



Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016 (No 2)

A2016-35

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Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016 (No 2)

A2016-35

An Act to amend the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, and for other purposes

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

1 Name of Act

This Act is the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016 (No 2)*.

2 Commencement

This Act commences immediately after the commencement of the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016*, section 3.

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

3 Legislation amended

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

Note This Act also amends the following legislation (see sch 1):

- *Road Transport (Third-Party Insurance) Act 2008*
- *Workers Compensation Act 1951*.

**4 Application of Act
New section 6 (3) (aa)**

insert

(aa) at that time—

- (i) the motor vehicle was owned by the Territory, or a territory authority; and
- (ii) a CTP policy was not in force for the motor vehicle; or

5 Section 6 (3), new note

insert

Note For the application of the [CTP Act](#) to motor vehicles owned by the Territory, the Commonwealth or a territory or commonwealth authority, see the [CTP Act](#), s 272.

**6 Payment of participants assessed treatment and care needs
Section 30 (3) (b)**

substitute

- (b) by giving the participant an amount to cover the expenses over a stated period under—
- (i) a payment agreement with the participant; or
 - (ii) a periodic payment agreement with the participant under section 30A; or
 - (iii) a lump sum agreement with the participant under section 30B (Lump sum payment—foreign national participant).

7 New sections 30A and 30B

insert

30A Periodic payment—overseas participant

- (1) The LTCS commissioner and an overseas participant may agree that the commissioner pay the participant's expenses under section 30 by giving the participant periodic payments to cover the participant's expenses while living outside Australia (a *periodic payment agreement*).

- (2) The overseas participant's expenses payable under section 30 must be paid under that section until the participant enters into the periodic payment agreement.
- (3) If the overseas participant returns to Australia to live before the end of the periodic payment agreement—
 - (a) the periodic payment agreement ceases to have effect; and
 - (b) section 30 (3) applies in relation to the payment of expenses in relation to the participant's treatment and care needs; and
 - (c) any amount paid for the period remaining on the agreement after it ceases to have effect must be repaid to the LTCS commissioner.
- (4) The LTCS guidelines may make provision for determining the following:
 - (a) the period an overseas participant must live outside Australia to be eligible to enter into a periodic payment agreement;
 - (b) the total amount and frequency of periodic payments to an overseas participant under a periodic payment agreement;
 - (c) the calculation of the amount to be repaid under subsection (3) (c).

Note The LTCS guidelines are made under s 93.

- (5) In this section:

overseas participant means a participant in the LTCS scheme who—

- (a) is an Australian citizen or a permanent resident of Australia; and
- (b) lives outside Australia; and
- (c) intends to live outside Australia permanently or for an extended time.

30B Lump sum payment—foreign national participant

- (1) The LTCS commissioner and a foreign national participant may agree that the commissioner pay the participant's expenses under section 30 (Payment of participants assessed treatment and care needs) by giving the participant a lump sum payment to cover the participant's expenses (a *lump sum agreement*).
 - (2) The foreign national participant's expenses payable under section 30 must be paid under that section until the participant enters into the lump sum agreement.
 - (3) The LTCS guidelines may make provision for determining the following:
 - (a) the period a foreign national participant must live outside Australia to be eligible to enter into a lump sum agreement;
 - (b) the amount of a lump sum payable to a foreign national participant under a lump sum agreement.
- Note* The LTCS guidelines are made under s 93.
- (4) If a foreign national participant receives a lump sum under a lump sum agreement with the LTCS commissioner, the foreign national participant—
 - (a) ceases to be a participant in the LTCS scheme; and
 - (b) is not eligible for compensation in relation to the participant's treatment and care needs under—
 - (i) for a motor accident injury—the [CTP Act](#); or
 - (ii) for a work injury—the [Workers Compensation Act 1951](#).

(5) In this section:

foreign national participant means a lifetime participant in the LTCS scheme who—

- (a) is a national of a foreign country; and
- (b) lives outside Australia.

**8 Appropriation of certain amounts for LTCS fund
New section 78 (ab)**

insert

- (ab) amounts paid under this part in relation to a motor accident injury suffered in an accident involving a motor vehicle owned by the Territory, or a territory authority, at the time of the accident;

**9 Determination of amount to be contributed to fund
Section 83 (1) (a)**

after

contribution period

insert

(other than people in relation to whom section 83A applies)

10 New sections 83A and 83B

insert

83A Determination of amount to be contributed to LTCS fund—motor accidents involving ACT government-owned vehicles

- (1) This section applies if—
 - (a) a person is catastrophically injured in a motor accident involving a motor vehicle owned by the Territory, or a territory authority, at the time of the accident; and
 - (b) a CTP policy was not in force for the motor vehicle at the time of the motor accident; and
 - (c) as a consequence of the injuries suffered in the motor accident, the person becomes a participant in the LTCS scheme.
- (2) The LTCS commissioner must determine, in writing, the amount ACTIA needs to contribute (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 the injuries suffered by the person; and
 - (b) to meet the payments needed to be made from the fund (other than payments under part 6) in relation to the person; 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.

Note 1 Power to make the determination includes power to make different provision in relation to different matters or different classes of matters, and to make a determination that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

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

Note 3 **ACTIA**—see the dictionary.

- (3) The amount needed to fully fund the present and likely future liability of the LTCS commissioner under part 6 in relation to the injuries suffered by the person 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 comes payable.
- (4) The LTCS commissioner's determination of the required fund contribution for the injuries suffered by the person must be made in accordance with—
 - (a) the report of an independent actuary; and
 - (b) if the motor accident involved more than 1 motor vehicle—the commissioner's apportionment of liability attributed to the motor vehicle owned by the Territory or territory authority; and
 - (c) the LTCS guidelines for determining the required fund contribution.

Note The LTCS guidelines are made under s 93.

83B Contributions to fund by ACTIA

- (1) ACTIA must make the required fund contribution determined for a person under section 83A by lump sum payment to the LTCS commissioner.

Note **ACTIA**—see the dictionary.

- (2) If the person is not accepted as a lifetime participant in the LTCS scheme, the LTCS commissioner must refund to ACTIA the part of the lump sum paid under subsection (1) that is not needed as a result of the person not being accepted as a lifetime participant.

- (3) The LTCS guidelines may make provision for the following:
- (a) the resolution of disputes between ACTIA and the LTCS commissioner about the amount to be paid under subsection (1);
 - (b) the calculation of the amount to be refunded under subsection (2);
 - (c) the application of interest received on the investment of lump sums received under this section, including in relation to fees that may be charged, or deductions that may be made, for making or managing the investment of a lump sum.

Note The LTCS guidelines are made under s 93.

**11 Determination of LTCS levy
Section 84 (1) (a)**

after

motor accident injuries

insert

(other than injuries suffered by people in relation to whom section 83A applies)

12 Dictionary, note 2

insert

- territory authority

13 Dictionary, new definitions

insert

ACTIA means the Australian Capital Territory Insurance Authority established under the *Insurance Authority Act 2005*.

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

14 Dictionary, definition of *lifetime participation*

omit

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Road Transport (Third-Party Insurance) Act 2008

[1.1] New section 156E

in part 4.9B, insert

156E LTCS scheme foreign national participant—no damages etc for treatment, care and support

- (1) This section applies if a person—
- (a) is a foreign national participant in the LTCS scheme in relation to a motor accident injury; and
 - (b) receives a lump sum under a lump sum agreement with the LTCS commissioner in relation to the 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) either—
 - (i) arose while the person was a participant in the LTCS scheme; or

- (ii) arise after the person receives the lump sum under the lump sum agreement.

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.

- (4) In this section:
- foreign national participant***, in the LTCS scheme—see the [LTCS Act](#), section 30B.
- lump sum agreement***—see the [LTCS Act](#), section 30B.

Part 1.2 Workers Compensation Act 1951

[1.2] Section 70 (2A), including note

substitute

- (2A) Despite subsection (1) (a), (b) and (c), the employer is not liable to pay the costs of any treatment and care needs, or excluded treatment and care, of the worker—
- (a) if the worker is a participant in the LTCS scheme—
 - (i) that relate to the injury for which the worker is a participant in the scheme; and
 - (ii) that arise while the worker is a participant in the scheme; or
 - (b) if the worker receives a lump sum under a lump sum agreement with the LTCS commissioner in relation to the injury for which the worker was a participant in the scheme—
 - (i) that relate to the injury; and
 - (ii) either—
 - (A) arose while the worker was a participant in the LTCS scheme; or
 - (B) arise after the worker receives the lump sum under the lump sum agreement.

Note **Excluded treatment and care**—see the [LTCS Act](#), s 9.
LTCS Act—see the dictionary.
LTCS commissioner—see the 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](#), s 9.
Work injury—see the [LTCS Act](#), dictionary.

[1.3] Section 70 (2C) (a) and (b)

substitute

- (a) until the worker is accepted as a participant in the LTCS scheme in relation to the injury; and
- (b) if the worker—
 - (i) ceases to be a participant in the LTCS scheme; and
 - (ii) does not receive a lump sum under a lump sum agreement with the LTCS commissioner.

[1.4] New section 70 (5)

insert

- (5) In this section:
lump sum agreement—see the [LTCS Act](#), section 30B.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2016.

2 Notification

Notified under the [Legislation Act](#) on 21 June 2016.

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) Amendment Bill 2016 (No 2), which was passed by the Legislative Assembly on 9 June 2016.

Clerk of the Legislative Assembly

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