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LIFETIME CARE AND SUPPORT IN NSW

By John Walsh

The Motor Accidents (Lifetime Care and Support) Bill 2006 received assent in NSW Parliament on 8 May 2006. This new piece of legislation was proposed by the Hon John Della Bosca, and provides the opportunity to extend and improve models of funding and support services for people who sustain a major injury as a result of a motor accident in NSW.

INTRODUCTION

Anyone who sustains a motor accident injury of sufficient severity to require 'lifetime care and support' will be entitled to receive care and support under the new Lifetime Care and Support Scheme (LTCS Scheme), irrespective of their ability to establish the negligence of a third party (which is a requirement for entitlement to damages under the current compulsory third party [CTP] scheme). Current CTP-eligible claimants will continue to be entitled to lump-sum damages for non-economic loss and future economic loss, but will receive ongoing care and support under the LTCS Scheme rather than a once-and-for-all lump sum.

The LTCS Scheme will be administered by a Lifetime Care and Support Authority (LTCSA), which will commence functions on 1 July 2006.

WHEN WILL THE LTCS SCHEME TAKE EFFECT?

The new scheme will be implemented in two stages. Any child under 16 who sustains an injury on or after 1 October 2006 will be covered by the scheme. For everyone else, coverage will start on 1 October 2007.

WHO IS ELIGIBLE FOR THE LTCS SCHEME?

Based on the experience of similar schemes in Victoria and Tasmania, it is expected that the majority of entrants will have sustained a spinal cord injury or severe brain injury; however, people with other injury types will occasionally also require lifetime care and support.

Eligibility will be determined in a two-stage process based on an objective clinical assessment of the severity of the injury. 'Interim eligibility', from which entitlement to care and other benefits will flow, will be assessed very soon after the injury, and in most cases before hospital discharge. 'Final eligibility' will generally be assessed not more than two years after injury, and will entitle eligible claimants to 'reasonable treatment and care expenses' associated with the injury for life, including medical expenses, rehabilitation, attendant care, equipment, and home and vehicle modifications.

Detailed eligibility criteria will be specified in guidelines, but are expected to be as follows:

- In terms of people who sustain a spinal cord injury in a motor accident, anyone who has an ongoing neurological deficit will be eligible, providing entitlement to an expected 35-40 new injuries per year.
- In terms of people who sustain a brain injury in a motor accident, interim eligibility will initially be determined by the requirement of at least seven days of post-traumatic amnesia (PTA) or a certification by a recognised clinical expert that a similarly severe brain trauma has occurred. Final eligibility will be assessed by applying the Functional Independence Measure (FIM – WeeFIM for children), and will require a score of five or less on any domain of the FIM or WeeFIM. It is expected that around 100 claimants per year will be deemed 'final eligible' as a result of brain injury.
- In terms of the small number of other injury types resulting from motor accidents, it is expected that fewer than five claimants per year will qualify, mainly as a result

of major burns, amputations or total loss of sight. The great majority of eligible claimants are expected to be young (70% will be under 30 at the time of injury), and the majority (around 75%) will be male.

WHAT WILL BE PROVIDED BY THE SCHEME?

Benefits defined in part 2 of the Bill are '...the reasonable expenses incurred by or on behalf of a person while a participant in the Scheme in providing for such of the treatment and care needs of the participant as relate to the motor accident injury in respect of which the person is a participant and as are reasonable and necessary in the circumstances'. For this purpose, 'treatment and care' include the following:

- medical treatment (including acute inpatient and therapy);
- dental treatment;
- rehabilitation;
- ambulance transportation;
- respite care;
- attendant care services (which is expected to include personal assistance, home nursing, domestic assistance, community access, gardening and home maintenance, childcare, and educational and vocational support);
- aids and appliances;
- artificial members, eyes and teeth; and
- home and transport modification.



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HOW WILL SERVICES BE ALLOCATED AND PROVIDED?

It is intended that each eligible claimant will be assigned a life care co-ordinator at the time that their interim eligibility is determined – that is, before leaving acute care in hospital. The life care co-ordinator will arrange for a care needs assessment to be undertaken using one or more of the assessment instruments to be specified by guidelines. The life care co-ordinator will then work with the injured person and his/her family, community and potential service-providers to construct a package of services and support that is appropriate to the individual's needs as determined by the needs assessment, and which will aim to satisfy his/her goals and potential.

This package of services and support will be monitored as to utilisation of its services, costs and outcomes, with a regular review of the needs assessment – review being more frequent in the early years post-injury or in times of life changes, and less frequent when progress towards goals is steady and stable, probably a few years after injury.

Actual service provision will be separate and distinct from planning and co-ordination. Service-providers will be required to establish competency, and will be accredited or approved by the LTCSA according to requirements to be specified. It is anticipated that the market for service provision will be contestable based on a range of characteristics, including satisfaction and outcomes for the

injured person, leading to an expanding and improving range of options with respect to attendant care services.

It is also anticipated that claimants with the wish and capability to do so will play an active role in the design of their care and support package, the appointment of service-providers and the application of approved funds. In this way their self-determination will be preserved.

WHAT WILL THIS MEAN FOR THE INJURED PERSON?

The LTCS Scheme will provide speed and certainty to eligible claimants in terms of the security of their future care and support, by providing the above services from the time of their hospital discharge. However, more important than this strict entitlement is the spirit and intention of the Scheme, and the new LTCSA, to adopt a person-centred approach to planning, co-ordination and service-delivery, with individual goals and the means to achieve each person's potential.

WHAT ABOUT DISPUTES?

It is expected that disputes will be few, because of:

- the objective nature of definitions and instruments;
- the relatively generous level of entitlements compared to other schemes in NSW, which obviously remain constrained to some degree; and
- the intended nature of the process as described above, which is meant to be individual, embracing, constructive and positive rather than adversarial and litigious.

Nevertheless, there will certainly be exceptions to the attainment of this spirit, leading to disputes in the following areas:

- entitlement with respect to definition of a motor accident. Such disputes will be dealt with in the same way as under the current CTP scheme (*Motor Accidents Compensation Act 1999*);¹
- entitlement with respect to eligibility (both interim and final eligibility). Disputes arising as to satisfaction of eligibility criteria can be referred to an Assessment Panel, with further reference to a Review Panel under limited circumstances. Both the Assessment Panel and Review Panel will be constituted of assessors who will be appointed from medical practitioners and other suitably qualified health professionals; and
- assessment of care needs and level of service entitlement. Where disputes arise as to this assessment, these can be referred to an assessor, with further reference to a Review Panel under limited circumstances. Assessors will be appointed from medical practitioners and other suitably qualified health professionals, and the Review Panel will also comprise such assessors.

HOW WILL THE LTCS SCHEME BE GOVERNED?

The new legislation creates the LTCSA, a statutory corporation with a board of directors, and functions as follows:

- to monitor the operation of the Scheme, and in particular to conduct research into and to collect statistics in relation to the operation of the Scheme;
- to advise the Minister as to the administration, efficiency and effectiveness of the Scheme;

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- to publicise and disseminate information concerning the Scheme;
- to issue and keep under review the LTCS Guidelines;
- to provide administrative and other support to the Advisory Council, sufficient to assist the Advisory Council to meet its priorities; and
- to provide advice and make recommendations to the Advisory Council on such matters as the Advisory Council requests or the Authority considers appropriate.

The Advisory Council referred to is also created by the new legislation, and will broadly consist of representatives of health practitioners, organisations providing treatment and care to injured people, and organisations representing the interests of injured people. Members of the Advisory Council will be appointed by the Minister after consultation. The Advisory Council will:

- advise the Minister with respect to any matter relating to the LTCS Scheme that it considers appropriate or that the Minister refers to it;
- advise and make recommendations to the LTCSA on, and keep under review, the LTCS Guidelines;
- monitor the operation of the services provided under the LTCS Scheme; and
- conduct such other functions as are conferred or imposed on it under legislation.

HOW WILL THE LTCS SCHEME BE FUNDED?

When the LTCS Scheme is operating at full steam (that is,

covering both children and adults) the equivalent annual funding amount in current values will be about \$300m. This is the amount deemed appropriate (with investment income) to fund care and support for the lifetimes of a full injury year cohort of eligible claimants, plus the expenses of care co-ordination and administration of the LTCS Scheme.

These funds will be collected by way of a levy on motorists, which will be largely offset by savings in the current CTP Scheme.

CONCLUSION

This scheme provides an exciting opportunity for people who sustain a major motor accident in NSW. Importantly, they will be encouraged to determine their own futures with security of care and support, and without the fear of funds proving inadequate in a changing world. ■

Note: 1 Under part 4.4 of the *Motor Accidents Compensation Act 1999*, a dispute as to whether an injury is a motor accident injury is referred to the Principal Claims Assessor, who is to convene a panel of three claims assessors under that part to determine the dispute. Such determination is final and binding.

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