The following section sets out statistics regarding disputes and complaints. Concerns about the dispute resolution system are discussed in chapters 4 and 5.

### **Disputes**

- 3.69** The *Motor Accidents (Lifetime Care and Support) Act 2006* includes provisions for dispute resolution for disputes concerning scheme eligibility and treatment and care. The process occurs when an applicant or participant does not agree with a decision by the LTCSA and informal dispute processes have been unsuccessful.

### ***Treatment and care disputes***

- 3.70** Treatment and care disputes occur when a scheme participant disagrees with a funding decision. During 2015-16, 21 disputes were lodged in relation to treatment and care decisions. This was a decrease from 18 disputes lodged in 2014-15. Less than 0.2 per cent of funding decisions result in a dispute. Ten of the 21 disputes lodged resulted in the original decision being upheld and only two resulted in the decision being overturned. It took on average 55 days to resolve a dispute. This is an increase on the average time of 48 days in 2014-15.<sup>155</sup>

### ***Eligibility disputes***

- 3.71** Eligibility disputes occur when there is disagreement with a decision by the LTCSA in relation to whether a person meets the entry criteria to become a scheme participant. Thirteen eligibility disputes were lodged in 2015-16 which is the same figure for 2014-15. It took 117 days on average to resolve an eligibility dispute. Three decisions were upheld and three decisions were overturned.<sup>156</sup>

<sup>154</sup> Answers to pre hearing questions, Mr Bhatia, p 27.

<sup>155</sup> icare, *Insurance and Care Annual Report 2015-16*, 2016, p 76.

<sup>156</sup> icare, *Insurance and Care Annual Report 2015-16*, 2016, p 76.

***Motor accident injury disputes***

- 3.72 Motor accident injury disputes are resolved through a panel of three legal representatives. They are very rare and only one dispute of this nature was received in 2015-16. Only one other dispute of this type has been received since the scheme commenced ten years ago.<sup>157</sup>

**Complaints**

- 3.73 The LTCSA receives complaints from scheme participants, family members, legal representatives and advocate groups. The vast majority of complaints come from scheme participants. During 2015/16, 54 complaints were lodged. On average, complaints took 19 days to be resolved. The table below provides further information.<sup>158</sup>

**Table 5 Lifetime Care and Support scheme complaints 2015-16**

Nature of complaint	Number of complaints	Average time to resolve (days)
Funding decision	8	14
Guidelines/legislation	3	19
Level of service	32	8
Policy/procedures	9	9
Privacy	1	3
Ministerial	1	43
Total	54	19

- 3.74 The LTCSA uses a three level model of complaint handling. The majority of complaints are resolved by a frontline staff member (level 1). Complaints that cannot be resolved are escalated to an internal review process (level 2). Those that require further review are forwarded to an external agency, such as the Ombudsman (level 3).<sup>159</sup>
- 3.75 During 2016, the LTCSA implemented a new process to better capture the number of complaints being made to frontline staff. This resulted in a sharp increase in the total number of complaints being recorded (201 complaints between July 2016 - March 2017) but a decrease in the number of complaints being escalated. Only 17 complaints were escalated to a level 2 complaint.<sup>160</sup>
- 3.76 icare advised that it provides staff with regular training on complaints handling processes and the Ombudsman has also been engaged to deliver soft skills training.<sup>161</sup>

<sup>157</sup> icare, *Insurance and Care Annual Report 2015-16*, 2016, p 76.

<sup>158</sup> icare, *Insurance and Care Annual Report 2015-16*, 2016, p 75.

<sup>159</sup> Answers to pre hearing questions, Mr Bhatia, p 23.

<sup>160</sup> Answers to pre hearing questions, Mr Bhatia, p27.

<sup>161</sup> Answers to pre hearing questions, Mr Bhatia, p27.

## Financial matters

- 3.77** As discussed in chapter 1, the Lifetime Care and Support Authority Fund is financed primarily through the Medical Care and Injury Services levy collected from third party insurance policy holders.<sup>162</sup>
- 3.78** The LTCSA estimates average liability per participant of more than \$2 million. On an individual basis, this could range from \$500,000 to \$10 million.<sup>163</sup> Dr Nick Allsop, Chief Actuary, icare advised that the scheme's current funding ratio is 150 per cent, with a fifty per cent chance of those liabilities being too high or too low.<sup>164</sup>
- 3.79** The LTCSA uses a life-costing model to estimate the cost of providing lifetime treatment and to calculate cash flow requirements on an annual basis. In 2014, the size of the liability to the annual revenue cash flow was approximately 6:1 but estimated to increase in future years to 25:1.<sup>165</sup>
- 3.80** The LTCSA engages an external actuary to conduct biannual independent analysis of the scheme's financial performance.<sup>166</sup> Pricewaterhouse Coopers provided an actuarial certificate on the scheme's outstanding claims liability as at 30 June 2016 and explained the difficulty of providing firm estimates:

There is limitation upon the accuracy of the estimates in this certificate in that there is an inherent uncertainty in any estimate of outstanding claims liabilities. This is due to the fact that the ultimate liability for claims is subject to the outcome of events yet to occur. These include, but are not limited to, the mortality rate and participants' injury severity improvements with the scheme, the number of participants accepted into the scheme, price adjustments by service providers and future levels of care and support provided to participants.<sup>167</sup>

### Key performance indicator data

- 3.81** According to key performance indicator data included in the icare 2015/16 Annual Report there is an adequate surplus of funds to ensure the fund remains viable. Table 6 provides further detail.<sup>168</sup>

<sup>162</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 48.

<sup>163</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Authority of NSW 2014-15 Annual Report*, 2015, p 30.

<sup>164</sup> Evidence, Dr Nick Allsop, Chief Actuary, icare, 2 June 2017, p 47.

<sup>165</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Authority of NSW 2014-15 Annual Report*, 2015, p 30.

<sup>166</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Authority of NSW 2014-15 Annual Report*, 2015, p 30.

<sup>167</sup> icare, *Insurance and Care NSW Financial Statements 2015-16*, 2016, p 72.

<sup>168</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 74.

**Table 6 Key performance indicators – as at 30 June 2016**

KPI	Purpose	Target	2015-16
Annual levy income aligns with actuarial estimates	To ensure sufficient revenue to meet levy income projections	100%	101%
Scheme funding ratio to expenses	To ensure the scheme has sufficient funds to meet the projected needs of participants and remains viable	>120%	150%
Payments ≤ actuarial estimates	To track payments to ensure scheme viability	<100%	88%
New client costs within actuarial estimates (number of quarters exceeding estimates)	To monitor the intake of participants	<3 quarters	<1quarter
Scheme efficiency ratio	To monitor the cost of administering the scheme	91.5%	91.6%

- 3.82** In its 2015-16 Annual Report, icare noted that expenditure on operations was within target and the high level of expenditure on participants had been maintained.<sup>169</sup>
- 3.83** According to the LTCSA 2015-16 financial statements, the scheme recorded a total comprehensive income of \$220.086 million. This was noticeably lower than comprehensive income reported in 2014-15 which was \$342.162 million. The difference in income can be largely attributed to investment revenue, which was \$128.807 million in 2015-16 in comparison to \$397.594 million in 2014-15.<sup>170</sup>
- 3.84** icare reported that overall investment income had fallen by approximately \$1.8 billion across all of the insurance and care schemes it administers and attributed this to a volatile market and low interest rates.<sup>171</sup>
- 3.85** icare reported a decrease in the movement in provision for future participant care and support services from \$205,665,000 in 2015 to \$40,286,000 in 2016.<sup>172</sup> icare explained the decrease in the movement in provision for future participant care and support services in 2016 compared to 2015 is mainly due to changes in participant-related and service usage assumptions. These assumptions include changes to the age distribution of participants, injury types and knowledge of improvement rates:

There has been a greater number of older participants in the Scheme, especially those with a spinal cord injury, than predicted; a greater number of incomplete spinal cord injuries compared to complete injuries than was originally predicted; and adjustments based on experience and a better understanding of the improvements in participants with a brain injury, particularly younger participants. The changes in assumptions are

<sup>169</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 74.

<sup>170</sup> icare, *Insurance and Care NSW Financial Statements 2015-16*, 2016, p 72.

<sup>171</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 8.

<sup>172</sup> icare, *Insurance and Care NSW Financial Statements 2015-16*, 2016, p 85.



also based on an increasing reliance on the 'actual' experience of service usage, rather than estimated use, as the Scheme grows.<sup>173</sup>

- 3.86** icare stated that the scheme remains fully funded to meet its liabilities to fund future treatment and care needs.<sup>174</sup>

### **Expenditure on treatment, care and rehabilitation services**

- 3.87** icare reported that \$114.8 million was spent on treatment, care and rehabilitation services during 2015-16.<sup>175</sup> The amount spent on these services has trended upwards over the past three years as the following table illustrates.<sup>176</sup>

**Table 7 Expenditure on treatment, rehabilitation and attendant care services 2014 - 2016**

<b>Financial year</b>	<b>Funds expended</b>
2013-14	\$83.6 million
2014-15	\$99.2 million
2015-16	\$114.8 million

- 3.88** The following table details the services that were provided and for each service, the funds expended and the proportion of total expenditure during 2015/16.<sup>177</sup>

**Table 8 Cost of treatment, care and rehabilitation services, 2015-16**

<b>Service</b>	<b>Expenditure \$m</b>	<b>Expenditure %</b>
Hospital	19.2	17
Medical	10.1	9
Rehabilitation	15.9	14
Case management	6.1	5
Attendant care	47.8	42
Equipment	8.3	7
Home modifications	7.4	6
Total	114.8	100

- 3.89** As specified in the table, the highest proportion of funds is spent on attendant care services. It is estimated that this will increase from 42 per cent to 70 per cent of expenditure over time.<sup>178</sup>

<sup>173</sup> Answers to questions on notice, Mr Bhatia, p 8.

<sup>174</sup> Answers to questions on notice, Mr Bhatia, p 8.

<sup>175</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 78.

<sup>176</sup> Answers to pre-hearing questions, Mr Bhatia, p 8.

<sup>177</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 78.

<sup>178</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 78.

*Committee comment*

- 3.90** The committee is encouraged by the figures presented that indicate that the LTCS scheme is viable and has a surplus of funds that will contribute to its continuing financial sustainability. The committee commends icare on its financial management of the LTCS scheme's funds.

## Chapter 4 Recommendations from the previous review

This chapter examines the response to the recommendations made by the committee in the fifth review of the exercise of the functions of the Lifetime Care and Support Authority.

### Recommendations from the fifth review of the exercise of the functions of the Lifetime Care and Support Authority

- 4.1 This section examines in turn the response by the government<sup>179</sup> to each of the recommendations made in the committee's fifth review of the Lifetime Care and Support Authority (LTCSA), along with any further action since that response was tabled.

#### Recommendation 1: Information regarding stakeholder consultation groups

**LTCSA fifth review recommendation 1:** That the Lifetime Care and Support Authority publish clear information on its website regarding stakeholder consultation groups that have been established by the authority, and note that no advisory committee has been established.

- 4.2 This recommendation was made in response to the level of confusion expressed by key stakeholders during the fifth review in relation to the Lifetime Care and Support consultative groups and the discontinuation of the Lifetime Care and Support Council.
- 4.3 The government supported this recommendation and the LTCSA subsequently published information on its website regarding its stakeholder groups and the dissolution of the Lifetime Care and Support Council. Information was also published in the LTCSA publications *Lifetime care and Support E-Newsletter* for service providers, and *Momentum Newsletter* for approved case managers.
- 4.4 icare advised that since the last review, the number of Participant Reference Groups has been increased from one to three to deliver a regional focus. There are now groups based in Sydney, Newcastle and Parramatta. This has resulted in more opportunities for participants, their families and carers to be involved in consultation processes, and to provide a local perspective on issues.<sup>180</sup>
- 4.5 Lifetime Care has consulted with scheme participants regarding membership of the Participant Reference Groups. It has also promoted the groups by publishing stories and calling for membership in the participant newsletter, *Shine*, which is used as a wider mechanism to consult with participants.

<sup>179</sup> Correspondence from the Hon Dominic Perrottet, Minister for Finance, Services and Property to the Clerk of the Parliaments, providing government response to the fifth review of the exercise of the functions of the Lifetime Care and Support Authority, 24 July 2015.

<sup>180</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 4.

***Committee comment***

- 4.6 The committee is pleased that information regarding stakeholder groups continues to be available through the LTCSA website and in the publications for case managers and service providers. The committee believes that the Participant Reference Groups provide a valuable consultative forum for scheme participants and their families and carers. The committee welcomes the news that the number of Participant Reference Groups has increased since the fifth review so that the opportunity to participate has been provided to a greater number of stakeholders.

**Recommendations 2, 3 and 5: Annual Report information**

**LTCSA fifth review recommendation 2:** That the Lifetime Care and Support Authority ensure that future annual reports provide detailed information and qualitative analysis on service delivery and the participant satisfaction survey.

**LTCSA fifth review recommendation 3:** That the Lifetime Care and Support Authority report using key performance indicators in its annual reports.

**LTCSA fifth review recommendation 5:** That the Lifetime Care and Support Authority report on the usage of the Accident Advice Support Grant in its annual report.

- 4.7 During the fifth review, the New South Wales Bar Association criticised the LTCSA for providing inadequate information in its annual reports. The association was particularly scathing of the lack of service delivery information and analysis of participant satisfaction survey data.<sup>181</sup>
- 4.8 In assessing the evidence, the committee agreed that the LTCSA could improve the information it provided in its annual reports, and in addition, noted that incorporating key performance indicators would make it easier for its future reviews on the performance of the authority.<sup>182</sup>
- 4.9 The LTCSA agreed that the information it reported on could be enhanced by providing more qualitative information on the participant satisfaction survey results and performance data, including participant satisfaction levels, timeliness of service delivery and efficiency of the scheme.<sup>183</sup>
- 4.10 The government subsequently supported recommendations 2 and 3 from the committee and the LTCSA committed to develop key performance indicators and report on these in its annual reports, as well as providing detailed analysis on service delivery and participant satisfaction survey results.

<sup>181</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), pp 21-22.

<sup>182</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), p 23.

<sup>183</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), p 22.

- 4.11** The information on service delivery and the participant satisfaction survey increased in the LTCSA annual reports for 2013/14 and 2014/15, and key performance indicators were also developed and included.<sup>184</sup>
- 4.12** The most recent annual report for the Lifetime Care and Support (LTCS) scheme, the *Insurance and Care NSW Annual Report 2015-16*, has included detailed information from the most recent scheme participant satisfaction survey, including specific data relating to case management services, attendant care, home modifications, assistive technology, vocational support and other services.<sup>185</sup>
- 4.13** In addition, the *Insurance and Care NSW Annual Report 2015-16* includes key performance indicator information in relation to LTCS scheme fund sustainability.<sup>186</sup>

#### ***Accident Advice Support Grant***

- 4.14** The Accident Advice Support Grant provides a one-off payment of \$5,000 to fund legal and accident investigation advice for scheme applicants and participants. The grant is the only method to fund legal and accident investigation advice under the scheme; therefore the committee recommended that the LTCSA report on its use in the annual report.<sup>187</sup>
- 4.15** This recommendation was supported by the government and data was included in the 2013/14 and 2014/15 LTCSA annual reports. In its 2015/16 annual report, icare also reported on the grant, noting that its availability had been mentioned to several scheme participants but had only been utilised by one injured person.<sup>188</sup>
- 4.16** The committee did not receive any evidence regarding the Accident Advice Support Grant during this review.

#### ***Committee comment***

- 4.17** The committee is pleased to see that icare has reported on the results of its most recent participant feedback survey in the *Insurance and Care NSW Annual Report 2015-16*. The information provided gives both a qualitative and quantitative assessment of the performance of the LTCSA in relation to client satisfaction and program delivery.
- 4.18** The key performance indicator data also provides clarity on the financial viability and efficiency of the scheme.
- 4.19** The committee is also pleased to see that information about the Accident Advice Support Grant is included in the icare 2015/16 annual report.

<sup>184</sup> Answers to pre-hearing questions (Tab A), Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 1.

<sup>185</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, pp 77-79.

<sup>186</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, p 74.

<sup>187</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), pp 36-37.

<sup>188</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, p 76.

**Recommendation 4: Funding for the In-Voc program**

**LTCSA fifth review recommendation 4:** That the Lifetime Care and Support Authority commit to the long term funding of the In-Voc program.

- 4.20** The In-Voc pilot program (which was discussed in chapter 3 at 3.55 to 3.56) was highly commended by stakeholders during the fifth review and Spinal Cord Injuries Australia recommended that the program continue to receive funding beyond the pilot period.<sup>189</sup>
- 4.21** The government supported the recommendation from the committee to carry on funding the program and committed \$2 million to continue the program until December 2019.

***Committee comment***

- 4.22** The committee is pleased that funding for the In-Voc program has continued since the fifth review and that it continues to deliver great outcomes.

**Recommendation 6: Independent dispute resolution process**

**LTCSA fifth review recommendation 6:** That the Lifetime Care and Support Authority work with stakeholders to examine the feasibility of implementing a more robust and independent dispute resolution process for disputes concerning eligibility and treatment.

- 4.23** The scheme's dispute resolution process was criticised in both the fourth and fifth reviews of the LTCSA. The primary concern raised was in regard to the independence of the review process and the absence of an independent body to review decisions made by the authority in relation to eligibility to join the scheme and the provision of treatment and care services.<sup>190</sup>
- 4.24** The government supported the committee's recommendation to examine the feasibility of implementing a more robust and independent scheme and the LTCSA engaged a consultant to review the dispute resolution process in consultation with stakeholders. That review was completed in 2016 and icare is in the process of implementing the resulting recommendations.<sup>191</sup>
- 4.25** In this review, the dispute process was again the subject of discussion with similar concerns raised in regard to autonomous decision making. The Law Society of New South Wales noted its frustration that 'there have been no further developments to create an accessible administrative appeals mechanism which is external to the Authority'.<sup>192</sup>

<sup>189</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority*, (2014), pp 30-31.

<sup>190</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority* (2014), p 38.

<sup>191</sup> Answers to pre-hearing questions (Tab A), Mr Bhatia, p 3.

<sup>192</sup> Submission 10, Law Society of New South Wales, p 2.

**4.26** During evidence, Mr Tim Concannon, Law Society of New South Wales, emphasised the importance of an independent and affordable avenue of appeal available to participants:

First, the appeal mechanisms for questions of eligibility to the scheme and for assessment of whether treatment or care is considered reasonable or necessary are embedded in the authority itself. There is no independent means of testing these decisions that is accessible to the average participant. A Supreme Court summons is not a viable option for the impecunious participant who faces an adverse costs order if the summons is unsuccessful. The society has no particular issue with the decision making of the authority at the moment, but that is not the point. The point is that in the future there is a risk that an organisation which is not subject to external scrutiny will fail to adjust to community expectations.<sup>193</sup>

**4.27** Mr Concannon noted that he was aware of only one tribunal, the NSW Civil and Administrative Tribunal (NCAT) that provides an avenue for lodgement of disputes to be made without risking exposure to damages or an adverse costs order if the claimant is unsuccessful. However, he was not aware if NCAT in its current form would have the expertise necessary to deal with disputes of this nature.<sup>194</sup>

**4.28** Mr Concannon suggested that the minimal sums of money that were being disputed did not make it feasible for a scheme participant to lodge a dispute with the Supreme Court which could result in significant costs for the claimant if they lose.<sup>195</sup>

**4.29** Concerns about the efficacy of the dispute resolution framework were also raised during this review. These will be discussed in chapter 5.

*Committee comment*

**4.30** The committee is pleased to learn that the LTCSA worked with a consultant to review the dispute resolution process and is in the process of implementing the resulting recommendations. The committee looks forward to hearing more about the outcomes of the implementation of those recommendation during its next review of the scheme.

**4.31** The committee acknowledges that only a small number of claims are lodged for external review and notes that this could be because of the risk and expense of pursuing a claim. Aggrieved participants may be more inclined to lodge an external dispute if there was a low risk, low cost option.

**4.32** The committee encourages icare to continue consultation with stakeholders but suggests that consultation be extended to include the Participant Reference Groups and the Lifetime Care Reference Group. These groups may be able to shed further light on whether participants would appeal externally if there was an option that was more economically accessible.

<sup>193</sup> Evidence, Mr Tim Concannon, Law Society of New South Wales, 28 June 2017, p 3.

<sup>194</sup> Evidence, Mr Concannon, 28 June 2017, p 6.

<sup>195</sup> Evidence, Mr Tim Concannon, 28 June 2017, p 6.

**Recommendation 7: Interim accommodation options**

**LTCSA fifth review recommendation 7:** That the NSW Government establish a working group with representatives from relevant government agencies to examine interim accommodation options for individuals so they can be discharged from hospital in a timely manner, and in doing so, investigate models in other jurisdictions, including Queensland.

- 4.33** The issue of interim accommodation was raised during the committee's fourth and fifth reviews of the LTCSA. A lack of suitable interim accommodation meant that participants were staying in hospital longer than needed.
- 4.34** While the LTCSA is not directly responsible for providing interim accommodation, it supported this recommendation and committed to establishing a cross agency working group to examine accommodation issues.
- 4.35** Since the last review, the working group was established and a report was produced regarding interim accommodation options. Subsequently icare advised the committee that it is 'implementing strategies that will improve participant access to interim accommodation options.'<sup>196</sup>
- 4.36** As noted in the last review, icare and the Sargood Foundation partnered together to build a residential care facility at Collaroy that would provide interim accommodation for people with spinal cord injuries.<sup>197</sup> Sargood on Collaroy opened in 2016, offering accommodation for LTCS scheme participants following their discharge from hospital, and until necessary modifications have been made to their homes. In addition to accommodation, a range of programs are offered to equip the injured person with the skills and information needed to maintain their health and lifestyle.<sup>198</sup>
- 4.37** Sargood on Collaroy has been fully operational since March 2017 and occupancy rates are slowly increasing. In April, occupancy was at 41.3 per cent, exceeding the established 35 per cent target. Half of the occupants are participants in the LTCS scheme.<sup>199</sup>
- 4.38** The committee did not receive any evidence during this review in relation to interim accommodation.

***Committee comment***

- 4.39** The committee is pleased to note that the LTCSA formed a cross agency working group to progress the issue of insufficient interim accommodation options and as a result, is working on strategies to improve access to services.

<sup>196</sup> Answers to pre-hearing questions (Tab A), Mr Bhatia, p 3.

<sup>197</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority* (2014), p 31.

<sup>198</sup> Answers to pre-hearing questions, Mr Bhatia, pp 12-13.

<sup>199</sup> Answers to pre-hearing questions (Tab A), Mr Bhatia, p 13.



- 4.40 The committee also commends icare and its partners on the establishment of Sargood on Collaroy. We look forward to hearing more about the success of this initiative in the next review.

**Recommendation 8: Greater self-management of care**

**LTCSA fifth review recommendation 8:** That the Lifetime Care and Support Authority explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.

- 4.41 During the fifth review, particular stakeholders expressed the view that participants should be able to manage their own funds and be given more choice in how funds are expended on treatment and care needs. The LTCSA advised that it was keen to provide more choice to participants and was trialling self-directed funding for scheme participants.
- 4.42 The government supported the committee's recommendation to explore providing participants with periodic sums and the LTCSA undertook a pilot program where periodic lump sum payments to purchase attendant care services.<sup>200</sup>
- 4.43 Since December 2016, scheme participants can elect to manage some or all of their supports, including attendant care services. Funds are directly deposited into the participant's bank account on a monthly basis, requiring the participant to report monthly on expenditure.<sup>201</sup>
- 4.44 icare advised that 14 participants are currently self-managing their attendant care services. An additional 39 participants have expressed interest in direct funding for this purpose and Lifetime Care is working with them to facilitate this where possible.<sup>202</sup>
- 4.45 During evidence, icare acknowledged that not all participants will be capable or interested in self-managing but it was about providing the option:
- ... we are starting from a position of saying that we would like everybody within the scheme to choose just how much control they have over choosing their service provider and managing the purchasing of those services after us getting out of the way as much as they would like us to get out of the way—so providing budgets with obviously checks and balances along the way to make sure that things are being properly spent.<sup>203</sup>
- 4.46 In recognition that participants will need varying levels of support to take on self-management, icare is engaging a number of service providers who will provide training, support, advice and insurance protection.<sup>204</sup>

<sup>200</sup> Answers to pre-hearing questions, Mr Bhatia, pp 3-4.

<sup>201</sup> Answers to pre-hearing questions, Mr Bhatia, p 20.

<sup>202</sup> Answers to supplementary questions on notice, Mr Bhatia, p 1.

<sup>203</sup> Evidence, Mr John Ferguson, Group Executive, Integrated Care, icare, 2 June 2017, p 55.

<sup>204</sup> Answers to supplementary questions on notice, Mr Bhatia, p 2.

- 4.47 icare is keen to promote self- management as an option and has published information on the LTCSA website and will include articles in the scheme’s participant magazine, ‘*Shine*’.<sup>205</sup>

***Committee comment***

- 4.48 The committee considers that providing a person-focused, flexible approach to service delivery rather than having a one size fits all approach is essential and empowering for LTCSA scheme participants. We are pleased that icare has progressed the attendant care services pilot program and continues to provide self-management options that can be tailored to an individual’s capacity and preparedness. The committee commends icare’s efforts to promote the option of self-management and provide training and support to scheme participants to enable participation where possible. We recommend that the LTCSA continue to explore the feasibility of providing participants with periodic sums to promote greater self-management of care.

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**Recommendation 2**

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.

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**Recommendations 9 and 10: Website information**

**LTCSA fifth review recommendation 9:** That the Lifetime Care and Support Authority consult with the Participant Reference Group and liaise with stakeholders to increase the focus of participant information on its website.

**LTCSA fifth review recommendation 10:** That the Lifetime Care and Support Authority liaise with stakeholders to produce an information sheet on its website regarding supported accommodation options for scheme participants.

- 4.49 Several stakeholders were critical of the LTCSA website during the fifth review report for the lack of information provided for participants.<sup>206</sup> The Physical Disability Council pointed out that the information available focused on professional service providers, rather than scheme participants. It was suggested that there should be more information on resources, such as advocacy services and housing.<sup>207</sup>
- 4.50 Since the fifth review, the LTCSA has made available information on accommodation including houses providing shared in-home support services. The authority also consulted with the Physical Disability Council in the development of information sheets about Lifetime

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<sup>205</sup> Answers to supplementary questions on notice, Mr Bhatia, p 2.

<sup>206</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority* (2014), pp 62-63.

<sup>207</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fifth review of the exercise of the functions of the Lifetime Care and Support Authority* (2014), pp 62-63.

Care's shared in-home support services to inpatient rehabilitation units in New South Wales. Lifetime Care has also published this information on its website.<sup>208</sup>

- 4.51** The LTCSA supported the committee's recommendation to consult with stakeholders on developing its website to provide more client focused information. The authority commenced a review of the website, seeking feedback from the Participant Reference Group and other stakeholders. A new website was launched in December 2014.<sup>209</sup>
- 4.52** Since the fifth review report and as a result of the establishment of icare, the existing website of the LTCSA is accessible through a hyperlink on the icare website. icare advised that it is reviewing the LTCSA webpages to make the information more client focused and accessible. The new LTCSA website will be launched toward the end of 2017:

The redesign of the website is being created specifically with the needs of the users in mind. The designs are being tested with Lifetime Care and Dust Diseases Care participants to ensure it meets their needs. The new website will meet AA accessibility standards in accordance with the Web Content Accessibility Guidelines version 2.0. Once the website is launched, icare will continue to optimise the user's digital experience based on data and insights.<sup>210</sup>

***Committee comment***

- 4.53** The committee is pleased that icare has conducted a consultative process in designing the new LTCSA website. The committee looks forward to seeing the website following its launch.

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<sup>208</sup> Answers to pre-hearing questions (Tab A), Mr Bhatia, p 4.

<sup>209</sup> Answers to pre-hearing questions (Tab A), Mr Bhatia, p 4.

<sup>210</sup> Answers to pre-hearing questions on notice, Mr Bhatia, p 16.



## Chapter 5 Scheme applications, participation and dispute resolution

This chapter firstly examines the manner in which people, or their representatives, apply to the Lifetime Care and Support scheme. The chapter will then address issues relating to scheme participation, including the interim participation period and exiting the scheme. Finally, the efficacy of the dispute resolution framework is discussed.

### Scheme applications

- 5.1 An application to become a participant in the Lifetime Care and Support (LTCS) scheme can be made by the injured person, or by the insurer responsible for the injured person's motor vehicle accident claim.<sup>211</sup>

#### Applications by insurers

- 5.2 An insurer can make an application for the injured person to enter the LTCS scheme with the person's agreement. However, the insurer can also submit an application without the person's consent.<sup>212</sup>
- 5.3 In addition, the State Insurance Regulatory Authority (SIRA) may direct the insurer to make an application for the person to become a participant in the scheme.<sup>213</sup> SIRA explained that this direction would only be made if the claimant's best interests were at risk. It advised the committee that it has never had call to exercise this direction and it was not aware of the former Motor Accidents Authority using this provision either.<sup>214</sup>

#### *Financial incentive to transfer applicants to the scheme*

- 5.4 An insurer who accepts liability for a motor vehicle accident claim is required to meet the costs of all reasonable and necessary treatment, rehabilitation and care needs for the claimant from the date the person is injured in a motor vehicle accident. If the person is subsequently accepted as a participant in the LTCS scheme, the financial burden of providing treatment, rehabilitation and care services is transferred from the insurer to the Lifetime Care and Support Authority (LTCSA).<sup>215</sup>
- 5.5 Some stakeholders believe that insurers may be encouraged by this financial incentive to lodge applications on behalf of claimants who may not want to join the LTCS scheme.<sup>216</sup>
- 5.6 Mr Tim Concannon, Law Society of New South Wales elaborated on this during evidence:

<sup>211</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 8.

<sup>212</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 8.

<sup>213</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 8.

<sup>214</sup> Answers to pre-hearing questions, SIRA, 19 May 2017, p 1.

<sup>215</sup> Submission 3, Suncorp, p 4.

<sup>216</sup> Submission 9, Australian Lawyers Alliance, p 4.

There is a real incentive for insurers to lodge such applications as a successful application will transfer the liability from the insurer to the scheme itself, which is funded by the Lifetime Care and Support Levy. This can lead to the perverse situation where an insurer will seek to argue that the claimant's injuries are severe in order to comply with the eligibility guidelines under the scheme and the claimant, who might often prefer the autonomy of a once and for all settlement to ongoing medical coverage, seeks to argue that the injuries are not that severe.<sup>217</sup>

- 5.7** Suncorp acknowledged that there was a financial incentive for insurers to transfer participants to the LTCS scheme. In addition, it suggested that some insurers may delay expensive treatments if they believed a transfer to the scheme was imminent. Suncorp proposed that extending the LTCS scheme's liability to the date of the accident, rather than from when the individual is accepted as a LTCS scheme participant could prevent this type of behaviour:

Adjusting the date of liability would ensure that insurers invest in all possible treatment early in the process, maximising the opportunity of expediting long-term recovery and capacity building. Any incentive for insurers to curtail or delay particularly expensive treatments on the expectation that liability would imminently transfer to the LTCSA would be removed, which is in the best interests of participants.<sup>218</sup>

- 5.8** During evidence, Mr Matthew Kayrooz, Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp, Mr Kayrooz expanded on this issue:

... if we think it [the claim] is going to go into lifetime care, if there is a major intervention we need to make, and we think it is obviously lifetime care, there is a financial incentive there for an insurer to say, "We will not put that in place because we know its lifetime care. We are not going to get paid back for it. So we'll wait until it goes into lifetime care and they can pay for it". But there is a gap for 12 months missing there. I put my hand up, insurers do say, "Yes, it is our cost base." There are not many claims here, we are not talking about a large amount of money. What we are talking about are the incentives—any incentives that prevent the early intervention in health care for people with brain injuries should be removed.<sup>219</sup>

- 5.9** icare pointed out that the majority of treatment and care costs incurred while the individual is in hospital are covered through a bulk billing arrangement with NSW Health, and that it is unlikely the insurer would be required to meet costs while a person is in a rehabilitation unit for spine or brain injury. icare stated that in the event an eligibility decision is delayed until after a person has left a brain or spinal cord rehabilitation unit, Lifetime Care will retrospectively pay the full costs of these services.<sup>220</sup>

- 5.10** icare acknowledged that bringing forward the date of liability could provide an advantage for a small cohort of participants in terms of receiving treatment and care that isn't covered through bulk billing. However, icare was concerned that such a change could delay early notifications

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<sup>217</sup> Evidence, Mr Tim Concannon, Law Society of New South Wales, 28 June 2017, p 2.

<sup>218</sup> Submission 4, Suncorp, p 4.

<sup>219</sup> Evidence, Mr Matthew Kayrooz, Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp, 2 June 2017, p 28.

<sup>220</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017, p 12.

by insurers, as the financial incentive to move people into the scheme would no longer be there. In turn, early intervention and treatment could be postponed.<sup>221</sup>

**5.11** icare also cautioned that any change to the liability date could impact on the scheme levy:

There could be a shift in liability from CTP insurers to the LTC scheme for the few expenses not already covered by the bulk billing agreement. This could allow CTP insurers to lower their premium (which is subject to GST). This could result in a corresponding increase to the LTC scheme levy by a slightly lower amount, or may be offset, because the LTC scheme is not subject to GST.<sup>222</sup>

**5.12** icare added that further consultation with SIRA would be required to accurately calculate cost differences.<sup>223</sup>

*Committee comment*

**5.13** The committee is very concerned that some insurers may be delaying treatment and care services for claimants on the assumption they will be transferred to the LTCS scheme. The committee encourages icare and SIRA to work together in monitoring insurer behaviour and to take appropriate punitive action when insurers are withholding treatment and care.

**5.14** While the committee acknowledges that bringing forward the date of liability could minimise this type of perverse behaviour, we believe that further analysis on the impacts of changing this date is needed. The committee sees merit in icare considering the proposal and in doing so it should consult with SIRA on the effects it would have on the Medical Care and Injury Services levy.

*Multiple applications*

**5.15** Currently, there is no limitation on the number of times an insurer can lodge an application on behalf of a claimant to enter the LTCS scheme. The Australian Lawyers Alliance submitted that in the interest of fairness for the injured person, a limit should be imposed:

The making of multiple membership applications puts an unfair burden on participants. It can lead to uncertainty and distress for the injured person and creates delay and additional costs in the finalisation of other compensation payments. Insurers should only be able to make one such application.<sup>224</sup>

**5.16** Mr Concannon, Law Society of New South Wales, also believed the number of applications an insurer makes should be limited. He noted two recent challenges on eligibility made by insurers to the Supreme Court:

These decisions do cause me to question whether the right of insurers to lodge applications for an injured person's entry into the scheme are limited in some way in

<sup>221</sup> Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, pp 2-3.

<sup>222</sup> Answers to questions on notice, Mr Bhatia, p 3.

<sup>223</sup> Answers to questions on notice, Mr Bhatia, p 3.

<sup>224</sup> Submission 9, Australian Lawyers Alliance, p 4.

terms of time or the number of applications. Regrettably, there have been a number of cases where the insurer has lodged the application two to three years down the track and thus delayed the finalisation of the associated common law claim for damages.<sup>225</sup>

**5.17** Mr Andrew Stone, New South Wales Bar Association agreed that the current process may subject to abuse and removing the right for insurers to make multiple claims should be given due consideration.<sup>226</sup>

**5.18** Mr Cameron Player, Executive Director, Dispute Resolution Services, SIRA, expressed his view that there could be a perception that insurers were lodging multiple applications but suggested insurers may be just using the dispute resolution process which has multiple steps:

I think what we are seeing is one application by an insurer that might go through multiple stages of the review processes, but I do not think that at the end of that process what you are seeing is the insurers coming back in six months' or nine months' time having another shot. I do not think that is what is occurring.<sup>227</sup>

**5.19** In responding to this issue, SIRA was able to confirm that there were no instances of insurers making multiple applications for scheme participation:

There are no instances of repeated applications for one injured person ever being referred back to the Proper Officer on more than one occasion by either an insurer, a claimant, or the LTCSA. There were two instances (one in 2012 and one in 2015) of review panel decisions subsequently being remitted by the Supreme Court for a fresh panel decision to be made about a matter which had previously been referred to the Proper Officer.<sup>228</sup>

**5.20** icare advised that limiting the number of applications that could be made by insurers would require legislative change and could have negative implications for individuals and insurers should the individual's health deteriorate:

It could disadvantage injured persons and insurers in circumstances where they are found ineligible for the scheme following an application made by the CTP insurer. The injured person's condition could change and they may later be eligible on the basis of new medical information. In this circumstance, the injured person could apply to the scheme, however the CTP insurer would be prevented from applying to the scheme again on their behalf.<sup>229</sup>

**5.21** icare also added that eliminating the ability to lodge more than one claim could put additional pressure on the dispute resolution system:

If an insurer has made one application to the scheme on an injured person's behalf, their only remaining option to attempt to change this decision would be to dispute a

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<sup>225</sup> Evidence, Mr Concannon, 28 June 2017, p 2.

<sup>226</sup> Evidence, Mr Andrew Stone, New South Wales Bar Association, 2 June 2017, p 5.

<sup>227</sup> Evidence, Mr Cameron Player, Executive Director, Dispute Resolution Services, SIRA, 28 June 2017, p 36.

<sup>228</sup> Answers to questions on notice, SIRA, 21 July 2017, p 5.

<sup>229</sup> Answers to supplementary questions on notice, Mr Bhatia, p 8.



previous decision about eligibility. An increase in the number of applications for disputes about eligibility is likely to result.<sup>230</sup>

**5.22** Data provided by icare indicates that insurers lodge only a small number of applications:

Current data indicates that CTP insurers lodge a small number of applications. Over the last three financial years (up to 31 March 2017), insurers lodged 39 applications out of 626 applications made, being six per cent of all applications.<sup>231</sup>

**5.23** icare noted that during consultation with stakeholders on the current review of the Lifetime Care and Support Guidelines (discussed in chapter 3) it proposed a three year limit from the date of accident for receipt of applications to enter the scheme.<sup>232</sup>

**5.24** It was suggested that the introduction of the *Motor Accidents Injuries Act 2017* could resolve some of these issues. As discussed in chapter 2, injured claimants with particular injuries will become the financial responsibility of the LTCSA after five years. Mr Stone stated:

... some heat will go out of this in five years time because there will not be that advantage to the insurer to put people into the scheme; all they will be doing is avoiding their first five year liability not their lifetime liability.<sup>233</sup>

***Committee comment***

**5.25** The committee acknowledges the concerns raised that multiple applications can cause undue distress for claimants and can delay the settlement of claims. However, the evidence provided indicates that insurers are not lodging repeated applications. In addition, insurers lodge only a small percentage of the applications received by the LTCSA.

**5.26** The committee notes the comment by icare that limiting the number of applications an insurer can make could in fact be detrimental to individuals. The committee encourages icare to continue to discuss with stakeholders the merits of its proposal to limit applications to be made within a three year time frame following an accident.

**Delays in application process**

**5.27** The application process to enter the LTCS scheme usually commences when the injured applicant is still in hospital or rehabilitation. Applications are generally made with the input of hospital staff or social workers who will liaise directly with the LTCSA.<sup>234</sup>

**5.28** Suncorp noted that it has experienced delays in the application process, primarily because insufficient documentation is provided. Suncorp said that these issues generally occur in regional areas.<sup>235</sup>

<sup>230</sup> Answers to supplementary questions on notice, Mr Bhatia, p 8.

<sup>231</sup> Answers to questions on notice, Mr Bhatia, p 3.

<sup>232</sup> Answers to supplementary questions on notice, Mr Bhatia, p 8.

<sup>233</sup> Evidence, Mr Stone, 2 June 2017, p 5.

<sup>234</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>235</sup> Submission 3, Suncorp, p 4.

- 5.29** Further, Suncorp believes that some injured persons are at risk of not being captured by the scheme because essential paperwork is not being completed prior to the person's discharge from hospital. By the time this is discovered, precious time has passed during which they could have been receiving critical early intervention services:

It is our observation that whilst a head injury is recorded, the injured person may be discharged into the community, without engaging the Lifetime Care and Support Authority, even though this person may be eligible as a scheme participant. It is only when we discover we contact the injured person, sometime later when a claim form is lodged, that we discover the person is not managing his/her post discharge medical appointments and treatment.

By this time, crucial time is lost in properly assessing and providing suitable services for brain damage, particularly if it is mild to moderate brain damage. This is compounded by the difficulties insurers may experience in obtaining relevant medical records from the regional facilities, which take time. The delay is often further complicated when the injured person is legally represented.<sup>236</sup>

- 5.30** icare similarly reported that its decision making on eligibility applications may be subject to delay because insurers often submit applications without the appropriate supporting documentation:

It is when the application is made by the CTP insurer that delays in eligibility decisions are most likely to occur. This is generally the result of incomplete applications or lack of required documentation (such as medical information and reports). Over the last three years, 33 out of 39 applications made by the insurer were made an average of 500 days after the injury. In comparison, the overall average for all participants was 100 days from date of accident to notification to Lifetime Care.<sup>237</sup>

- 5.31** Another issue, raised by Mr Stone from the New South Wales Bar Association, is that while hospitals in New South Wales are generally good at ensuring injured persons are directed to the scheme, participants transferred to hospitals in other states can miss out:

...one [example] involved an accident in Wentworth and they had immediately been carted to hospital in Mildura and they did not get picked up across the border; another one involved an accident in Broken Hill where they were immediately flown to Adelaide, and they were not picked up. New South Wales hospitals are reasonably good at picking up people to come into the scheme. When they are immediately taken out of the State they sometimes slip through the cracks.<sup>238</sup>

- 5.32** Suncorp suggested that the application process could be improved by providing health services with training and information on the services available:

In the effort to continually improve the customer experience, we believe ongoing education is required at hospital facilities including (but not limited to) John Hunter,

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<sup>236</sup> Answers to questions on notice, Mr Matthew Kayrooz, Head of Accident and Trauma, Personal Injury Portfolio and Products Insurance, Suncorp, 29 June 2017, p 1.

<sup>237</sup> Answers to pre-hearing questions, Mr Bhatia, p 10.

<sup>238</sup> Evidence, Mr Stone, 2 June 2017, p 3.

Lismore, Wollongong, Wyong, and cross border hospitals to ensure appropriate support pathways are established with the LTCSA before discharge from hospital.<sup>239</sup>

- 5.33 icare noted that its approval processing times could be greatly improved if it had the power to compel insurers or solicitors to provide the necessary paperwork.<sup>240</sup>

*Committee comment*

- 5.34 The committee is concerned that there is a potential for motor accident victims to miss out on entry to the scheme due to a lack of information. The committee believes that the LTCSA should work with regional hospitals and cross border hospitals to improve the knowledge and awareness of the LTCS scheme amongst staff.

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**Recommendation 3**

That the Lifetime Care and Support Authority work with regional hospitals and cross border hospitals to facilitate a better understanding of the Lifetime Care and Support scheme and its application to those patients who have been catastrophically injured in a motor vehicle accident.

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- 5.35 The committee also notes icare's frustration with receiving incomplete paperwork, although acknowledges the insurer may be hindered in the application process because of the issues they have highlighted with regional hospitals. The committee does see the benefit of icare having the appropriate legislative powers to compel insurers to provide paperwork and would support legislative changes to increase these powers.

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**Recommendation 4**

That the NSW Government consider providing icare with legislative power to compel insurers to provide the information it needs to make decisions regarding scheme eligibility and treatment and care needs.

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**Scheme participation**

- 5.36 This section discusses the two year interim participation period that applies to new entrants to the LTCS scheme, and the transition to lifetime participation. It also looks at the reluctance of some individuals to enter or stay in the scheme for a variety of reasons. In addition, planning processes relating to transitioning out of the scheme are considered.

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<sup>239</sup> Answers to questions on notice, Mr Kayrooz, p 1.

<sup>240</sup> Answers to supplementary questions on notice, Mr Bhatia, p 7.

### Interim participation period

**5.37** As mentioned previously, participants enter the LTCS scheme on an interim basis for a period of up to two years. Prior to the completion of the interim period, the LTCSA assesses the participant's eligibility for lifetime participation.<sup>241</sup>

**5.38** The two year interim period commences on the day the participant is accepted in the scheme. Suncorp believes that the interim period should commence from the date of the accident to facilitate prompter acceptance of an individual's permanent participation in the scheme:

It is suggested that the two-year period run from the date of the accident causing the relevant injuries. This change would promote earlier resolution of the claim for the claimant. The claimant should be able to expect that their injury would have stabilised within the two-year period after the accident for the purpose of assessing their future pathway within the CTP and the LTCS schemes.<sup>242</sup>

**5.39** This suggestion was supported by Mr Stone from the New South Wales Bar Association, particularly in regard to those individuals entering the scheme after a significant period has passed from the date of the accident:

Suncorp have made what is a very sensible suggestion, namely, where there are delayed applications do not wait then [for] the two-year interim period. The two year interim period was designed to allow maximum recovery from brain injury before you made a decision about permanent membership. But it basically means that any application after two years should not go through that interim membership; it should be considerably shorter ...<sup>243</sup>

**5.40** Mr Stone noted that he is aware that the LTCSA has shortened the interim period in certain cases where an application for scheme participation is made several years after the accident. He believes that approach should always apply for anyone accepted into the scheme more than two years after the accident.<sup>244</sup>

**5.41** icare confirmed that the LTCSA does on occasion shorten the interim participation period, provided all parties agree that this is the right approach. This has occurred for participants with spinal injuries and those who have entered the scheme several years after the accident.<sup>245</sup>

**5.42** Nevertheless, icare believes the two year interim period serves an important purpose, particularly for those participants with brain injury:

For participants who have a traumatic brain injury, the duration of the interim participation is important. The two-year period is not just about time since injury, it is also the general time required for effective specialist treatment as required for a brain injury.<sup>246</sup>

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<sup>241</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines* (2015), p 7.

<sup>242</sup> Submission 3, Suncorp, p 5.

<sup>243</sup> Evidence, Mr Stone, 2 June 2017, p 5.

<sup>244</sup> Evidence, Mr Stone, 2 June 2017, p 5.

<sup>245</sup> Answers to pre-hearing questions, Mr Bhatia, p 14.

<sup>246</sup> Answers to pre-hearing questions, Mr Bhatia, p 14.

*Committee comment*

- 5.43** The committee believes that the interim participation period is an effective means of assessing a participant's condition and treatment and care needs. The committee also appreciates that there is flexibility for the LTCSA to shorten this period when it is warranted by the participant's injury and the length of time that has passed since the accident, therefore we do not believe that changing the date the period commences to the date of the accident is necessary.

**Participant resistance and reduced decision making capacity**

- 5.44** The Australian Lawyers Alliance noted that some participants are resistant to enter the scheme in spite of it being the most appropriate option in the circumstances:

A number of participants refuse to accept that they have an injury, particularly where the injury is not clearly physically identifiable, such as a brain injury. People can be experiencing symptoms whilst not accepting that they are suffering from an injury that requires treatment.<sup>247</sup>

- 5.45** The Insurance Council of Australia also pointed out that it has experienced reluctance from some claimants in relation to entering the scheme. However, its members believe that some lawyers are discouraging participation:

One area of friction that we have been notified about involves some solicitors advising claimants to reject requests to submit applications to the LTCS. This is not serving the claimant's best interests. Increased awareness raising of the scheme and its benefits may help to counter this.<sup>248</sup>

- 5.46** Ms Genevieve Henderson, Australian Lawyers Alliance, responded that initially lawyers were wary of the scheme but she believes that attitudes have changed:

This scheme has been around for a little while and I probably acknowledge that at the beginning lawyers were afraid of it and thought it was terrible. But I am sure that has gone—certainly from the Australian Lawyers Alliance point of view. Our role is to provide the best advice to the clients and for them to make the decision.<sup>249</sup>

- 5.47** Mr Stone stated that he in fact encourages people to apply for the scheme but acknowledged that that the scheme is not suitable for everyone:

At a personal level I can say I have worked very hard to persuade some people, "No, this is a good scheme—join up for it". Others will occasionally instruct us they do not want to be in the scheme, and often they have had two years as an interim member, they are borderline on whether they will get into the scheme or not on a brain injury, and they would prefer to be out of it. In some instances, you can understand that because the scheme is intrusive, it is going to somebody for permission for every item of expenditure for the rest of your life, and if you are marginal as to whether you

<sup>247</sup> Submission 9, Australian Lawyers Alliance, pp 4-5.

<sup>248</sup> Submission 4, Insurance Council of Australia, p 1.

<sup>249</sup> Evidence, Ms Genevieve Henderson, Australian Lawyers Alliance, 2 June 2017, p 4.

belong in or out and you are capable of managing your own affairs that might be something you do not want.<sup>250</sup>

- 5.48** Suncorp also reported that it had experience of participants who refuse to apply for the scheme. In most cases the LTCSA has contacted the individual and been effective in getting the person to participate. In those cases where this is not successful, Suncorp recommends cooperation between all interested parties:

Suncorp suggests that where these instances arise, there should be a collaborative approach between the LTCSA, claimants, their lawyers and insure to ensure claimants have an opportunity to understand the benefits in participating in the scheme.<sup>251</sup>

- 5.49** icare advised that in most cases where it encounters a person that does not want to become a scheme participant, it is due to the advice provided by the person's lawyer. icare stated that it would welcome the opportunity to work with stakeholders including health professionals, lawyers, and insurers on how to provide assistance to injured people who are reluctant to enter the scheme.<sup>252</sup>

- 5.50** The Australian Lawyers Alliance submitted that some individuals who are resistant to entering the scheme may in fact lack the intellectual ability to make such a decision:

One of the issues that was raised by the Australian Lawyers Alliance is when the Lifetime Care and Support Authority becomes aware that a person clearly lacks capacity at all and there is no other person to make appropriate orders. What can they do about it? What are they willing to do about it? So they are engaging with someone who has not got appropriate guardianship orders.<sup>253</sup>

- 5.51** In response to this issue, icare advised that applications for guardianship can be made by a wide range of people in the participant's life, including family members and members of the treating health team. However, it will make guardianship applications in the absence of any other appropriate person:

icare agrees with the ALA and has made several guardianship applications in appropriate circumstances. This has occurred where there were significant concerns and no other person could make an application.<sup>254</sup>

### *Committee comment*

- 5.52** The committee acknowledges that lawyers, insurers and the LTCSA perform an important role in advising potential scheme participants on their rights and their options and it believes that most participants are capable of making an informed decision on whether or not they apply to become an LTCS scheme participant. In situations where the person lacks capacity, and guardianship is the most sensible option, the committee believes icare is acting appropriately in making a guardianship application in the absence of family or other suitable person.

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<sup>250</sup> Evidence, Mr Stone, 2 June 2017, p 3.

<sup>251</sup> Submission 3, Suncorp, p 5.

<sup>252</sup> Answers to prehearing questions, Mr Bhatia, p 11.

<sup>253</sup> Evidence, Ms Henderson, 2 June 2017, p 14.

<sup>254</sup> Answers to supplementary questions on notice, Mr Bhatia, p 9.

### Exiting the scheme

- 5.53** During the interim participation period, the LTCSA will regularly update the relevant insurer on the participant's status and if it is likely they will be exiting the scheme or transitioning to lifetime participation. Suncorp advised that on occasion it has received very little notice that someone is leaving the scheme and it has had an inadequate period in which to contact relevant stakeholders. This can impact on the insurer's ability to provide continuity of treatment and care services for an individual.<sup>255</sup>
- 5.54** icare responded that it endeavours to provide insurers with notice four months before the interim participation period is due to end. However, icare acknowledges that this notice period can be shortened:
- On occasion, assessment of lifetime participation can be affected by the participant's availability or willingness to attend an assessment with a medical specialist or other clinician to complete a functional independence measure assessment or obtain the medical certificate required as part of the lifetime application process. This can mean that assessments sometimes occur very late in the two-year interim participation period. In these circumstances, Lifetime Care is unable to advise the CTP insurer any earlier that a participant is transitioning out of the Scheme.<sup>256</sup>
- 5.55** icare noted that it would be willing to discuss the process with Suncorp and develop improvements to the notification period.<sup>257</sup>

### *Committee comment*

- 5.56** The committee acknowledges that insurers need an adequate lead time to prepare for an individual who will be exiting the LTCS scheme. While icare is able to provide appropriate notice in most instances, it is occasionally insufficient. The committee is concerned that this can result in treatment and care services being disrupted. The committee encourages icare to work with stakeholders to develop a process that would improve the notification period to ensure participants experience a seamless transition out of the LTCS scheme.

### Dispute resolution

- 5.57** As mentioned in chapter 4, the dispute resolution process continued to be the subject of some criticism during the review.<sup>258</sup> A dispute can be lodged by an individual or an insurer in regard to an injured person's eligibility to enter the scheme, the participant's treatment and care needs, and in relation to whether an injury meets the legal definition of a motor accident injury. Each of these disputes has a different resolution process, involving multiple review stages.

<sup>255</sup> Submission 3, Suncorp, p 5.

<sup>256</sup> Answers to pre-hearing questions, Mr Bhatia, p 15.

<sup>257</sup> Answers to pre-hearing questions, Mr Bhatia, p 15.

<sup>258</sup> See, Submission 10, New South Wales Bar Association, p 2; Evidence, Mr Concannon, 28 June 2017, p 7.

### Eligibility disputes

- 5.58** Disputes about eligibility for either interim or lifetime participation in the scheme can be lodged by an insurer within six months of a decision being made. These disputes are referred to an Assessment Panel for determination.<sup>259</sup>
- 5.59** Assessment panels are comprised of three dispute assessors appointed by the LTCSA. Dispute assessors are health professionals (e.g. occupational therapists, physiotherapists, doctors) that have experience in diagnosing people with brain injury, spinal cord injury, burns, blindness or amputations.<sup>260</sup>
- 5.60** If the insurer believes there is an error in the assessment panel decision, they can refer the decision for review by the SIRA Dispute Resolution Service Division's Proper Officer of the Motor Accidents Medical Assessment Service (MAS) who will determine if the request for review satisfies the statutory test for referral to a review panel of three dispute assessors.<sup>261</sup>
- 5.61** Based on submissions from the parties to the original dispute, the Proper Officer will make a decision to dismiss the application if it doesn't satisfy the statutory test or accept the application and refer it to another panel of three dispute assessors appointed by the LTCSA who will conduct a fresh assessment of the medical dispute.<sup>262</sup>

### Treatment and care needs disputes

- 5.62** Treatment and care needs disputes are reviewed by a dispute assessor who has not previously assessed or treated the scheme participant. The dispute assessor's decision is legally binding and can only be reviewed on certain grounds.<sup>263</sup>
- 5.63** Grounds for review include additional relevant information about whether treatment and care needs have become available, the decision was not made in accordance with the Lifetime Care and Support Guidelines or the decision is demonstrably incorrect in a material respect.<sup>264</sup>
- 5.64** The Proper Officer of the MAS will decide if the grounds for review have been satisfied. If they are, a review panel of three dispute assessors is convened to make a determination. The panel is overseen by the Proper Officer.<sup>265</sup>

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<sup>259</sup> *Motor Accidents (Lifetime Care and Support) Act 2006, s 14.*

<sup>260</sup> Lifetime Care and Support Authority, *Information Sheet DC06, Information for Service Providers, Dispute Assessors*, <http://www.lifetimecare.nsw.gov.au/information-for-service-providers/scheme-information-sheets>.

<sup>261</sup> Answers to questions on notice, SIRA, p 4.

<sup>262</sup> Answers to questions on notice, SIRA, p 4.

<sup>263</sup> Lifetime Care and Support Authority, *Information sheet DC04, Resolving Disputes about Treatment and Care Needs*, <http://www.lifetimecare.nsw.gov.au/information-for-service-providers/scheme-information-sheets>.

<sup>264</sup> Lifetime Care and Support Authority, *Information Sheet DC05, Review of a Dispute Assessors Decision on Treatment and Care Needs*, <http://www.lifetimecare.nsw.gov.au/information-for-service-providers/scheme-information-sheets>.

<sup>265</sup> Answers to pre-hearing questions, SIRA, p 2.



### Motor Accident Injury disputes

- 5.65** These disputes are referred to the Principal Claims Assessor at the Motor Accidents Authority who is responsible for convening a panel of three claims assessors to determine the dispute. The decision of the panel is legally binding and there is no provision in the legislation to appeal.<sup>266</sup>
- 5.66** icare informed the committee that only two disputes about motor accident injuries have been lodged since the scheme commenced. One was withdrawn and the other, lodged by an individual in 2015/16, is still in progress.<sup>267</sup>

### Concerns with the dispute resolution process

- 5.67** In addition to the concerns discussed in chapter 4 regarding the independence of the dispute resolution process, issues have also been raised regarding the length and accessibility of the process. These matters will be considered below.

#### *Drawn out process*

- 5.68** A significant criticism of the dispute resolution process related to the number of review steps it affords, and the time it can take to reach a final resolution.
- 5.69** Mr Stone, New South Wales Bar Association, was of the view that the process was protracted, stating ‘We have submitted that it is an overly elaborate mechanism with too many review steps in it, in particular for the insurer’.<sup>268</sup>
- 5.70** During evidence, Mr Stone provided an example of a scheme participant whose desire to exit the scheme was supported by icare but thwarted by the insurer’s appeal:

After two years, he did not want to be in the scheme. The scheme assessed him and said, “That’s fine. On your way”. The insurer spent the next four years pushing through the review panel of three, the next review panel of three, a trip to the Supreme Court judge, and beyond that to the Court of Appeal, losing at every single stage, trying to get Mr Milton into the LTCS scheme in order that they not have to pay his ongoing treatment and care needs and in order that they be met by the LTCS scheme.<sup>269</sup>

- 5.71** The Association noted it had suggested to icare that the process could be simplified by not allowing insurers ‘to engage in the third round of disputation’.<sup>270</sup>
- 5.72** Suncorp, however, defended the right of insurers to participate in all levels of the dispute resolution process:

<sup>266</sup> Lifetime Care and Support Authority, *Information Sheet DC03, Resolving Disputes about a Motor Accident Injury*, <http://www.lifetimecare.nsw.gov.au/information-for-service-providers/scheme-information-sheets>.

<sup>267</sup> icare, *Insurance and Care NSW Annual Report 2015-16*, 2016, p 76.

<sup>268</sup> Evidence, Mr Stone, 2 June 2017, p 3.

<sup>269</sup> Evidence, Mr Stone, 2 June 2017, p 3.

<sup>270</sup> Submission 8, New South Wales Bar Association, p 3.

Suncorp contends it is entirely appropriate that insurers be involved in the first two levels of the eligibility dispute, particularly in circumstances where the injured person's condition has materially changed or information was not readily available before the original assessment. Insurers are intimately involved in providing CTP services to injured persons. Accordingly they are in a unique position to assess whether the injured person is likely to require the LTCS services.

In relation to an appeal to the Supreme Court, it is not an appeal avenue Suncorp takes lightly and we are not aware that this avenue has been pursued by Suncorp.<sup>271</sup>

- 5.73** icare advised that since the scheme commenced in 2006, 56 eligibility disputes have been resolved. Insurers lodged 32 of these disputes (57 per cent) while scheme participants or their legal representative lodged the remaining 24 disputes (43 per cent).<sup>272</sup>
- 5.74** As mentioned in chapter 3 at 3.71, 13 eligibility disputes were received by the LTCSA in 2015/16, taking an average of 117 days to be determined. There were 21 treatment and care disputes, taking on average 55 days to be determined.
- 5.75** As mentioned previously, if a dispute continues beyond the first review by the medical assessment panel (eligibility disputes) or the dispute assessor (treatment and care disputes), it can be referred to the Proper Officer of the Motor Accidents MAS for further assessment. SIRA provided the following statistics for medical eligibility and treatment and care dispute applications referred to the Proper Officer since the scheme commenced:<sup>273</sup>

**Table 9 Dispute applications referred to the Proper Officer**

<b>Application lodged by:</b>	<b>Eligibility disputes</b>	<b>Treatment and Care disputes</b>
Injured person	5	16
Insurer	8	0
LTCSA	0	0
Total	13	16

- 5.76** SIRA advised that eligibility decisions by the Proper Officer take on average 26 calendar days. Since the scheme commenced, six eligibility disputes have progressed to a further review by a dispute assessor panel. The average time to resolve these disputes was 129.5 calendar days.<sup>274</sup>
- 5.77** In relation to disputes about treatment and care decisions, the average time taken for the Proper Officer to make a determination is 20 calendar days. Three treatment and care disputes were subject to further review by dispute assessor panel. The time to resolve these issues has spanned from 141 to 190 calendar days.<sup>275</sup>

<sup>271</sup> Answers to questions on notice, Mr Kayrooz, p 3.

<sup>272</sup> Answers to supplementary questions, Mr Bhatia, p 1.

<sup>273</sup> Answers to questions on notice, SIRA, p 5.

<sup>274</sup> Answers to questions on notice, SIRA, p 6.

<sup>275</sup> Answers to questions on notice, SIRA, p 7.

**5.78** SIRA noted that various factors contribute to the length of time it takes for a review determination to be made:

Some Review Panel determinations do take longer than others to finalise due to the individual circumstances of those cases. This can often be a result of the need for the Panel to request important further medical information or clinical notes before making a decision, or from the need for the Panel to arrange and undertake further clinical assessments before making a decision.<sup>276</sup>

**5.79** In addition, the availability of the scheme participant and LTCSA dispute assessors can also impact on the time taken.<sup>277</sup>

**5.80** Once all internal avenues for dispute resolution are exhausted, the insurer or the individual can continue to dispute a decision externally through the judicial system. According to icare, very few disputes progress to judicial review:

In the ten year history of the scheme, icare is aware of two cases regarding eligibility issues that have involved judicial review in the courts and taken significant time and cost to resolve. As per Lifetime Care's legislative dispute resolution processes, both cases involved a dispute about eligibility resolved by an Assessment Panel, and then a review of the dispute about eligibility by a Review Panel.<sup>278</sup>

**5.81** Since the committee's fifth review of the LTCSA, icare has taken a number of steps to decrease time frames for dispute resolution, including:

- expanding the number of dispute assessors from 33 to 50
- engaging three disability advocacy service providers to provide an impartial and external support and advocacy service
- recruiting additional staff to ensure all timeframes are met in processing a dispute
- providing additional training to dispute assessor panel members regarding their role and responsibilities.<sup>279</sup>

**5.82** In relation to disputes about eligibility, icare actively seeks to obtain medical information and hospital records during the initial application process to prevent delays in doing so later in the process. icare is also working to have all pertinent information available and ready for the dispute assessor before treatment and care disputes are lodged.<sup>280</sup>

**5.83** Mr Kayooz, Suncorp, acknowledged icare's changes to improve the dispute resolution process:

...I know over the last year or two the lifetime care and support system has introduced several initiatives in improving the dispute process for those candidates in there, with access to lawyers et cetera. That is very important as well.<sup>281</sup>

<sup>276</sup> Answers to questions on notice, SIRA, p 7.

<sup>277</sup> Answers to questions on notice, SIRA, p 7.

<sup>278</sup> Answers to supplementary questions on notice, Mr Bhatia, p 1.

<sup>279</sup> Answers to pre-hearing questions, Mr Bhatia, p 25.

<sup>280</sup> Answers to pre-hearing questions, Mr Bhatia, p 25.

<sup>281</sup> Evidence, Mr Kayooz, 2 June 2017, p 29.

- 5.84** As noted earlier, icare has suggested that further efficiencies could be achieved if its powers to obtain information were enhanced:

Delays in obtaining information can also delay a dispute about eligibility, when an Assessment Panel requests (but cannot compel) information from a party to the dispute. Currently icare can only request, but cannot compel, parties such as insurers to provide information, which can mean that insurers and participant's legal representatives choose not to provide information unfavourable to their position.<sup>282</sup>

- 5.85** icare has noted that it is happy to have further discussions with SIRA and other stakeholders to explore the issue of protracted disputes.<sup>283</sup>

*Committee comment*

- 5.86** The committee acknowledges the concern raised by the New South Wales Bar Association regarding the opportunity for insurers to be involved at every stage of the dispute resolution process. We also acknowledge the argument from Suncorp that insurers should be involved. The committee did not receive enough evidence regarding this issue to warrant making a recommendation, however, we will keep a watching brief on this matter in our next review.
- 5.87** The committee commends icare for the initiatives it has taken since the last review of the LTCSA to improve time frames for resolution. The committee also acknowledges the role that SIRA has in resolving disputes in a timely manner and encourages icare and SIRA to work together to discuss ways in which the timeframes for the dispute resolution process could continue to be improved.
- 5.88** The committee believes that icare should be supported in its attempts to improve the timeliness and effectiveness of the decisions it makes in relation to scheme eligibility and treatment and care needs. The committee endorses icare's suggestion that it be provided with additional legislative powers that would allow it to compel insurers to provide essential information (see recommendation 4).
- 5.89** However we remain concerned that there are an unlimited number of appeals available to insurers who seek to have an injured person accepted by the LTSCA. This can cause significant delay in finalising that person's claim and puts the scheme and the injured person to often significant financial outlay. Of course insurers should be given a reasonable opportunity to challenge any refusal, but this should not be an open-ended opportunity. Some form of statutory limitation seems appropriate to address this problem, the exact terms of which require consideration by stakeholders in the industry.

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**Recommendation 5**

That the NSW Government put a legislative limitation on the number of times that a party can seek to dispute a decision by the Lifetime Care and Support Authority to not accept an injured person into the scheme.

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<sup>282</sup> Answers to supplementary questions, Mr Bhatia, p 7.

<sup>283</sup> Answers to supplementary questions, Mr Bhatia, p 1.

*Accessibility*

**5.90** The accessibility of the dispute resolution process was also raised as an issue, particularly for those participants who may not be intellectually capable. In its submission, the New South Wales Bar Association wrote:

Participants within the scheme have the right to challenge their Care Plan and to dispute the care and services that they are allocated if they believe their needs are not properly or fully met. However, this right is of minimal value or use if the scheme participant does not have intellectual capacity or tenacity to pursue the relevant dispute resolution mechanisms.<sup>284</sup>

**5.91** In response to this concern, icare advised that participants are given verbal advice about their rights to challenge and lodge a dispute whenever the LTCSA makes a decision relating to their participation in the scheme. Coordinators are also available to help participant's lodge a dispute, or will lodge a dispute on the participant's behalf.<sup>285</sup>

**5.92** In addition to the coordinators, there is a separate team that exists to assist participants and their families with disputes and complaints. A recent initiative is the establishment of an independent support and advocacy advice service for scheme participants and families. The service has employed specialist staff who are skilled at assisting people with acquired brain and spinal cord injuries.<sup>286</sup>

*Committee comment*

**5.93** The committee notes the importance of providing information to scheme participants on their right to dispute decisions made by the LTCSA that impact on the services they are provided. The committee commends the LTCSA on the information it provides to scheme participants to facilitate their awareness of the dispute resolution process. The committee is also pleased that the authority is providing services that assist participants to access both the disputes and complaints resolution processes.

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<sup>284</sup> Submission 8, New South Wales Bar Association, p 5.

<sup>285</sup> Answers to supplementary questions on notice, Mr Bhatia, p 6.

<sup>286</sup> Answers to supplementary questions on notice, Mr Bhatia, p 6.



## Appendix 1 Submissions

No	Author
1	Carers NSW
2	Motorcycle Council of NSW
3	Suncorp
4	Insurance Council of Australia
5	Attendant Care Industry Association (ACIA)
6	Hunter Brain Injury Service (Partially confidential)
7	Safe Work Australia
8	NSW Bar Association
9	Australian Lawyers Alliance
10	Law Society of NSW
11	NSW ACI Brain Injury Rehabilitation Directorate

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday 2 June 2017</b>		
<b>Jubilee Room, Parliament House, Sydney</b>	Mr Andrew Stone SC	Member, Common Law Committee, NSW Bar Association
	Ms Genevieve Henderson	Solicitor, State Practice Group, Slater and Gordon appearing for Australian Lawyers Alliance
	Ms Danielle Bennett	President, Attendant Care Industry Association
	Ms Natasha Cebalo	General Manager, Attendant Care Industry Association
	Ms Barbara Merran	Advisor, Attendant Care Industry Association Board
	Mr Matthew Kayrooz	Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp
	Dr Adeline Hodgkinson	Co-Chair, Brain Injury Rehabilitation Directorate, NSW Agency for Clinical Innovation
	Ms Rachel Morris	Case Manager, Hunter Brain Injury Service
	Mr Vivek Bhatia	Chief Executive Officer, icare
	Dr Nick Allsop	Chief Actuary, icare
	Mr Don Ferguson	Group Executive, Integrated Care, icare
	Mr Chris Koutoulas	General Manager Operations, Care, icare
<b>Wednesday 28 June 2017</b>		
<b>Macquarie Room, Parliament House, Sydney</b>	Mr David Andersen	Partner, HWL Ebsworth, appearing for the Law Society of NSW
	Mr Tim Concannon	Partner, Carroll & O'Dea, appearing for the Law Society of NSW
	Dr Susan Miles, FRACP	Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand
	Dr Anthony Johnson, FRACP	Respiratory and Sleep Physician, NSW Occupation and Environmental Lung Diseases Special Interest Group, Thoracic Society of Australia and New Zealand



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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Rod Smith	Zealand Awareness and Support Coordinator, Bernie Banton Foundation
	Ms Theodora Ahilas	National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers
	Mr Andrew Nicholls	Executive Director, SIRA Motor Accidents Insurance Regulation, SIRA
	Mr Cameron Player	Executive Director, SIRA Dispute Resolution Services, SIRA
	Mr David Bowen	Chief Executive Officer, National Disability Insurance Agency

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## Appendix 3 Minutes

### Minutes no. 18

Friday 2 June 2017

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney 9.02 am

#### 1. Members present

Mr Mallard, *Chair*

Ms Voltz, *Deputy Chair* (from 9.10 am until 11.49 am)

Mr Clarke (from 9.16 am)

Mr Khan (until 1.36 pm)

Mr Mookhey

Mr Shoebridge

#### 2. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 17 be confirmed.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### **Received:**

- 14 March 2017 – Email from the Office of the President and Chief Executive Officer, Australian Medical Association (NSW) Limited, advising that they will not submit to the review in this instance
- 18 April 2017 – Email from Ms Carmelina De Lorenzo-Crowe, A/Executive Support Manager, Strategy, Planning and Communications, Agency for Clinical Innovation to secretariat, advising that the Agency for Clinical Innovation will not be making a submission to the inquiry
- 17 May 2017 – Letter from Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations to Chair, advising of Insurance & Care NSW (icare) witnesses
- 19 May 2017 – Letter from Hon Victor Dominello MP, Minister for Finance, Services and Property to Chair, nominating SIRA witnesses and attaching answers to pre-hearing questions on notice for SIRA
- 19 May 2017 – Letter from Mr Vivek Bhatia, Chief Executive Officer, icare to secretariat, attaching answers to pre-hearing questions on notice for icare
- 26 May 2017 – Email from Ms Sarah Phillips, Acting General Manager Consumer Relations & Market Development, Insurance Council of Australia to secretariat, advising that the Insurance Council of Australia is unable to attend the hearing
- 26 May 2017 – Letter from Mr Greg Chalik to secretariat, regarding alleged failings by the NSW Civil and Administrative Tribunal and calling for an inquiry into NCAT operations, culture and practices.

##### **Sent:**

- 28 April 2017 – Letter from Chair to Hon Victor Dominello MP, Minister for Finance, Services and Property, attaching pre-hearing questions on notice for SIRA
- 28 April 2017 – Letter from Chair to Hon Dominic Perrottet MP, Treasurer and Minister for Industrial Relations, attaching pre-hearing questions on notice for icare.

#### 4. First review of the Dust Diseases and Lifetime Care and Support schemes

##### 4.1 Public hearing

Witnesses, the public and the 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 Andrew Stone SC, Member, Common Law Committee NSW Bar Association
- Ms Genevieve Henderson, Member, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Danielle Bennett, President, Attendant Care Industry Association
- Ns Natasha Cebalo, General Manager, Attendant Care Industry Association
- Ms Barbara Merran, Advisor, Attendant Care Industry Association Board.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Matthew Kayrooz, Head of Accident and Trauma, Personal Insurance Portfolio and Products, Suncorp.

Mr Kayrooz tendered the following documents:

- Suncorp Group, 'Insurance insights: The mechanics of motor injury schemes: Design considerations for personal injury insurance schemes for motorists', October 2013
- Suncorp Group, 'Insurance insights: Beyond fault: Progressing to universal no-fault insurance for catastrophic motor injuries', June 2014.

The evidence concluded and the witness withdrew.

Ms Voltz left the meeting at 11.49 am.

The following witnesses were sworn and examined:

- Dr Adeline Hodgkinson, Co-Chair, Brain Injury Rehabilitation Directorate, NSW Agency for Clinical Innovation
- Ms Rachel Morris, Case Manager, Hunter Brain Injury Service.

Ms Morris tendered the following document:

- Letter from Synapse to icare regarding eligibility of Lifetime Care participants and the NDIS, 28 March 2017.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Vivek Bhatia, Chief Executive Officer, icare
- Dr Nick Allsop, Chief Actuary, icare
- Mr Don Ferguson, Group Executive, Care, icare
- Mr Chris Koutoulas, General Manager Operations, Care, icare.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 1.35 pm.

Mr Khan left the meeting at 1.36 pm.

#### **4.2 Tendered documents**

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Suncorp Group, 'Insurance insights: The mechanics of motor injury schemes: Design considerations for personal injury insurance schemes for motorists', October 2013, tendered by Mr Kayrooz
- Suncorp Group, 'Insurance insights: Beyond fault: Progressing to universal no-fault insurance for catastrophic motor injuries', June 2014, tendered by Mr Kayrooz
- Letter from Synapse to icare regarding eligibility of Lifetime Care participants and the NDIS, 28 March 2017, tendered by Ms Morris.

#### **4.3 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: Dust Diseases scheme submissions 1-6, and Lifetime Care and Support scheme submissions 1- 5 and 7-10.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of submission no. 11 to the Lifetime Care and Support scheme.

#### **4.4 Partially confidential submission**

Resolved, on the motion of Mr Shoebridge: That the committee keep names and/or identifying and sensitive information confidential, as per the request of the author in Lifetime Care and Support scheme submission no. 6.

#### **4.5 Answers to pre-hearing questions on notice**

The committee noted that the following answers to pre-hearing questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice by SIRA, received from Hon Victor Dominello MP, Minister for Finance, Services and Property, 19 May 2017
- answers to questions on notice by icare, received from Mr Vivek Bhatia, Chief Executive Officer, icare, 19 May 2017.

#### **4.6 Additional witness**

Resolved, on the motion of Mr Mookhey: That the committee invite a representative from the National Disability Insurance Agency to appear as a witness for 1 hour at the next hearing on 28 June 2017.

#### **4.7 Redaction of sensitive information**

Resolved, on the motion of Mookhey: That the committee redact the name of a Lifetime Care and Support scheme participant identified in the evidence given by Mr Vivek Bhatia.

### **5. Adjournment**

The committee adjourned at 1.41 pm, until Wednesday 28 June 2017 (public hearing, first review of the dust diseases and lifetime care and support schemes).

Sharon Ohnesorge  
**Clerk to the Committee**

### **Minutes no. 19**

Wednesday 28 June 2017

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney 9.00 am

#### **1. Members present**

Mr Mallard, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey (from 9.19 am)

Mr Shoebridge

#### **2. Previous minutes**

Resolved, on the motion of Mr Clarke: That draft minutes no. 18 be confirmed.

#### **3. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 22 May 2017 – Email from Carmel Donnelly, Acting Chief Executive, State Insurance Regulatory Authority, advising that she is unable to appear as a witness at the hearing on 28 June 2017.

**Sent:**

- 7 June 2017 – Email from secretariat to Mr Mike Sprange, Chair, Intellectual Disability Rights Service, inviting him to make a submission to the First Review of the Dust Diseases and Lifetime Care and Support schemes.

#### 4. First review of the Dust Diseases and Lifetime Care and Support schemes

##### 4.1 Public hearing

Witnesses, the public and the 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 Andersen, appearing for the Law Society of NSW.
- Mr Tim Concannon, Member, Injury Compensation Committee, Law Society of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Anthony Johnson FRACP, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand
- Dr Susan Miles FRACP, Respiratory and Sleep Physician, NSW Occupational and Environmental Lung Disease Special Interest Group, Thoracic Society of Australia and New Zealand,
- Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Nicholls, A/Chief Executive SIRA, and Executive Director, SIRA Motor Accidents Insurance Regulation
- Mr Cameron Player, Executive Director, SIRA Dispute Resolution Services.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Bowen, Chief Executive Officer, National Disability Insurance Agency.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The public hearing concluded at 1.05 pm.

##### 4.2 Tendered documents

Resolved, on the motion of Ms Voltz: That the committee accept and publish the following document tendered during the public hearing:

- State Insurance Regulation Authority, SIRA statement, tendered by Mr Andrew Nicholls.

#### 5. Adjournment

The committee adjourned at 1.08 pm, until 9.30 am, Monday 21 August 2017 (report deliberative, first review of the dust diseases and lifetime care and support schemes).

Rebecca Main  
**Clerk to the Committee**

**Draft minutes no. 20**

Monday 20 August 2017

Standing Committee on Law and Justice

Room 1254, Parliament House, Sydney 9.40 am

**1. Members present**Mr Mallard, *Chair*

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

**2. Apologies**

Ms Voltz

**3. Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 19 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 10 July 2017 – Letter from Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, providing clarification on the role of the Dust Diseases Board
- 10 July 2017 – Letter from Mr Rod Smith, Awareness and Support Coordinator, Bernie Banton Foundation, providing clarification to a figure incorrectly stated in evidence on 28 June 2017
- 16 July 2017 – Email from Mr Dean Pike regarding the workers' compensation scheme
- 17 July 2017 – Letter from Ms Pauline Wright, President, The Law Society of New South Wales, providing clarification regarding evidence on restrictions of the Dust Diseases Tribunal in relation to malignant claims on 28 June 2017
- 24 July 2017 – Email from Mr Dean Pike responding to the secretariat's email regarding the workers' compensation scheme.

***Sent***

- 3 July 2017 – Letter from Chair to Mr Vivek Bhatia, Chief Executive Officer, icare, requesting answers to additional questions on notice
- 20 July 2017 – Email from the secretariat to Mr Dean Pike in response to his email regarding the workers' compensation scheme.

**5. First review of the dust diseases and lifetime care and support schemes****5.1 Answers to questions on notice**

The committee noted that answers to questions on notice from the following witnesses were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Insurance and Care NSW, received 30 June 2017
- Suncorp, received 29 June 2017
- Attendant Care Industry Association, received 29 June 2017
- The Thoracic Society of Australia and New Zealand, received 21 July 2017

- Insurance and Care NSW, received 21 July 2017
- State Insurance Regulatory Authority, received 21 July 2017
- The Law Society of New South Wales, received 27 July 2017.

## 5.2 Consideration of Chair's draft report Dust Diseases scheme report

The Chair submitted his draft report entitled *First review of the Dust Diseases scheme*, which, having been previously circulated, was taken as being read.

### Chapter 1

Resolved, on the motion of Mr Mookhey: That paragraph 1.26 be amended by omitting 'customers' and inserting instead 'claimants'.

Resolved, on the motion of Mr Mookhey: That the heading above paragraph 1.42 be amended by omitting 'Customer satisfaction' and inserting instead 'Claimant satisfaction'.

Resolved on the motion of Mr Mookhey: That the heading 'Recent customer service initiatives' before paragraph 1.48 be omitted and inserting instead 'Recent service initiatives'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.45 be amended by omitting 'a leading support organisation' and inserting instead 'a support organisation'.

Mr Mookhey moved: That paragraph 1.64 be omitted: 'It is extremely pleasing to see that the same can be said about the new Workers' Compensation (Dust Diseases) Authority working through icare dust Diseases Care. It is clear from the evidence before the committee that the organisation transition has been managed successfully, and that if anything, the services provided to scheme applicants and participants are even better than they were previously' and the following new paragraph be inserted instead:

'The transition to the new workers compensation authority has not yet jeopardised the previous scheme's exemplary performance, however the committee is concerned about the absence of the victim's voice in the decision making councils of the authority'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Mallard, Mr Clarke, Mr Khan.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.64 be amended by:

- omitting, 'It is extremely pleasing to see that' before 'the same can be said'
- omitting, 'It is clear from' before 'the evidence before the committee'
- inserting 'is' before 'the organisational transition'
- omitting 'even better' before 'than they were previously' and inserting instead 'more timely'.

### Chapter 2

Mr Khan moved: That paragraphs 2.21 to 2.24 be omitted:

'As mentioned previously, participation in the workers compensation scheme would, however, prevent the person from claiming any common law damages through the Dust Diseases Tribunal. Ms Ahilas from Maurice Blackburn Lawyers, cited the example of Mr F (previously mentioned at 2.11):

He did have entitlements to make a claim through the WorkCover scheme as a worker; however, in order to do that he had to give away any common law entitlements he had because he had very serious debts to pay for his medical expenses. So he had to trade some of his entitlements away for some others. That is the difference with the Dust Diseases Authority entitlements and the Dust Diseases Tribunal entitlements at common law, they are concurrent entitlements. A person

facing an entitlement through the Dust Diseases Authority does not have to trade away his common law entitlements, which is what happens under the draconian workers compensation scheme in some instances.’[FOOTNOTE: Evidence, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 20.]

Ms Ahilas added that the Dust Diseases scheme was very attractive as it provided benefits and security far beyond what is available under workers compensation legislation:

It is a security factor. It is knowing that if they die from a dust disease, which a lot of these applicants do, that their families will continue to be protected and their families or dependants become entitled to a claim through the DDA for a lump sum. There are a host of entitlements. The other thing is medical expenses. Anything deemed reasonable for their treatment is covered by the DDA for the medical expenses. In the case of Mr F he had a lung transplant. His expenses were huge and he could have had the benefit of the medical expenses through the DDA. [FOOTNOTE: Evidence, Mr Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 25.]

Ms Ahilas noted that under the Dust Diseases scheme participants are supported to participate in medical trials, providing access to costly treatments that are not covered by the Pharmaceutical Benefits Scheme. [FOOTNOTE: Evidence, Ms Theodora Ahilas, National Practice Head, Asbestos and Dust Diseases Department, Maurice Blackburn Lawyers, 28 June 2017, p 25.]

In response to the suggestion to broaden the scheme to include other occupational diseases, icare pointed out that the current legislation allows Dust Diseases care to exercise a degree of flexibility when it comes to determining scheme eligibility:

There is some flexibility under the Act to allow for the awarding of compensation for other occupational disease of the lungs, pleura or peritoneum if the condition relates to an exposure that leads to any of the diseases listed on the Schedule. Dust Diseases care has utilised this provision to award workers compensation benefits in four instances where the individual has developed scleroderma based on the history of exposure to silica.’ [FOOTNOTE: Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 3.]

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.

Mr Khan moved: That paragraphs 2.26 to 2.27 be omitted:

‘This has resulted in an inequitable situation where some individuals are being excluded from the scheme because their conditions do not meet the restrictive definition currently specified in section 3 of the Act or their disease is not included in Schedule 1.

The committee notes that there is some flexibility in the current legislation to approve applications from individuals with conditions that do not strictly meet the eligibility requirements. However, based on the evidence, the committee believes that there is merit in conducting research and actuarial studies in consideration of updating the Act to expand the range of compensable diseases. We recommend that stakeholders be consulted during this process.’

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.



Mr Mookhey moved: That recommendation 1 be amended by:

- a. omitting 'expanding the definition of' and inserting instead 'replacing the definition of'
- b. inserting 'with section 3 of the Dust Diseases Tribunal Act 1989' before 'and that it consult with stakeholders in the process'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Clarke, Mr Khan, Mr Mallard.

Question resolved in the negative.

Mr Khan moved: That recommendation 1 be omitted:

'That the NSW Government consider expanding the definition of 'dust disease' in section 3 of the Workers' Compensation (Dust Diseases) Act 1942, and that it consult with stakeholders in the process.'

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard

Noes: Mr Mookhey, Mr Shoebridge.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.42:

'The return of any occupational disease is deeply troubling and the fact that silicosis is occurring to such a degree in our society is evidence of a significant failure in our work health safety regime. There clearly is a need for a review of what has gone wrong, whether at a workplace level or at a state regulatory level, that has caused the disease to return. The fact that at this stage it appears to be limited to the manufactured stone industry suggests that if addressed rapidly lives can be saved and failings can be remedied to protect other parts of the workforce.'

Mr Shoebridge moved: That the following recommendation be inserted after paragraph 2.42:

**Recommendation X**

That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry. Given lives are at risk the task force is to deliver an initial report within six months of being established.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'Given lives are at risk the taskforce is to deliver an initial report within six months of being established.'

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.79 be amended by omitting 'establishment of a Medical Appeals Tribunal' and inserting instead 'establishment of a statutory internal appeals panel'.

Resolved, on the motion of Mr Shoebridge: That recommendation 5 be amended by omitting ‘Medical Appeal Tribunal’ and inserting instead ‘statutory internal appeals panel’.

Resolved, on the motion of Mr Clarke: That:

- a. the draft report, as amended, be the report of the committee and that the committee present the report to the House
- b. the transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be tabled in the House with the report
- c. upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- d. upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be published by the committee, except for those documents kept confidential by resolution of the committee
- e. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- f. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- g. dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting.
- h. that the report be tabled on Thursday 24 August 2017.

### **5.3 Consideration of Chair’s draft report Lifetime Care and Support scheme report**

The Chair submitted his draft report entitled *First review of the Lifetime Care and Support scheme*, which, having been previously circulated, was taken as being read.

#### **Chapter 1**

Resolved, on the motion of Mr Shoebridge: That all references to ‘Ray Williams’ be omitted and replaced with ‘the relevant minister’.

#### **Chapter 2**

Mr Mookhey moved: That paragraph 2.54 be amended by:

- a. omitting ‘The committee is confident that SIRA and icare are effectively using’ and inserting instead ‘The committee urges SIRA and icare to effectively use’
- b. omitting ‘The committee strongly encourages icare and SIRA to continue their consultation with stakeholders in the development of the associated guidelines and processes.’

Question put.

The committee divided.

Ayes: Mr Mookhey.

Noes: Mr Mallard, Mr Clarke, Mr Khan, Mr Shoebridge.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.54 be amended by:

- c. omitting ‘The committee is confident that SIRA and icare are effectively using the long lead time’ and inserting instead ‘The committee notes that SIRA and icare are using the long lead time’
- d. inserting at the end of paragraph 2.54 ‘Detailed annual reports on the progress in transitioning to the new scheme should be provided by both agencies.’

Question put.

The committee divided.

Ayes: Mr Shoebridge, Mr Mallard, Mr Clarke, Mr Khan.

Noes: Mr Mookhey.

Question resolved in the affirmative.

Mr Mookhey moved that: The following new recommendation be inserted after paragraph 2.54:

**Recommendation X**

That SIRA develop a transfer strategy which:

- a. assesses claims management by insurers prior to transfer
- b. publishes all results of mismanagement by insurers
- c. publishes quantum recovered by the insurer.

Mr Shoebridge moved that the motion of Mr Mookhey be amended by omitting ‘That SIRA develop a transfer strategy which’ and inserting instead ‘That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should’.

Question put.

The committee divided.

Ayes: Mr Shoebridge, Mr Mallard, Mr Clarke, Mr Khan.

Noes: Mr Mookhey.

Question resolved in the affirmative.

Original question of Mr Mookhey, as amended, put and passed.

**Chapter 3**

Resolved, on the motion of Mr Mookhey: That paragraph 3.53 be amended by omitting ‘The committee commends icare’s position on creating a more considered approach’ and inserting instead ‘The committee notes icare’s position on creating a more considered approach.’

**Chapter 4**

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after paragraph 4.48:

**Recommendation X**

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.’

**Chapter 5**

Mr Khan moved:

- a. that paragraph 5.14 be amended by omitting ‘The committee recommends that icare consider the proposal’ and inserting ‘The committee see merit in icare considering the proposal’; and
- b. that Recommendation 1 be omitted: ‘That icare consider bringing forward the date that the Lifetime Care and Support scheme assumes liability for scheme participants to the date of the accident, and that it consult with the State Insurance Regulatory Authority in relation to the impact of such a change on the Medical Care and Injury Services Levy.’

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard, Mr Mookhey.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Mr Mookhey moved: That recommendation 3 be amended by omitting ‘the NSW Government consider providing icare with legislative power’ and inserting instead ‘the NSW Government provide icare with legislative power’.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Clarke, Mr Khan, Mr Mallard.

Question resolved in the negative.

Resolved on the motion of Mr Shoebridge: That recommendation 3 be amended by omitting 'legislative power to compel insurers and lawyers to provide the information' and inserting instead 'legislative power to compel insurers to provide the information'.

Resolved on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 5.88:

'However, we remain concerned that there are an unlimited number of appeals available to insurers who seek to have an injured person accepted by the LTCSA. This can cause significant delay in finalising that person's claim and puts the scheme and the injured person to often significant financial outlay. Of course insurers should be given a reasonable opportunity to challenge any refusal, but this should not be an open-ended opportunity. Some form of statutory limitation seems appropriate to address this problem, the exact terms of which require consideration by stakeholders in the industry.'

Mr Shoebridge moved: That the following new recommendation be inserted after the new paragraph 5.88:

**Recommendation X**

That the NSW Government put a legislative limitation on the number of times that an insurer can seek to dispute a decision by the Lifetime Care and support Authority to not accept an injured person into the scheme.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'the number of times that an insurer can seek to dispute a decision' and inserting instead 'the number of times that a party can seek to dispute a decision'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original motion of Mr Shoebridge, as amended, put and passed.

Resolved on the motion of Mr Clarke: That:

- a. the draft report, as amended, be the report of the committee and that the committee present the report to the House
- b. the transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be tabled in the House with the report
- c. upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- d. upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be published by the committee, except for those documents kept confidential by resolution of the committee
- e. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- f. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- g. dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting.

h. that the report be tabled on Thursday 24 August 2017.

**6. Adjournment**

The committee adjourned at 10.40 am, *sine die*.

Teresa McMichael  
**Clerk to the Committee**