



Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Act 2014

A2014-11

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Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Act 2014

A2014-11

An Act to provide a scheme for the lifetime care and support of people who have been catastrophically injured, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*.

2 Commencement

This Act commences on 1 July 2014.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*legal costs*—see the [Legal Profession Act 2006](#), dictionary.’ means that the term ‘legal costs’ is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

- (1) This Act applies only in relation to a motor accident injury suffered by a person—
 - (a) as a result of a motor accident that happens in the ACT on or after 1 July 2014; and
 - (b) whether or not the person was at fault in the motor accident; and
 - (c) if at least 1 motor vehicle involved in the motor accident had CTP cover under the CTP Act at the time of the motor accident.
- (2) A regulation may make provision for or in relation to limiting the application of this Act to a stated class of people.

Note 1 A reference to an Act includes a reference to a provision of an Act (see [Legislation Act](#), s 7 (3)).

Note 2 Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) For subsection (1), a motor vehicle involved in a motor accident is taken to have had CTP cover under the CTP Act at the time of the motor accident if—
- (a) a CTP policy was in force for the motor vehicle at that time; or
 - (b) the motor vehicle was owned by the Commonwealth, or an entity representing the Commonwealth at that time; or
 - (c) there is a right of action against the nominal defendant under the CTP Act in relation to the motor accident; or
 - (d) there would be a right of action against the nominal defendant under the CTP Act in relation to the motor accident if the cause of the motor accident was the fault of the responsible person or driver of the motor vehicle in the use or operation of the motor vehicle.

Part 2 Purpose and important concepts

7 Purpose of Act

The purpose of this Act is to—

- (a) provide an indemnity insurance scheme to respond to the reasonable and necessary treatment and care needs of people who have been catastrophically injured in a motor accident; and
- (b) ensure that the scheme is fully funded.

8 Terms used in CTP Act

A term used in the CTP Act has the same meaning in this Act.

Note 1 A definition in an Act applies except so far as the contrary intention appears (see [Legislation Act](#), s 155).

Note 2 *CTP Act*—see the dictionary.

9 Meaning of *treatment and care needs* etc

In this Act:

excluded treatment and care means treatment, care, support or services of a kind prescribed by regulation for this definition.

treatment and care needs, of a participant in the LTCS scheme—

- (a) means the participant's needs in relation to any of the following:
 - (i) medical treatment (including pharmaceutical treatment);
 - (ii) dental treatment;
 - (iii) rehabilitation;
 - (iv) ambulance transportation;
 - (v) respite care;

- (vi) attendant care services;
 - (vii) aids and appliances;
 - (viii) prostheses;
 - (ix) education and vocational training;
 - (x) home and transport modification;
 - (xi) workplace and educational facility modifications;
 - (xii) any other kinds of treatment, care, support or services prescribed by regulation; but
- (b) does not include excluded treatment and care.

Part 3 LTCS commissioner

10 Appointment of LTCS commissioner

- (1) The Minister may appoint a public servant to be Lifetime Care and Support Commissioner of the Australian Capital Territory (the *LTCS commissioner*).

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The LTCS commissioner must be appointed for not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

11 Functions of LTCS commissioner

- (1) The LTCS commissioner has the following functions:
- (a) to monitor the operation of the LTCS scheme and, in particular, to conduct research into and collect statistics in relation to the scheme's operation;
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).
- (b) to advise the Minister about the administration, efficiency and effectiveness of the LTCS scheme;
 - (c) to publicise and distribute information about the LTCS scheme;
 - (d) to issue and monitor the LTCS guidelines;
 - (e) any other function given to the LTCS commissioner under this Act or another territory law.

- (2) The LTCS commissioner has the following functions in relation to the provision of care, treatment, rehabilitation, long-term support and other services for people who have sustained motor accident injuries:
- (a) to monitor those services;
 - (b) to support and fund programs that will improve delivery of those services;
 - (c) to support and fund research and education in relation to the delivery of those services.

12 Delegation by LTCS commissioner

- (1) The LTCS commissioner may delegate the LTCS commissioner's functions under section 11 to an authorised person.
- (2) A delegate may subdelegate to an authorised person a function delegated under subsection (1) if the subdelegation is authorised in writing by the LTCS commissioner.
- (3) In this section:

authorised person means—

- (a) a public employee; or
- (b) a person prescribed by regulation.

Note **Public employee**—see the [Legislation Act](#), dictionary, pt 1.

13 LTCS commissioner staff

The staff assisting the LTCS commissioner must be employed under the [Public Sector Management Act 1994](#).

14 Use of consultants and contractors

The LTCS commissioner may engage the consultants and contractors that may be necessary or convenient to exercise the LTCS commissioner's functions.

Part 4 Participation in LTCS scheme

15 Participation in LTCS scheme—eligibility

- (1) A person who has a motor accident injury to which this Act applies (the *injured person*) is eligible to participate in the LTCS scheme in relation to the injury if—
- (a) the injury involves—
 - (i) a spinal cord injury; or
 - (ii) a brain injury; or
 - (iii) an amputation of a limb; or
 - (iv) burns; or
 - (v) permanent blindness; or
 - (vi) any other injury mentioned in the LTCS guidelines; and
 - (b) the injury satisfies the criteria mentioned in the LTCS guidelines.

Note 1 See s 6 for application of this Act to motor accident injuries.

Note 2 The LTCS guidelines are made under s 93.

- (2) The person may participate in the LTCS scheme as an interim participant or lifetime participant.

Note 1 See s 20 for eligibility criteria for interim participants.

Note 2 See s 21 for eligibility criteria for lifetime participants.

- (3) However, the person is not eligible to participate in the LTCS scheme in relation to the motor accident injury if the person has been awarded damages, under a final judgment entered by a court or a binding settlement, for future economic loss in relation to the person's treatment and care needs relating to the injury.

Note 1 **Motor accident injury**, in relation to a person—see the dictionary.

Note 2 **Treatment and care needs**, of a participant in the LTCS scheme—see s 9.

- (4) The LTCS guidelines may include further information in relation to the person's eligibility to participate in the LTCS scheme, including—
- (a) the criteria to be satisfied in relation to a motor accident injury for the person to be eligible to be a participant in the scheme; and
 - (b) determining whether the motor accident injury satisfies the criteria.

16 LTCS scheme—initial application to participate

- (1) This section applies if an injured person is eligible to participate in the LTCS scheme.
- (2) Any of the following people may apply to the LTCS commissioner for the injured person to become a participant in the LTCS scheme in relation to the motor accident injury:
- (a) the injured person;
 - (b) someone else on the injured person's behalf;

Examples—par (b)

- 1 the injured person's parent
- 2 the injured person's spouse

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(c) an insurer for a motor accident claim made by the injured person in relation to the injury.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

Note 3 **Motor accident claim**, for a motor accident—see the [CTP Act](#), s 77.

(3) The application must be accompanied by a medical certificate.

Note If a form is approved under s 98 for this provision, the form must be used.

(4) However, the LTCS commissioner may waive the requirement for a medical certificate if satisfied that—

(a) a certificate is not needed to establish the injured person's eligibility to participate in the LTCS scheme; and

(b) there are exceptional circumstances justifying the waiver.

(5) The injured person's consent is not needed for the insurer to make the application.

(6) The CTP regulator may direct the insurer to apply for the injured person to become a participant in the LTCS scheme.

Note **CTP regulator**—see the [CTP Act](#), s 14.

(7) The insurer must comply with the CTP regulator's direction.

(8) In this section:

insurer, for a claim made by an injured person in relation to the motor accident injury, means—

(a) if the injured person is a CTP insured person—the CTP insurer for the person; or

(b) if the injured person is not a CTP insured person—the nominal defendant.

Note **CTP insured person**—see the [CTP Act](#), s 16.

17 LTCS scheme—authorisation for LTCS commissioner to obtain information

The LTCS commissioner may require an applicant for participation in the LTCS scheme to authorise the LTCS commissioner to obtain information and documents relevant to the applicant's motor accident injury from stated people.

18 LTCS scheme—guidelines for applications

The LTCS guidelines may make provision for applications for participation in the LTCS scheme, including provision for—

- (a) making and determining applications (including information to be given with an application); and
- (b) requiring an insurer to pay the costs of any assessment required by the LTCS guidelines in relation to an application; and
- (c) imposing restrictions on the time within which an application can be made or requiring the making of an application to be deferred until an injury has stabilised.

Note The LTCS guidelines are made under s 93.

19 LTCS scheme—acceptance as participant

- (1) This section applies if the LTCS commissioner receives an application under section 16 (LTCS scheme—initial application to participate).
- (2) If the LTCS commissioner is satisfied that the injured person is eligible to be a participant in the LTCS scheme, the LTCS commissioner must give the injured person written notice accepting the person as an interim participant in the scheme.

20 LTCS scheme—interim participation

- (1) This section applies if the LTCS commissioner accepts an injured person as an interim participant in the LTCS scheme.
- (2) The period of the injured person's interim participation is—
 - (a) for an injured person who is 3 years or older—2 years, starting on the date of the LTCS commissioner's determination; and
 - (b) for an injured person who is under 3 years—the period starting on the date of the LTCS commissioner's determination and ending on the injured person's 5th birthday.
- (3) An injured person must not be accepted as an interim participant more than once in relation to the same motor accident injury.
- (4) The end of a period of interim participation in the LTCS scheme does not prevent an injured person being later accepted as a lifetime participant in the scheme.
- (5) However, if the injured person is awarded damages, under a final judgment entered by a court or a binding settlement, for future economic loss in relation to the injured person's treatment and care needs relating to the injury during or after the end of a period of interim participation, the injured person must not be accepted as a lifetime participant.

Note *Treatment and care needs*, of a participant in the LTCS scheme—see s 9.

21 LTCS scheme—application for lifetime participation

- (1) This section applies if an injured person is or has been an interim participant in the LTCS scheme.
- (2) Any of the following people may apply to the LTCS commissioner for the injured person to become a lifetime participant in the LTCS scheme:
 - (a) the injured person;

- (b) someone else on the injured person's behalf;

Examples—par (b)

- 1 the injured person's parent
- 2 the injured person's spouse

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) an insurer for a motor accident claim made by the injured person in relation to the injury.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

Note 3 **Motor accident claim**, for a motor accident—see the [CTP Act](#), s 77.

- (3) The application must be accompanied by a medical certificate and any additional information requested under subsection (6).

Note If a form is approved under s 98 for this provision, the form must be used.

- (4) The medical certificate must be completed—

- (a) not more than 2 months before the date that the application for lifetime participation is made; or
- (b) if the LTCS commissioner allows another time within which to complete the medical certificate—within the time allowed.

- (5) However, the LTCS commissioner may waive the requirement for a medical certificate if satisfied that—

- (a) a certificate is not needed to establish the injured person's eligibility for lifetime participation; and
- (b) there are exceptional circumstances justifying the waiver.

- (6) The LTCS commissioner must notify the injured person and any other interested party, in writing, of any additional information that must accompany the application.
- (7) If the injured person is accepted as a lifetime participant in the LTCS scheme, the injured person—
 - (a) ceases to be an interim participant in the scheme; and
 - (b) is a lifetime participant in the scheme until the end of the person's life.

22 Effect of LTCS scheme on compensation claims etc

- (1) This Act does not limit or otherwise affect the application of the CTP Act in relation to a motor accident injury of an injured person who is, or is eligible to become, a participant in the LTCS scheme, except as provided by that Act.

Note CTP Act—see the dictionary.

- (2) While an injured person is an interim participant in the LTCS scheme in relation to a motor accident injury, time does not run for the CTP Act, section 146 to section 149 or a provision of the *Limitation Act 1985* in relation to a cause of action on a claim for damages—
 - (a) relating to the injury; or
 - (b) relating to any other injury suffered by the person as a result of the motor accident.

Part 5 Treatment and care needs assessment

23 Assessment of participant's treatment and care needs

- (1) The LTCS commissioner must assess the treatment and care needs of a participant in the LTCS scheme for the motor accident injury in relation to which the injured person is a participant in the scheme.

Note **Treatment and care needs**, of a participant in the LTCS scheme—see s 9.

- (2) The assessment must determine the participant's treatment and care needs that—
- (a) are reasonable and necessary in the circumstances; and
 - (b) relate to the motor accident injury in relation to which the person is a participant in the LTCS scheme.
- (3) In deciding whether the participant's treatment and care needs are reasonable and necessary in the circumstances, the LTCS commissioner must consider the following:
- (a) the benefit that a service will have for meeting the participant's treatment and care needs;
 - (b) the appropriateness of a service, or request for a service, to meet the participant's treatment and care needs;
 - (c) the appropriateness of a provider of a service mentioned in paragraph (b);
 - (d) the cost benefit of a service mentioned in paragraph (b).

Note The LTCS guidelines may include provisions about which of an injured person's treatment and care needs are reasonable and necessary in the circumstances (see s 30 (5)).

- (4) The assessment must be made in accordance with the LTCS guidelines.

Note The LTCS guidelines are made under s 93.

- (5) The LTCS commissioner must—
- (a) certify in writing its assessment of the participant's treatment and care needs; and
 - (b) include in the certificate its reasons for the findings on which the assessment is based; and
 - (c) give a copy of the certificate to the participant.

24 Effect of assessment

- (1) The LTCS commissioner's assessment of a participant's treatment and care needs is final and binding for this Act and any court proceeding under this Act.

Note The LTCS commissioner is to revise its assessment if necessary to give effect to a decision by an assessor or review panel in relation to a dispute about the participant's treatment and care needs (see s 64).

- (2) The LTCS commissioner's assessment of a participant's treatment and care needs supersedes any earlier assessment by the commissioner of those needs.

25 LTCS commissioner not liable for legal costs for assessment

The LTCS commissioner is not liable for legal costs for legal services provided to a participant in the LTCS scheme in relation to an assessment of the participant's treatment and care needs.

Note **Legal costs**—see the dictionary.

Legal services—see the dictionary.

26 Co-operation of participant

A participant in the LTCS scheme must comply with any reasonable request made by the LTCS commissioner in relation to an assessment of the participant's treatment and care needs, including a request to undergo a medical or other examination by a health practitioner.

Note **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

27 Treatment and care needs assessment—LTCS guidelines

- (1) The LTCS guidelines may make provision for and in relation to the assessment of the treatment and care needs of a participant in the LTCS scheme.

Note The LTCS guidelines are made under s 93.

- (2) In particular, the LTCS guidelines may make provision for the following:
 - (a) the procedures to be followed for the assessment;
 - (b) the intervals at which assessments are to be carried out;
 - (c) the methods and criteria to be used to determine the treatment and care needs of participants in the LTCS scheme;
 - (d) the information participants must provide for or in relation to assessments.
- (3) An assessment of the treatment and care needs of a participant in the LTCS scheme must be carried out in accordance with the LTCS guidelines.

28 Request for treatment and care needs assessment

- (1) A participant in the LTCS scheme, or someone on the participant's behalf, may request the LTCS commissioner to carry out an assessment of the participant's treatment and care needs.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

Note 3 The LTCS commissioner is not liable for any legal costs incurred by a participant for legal services provided to the participant (see s 25).

- (2) The LTCS guidelines may make provision for and in relation to when a person mentioned in subsection (1) may request the LTCS commissioner to carry out an assessment of the participant's treatment and care needs.

Note 1 The LTCS guidelines are made under s 93.

Note 2 ***Treatment and care needs***, of a participant in the LTCS scheme—see s 9.

Part 6 Payments under LTCS scheme

29 Definitions

In this Act:

approved provider, of a service, means a person—

- (a) approved by the LTCS commissioner to provide the service; or
- (b) who is an approved provider for the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW).

assessed treatment and care needs, of a participant in the LTCS scheme, means the treatment and care needs assessed by the LTCS commissioner under section 23 (Assessment of participant's treatment and care needs).

30 Payment of participants assessed treatment and care needs

- (1) The LTCS commissioner must pay all the reasonable expenses (if any) incurred by or on behalf of an injured person in relation to the injured person's assessed treatment and care needs while the injured person is a participant in the LTCS scheme.
- (2) Expenses are not payable in relation to—
 - (a) excluded treatment and care; or
 - Note* ***Excluded treatment and care***—see s 9.
 - (b) treatment and care that is not assessed treatment and care needs.
 - Note* ***Treatment and care needs***, of a participant in the LTCS scheme—see s 9.
- (3) The LTCS commissioner may pay a participant's expenses (if any) in relation to the participant's assessed treatment and care needs—
 - (a) when the expenses are incurred; or

- (b) by giving the participant an amount to cover the expenses over a stated period under a payment agreement with the participant.
- (4) The LTCS commissioner may only pay a participant's expenses for treatment and care services that the LTCS commissioner has approved, unless the LTCS commissioner agrees otherwise.
- (5) The LTCS guidelines may make provision for determining which of an injured person's treatment and care—
 - (a) are reasonable and necessary in the circumstances; and
 - (b) relate to the motor accident injury in relation to which the person is a participant in the LTCS scheme.

Note The LTCS guidelines are made under s 93.

- (6) This section is subject to section 31.
- (7) In this section:

payment agreement, between the LTCS commissioner and a participant in the LTCS scheme, means an agreement the LTCS commissioner has with the participant for the participant to pay the expenses relating to the participant's assessed treatment and care needs.

31 Payment not required in certain circumstances

- (1) The LTCS commissioner is not required to make a payment in relation to the following:
 - (a) treatment, care, support or services provided to a participant in the LTCS scheme for which the participant has not paid and is not liable to pay;

Example

nursing care provided by a spouse or parent on a gratuitous basis

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) any treatment, care, support or services required to be provided to a participant by an approved provider but is provided by a person who is not, when the treatment, care, support or services is given, an approved provider.
- (2) However, the LTCS commissioner may elect to make a payment in relation to treatment, care, support or services mentioned in subsection (1) if the LTCS commissioner considers that special circumstances exist that justify making the payment.
- (3) The LTCS guidelines may make provision for working out whether special circumstances exist that justify payment in relation to treatment, care, support or services mentioned in subsection (1).
- (4) To remove any doubt, this section applies even if the treatment, care, support or services mentioned in subsection (1) are provided in connection with the assessed treatment and care needs of the participant.

32 Approved providers

- (1) The following treatment, care, support or services (provided as part of the assessed treatment and care needs of a participant in the LTCS scheme) must be provided by an approved provider of the treatment, care, support or services:
 - (a) attendant care services;
 - (b) any other treatment, care, support or services (other than the services of a medical practitioner) identified in the LTCS guidelines as treatment, care, support or services that must be provided by an approved provider.
- (2) The LTCS guidelines may make provision for the standards of competency of approved providers.

Note The LTCS guidelines are made under s 93.

Part 7 **Dispute resolution**

Division 7.1 **Disputes about eligibility**

33 **Definitions—div 7.1**

In this division:

eligibility assessment panel—see section 35.

eligibility assessor—see section 36.

eligibility review panel—see section 39.

34 **Dispute about eligibility**

- (1) The following people may, by written notice to the LTCS commissioner, dispute whether a motor accident injury suffered by an injured person satisfies the criteria stated in this Act and the LTCS guidelines for eligibility to participate in the LTCS scheme:
 - (a) the injured person or someone on the injured person's behalf;
 - (b) the insurer for the injured person's motor accident claim.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

Note 3 **Motor accident claim**, for a motor accident—see the [CTP Act](#), s 77.

Note 4 The LTCS guidelines are made under s 93.

- (2) The dispute must be referred to an eligibility assessment panel within 6 months after the date of the LTCS commissioner's decision under section 19 (LTCS scheme—acceptance as participant) about the injured person's eligibility to participate in the LTCS scheme.
- (3) The LTCS commissioner may allow a notice under subsection (1) to be given orally.

35 Eligibility dispute—convening assessment panel

If the LTCS commissioner receives notice of a dispute under section 34 (1), the LTCS commissioner must convene a panel (an *eligibility assessment panel*) of 3 eligibility assessors to determine the dispute.

36 Eligibility disputes—appointment of eligibility assessors

The LTCS commissioner may appoint a medical practitioner, or another person the LTCS commissioner considers is suitably qualified, to be an assessor (an *eligibility assessor*) for this division.

37 Eligibility dispute—determination by assessment panel

- (1) This section applies if an eligibility assessment panel is convened under section 35 to determine a dispute about an injured person's eligibility to participate in the LTCS scheme.
- (2) The eligibility assessment panel must—
 - (a) either—
 - (i) confirm the LTCS commissioner's decision (the *original decision*) under section 19 (LTCS scheme—acceptance as participant); or
 - (ii) revoke the original decision and substitute its own decision; and
 - (b) give the LTCS commissioner a certificate of its decision in relation to the dispute, setting out the reasons for the decision.
- (3) The LTCS commissioner must give a copy of the eligibility assessment panel's certificate to the injured person within 5 working days after the day the LTCS commissioner receives the certificate.
- (4) The eligibility assessment panel may correct an error in the certificate that arises from a clerical mistake or accidental slip or omission.

38 Eligibility assessment panel—review of decision

(1) The following people may apply to the LTCS commissioner for review of a decision by an eligibility assessment panel under section 37:

(a) the injured person to whom the decision relates, or someone on the injured person's behalf;

(b) the insurer for the injured person's motor accident claim;

Note **Motor accident claim**, for a motor accident—see the [CTP Act](#), s 77.

(c) the LTCS commissioner.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

(2) An application for review of a decision under section 37 must be made within 6 months after the date the decision was made.

(3) A decision under section 37 may be reviewed on the following grounds only:

(a) a change in the injured person's condition that happened or first became apparent after the dispute was referred for decision by the eligibility assessment panel and that is capable of having a material effect on the decision;

(b) additional relevant information about the injured person's injury that was unavailable, or could not reasonably have been obtained, before the dispute was referred for decision by the eligibility assessment panel and that is capable of having a material effect on the decision;

(c) the decision was not made in accordance with the LTCS guidelines;

Note The LTCS guidelines are made under s 93.

(d) the decision is demonstrably incorrect in a material respect.

39 Eligibility review panel

- (1) If the LTCS commissioner receives an application under section 38 (1) for review of a decision, the LTCS commissioner must convene a panel (an *eligibility review panel*) of 3 eligibility assessors to review the decision.
- (2) The eligibility review panel may include an eligibility assessor who was on the eligibility assessment panel that made the decision only if—
 - (a) the LTCS commissioner is satisfied that exceptional circumstances exist that justify the assessor's inclusion on the review panel; and
 - (b) the injured person to whom the application relates consents to the assessor's inclusion on the review panel.
- (3) The eligibility review panel must—
 - (a) review the decision; and
 - (b) either—
 - (i) confirm the decision; or
 - (ii) revoke the decision and substitute its own decision; and
 - (c) give the LTCS commissioner and the person who referred the decision for review a certificate of its decision, setting out the reasons for the decision.
- (4) The eligibility review panel may correct an error in the certificate that arises from a clerical mistake or accidental slip or omission.

40 Decision under this division binding

- (1) This section applies to a decision by—
 - (a) an eligibility assessment panel about whether a motor accident injury satisfies the criteria stated in the LTCS guidelines for eligibility for participation in the LTCS scheme; or
 - (b) if the eligibility assessment panel's decision is reviewed under section 39—an eligibility review panel about whether a motor accident injury satisfies the criteria stated in the LTCS guidelines for eligibility for participation in the LTCS scheme.

Note The LTCS guidelines are made under s 93.

- (2) The decision is final and binding for this Act and any court proceeding under this Act.

41 LTCS commissioner liable for costs of assessment

- (1) The LTCS commissioner must pay the costs of a decision and a review of a decision under this division.

- (2) In this section:

costs, of a decision or a review of a decision, include the necessary costs and expenses of travel and accommodation to attend a panel for the decision or review incurred by—

- (a) the injured person to whom the decision relates; and
- (b) a parent or other carer accompanying the injured person.

42 LTCS commissioner not liable for legal costs for decision or review

The LTCS commissioner is not liable for legal costs for legal services provided to an injured person or an insurer in relation to—

- (a) a decision about a dispute under section 37 (Eligibility dispute—determination by assessment panel); or

- (b) a review of the panel's decision by an eligibility review panel under section 39 (Eligibility review panel).

Note **Legal costs**—see the dictionary.

Legal services—see the dictionary.

43 Procedures for disputes about eligibility—LTCS guidelines

- (1) The LTCS guidelines may include provisions about the procedures to be followed in relation to the referral of disputes for decision or review under this division.

Note The LTCS guidelines are made under s 93.

- (2) A dispute about eligibility under this division must be decided or reviewed in accordance with any procedures in the LTCS guidelines.

44 LTCS commissioner monitoring and oversight

The LTCS commissioner may arrange for training and information to be given to eligibility assessors to promote accuracy and consistency in relation to decisions and reviews under this division.

Division 7.2 Disputes about motor accident injuries

45 Definitions—div 7.2

In this division:

claims assessment panel—see section 49 (1).

claims assessor means a person appointed as a claims assessor under section 46.

interested person—each of the following people is an *interested person* in relation to an injury that is the subject of a decision by the LTCS commissioner:

- (a) the injured person;
- (b) the insurer of a claim made by the injured person in relation to the injury;
- (c) if the injured person has a right of action against the nominal defendant—the nominal defendant.

principal claims assessor means a person appointed as a principal claims assessor under section 46.

46 Appointment of claims assessors and principal claims assessor

The LTCS commissioner may appoint a person the LTCS commissioner considers is suitably qualified to be a claims assessor or principal claims assessor for this part.

47 Dispute about motor accident injury—application

- (1) An interested person may, by written notice to the LTCS commissioner, dispute the commissioner's decision about whether an injury is a motor accident injury.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

- (2) The interested person must give the notice within 6 months after the day the decision was made.
- (3) The LTCS commissioner may allow a notice under subsection (1) to be given orally.

48 Dispute about motor accident injury—referral to principal claims assessor

If the LTCS commissioner receives notice of a dispute under section 47, the LTCS commissioner must refer the dispute to the principal claims assessor.

49 Dispute about motor accident injury—review panel

- (1) If a dispute is referred to the principal claims assessor under section 48, the principal claims assessor must convene a panel (the *claims assessment panel*) of 3 claims assessors.
- (2) The claims assessment panel must—
 - (a) determine the dispute; and
 - (b) give the LTCS commissioner and interested person a certificate of its determination and reasons for the determination.
- (3) The claims assessment panel may correct an error in the certificate that arises from a clerical mistake or accidental slip or omission.
- (4) The claims assessment panel's determination is final and binding for this Act and any court proceeding under this Act.

50 Dispute about motor accident injury—reasonable legal costs

- (1) This section applies if a claims assessment panel determines a dispute about an injury under section 49.
- (2) The panel's determination must include a determination of the amount of the reasonable legal costs payable by the injured person for legal services provided to the person in relation to the referral and determination of the dispute.

Note **Legal costs**—see the dictionary.

Legal services—see the dictionary.

- (3) The LTCS commissioner must pay the injured person's reasonable legal costs.
- (4) No other legal costs are payable by the LTCS commissioner for legal services provided to the injured person in relation to the dispute.

51 Dispute about motor accident injury—maximum legal costs

- (1) A regulation may prescribe the maximum legal costs for legal services provided to an injured person in relation to the referral and determination of a dispute under this division.

Note **Legal costs**—see the dictionary.

Legal services—see the dictionary.

- (2) A legal practitioner who provided legal services to an injured person in relation to a dispute under this division is not entitled to be paid or recover an amount exceeding the maximum legal costs for the services.

Note **Legal practitioner**—see the [Legislation Act](#), dictionary, pt 1.

52 Dispute about motor accident injury—legal costs not payable

- (1) This section applies if a legal practitioner provided legal services to an injured person in relation to a dispute under this division.
- (2) The legal practitioner is not entitled to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.

53 Inconsistency between Act and Legal Profession Act 2006

- (1) This division prevails if there is an inconsistency between this section and the *Legal Profession Act 2006*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act*, s 104).

- (2) An assessment under the *Legal Profession Act 2006* of legal costs that are the subject of a regulation under this division must be made in accordance with the regulation.

Division 7.3 Disputes about treatment and care needs assessments

54 Definitions—div 7.3

In this division:

treatment and care assessor means—

- (a) a person appointed under section 57; or
(b) a person appointed under the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW), section 24 (3) (Dispute about authority's assessment—determination by assessor).

treatment and care review panel—see section 62.

55 Dispute about LTCS commissioner's assessment

- (1) A participant in the LTCS scheme may, by written notice to the LTCS commissioner, dispute an assessment, or part of an assessment, made in relation to the participant's treatment and care needs under part 5 (Treatment and care needs assessment).

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

Note 3 **Treatment and care needs**, of a participant in the LTCS scheme—see s 9.

- (2) A notice under subsection (1) must be given to the LTCS commissioner within 28 days after the day the LTCS commissioner gives the participant a copy of the LTCS commissioner's certificate of assessment under section 23 (5) (Assessment of participant's treatment and care needs).
- (3) The LTCS commissioner may allow a notice under subsection (1) to be given orally.

56 Assessment dispute—referral to assessor

If the LTCS commissioner receives a notice under section 55 (1), the LTCS commissioner must refer the dispute to a treatment and care assessor to determine the dispute.

57 Appointment of treatment and care assessors

The LTCS commissioner may appoint a health practitioner, or another person the LTCS commissioner considers is suitably qualified, to be a treatment and care assessor for this part.

Note **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

58 Treatment and care assessor’s decision—LTCS guidelines

- (1) The LTCS guidelines may make provision for determining a dispute about a participant’s treatment and care needs.

Note The LTCS guidelines are made under s 93.

- (2) The guidelines may include provisions about the following:
 - (a) the procedures to be followed by a treatment and care assessor for assessing the dispute and the participant’s treatment and care needs;
 - (b) the methods and criteria to be used to determine the dispute.
- (3) A treatment and care assessor must determine a dispute about a participant’s treatment and care needs in accordance with the LTCS guidelines.

59 Treatment and care assessor—cooperation of participant

A participant in the LTCS scheme must comply with any reasonable request made by a treatment and care assessor in relation to an assessment of the participant’s treatment and care needs, including a request to undergo a medical or other examination by a health practitioner.

Note **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

60 Treatment and care assessor’s determination—certificate

- (1) This section applies if a treatment and care assessor determines a dispute about a participant’s treatment and care needs.
- (2) The treatment and care assessor must give the LTCS commissioner and the participant a certificate of the assessor’s determination, setting out the reasons for the findings on which the determination is based.

- (3) The treatment and care assessor may correct an error in the certificate that arises from a clerical mistake or accidental slip or omission.

61 Treatment and care assessor's determination—review

- (1) The LTCS commissioner or a participant in the LTCS scheme may refer a determination (the *original determination*) by a treatment and care assessor about the participant's treatment and care needs to a treatment and care review panel for review.

Note 1 If a form is approved under s 98 for this provision, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

- (2) The determination must be referred for review within 28 days after the day the certificate of the determination is given to the LTCS commissioner and the participant under section 60.
- (3) The determination may be referred for review on the following grounds only:
- (a) that additional relevant information about the participant's treatment and care needs that was unavailable or could not reasonably have been obtained when the assessor made the original determination, and that is capable of having a material effect on the determination, has become available;
 - (b) the treatment and care assessor's determination was not made in accordance with the LTCS guidelines;
 - (c) the treatment and care assessor's determination is demonstrably incorrect in a material respect.

62 Review by treatment and care review panel

- (1) If a determination (the *original determination*) by a treatment and care assessor is referred under section 61 to a treatment and care review panel for review, the LTCS commissioner must convene a panel (a *treatment and care review panel*) of 3 treatment and care assessors to review the determination.
- (2) The treatment and care review panel must not include the treatment and care assessor who made the original determination.
- (3) The treatment and care review panel must—
 - (a) review the original determination; and
 - (b) either—
 - (i) confirm the original determination; or
 - (ii) revoke the original determination and substitute its own determination; and
 - (c) give the LTCS commissioner and the participant a certificate of its determination and reasons for any findings on which the determination is based.
- (4) The treatment and care review panel may correct an error in the certificate that arises from a clerical mistake or accidental slip or omission.
- (5) In conducting its review of the original determination, the treatment and care review panel must take into account any written submissions—
 - (a) prepared by or on behalf of the participant; and
 - (b) submitted to the panel.

63 Review panel procedure—LTCS guidelines

- (1) The LTCS guidelines may make provision for reviewing a treatment and care assessor's determination under this division.

Note The LTCS guidelines are made under s 93.

- (2) The guidelines may include provisions about the following:
 - (a) the procedures to be followed by a treatment and care review panel in relation to the review;
 - (b) the methods and criteria to be used in relation to the review.
- (3) A treatment and care review panel must review a treatment and care assessor's determination about a participant's treatment and care needs in accordance with the LTCS guidelines.

64 Assessed treatment and care to be revised

- (1) This section applies if a treatment and care assessor or review panel makes a determination about a dispute relating to the treatment and care needs of a participant in the LTCS scheme.

Note **Treatment and care needs**, of a participant in the LTCS scheme—see s 9.

- (2) The LTCS commissioner must revise its assessment of the participant's treatment and care needs to include the changes that are needed (if any) to give effect to the determination of the assessor or review panel.
- (3) The LTCS commissioner may correct an error in its assessment that arises from a clerical mistake or accidental slip or omission.
- (4) The LTCS commissioner's revised assessment of a participant's treatment and care needs replaces an earlier assessment of those needs.

65 LTCS commissioner not liable for legal costs for dispute or review

The LTCS commissioner is not liable for legal costs for legal services provided to a participant in the LTCS scheme in relation to—

- (a) a treatment and care assessor's determination in relation to a dispute about the participant's treatment and care needs; or
- (b) a review of the assessor's determination by a treatment and care review panel.

Note **Legal costs**—see the dictionary.
Legal services—see the dictionary.

- (3) The LTCS commissioner may contact the hospital where a participant is being cared for to discuss matters relating to the participant's involvement in the LTCS scheme.

67 Contacting participant's legal representative

- (1) This section applies if the LTCS commissioner or an insurer for a participant's claim—
 - (a) sends correspondence about the participant to the participant's lawyer; and
 - (b) has had no response to the correspondence within 20 days after the date the correspondence was sent; and
 - (c) has attempted to confirm that the lawyer received the correspondence.
- (2) The LTCS commissioner or insurer may contact the participant directly.

Part 9 Payments to hospitals, doctors and others

68 Definitions—pt 9

In this part:

bulk billing arrangements means an arrangement between the LTCS commissioner and the following people for the LTCS commissioner to pay expenses at the rate mentioned in the arrangement:

- (a) the Health Minister;
- (b) services providers or others acting on their behalf.

Health Minister means the Minister responsible for administering the [Health Act 1993](#).

69 Bulk billing arrangements for hospital, ambulance and other expenses

- (1) The LTCS commissioner may enter into bulk billing arrangements in relation to the following:
 - (a) the payment of expenses incurred in relation to the treatment of participants in the LTCS scheme at hospitals;
 - (b) the payment of expenses incurred in transporting participants in the LTCS scheme by ambulance;
 - (c) the payment of other expenses incurred in relation to other treatment for participants in the LTCS scheme.
- (2) In this section:

transport, of participants in the LTCS scheme, includes transport of people classified as participants in the scheme under a bulk billing arrangement.

treatment, of participants in the LTCS scheme, includes treatment of people classified as participants in the scheme under a bulk billing arrangement.

70 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement

- (1) This section applies to each payment mentioned in subsection (2) if payment for the expenses to which the payment relates—
 - (a) has not been made; and
 - (b) is not required to be made under a bulk billing arrangement.
- (2) For subsection (1), the payments are the following:
 - (a) payment for the treatment of participants in the LTCS scheme at hospitals;
 - (b) payment for conveying participants in the LTCS scheme by ambulance;
 - (c) payment for any medical or dental treatment of, or rehabilitation services provided to, participants in the LTCS scheme.
- (3) The rate at which a payment mentioned in subsection (2) must be made by the LTCS commissioner is as follows:
 - (a) for treatment at a public hospital—the rate determined by the Minister for Health;
 - (b) for treatment or a service for which a maximum rate is fixed under section 71—the maximum rate fixed under section 71;
 - (c) in any other case—at the rate reasonably appropriate to the treatment or service, having regard to the customary charge made in the community for the treatment or service.
- (4) A determination under subsection (3) (a) is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (5) If the LTCS commissioner does not make a payment mentioned in subsection (2), the body or person who provided the treatment or service to which the payment relates may recover the payment from the LTCS commissioner as a debt in a court of competent jurisdiction or the ACAT.

71 Maximum amount payable for certain treatment and services

- (1) This section applies to a payment (a *LTCS-related payment*) payable by the LTCS commissioner for the following treatment or services given to a participant in the LTCS scheme:
- (a) medical treatment;
 - (b) dental treatment;
 - (c) rehabilitation services;
 - (d) attendant care services.
- (2) This section also applies to the payment payable to a private hospital for any treatment at the hospital.
- (3) However, this section does not apply to a payment for treatment or a service mentioned in subsection (1) if—
- (a) the treatment or service is given to the participant at a public hospital (whether as an inpatient or outpatient); and
 - (b) the payment is payable to the public hospital, and not the treatment or service provider.
- (4) The Minister may determine the maximum amount the LTCS commissioner is liable for in relation to a claim for a LTCS-related payment.
- (5) A determination under subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (6) A LTCS-related payment may be determined by reference to—
 - (a) fees recommended by the Australian Medical Association or other health professional association; or
 - (b) a schedule of fees.
- (7) A regulation may prescribe the way in which the LTCS commissioner must pay a LTCS-related payment.
- (8) The LTCS guidelines may make provision for the maximum amount payable for LTCS-related payments that are not determined by the Minister.

Note The LTCS guidelines are made under s 93.

Part 10 Administration of LTCS scheme

Division 10.1 Funding the LTCS scheme

72 Definitions—div 10.1

In this division:

contribution period, for which a required fund contribution is determined—see section 73 (1).

LTCS fund—see section 74.

LTCS fund banking account—see section 76 (1).

LTCS fund investment guidelines—see section 81.

LTCS levy—see section 84.

required fund contribution—see section 83 (1).

73 Meaning of *contribution period*—div 10.1

- (1) For this division, a *contribution period*, for which a required fund contribution is determined, is a financial year or other period (not longer than 12 months) determined by the LTCS commissioner to be a contribution period for section 83 (Determination of amount to be contributed to fund).
- (2) The LTCS commissioner—
 - (a) may determine a contribution period that overlaps with another contribution period; but
 - (b) must not determine successive contribution periods with gaps between the periods.

74 Lifetime Care and Support Fund

The Lifetime Care and Support Fund (the *LTCS fund*) is established.

75 LTCS fund directorate

The Treasurer must, under the *Financial Management Act 1996*, dictionary, definition of *directorate*, paragraph (b), establish and keep a directorate for the LTCS fund.

76 LTCS fund banking accounts

- (1) The director-general must open and keep 1 or more banking accounts (an *LTCS fund banking account*) solely for the management of the LTCS fund.
- (2) An LTCS fund banking account is a directorate banking account of the LTCS fund directorate.

77 Closure of LTCS fund banking accounts

If an LTCS fund banking account is closed, any amount standing to the credit of the account immediately before it is closed must be paid into another LTCS fund banking account.

78 Appropriation of certain amounts for LTCS fund

The following amounts, whether paid before or after the commencement of this Act, are appropriated for the purposes of the LTCS fund:

- (a) fund levies paid under this part in relation to the issue of CTP policies;
Note *CTP policy*—see the *CTP Act*, s 18.
- (b) the interest from time to time accruing from the investment of the fund;
- (c) money required to be paid into the fund under this Act or any other Act;
- (d) all other money received by the LTCS commissioner and not otherwise appropriated.

79 Payments from LTCS fund banking accounts

The following amounts only are to be paid out of the LTCS fund banking account:

- (a) all payments required to be made by the LTCS commissioner under part 6 (Payments under LTCS scheme);
- (b) the remuneration, allowances, office accommodation and other associated costs of the LTCS commissioner and the commissioner's staff;
- (c) all payments required to meet expenditure incurred in relation to the LTCS commissioner's functions, if money is not otherwise provided for that purpose;
- (d) all other money required by or under this Act or any other territory law to be paid from the LTCS fund.

80 Investment of amounts in LTCS fund banking accounts

- (1) An amount in an LTCS fund banking account that is not immediately needed for a purpose mentioned in section 79 may be invested—
 - (a) in a way that is authorised by the *Financial Management Act 1996*; or
 - (b) in any other way prescribed by the LTCS investment guidelines.
- (2) Transfers between the territory banking account and LTCS fund banking accounts to facilitate investment may be made without appropriation.
- (3) Any repayment of amounts invested from an LTCS fund banking account must be paid into an LTCS fund banking account.
- (4) Interest received by the Territory for the investment of amounts from an LTCS fund banking account must be paid into an LTCS fund banking account.

- (5) However, if an investment of an amount from an LTCS fund banking account is made or managed by a directorate, the directorate may deduct from the interest received by the Territory for the investment a fee charged by the directorate for making or managing the investment.
- (6) A fee charged by a directorate under subsection (4) must not be more than the costs and expenses incurred by the directorate in making or managing the investment.
- (7) Interest that is to be paid into an LTCS fund banking account under subsection (3) may be paid into the account directly or through the territory banking account.

81 LTCS fund investment guidelines

- (1) The Treasurer may make guidelines (the *LTCS fund investment guidelines*) prescribing how an amount in an LTCS banking account that is not immediately needed for a purpose mentioned in section 79 may be invested.
- (2) The LTCS fund investment guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

82 Interest on amounts of LTCS levy

- (1) An LTCS levy is taken to be—
 - (a) the amount paid as the levy; and
 - (b) any interest received on the investment of the amount, or any part of it, under this division.
- (2) Interest received by the Territory on an investment under this division of an amount from an LTCS levy must be applied for the purposes for which the amount invested was appropriated.

- (3) However, if an investment of an amount from an LTCS levy is made or managed by a directorate, the directorate may deduct from the interest received by the Territory for the investment a fee charged by the directorate for making or managing the investment.
- (4) A fee charged by a directorate under subsection (3) must not be more than the costs and expenses incurred by the directorate in making or managing the investment.

83 Determination of amount to be contributed to fund

- (1) Before the beginning of each contribution period, the LTCS commissioner must determine the amount needed to be contributed to the fund in the contribution period (the *required fund contribution*)—
 - (a) to fully fund the present and likely future liabilities of the LTCS commissioner under part 6 (Payments under LTCS scheme) in relation to people who become participants in the scheme because of motor accident injuries suffered during the contribution period; and
 - (b) to meet the payments needed to be made from the fund (other than payments under part 6) during the contribution period; and
 - (c) to provide for any other matters the LTCS commissioner should, in all the circumstances, prudently make provision for in relation to liabilities under part 6.
- (2) The amount needed to fully fund the present and likely future liability of the LTCS commissioner under part 6 is an amount sufficient to provide an amount of money that together with anticipated investment income is equal to the best estimate of the cost of meeting the liability (in inflated dollars) when the liability becomes payable.

- (3) The LTCS commissioner's determination of the required fund contribution for a contribution period must be made in accordance with the report of an independent actuary.

84 Determination of LTCS levy

- (1) The LTCS commissioner must determine a levy (a *LTCS levy*) for a contribution period.

- (2) A determination under subsection (1) is a notifiable instrument.

Note 1 A notifiable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 Power to make the determination includes power to amend or repeal the determination (see [Legislation Act](#), s 46).

- (3) For subsection (1), the LTCS levy must be an amount that the LTCS commissioner reasonably believes will result in the required fund contribution for the contribution period being contributed to the fund.

- (4) The LTCS levy may be determined as any of the following:

- (a) a fixed amount;
- (b) a percentage of the premium payable for a CTP policy;
- (c) a combination of a fixed amount and percentage of the premium payable for a CTP policy.

- (5) An LTCS levy may be determined to differ according to any classification or other criteria for the determination of premiums for CTP policies as provided for by the CTP premium guidelines.

Note 1 Power to make a statutory instrument in relation to a matter includes power to make provision in relation to a class of matter (see [Legislation Act](#), s 48 (2)).

Note 2 **CTP policy**—see the [CTP Act](#), s 18.
CTP premium guidelines—see the [CTP Act](#), s 39.

85 Contributions to fund by CTP policy holders

The required fund contribution for a contribution period must be made by payment to the LTCS commissioner of the LTCS levy by each person to whom a CTP policy is issued during the contribution period.

86 Cancellation of LTCS levy

The [CTP Act](#), part 2.5 (Cancellation of CTP policies) applies in relation to an LTCS levy payable in relation to the issue of a CTP policy in the same way it applies to the premium payable for the CTP policy.

87 Refund of LTCS levy

- (1) This section applies if a CTP policy issued to a person is cancelled on the cancellation of the registration of the motor vehicle to which the policy relates.
- (2) The LTCS commissioner must refund to the person, on a proportionate basis, the LTCS levy paid in relation to the CTP policy.

Division 10.2 Recovery of lifetime care and support payments

88 Meaning of *present value of treatment and care liabilities*—div 10.2

In this division:

present value of the LTCS commissioner's treatment and care liabilities, in relation to a participant in the LTCS scheme, is worked out as follows:

$$A + B$$

A means the amount paid by the LTCS commissioner under part 6 (Payments under LTCS scheme) in relation to the participant's treatment and care needs associated with the participant's motor accident injury.

B means the present value of the amounts the LTCS commissioner estimates will become payable by the LTCS commissioner in the future under part 6 in relation to the participant's treatment and care needs associated with participant's motor accident injury.

89 Recovery of LTCS payments—entitlement

- (1) The LTCS commissioner is entitled to recover from the appropriate person the present value of its treatment and care liabilities in relation to a motor accident injury suffered by a participant in the LTCS scheme if the injury is an injury to which the [CTP Act](#), chapter 4 (Motor accident claims) applies.

Note **CTP Act**—see the dictionary.

- (2) However, if the participant's injury was the result partly of the participant's contributory negligence, the amount the LTCS commissioner is entitled to recover under this division is reduced in proportion to the participant's share in the responsibility for the injury.
- (3) In this section:

appropriate person, from whom the LTCS commissioner is entitled to recover, means—

- (a) if the motor vehicle was at the time of the motor accident subject to coverage under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of a place other than the ACT or under a law of the Commonwealth—the insurer of that policy or the person liable under that scheme; or

- (b) in any other case—the responsible person for the motor vehicle at the time of the accident, or the driver of the vehicle, or both.

90 Recovery of LTCS payments from responsible person or driver

- (1) This section applies if the motor accident injury of a participant in the LTCS scheme is caused by a motor accident involving an uninsured motor vehicle.

Note **Uninsured motor vehicle**—see the [CTP Act](#), s 60.

- (2) This section does not apply if, when the motor accident happened—
- (a) an unregistered vehicle permit was in force for the uninsured motor vehicle; or
 - (b) the registration provisions did not apply to the uninsured motor vehicle because of the [Road Transport \(Vehicle Registration\) Regulation 2000](#), part 2.2 (Vehicles not subject to registration provisions); or
 - (c) the uninsured motor vehicle was exempted from the operation of the [CTP Act](#), section 17 (Offence—using uninsured motor vehicle on road or road related area) by regulation.
- (3) The LTCS commissioner may recover as a debt from the responsible person for the uninsured motor vehicle, or the driver of the uninsured motor vehicle, or both, the present value of its treatment and care liabilities in relation to the participant’s motor accident injury.
- (4) It is a defence to a proceeding under this section against the responsible person for the uninsured motor vehicle if the responsible person proves that—
- (a) the motor vehicle was driven without the authority of the responsible person; or

- (b) the responsible person believed on reasonable grounds that the motor vehicle was insured.
- (5) It is a defence to a proceeding under this section against the driver of the uninsured motor vehicle if the driver proves that the driver believed on reasonable grounds that—
 - (a) the driver had the responsible person’s consent to drive the motor vehicle; and
 - (b) the motor vehicle was insured.

91 Recovery of LTCS payments from other person

- (1) This section applies if the motor accident injury of a participant in the LTCS scheme was caused by the fault of someone other than the responsible person for a motor vehicle involved in the motor accident or a driver of the vehicle.
- (2) The LTCS commissioner may recover as a debt from the person a proportion of the present value of its treatment and care liabilities in relation to the participant’s injury as corresponds to the person’s share in the responsibility for the injury.

92 Recovery of LTCS payments—evidentiary certificate

- (1) This section applies to a court proceeding under this division.
- (2) A certificate that appears to be signed by or on behalf of the LTCS commissioner and states any matter relevant to the present value of the LTCS commissioner’s treatment and care liabilities in relation to a motor accident injury of a participant in the LTCS scheme is evidence of the matter.

Part 11 Miscellaneous

93 LTCS guidelines

- (1) The LTCS commissioner may make LTCS guidelines about any matter required or permitted by this Act to be included in the guidelines.

Note The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

- (2) The LTCS guidelines may make provision in relation to any matter required or permitted by this Act.
- (3) The LTCS guidelines may apply, adopt or incorporate an instrument, as in force from time to time.

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (4) The [Legislation Act](#), section 47 (5) and (6) does not apply to an instrument mentioned in subsection (3).

Note An instrument applied, adopted or incorporated by the LTCS guidelines does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (5) An LTCS guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

94 Exchange of information

- (1) The LTCS commissioner may exchange information about the treatment and care needs of a participant in the LTCS scheme with the following people:

- (a) a licensed insurer;

- (b) a hospital where the participant receives treatment and care for the participant's motor accident injury;
 - (c) the NSW LCS authority;
 - (d) the CTP regulator;
 - (e) a person approved in writing by the LTCS commissioner.
- (2) In this section:
- information*, about the treatment and care needs of a participant in the LTCS scheme, includes the expenses paid or payable by the LTCS commissioner under the scheme in relation to the treatment and care.

95 Protection of assessors from liability

- (1) An assessor is not civilly liable for conduct engaged in honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) An assessor is, in any legal proceeding, competent but not compellable to give evidence or produce documents in relation to any matter in which the assessor was involved in the course of exercising the assessor's functions.
- (3) Any civil liability that would, apart from this section, attach to the assessor attaches instead to the Territory.
- (4) In this section:
- assessor* means the following:
- (a) a claims assessor;
 - (b) a principal claims assessor;
 - (c) an eligibility assessor;

(d) a treatment and care assessor.

96 Disapplication of Civil Law (Wrongs) Act 2002

The *Civil Law (Wrongs) Act 2002* does not apply in relation to the LTCS scheme.

97 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

98 Approved forms

- (1) The director-general may approve forms for this Act.

- (2) If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

99 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

100 Review of Act

- (1) The Minister must review the operation of this Act as soon as practicable after the end of its 5th year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) This section expires 7 years after the day it commences.

Part 12 **Consequential amendments**

101 **Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Road Transport (Third-Party Insurance) Act 2008— Consequential amendments

(see s 101)

[1.1] New section 22 (1) (fa)

insert

- (fa) liability to pay the treatment, care and support costs of a participant in the LTCS scheme;

Note **LTCS scheme**—see the dictionary.

[1.2] New section 43 (2)

insert

- (2) For subsection (1) (b) and (c), the cost of motor accident claims does not include the treatment, care and support costs of a participant in the LTCS scheme.

Note **LTCS scheme**—see the dictionary.

[1.3] New section 83B

in part 4.2, after the notes, insert

83B Application to participate in LTCS scheme

- (1) This section applies if a claimant for a motor accident claim is eligible to participate in the LTCS scheme.
- (2) Before the claimant brings a court proceeding based on the claim against a respondent for the claim, the claimant must apply under the LTCS Act to participate in the LTCS scheme.

Note **LTCS Act**—see the dictionary.

LTCS scheme—see the dictionary.

[1.4] New section 120A

in division 4.6.1, insert

120A Application—pt 4.6

- (1) This part does not apply in relation to any treatment and care needs, or excluded treatment and care, of a person who is a participant in the LTCS scheme—
- (a) that relate to a motor accident injury for which the person is a participant in the scheme; and
 - (b) that arise while the person is a participant in the scheme.

Note **Excluded treatment and care**—see the dictionary.

LTCS scheme—see the dictionary.

Participant, in the LTCS scheme—see the dictionary.

Treatment and care needs, of a participant in the LTCS scheme—see the dictionary.

- (2) This section applies—
- (a) whether or not the treatment and care are assessed treatment and care needs under the LTCS Act; and
 - (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and
 - (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge.

Note **LTCS Act**—see the dictionary.

LTCS commissioner—see the dictionary.

[1.5] Section 141 (5), new note

insert

Note 3 If a claimant is a participant in the LTCS scheme in relation to the claimant's motor accident injury, certain amounts are not to be included in a mandatory final offer made to the claimant (see s 156D).

[1.6] New part 4.9B

insert

Part 4.9B Damages for treatment, care and support

156D LTCS scheme participant—no damages etc for treatment, care and support

- (1) This section applies to a person who is a participant in the LTCS scheme in relation to a motor accident injury.

Note **LTCS scheme**—see the dictionary.

Participant, in the LTCS scheme—see the dictionary.

- (2) An award of damages or an offer of settlement (including a mandatory final offer) made to the person in relation to the motor accident injury must not include an amount for the person's treatment and care needs, or any excluded treatment and care, that—

- (a) relate to the motor accident injury; and
(b) arise while the person is a participant in the LTCS scheme.

Note **Excluded treatment and care**—see the dictionary.

Treatment and care needs, of a participant in the LTCS scheme—see the dictionary.

- (3) This section applies—
(a) whether or not the treatment and care needs are assessed treatment and care needs under the LTCS Act; and

- (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and
- (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge on a gratuitous basis.

Note **LTCS Act**—see the dictionary.
LTCS commissioner—see the dictionary.

[1.7] **New section 176A**

insert

176A Effect of payments under LTCS Act on limitation period

- (1) To remove any doubt, a payment made by the LTCS commissioner under the LTCS Act does not, for the *Limitation Act 1985*, section 32 (Confirmation), confirm a cause of action under this Act.

Note **LTCS Act**—see the dictionary.
LTCS commissioner—see the dictionary.

- (2) In this section:

payment, by the LTCS commissioner, means a payment that is made voluntarily or in accordance with a requirement under the LTCS Act.

[1.8] **New section 269A**

insert

269A Exchange of information

- (1) The CTP regulator may exchange information with the LTCS commissioner about the following:
 - (a) claims under this Act;

- (b) payments made to or on behalf of a person who is a participant in the LTCS scheme under the LTCS Act;
- (c) the treatment and care needs of a person who is a participant in the LTCS scheme in relation to the motor accident injury as a consequence of which the person became a participant in the scheme.

Note **LTCS Act**—see the dictionary.

LTCS scheme—see the dictionary.

- (2) In this section:

information, about the treatment and care needs of a participant in the LTCS scheme, includes the expenses paid or payable by the LTCS commissioner under the scheme in relation to those needs.

Note **LTCS commissioner**—see the dictionary.

Participant, in the LTCS scheme—see the dictionary.

Treatment and care needs, of a participant in the LTCS scheme—see the dictionary.

[1.9] New section 270 (2A)

insert

- (2A) The CTP claims register must also include details of information provided by the LTCS commissioner under section 269A that the CTP regulator considers appropriate for inclusion in the CTP claims register.

Note **LTCS commissioner**—see the dictionary.

[1.10] Dictionary, new definitions

insert

assessed treatment and care needs, of a participant in the LTCS scheme—see the LTCS Act, section 29.

excluded treatment and care—see the LTCS Act, section 9.

LTCS Act means the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*.

LTCS commissioner—see the LTCS Act, dictionary.

LTCS scheme—see the LTCS Act, dictionary.

participant, in the LTCS scheme—see the LTCS Act, dictionary.

treatment and care needs, of a participant in the LTCS scheme—
see the LTCS Act, section 9.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- corporation
- disallowable instrument (see s 9)
- financial year
- health practitioner
- legal practitioner
- notifiable instrument (see s 10)
- person (see s 160)
- public employee
- under.

Note 3 The [Road Transport \(Third-Party Insurance\) Act 2008](#) contains definitions relevant to this Act. For example, the following terms are defined in the [Road Transport \(Third-Party Insurance\) Act 2008](#), dictionary:

- CTP insured person (see s 16)
- CTP policy (see s 18)
- CTP premium
- CTP premium guidelines (see s 39)
- CTP regulator (see s 14)
- insured motor vehicle (see s 15)
- insurer
- licensed insurer
- motor accident (see s 7)
- motor accident claim
- non-economic loss (see s 156B)
- personal injury (see s 6)
- responsible person, for a vehicle.

approved provider, of a service—see section 29.

assessed treatment and care needs, of a participant in the LTCS scheme—see section 29.

attendant care services, for a person who is a participant in the LTCS scheme, means services that aim to give the person assistance with everyday tasks.

Examples

- personal assistance
- nursing
- home maintenance
- domestic services

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

bulk billing arrangements, for part 9 (Payments to hospitals, doctors and others)—see section 68.

claims assessment panel, for division 7.2 (Disputes about motor accident injuries)—see section 49 (1).

claims assessor, for division 7.2 (Disputes about motor accident injuries)—see section 45.

contribution period for which a required fund contribution is determined, for division 10.1 (Funding the LTCS scheme)—see section 73 (1).

CTP Act means the [Road Transport \(Third-Party Insurance\) Act 2008](#).

eligibility assessment panel, for division 7.1 (Disputes about eligibility)—see section 35.

eligibility assessor, for division 7.1 (Disputes about eligibility)—see section 36.

eligibility criteria, for participation in the LTCS scheme, means the criteria stated in the LTCS guidelines for eligibility to participate in the LTCS scheme.

eligibility review panel, for division 7.1 (Disputes about eligibility)—see section 39.

excluded treatment and care—see section 9.

Health Minister, for part 9 (Payments to hospitals, doctors and others)—see section 68.

injured person—see section 15 (1).

interested person, for division 7.2 (Disputes about motor accident injuries)—see section 45.

interim participation, in the LTCS scheme, means a person accepted as an interim participant in the LTCS scheme under section 20.

legal costs—see the [Legal Profession Act 2006](#), dictionary.

legal services—see the [Legal Profession Act 2006](#), dictionary.

lifetime participation, in the LTCS scheme, means a person accepted as a lifetime participant in the LTCS scheme under section 21.

LTCS commissioner means the Lifetime Care and Support commissioner appointed under section 10.

LTCS fund, for division 10.1 (Funding the LTCS scheme)—see section 74.

LTCS fund banking account, for division 10.1 (Funding the LTCS scheme)—see section 76 (1).

LTCS fund investment guidelines, for division 10.1 (Funding the LTCS scheme)—see section 81.

LTCS guidelines means guidelines made by the LTCS commissioner under section 93.

LTCS levy, for division 10.1 (Funding the LTCS scheme)—see section 84.

LTCS scheme means the scheme provided for by this Act for the lifetime care and support of people catastrophically injured in motor accidents.

motor accident injury, in relation to a person, means an injury the person has as a result of a motor accident.

NSW LCS authority means the Lifetime Care and Support Authority of New South Wales, constituted under the [Motor Accidents \(Lifetime Care and Support\) Act 2006](#) (NSW), section 33.

participant, in the LTCS scheme, means a person accepted as an interim or lifetime participant in the scheme under section 19.

present value of the LTCS commissioner's treatment and care liabilities, for division 10.2 (Recovery of lifetime care and support payments)—see section 88.

principal claims assessor, for division 7.2 (Disputes about motor accident injuries)—see section 45.

required fund contribution—see section 83 (1).

treatment and care assessor, for division 7.3 (Disputes about treatment and care needs assessments)—see section 54.

treatment and care needs, of a participant in the LTCS scheme—see section 9.

treatment and care needs assessment means an assessment under part 5 (Treatment and care needs assessment) of the treatment and care needs of a participant in relation to the participant's motor accident injury.

treatment and care review panel, for division 7.3 (Disputes about treatment and care needs assessments)—see section 62.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 February 2014.

2 Notification

Notified under the [Legislation Act](#) on 17 April 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Lifetime Care and Support (Catastrophic Injuries) Bill 2014, which was passed by the Legislative Assembly on 10 April 2014.

Clerk of the Legislative Assembly

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