

2014

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LIFETIME CARE AND SUPPORT (CATASTROPHIC INJURIES) BILL
2014**

EXPLANATORY STATEMENT

**Presented by
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Treasurer**

LIFETIME CARE AND SUPPORT (CATASTROPHIC INJURIES) BILL 2014

Outline

The purpose of the Lifetime Care and Support (Catastrophic Injuries) Bill 2014 is to implement the ACT Government's commitment to introduce a National Injury Insurance Scheme (NIIS) for those catastrophically injured in a motor accident in the ACT by 1 July 2014. The Bill introduces a Lifetime Care and Support (LTCS) Scheme consistent with the nationally agreed minimum benchmarks for a NIIS for motor accidents.

The scheme is designed to be a no-fault indemnity insurance scheme that will provide universal and consistent cover to persons catastrophically injured in a motor accident occurring in the ACT.

Currently, only those who are able to prove someone else was at-fault have the opportunity to make a claim under the compulsory third party (CTP) scheme set out in the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act). Those unable to prove fault must rely on their family, friends and a fragmented system of health services to provide for their care and support (for example, single vehicle accidents where a motorbike or car hits an object or animal). The LTCS Scheme will extend to those injured persons who are at-fault for the accident or for whom no person is considered to be at-fault.

The scheme established under the Act mirrors the NSW Lifetime Care and Support (LTCS) scheme. This reflects the minimum benchmarks agreed for the NIIS for motor accidents which have been modelled on the NSW scheme. Any additions or difference between this Act and the NSW legislation reflects current ACT legislative drafting practices and the ACT's human rights environment, for example, indicating in the Act timeframes for making disputes.

The principal features of the LTCS Scheme are as follows:

- establishes the role of the LTCS Commissioner to manage and administer the Scheme in the ACT;
- the LTCS Scheme will respond to the reasonable and necessary treatment and care expenses of participants in the Scheme (including medical treatment, rehabilitation, attendant care services and home and transport modification);
- a person will be eligible to participate in the LTCS Scheme if the person has suffered a motor accident injury that satisfies the eligibility criteria set out in section 15 and the LTCS Guidelines issued by the LTCS Commissioner;
- participation in the Scheme is either as an interim participant or a lifetime participant, all participants will be interim participants for 2 years until such time as they are accepted as a lifetime participant;
- an application for participation in the LTCS Scheme can be made by or on behalf of the injured person, or by an insurer for a motor accident claim in respect of the injury;
- a person will not be eligible to participate in the Scheme if the person has been awarded common law damages for their treatment and care needs, and

participation in the Scheme will mean that a person's treatment and care needs will be met by the Scheme and not recoverable as damages;

- funding for the LTCS Scheme will be provided by way of special levy (akin to a premium amount) to be paid by persons who pay a CTP premium under the *Road Transport (Third-Party Insurance) Act 2008*, with the levy to be collected on behalf of the Scheme by Road User Services at the time of registration.

Human Rights Implications

This Act is considered to be consistent with the *Human Rights Act 2004*. It seeks to make the benefits of a statutory indemnity insurance scheme available to persons catastrophically injured in a motor accident. This means that all the reasonable and necessary treatment and care needs (as assessed under the Act) will be made available to a participant in the Scheme for the whole of their life, providing the person with the ongoing certainty that the cost of their treatment and care will be met.

This scheme will provide certainty of treatment and care to all participants, not only to those who can establish that someone else was at-fault in the motor accident, but also those who may have been at-fault or where no one is at-fault for the accident. As such, the Act clearly adds to and enhances a right created by statute that did not previously exist: a right to your reasonable and necessary treatment and care needs regardless of fault.

In addition, the Bill contains provisions that allow for information to be shared between the LTCS Commissioner, CTP insurers, a hospital where the participant is receiving treatment and care, the NSW Lifetime Care and Support (LTCS) Authority, the CTP Regulator and anyone approved by the LTCS Commissioner. There is a corresponding provision for inclusion in the *Road Transport (Third-Party Insurance) Act 2008* that states what type of information the CTP Regulator may share with the LTCS Commissioner in relation to those catastrophically injured and/or participants in the LTCS scheme. These provisions may affect an injured person or participant's privacy under the *Human Rights Act 2004*, section 12:

12 Privacy and reputation

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and*
- (b) not to have his or her reputation unlawfully attacked.*

These provisions provide participants with a clear expectation as to the type of information and who that information will be shared with lawfully under both Acts. These provisions are required as part of the operation of the LTCS scheme as they will assist in identifying those who are eligible for the Scheme earlier and ensure that the costs of treatment and care of those catastrophically injured in a motor accident are being met by the scheme properly designed to meet those needs (the LTCS Scheme). In terms of any information exchanged with the NSW LTCS Authority, the purpose of this is to ensure that participants are in the right scheme as given our proximity, people injured in the ACT and NSW region will often be treated in an ACT and/or NSW hospital.

Detailed explanation

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the Lifetime Care and Support (Catastrophic Injuries) Act 2014.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on 1 July 2014.

Clause 3 Dictionary

This clause notes that the dictionary provided at the end of this Act is part of the Act.

Clause 4 Notes

This clause specifies that a note included in this Act is explanatory and is not part of the Act.

Clause 5 Offences against Act-application of Criminal Code etc

This clause notes that other legislation applies in relations to offences against this Act.

Clause 6 Application of Act

This clause sets out the application of the Act. In particular, it limits the application of the Act to motor accidents occurring in the ACT after 1 July 2014 that involve at least one registrable vehicle. Registrable vehicles have been identified in this clause under subsections 6(1)(c) as being vehicles that are subject to CTP cover as defined under subsection 6(3).

Subsection 6(2) has been adopted from the NSW legislation to allow flexibility in the implementation of the Scheme in the ACT, particularly in its early phases as well as recognising that the Scheme is part of our broader national commitments, which may change over time.

Part 2 Purpose and important concepts

Clause 7 Purpose of Act

This clause provides that the purpose of the Act is to 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 to ensure that the scheme is fully funded as required under section 83 of the Act.

Clause 8 Terms used in CTP Act

This clause provides that terms used in this Act, unless defined in this Act, are to have the same interpretation as in the *Road Transport (Third-Party Insurance) Act 2008*.

Clause 9 Meaning of *treatment and care needs* etc

This clause lists the treatment and care needs that are covered by the scheme in relation to a participant's needs.

Part 3 LTCS commissioner

Clause 10 Appointment of LTCS commissioner

This clause allows for the Lifetime Care and Support Commissioner of the Australian Capital Territory (the LTCS Commissioner) to be appointed. The Commissioner is to be a public servant appointed by the Minister responsible for the Act.

Clause 11 Functions of LTCS commissioner

This clause lists the various functions of the LTCS Commissioner.

Clause 12 Delegation by LTCS commissioner

This clause authorises the LTCS Commissioner to delegate, or subdelegate, its functions under the Act to authorised persons.

Clause 13 LTCS commissioner staff

This clause provides that LTCS Commissioner staff must be employed under the *Public Sector Management Act 1994*.

Clause 14 Use of consultants and contractors

This clause authorises the LTCS Commissioner to engage consultants and contractors in order to exercise its functions. For example, it must appoint an independent actuary to set the required fund contribution used to set the LTCS levy.

Part 4 Participation in LTCS scheme

Clause 15 Participation in LTCS scheme—eligibility

This clause provides that a person is eligible to participate in the LTCS Scheme if their motor accident injury is an injury of the type mentioned in subsection (1)(a) and satisfies the criteria set out in the LTCS Guidelines. This mirrors the same eligibility criteria under the NSW Lifetime Care and Support scheme as set out in their LTCS Guidelines issued under section 58 of the *Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)*. This reflects the fact that the minimum benchmarks agreed nationally for the NIIS are modelled on the NSW scheme's eligibility criteria and hence, this will ensure consistency with other lifetime care schemes.

However, a person will not be eligible to participate where they have been awarded damages or reached a binding settlement that includes their treatment and care needs. A person may be a participant in the LTCS Scheme as an interim participant or a lifetime participant.

Clause 16 LTCS scheme—initial application to participate

This clause provides for how and by whom an initial application to participate in the LTCS scheme may be made.

Clause 17 LTCS scheme—authorisation for LTCS commissioner to obtain information

This clause provides the power for the LTCS Commissioner to require an applicant to provide the Commissioner with authorisation to obtain information and documents relevant to their motor accident injury from stated people.

Clause 18 LTCS scheme—guidelines for applications

This clause provides for the making of LTCS Guidelines in relation to applications for participation in the LTCS scheme, in particular the guidelines are to deal with making and determining an application, the cost of assessments and the deferral of making an application until an injury has stabilised. In regards to the stabilisation of injuries this is to allow a person who, for example, may not initially be eligible but requires amputation surgery as a result of their motor accident injury after which they would become eligible to participate in the scheme.

Clause 19 LTCS scheme—acceptance as participant

This clause provides that where the LTCS Commissioner is satisfied that a person is eligible to participate in the LTCS scheme they must be accepted as an interim participant in the scheme.

Clause 20 LTCS scheme—interim participation

This clause provides that a person who is accepted as a participant will be accepted as an interim participant on initial application to the scheme for a period of 2 years until they are accepted as a lifetime participant under section 21. If an interim participant receives an award of damages or binding settlement including an amount for future treatment and care needs they will not be accepted as a lifetime participant.

Clause 21 LTCS scheme—application for lifetime participation

This clause provides for how and by whom an application for lifetime participation in the LTCS scheme may be made. The LTCS Commissioner may waive the requirement for a medical certificate to be completed within 2 months of an application for lifetime participation if, for example eligibility for lifetime participation is clear and circumstances are such that a certificate cannot be obtained within the 2 month timeframe.

Clause 22 Effect of LTCS scheme on compensation claims etc

This clause provides that the Act does not affect the application of the CTP Act except as provided for by that Act. In addition, while a person is an interim participant, the limitation period for a motor accident claim does not run.

Part 5 Treatment and care needs assessment

Clause 23 Assessment of participant's treatment and care needs

This clause provides that the LTCS Commissioner must make an assessment of the reasonable and necessary treatment and care needs of a participant in the LTCS scheme.

Clause 24 Effect of assessment

This clause provides that 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 and supersedes any earlier assessment by the Commissioner of those needs.

An injured person is not precluded under the Scheme from seeking judicial review of a decision if they believe the decision is wrong as a matter of law.

Clause 25 LTCS commissioner not liable for legal costs for assessment

This clause provides that no legal costs are payable by the LTCS Commissioner for legal services provided to a participant in the LTCS scheme in relation to an assessment of the participant’s treatment and care needs.

Clause 26 Co-operation of participant

This clause requires a participant in the LTCS scheme to comply with any reasonable request made by the LTCS Commissioner in relation to an assessment of the participant’s treatment and care needs. This includes a request to undergo a medical or other examination by a health practitioner.

Clause 27 Treatment and care needs assessment—LTCS guidelines

This clause authorises the LTCS Guidelines to deal with the assessment of a participant’s treatment and care needs.

Clause 28 Request for treatment and care needs assessment

This clause provides that 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. The LTCS Guidelines are authorised to set out when a request may be made by a participant for a treatment and care needs assessment.

Part 6 Payments under LTCS scheme

Clause 29 Definitions—Act

This clause defines an “approved provider” and “assessed treatment and care needs” for the purposes of the Act. Specifically, an approved provider will be one approved by the LTCS Commissioner or a provider that is an approved provider under the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW). The cross-recognition of approved providers under the NSW scheme will allow a seamless transition for the ACT in terms of meeting the needs of participants and recognises that NSW is a sector leader in lifetime care service provision.

Clause 30 Payment of participants assessed treatment and care needs

This clause requires the LTCS Commissioner to pay all reasonable expenses incurred (if any are incurred) by or on behalf of a participant in relation to their assessed treatment and care needs. The LTCS Commissioner may make this payment by either paying for expenses when the expense is incurred or by giving the participant an amount to cover the expenses. This will facilitate choice of services by a participant, where the participant does not reside in the ACT or is away from their ordinary place of residence for a period of time.

The LTCS Guidelines are authorised to make provision for the determining a participants treatment and care needs, including what will be reasonable and necessary in the circumstances.

Clause 31 Payment not required in certain circumstances

This clause provides circumstances for which the LTCS Commissioner is not required to make a payment in relation to treatment, care, support or services provided to a participant in the LTCS scheme. Specifically, the Commissioner is not required to pay for treatment, care, support or services that are provided to a participant on a gratuitous basis and for treatment, care, support or services provided by a person who is not an approved provider where such services are required to be provided by an approved provider.

In some cases the Bill recognises that there may be special circumstances that would justify the payment of a family member, for example, geographical location where they are the only person who can provide care to an injured family member. In such a case, it would be expected that the family member would be employed through an attendant care agency to ensure that they have the appropriate insurances in place (workers compensation and professional indemnity insurance) as well proper training to provide the care required.

Clause 32 Approved providers

This clause lists those treatment, care, support or services that must be provided by an approved provider. The clause authorises the LTCS Guidelines to provide for the standards of competency of approved providers.

Part 7 Dispute Resolution

Division 7.1 Disputes about eligibility

Clause 33 Definitions—div7.1

This clause defines the terms “eligibility assessment panel”, “eligibility assessor” and “eligibility review panel” for the purposes of this Division.

Clause 34 Dispute about eligibility

This clause provides for who and how a determination as to whether a motor accident injury satisfies the injury criteria under the Act and in the LTCS Guidelines may be disputed. The time limit for such a dispute is 6 months from the date of the LTCS Commissioner’s decision about eligibility.

This provision acknowledges that in some instances it may not be possible to provide written notice and permits notice to be provided orally where allowed by LTCS Commissioner.

Clause 35 Eligibility dispute—convening assessment panel

This clause provides that a panel of 3 eligibility assessors must be convened by the LTCS Commissioner to determine a dispute about eligibility.

Clause 36 Eligibility disputes—appointment of eligibility assessors

This clause provides that the LTCS Commissioner may appoint a medical practitioner, or another person the LTCS Commissioner considers is suitably qualified, to be an eligibility assessor.

Clause 37 Eligibility dispute—determination by assessment panel

This clause provides the determination of an eligibility dispute and the issue of a certificate as evidence of the determination of the assessment panel. Any clerical mistake or accidental slip or omission may be corrected without the need for a dispute.

Clause 38 Eligibility assessment panel—review of decision

This clause allows a determination of an assessment panel for a dispute to be reviewed on certain grounds.

Clause 39 Eligibility review panel

This clause provides that a panel of 3 eligibility assessors must be convened to review a determination by an assessment panel and make a decision on the review. Any clerical mistake or accidental slip or omission may be corrected without the need for a dispute.

Clause 40 Decision under this division binding

This clause provides that the decision made under this division is final and binding.

An injured person is not precluded under the Scheme from seeking judicial review of a decision if they believe the decision is wrong as a matter of law.

Clause 41 LTCS commissioner liable for costs of assessment

The LTCS Commissioner must pay the costs of a dispute or decision made under this division.

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

This clause provides that no legal costs are payable by the LTCS Commissioner for legal services provided to an injured person or an insurer in relation to a dispute or decision made under this division.

Clause 43 Procedures for disputes about eligibility—LTCS guidelines

This clause authorises the LTCS guidelines to include provisions about the referral of disputes for decision or review under this division.

Clause 44 LTCS commissioner monitoring and oversight

This clause provides that 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

Clause 45 Definitions—div 7.2

This clause provides definitions for “claims assessment panel”, “claims assessor”, “interested person” and “principal claims assessor” for the purposes of this division.

Clause 46 Appointment of claims assessors and principal claims assessor

This clause provides that the LTCS Commissioner may appoint a claims assessor or principal claims assessor for this part.

Clause 47 Dispute about motor accident injury—application

This clause provides who and how a person may dispute a decision about eligibility in relation to whether the injury is a motor accident injury.

This provision acknowledges that in some instances it may not be possible to provide written notice and permits notice to be provided orally where allowed by LTCS Commissioner.

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

This clause provides for the referral of a motor accident injury dispute to a principal claims assessor.

Clause 49 Disputes about motor accident injury—review panel

This clause provides that a principal claims assessor must convene a panel of 3 claims assessors to determine the motor accident injury dispute. A determination by an assessment panel is final and binding.

An injured person is not precluded under the Scheme from seeking judicial review of a decision if they believe the decision is wrong as a matter of law.

Clause 50 Dispute about motor accident injury—reasonable legal costs

This clause provides that only reasonable legal costs will be payable by the LTCS Commissioner for legal services to a person in relation to the referral and determination of a motor accident injury dispute.

Clause 51 Dispute about motor accident injury—maximum legal costs

This clause provides that a regulation may prescribe the maximum legal costs for legal services provided to an injured person in relation to a dispute under this division.

Clause 52 Dispute about motor accident injury—legal costs not payable

This clause provides that legal costs unreasonably incurred in relation to a dispute under this division will not be paid.

Clause 53 Inconsistency between Act and Legal Profession Act 2006

This clause provides that this division prevails over the *Legal Profession Act 2006* to the extent of any inconsistency between the two Acts.

Division 7.3 Disputes about treatment and care needs assessments

Clause 54 Definitions—div 7.3

This clause provides definitions for “treatment and care assessor” and “treatment and care review panel” for the purposes of this division. The cross-recognition of treatment and care assessors under the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) will allow a seamless transition for the ACT in terms of meeting the needs of participants and recognises that NSW is a sector leader in lifetime care service provision.

Clause 55 Dispute about LTCS commissioner’s assessment

This clause provides for how a participant may dispute a treatment and care needs assessment under this Act, or a part of an assessment.

This provision acknowledges that in some instances it may not be possible to provide written notice and permits notice to be provided orally where allowed by LTCS Commissioner.

Clause 56 Assessment dispute—referral to assessor

This clause provides that a treatment and care needs assessment dispute must be referred to a treatment and care assessor for determination.

Clause 57 Appointment of treatment and care assessors

This clause provides that 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.

Clause 58 Treatment and care assessor’s decision—LTCS guidelines

This clause authorises the LTCS guidelines to make provision for determining a treatment and care needs assessment dispute.

Clause 59 Treatment and care assessor—co-operation of participant

This clause provides that a participant in the LTCS scheme must comply with any reasonable request made by a treatment and care assessor.

Clause 60 Treatment and care assessor’s determination—certificate

This clause provides that treatment and care assessor must give a certificate of their determination to the participant and LTCS Commissioner and state the reasons for the decision.

Clause 61 Treatment and care assessor’s determination—review

This clause provides that the LTCS Commissioner or a participant in the LTCS scheme may refer a determination by a treatment and care assessor for review on certain grounds.

Clause 62 Review by treatment and care review panel

This clause provides that the LTCS Commissioner must convene a panel of 3 treatment and care assessors to review a treatment and care assessor’s decision.

Clause 63 Review panel procedure—LTCS guidelines

This clause authorises the LTCS Guidelines to make provision for a review under this division.

Clause 64 Assessed treatment and care to be revised

This clause provides that 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.

Clause 65 LTCS Commissioner not liable for legal costs for dispute or review

This clause provides that no legal costs are payable by the LTCS Commissioner for legal services provided to a participant in the LTCS scheme in relation to the determination of a dispute about the participant’s treatment and care needs; or a review of the assessor’s determination by a treatment and care review panel.

Part 8 Communicating with injured person or LTCS participant

The provisions in this part are designed to allow contact with a catastrophically injured person or participant directly, even where the person may be legally represented.

These provisions are similar to those contained within the claims handling guidelines issued by the NSW Motor Accidents Authority and merely reflect the current practice that occurs in NSW under their Lifetime Care and Support Scheme guidelines. This part is designed to ensure that these practices are followed under the ACT Lifetime Care and Support scheme to ensure best practice and the responsiveness and timeliness of support and services being delivered to ACT participants.

Clause 66 Contacting injured person or LTCS participant

This clause provides the circumstances in which the LTCS Commissioner or an insurer for an injured person’s claim may contact the injured person directly, regardless of whether they have legal representation or not.

Clause 67 Contacting participant’s legal representative

This clause provides the circumstances under which the LTCS Commissioner or a participant CTP insurer may contact a participant directly for all other correspondence in relation to which they have had no communication from the participant’s legal representative for 20 days.

Part 9 Payments to hospitals, doctors and others

Clause 68 Definitions—pt 9

This clause provides definitions for “bulk billing arrangements” and “Health Minister” for the purposes of this part.

Clause 69 Bulk billing arrangements for hospital, ambulance and other expenses

This clause provides for the LTCS Commissioner to enter into bulk billing arrangements for payment of the expenses of hospital treatment, ambulance services and other treatment expenses.

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

This clause provides for the rates at which the LTCS Commissioner is required to pay the expenses of hospital treatment, ambulance services, medical and dental treatment and rehabilitation services that are not covered by bulk billing arrangements.

Clause 71 Maximum amount payable for certain treatment and services

This clause provides for the regulation to set the fees payable for certain treatment not provided and charged for at a hospital.

Part 10 Administration of LTCS scheme

Clause 72 Definitions—div 10.1

This clause defines “contribution period”, “LTCS fund”, “LTCS fund banking account”, “LTCS fund investment guidelines”, “LTCS levy” and “required fund contribution” for this division.

Clause 73 Meaning of *contribution period*—div 10.1

This clause requires the LTCS Commissioner to determine a contribution period for the purposes of this part.

Clause 74 Lifetime Care and Support Fund

This clause establishes the Lifetime Care and Support Fund (the fund).

Clause 75 LTCS fund directorate

This clause requires the Treasurer to establish a directorate as part of an administrative unit for the purposes of maintaining the LTCS fund.

Clause 76 LTCS fund banking accounts

This clause requires the Director-General of the administrative unit responsible for maintaining the LTCS fund to open and keep at least one banking account for the management of the LTCS fund.

Clause 77 Closure of LTCS fund banking accounts

This clause requires that amounts in the LTCS fund be kept in an LTCS fund. This is essential to quarantine the LTCS fund from public monies paid into the Territory banking account under the *Financial Management Act 1996*.

Clause 78 Appropriation of certain amounts for LTCS fund

This clause deems certain amounts to have been appropriated for the purposes of the LTCS fund. This enables the LTCS levy paid by Canberrans on their vehicle registration to be quarantined from public monies and paid directly into the LTCS fund banking account following collection of the levy.

Clause 79 Payments from LTCS fund banking accounts

This clause requires that payments from the LTCS fund must be for one of the listed purposes.

Clause 80 Investment of amounts in LTCS fund banking account

This clause authorises the investment of amounts in the LTCS fund banking account that are not immediately needed. Specifically, a repayment of the investment amount or interest earned on an investment is deemed to have been appropriated and must be paid into an LTCS fund banking account.

Clause 81 LTCS fund investment guidelines

This clause allows the making of guidelines for the purposes of investment of amounts in the LTCS fund banking account.

Clause 82 Interest on amounts of LTCS levy

This clause deems the LTCS levy and any interest earned on the LTCS levy to have been appropriated for the LTCS Scheme and as such must be paid directly into an LTCS fund banking account.

Clause 83 Determination of amount to be contributed to fund

This clause provides that the LTCS Commissioner must determine the amount required to be contributed in order to fully fund in the liabilities of the Commissioner. The amount must be determined in accordance with an independent actuaries report.

Clause 84 Determination of LTCS levy

This clause provides that the LTCS Commissioner must determine a levy for a contribution period. The levy is the LTCS levy and must be an amount that is believed to result in the required fund contribution.

Clause 85 Contributions to fund by CTP policy holders

This clause provides that the LTCS levy determined by the LTCS Commissioner be paid to the Commissioner by each person to whom a CTP policy is issued under the *Road Transport (Third-Party Insurance) Act 2008*.

Clause 86 Cancellation of LTCS levy

This clause provides that the *Road Transport (Third-Party Insurance) Act 2008*, part 2.5 (Cancellation of CTP policies) applies to the LTCS levy in the same way as it does to CTP premiums. Specifically, a LTCS levy payment is cancelled if registration is cancelled.

Clause 87 Refund of LTCS levy

This clause provides for the pro rata refund of the LTCS levy on the cancellation of a CTP policy (for example, if registration is cancelled the LTCS levy will be refunded on a pro rata basis).

Division 10.2 Recovery of lifetime care and support payments

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

This clause describes how to determine the present value of the LTCS Commissioner's treatment care liabilities for this division.

Clause 89 Recovery of LTCS payments—entitlement

This clause provides that the LTCS Commissioner is entitled to recover the present value of its treatment and care liabilities in relation to a participant in the LTCS scheme in cases where a vehicle is unregistered or registered in another jurisdiction outside the ACT.

Clause 90 Recovery of LTCS payments from responsible person or driver

This clause provides that, subject to certain defences, the LTCS Commissioner is entitled to recover the present value of its treatment and care liabilities in relation to a participant in the LTCS scheme in cases where a vehicle is uninsured.

Clause 91 Recovery of LTCS payments from other person

This clause provides that the LTCS Commissioner is entitled to recover a proportion of the present value of its treatment and care liabilities in relation to a participant in the LTCS scheme from a person who caused the motor accident other than the responsible person or the driver.

Clause 92 Recovery of LTCS payments-evidentiary certificate

This clause provides that a certificate issued by the LTCS Commissioner is evidence of any matter stated relevant to the present value of its treatment and care liabilities in relation to a participant.

Part 11 Miscellaneous

Clause 93 LTCS guidelines

This clause provides the LTCS Commissioner with a general LTCS guideline making power under this Act.

Clause 94 Exchange of information

This clause lists the persons with whom the LTCS Commissioner may exchange information about the treatment and care needs of a participant in the LTCS scheme.

Clause 95 Protection of assessors from liability

This clause provides protection for assessors against liability for acts and omissions done in good faith and states that they cannot be compellable in court proceedings.

Clause 96 Disapplication of Civil Law (Wrongs) Act 2002

This clause provides that the *Civil Law (Wrongs) Act 2002* does not apply in relation to the LTCS scheme. This is because it is a no-fault scheme (ie it does not require the determination of fault in order to access the scheme) and as such it does not require the application of the procedures or tests for proving fault as is set out in that Act generally for actions in tort involving personal injury.

Clause 97 Determination of fees

This clause authorises fees to be determined under the Act.

Clause 98 Approved forms

This clause authorises the director-general to approve forms for this Act.

Clause 99 Regulation-making power

This clause authorises the Executive to make regulations for this Act.

Clause 100 Review of Act

This clause provides for a review of the operation of this Act after 5 years.

Part 12 Consequential amendments

Clause 101 Legislation amended-sch 1

This clause sets out the consequential amendments to other legislation in schedule 1.

Schedule 1 Consequential amendments

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

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

This amending clause makes it clear that liability for treatment, care and support costs of a participant in the LTCS scheme are not a part of the risk base of CTP policies under the *Road Transport (Third-Party Insurance) Act 2008*.

[1.2] New section 43(2)

This amending clause makes it clear that treatment, care and support costs for participants in the LTCS scheme do not form part of the costs of a motor accident claims for the purposes of calculating CTP premiums under the *Road Transport (Third-Party Insurance) Act 2008*.

[1.3] New section 83B

This amending clause requires a person with a motor accident claim who is eligible to participate in the LTCS scheme to apply to the scheme before they can commence legal proceedings in relation to their motor accident claim. This is because the treatment, care and support costs for those catastrophically injured in a motor accident are not part of the risks covered by a CTP policy under the *Road Transport (Third-Party Insurance) Act 2008*. Catastrophic injuries are covered under the LTCS scheme as reflected in the LTCS levy as the premium paid under the scheme.

[1.4] New section 120A

This amending clause makes it clear that Chapter 4 (which requires insurers to pay for certain medical and rehabilitation expenses) does not apply in respect of any treatment and care needs of a participant in the LTCS Scheme (whether or not the LTCS Commissioner is obliged to make a payment in respect of the treatment and care needs concerned or whether or not they are provided for on a gratuitous basis).

[1.5] New section 141(5), new note

This amending clause makes a note to refer to the new part 4.9B.

[1.6] New part 4.9B

This amending clause makes it clear that a person who is a participant in the LTCS Scheme cannot claim damages (or an amount as part of an offer of settlement or mandatory final offer) in respect of any treatment and care needs while they are a participant in the scheme (whether or not the LTCS Commissioner is obliged to make a payment in respect of the treatment and care needs concerned and whether or not they are provided for on a gratuitous basis).

[1.7] New section 176A

This clause makes it clear that payments made to or on behalf of a participant in the LTCS Scheme by the LTCS Commissioner are not to be considered to confirm a cause of action under section 32 of the *Limitation Act 1985* as recently confirmed in *Keast v Kavanagh and IAG Australia Pty Ltd t/as NRMA Insurance Ltd* [2013] ACTMC 11 (15 August 2013).

[1.8] New section 269A

This clause authorises the exchange of information between the CTP Regulator and the LTCS Commissioner in relation to LTCS Scheme participants and motor accident claimants under the *Road Transport (Third-Party Insurance) Act 2008*.

[1.9] New section 270(2A)

This amending clause authorises the CTP Regulator to keep information provided to it by the LTCS Commissioner on the CTP claims register.

[1.10] Dictionary, new definitions

This amending clause adds relevant terms used in the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*.