

Standing Committee on Law and Justice

**Fifth review of the exercise  
of the functions of the  
Lifetime Care and Support  
Authority**

Ordered to be printed 3 July 2014 according to Standing Order  
231

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

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

Fifth review of the exercise of the functions of the Lifetime Care and Support Authority / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2014. — [xii, 81] pages ; 30 cm. (Report ; no. 52)

Chair: David Clarke, MLC.

“July 2014”.

ISBN 9781920788711

1. Lifetime Care and Support Authority of NSW.
2. Lifetime Care and Support Scheme (N.S.W.)
3. Traffic accident victims—Services for—New South Wales.
  - I. Title
  - II. Clarke, David.
  - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 52

363.125 (DDC22)

## How to contact the committee

Members of the Standing Committee on Law and Justice can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

---

The Director

---

Standing Committee on Law and Justice

---

Legislative Council

---

Parliament House, Macquarie Street

---

Sydney New South Wales 2000

---

Internet [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice)

---

Email [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

---

Telephone 02 9230 3543

---

Facsimile 02 9230 2981

---

## Terms of reference

1. That, in accordance with section 11 of the Safety, Return to Work and Support Board Act 2012, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the following authorities:
  - (a) Lifetime Care and Support Authority under the Motor Accidents (Lifetime Care and Support) Act 2006,
  - (b) Motor Accidents Authority under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988,
  - (c) WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998, and
  - (d) (d) Workers' Compensation (Dust Diseases) Board under the Workers Compensation (Dust Diseases) Act 1942.
2. That the terms of reference of the committee in relation to these functions be:
  - (a) to monitor and review the exercise by the authorities of their functions,
  - (b) to monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 2012, of their functions,
  - (c) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed,
  - (d) to examine each annual or other report of the authorities and report to the House on any matter appearing in, or arising out of, any such report, and
  - (e) to examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.
3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once every two years in relation to each authority.
4. That nothing in this resolution authorises the committee to investigate a particular compensation claim under the legislation referred to in paragraph 1.<sup>1</sup>

---

<sup>1</sup> *Minutes*, Legislative Council, 14 November 2012, pp 1368-1369.

## Committee membership

<b>The Hon David Clarke MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Peter Primrose MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Mr Scot MacDonald MLC</b>	Liberal Party	
<b>The Hon Sarah Mitchell MLC</b>	The Nationals	
<b>The Hon Shaoquett Moselmane MLC</b>	Australian Labor Party	
<b>Mr David Shoebridge MLC</b>	The Greens	

## Table of contents

	<b>Chair’s foreword</b>	<b>x</b>
	<b>Summary of recommendations</b>	<b>xi</b>
	<b>Glossary</b>	<b>xii</b>
<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
	<b>The committee’s role</b>	<b>1</b>
	<b>Conduct of the Fifth Review</b>	<b>1</b>
	Submissions	2
	Hearings	2
	Questions on notice	2
	<b>Overview of the Lifetime Care and Support Scheme</b>	<b>2</b>
	<b>The Lifetime Care and Support Authority</b>	<b>3</b>
	<b>Structure of report</b>	<b>4</b>
<b>Chapter 2</b>	<b>Developments since the previous review</b>	<b>5</b>
	<b>Safety, Return to Work and Support Board Act 2012</b>	<b>5</b>
	Abolishment of the Lifetime Care and Support Advisory Council	5
	Advisory committees and stakeholder interaction	6
	<b><i>Thiering v Daly</i></b>	<b>9</b>
	Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012	10
	‘Reasonable and necessary’ treatment and services	10
	<b>National Disability Insurance Scheme and National Injury Insurance Scheme</b>	<b>12</b>
<b>Chapter 3</b>	<b>Scheme performance and initiatives</b>	<b>17</b>
	<b>Scheme performance</b>	<b>17</b>
	Scheme statistics	17
	Participant satisfaction survey 2012	19
	Criticism of the annual report and participant satisfaction survey analysis	21
	<b>Dispute resolution statistics</b>	<b>23</b>
	<b>Complaints handling</b>	<b>24</b>
	<b>Statutory review of the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i></b>	<b>25</b>

	Delays in the assessment and delivery of equipment and services	26
	<b>Financial matters</b>	<b>27</b>
	Medical Care and Injury Services Levy	28
	<b>Programs and initiatives</b>	<b>30</b>
	In-Voc program	30
	Sargood Centre	31
	Goal training project	32
<b>Chapter 4</b>	<b>Recommendations from the previous review</b>	<b>33</b>
	<b>Recommendations from the Fourth Review of the LTCSA and the Lifetime Care and Support Advisory Council</b>	<b>33</b>
	Recommendation 1: Legislative Council's oversight role	33
	Recommendation 2: participant representatives on the Lifetime Care and Support Advisory Council	34
	Recommendation 3: Scheme eligibility	35
	Recommendation 4: Legal costs and the Accident Advice Support Grant	36
	Recommendation 5: Dispute resolution process concerning eligibility and treatment	38
	Recommendation 6: Simplifying and standardising forms and limiting the administrative burden on service providers	41
	Recommendation 7: Improved communication between clinicians and the authority	42
	Recommendation 8: Mechanisms to inform general practitioners and acute treating teams	43
	Recommendation 9: Induction training for LTCS Coordinators	44
	Recommendation 10: Protocol for discussing participant treatment options	46
	Recommendation 11: Discharging participants from hospital to interim accommodation	47
	Recommendation 12: Treatment and care services when a participant is on holiday or overseas	49
	Recommendation 13: Guidelines on recreation and leisure activities	51
	Recommendation 14: Educational support for child participants	53
<b>Chapter 5</b>	<b>Participant choice and matters raised by advocacy groups</b>	<b>55</b>
	<b>Opting-out of the scheme and greater self-management of care</b>	<b>55</b>
	Legal association perspective	55
	Service provider perspective	56
	Advocacy group perspective	58
	LTCSA perspective and the direct funding trial	59
	<b>Carers</b>	<b>60</b>
	<b>Website content</b>	<b>62</b>

<b>Appendix 1</b>	<b>Submission list</b>	<b>65</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>66</b>
<b>Appendix 3</b>	<b>Answers to questions on notice</b>	<b>68</b>
<b>Appendix 4</b>	<b>Minutes</b>	<b>69</b>

---



---

## Case

---

Case study – John*	57
--------------------	----

---

## Figures

---

Figure 1	Age of scheme participants as at 30 June 2013	18
Figure 2	Scheme participant geographical breakdown as at June 2013	19

---

## Tables

---

Table 1	Scheme participant injury type - as at 30 June 2013	17
Table 2	LTSCA participant role in the accident	18
Table 3	Participant satisfaction survey results on individual services provided	20
Table 4	Eligibility disputes per year	24
Table 5	Treatment and care disputes per year	24
Table 6	Complaints received by year	25

---

## Chair's foreword

This is the committee's fifth review of the Lifetime Care and Support Authority (LTCSA) since the scheme's inception in 2006. Although this is the fifth review, it is the first time the committee has performed its oversight role under the *Safety, Return to Work and Support Board Act 2012* and the first review since the Lifetime Care and Support Advisory Council was abolished following a reform of the governance of the LTCSA under that Act.

The report highlights that overall the scheme is working very well to provide support to people who are catastrophically injured in motor vehicle accidents. The committee has heard from a range of stakeholders including medical professionals, legal specialists and advocacy groups. A number of these groups have commended the LTCSA for its ongoing work to improve its processes and for operating in a spirit of collaboration.

The committee is particularly pleased that the LTCSA has committed to aligning itself with the values of the National Disability Insurance Scheme to provide greater choice and control for participants. In particular, the LTCSA has convened a Participant Reference Group to enhance the role of participants in the scheme and is about to commence a direct-funding trial.

Although the committee received positive information regarding the operation of the scheme, we are concerned that there is the lack of publically available information on its performance. To address this, the report includes a number of recommendations that call for greater accountability by the LTCSA including the provision of more information in its annual report.

The committee urges the NSW Government and the LTCSA to adopt the recommendations in this report and intends to request the LTCSA to provide an update to the committee, one year after this report is tabled, detailing the progress that has been made regarding each recommendation.

The report is structured differently to past reviews in that it is more succinct, building on the content of previous reports, and has a greater focus on following up on the implementation of recommendations made by the committee in the previous review.

I would like to thank all of those who have contributed to the conduct of this year's review. I am especially grateful to those stakeholders who participated in this review through the preparation of submissions and participation in hearings.

I express my thanks to my colleagues for their thoughtful contributions to this year's review. Our monitoring role has benefited greatly from both our individual perspectives and our cooperative approach. Finally, I thank the staff of the committee secretariat for their ongoing professional support, in particular Teresa McMichael, Director, Samuel Griffith, Principal Council Officer, Christine Nguyen, Council Officer, Chris Angus, Assistant Council Officer and Lynn Race, Assistant Council Officer.



Hon David Clarke MLC  
**Committee Chair**

## Summary of recommendations

- Recommendation 1** **8**  
 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.
- Recommendation 2** **23**  
 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.
- Recommendation 3** **23**  
 That the Lifetime Care and Support Authority report using key performance indicators in its annual reports.
- Recommendation 4** **32**  
 That the Lifetime Care and Support Authority commit to the long term funding of the In-Voc program.
- Recommendation 5** **37**  
 That the Lifetime Care and Support Authority report on the usage of the Accident Advice Support Grant in its annual report.
- Recommendation 6** **40**  
 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.
- Recommendation 7** **49**  
 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.
- Recommendation 8** **60**  
 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.
- Recommendation 9** **64**  
 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.
- Recommendation 10** **64**  
 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.

## Glossary

<b>BIRD</b>	Brain Injury Rehabilitation Directorate
<b>CTP</b>	Compulsory Third Party
<b>FIM</b>	Functional Independence Measure
<b>LTCS</b>	Lifetime Care and Support
<b>LTCSA</b>	Lifetime Care and Support Authority
<b>MAA</b>	Motor Accidents Authority
<b>MCIS</b>	Medical Care and Injury Services
<b>NDIS</b>	National Disability Insurance Scheme
<b>NIIS</b>	National Injury Insurance Scheme
<b>SCIA</b>	Spinal Cord Injuries Australia
<b>SSCIS</b>	State Spinal Cord Injury Service

## Chapter 1 Introduction

This chapter provides an overview of the review process, outlining the committee's approach to the Fifth Review of the Lifetime Care and Support Authority. The chapter briefly describes the Lifetime Care and Support Scheme and concludes with an overview of the structure of the report.

### The committee's role

- 1.1 A committee of the Legislative Council is required under section 11 of the *Safety, Return to Work and Support Board Act 2012* to supervise the exercise of the functions of the Lifetime Care and Support Authority (LTCSA).
- 1.2 Since 2007, a resolution of the Legislative Council has designated the Standing Committee on Law and Justice to undertake this role, and has set out the terms of reference for the committee's reviews. The current resolution appointing the committee was resolved on 14 November 2012 and stated the committee must report at least once every two years.<sup>2</sup>
- 1.3 The terms of reference are reproduced in full on page iv.
- 1.4 Before 2012, the committee performed this role according to section 68 of the *Motor Accidents (Lifetime Care and Support) Act 2006*. New legislation was introduced in 2012 which expanded the committee's oversight role. These changes are discussed in detail in chapter 2.
- 1.5 The current resolution designates the committee to supervise the exercise of the functions of the:
  - LTCSA
  - Motor Accidents Authority
  - WorkCover Authority
  - Workers' Compensation (Dust Diseases) Board.
- 1.6 This fifth review was conducted concurrently with the committee's 12th review of the Motor Accidents Authority. That review will be the subject of its own report, also to be published in July 2014. The review process for the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board are part of a separate review process by the committee.
- 1.7 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).

### Conduct of the Fifth Review

- 1.8 The committee resolved to commence this review on 10 September 2013. The committee evaluated the way in which the LTCSA exercised its functions since the committee tabled its

<sup>2</sup> *Minutes*, Legislative Council, 14 November 2012, pp 1368-69.

last report in December 2011 and examined the LTCSA's 2010/11, 2011/12 and 2012/13 Annual Reports.

- 1.9 The committee would like to thank all participants to this review. The considered contributions of stakeholders have greatly assisted the committee to successfully undertake its reviewing role.

### **Submissions**

- 1.10 The committee invited submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph*, and through a press release distributed via *Media Monitors*. As with previous reviews, the committee also wrote directly to a number of stakeholders to invite them to make a submission.
- 1.11 The committee received 13 submissions and six supplementary submissions from a range of stakeholders, including a number of special interest advocacy groups, health professionals and the legal and insurance sectors. A list of submission authors is shown in Appendix 1.

### **Hearings**

- 1.12 The committee held two public hearings on 7 and 17 March 2014. The committee heard from representatives from several organisations, including the LTCSA, legal associations, service providers and advocacy groups. A full list of witnesses is provided in Appendix 2.

### **Questions on notice**

- 1.13 Following the practice developed during previous reviews, the committee forwarded written questions on notice to the LTCSA prior to the public hearing. These questions were based on the LTCSA's 2010/11, 2011/12 and 2012/13 Annual Reports, issues raised in submissions, recommendations made in the *Fourth Review Report* and the government's response to those recommendations. This allowed for the in-depth consideration of the issues by the committee and other inquiry stakeholders.
- 1.14 Following the hearing, the committee wrote to the LTCSA requesting an update on the government's response to the *Fourth Review Report*.

## **Overview of the Lifetime Care and Support Scheme**

- 1.15 The Lifetime Care and Support Scheme (the scheme) has been operating for over seven years and provides lifelong treatment, rehabilitation and attendant care to people severely injured in a motor vehicle accident in New South Wales, regardless of who was at fault. People are eligible to enter the scheme if they have sustained a spinal cord injury, moderate to severe brain injury, multiple amputations, severe burns or permanent blindness.<sup>3</sup>

---

<sup>3</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 4.

- 1.16** Unlike the Motor Accidents Compensation Scheme, the LTCS Scheme does not pay compensation to individuals. Instead, it pays for medical treatment, rehabilitation and attendant care services that are ‘reasonable and necessary’ to meet the needs of each participant. Medical treatment services may include doctors, hospitals and medication. Rehabilitation may include physiotherapy, occupational therapy, speech pathology, social work, psychology, equipment to assist in daily living and home and vehicle modification. Attendant care services means personal or respite care, childcare, domestic assistance and educational or vocational support.<sup>4</sup>
- 1.17** Eligibility for lifetime participation in the scheme is a two stage process: first there is an ‘interim’ participation period, which is followed by ‘lifetime’ participation in eligible cases. The interim period exists to take into account possible improvements to an individual’s health. Lifetime participation is assessed before the interim participation period expires.<sup>5</sup>
- 1.18** Funding for the scheme is obtained through the Medical Care and Injury Services (MCIS) levy paid by motorists when they purchase a Compulsory Third Party green slip insurance policy. Licensed insurers collect the levy on behalf of the Motor Accidents Authority. Levy contributions are adjusted over time in order to remain sufficient to fund the full cost of providing lifetime care and treatment to scheme participants and meet other scheme expenses.<sup>6</sup>

## The Lifetime Care and Support Authority

- 1.19** The LTCSA is a statutory authority established on 1 July 2006 under the *Motor Accidents (Lifetime Care and Support) Act 2006* and is responsible for the day to day administration of the scheme.
- 1.20** The role of the LTCSA is:
- to ensure the scheme effectively and efficiently provides lifetime medical and care services on a needs basis to people catastrophically injured in motor vehicle accidents
  - to keep the scheme fully funded to meet incurred liabilities.<sup>7</sup>
- 1.21** In addition to a small secretariat staff, the LTCSA employ coordinators and case managers.
- **LTCS coordinators** monitor and organise care and support for individual participants, organise injury related services such as planning for a return to leisure activities, work or school, and oversee each person’s lifetime participation in the scheme. They are the primary link between a participant and the LTCSA.

<sup>4</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011 pp 7-8.

<sup>5</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines*, May 2012, pp 7-8.

<sup>6</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, pp 7-8.

<sup>7</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 4.

- **Case managers** facilitate a participant's daily needs and act as a primary communication portal between service providers and LTCS coordinators. Participants have a single case manager who, in the early stages of acute recovery, is often a member of their treating team.<sup>8</sup> However, not all participants have a case manager, particularly people with a spinal cord injury.<sup>9</sup>

1.22 The authority also funds the development of programs and research to assist injured people and their families and to provide health professionals with best practice information.<sup>10</sup>

## Structure of report

1.23 This report is structured differently to previous review reports. The focus of this report is to provide an analysis of recent changes to the scheme, the progress of the LTCSA regarding actioning recommendations from the previous committee review and analysis of ongoing stakeholder concerns.

1.24 This report is comprised of five chapters. Chapter 2 outlines legislative changes to the administration of the scheme since the previous review and the development of the National Disability Insurance Scheme and the National Injury Insurance Scheme.

1.25 Chapter 3 examines the performance of the scheme, dispute resolution and complaints handling processes and LTCSA initiatives, such as the In-Voc pilot program that has assisted spinal cord injury participants to return to work.

1.26 Chapter 4 notes the government response to recommendations made in the committee's fourth review and assesses action taken in response to those recommendations.

1.27 Finally, chapter 5 examines the issue of whether individuals should be allowed to opt-out of the scheme or have greater choice as participants in the scheme. The chapter also addresses issues relating to carers and information on the authority's website.

---

<sup>8</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, pp 12-13.

<sup>9</sup> Evidence, Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority, 17 March 2014, p 49.

<sup>10</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 4.



## Chapter 2      Developments since the previous review

This chapter outlines key developments since the previous review regarding the new governance structure introduced in the *Safety, Return to Work and Support Board Act 2012*, inconsistencies raised in the decision of *Thiering v Daly* that were subsequently addressed in the *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012* and progress regarding the implementation of the National Disability Insurance Scheme and National Injury Insurance Scheme.

### ***Safety, Return to Work and Support Board Act 2012***

- 2.1**      The *Safety, Return to Work and Support Board Act 2012* was assented to on 27 June 2012 and established the Safety, Return to Work and Support Board (the board) to oversee the functions of the Lifetime Care and Support Authority (LTCSA), the Motor Accidents Authority (MAA), the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board. The Act abolished the individual boards of directors of the MAA, LTCSA and WorkCover and brought them under the auspices of the board.<sup>11</sup>
- 2.2**      The Act passed through parliament as a cognate to the *Workers Compensation Legislation Amendment Act 2012* which sought to reform the workers compensation scheme in New South Wales.
- 2.3**      The board has been in operation since 1 August 2012 and consists of seven members including the Chief Executive Officer and six members appointed by the Governor on the recommendation of the Minister for Finance and Services. In order to be recommended for appointment to the board, a person must have skills and experience in either insurance, finance, investment, law, health, marketing, communications, work health and safety, injury prevention or management, return to work programs and/or disability services.<sup>12</sup>
- 2.4**      As part of its functions, the board is to determine the general policies and strategic direction of each authority, oversee their performance, ensure their activities are carried out properly and advise the Minister on any relevant matter.<sup>13</sup>
- 2.5**      The board is also responsible for determining the investment policies of seven funds, including the LTCSA Fund established under s 48 of the *Motor Accidents (Lifetime Care and Support) Act 2006*.<sup>14</sup>

### **Abolishment of the Lifetime Care and Support Advisory Council**

- 2.6**      In addition to the individual MAA, LTCSA and WorkCover boards being abolished, the LTCSA's Lifetime Care and Support Advisory Council was also abolished under the new Act.<sup>15</sup>

<sup>11</sup>      *Safety, Return to Work and Support Board Act 2012* (NSW) sch 2.

<sup>12</sup>      *Safety, Return to Work and Support Board Act 2012* (NSW) s 4.

<sup>13</sup>      *Safety, Return to Work and Support Board Act 2012* (NSW) s 5.

<sup>14</sup>      *Safety, Return to Work and Support Board Act 2012* (NSW) s 7.

<sup>15</sup>      *Safety, Return to Work and Support Board Act 2012* (NSW) sch 2.

- 2.7 The Lifetime Care and Support Advisory Council had been a permanently appointed statutory body. Its role was to facilitate input from relevant stakeholders on the Lifetime Care Scheme (the scheme) and consider issues referred by the LTCSA with a view to providing advice and recommendations.
- 2.8 This committee had a statutory role to review the exercise and functions of both the LTCSA and the Lifetime Care and Support Advisory Council from 2006 until 2012.

### **Advisory committees and stakeholder interaction**

- 2.9 The *Safety, Return to Work and Support Board Act* makes provision for the Minister for Finance and Services to establish advisory committees at his or her discretion. The functions of these advisory committees are also at the discretion of the minister, but may include investigating and reporting on matters relating to the exercise of an authority's functions.<sup>16</sup>
- 2.10 Currently no advisory committees have been appointed by the Minister. Under the resolution of the Legislative Council (see chapter 1 at 1.2), any advisory committees appointed would be monitored and reviewed by this committee.
- 2.11 Unlike the evidence received for the 12th review of the MAA, this committee did not receive evidence from legal associations that an advisory committee was necessary for the LTCSA.<sup>17</sup>
- 2.12 In lieu of an advisory committee, the LTCSA has convened an advisory group to consult on the LTCS guidelines, assist with identifying gaps in service delivery and inform the authority of new initiatives in their areas of expertise. Members include representatives from 'the Physical Disability Council of NSW, Brain Injury Association of NSW, ParaQuad, Attendant Care Industry Association, the Trustee and Guardian, Rural Brain Injury Services and the Brain Injury and Spinal Cord Injury Rehabilitation Services'.<sup>18</sup>
- 2.13 Further, the LTCSA has established a 'Participant Reference Group' to advise the authority on its policies, procedures and service initiatives. Membership of the reference group consists of participants with brain injuries, spinal cord injuries and their families. The group will be consulted regarding the 2013 participant satisfaction survey and on specific projects such as the direct funding trial (discussed in chapters 3 and 5 respectively).<sup>19</sup>

---

<sup>16</sup> *Safety, Return to Work and Support Board Act 2012* (NSW) s 10.

<sup>17</sup> Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 9.

<sup>18</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, 14 February 2014, p 3.

<sup>19</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 3.

- 2.14** Feedback received during this review regarding stakeholder consultation was generally very positive.<sup>20</sup> Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales advised that she liaised with the LTCSA on a regular basis.<sup>21</sup> She was supportive of scheme participants having a role on a reference group, but warned it was important this was ‘real participation’ and not ‘tokenistic in fashion’.<sup>22</sup>
- 2.15** Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, stated that as an independent advocate, he has noticed the LTCSA has been proactive in seeking out the association to have representation on quite a few of their forward-thinking processes.<sup>23</sup>
- 2.16** In evidence received by the committee, there appeared to be some confusion regarding the Lifetime Care and Support Advisory Council, with some stakeholders under the impression that it still existed.<sup>24</sup>
- 2.17** For example, during evidence Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, referred to a recommendation made in one of the committee’s previous reviews which recommended including participants on the Lifetime Care and Support Advisory Council, and agreed that he would like to see direct participant contribution on the council. He then noted the Participant Reference Group and said he was unclear whether the reference group was the same as the Lifetime Care and Support Advisory Council:
- ... in the latest [LTCSA] newsletter there was a quote saying that they were currently now seeking two participants to join a reference group so I am not 100 per cent sure whether the reference group is a separate reference group, something that would be called up by the [LTCSA] or whether it is actually talking about the same thing.<sup>25</sup>
- 2.18** Similarly, the Council of Social Service of New South Wales strongly urged that the recommendation to ‘appoint two participant representatives to the LTCSA Council, as set out in the *Second Review Report* and supported by the *Third Review Report*, [be] immediately actioned’.<sup>26</sup> Carers NSW also commented on the importance of enabling participants to participate in the advisory council.<sup>27</sup>
- 2.19** Carers NSW was supportive of the work undertaken by the LTCSA to increase participant consultation, but recommended steps be taken to ‘increase carer participation, as carers are

---

<sup>20</sup> Submission 1, Council of Social Service of NSW (NCOSS), p 1.

<sup>21</sup> Evidence, Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales 7 March 2014, p 31.

<sup>22</sup> Evidence, Ms Robinson, 7 March 2014, p 30.

<sup>23</sup> Evidence, Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, 7 March 2014, p 43.

<sup>24</sup> Submission 1, NCOSS, p 3; Submission 3, Carers NSW, p 8; Submission 13, Spinal Cord Injuries Australia, p 6.

<sup>25</sup> Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 7 March 2014, p 41.

<sup>26</sup> Submission 1, NCOSS, p 3.

<sup>27</sup> Submission 3, Carers NSW, p 8.

directly impacted by the operation of the scheme and should be recognised as key stakeholders'.<sup>28</sup>

**2.20** In response, the LTCSA noted the Participant Reference Group includes family representatives.<sup>29</sup>

**2.21** During evidence to the 12th review of the MAA, Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support stated she believed work could be done to streamline stakeholder engagement as many stakeholders are common across all authorities under the management of the board:

We need to engage, we need to consult. We also need to have an eye to how much are we expecting of them to be giving up their time across four different agencies where in fact there are some of the same faces. We would say yes, as a group of agencies I am happy to look at what we can do to improve.<sup>30</sup>

### ***Committee comment***

**2.22** The committee is pleased with the level of stakeholder engagement by the LTCSA. We note there does not appear to be the same level of need or desire for a lifetime care advisory committee as there is for the MAA. However, we will keep a watching brief of this issue.

**2.23** One issue the committee is concerned with is the number of key stakeholders that still thought the Lifetime Care and Support Advisory Council was in operation and were advocating for the government to include participant representatives on the council. We also note Mr Killeen's query as to whether the Participant Reference Group is the same as the council. It is important that stakeholders are aware of major developments in the scheme and understand the differences between these groups. Because of this, the committee recommends that the LTCSA publish clear information on its website regarding the stakeholder consultation groups that have been established by the authority and note that no advisory committee has been established.

---

### **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.

---

**2.24** The committee is supportive of Ms Donnelly's comments regarding streamlining stakeholder engagement between the authorities that are managed by the board. The committee encourages the board to liaise with key stakeholders across the authorities to establish a suitable approach for such engagement.

---

<sup>28</sup> Submission 3, Carers NSW, p 8.

<sup>29</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 3.

<sup>30</sup> Evidence, Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support, 17 March 2014, p 23.

## *Thiering v Daly*

- 2.25** The case of *Thiering v Daly* [2011] NSWSC 1345 arose after a motor vehicle accident between the plaintiff and defendant rendered the plaintiff a quadriplegic. The plaintiff became a scheme participant and requested the LTCSA pay his mother as an attendant carer, to which the LTCSA declined.<sup>31</sup>
- 2.26** The Supreme Court of New South Wales considered whether the right of a scheme participant to damages for gratuitous care had been abolished pursuant to what was then s 130A of the *Motor Accidents Compensation Act 1999*, which provided that ‘no damages may be awarded to a person who is a participant in the [LTCS] scheme ... for economic loss in respect of the treatment and care needs’.<sup>32</sup> If that right had not been abolished, the court needed to determine whether it was the defendant or the LTCSA that was liable for the payment of compensation for these services.<sup>33</sup>
- 2.27** The Supreme Court found that the former s 130A did not, as had previously been thought, prevent a lifetime care participant from recovering damages for economic loss or treatment and care needs that the LTCSA had not paid for, or accepted an obligation to pay.<sup>34</sup>
- 2.28** It also noted a significant lacuna in the *Motor Accidents (Lifetime Care and Support) Act* that there is no express provision to specifically oblige the LTCSA to provide or pay for all of the assessed needs of participants. It was argued that this obligation was just assumed.<sup>35</sup>
- 2.29** The decision left open the possibility that compulsory third party insurers may be liable in damages for the cost of participants’ future treatment and care needs. As insurers calculated their premiums on the assumption they were not liable for these expenses, future premium costs would have risen substantially.<sup>36</sup>
- 2.30** Prior to this decision, it was thought the *Motor Accident Compensation Act* excluded a lifetime participant from recovering economic loss damages for any treatment and care needs. As well as this, it was considered insurers were not required to meet a participant’s treatment and care expenses, as those expenses would be met solely by the LTCSA.<sup>37</sup>
- 2.31** The decision in *Thiering* was overturned in 2013 by the High Court in *Daly v Thiering* [2013] HCA 45, but not before legislation was passed in parliament to counter its effects.<sup>38</sup>

<sup>31</sup> *Thiering v Daly* [2011] NSWSC 1345 [46]; Melbourne Law School, *Opinions on High* (6 November 2013), <http://blogs.unimelb.edu.au/opinionsonhigh/2013/11/06/daly-case-page/>.

<sup>32</sup> *Motor Accidents Compensation Act 1999* (NSW) s 130A, as repealed by *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012* (NSW) sch 2 item 5.

<sup>33</sup> *Hansard*, Legislative Council, 30 May 2012, p 12179 (Greg Pearce).

<sup>34</sup> *Hansard*, Legislative Council, 30 May 2012, p 12179 (Greg Pearce).

<sup>35</sup> *Hansard*, Legislative Council, 30 May 2012, p 12179 (Greg Pearce).

<sup>36</sup> *Hansard*, Legislative Council, 30 May 2012, p 12179 (Greg Pearce).

<sup>37</sup> *Hansard*, Legislative Council, 30 May 2012, p 12178 (Greg Pearce).

<sup>38</sup> Submission 7, Law Society of New South Wales, p 8; Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 16.

***Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012***

**2.32** The *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012* was passed by parliament on 20 June 2012 to expressly negate the decision in *Thiering v Daly*. In his second reading speech, the then Minister for Finance and Services, the Hon Greg Pearce MLC, stated the Act had two key features:

- it clarified that the LTCSA is solely responsible for paying the expenses of all the assessed treatment and care needs of scheme participants
- it clarified that participation in the scheme abolishes a participant's right to claim damages for economic loss or treatment and care needs payable under the *Motor Accidents Compensation Act*.<sup>39</sup>

**2.33** In doing so the Act ensured the reasonable and necessary treatment and care expenses of a participant were paid for from the LTCS component of the Medical Care and Injury Services Levy and that insurers were not obliged to pay damages for these matters.<sup>40</sup>

**2.34** Further to this, the Act introduced s 11A that stated the LTCS guidelines may now 'make provision for or with respect to determining which treatment and care needs of a participant in the scheme are reasonable and necessary',<sup>41</sup> effectively meaning the authority 'has the sole discretion over whether a particular treatment or care regime is reasonable and necessary'.<sup>42</sup>

**'Reasonable and necessary' treatment and services**

**2.35** Legal associations expressed concern that the *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act* gave the authority the power to determine for itself what was 'reasonable and necessary' rather than leaving it to the ultimate determination of a court. Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, asserted the Act took away the right participants had to challenge the authority's decision in the Supreme Court on whether a treatment or service was 'reasonable and necessary'.<sup>43</sup>

**2.36** Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, noted that this legislative change gave great power to the authority:

The change the bill made was it let the authority define in its own guidelines what was reasonable and necessary. ... you have given them an enormous power to, in effect, say what they are prepared to treat as reasonable and necessary, irrespective of what common sense, logic or medical best practice might call reasonable and necessary.<sup>44</sup>

---

<sup>39</sup> *Hansard*, Legislative Council, 30 May 2012, p 12180 (Greg Pearce).

<sup>40</sup> *Hansard*, Legislative Council, 30 May 2012, p 12180 (Greg Pearce).

<sup>41</sup> *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012* (NSW) s 11A(5).

<sup>42</sup> Submission 7, Law Society of New South Wales, p 8.

<sup>43</sup> Evidence, Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, 7 March 2014, p 25.

<sup>44</sup> Evidence, Mr Stone, 7 March 2014, p 3.

**2.37** The Law Society of New South Wales declared the provisions reflected an unwillingness by the LTCSA to accept external scrutiny:

... many of these amendments reflect a reluctance on the part of the authority to accept external scrutiny of its decision making... The [Law Society's Injury Compensation] Committee questions why such provision was required if the authority aspires to be a truly transparent organisation.<sup>45</sup>

**2.38** Further, the Law Society argued that external scrutiny would help to ensure the question of what is 'reasonable and necessary' is reviewed regularly and does not become outdated through rigid adherence to guidelines:

What is reasonable and necessary in a particular person's case should be the subject of individual assessment without rigid adherence to guidelines issued by the Authority ... The danger is that in the absence of any external scrutiny by way of a legal review process the Authority will have little reason to question whether entrenched views on treatment and/or care are appropriate and up to date.

In the above circumstances the [Law Society's Injury Compensation] Committee submits that the question of whether a treatment is reasonable and necessary should not be at the sole discretion of the authority.<sup>46</sup>

**2.39** It is noted that during the *Fourth Review Report* this committee also heard evidence regarding the issue of 'reasonable and necessary' treatment and services, however, it was from the viewpoint of participants and service providers, who were either seeking clarification regarding what was considered 'reasonable and necessary' or were frustrated that there had been inconsistent decisions made on the subject. In that report, the committee expressed its reluctance to recommend that the LTCSA define specific services as being 'reasonable and necessary' as it may limit the operation of the Act.<sup>47</sup>

### ***Committee comment***

**2.40** The committee acknowledges the concerns raised by legal associations that the LTCSA has a total degree of control to decide what are 'reasonable and necessary' treatment and services.

**2.41** The committee did not receive enough evidence in this review that the legislative changes regarding the issue of what is 'reasonable and necessary' treatment and services has created serious problems.

**2.42** Also, unlike in the *Fourth Review Report*, the committee did not receive information from participants and service providers concerned with what treatment and services are classified as 'reasonable and necessary'.

**2.43** As such, at this stage, the committee will note the concerns raised by legal associations and examine with interest the evidence on this issue in the next review.

<sup>45</sup> Submission 7, Law Society of New South Wales, p 8.

<sup>46</sup> Submission 7, Law Society of New South Wales, p 8.

<sup>47</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 69-70.

## National Disability Insurance Scheme and National Injury Insurance Scheme

- 2.44** In August 2011, the Productivity Commission released its final report on a national disability strategy and recommended the establishment of two schemes: the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS).
- 2.45** The purpose of the NDIS is to provide referral services, maximise social and economic participation for people with a disability, and provide individually tailored funding for people with a significant disability.<sup>48</sup>
- 2.46** The purpose of the NIIS is to facilitate the establishment of nationally consistent, state-based, no-fault schemes for the provision of care to people who have suffered catastrophic injuries, whatever the cause.<sup>49</sup>

### *National Disability Insurance Scheme*

- 2.47** In December 2012, New South Wales became the first state to sign on to the NDIS through an intergovernmental agreement with the Commonwealth. On 20 November 2013, the parliament passed the *National Disability Insurance Scheme (NSW) Enabling Act 2013* which launched the scheme in the Hunter area.
- 2.48** In the second reading speech, the Minister for Disability Services, the Hon John Ajaka MLC, stated the enabling Act would result in an estimated 10,000 people accessing the NDIS over the next three years. A progressive roll out of the scheme across the state will occur from July 2016.<sup>50</sup>
- 2.49** The Act was designed to achieve three critical objectives:
- to ensure that the implementation of the NDIS delivers maximum continuity of services for people with a disability
  - to promote the retention of a skilled disability services workforce
  - to maximise the capacity of the disability services sector.<sup>51</sup>

---

<sup>48</sup> Productivity Commission, 'Vol 1 – Disability Care and Support', *Disability Care and Support: Inquiry Report*, Report 54, 31 July 2011, p 63.

<sup>49</sup> Productivity Commission, 'Vol 1 – Disability Care and Support', *Disability Care and Support: Inquiry Report*, Report 54, 31 July 2011, p 88.

<sup>50</sup> *Hansard*, Legislative Council, 23 October 2013, p 24530 (John Ajaka).

<sup>51</sup> *Hansard*, Legislative Council, 23 October 2013, p 24530 (John Ajaka).



### *National Injury Insurance Scheme*

- 2.50** The purpose of the NIIS is to create nationally consistent, state-based, no-fault schemes for people catastrophically injured in different circumstances, for example in a motor vehicle, workplace, medical treatment or general accident. The implementation of NIIS requires the Australian Government to work with states and territories to develop various national standards, such as eligibility and treatment and services provisions, for these different schemes.<sup>52</sup>
- 2.51** Currently only the motor vehicle accident minimum benchmarks (national standards) have been developed for state and territory motor vehicle accident compensation schemes.<sup>53</sup> In its current form, the LTCSA meets these minimum benchmarks.<sup>54</sup>
- 2.52** Under the motor vehicle accident benchmarks, eligibility rules have been developed for individuals who have suffered spinal cord injury, traumatic brain injury, multiple amputations, burns and/or permanent traumatic blindness. The benchmarks also set out the range of treatment and services to be offered to participants, including medical treatment, rehabilitation, attendant care services, domestic assistance, education and vocational training and home and transport modification.<sup>55</sup>
- 2.53** The LTCSA advised that it has had input into the design of the NIIS through the Safety, Return to Work and Support's participation in reporting to the Standing Council on Federal Financial Relations.<sup>56</sup>

### *Differences between the LTCS scheme and the NDIS*

- 2.54** Ms Donnelly noted that there are some fundamental differences between the NDIS and the LTCS scheme (which is now a component of the New South Wales NIIS), particularly that lifetime care offers more services and has no age restriction:

... between whether someone is in NDIS or in lifetime care as part of the New South Wales NIIS there are some differences. A key one is that... lifetime care, will continue to obviously provide a whole lot of medical treatment and rehabilitation services on top of NDIS... If you are in lifetime care... you will have access to more than you would if you are in NDIS. Similarly, the age issue that the Committee raised earlier... lifetime care, does not have a minimum benchmark if you are under 65 or under retiring age. Again, that is another example where the intent is that a participant in the NIIS will have access to more reasonable and necessary benefits than the other way around, but where it comes to supports or disability, the intention is that they would be the same.<sup>57</sup>

<sup>52</sup> Australian Government, The Treasury, *National Injury Insurance Scheme*, <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme>.

<sup>53</sup> Australian Government, The Treasury, *National Injury Insurance Scheme*, <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme>.

<sup>54</sup> Evidence, Ms Donnelly, 17 March 2014, p 48.

<sup>55</sup> Australian Government, The Treasury, *Agreed minimum benchmarks for motor vehicle accidents*, <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>.

<sup>56</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 5.

<sup>57</sup> Evidence, Ms Donnelly, 17 March 2014, p 48.

- 2.55** The LTCSA anticipated that the NDIS would not significantly impact on the LTCS scheme.<sup>58</sup> Nevertheless, the LTCSA stated that it was taking the ethos of the NDIS and NIIS regarding greater choice and control for participants into account in the development of its current business practices:

All current business improvement projects and any other work undertaken by the Authority take account of the effect the NIIS may have on its operations. The Authority's current direct funding pilot and review of the community living plans, reflect the philosophy which underpins the NDIS and the NIIS. Both these projects aim to provide the participants with greater choice and control over their services.<sup>59</sup>

- 2.56** Mr Don Ferguson, General Manager, LTCSA advised the authority would review its guidelines and include a greater involvement of participants in the operation of the scheme to ensure the LTCSA is aligned to the reform agenda:

A service challenge for us is aligning neatly with the disability reform agenda that is embodied in the introduction of the NDIS. With this in mind, we are about to undertake a comprehensive review of the scheme guidelines on which we will be consulting widely. We are also promoting greater involvement of participants in the running of the scheme through the recent establishment of a participant reference group that meets with me personally to provide feedback and input on issues and opportunities for improvement.<sup>60</sup>

- 2.57** One concern, raised during the review by Mr Christopher Catchpole, Acting Manager, Hunter Brain Injury Service, was that participants under the NDIS may be eligible for more services, such as leisure and recreation, than participants in the LTCS scheme:

The [NDIS] has a trial site in the Hunter... the majority of focus is then on things like getting back to leisure activities and life activities. The issue we are finding is that if a person is within the [LTCS] Scheme, they are ineligible for the [NDIS]. There is potential for people to get to a point where they would prefer to be in the [NDIS], because that would better support them at the point in their life of getting back to leisure activities and those types of things... Obviously, we do not want these clients to be disadvantaged if they fall under lifetime care and they cannot access services provided under the [NDIS].<sup>61</sup>

...

Once they require less rehab, less medical care and need to be supported with more life participation, that is where they probably will feel like they have been disadvantaged, potentially, being in the [LTCS] scheme because some of those things, like leisure and recreation, are not supported whereas the information we have had from NDIS is that they will be supported under NDIS.<sup>62</sup>

---

<sup>58</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 6.

<sup>59</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 5.

<sup>60</sup> Evidence, Mr Don Ferguson, General Manager, Lifetime Care and Support Authority, 17 March 2014, p 36.

<sup>61</sup> Evidence, Mr Christopher Catchpole, Acting Manager, Hunter Brain Injury Service, 7 March 2014, p 34.

<sup>62</sup> Evidence, Mr Catchpole, 7 March 2014, p 35.

- 2.58** In response to this concern, the LTCSA commented it had only one experience of a participant being assessed by the NDIS for the activity costs associated with recreation and leisure. In that situation, the NDIS indicated that it did not pay for social and recreation activity costs.<sup>63</sup>
- 2.59** Mr Ferguson pointed out that ultimately what is provided for under the NDIS is still being resolved,<sup>64</sup> but agreed a key focus for the authority is to ensure the experience of participants is comparable between the schemes:
- The other focus is on the balance of managing risk and allowing flexibility to individuals to ensure that, if somebody ends up on the [NDIS] or the [NIIS], their experience is comparable. We do not want people in one scheme saying, "I would like a bit of that. I think that would be a better option for me".<sup>65</sup>
- 2.60** Methods to increase flexibility for participants and compulsory participation in the LTCS scheme are discussed in chapter 5.
- 2.61** The LTCSA acknowledged that while it is too early to comment on what, if any, differences there are between the schemes, it expressed the view that it is unlikely anyone would receive more services through the NDIS compared to the LTCS scheme.<sup>66</sup>

### *Committee comment*

- 2.62** The committee is pleased that the LTCS scheme meets the motor vehicle accident minimum benchmarks under the NIIS. We support having nationally consistent standards for motor vehicle accident schemes for the catastrophically injured and commend the work that has been done to implement this.
- 2.63** The committee notes the rollout of the NDIS is still in its infancy and acknowledges the comments by the LTCSA that it is too early to comment on the differences between the schemes. However, the committee appreciates the desire by stakeholders to ensure the services offered by the LTCS scheme are comparable to the NDIS.
- 2.64** The committee will be interested to see the interaction and differences between the NDIS and the LTCS scheme in the next review once more data is available and the trial in the Hunter has been in effect for longer.

<sup>63</sup> Answers to questions on notice, Lifetime Care and Support Authority, 16 April 2014, p 3.

<sup>64</sup> Evidence, Mr Ferguson, 17 March 2014, p 48.

<sup>65</sup> Evidence, Mr Ferguson, 17 March 2014, p 41.

<sup>66</sup> Answers to questions on notice, Lifetime Care and Support Authority, p 3.



## Chapter 3 Scheme performance and initiatives

This chapter examines the performance of the Lifetime Care and Support (LTCS) scheme since the committee's *Fourth Review Report* and looks at projects and initiatives undertaken by the Lifetime Care and Support Authority (LTCSA), such as the In-Voc pilot program that has assisted spinal cord injury participants to return to work.

### Scheme performance

**3.1** This section reviews scheme performance by examining statistical information about the scheme and the results and analysis of the 2012 participant satisfaction survey. Criticism regarding a lack of scheme performance information in the annual report will also be addressed.

#### Scheme statistics

**3.2** This section provides a statistical overview of the LTCS scheme. As at 30 June 2013, there were 796 participants in the scheme. Of these:

- 712 were adults and 84 were children
- 71 per cent of all participants were male and 29 per cent were female
- 63 per cent of child participants were male and 37 per cent were female.<sup>67</sup>

**3.3** As noted in chapter 1, lifetime participation in the scheme is assessed before the interim period expires. As at 30 June 2013, there were 438 lifetime participants in the scheme which is an increase of 134 from June 2012.<sup>68</sup>

**3.4** Table 1 outlines the type of injury sustained by adults and child participants in the scheme.

**Table 1 Scheme participant injury type - as at 30 June 2013<sup>69</sup>**

Injury type	Child		Adult	
	No	%	No	%
Traumatic brain injury	78	93	523	73.5
Spinal cord injury	6	7	173	24.3
Other <sup>70</sup>	0	0	16	2.2

**3.5** Table 2 provides a breakdown of the participants' role in the accident, for example, whether they were a driver, passenger or a pedestrian.

<sup>67</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

<sup>68</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

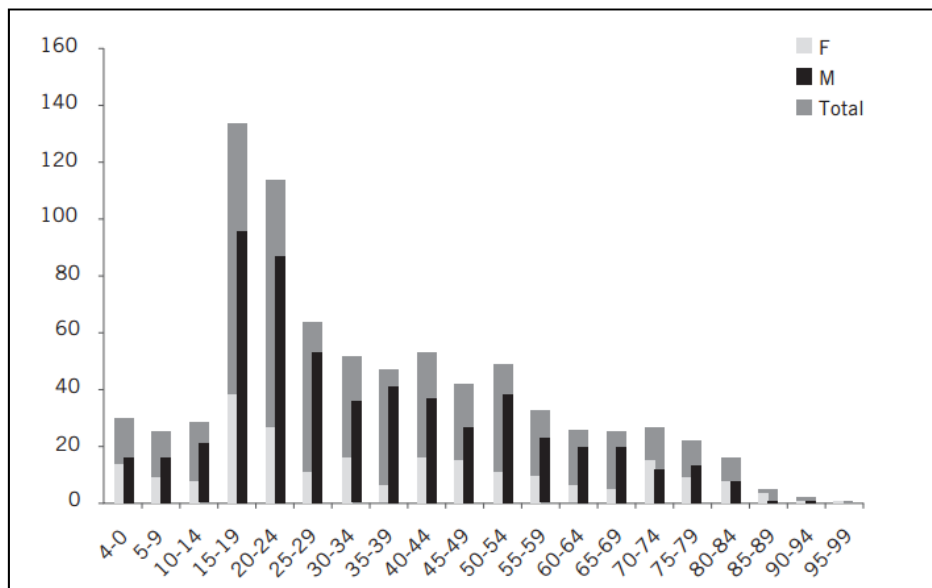
<sup>69</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

<sup>70</sup> 'Other' injuries include amputations, burns and vision loss.

**Table 2 LTSCA participant role in the accident<sup>71</sup>**

Role in accident	Child		Adult	
	No	%	No	%
Pedestrian	40	47.6	142	19.9
Passenger	35	41.7	124	17.4
Cyclist	3	3.6	29	4.1
Driver	2	2.4	247	34.7
Motorcycle rider	2	2.4	161	22.6
Pillion passenger	0	0	6	<1
Other	2	2.4	3	<1
<b>Total</b>	<b>84</b>		<b>712</b>	

**3.6** The age of participants in the scheme ranges from five months to 100 years.<sup>72</sup> The age group with the strongest representation was 15-19 years (17 per cent), followed by 20-24 years (14 per cent).<sup>73</sup> Figure 1 provides a breakdown of the participants by age groups.

**Figure 1 Age of scheme participants as at 30 June 2013<sup>74</sup>**

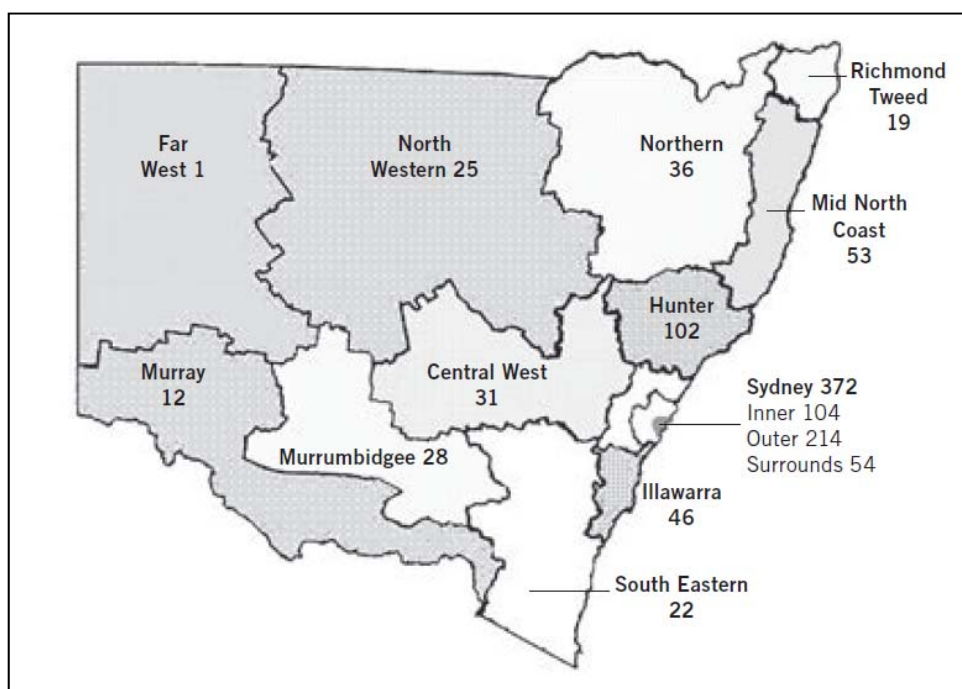
**3.7** The map in Figure 2 illustrates a geographical breakdown of where participants reside. Almost half of the participants in the scheme reside in Sydney (46 per cent), while the remainder reside in regional areas of New South Wales.

<sup>71</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

<sup>72</sup> Evidence, Mr Don Ferguson, General Manager, Lifetime Care and Support Authority, 17 March 2014, p 44.

<sup>73</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

<sup>74</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

**Figure 2 Scheme participant geographical breakdown as at June 2013<sup>75</sup>**

### Participant satisfaction survey 2012

- 3.8** The LTCSA conducts an annual participation satisfaction survey to measure the effectiveness of the scheme and the authority's services and service provision, from the perspective of scheme participants. The surveys are used by the LTCSA to monitor service provision and the performance of the scheme, and to highlight systemic issues or trends that need to be addressed or examined.<sup>76</sup>
- 3.9** The survey is conducted by a psychologist with experience in social and market research and knowledge of brain injury.<sup>77</sup>
- 3.10** The 2012 participant satisfaction survey showed generally consistent results with surveys from previous years. The survey showed an overall satisfaction with the scheme, with 83 per cent of participants expressing satisfaction with how the scheme was meeting their needs.<sup>78</sup> This is the same percentage as the 2009 survey, reported on in the fourth review of the LTCSA.<sup>79</sup>

<sup>75</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 12.

<sup>76</sup> KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013, p 21.

<sup>77</sup> KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013, p 9.

<sup>78</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, 14 February 2014, p 2.

<sup>79</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 25.

- 3.11** Mr Don Ferguson, General Manager of the LTCSA highlighted that the survey showed 85 per cent to 99 per cent of participants were satisfied with the services provided.<sup>80</sup> Further to this, Mr Ferguson informed the committee that the proportion of participants that reported no problems with service providers improved from 68 per cent in 2011 to 78 per cent in 2012, and that satisfaction with case management services rose from 83 per cent to 94 per cent during the same period.<sup>81</sup>
- 3.12** Table 3 shows the percentage of participant satisfaction with the individual services provided through the scheme.

**Table 3 Participant satisfaction survey results on individual services provided<sup>82</sup>**

Service provided	Percentage of participants satisfaction
Case management	91 per cent
Home and vehicle modifications	91 per cent
Equipment	89 per cent
Attendant care	89 per cent
Vocational and educational	85 per cent

- 3.13** Although the figures in Table 3 are mostly positive, the survey did identify a number of problems with service providers. The LTCSA found that the most common problem was with equipment supply, in particular waiting for specialist equipment such as special wheels for a wheelchair or a bench seat to do weights at the right height. Further to this, participants reported there was ‘not enough contact’ with case management services.<sup>83</sup>
- 3.14** The LTCSA noted that 35 per cent of participants who had a problem with service providers did not expect them to be sorted. Reasons cited for this included breakdown in relationships with doctors, an international parcel being lost in transit for over five weeks and general communication problems.<sup>84</sup>
- 3.15** Further, 88 per cent of participants indicated they did not have any problems with the authority as opposed to service providers. Mr Ferguson told the committee that the number of concerns with the LTCSA had been reducing. In 2011, 23 per cent of participants were reported as having problems with the authority in the last three months and in 2012, this was down to 15 per cent.<sup>85</sup>
- 3.16** In comparison to the previous survey results of 2011, the 2012 survey showed there was some improvement in community participation. The extent to which participants felt part of the community and felt they had enough time with friends had increased from 67 per cent to 74

<sup>80</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>81</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>82</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>83</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>84</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>85</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.



per cent and 68 per cent to 78 per cent respectively.<sup>86</sup> In addition, 84 per cent of survey respondents agreed that considering the stage of rehabilitation they were at, they were happy with how much they were getting out of the community, which is an increase of eight per cent from 2011.<sup>87</sup>

- 3.17** Most recommendations made by participants for improvements to the scheme were in the area of ‘more communication or contact with the authority’,<sup>88</sup> with survey results finding that 40 per cent of participants felt they needed more information from the LTCSA. Mr Ferguson conceded that ‘a theme has emerged... in relation to better communication’.<sup>89</sup> He stated that the LTSCA is taking this matter ‘seriously’ and is ‘keen to have comprehensive information from participants... about their experience within the scheme and the ways that [the authority] can improve it’.<sup>90</sup>

### **Criticism of the annual report and participant satisfaction survey analysis**

- 3.18** The New South Wales Bar Association was critical of the LTCSA’s lack of service delivery data in the 2012/13 annual report and lack of qualitative analysis of the results of its 2012 participant satisfaction survey.
- 3.19** Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association was particularly critical of the lack of service delivery content in the annual report:

The LTCS scheme ... is all about service delivery. It is about looking after people who are catastrophically injured and getting the services to them. In that context, you could call it anywhere between disappointing and appalling that the annual report from that authority contains no more than two lines addressed to the subject of service delivery. They say that 90 per cent of their customers are happy full stop. There is no word about any aspect of service delivery.<sup>91</sup>

- 3.20** Further, the Bar Association declared that it is pertinent for the annual report to include a critical analysis of scheme performance:

Critical evaluation of weaknesses and shortcomings in the delivery of services is essential to understanding where future improvements can be made... The experience the Association’s members do have with scheme participants is that there are a number of concerns about the delivery of services and the performance of the scheme. Those concerns are not reflected in the authority’s Annual Report which provides no critical analysis of scheme performance.<sup>92</sup>

<sup>86</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 2.

<sup>87</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 2.

<sup>88</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>89</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>90</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>91</sup> Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 2.

<sup>92</sup> Supplementary submission 10a, New South Wales Bar Association, p 6.

**3.21** In addition, the Bar Association remarked that there ‘is not a single mention in the Annual Report of any key performance indicators’ and questioned if the LTCSA had set benchmarks for service delivery.<sup>93</sup>

**3.22** Regarding the participant satisfaction survey, Mr Stone noted there was no analysis from the LTCSA on the results, and asserted a qualitative analysis of its findings should be conducted:

... within three months of their survey, 32 per cent—nearly a third of scheme participants—had a problem with a service provider. You would like to follow that with qualitative questions: What was the nature of the problem?. ... What is truly frightening when you look at their own data is that 47 per cent of those problems had not been sorted out. Further, their data said 89 per cent of people know who their case manager is. Given that you are in this scheme because you are catastrophically injured, the case manager is pretty close to the most important person in your life. What frightens me is that 10 per cent of people did not know, and why not? None of those issues are addressed.<sup>94</sup>

**3.23** In response to the concerns raised by the Bar Association, Mr Ferguson accepted the annual report could contain more performance information and undertook to do so for the next reporting period:

I think the annual report can be much stronger next time around in relation to performance information. I have heard the observations that have been made and I am comfortable with them. I would be comfortable in looking at how the annual report could provide some more qualitative information in relation to areas such as the survey, as well as looking at providing a greater range of performance data.<sup>95</sup>

**3.24** Regarding the concern raised by Mr Stone that only 89 per cent of scheme participants know who their case manager is, Ms Suzanne Lulham, Director, Service Delivery, LTCSA, explained that not everyone has a case manager, particularly people with a spinal cord injury. In addition, a number of participants have severe cognitive deficits, so they may not know the name of their case manager.<sup>96</sup>

**3.25** As stated in chapter 2, the committee was advised that the newly established Participant Reference Group will be consulted about the results of the 2013 participant satisfaction survey.<sup>97</sup>

### ***Committee comment***

**3.26** The committee thanks the Bar Association for bringing to its attention the association’s concerns about the LTCSA’s annual report and participant satisfaction survey. We agree the annual report should provide more information on the LTCSA’s vital role in service delivery and should provide a greater amount of detail and critical analysis of the participant satisfaction survey.

---

<sup>93</sup> Supplementary submission 10a, New South Wales Bar Association, p 3.

<sup>94</sup> Evidence, Mr Stone, 7 March 2014, p 2.

<sup>95</sup> Evidence, Mr Ferguson, 17 March 2014, p 42.

<sup>96</sup> Evidence, Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority, 17 March 2014, p 49.

<sup>97</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 3.

- 3.27** The committee is pleased that the LTCSA acknowledged the annual report should be ‘stronger’ in the future and therefore recommends that the LTCSA ensure that future annual reports provide more detailed information and qualitative analysis on service delivery and the participant satisfaction survey.

---

**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.

- 
- 3.28** The committee also notes that the LTCSA does not report using key performance indicators. The use of key performance indicators helps to structure and focus annual reports and allows for a more critical level of reporting on performance. It also makes it easier for bodies such as this committee to review the performance of the authority over time. Therefore, the committee recommends that the LTCSA report using key performance indicators in its annual reports.

---

**Recommendation 3**

That the Lifetime Care and Support Authority report using key performance indicators in its annual reports.

---

**Dispute resolution statistics**

- 3.29** The *Motor Accidents (Lifetime Care and Support) Act* 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 authority and informal dispute processes have been unsuccessful. The Act requires the LTCSA to appoint qualified assessors to review the disputed decision.<sup>98</sup> A number of stakeholders have been critical of this process. These criticisms will be considered in chapter 4.
- 3.30** There have been 27 eligibility disputes since the inception of the scheme in 2006 (see Table 4). The average length of time to resolve these disputes varies. The LTCSA observed this is usually because either the assessment panel has requested further medical information, legal advice or clinical assessments, or the respondent has taken longer to send in their submission or has requested a delay.<sup>99</sup>

---

<sup>98</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 24(3).

<sup>99</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, pp 10-11.

**Table 4 Eligibility disputes per year<sup>100</sup>**

Financial year	No. of disputes	Average days to resolve
2006	Nil	N/A
2007	Nil	N/A
2008	1	282
2009	3	120
2010	5	135
2011	8	184
2012	5	174
2013 – Jan 2014	5	103 (3 disputes in progress)

**3.31** There have been 56 treatment and care disputes since the start of the scheme in 2006 (see Table 5). These disputes have been for a range of issues such as equipment, domestic services, attendant care and home modifications. The average number of days to resolve disputes peaked in 2011 and has steadily decreased in the last few years. Reasons for variances in time to resolve disputes are similar to eligibility disputes but also include the availability of treatment providers for consultation and requests by participants to have their dispute heard by a different assessor.<sup>101</sup>

**Table 5 Treatment and care disputes per year<sup>102</sup>**

Financial year	No. of disputes	Average days to resolve
2008	2	57
2009	8	51
2010	13	83
2011	12	94
2012	12	67
2013	9	47 (3 disputes in progress)

## Complaints handling

**3.32** The LTCSA has a customer feedback service that welcomes suggestions and complaints. Through this service, the LTCSA has received complaints about the operation of the scheme and provision of services.<sup>103</sup> The past three financial years have seen an increase in the number

<sup>100</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 10.

<sup>101</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 12.

<sup>102</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, pp 11-12.

<sup>103</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 15.

of complaints from 15 to 34. There has also been a notable increase in complaints regarding requests for the approval of services, rising from four in 2012 to 16 in 2013.<sup>104</sup>

**3.33** However, during the same time there has been a reduction in the average amount of days to resolve each complaint, from 31 to 15. See Table 6 for these figures. The LTCSA explained complaints can take more than 40 days to be resolved if:

- they turn into a dispute
- an internal review is undertaken to resolve the complaint
- it was resolved after investigation by the Ombudsman.<sup>105</sup>

**Table 6 Complaints received by year<sup>106</sup>**

Financial year	No. of complaints	Average days to resolve
2011	15	31
2012	26	27
2013	34	15

**3.34** The Council of Social Service of New South Wales (NCOSS) received feedback from its stakeholders contending that complaints handling by the LTCSA was not as thorough as it should be, and processes for investigating complaints should be more comprehensive. Further, NCOSS stakeholders suggested the LTCSA's complaints handling process could also be improved by involving external advocates where appropriate.<sup>107</sup>

**3.35** In response to the suggestion regarding advocates, the LTCSA stated that participants and their families are welcome to use external advocates to assist them make a complaint and for other aspects of their participation in the scheme. The authority has published an information sheet about advocacy with information on how advocates can be used to help make complaints. Also, the LTCSA advised it has worked with external advocates who have made complaints on a participant's behalf.<sup>108</sup>

### Statutory review of the *Motor Accidents (Lifetime Care and Support) Act 2006*

**3.36** On 6 March 2014, a statutory review of the *Motor Accidents (Lifetime Care and Support) Act 2006* was tabled in parliament, according to s 67 of that Act. The review was conducted by KPMG of behalf of the Safety, Return to Work and Support Division, and was to determine if the policy objectives of the Act remain valid and the Act is appropriate for securing those objectives.<sup>109</sup>

<sup>104</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, pp 12-13.

<sup>105</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 13.

<sup>106</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, pp 12-13.

<sup>107</sup> Submission 1, Council of Social Service of New South Wales (NCOSS), p 2.

<sup>108</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 14.

<sup>109</sup> *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) s 67; KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013.

- 3.37** The review concluded that the policy objectives, governance and management and financial management and sustainability of the scheme are appropriate. It stated that scheme participants ‘primarily receive the necessary treatment, rehabilitation and care to meet their needs’.<sup>110</sup>
- 3.38** The review made a number of recommendations, including that there be greater clarity and information around the role and function of LTCS coordinators, particularly for participants, and that timeliness for the approval and delivery of support to participants be improved. The review noted that timeliness of approvals has been an ongoing issue for both participants and this committee.<sup>111</sup>

### **Delays in the assessment and delivery of equipment and services**

- 3.39** A number of stakeholders expressed concern that participants experience long waits for the delivery of equipment and services and that assessment processes are arduous.
- 3.40** For example, NCOSS received feedback from therapists suggesting that, while LTCSA processes are generally good, there is room for improvement in relation to effective assessment and approval processes to reduce waiting times.<sup>112</sup>
- 3.41** Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, stated he had spoken to service providers and noted there are 60 questions that need to be answered to fill out the assessment form to get a direct service. This has not improved since the last review of the authority.<sup>113</sup>
- 3.42** Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales also noted that participants still advise there are long waits for the approval of services.<sup>114</sup>
- 3.43** In response to this issue, Ms Lulham stated that well over 80 or 90 per cent of equipment decisions are made within 10 days. Although some equipment decisions have taken three to six months, they were around very specific pieces of equipment and circumstances.<sup>115</sup>
- 3.44** Mr Ferguson provided an example regarding a tilt bed where a participant had been recommended the bed, but the prescriber said there was not one available to supply. The LTCSA then went to a different prescriber and was able to locate the bed within the month. He pointed out that although there is often an urgent need for equipment, sometimes that

---

<sup>110</sup> KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013, pp 3-22, specifically p 14.

<sup>111</sup> KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013, pp 14-55.

<sup>112</sup> Submission 1, NCOSS, p 2.

<sup>113</sup> Evidence, Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, 7 March 2014, p 42.

<sup>114</sup> Answers to questions on notice, Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales, 17 March 2014, p 2.

<sup>115</sup> Evidence, Ms Lulham, 17 March 2014, p 42.

equipment is not immediately available. Mr Ferguson stated the LTCSA proactively try to resolve issues, but understandably delays can lead to frustration by participants.<sup>116</sup>

- 3.45** Ms Lulham stated the LTCSA is concerned that the participant satisfaction survey recorded that 38 per cent of participants are experiencing long delays waiting for services to be approved. She said that although this delay was sometimes due to the authority, it could also be caused by a range of other factors:

We discussed this at our reference group meeting only the other day and the doctors themselves were of the view that that has happened because lifetime care is the funder. We are bearing the responsibility for the delay even though many times it is not our responsibility. I am not saying it is not always our responsibility but certainly sometimes it is. However, the delays often come in working out what the piece of equipment needs to be. People are trialling equipment and from participants' point of view they know they need a wheelchair but meanwhile they are trying out three or four and that might take a month. So it all adds up from their point of view.<sup>117</sup>

### *Committee comment*

- 3.46** The committee is pleased with the generally positive information regarding the scheme in the statutory review of the Act conducted by KPMG. The committee encourages the LTCSA to work on the recommendations made in the KPMG report, particularly regarding the issue of reducing delays in the assessment and delivery of equipment and services to participants.

### **Financial matters**

- 3.47** According to the 2012/13 Annual Report financial statements, the authority reported a total comprehensive income of \$377.418 million.<sup>118</sup> This is an increase from the total income of \$117.780 million reported in 2011/12<sup>119</sup> and is a significant improvement from the figures in the committee's *Fourth Review Report* which reported a deficit of \$65.133 million in 2009/10.<sup>120</sup>
- 3.48** The LTCSA engages external actuarial consultants to conduct independent analysis of the financial performance of the scheme twice a year.<sup>121</sup> An independent actuary takes account of what costs have been incurred and anticipated costs for each participant over their lifetime.<sup>122</sup>
- 3.49** The LTCSA also uses a life costing model as a tool to estimate costs for providing lifelong treatment, rehabilitation and care services to participants and to calculate the authority's cash flow requirements on an annual basis.<sup>123</sup>

<sup>116</sup> Evidence, Mr Ferguson, 17 March 2014, p 37.

<sup>117</sup> Evidence, Ms Lulham, 17 March 2014, pp 42-43.

<sup>118</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 25.

<sup>119</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 25.

<sup>120</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 21.

<sup>121</sup> KPMG, *Statutory Review of the Motor Accidents (Lifetime Care and Support) Act 2006*, Final report, October 2013, p 18; Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 7.

<sup>122</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 7.

- 3.50** The LTCSA found that the model works particularly well for a group of participants that generally have the same experience with a particular injury, for example, a group of participants who each have a spinal cord injury. However, work is ongoing to refine the model for smaller participant groups, for example, participants with extensive medical needs or participants with pre-existing disabilities.<sup>124</sup>

### **Medical Care and Injury Services Levy**

- 3.51** As discussed in chapter 1, the LTCSA scheme is funded through the Medical Care and Injury Services (MCIS) levy which is a component of the Compulsory Third Party (CTP) green slip insurance policy purchased by motorists when registering a motor vehicle in New South Wales. A proportion of the MCIS levy contributes to the LTCS fund and represents a non-fixed percentage of the insurer premium for each vehicle class and region rating.<sup>125</sup>
- 3.52** In 2012/13, the scheme received \$470.265 million in funding through the levy.<sup>126</sup>
- 3.53** In 2013, the MAA and LTCSA conducted a review of the MCIS levy which led to an overall average levy reduction of two per cent.<sup>127</sup> As a result, the MAA component was increased from eight per cent to 9.5 per cent, while the LTCSA component was reduced following re-evaluation of its liabilities.<sup>128</sup> The new levy rates came into effect from 1 July 2013.<sup>129</sup>

### ***Concerns regarding scheme costs***

- 3.54** Legal associations expressed concern that the scheme appeared to be collecting far more in premiums than the level of benefits being paid out could justify.
- 3.55** The Australian Lawyers Alliance noted that 20 per cent of the CTP premium currently goes to supporting the LTCS scheme, meaning motorists pay over \$100 per year to fund care and treatment for less than 200 people. The alliance remarked it was difficult to see where this large sum of money went.<sup>130</sup>
- 3.56** The Australian Lawyers Alliance also pointed out that only very limited data is publicly available about this issue and recommended a comprehensive review of the scheme in order to ascertain whether 'premiums can be reduced further and whether the benefits that are being provided can be improved'.<sup>131</sup>

---

<sup>123</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 22; Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 7.

<sup>124</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 8.

<sup>125</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 23.

<sup>126</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 35.

<sup>127</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 6.

<sup>128</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 12; Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 6.

<sup>129</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 6.

<sup>130</sup> Submission 8, Australian Lawyers Alliance, p 4.

<sup>131</sup> Submission 8, Australian Lawyers Alliance, p 5.



- 3.57** Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales declared that it appeared estimates of the cost of the scheme have been overblown.<sup>132</sup>
- 3.58** The New South Wales Bar Association recognised the need to collect substantial sums of money up front in order to cover the lifetime care costs of participants. However, it was concerned with the substantial amounts being collected from the CTP premium in order to fund the ongoing care and treatment of a relatively small number of participants.<sup>133</sup>
- 3.59** The association commented that, as the case costs of some high dependency brain injury and quadriplegic participants must come close to \$1 million per year, a significant number of participants must be receiving very little service or support.<sup>134</sup>

### *LTCSA perspective*

- 3.60** In response to these concerns, the LTCSA stated the amount of money that is collected by the levy each year reflects the full cost of providing support to participants for the rest of their lives. The amount paid out in one year could never be commensurate with the amount collected because it gets put aside for future care.<sup>135</sup>
- 3.61** The LTCSA emphasised the long tail nature of the scheme cannot be underestimated and the ability of the scheme to correct for any under collection will become harder the longer the scheme has been running. The size of the liability to the annual revenue cash flow is currently around 6:1, but in future years will increase to 25:1.<sup>136</sup>
- 3.62** The average liability per participant is approximately \$2.2 million over their life in the scheme and ranges from approximately \$500,000 to \$10 million. As noted earlier in this chapter, the scheme has participants as young as five months and someone who is 100 years old.<sup>137</sup> As such, the cost per person is significantly different depending on how old a participant is when they enter the scheme. Also, almost a third of participants (31 per cent) are aged 15 to 24 and will need to be supported under the scheme for many years.<sup>138</sup>
- 3.63** The cost also varies according to injury severity. Approximately 16 per cent of participants have a brain injury that requires very high care needs. For this group, the average spend was \$270,000 in 2012/2013, with the highest cost being \$550,000. However, approximately 20 per cent of participants have a brain injury that requires less frequent support. For this group, the average spend was \$15,000 in 2012/2013.<sup>139</sup>
- 3.64** In addition, care needs vary over time as life circumstances change. Mr Ferguson explained that often a change in work or family circumstances of a participant will cause care needs to

<sup>132</sup> Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 17.

<sup>133</sup> Supplementary submission 10a, New South Wales Bar Association, p 1.

<sup>134</sup> Supplementary submission 10a, New South Wales Bar Association, p 2.

<sup>135</sup> Evidence, Mr Ferguson, 17 March 2014, p 43.

<sup>136</sup> Answers to questions on notice, Lifetime Care and Support Authority, 16 April 2014, pp 1-2.

<sup>137</sup> Evidence, Mr Ferguson, 17 March 2014, p 44.

<sup>138</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 11.

<sup>139</sup> Answers to questions on notice, Lifetime Care and Support Authority, pp 1-2.

fluctuate.<sup>140</sup> Ms Lulham pointed out that participants with low-level spinal cord injuries often require few services when they are young, but as they age their needs will increase. She explained that the costings of the authority allow for an increase in costs as participants age.<sup>141</sup>

### ***Committee comment***

- 3.65** The committee appreciates legal associations raising their concerns regarding the amount of money the scheme is collecting each year. However, we are satisfied by the explanation provided by the LTCSA on this matter.
- 3.66** The committee would be interested to see in the next review whether the LTCSA's response also satisfies legal associations, or whether they still advocate for a comprehensive scheme review to determine if the premium can be reduced.

### **Programs and initiatives**

- 3.67** As mentioned in chapter 1, the LTCSA funds the development of programs and research to assist injured people and their families and to provide health professionals with best practice information. This section describes a number of initiatives that have recently been undertaken by the LTCSA.

#### **In-Voc program**

- 3.68** The In-Voc pilot program is an early intervention return to work program, funded by the LTCSA, to assist spinal cord injury participants to access individualised vocational counselling by providing solutions and support to help them focus on returning to their job, or explore new career paths, before they leave hospital.<sup>142</sup>
- 3.69** The initial pilot ran for a two-year period that ceased on 31 May 2013. It saw an increase in return to work rates and positive feedback from the three participating spinal cord units. Due to this success, the LTCSA is continuing to fund the program for a further 18 months until 30 November 2014. The Rehabilitation Studies Unit of Sydney University is continuing to evaluate the pilot program. The preliminary findings indicate a high return-to-work rate following spinal cord injury. Data collection and evaluation is continuing with the review of all eligible participants' employment status and wellbeing to be conducted at 12, 24 and 30 months following injury.<sup>143</sup>
- 3.70** Over the next two to three years, two related vocational programs will be trialled for people with a brain injury. One will be an early intervention program and the other for people with a more serious brain injury who have been out of work for a longer time.<sup>144</sup>

---

<sup>140</sup> Evidence, Mr Ferguson, 17 March 2014, p 44.

<sup>141</sup> Evidence, Ms Lulham, 17 March 2014, p 44.

<sup>142</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 14.

<sup>143</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 16.

<sup>144</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 16.

- 3.71** NSW Health, the Physical Disability Council and Spinal Cord Injuries Australia commended the LTCSA for the In-Voc pilot program.<sup>145</sup>
- 3.72** However, Spinal Cord Injuries Australia expressed concern regarding what would happen to the program once the LTCSA ceased funding the project in November 2014, and suggested the LTCSA continue to fund the program.<sup>146</sup>

### **Sargood Centre**

- 3.73** The Sargood Centre is a joint project that has received 50 per cent of its funding from the LTCSA. The centre will provide residential care services and aims to be a life learning campus for people with spinal cord injuries. The facility is located at Collaroy Beach and is due to open in 2015.<sup>147</sup>
- 3.74** The Physical Disability Council of New South Wales expressed support for the project and informed the committee that Sargood will be an accommodation facility with 14 new apartments for people with recent spinal cord injuries. Each apartment will have its own external entrance, kitchenette, en suite, bedrooms and living room, combined with state of the art technology including automation, aids and appliances, environmental control, communication and information technology. Each apartment will be designed so it can be adapted for individual needs.<sup>148</sup>
- 3.75** NCOSS, Carers NSW and Spinal Cord Injuries Australia also welcomed the development.
- 3.76** Carers NSW and the NCOSS recommended the centre should have carer support and education as a focus, and should refer carers to external services of benefit to them, such as Carers NSW, the Department of Human Services and the Commonwealth Respite and Carelink Centres.<sup>149</sup>
- 3.77** Spinal Cord Injuries Australia suggested the centre should provide a large range of assistive technology to enhance the independence of residents, not only while staying at the Sargood Centre, but more importantly when transitioning to home. The organisation highlighted that assistive technology, such as environmental control units, can enable people with significant physical disability to operate a variety of lights and appliances and can increase a person's independence and self-esteem. It can also be cost-effective by not requiring a care worker for as many hours during the day.<sup>150</sup>

<sup>145</sup> Submission 9, NSW Health, p 3; Submission 11, Physical Disability Council of New South Wales, p 4, Submission 13; Spinal Cord Injuries Australia, p 7.

<sup>146</sup> Submission 13, Spinal Cord Injuries Australia, pp 7-8.

<sup>147</sup> Sargood, *About Sargood*, <http://www.sargood.org.au/about-sargood/>.

<sup>148</sup> Supplementary submission 11a, Physical Disability Council of New South Wales, p 6.

<sup>149</sup> Submission 1, NCOSS, p 2, Submission 3, Carers NSW, p 7.

<sup>150</sup> Submission 13, Spinal Cord Injuries Australia, pp 4-5.

**Goal training project**

- 3.78** In 2012/13, the LTCSA, MAA and WorkCover Authority of NSW jointly funded the Brain Injury Rehabilitation Directorate to run a series of goal-training workshops. The workshops were attended by nearly 250 people, including public and private clinicians.
- 3.79** The training promoted a collaborative, client-centred, goal-based approach to rehabilitation to improve skills in goal writing. Feedback was positive and providers have been enthusiastic to implement the approach across the three schemes.
- 3.80** The LTCSA stated it would explore how to implement the approach on a wider basis and provide further training opportunities to staff and service providers. This may also 'include changes to paperwork and processes for documenting and reporting on participant's goals and their progress towards achieving these goals'.<sup>151</sup>
- 3.81** Dr Adeline Hodgkinson, Chair, Brain Injury Rehabilitation Directorate said there has been considerable work done defining the role of case managers and improving goal setting in the context of brain injury with a focus on client centred goals.<sup>152</sup>
- 3.82** Spinal Cord Injuries Australia suggested the LTCSA organise a 'goal setting' workshop either during rehabilitation or soon after being discharged from hospital to assist participants to identify and pursue vocational, employment and lifestyle choices.<sup>153</sup>

**Committee comment**

- 3.83** The committee commends the LTCSA on the success of the In-Voc program. Like Spinal Cord Injuries Australia, the committee is concerned what will happen to the project following November 2014 when the current funding arrangement ends and recommends that the LTCSA commit to the long term funding of the program.
- 

**Recommendation 4**

That the Lifetime Care and Support Authority commit to the long term funding of the In-Voc program.

---

- 3.84** The committee also commends the positive work the LTCSA is conducting in the development of the Sargood Centre. We encourage the LTCSA to consult with stakeholders before the facility opens to ensure it has all the required equipment and services to be an effective residential care service and life learning campus for people with spinal cord injuries.

---

<sup>151</sup> Lifetime Care and Support Authority, *Annual Report 2012/13*, p 17.

<sup>152</sup> Answers to questions on notice, Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate, 3 April 2014, p 1.

<sup>153</sup> Submission 13, Spinal Cord Injuries Australia, p 8.

## Chapter 4 Recommendations from the previous review

This chapter examines the response to each of the recommendations made by the committee in the Fourth Review of the Lifetime Care and Support Authority (LTCSA).

### Recommendations from the Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

- 4.1 This section examines in turn the response by the government<sup>154</sup> to each of the recommendations made in the committee's *Fourth Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*<sup>155</sup>, and assesses any further action since that response was tabled.

#### Recommendation 1: Legislative Council's oversight role

**LTCSA Fourth review recommendation 1:** That the Legislative Council amend the resolution designating the Standing Committee on Law and Justice with responsibility for supervising the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council, so that the committee will be required to report to the House in relation to the exercise of its functions under that resolution at least once every two years.

- 4.2 The recommendation for the Legislative Council to amend the above resolution so the committee reviews the LTCSA at least once every two years, as opposed to every year, was made to reduce the burden on stakeholders to provide evidence every year, particularly as the scheme was seen to be running relatively smoothly.<sup>156</sup>
- 4.3 The recommendation was supported by the LTCSA as it would allow the authority 'time to implement and review changes in response to recommendations between reviews'.<sup>157</sup>
- 4.4 In accordance with the recommendation, the Legislative Council amended its resolution on 28 March 2012.<sup>158</sup> Under the current reporting structure, discussed in chapter 2, the Legislative

<sup>154</sup> Correspondence from the NSW Government to the Clerk of the Parliaments, providing government response to the fourth review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council [LTCSAC], 20 June 2012.

<sup>155</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011.

<sup>156</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 3-4.

<sup>157</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 1.

<sup>158</sup> *Minutes*, Legislative Council, 28 March 2012, p 852.

Council maintained this practice and resolved on 14 November 2012 that the committee must report on all four authorities once every two years<sup>159</sup>

***Committee comment***

- 4.5 The committee acknowledges this recommendation was supported by the government and was maintained when the current resolution was resolved in 2012. The committee believes the process to review the LTCSA at least once every two years remains appropriate.

**Recommendation 2: participant representatives on the Lifetime Care and Support Advisory Council**

**LTCSA Fourth review recommendation 2:** That the Government pursue a stand-alone amendment to section 45 of the *Motor Accidents (Lifetime Care and Support) Act 2006* to include two participant representatives on the Lifetime Care and Support Advisory Council.

- 4.6 This issue was discussed in chapter 2 in the section on advisory committees under the *Safety, Return to Work and Support Board Act 2012*.
- 4.7 The government stated in its response that the recommendation was under consideration.<sup>160</sup> However, two weeks after the government response was received, the *Safety, Return to Work and Support Board Act* was passed, abolishing the Lifetime Care and Support Advisory Council. As such, the recommendation could not be implemented.
- 4.8 As discussed in chapter 2, although there is currently no advisory committee, the LTCSA has established a Participant Reference Group to advise the authority on its policies, procedures and service initiatives. The group will meet three or four times in 2014.<sup>161</sup>

***Committee comment***

- 4.9 The committee is pleased that the LTCSA has established the Participant Reference Group so that participants have a voice in the operation of the scheme. The committee will be interested to assess the effectiveness of the reference group at the next review and hear the feedback of participant members.

---

<sup>159</sup> *Minutes*, Legislative Council, 14 November 2012, pp 1368-69.

<sup>160</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 1.

<sup>161</sup> Further answers to questions on notice, Lifetime Care and Support Authority, 26 May 2014, p 1.

### Recommendation 3: Scheme eligibility

**LTCSA Fourth review recommendation 3:** That the Lifetime Care and Support Authority evaluate the current medical assessment tools used to assess eligibility criteria, and investigate and report on any alternative and/or additional tools or strategies that may be appropriately used to avoid inequity in scheme eligibility. The authority should consult with stakeholders during this process.

- 4.10** The recommendation for the LTCSA to evaluate the current medical assessment tools used to assess eligibility criteria was a follow-on from a recommendation in the committee's *Third Review Report*. That recommendation called for an evaluation of tools to assess eligibility criteria, including the suitability of the Paediatric Care and Needs Scale.<sup>162</sup> In the *Fourth Review Report*, the LTCSA advised it had reviewed the Paediatric Care and Needs Scale and considered it an inappropriate tool for this purpose. However, it did not conduct a wider evaluation.<sup>163</sup>
- 4.11** The Functional Independence Measure (FIM) for adults and the WeeFIM for children are the main tools used to assess medical eligibility to enter the scheme.
- 4.12** In the government response, the LTCSA expressed support for reviewing the medical assessment tools. However, it was mindful that a project had been initiated to evaluate assessment tools for the National Disability Insurance Scheme (NDIS). The authority stated that it intended 'to review its own eligibility assessment tools following the results of this project in order to ensure that they are aligned with the tools that will be used in the NDIS'.<sup>164</sup>
- 4.13** During this review, the LTCSA advised that the NDIS implementation included an extensive review of existing assessment and planning tools and did not identify a tool or set of tools for determining eligibility. The eligibility requirements under the NDIS are that:
- the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or to a psychiatric condition
  - the impairment is likely to be permanent
  - the impairment results in substantially reduced functional capacity to undertake one or more of the following activities – communication, social interaction, learning, mobility, self-care or self-management
  - the impairment affects the person's capacity for social and economic participation.<sup>165</sup>

<sup>162</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, Third Report*. Report 45, November 2010, p 48.

<sup>163</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 39.

<sup>164</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, pp 1-2.

<sup>165</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, 14 February 2014, p 7.

- 4.14 Further, the LTCSA noted the NDIS will also base its minimum eligibility benchmarks for traumatic brain injury for motor vehicle accidents (discussed in chapter 2) on the FIM. The LTCSA claimed this is the most appropriate measure for severe injuries and no ‘better tool has been identified by or recommended to the authority to date’.<sup>166</sup>

#### *Committee comment*

- 4.15 The committee notes that the extensive review of existing assessment and planning tools conducted during the implementation of NDIS did not identify a different set of tools to FIM to determine eligibility. As such, the committee is satisfied that FIM continues to be the most effective medical assessment tool to assess eligibility criteria.

#### **Recommendation 4: Legal costs and the Accident Advice Support Grant**

**LTCSA Fourth review recommendation 4:** That the Lifetime Care and Support Authority should review the adequacy of the Accident Advice Support Grant on an annual basis and at minimum annually increase the grant to meet increases in the Consumer Price Index.

- 4.16 During the *Fourth Review Report*, the Australian Lawyers Alliance and the Law Society of New South Wales argued the *Motor Accidents (Lifetime Care and Support) Act 2006* restricts access to legal services. Section 18 provides that no legal costs are payable by the authority in respect of a dispute regarding eligibility for the scheme and s 29 provides that no legal costs are payable with respect to disputes concerning treatment and care assessments. It is only when a dispute concerns whether an injury is a ‘motor accident injury’ that there is an entitlement to recover costs for legal representation.<sup>167</sup>
- 4.17 The Accident Advice Support Grant was introduced in 2008 to provide a one-off payment of up to \$5,000 to fund legal and accident investigation advice. In the *Fourth Review Report*, the Australian Lawyers Alliance supported the grant, but submitted the amount was insufficient. Because of this, the committee recommended that the LTCSA review the grant on an annual basis and increase it to meet the Consumer Price Index.
- 4.18 The government responded that the LTCSA developed the grant in good faith and has reviewed its usage regularly. The government noted the grant has been accessed on two occasions and concluded the amount remains adequate. In its response, the government also noted that as the Act stipulates no legal costs are payable by the authority, it was unwilling to increase the grant.<sup>168</sup>
- 4.19 In the current review, the Australian Lawyers Alliance reiterated its concern and submitted that the grant should be reviewed and increased as a matter of priority. Further, the Australian

<sup>166</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 7.

<sup>167</sup> Submission 8, Australian Lawyers Alliance, p 6.

<sup>168</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 2.



Lawyers Alliance argued the LTCSA should introduce a proper regime for costs recovery to ensure that injured people are able to get the legal advice that they require.<sup>169</sup>

- 4.20** To illustrate its concern the Australian Lawyers Alliance noted a recent case where, after the authority initially rejected an injured person's application for participation in the scheme; the person engaged legal assistance to obtain a costly expert's report and was ultimately accepted. However, the \$5,000 grant was inadequate to cover the cost of the report and legal fees. The Australian Lawyers Alliance noted that in this instance lawyers wrote off fees to ensure the injured person did not have to pay out of his own pocket, but argued injured people should not be put in a position where they 'must hope for the benevolence of lawyers in order to assert their rights'.<sup>170</sup>
- 4.21** The LTCSA advised that in complex cases where the circumstances of the motor accidents are unclear, the authority will request additional information and/or legal advice in order to make an eligibility decision.<sup>171</sup>
- 4.22** The LTCSA told the committee that it planned to consult with the Law Society and the Bar Association in relation to the grant.<sup>172</sup>

#### *Committee comment*

- 4.23** The committee acknowledges the concerns of legal associations that the cap of \$5,000 on the Accident Advice Support Grant is insufficient to cover legal and accident investigation advice legal costs.
- 4.24** The committee commends the LTCSA for undertaking to consult with the Law Society and the Bar Association in relation to the grant. We also encourage the LTCSA to liaise with the Australian Lawyers Alliance about this matter.
- 4.25** The committee notes that the LTCSA has reviewed the usage of the grant. As the grant is the only method to fund legal and accident investigation advice under the scheme, we recommend that the LTCSA report on its use in its annual report.

---

#### **Recommendation 5**

That the Lifetime Care and Support Authority report on the usage of the Accident Advice Support Grant in its annual report.

---

- 4.26** The committee is disappointed the government did not implement its recommendation that, at a minimum, the grant be increased to meet the Consumer Price Index. Given the level of the grant has not been increased since its inception six years ago, the committee urges the government to reconsider its position and consider the evidence by legal associations that the current level of the grant is inadequate.

---

<sup>169</sup> Submission 8, Australian Lawyers Alliance, p 7.

<sup>170</sup> Submission 8, Australian Lawyers Alliance, pp 6-7.

<sup>171</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 3.

<sup>172</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 3.

**Recommendation 5: Dispute resolution process concerning eligibility and treatment**

**LTCSA Fourth review recommendation 5:** That the Lifetime Care and Support Authority work with the Brain Injury Rehabilitation Directorate and other stakeholders to examine the feasibility of a more robust and independent dispute resolution process for disputes concerning eligibility and treatment.

- 4.27** The committee's *Fourth Review Report* noted concerns by legal associations and the Brain Injury Rehabilitation Directorate (BIRD) regarding the dispute resolution process for disputes concerning eligibility and treatment. Legal associations were concerned that the process was not independent as the LTCSA appointed the dispute assessors itself and there was no right of appeal to an external body. The BIRD suggested disagreements should be referred to an external professional prior to the escalation of a dispute to the formal dispute resolution process. The committee recommended the authority work with stakeholders to develop a more robust and independent process.<sup>173</sup>
- 4.28** The government response asserted the current dispute resolution process is independent and robust. It noted that the process was established in accordance with Part 3 of the *Motor Accidents (Lifetime Care and Support) Act*, which requires the LTCSA to appoint dispute assessors, and when a participant wishes to have decisions reviewed, it is referred to the Motor Accidents Authority's (MAA) Medical Assessment Service. This review is managed independently of the MAA.<sup>174</sup>
- 4.29** The government pointed out that while dispute assessors are engaged by the authority, they are also employed by a range of institutions or private practices and are selected for their skills and experience in the treatment and rehabilitation of people with brain and spinal cord injury.<sup>175</sup>
- 4.30** Regarding the suggestion by BIRD in the *Fourth Review Report* the government responded that the LTCSA already appoints approved assessors who are external professionals and it routinely requests them to provide independent advice when there is a disagreement with the participant or their treating team. Further, this assessment can already occur prior to a formal dispute.<sup>176</sup>
- 4.31** The government noted the LTCSA has always endeavoured to resolve potential disputes informally as this is more likely to preserve its relationship with the participant and is less

<sup>173</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 45-46.

<sup>174</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 2.

<sup>175</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 2.

<sup>176</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 3.

costly. However, s 24 of the Act dictates that if a participant wishes to dispute a decision, the authority must refer it to a dispute assessor for determination.<sup>177</sup>

**4.32** In the current review, the LTCSA indicated it had met with the BIRD in 2012 and no additional feedback or recommendations relating to dispute resolution were raised.<sup>178</sup>

**4.33** The Australian Lawyers Alliance reiterated its concerns and submitted that steps should be taken to review the dispute resolution system as a matter of priority. It argued the current dispute resolution process ‘is a major weakness of the scheme and inherently unjust’.<sup>179</sup>

**4.34** Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance stated that there should be an external review body set up as a step in between the Supreme Court and the initial internal review:

The Supreme Court review power is incredibly important, but it would be a good idea ... to have something in between, some sort of external review that goes in between the internal review that is conducted by lifetime care and the final stage of getting to a Supreme Court hearing... perhaps in the nature of some sort of tribunal or the Ombudsman.<sup>180</sup>

**4.35** Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society agreed there should be another method, as the Supreme Court is unaffordable for many participants due to legal costs not being provided for under the scheme. He supported the suggestion of considering the Ombudsman<sup>181</sup> for the role or using the Motor Accident Authority’s Claims Assessment and Resolution Service.<sup>182</sup>

**4.36** However, Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital and Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate, expressed concern at the suggestion of installing an external dispute resolution body, such as the Ombudsman, as it would add another level of bureaucracy.<sup>183</sup> Instead they wanted to simplify the process for resolving disputes.<sup>184</sup>

**4.37** Dr Adeline Hodgkinson, Chair, BIRD, agreed, stating that the system is already bureaucratic and it is difficult to engage with decision-maker directly:

<sup>177</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 3.

<sup>178</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 4.

<sup>179</sup> Submission 8, Australian Lawyers Alliance, p 9.

<sup>180</sup> Evidence, Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, 7 March 2014, p 25.

<sup>181</sup> Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 17.

<sup>182</sup> Evidence, Mr Concannon, 7 March 2014, p 17.

<sup>183</sup> Evidence, Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital, 7 March 2014, p 37; Evidence, Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate, 7 March 2014, p 37.

<sup>184</sup> Evidence, Dr Engel, 7 March 2014, p 33; Evidence, Ms Frances Moneypenny, Manager, State Spinal Cord Injury Service, 7 March 2014, p 37.

As an organisation, Lifetime Care is fairly bureaucratic. It is difficult to actually present and discuss your case directly with the decision-maker. That decision-maker is behind the level of the coordinators, who are the ones dealing with you directly. So you may present an argument. It goes to the next level. You get back the response, then you present your counterargument. It goes through that person again to the decision-maker and so on.<sup>185</sup>

- 4.38** From an advocacy perspective, Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW highlighted that the NDIS had established an external merits review committee. Under the NDIS there is an internal peer review system, but if the issue has not been resolved, an external merits review tribunal is available. He noted it was a very new system, but suggested that the LTCSA should investigate its effectiveness.<sup>186</sup>
- 4.39** Positive feedback regarding dispute resolution was received by Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales who noted that from her consultations with participants there appeared to be improvements in resolving disputes, with more ‘information available to participants about how to address concerns with the [LTCSA], including resources that enable easy access to independent information and advocacy’.<sup>187</sup>

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

- 4.40** The committee notes the LTCSA is of the view that the dispute resolution process is already independent and robust. However, at the same time, numerous participants from legal, health and advocacy groups argue the current dispute process is inadequate. We note the difference of opinion between these stakeholders. Some want an external review mechanism, while others want to expedite the process by reducing layers of bureaucracy within the LTCSA.
- 4.41** The committee encourages the LTCSA to take on board these concerns and investigate the range of solutions that have been discussed by stakeholders. The committee is particularly interested for the authority to investigate the NDIS process mentioned by Mr Hampton regarding its external merits review committee. As such, similar to the *Fourth Review Report*, we recommend that the LTCSA work with stakeholders to examine the feasibility of implementing a more robust and independent dispute resolution process for disputes concerning eligibility and treatment.

---

#### **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.

---

---

<sup>185</sup> Evidence, Dr Hodgkinson, 7 March 2014, p 37.

<sup>186</sup> Evidence, Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, 7 March 2014, p 41.

<sup>187</sup> Answers to questions on notice, Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales, 17 March 2014, p 2.

**Recommendation 6: Simplifying and standardising forms and limiting the administrative burden on service providers**

**LTCSA Fourth review recommendation 6:** That the Lifetime Care and Support Authority collaborate with the Brain Injury Rehabilitation Directorate, the State Spinal Cord Injury Service, the Children’s Hospital at Westmead and other service providers to simplify and standardise forms with a view to minimising the duplication of information and limiting the administrative burden on service providers.

- 4.42** During the *Fourth Review Report*, the committee recognised the importance of clinicians spending time with patients rather than completing large amounts of paperwork. The committee received evidence that clinicians’ time was being eroded due to the administrative burden of completing Lifetime Care and Support (LTCS) forms. Because of this, the committee recommended the LTCSA collaborate with service providers to simplify and standardise forms to reduce the administrative burden.
- 4.43** In its response, the government committed that the LTCSA would continue to discuss this issue with service providers.<sup>188</sup>
- 4.44** During this review, the authority advised it had worked with the brain injury and spinal cord rehabilitation units to identify problem areas and ways of streamlining processes. For example, the authority trialled an equipment position statement in rehabilitation units to guide decisions about when to hire or purchase equipment for people with newly acquired spinal cord injuries. Information, guidance material and training had also been delivered to all providers on the LTCSA’s procedures and forms. The authority also worked with attendant care providers to simplify invoicing for services and explored the option of an electronic portal for attendant care providers.<sup>189</sup>
- 4.45** Mr Don Ferguson, General Manager, LTCSA acknowledged the helpfulness of the brain and spinal cord injury rehabilitation units in working with the LTCSA to understand each other’s needs and simplify processes.<sup>190</sup>
- 4.46** Service providers highlighted their general support for the efforts of the LTCSA to reduce the administrative burden. For example, the State Spinal Cord Injury Service conducted a survey of its members in 2012 that showed duplication was no longer a problem, although the administrative burden remained an issue. Members noted this was improving as the LTCSA continued to refine and simplify the online submission process to reduce the time clinicians spend in completing the forms.<sup>191</sup>
- 4.47** The Children’s Hospital at Westmead advised that it met regularly with the LTCSA regarding information collection, with the aim of simplifying and standardising forms. While an

<sup>188</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 3.

<sup>189</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 14.

<sup>190</sup> Evidence, Mr Don Ferguson, General Manager, Lifetime Care and Support Authority, 17 March 2014, p 36.

<sup>191</sup> Submission 9, NSW Health, p 4.

administrative burden persists, cooperative work to develop and improve these processes is ongoing.<sup>192</sup>

- 4.48 Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital, noted the LTCSA has started to simplify the forms to reduce the amount of paperwork. She commended this work and urged it to continue.<sup>193</sup>

### *Committee comment*

- 4.49 The committee commends the efforts of the LTCSA to simplify and standardise forms and reduce the administrative burden on service providers. The committee acknowledges that paperwork cannot be eliminated entirely, but encourages the LTCSA to continue streamlining its processes wherever possible.

### **Recommendation 7: Improved communication between clinicians and the authority**

**LTCSA Fourth review recommendation 7:** That the Lifetime Care and Support Authority work with the State Spinal Cord Injury Service and the Brain Injury Rehabilitation Directorate directly to develop methods for improved communication between clinicians and the Authority and to act on the concerns of service providers and to put in place a system whereby clinicians receive meaningful responses to the concerns they raise.

- 4.50 The committee's *Fourth Review Report* noted concerns from service providers regarding communication with the LTCSA and recommended that a system be put in place so the LTCSA works directly with the State Spinal Cord Injury Service (SSCIS) and the BIRD to improve communication and meaningful responses to concerns raised by service providers.<sup>194</sup>
- 4.51 In its response, the government noted the LTCSA had committed to continuing quarterly meetings with the BIRD and SSCIS. Further, the authority encouraged clinicians to make use of its complaints handling process to provide feedback (discussed in chapter 3). The LTCSA stated the process has not been routinely used by clinicians despite it being widely publicised and available since the authority's inception. Use of this formal process would ensure clinicians receive a response and would enable the LTCSA to monitor trends or issues in service delivery.<sup>195</sup>
- 4.52 In the current review, NSW Health listed a number of important strategies that have been undertaken since the last review to improve communication:
- The LTCSA newsletter updates service providers on changes, requirements and improvements

<sup>192</sup> Submission 9, NSW Health, p 4.

<sup>193</sup> Evidence, Dr Engel, 7 March 2014, p 33.

<sup>194</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 64-65.

<sup>195</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 4.

- Feedback provided to service providers on the information required by LTCSA to help in its determination of whether a request fulfils the 'reasonable and necessary' criteria
- LTCSA staff to attend regular meetings with staff in spinal cord injury unit to address any areas of concern in relation to processes or procedures
- The Terms of Reference for the SSCIS and LTCSA Liaison Committee have been reviewed and updated to ensure it has representation from all spinal cord injury service providers and provides a forum where issues unable to be resolved at a spinal cord injury unit level are addressed. The Committee meets three times per year.<sup>196</sup>

4.53 Dr Engel stated the progress made by the LTCSA regarding communication, including the establishment of regular meetings with prescribers, was 'very good' and urged it to continue.<sup>197</sup>

4.54 Ms Money Penny shared a similar view of the positive changes instigated by the LTCSA:

The SSCIS Directorate and its members from the Spinal Cord Injury services are happy with the current level of dialogue... these have been very effective in improving communication...<sup>198</sup>

#### *Committee comment*

4.55 The committee is pleased with the progress made by the LTCSA to increase its communication with BIRD and SSCIS through the establishment of regular meetings and by including important updates in the LTCSA newsletter. The committee encourages this communication to continue.

#### **Recommendation 8: Mechanisms to inform general practitioners and acute treating teams**

**LTCSA Fourth review recommendation 8:** That the Lifetime Care and Support Authority develop and then employ effective mechanisms to better inform both general practitioners and acute treating teams of the Lifetime Care and Support Scheme and report to the committee on these mechanisms in its next review.

4.56 This recommendation to employ effective mechanisms to better inform both general practitioners and acute treating teams of the workings of the scheme was made in the *Fourth Review Report* to address concerns that knowledge of the scheme among these groups can be limited.<sup>199</sup>

<sup>196</sup> Submission 9, NSW Health, pp 4-5.

<sup>197</sup> Evidence, Dr Engel, 7 March 2014, p 33.

<sup>198</sup> Answers to questions on notice, Ms Frances Money Penny, Manager, State Spinal Cord Injury Service, 4 April 2014, p 1.

<sup>199</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 67.

- 4.57 The government response noted the LTCSA had written to the Australian Medical Association in December 2011 to invite their support in developing appropriate communication methods with general practitioners about the scheme.<sup>200</sup>
- 4.58 In the current review, the LTCSA stated it met with the Australian Medical Association in July 2012. This meeting did not identify the need for any changes to the existing mechanisms of informing general practitioners about the scheme.<sup>201</sup>
- 4.59 In addition, the LTCSA advised it runs free training for service providers on a regular basis which is also open to acute treating teams, and that the authority has a range of resources and information sheets on its website which can assist acute treating teams in understanding the scheme. Further, the LTCSA responds to requests from acute treating teams to provide specific formal training in the workplace. Coordinators also provide informal training to acute treating teams when a potential participant is identified in hospital.<sup>202</sup>
- 4.60 The LTCSA also informed the committee it had undertaken significant work on its Approved Case Manager Program which has clarified the role and functions of case managers. This has assisted to ensure general practitioners and treating teams are aware of the scheme.<sup>203</sup>
- 4.61 The committee did not receive evidence regarding any ongoing concern from service providers on this matter.

### *Committee comment*

- 4.62 The committee commends the LTCSA for meeting with the Australian Medical Association and acknowledges that the meeting did not identify any changes to the existing mechanisms of informing general practitioners about the scheme. The committee notes that no concerns were raised on this matter during the review.

### **Recommendation 9: Induction training for LTCS Coordinators**

**LTCSA Fourth review recommendation 9:** That the Lifetime Care and Support Authority ensure that it provides, as part of its induction training for Lifetime Care and Support coordinators, information on respect for expert clinician decisions and treatment recommendations notwithstanding Coordinators' previous skills and experience.

- 4.63 This recommendation to provide information to coordinators on expert clinician decisions and treatment recommendations during their induction training was made because service providers stated that coordinators may be second-guessing the treatment recommendations of

<sup>200</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 4.

<sup>201</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 15.

<sup>202</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 15.

<sup>203</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 6.



clinicians. The report noted that was problematic as it could damage the relationship between families and clinicians and could lead to broader communication problems.<sup>204</sup>

- 4.64** The government response stated the LTCSA would continue to reinforce the importance of obtaining expert clinical opinion in its induction training for new coordinators and advised that the training provided a number of key messages including:
- coordinators need documented clinical opinion and justification for this opinion
  - clinicians recommending a service or equipment for a participant are in the best position to provide the reasons why they are recommending it
  - the sustainability of the scheme is dependent on good clinical information and decision making with respect to reasonable and necessary treatment, rehabilitation and attendant care services.<sup>205</sup>
- 4.65** This matter was raised again during this review in regard to spinal cord injuries. NSW Health reiterated that it was critical coordinators were able to understand the specialist health care, treatment and mobility equipment needs of a person with a spinal cord injury. It noted that even with the current training, ‘inconsistency continues’.<sup>206</sup>
- 4.66** NSW Health reported the LTCSA had established an internal newsletter to keep coordinators informed and updated and noted the SSCIS would provide short articles on spinal cord injury specific issues to educate coordinators.<sup>207</sup>
- 4.67** Ms Money Penny stated that at a recent LTCSA and SSCIS Liaison Committee meeting the issue of providing further spinal cord injury education resources to coordinators was explored.<sup>208</sup>
- 4.68** The LTCSA further advised that in late 2013 it commenced a training needs analysis to identify opportunities to develop skills and capabilities of coordinators and authority staff and noted that the work is ongoing.<sup>209</sup>

### ***Committee comment***

- 4.69** The committee acknowledges the work done by the LTCSA to train coordinators regarding the importance of obtaining expert clinical opinion and commends the LTCSA for commencing the training needs analysis to develop skills and capabilities of coordinators.
- 4.70** The committee is concerned by reports from NSW Health that there are still inconsistencies in the practices of coordinators and we urge the LTCSA to continue to address this matter and meet with service providers to ensure coordinators are effectively educated.

<sup>204</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 75-76.

<sup>205</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, pp 4-5.

<sup>206</sup> Submission 9, NSW Health, p 5.

<sup>207</sup> Submission 9, NSW Health, p 5.

<sup>208</sup> Answers to questions on notice, Ms Frances Money Penny, p 2.

<sup>209</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 7.

**Recommendation 10: Protocol for discussing participant treatment options**

**LTCSA Fourth review recommendation 10:** That the Lifetime Care and Support Authority consult with the Children's Hospital at Westmead to develop an agreed protocol to enable discussion of a participant's appropriate treatment options with clinicians prior to any discussion with a participant's family.

- 4.71** This recommendation for the LTCSA and the Children's Hospital at Westmead to develop a protocol to discuss a participant's treatment options prior to any discussion with a participant's family was developed due to concerns raised in the *Fourth Review Report* that coordinators had made recommendations to families before consulting with the treating team.<sup>210</sup>
- 4.72** The government response stated the LTCSA would consult with the Children's Hospital at Westmead to develop an agreed protocol for communication regarding participants' treatment and care options and how to transition participants to appropriately qualified community based providers.<sup>211</sup>
- 4.73** In the current review, the Children's Hospital advised that regular meetings had been held to work towards an agreed protocol. However, the hospital informed this process had not been completed.<sup>212</sup>
- 4.74** The LTCSA advised in May 2014 that a process had been agreed to with the Children's Hospital where an LTCS coordinator and a hospital case manager meet with the treating health team, participant and family for a joint case discussion. This meeting is to ensure the individual needs of the participant are met, for example the appropriate selection of service providers and transitioning participants to community-based providers.<sup>213</sup>

***Committee comment***

- 4.75** The committee commends the LTCSA for meeting and developing a process with the Children's Hospital at Westmead regarding discussion of a participant's appropriate treatment options.
- 4.76** We will be interested to hear from the Children's Hospital at Westmead in the next review to see if its original concern that coordinators had made recommendations to families before consulting with the treating team has been addressed.

---

<sup>210</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 76.

<sup>211</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, pp 5-6.

<sup>212</sup> Submission 9, NSW Health, p 5.

<sup>213</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 8.

## Recommendation 11: Discharging participants from hospital to interim accommodation

**LTCSA Fourth review recommendation 11:** That the Lifetime Care and Support Authority investigate options for permitting participants to be discharged from hospital to interim accommodation, prior to long-term accommodation having been secured.

- 4.77** The issue of participants being discharged from hospital in a timely manner has been a matter of ongoing concern, as it is both costly to keep participants in hospital and it affects their morale.<sup>214</sup> In the *Fourth Review Report* the committee recommended the LTCSA investigate options for participants to be discharged from hospital to interim accommodation while appropriate longer-term accommodation is being secured.<sup>215</sup>
- 4.78** The government response stated the LTCSA is committed to continuing to investigate appropriate discharge options for participants. However, the participant's discharge destination is not a decision the authority makes, as it does not fund direct accommodation costs.<sup>216</sup>
- 4.79** In the current review, the LTCSA stated that while a participant's home is being modified, the LTCSA will pay for the participant's interim accommodation. While there has been some increase in interim or short term accommodation places for people with serious injury, it has not been to the same extent as longer term accommodation.<sup>217</sup>
- 4.80** The authority noted that suitable accommodation for participants with high support needs is limited. Because of this the LTCSA has purchased and modified a small number of houses for ten participants with these needs, with tenancy managed by a community housing association.<sup>218</sup>
- 4.81** NSW Health acknowledged that accommodation is not within the remit of LTCSA and expressed appreciation for the authority's efforts to support participants to access available transition accommodation options, such as the ParaQuadNSW Ferguson Lodge.<sup>219</sup>
- 4.82** Service providers stated that the matter requires a whole-of-government response as multiple government agencies are involved in trying to support participants to get back into the community.<sup>220</sup>

<sup>214</sup> Evidence, Dr Engel, Director, 7 March 2014, p 38, Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 7 March 2014, pp 44-45.

<sup>215</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 79.

<sup>216</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 6.

<sup>217</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 16.

<sup>218</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 8.

<sup>219</sup> Submission 9, NSW Health, p 5.

<sup>220</sup> Evidence, Ms Money Penny, 7 March 2014, p 38.

**4.83** Dr Engel noted that Queensland has a streamlined, whole-of-government approach<sup>221</sup> for its Spinal Cord Injuries Response program, which has been running in Queensland since 2005/06. The cross-government program provides ‘a co-ordinated approach to meeting the needs of newly injured people on discharge from the spinal injuries unit’ with the aim of reducing unnecessary delays to discharge.<sup>222</sup> The main components of the program are:

- dedicated funding for private home modifications, which are co-ordinated by a single state-wide service provider
- participants have the highest priority for social housing which is co-ordinated by the local Department of Housing Service Centre
- dedicated funding for necessary aids and equipment
- dedicated funding for personal care support.<sup>223</sup>

**4.84** People with newly acquired spinal cord injuries in Queensland also have access to the Transitional Rehab Program which offers free accommodation for six to eight weeks to non-Brisbane clients undertaking community based transition programs in Brisbane.<sup>224</sup>

**4.85** Dr Engel asserted that implementing a similar program in New South Wales would be beneficial to participants:

There would be significant cost savings for the hospital with improved health outcomes with reduction of anxiety and institutionalisation if a programme such as the one in Queensland is implemented. The crucial elements of such a programme must be cross-agency cooperation for timely availability of accessible housing and personal care support and equipment packages.<sup>225</sup>

**4.86** Mr Ferguson commented the ‘issue of transition accommodation is one that the community has failed to resolve in a whole range of areas’<sup>226</sup> and collectively more must be done to resolve the issue:

There is an ongoing issue but it is hard to give you a clear vision around how to resolve it. We have some capacity—it is not full—and we can continue to provide support to individuals but it is not always where people require that service. So we need to continue to work in partnership with the other parts of the service system, such as the rehabilitation units which themselves have a transitional living arrangement that provides a part of the answer. Collectively, we need to look at how to do that better.<sup>227</sup>

**4.87** However, Mr Ferguson contended that having a small number of fixed assets is not always a suitable solution. For instance, if a participant lives in Western New South Wales and the

---

<sup>221</sup> Evidence, Dr Engel, 7 March 2014, p 39.

<sup>222</sup> Answers to questions on notice, Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital, 12 May 2014, pp 1-2.

<sup>223</sup> Answers to questions on notice, Dr Engel, pp 1-2.

<sup>224</sup> Answers to questions on notice, Dr Engel, p 2.

<sup>225</sup> Answers to questions on notice, Dr Engel, p 2.

<sup>226</sup> Evidence, Mr Ferguson, 17 March 2014, p 41.

<sup>227</sup> Evidence, Mr Ferguson, 17 March 2014, p 40.

transitional accommodation is in Sydney, the accommodation may not be ideal for the needs of the participant and their family.<sup>228</sup>

### *Committee comment*

- 4.88** The committee greatly appreciates the work of the LTCSA to investigate appropriate discharge options for participants, particularly given that accommodation is not within the remit of the authority.
- 4.89** The committee also acknowledges that the issue requires a whole-of-government approach to resolve. For this reason, the committee thanks Dr Engel for bringing to the attention of the committee the streamlined, whole-of-government approach in Queensland to discharge newly injured people from the spinal injuries unit. We recommend that the NSW Government establish a working party with representatives from relevant government agencies to examine interim accommodation options so individuals can be discharged from hospital in a timely manner, and in doing so, investigate models in other jurisdictions, including Queensland.

---

### **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.

---

### **Recommendation 12: Treatment and care services when a participant is on holiday or overseas**

**LTCSA Fourth review recommendation 12:** That the Lifetime Care and Support Authority clarify its guidelines and consider the extent to which the authority will pay for treatment and care services while a participant is on holiday or overseas in order to balance the needs of participants with the scope and capacity of the scheme.

- 4.90** By way of recommendation, the committee sought to clarify with the LTCSA in the *Fourth Review Report* the extent to which the authority will pay for treatment and care services while a participant is on holiday or overseas. This issue had been raised by the Australian Lawyers Alliance.<sup>229</sup>
- 4.91** The government responded that the LTCSA will fund a participant's treatment and care needs to a similar level that they would receive in New South Wales if they are travelling interstate or

---

<sup>228</sup> Evidence, Mr Ferguson, 17 March 2014, p 40.

<sup>229</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, p 88.

overseas. Where possible, support should be sourced from the destination unless the participant has a need for attendant care during travel itself.<sup>230</sup>

- 4.92** The response advised the LTCSA will fund attendant care to travel on holidays and will consider it on a case-by-case basis depending on the participant's needs. For instance, the authority has funded travel costs and support of two attendant care workers in the past. However, the authority will not fund airfares for participants as they are not treatment, rehabilitation or care.<sup>231</sup>
- 4.93** In 2012 the LTCSA amended the LTCS guidelines to provide further clarification about funding attendant care services when a participant is away from home, including when on holiday or away from their usual place of residence.<sup>232</sup> The guidelines clarify the attendant care services and equipment hire available for participants under the scheme when they are away from home.<sup>233</sup>
- 4.94** In the current review, the Australian Lawyers Alliance again expressed concern regarding this issue. The alliance noted the scheme will pay for one economy airfare within Australia for one carer each year, in addition to the costs of accommodation due to the carer staying with the participant. However, there is no provision for funding for either a second carer, business class travel or higher level accommodation.<sup>234</sup>
- 4.95** The alliance argued that injured people who are 'unable to travel in economy class, or who need to stay in a more expensive hotel with better facilities, will either have to pay for the additional expense themselves or they won't be able to travel at all'.<sup>235</sup> Also, this lack of funding particularly affects participants with family overseas.
- 4.96** The alliance asserted that the matter should be reviewed and addressed within the guidelines.<sup>236</sup>

### ***Committee comment***

- 4.97** The committee commends the LTCSA for implementing its recommendation to amend the LTCS guidelines to clarify the extent to which the authority will pay for treatment and care services while a participant is on holiday or overseas.
- 4.98** However, the committee acknowledges the ongoing concerns by the Australian Lawyers Alliance that the LTCSA does not pay for certain costs when a participant is on holiday or overseas.

---

<sup>230</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 6.

<sup>231</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 6.

<sup>232</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 9.

<sup>233</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines*, Part 8, May 2012, pp 48-49.

<sup>234</sup> Submission 8, Australian Lawyers Alliance, p 10.

<sup>235</sup> Submission 8, Australian Lawyers Alliance, p 10.

<sup>236</sup> Submission 8, Australian Lawyers Alliance, p 11.

- 4.99** The committee is concerned this means that some participants may not be able to travel as they may not be able to afford the required level of accessibility they need, such as a business class seat or a higher level of accommodation. While the committee appreciates that these matters are not ‘reasonable and necessary’ treatment and care needs, we do feel these aspects should be considered as a component of the LTCSA’s duties to support participants.
- 4.100** To investigate this matter further, the committee encourages the LTCSA to include it for discussion at the next Participant Reference Group meeting, and include a question about it in the next Participant Satisfaction Survey. The information gathered should then be used to analyse the financial ability of participants to travel on holiday or overseas under the current guidelines.

### **Recommendation 13: Guidelines on recreation and leisure activities**

**LTCSA Fourth review recommendation 13:** That the Lifetime Care and Support Authority publish its guidelines on recreation and leisure activities and clarify its policy on funding for the transport of participants and carers to and from recreation and leisure activities.

- 4.101** The issue of participants being funded to travel to and from recreation and leisure activities has been raised in a number of previous reviews, as it impacts on the ability of participants to undertake certain activities and be involved in their community. The recommendation in the *Fourth Review Report* called on the LTCSA to publish its guidelines on the matter and clarify whether it would fund the transport of participants to these activities.<sup>237</sup>
- 4.102** The government response noted the scheme is only funded to pay for travel to treatment and rehabilitation. Therefore, the LTCSA is unable to pay for participant travel to recreation and leisure activities. However, the authority will fund an attendant care worker’s fares if they are supporting a participant to an activity using public transport. The government’s view was that more transport options need to be made available generally for people with a disability.<sup>238</sup>
- 4.103** The government advised that draft guidelines had been endorsed on recreation and leisure and the authority was seeking to have it gazetted.<sup>239</sup>
- 4.104** During this review, the LTCSA advised it had decided not to proceed with a gazettal of these guidelines as services funded to assist participants to access recreation and leisure activities are already contained in Part 8 and Part 13 of the LTCS guidelines.<sup>240</sup>

<sup>237</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 85-89.

<sup>238</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 7.

<sup>239</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 7.

<sup>240</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 10.

- 4.105** Ms Suzanne Lulham, Director, Service Delivery, LTCSA, told the committee the authority does not pay for the cost of leisure activities. She provided an example of what the LTCSA does pay for in relation to recreation and leisure activities and stated the authority was restricted by the legislation as to what it can fund:

For instance, we do not buy movie tickets. We do not pay for them to go to the movies. What we pay for is the attendant care worker to take them. We pay for the attendant care worker's time. If someone needs special equipment, we will pay for that. But the services we pay for at the moment are listed in the legislation, and they are fairly clearly defined. Things like those specific items of leisure are not there at the moment. In respect of one of the things that we would like to do...increasing the flexibility in what we can offer is part of that. At the moment we are restrained, to some extent, by the parameters that are listed in our legislation.<sup>241</sup>

- 4.106** The LTCSA informed the committee that it had revised information sheets and included information in newsletters regarding how it can support participants to access recreation and leisure activities. Further, by way of recognising the importance of recreation and leisure activities and 'meaningful activities', the LTCSA is currently funding a project to assist clinicians to identify and plan 'meaningful activities' for participants with a brain injury.<sup>242</sup>

- 4.107** Dr Hodgkinson said that BIRD was working with the LTCSA outside the scope of the committee review process to explore the definition of care, particularly around the issue of leisure activities and transport. She provided an example of the conundrum the current process poses to participants:

I have had a patient say to me, "I would like to go to the gym but I can't afford it. If I go to the gym I don't need a psychiatrist. They are happy to pay for the psychiatrist to help me deal with my depression when I develop it because I can't go to the gym." So it is something that we feel we probably would be best off working directly with Lifetime Care to try to work together to identify the legislative changes that might be required and how the interpretation of care can be done outside legislation, or within legislation existing.<sup>243</sup>

### *Committee comment*

- 4.108** The committee acknowledges that the issue of the LTCSA funding recreation and leisure activities is not a straightforward matter. We appreciate the LTCSA clarifying its position on funding the transport of participants and carers to and from recreation and leisure activities.
- 4.109** The committee notes that this nonetheless remains a significant issue for participants and encourages the LTCSA to increase its flexibility on the matter within the confines of the legislation.
- 4.110** The committee commends the LTCSA on commencing a project to assist clinicians to identify and plan meaningful activities for participants with a brain injury and we look forward to being updated on the progress of this project in the next review.

---

<sup>241</sup> Evidence, Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority, 17 March 2014, p 48.

<sup>242</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 10.

<sup>243</sup> Evidence, Dr Hodgkinson, 7 March 2014, p 36.



**Recommendation 14: Educational support for child participants**

**LTCSA Fourth review recommendation 14:** That the Lifetime Care and Support Authority liaise with the Department of Education and Training and review the issues raised by the Children’s Hospital Westmead as set out in paragraph 6.112 of this report to improve and clarify the process of obtaining educational support for child participants in the scheme, with a view to accepting and implementing those recommendations as appropriate.

- 4.111** The Children’s Hospital at Westmead suggested in the *Fourth Review Report* that the LTCSA clarify its relationship with schools to determine how the LTCSA, schools and rehabilitation specialists interact. The committee recommended the LTCSA liaise with the then Department of Education and Training to raise these issues.<sup>244</sup>
- 4.112** The government response noted the authority had been continuing discussions with what is now the Department of Education and Communities to improve the process for obtaining educational support for participants in schools. The authority had also consulted with the Association of Independent Schools of NSW and Catholic Education Commission of NSW.<sup>245</sup>
- 4.113** The government advised the authority considers funding teacher’s aides and other learning supports on a case-by-case basis. The LTCSA will not fund education supports until options through the department have been exhausted. As the authority recognises that teachers are the experts in education, it requires the school to make a request for education support.<sup>246</sup>
- 4.114** Case managers and other therapists are often funded to liaise with schools regarding a participant’s injury related needs. It is expected these requests will be made by the school in collaboration with the participant’s treating health team.<sup>247</sup>
- 4.115** The government response also stated the authority will consult on how to best inform and train teachers to complete the authority’s forms and that it expected coordinators to assist schools when needed. Further, the authority would continue to liaise with the Children’s Hospital at Westmead and the Sydney Children’s Hospital about planned changes to requesting education services.<sup>248</sup>
- 4.116** In the current review, NSW Health noted the Sydney Children’s Hospital Network had advised that liaison had occurred between the LTCSA and the Department of Education and

<sup>244</sup> Standing Committee on Law and Justice, *Fourth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council*, Report 47, December 2011, pp 90-92.

<sup>245</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 7.

<sup>246</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 7.

<sup>247</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 7.

<sup>248</sup> Government response to the fourth review of the exercise of the functions of the LTCSA and the LTCSAC, 20 June 2012, p 8.

Communities. However, it stated practical improvements in the area appear to have been limited.<sup>249</sup>

- 4.117** The LTCSA indicated it had worked to address processes for requesting education support by revising and publishing the Education Support Request form in 2012. This was done in consultation with the Children’s Hospital at Westmead and the Sydney Children’s Hospital, the Department of Education and Communities and teachers at public, Catholic and independent schools.<sup>250</sup>

***Committee comment***

- 4.118** The committee commends the LTCSA for consulting with the Department of Education and Communities regarding educational support for child participants in the scheme and for revising the Education Support request form. However, the committee notes the concerns of NSW Health that practical improvements in the area have been minimal.
- 4.119** While the committee agrees that teachers are the experts in education, we believe the LTCSA should take a more proactive role in ensuring child participants in the scheme are receiving the educational support they need. It is important that good lines of communication are open between child participants, parents, service providers, case workers and schools so that a holistic approach can be taken to ensure the needs and wellbeing of child participants are met.
- 4.120** We encourage the LTCSA to be more proactive to ensure child participants are receiving the care and services they need and will keep a watching brief of this matter in the next review.

---

<sup>249</sup> Submission 9, NSW Health, p 5.

<sup>250</sup> Further answers to questions on notice, Lifetime Care and Support Authority, p 11.

## Chapter 5 Participant choice and matters raised by advocacy groups

The final chapter examines opting-out of the scheme and greater self-management of care, including discussion of the Lifetime Care and Support Authority's (LTCSA) direct funding trial. The chapter also examines matters raised by advocacy groups regarding the importance of carers and concerns with the content on the LTCSA website.

### Opting-out of the scheme and greater self-management of care

- 5.1** A recurring theme in past reviews has been whether a participant should be given the choice to opt-out of the Lifetime Care and Support (LTCS) scheme and instead receive a lump sum payment to cover the costs of their ongoing care. Also, many stakeholders have expressed the view that participants should be given greater autonomy to manage their own care needs.
- 5.2** Under s 8(2) of the *Motor Accidents (Lifetime Care and Support) Act 2006*, an application by an insurer for a claimant to participate in the scheme does not require the consent of the injured person.<sup>251</sup>

#### Legal association perspective

- 5.3** Legal associations strongly argued that individuals should be given a choice whether they want to enter the scheme or to opt-out.<sup>252</sup>
- 5.4** As such, the Australian Lawyers Alliance submitted that s 8(2) be repealed.<sup>253</sup> The alliance argued that to deny people who have the intellectual capacity to exercise freedom of choice is an injustice and is contrary to the concept of individual responsibility and self-determination.<sup>254</sup>
- 5.5** Dr Andrew Morrison SC, Member, Australian Lawyers Alliance discussed the matter of lifetime care versus lump sum payments. He commented that in some cases individuals should not be put in charge of large sums of money, and in those instances, the scheme is the most appropriate option. On the other hand, he discussed situations where individuals should be in charge of organising their own care and services through a lump sum payment:

... I have seen highly intelligent very able people, capable of investing and managing their own money, capable of organising their care and their affairs in a way which suits them and who do not want to spend their time...debating with the LTCSA about their particular medical needs, costs and care arrangements. To have a rule which forces everyone into the LTCS scheme, including people who would rather take the

<sup>251</sup> *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) s 8(2).

<sup>252</sup> Submission 10, New South Wales Bar Association, p 22.

<sup>253</sup> Submission 8, Australian Lawyers Alliance, p 11.

<sup>254</sup> Answers to questions on notice, Australian Lawyers Alliance, 9 April 2014, p 2.

diminished lump sum payment and get on with their lives, on the face of it, seems to be something which is manifestly unjust in those particular cases.<sup>255</sup>

- 5.6** As a compromise, the Law Society of New South Wales suggested that participants be given a lump sum on a monthly or three monthly basis. Further, if a participant proves incapable of managing the funds the access to future lump sums could be curtailed.<sup>256</sup>
- 5.7** In addition to this, the Law Society stated it had observed an increased tendency of the authority to impose further restrictions on participants' decision-making through the LTCS guidelines. For example, it noted that regulated fees for care prescribed in the guidelines are well below commercial rates. The Law Society was concerned this further limited the choice of participants.<sup>257</sup>
- 5.8** Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, stood by these concerns, but expressed his support for an upcoming pilot scheme for direct funding (discussed later in the chapter) where a participant can choose who provides their cleaning or personal care, rather than being limited by an LTCSA approved service provider.<sup>258</sup>

### **Service provider perspective**

- 5.9** Service providers were more wary of allowing individuals to opt-out of the scheme and receive a lump sum payment.
- 5.10** Dr Adeline Hodgkinson, Chair, BIRD, said that when lump sum payments were made before the existence of the LTCSA, spinal cord injuries were often overcompensated, while brain injury costs were often underestimated. Further, Dr Hodgkinson noted that prior to the scheme, it was rare for individuals to be appropriately compensated and for that compensation to last sufficiently long.<sup>259</sup>
- 5.11** Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital explained the risks of providing individuals with such large sums of money that must be used to treat their care needs for the rest of their life:

I also remind you that we are dealing with a population of largely young men who have had a catastrophic injury and... often will have major psychiatric disabilities and major substance abuse problems. Their care is complex and will involve quite a large amount of money. We were in the business of having a court-allocated settlement, we were talking about \$10 or \$15 million for people. Sadly, I had one patient who went

---

<sup>255</sup> Evidence, Dr Andrew Morrison SC, Member, Australian Lawyers Alliance, 7 March 2014, p 26.

<sup>256</sup> Submission 7, Law Society of New South Wales, p 9.

<sup>257</sup> Submission 7, Law Society of New South Wales, p 8.

<sup>258</sup> Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 16.

<sup>259</sup> Evidence, Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate, 7 March 2014, p 39.

through \$5 million in two years and then it was gone. The number of people that ran out of money was quite large.<sup>260</sup>

- 5.12** Dr Engel cautioned that lump sum payments give individuals the ability to spend the money on unnecessary items, such as a new Xbox, as opposed to items to assist their treatment and care needs.<sup>261</sup> She acknowledged that many participants would like to be in control and have flexibility, but argued there should be a middle ground between the current system and opting-out:

Many people would feel very hard done by that they do not have this amount of money to control. I understand that people also feel that they do not have the flexibility of choosing the person next door.... We need to have a look at some sort of medium grant. If you are going to do an opt-in or opt-out scheme, there would have to be a mechanism for review at regular intervals. If it is all or nothing then I fear we are going to be back where we were before. What happens when the money runs out? We would be back to everyone being on a system without a budget, because the budget has been moved to this funding system.<sup>262</sup>

#### Case study – John\*<sup>263</sup>

- 5.13** John suffers from a traumatic brain injury and has a strong desire to opt-out of the scheme. John says he did not want to join the scheme but had ‘absolutely no rights or choice’ about the matter. He also feels that he has no rights or choice regarding the decisions about his own medical treatment.
- 5.14** John urges that the legislation be amended to provide individuals with a choice whether to join the scheme or to receive an insurance payout to manage their own care needs.
- 5.15** John made the following comments about the scheme:
- the scheme is bureaucratic and takes far too long to approve medical treatment
  - the LTCSA makes the participant ‘prove’ how disabled they are every time they make a medical request
  - the LTCSA tries its best to avoid paying for required medical treatment
  - the LTCSA has not adequately dealt with complaints regarding how long it takes to provide treatment and services
  - he feels like a ‘slave’ to the scheme
  - he would be in a better medical position if he was not in the scheme, as it would allow for faster access to treatment and services.

\*Not real name

<sup>260</sup> Evidence, Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital, 7 March 2014, p 34.

<sup>261</sup> Evidence, Dr Engel, 7 March 2014, p 34.

<sup>262</sup> Evidence, Dr Engel, 7 March 2014, p 34.

<sup>263</sup> Submission 12, Name suppressed, pp 1-3.

**Advocacy group perspective**

- 5.16** Advocacy groups did not discuss opting-out of the scheme, but were united in their view that participants should have greater autonomy in making decisions about their treatment and care needs.
- 5.17** Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW argued there should be no need to refer smaller day-to-day decisions to the LTCSA on a constant basis. Instead, there should be the ability to allow some decisions to be made by the participant and only major decisions left to the LTCSA.<sup>264</sup>
- 5.18** Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia submitted it would be simpler and more cost effective if participants were provided with funds directly to purchase standard items, such as computer equipment:
- A lot of people with minimum dexterity use what they call a track ball, which is a ball inside a cup when they cannot move the mouse around. They are \$100. To get an assessment, a prescription or something like that where the therapist possibly charges \$100 an hour, it would seem that the cost benefit to the scheme... would almost be like "Let's cut through the therapy side of it; let's allocate an extra amount of money to the participants".<sup>265</sup>
- 5.19** Further to this, Spinal Cord Injuries Australia recommended a trial be conducted where participants were provided with a small grant to purchase certain services:
- Spinal Cord Injuries Australia would like to suggest a pilot program, or trial, that would apply a 'person centred approach' to service delivery and provide LTCS participants with an ex gratia tax-free allowance of between \$2,000-\$10,000 to research and purchase various types of environmental control units, computer peripherals as well as software, and home appliances to assist with activities of daily living etc.<sup>266</sup>
- 5.20** Carers NSW was supportive of the LTCSA working towards a more person-centred disability system and was optimistic that this change would mean greater choice and control for people with disabilities and their families and carers. Carers NSW congratulated the LTCSA on its efforts to increase the choice and control of participants and carers in relation to case workers.<sup>267</sup>
- 5.21** The Council of Social Service of NSW (NCOSS) supported the NDIS model where the first assumption should be that a person with a disability has the capacity to make decisions. NCOSS stated that substitute decision-making may not always produce the best outcomes for participants and the use of this process should be regularly reviewed. Further, NCOSS

---

<sup>264</sup> Evidence, Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW, 7 March 2014, p 43.

<sup>265</sup> Evidence, Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injuries Australia, 7 March 2014, p 42.

<sup>266</sup> Submission 13, Spinal Cord Injuries Australia, p 5.

<sup>267</sup> Submission 3, Carers NSW, p 5.

recommended the LTCSA undertake research into the role and appropriate use of substitute decision-making to ensure best practice.<sup>268</sup>

### **LTCSA perspective and the direct funding trial**

- 5.22** The LTCSA has focused recently on providing more choice to participants, primarily through a self-directed funding trial that will operate from March 2014 to March 2015. Participants will have the right to elect to manage their own affairs and choose and engage their own service providers.<sup>269</sup> The aim is to ensure the autonomy of participants is respected, while at the same time, having support so they do not end up with unintended outcomes.<sup>270</sup>
- 5.23** Fifteen participants will receive direct funding for their attendant care by the end of the pilot period. Participants with brain and spinal cord injuries across rural and metropolitan regions will be represented. Governance of the trial will include an internal staff steering group, an external expert advisory group and use of the Participant Reference Group, and the trial will be externally evaluated upon completion. Concurrent to the trial, the LTCSA will consider the roll-out of direct funding to services other than attendant care.<sup>271</sup>
- 5.24** The authority is working on a draft supported decision-making position statement to assist the direct funding trial, which will be made available on the website. This position statement will provide guidance about supported decision-making on reasonable and necessary treatment and care services.<sup>272</sup>
- 5.25** Outside of the trial, the LTCSA is also working with the attendant care industry association to improve the standard of attendant care to move towards a more person-centred model in line with the NDIS.<sup>273</sup>
- 5.26** Further, the LTCSA is reviewing its planning and assessment processes so that the participant is more central to the process and can set goals and choose services to meet those goals. In this process, the authority informed the committee it will try to broaden the understanding of treatment and care needs, listed in s 5A of the *Motor Accidents (Lifetime Care and Support) Act 2006*, to provide greater flexibility for participants.<sup>274</sup>
- 5.27** Regarding the concern by the Law Society that regulated fees for care prescribed in the guidelines are well below commercial rates, the authority explained the fees have been negotiated to ensure cost-effectiveness. All attendant care providers on the approved list have demonstrated their disability expertise and quality of their service provision. In special

<sup>268</sup> Submission 1, Council of Social Service of NSW (NCOSS), p 3.

<sup>269</sup> Evidence, Mr Don Ferguson, General Manager, Lifetime Care and Support Authority, 17 March 2014, pp 36-37.

<sup>270</sup> Evidence, Mr Ferguson, March 2014, p 40.

<sup>271</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, 14 February 2014, pp 9-10.

<sup>272</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 10.

<sup>273</sup> Evidence, Mr Ferguson, March 2014, p 36.

<sup>274</sup> Answers to questions on notice, Lifetime Care and Support Authority, 16 April 2014, p 3.

circumstances the authority will approve an attendant care provider that is not on the list. This process should become more flexible following the direct funding trial.<sup>275</sup>

- 5.28** Mr Don Ferguson, General Manager, LTCSA acknowledged the suggestion of providing small grants to participants and expressed in principle support for easier access to minor services of equipment:

Particularly where it is low cost and low risk we want to get out of the way: it is not a good use of our time and it is not appropriate for participants to be waiting. On a risk decision-making process wherever we feel that we can move to a system that allows for much more straightforward access to services or equipment that is what we are currently working on.<sup>276</sup>

### ***Committee comment***

- 5.29** The committee is pleased that the LTCSA has undertaken a number of methods to increase the choice of participants for the greater self-management of care, including initiating the direct funding trial.
- 5.30** The committee notes the concerns of legal associations and participants that forcing individuals to participate in the scheme is unjust. The committee also notes the comments from service providers regarding the need to ensure lump sum payments are used appropriately and will last for the rest of a participant's life.
- 5.31** The committee is interested for the LTCSA to explore the middle ground between these options, as discussed by a range of stakeholders. We therefore recommend the LTCSA investigate the feasibility of a system where participants receive periodic sums for treatment and care needs, or for the purchase of low cost items.
- 

### **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.

---

### **Carers**

- 5.32** The adequacy of support and recognition provided to carers, including family members, has been an issue considered in previous committee reviews.
- 5.33** In the current review, Carers NSW congratulated the LTCSA on recognising its obligations under the NSW *Carers (Recognition) Act 2010*, commitment to advising all staff on the principles of the NSW Carers Charter and openness to continued consultation with Carers NSW.<sup>277</sup>

---

<sup>275</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 9.

<sup>276</sup> Evidence, Mr Ferguson, March 2014, p 46.

<sup>277</sup> Submission 3, Carers NSW, p 3.

---



- 5.34** In its submission, Carers NSW made a number of recommendations, including that the LTCSA:
- broaden its carer consultation and representation process beyond Carers NSW and other representative organisations to include carers directly
  - pursue a range of initiatives to ensure that staff and agents not only understand the NSW Carers Charter, but also incorporate its principles into their work
  - report on compliance with the NSW *Carers (Recognition) Act 2010* in its annual report.<sup>278</sup>
- 5.35** Carers NSW reiterated its view that attendant care workers and case managers should be educated and trained in carer awareness and proposed their workshop, ‘Understanding and Supporting Carers’, be delivered as part of current capacity building initiatives.<sup>279</sup>
- 5.36** Both Carers NSW and NCOSS agreed with the LTCSA that the provision of paid attendant care is in the interests of carers, but thought certain exceptions should be explored. They considered a family member could be paid as an attendant care worker when a participant is:
- from an Aboriginal or Torres Strait Islander background
  - from a culturally and linguistically diverse background
  - living in a rural or remote area.<sup>280</sup>
- 5.37** The LTCSA stated that while its primary responsibility is to its participants, it acknowledged the important role of carers in supporting participants. It highlighted that when the treatment and support needs of participants are assessed, the role and support of carers is always taken into account. It also pointed out that the newly established Participant Reference Group includes family representatives.<sup>281</sup>
- 5.38** The authority advised it runs a series of free workshops for case managers throughout the year called ‘Care Needs Review in the Scheme’. The workshop provides case managers with information on how to assess care needs for scheme participants. The LTCSA will also provide training to case managers in 2014 that will acknowledge the role of family and informal supports.<sup>282</sup>
- 5.39** Regarding the issue of family members as carers, the LTCSA informed the committee that in special circumstances, a participant’s attendant care workers may be family members. The family member must be employed by an attendant care agency to ensure they are appropriately trained and supported and ‘that both the family member and the participant have the appropriate insurance in place’.<sup>283</sup>

---

<sup>278</sup> Submission 3, Carers NSW, p 3.

<sup>279</sup> Submission 3, Carers NSW, pp 3-5.

<sup>280</sup> Submission 1, NCOSS, p 2; Submission 3, Carers NSW, p 7.

<sup>281</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 3.

<sup>282</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 4.

<sup>283</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 4.

**5.40** Under Part 18 of the LTCS guidelines, ‘special circumstances may include (but are not limited to) geographic isolation and cultural or religious reasons’.<sup>284</sup> The authority considers special circumstances on a case-by-case basis.<sup>285</sup>

**5.41** Ms Suzanne Lulham, Director, Service Delivery, LTCSA, illustrated circumstances where the LTCSA has allowed family members to become attendant care workers for participants:

We do have exceptions already in ... rural and remote areas, but also a couple of exceptions where participants have severe mental health problems like paranoia and only a family member can do it. We insist in those circumstances that family members are employed by an attendant care agency so that they are properly trained.<sup>286</sup>

**5.42** Ms Lulham also affirmed that some participants request a mix of family and attendant care workers:

Undoubtedly some family members may decide that they want a combination of each. A very common situation is, for instance, where we might provide up to 18 hours of care a day but the family does not want an attendant care worker in the house overnight whose role is just to sleep in house in case something happens. A family may decide that they do not want that. But should, for instance, the family go away on holidays or something then we remain willing to put that carer in.<sup>287</sup>

### *Committee comment*

**5.43** The committee is pleased with the positive comments from Carers NSW regarding the work conducted by the LTCSA since the previous review to recognise the authority’s obligations under the NSW *Carers (Recognition) Act 2010* commitment to advising its staff on the principles of the NSW Carers Charter and consulting with Carers NSW. The committee encourages the LTCSA to continue consulting with Carers NSW to ensure the views of carers are well represented.

### **Website content**

**5.44** A number of participants expressed concern regarding the content on the LTCSA website.

**5.45** The Physical Disability Council of New South Wales was particularly concerned that the website was geared more toward professionals than participants and stated that more resources need to be available to participants. The council noted the extensive resources available to participants on the Victorian Department of Human Services, Disability Services website as an example of information that should be provided by the LTCSA.<sup>288</sup>

**5.46** Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales acknowledged that the LTCSA had recently conducted work to improve the information

<sup>284</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines*, May 2012, p 79.

<sup>285</sup> Lifetime Care and Support Authority, *Lifetime Care and Support Guidelines*, May 2012, p 79.

<sup>286</sup> Evidence, Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority, 17 March 2014, p 47.

<sup>287</sup> Evidence, Ms Lulham, 17 March 2014, p 45.

<sup>288</sup> Submission 11, Physical Disability Council of New South Wales, p 3.

provided to participants, but suggested more could be done. She suggested that this information should also be made available in print form, as in her experience, not all participants use a computer.<sup>289</sup>

- 5.47** In addition to this, the Physical Disability Council stated the LTCSA should provide an online information sheet on accommodation to cover the following subjects:
- Social and public housing
  - Affordable housing
  - Transitional and supported accommodation
  - Accessible accommodation
  - Home modifications
  - Liveable Housing Australia.<sup>290</sup>
- 5.48** NCOSS also commented on the website suggesting it could be improved in relation to the information on advocacy, including contact details, as currently the information is quite general.<sup>291</sup>
- 5.49** Carers NSW expressed disappointment there is still limited reference to, and information for, carers on the LTCSA website, and that the references and information that do exist are difficult to find.<sup>292</sup>
- 5.50** Carers NSW recommended the LTCSA produce and publish information linking carers to appropriate services and support such as Carers NSW, other non-government organisations and the Commonwealth Respite and Carelink Centres. It also suggested a simple web page or downloadable fact sheet with information about who carers are and the services and supports that exist would be extremely helpful.<sup>293</sup>
- 5.51** In response to these concerns, the LTCSA advised it will conduct a website review in 2014 which will consider the presentation and location of information for participants.<sup>294</sup>
- 5.52** Regarding references to carers, the LTCSA stated it refers to carers in its publications. Further, the website has a link to Carers NSW and has resources for families and carers in the section for ‘Scheme Participants’ under the heading ‘information for families/carers’.<sup>295</sup>
- 5.53** The authority added that it published a range of information sheets in 2012 to provide information about the scheme to participants. These information sheets were edited into plain English and they are available in electronic format on the website, as well as in a printed

<sup>289</sup> Evidence, Ms Ruth Robinson, Executive Officer, Physical Disability Council of New South Wales 7 March 2014, p 30.

<sup>290</sup> Submission 11, Physical Disability Council of New South Wales, pp 3-4.

<sup>291</sup> Evidence, Ms Rashmi Kumar, Senior Policy Officer, Council of Social Service of New South Wales, 7 March 2014, p 44.

<sup>292</sup> Submission 3, Carers NSW, p 6.

<sup>293</sup> Submission 3, Carers NSW, p 6.

<sup>294</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 8.

<sup>295</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 4.

format to all new participants. Further, the Participant Reference Group will be consulted on the development of any new information sheets.<sup>296</sup>

### ***Committee comment***

- 5.54** The committee notes the concerns raised by the Physical Disability Council, NCOSS and Carers NSW regarding content on the LTCSA website. After receiving this evidence, the committee is pleased to see that the LTCSA has committed to conducting a review of its website. The committee encourages the LTCSA to liaise with key stakeholders in this process.
- 5.55** The committee is particularly interested to see the LTCSA follow up on suggestions by the Physical Disability Council that the website should be better geared towards scheme participants and notes the council's request that the LTCSA provide information to participants similar to what is available on the Victorian Department of Human Services, Disability Services website. To achieve this, the committee recommends that the LTCSA consult with the Participant Reference Group and continue to liaise with the Physical Disability Council and other stakeholders to increase the focus of participant information on its website.
- 

### **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.

---

- 5.56** The committee also agrees with the Physical Disability Council that it would be useful for the authority to provide an information sheet on its website regarding supported accommodation options for scheme participants. As such, we recommend that the LTCSA liaise with the Physical Disability Council and other relevant stakeholders to produce such a document.
- 

### **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.

---

---

<sup>296</sup> Answers to pre-hearing questions on notice, Lifetime Care and Support Authority, p 8.

## Appendix 1 Submission list

No	Author
1	Council of Social Service of NSW (NCOSS)
2	Suncorp Group
2a	Suncorp Group
3	Carers NSW
3a	Carers NSW
4	Motorcycle Council of NSW
5	Insurance Council of Australia
6	Youthsafe
7	The Law Society of New South Wales
7a	The Law Society of New South Wales
8	Australian Lawyers Alliance
8a	Australian Lawyers Alliance
9	NSW Health
10	The New South Wales Bar Association
10a	The New South Wales Bar Association
11	Physical Disability Council of NSW
11a	Physical Disability Council of NSW
12	Name suppressed
13	Spinal Cord Injuries Australia

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>7 March 2014</b> <b>Macquarie Room,</b> <b>State Library of New South</b> <b>Wales</b>	Mr Alastair McConnachie	Deputy Executive Director, The New South Wales Bar Association
	Mr Andrew Stone	Barrister and Bar Councillor The New South Wales Bar Association
	Mr Tim Concannon	Member, Injury Compensation Committee, The Law Society of New South Wales
	Ms Jnana Gumbert	NSW State President, Australian Lawyers Alliance
	Dr Andrew Morrison SC	Member, Australian Lawyers Alliance
	Ms Ruth Robinson	Executive Officer, Physical Disability Council of NSW
	Dr Adeline Hodgkinson	Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate
	Mr Christopher Catchpole	A/Manager, Hunter Brain Injury Service
	Ms Frances Monypenny	Manager, State Spinal Cord Injury Service
	Dr Stella Engel	Director, Spinal Medicine, The Prince of Wales Hospital
	Ms Rashmi Kumar	Senior Policy Officer, Council of Social Service of NSW (NCOSS)
	Mr Michael Hampton	Community Voice Manager, Brain Injury Association of NSW
	Mr Greg Killeen	Senior Policy and Advocacy Officer, Spinal Cord Injury Australia
Ms Mary Maini	General Manager, CTP, Insurance Australia Group, Insurance Council of Australia	
Mr Tony Mobbs	General Manager, CTP, Allianz, Insurance Council of Australia	

---

Date	Name	Position and Organisation
<b>17 March 2014</b> <b>Hamilton Room,</b> <b>Level 47, NSW Trade and</b> <b>Investment Centre,</b> <b>MLC Centre, Sydney</b>	Mr Christopher Burns	Member, Motorcycle Council of NSW
	Mr Guy Stanford	Member, Motorcycle Council of NSW
	Ms Carmel Donnelly	General Manager, Strategy and Performance, Safety, Return to Work and Support
	Mr Don Ferguson	General Manager, Lifetime Care and Support Authority
	Ms Suzanne Lulham	Director, Service Delivery, Lifetime Care and Support Authority

---

## Appendix 3 Answers to questions on notice

The committee received answers to questions on notice from:

- Lifetime Care and Support Authority
- Australian Lawyers Alliance
- Brain Injury Rehabilitation Directorate
- Insurance Council of Australia
- Motorcycle Council of NSW
- New South Wales Bar Association
- Physical Disability Council of NSW
- Spinal Cord Injuries Australia
- State Spinal Cord Injury Service
- The Prince of Wales Hospital.



## Appendix 4 Minutes

### Minutes No. 23

Tuesday 10 September 2013

Members' Lounge, Parliament House, at 1:03 pm

#### 1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mr Moselmane (1:10 pm)

Mr Shoebridge

#### 2. Apologies

Mrs Mitchell

#### 3. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft Minutes No. 22 be confirmed.

#### 4. \*\*\*

#### 5. \*\*\*

#### 6. 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA

Resolved, on the motion of Mr Shoebridge: That:

- The Committee commence its twelfth review of the exercise and functions of the MAA and its fifth review of the exercise and functions of the LTCSA and that the reviews be held concurrently.
- The reviews and the call for submissions be advertised in the Sydney Morning Herald and Daily Telegraph on Wednesday 18 September 2013.
- The Committee consider the proposed stakeholder list provided by the Secretariat, and that, after input from the Committee is received by 11 September 2013, the stakeholders be invited to make submissions to the reviews.
- The Committee hold at least one day of hearings on dates to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses.
- Representatives of the MAA and the LTCSA be invited to appear as witnesses along with any other witnesses determined by the Secretariat in consultation with the Chair and the Committee.
- The questions on notice process be conducted prior to the hearings as has occurred in previous reviews, with questions submitted to the MAA and LTCSA following the tabling of the Authorities' 2012-13 Annual Reports in the House.

Mr Moselmane joined the meeting.

#### 7. \*\*\*

**8. Adjournment**

The Committee adjourned at 1.17 pm, until Monday 14 October 2013 at 2:30 pm.

Teresa McMichael  
**Committee Clerk**

**Minutes No. 26**

Friday 15 November 2013

Room 1153, Parliament House, 10.00 am

**1. Members present**

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

**2. \*\*\***

**3. Previous minutes**

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 25 be confirmed.

**4. \*\*\***

**5. \*\*\***

**6. 12<sup>th</sup> Review of the MAA and 5<sup>th</sup> Review of the LTCSA**

**6.1 Submissions**

The Committee noted that the following submissions were published by the Committee Clerk under the authorisation of an earlier resolution:

- MAA12: Submission Nos 1-9
- LTCSA5: Submission Nos 1-7.

**6.2 Hearings**

Resolved, on the motion of Mr Moselmane: That the Committee hold public hearings on 7 March and 17 March 2014 (reserve date).

**6.3 Call for supplementary submissions**

Resolved, on the motion of Mr MacDonald: That, following the tabling of the MAA and LTCSA 2012-13 Annual Reports in the House, submission authors to the reviews be invited to make a supplementary submission by Friday 31 January 2014 to address any issues arising from the Annual Reports.

**7. \*\*\***

**8. Adjournment**

The Committee adjourned at 2.49 pm *sine die*.

Teresa McMichael  
**Clerk to the Committee**

**Minutes No. 27**

Wednesday 27 November 2013

Members' Lounge, Parliament House, 1.11 pm

**1. Members present**

Mr Clarke, *Chair*  
Mr Primrose, *Deputy Chair*  
Mr MacDonald  
Mrs Mitchell  
Mr Moselmane  
Mr Shoebridge

**2. Previous minutes**

Resolved, on the motion of Mrs Mitchell: That draft Minutes No. 26 be confirmed.

**3. 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA**

**3.1 Submissions**

The Committee noted that the following submissions were published by the Committee Clerk under the authorisation of an earlier resolution:

- MAA12: Submission Nos 10-11
- LTCSA5: Submission Nos 8-11.

**4. \*\*\***

**5. \*\*\***

**6. Adjournment**

The Committee adjourned at 1.47 pm until 7 March 2014 (public hearing into MAA12 and LTCSA5)

Teresa McMichael  
**Clerk to the Committee**

**Minutes No. 29**

Friday 7 March 2014

Macquarie Room, State Library of New South Wales, 9.20 am

**1. Members present**

Mr Clarke, *Chair*  
Mr Primrose, *Deputy Chair*  
Mr MacDonald  
Mrs Mitchell  
Mr Moselmane  
Mr Shoebridge (9.35 am)

**2. Previous minutes**

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 28 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 28 November 2013 – From Mr Roy Wakelin-King AM, Chief Executive Officer, NSW Taxi Council to Chair, advising that they have no further information to the MAA and LTCSA reviews provide and expressing appreciation for the invitation to lodge a supplementary submission
- 19 December 2013 – From Dr Mary Foley, Director General, NSW Department of Health to Chair, in response to lodge a supplementary submission to the MAA and LTCSA reviews and advising that they have no further information to provide
- \*\*\*
- 14 February 2014 – From Ms Carmel Donnelly, General Manager, Strategy & Performance, Safety, Return to Work and Support Division, providing pre-hearing answers to questions on notice to the MAA and LTCSA.

***Sent***

- 13 December 2013 – From Chair to the Hon Andrew Constance MP, Minister for Finance and Services, with a list of pre-hearing questions on notice to the MAA and LTCSA
- 5 February 2014 – From Chair to the Hon Andrew Constance MP, Minister for Finance and Services, inviting representatives from the MAA and LTCSA to give evidence at the hearing on 17 March 2014
- \*\*\*

**4. \*\*\*****5. \*\*\*****6. 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA****6.1 Public hearing**

Witnesses, the public and media were admitted.

The following witnesses were sworn and examined:

- Mr Alastair McConnachie, Deputy Executive Director, The New South Wales Bar Association
- Mr Andrew Stone, Barrister and Member, The New South Wales Bar Association.

Mr Andrew Stone tendered the following documents:

- Summary of insurer profitability projections from MAA Scheme performance reports 2003/04 to 2012/13
- The New South Wales Bar Association, The Law Society of New South Wales and The Australian Lawyers Alliance, Joint Submission to the Motor Accidents Authority entitled ‘An alternative proposal to reform the NSW CTP scheme’.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Tim Concannon, Member, Injury Compensation Committee, The Law Society of New South Wales.

Mr Tim Concannon tendered the following document:

- Deloitte, NSW CTP Costing Summary, dated 4 April 2013.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Jnana Gumbert, NSW State President, Australian Lawyers Alliance
- Dr Andrew Morrison SC, Member, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Ruth Robinson, Executive Officer, Physical Disability Council of NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate
- Mr Christopher Catchpole, A/Manager, Hunter Brain Injury Service
- Ms Frances Monypenny, Manager, State Spinal Cord Injury Service
- Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rashmi Kumar, Senior Policy Officer, Council of Social Services of NSW (NCOSS)
- Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW
- Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injury Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia
- Ms Mary Maini, General Manager, CTP, Insurance Australia Group, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.17 pm.

7. \*\*\*

## 8. 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA

### 8.1 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Primrose: That:

- supplementary questions may be lodged with the secretariat up to two days following the receipt of the hearing transcript, and
- witnesses be requested to provide answers to questions on notice and supplementary questions within 21 days of the date on which the questions are forwarded to the witness.

### 8.2 Submission and supplementary submissions

The Committee noted that the following submissions were published under the authorisation of an earlier resolution:

- MAA12: Submission No. 12 and supplementary submission Nos. 2a, 3a, 6a, 8a, 10a and 11b
- LTCSA5: Supplementary submission Nos. 2a, 3a, 7a, 8a, 10a and 11a.

### 8.3 Report deliberative date

Resolved, on the motion of Mr Primrose: That the Committee hold a report deliberative for the 12<sup>th</sup> Review of the Motor Accidents Authority and the Fifth Review of the Lifetime Care and Support Authority on Monday 2 June 2014.

#### 8.4 Tended documents

Resolved, on the motion of Mrs Mitchell: That the Committee accept and publish the following documents tendered during the hearing held on Friday 7 March 2014:

- Summary of insurer profitability projections from MAA Scheme performance reports 2003/04 to 2012/13
- Deloitte, NSW CTP Costing Summary, dated 4 April 2013.

#### 9. Adjournment

The Committee adjourned at 4:45 pm until Monday 17 March 2014, at 8:45 am in the Hamilton Room, Level 47, MLC Centre, for the public hearing into MAA12 and LTCSA5.

Teresa McMichael  
Clerk to the Committee

#### Minutes No. 30

Monday 17 March 2014

Hamilton Room, Level 47, NSW Trade and Investment Centre, MLC Centre, Sydney, 8.50 am

#### 1. Members present

Mr Clarke, *Chair*  
Mr Primrose, *Deputy Chair*  
Mr MacDonald  
Mrs Mitchell  
Mr Moselmane  
Mr Shoebridge

#### 2. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 29 be confirmed.

#### 3. \*\*\*

#### 4. 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA

##### 4.1 Partially confidential submission

Resolved, on the motion of Mr Shoebridge: That the Committee authorise the publication of Submission No. 12 to the Fifth Review of the Lifetime Care and Support Authority with the exception of the name and other personal details of the author which are to remain confidential.

##### 4.2 Public hearing

Witnesses, the public and media were admitted.

The following witnesses were sworn and examined:

- Mr Christopher Burns, Spokesman, Motorcycle Council of NSW
- Mr Guy Stanford, Member, Motorcycle Council of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support
- Mr Cameron Player, Director, Assessment Services, Safety, Return to Work and Support
- Mr Andrew Nicholls, General Manager, Motor Accidents Authority of NSW.

Mr Andrew Nicholls tendered the following documents:

- Ernst & Young, Selected indicators of the performance of the NSW CTP Scheme to 2013
- Ernst & Young, High level review of the New South Wales Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal
- Estelle Pearson, Motorcycle Experience and Premium Setting: Motor Accidents Authority, March 2014
- Transformation Management Services, Claims Assessment & Resolution Service Strategic (CARS) Review 2011, update February 2014.

The evidence concluded and Mr Cameron Player and Mr Andrew Nicholls withdrew.

The following witnesses were sworn and examined:

- Mr Don Ferguson, General Manager, Lifetime Care and Support Authority
- Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority.

The Chair noted that Ms Carmel Donnelly did not need to be sworn, as she had been sworn earlier during the hearing.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.00 pm.

#### **4.3 Tendered documents**

Resolved, on the motion of Mr Shoebridge: That the Committee accept and publish the following documents tendered during the hearing held on Friday 17 March 2014:

- Ernst & Young, Selected indicators of the performance of the NSW CTP Scheme to 2013
- Ernst & Young, High level review of the New South Wales Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal
- Estelle Pearson, Motorcycle Experience and Premium Setting: Motor Accidents Authority, March 2014
- Transformation Management Services, Claims Assessment & Resolution Service Strategic (CARS) Review 2011, update February 2014.

5. \*\*\*

#### **6. Adjournment**

The Committee adjourned at 4.30 pm until Friday 21 March 2014, at 8:45 am in the Hobart Room, Sofitel Hotel.

Teresa McMichael  
**Clerk to the Committee**

## Minutes No. 33

28 March 2014

Standing Committee on Law and Justice

Macquarie Room, State Library, Sydney, 8.47 am

### 1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane (from 8.55 am)

Mr Shoebridge

### 2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That Draft Minutes No. 32 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### ***Received:***

- 14 March 2014 – From Ms Ruth Robinson, Physical Disability Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014
- 18 March 2014 – From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA hearing on 17 March 2014
- \*\*\*
- 24 March 2014 - From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA hearing on 17 March 2014
- \*\*\*
- 26 March 2014 – From Ms Ruth Robinson, Physical Disability Council of NSW, to Principal Council Officer, providing answers to supplementary questions on notice from the 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014
- 26 March 2014 – From Mr Greg Killeen, Spinal Cord Injury Australia, to the Secretariat, providing answers to questions on notice from the 12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014.

#### ***Sent:***

- \*\*\*

### 4. Fifth Review of the LTCSA

#### 4.1 Publication of Submission No. 13

Resolved, on the motion of Mrs Mitchell: That the Committee publish Submission No. 13 to the Fifth Review of the Lifetime Care and Support Authority.

5. \*\*\*

6. \*\*\*



**7. Adjournment**

The Committee adjourned at 5.15 pm until Monday 31 March 2014, at 9.30 am in the Pioneer Community Hall, Bowraville

Teresa McMichael  
**Clerk to the Committee**

**Minutes No. 35**

Thursday 1 May 2014

Nambucca Shire Council Chambers, Macksville, 1.50 pm.

**1. Members present**

Mr Clarke, *Chair*  
 Mr Primrose, *Deputy Chair*  
 Mr MacDonald  
 Mrs Mitchell  
 Mr Moselmane  
 Mr Shoebridge

**2. Participating members**

Ms Cusack

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 31 March 2014 – From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing additional information to answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 3 April 2014 – From Ms Sarah Phillips, Insurance Council of Australia, to Director, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 4 April 2014 – From Ms Adeline Hodgkinson, Brain Injury Rehabilitation Directorate, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 4 April 2014 – From Ms Frances Monypenny, State Spinal Cord Injury Service, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- \*\*\*
- 8 April 2014 – From Mr Alastair McConnachie, New South Wales Bar Association, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 9 April 2014 – From Ms Jnana Gumbert, Australian Lawyers Alliance, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- \*\*\*
- 16 April 2014 – Ms Carmel Donnelly, Safety, Return to Work and Support, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- \*\*\*

***Sent:***

- \*\*\*

**4. Previous minutes**

Resolved, on the motion of Mr MacDonald: That draft minutes nos. 33 and 34 be confirmed.

5. \*\*\*

6. **12<sup>th</sup> Review of the MAA and Fifth Review of the LTCSA**

6.1 \*\*\*

6.2 **Update on implementation of recommendations**

Resolved, on the motion of Mr Shoebridge: That the committee request the MAA and LTCSA to provide an update on any implementation of recommendations from the 11<sup>th</sup> Review of the MAA and Fourth Review of the LTCSA.

7. \*\*\*

8. **Committee meeting dates**

Resolved, on the motion of Mr Shoebridge: That the committee secretariat circulate an updated timetable for all of the Law and Justice Committee meeting and report deliberative dates.

9. **Adjournment**

The committee adjourned at 5.40pm until Friday 2 May 2014 at 9.00am (closed roundtable hearing for inquiry into the family response to the murders in Bowraville).

Teresa McMichael  
**Clerk to the Committee**

**Minutes No. 37**

Monday 12 May 2014

Standing Committee on Law and Justice

Macquarie Room, Parliament House, 8.55 am

1. **Members present**

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Shoebridge

2. **Apologies**

Mr Moselmane

3. **Participating members**

Ms Cusack

4. \*\*\*

5. \*\*\*

6. \*\*\*

7. **Correspondence**

***Received:***

- \*\*\*

**Sent:**

- 5 May 2014 – From the Chair to the Hon Dominic Perrottet MP, Minister for Finance and Services, requesting an update to the government responses for the previous MAA and LTCSA reviews.

8. \*\*\*

9. \*\*\*

10. **Adjournment**

The committee adjourned at 2.15 pm until Monday 2 June 2014.

Teresa McMichael

**Clerk to the Committee**

**Minutes No. 38**

Monday 2 June 2014

Standing Committee on Law and Justice

Room 1254, Parliament House, 8.55 am

1. **Members present**

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell (*via teleconference*)

Mr Shoebridge

2. **Apologies**

Mr Moselmane

3. \*\*\*

4. \*\*\*

5. **Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 37 be confirmed.

6. **Correspondence**

**Received:**

- \*\*\*
- 12 May 2014 – From Dr Stella Engel, The Prince of Wales Hospital, providing answers to questions on notice from 7 March hearing to the LTCSA5 review
- \*\*\*
- 26 May 2014 – From the LTCSA providing an update to the government's response to the Fourth Review Report of the LTCSA
- \*\*\*
- 29 May 2014 – From the Hon Dominic Perrottet MP, Minister for Finance and Services, to Director, confirming attendance of representatives from Safety, Return to Work and Support at 2 June 2014 meeting.

**Sent:**

- 13 May 2014 – From the Chair to the Minister for Finance and Services, organising a meeting with the MAA to discuss insurer profits
- \*\*\*

7. \*\*\*

8. \*\*\*

9. **Adjournment**

The committee adjourned at 12.10 pm until Friday 27 June 2014.

Teresa McMichael  
**Clerk to the Committee**

**Draft Minutes No. 39**

Friday 27 June 2014

Standing Committee on Law and Justice

Room 1153, Parliament House, Sydney, 9.11 am

1. **Members present**

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. **Previous minutes**

Resolved, on the motion of Mr MacDonald: That draft minutes no. 38 be confirmed.

3. \*\*\*

4. \*\*\*

5. \*\*\*

6. **Fifth review of the LTCSA**

**6.1 Consideration of Chair's draft report**

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

Resolved, on the motion of Mr Primrose: That the committee thank the secretariat for its work on the report, which was unanimously adopted without any amendments.

Resolved, on the motion of Mr MacDonald: That:

- the draft report, be the report of the committee and that the committee present the report to the House
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the review be tabled in the House with the report

- upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the report be tabled by no later than Thursday 3 July 2014.

7. \*\*\*

8. **Adjournment**

The committee adjourned at 1.17pm until Monday 11 August 2014, 10.00 am

Teresa McMichael  
**Clerk to the Committee**