



New South Wales

# Motor Accidents (Lifetime Care and Support) Act 2006 No 16

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New South Wales

# **Motor Accidents (Lifetime Care and Support) Act 2006 No 16**

Act No 16, 2006

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An Act to provide a scheme for the lifetime care and support of persons injured in motor accidents; and for other purposes. [Assented to 8 May 2006]

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See also *Motor Accidents Compensation Amendment Act 2006*.

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Motor Accidents (Lifetime Care and Support) Act 2006*.

### **2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 66 (Auditor-General to report on Costing Study) commences on the date of assent to this Act.

### **3 Definitions**

- (1) In this Act:

**Advisory Council** means the Lifetime Care and Support Advisory Council of New South Wales constituted by this Act.

**attendant care services** means services that aim to provide assistance to people with everyday tasks, and includes (for example) personal assistance, nursing, home maintenance and domestic services.

**Authority** means the Lifetime Care and Support Authority of New South Wales constituted by this Act.

**Fund** means the Lifetime Care and Support Authority Fund established by this Act.

**insurer** of a claim means an insurer for the purposes of Chapter 4 (Motor accident claims) of the *Motor Accidents Compensation Act 1999* in relation to the claim.

**LTCS Guidelines** means guidelines issued by the Authority under section 58, as in force from time to time.

**MAA** means the Motor Accidents Authority under the *Motor Accidents Compensation Act 1999*.

**motor accident injury** means injury caused by a motor accident.

**Note.** Section 4 provides for the motor accident injuries to which this Act applies.

**participant** in the Scheme means a person accepted as provided by this Act as a participant in the Scheme (either as a lifetime participant or as an interim participant).

**the Scheme** means the scheme provided for by this Act for the lifetime care and support of persons injured in motor accidents.

**treatment and care needs**—see section 6.

*treatment and care needs assessment* means an assessment under Part 4 of the treatment and care needs of a participant in respect of the participant's motor accident injury.

- (2) Notes included in this Act do not form part of this Act.

#### **4 Application of Act**

- (1) This Act applies only in respect of motor accident injuries resulting from motor accidents occurring after the commencement of this section.
- (2) This Act applies only in respect of motor accident injuries resulting from motor accidents occurring in New South Wales.
- (3) This Act applies in respect of a motor accident injury only if there is a motor vehicle involved in the motor accident concerned that has motor accident insurance cover for the motor accident (within the meaning of section 3B of the *Motor Accidents Compensation Act 1999*), whether or not all the motor vehicles involved in the motor accident have motor accident insurance cover for the motor accident.
- (4) This Act applies in respect of a motor accident injury whether or not the injury was caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle or of any other person and so applies even if the injured person was at fault (whether as owner or driver of the vehicle or otherwise).
- (5) The regulations may make provision (including provision of a savings or transitional nature) for or with respect to limiting the application of this Act or any specified provisions of this Act to specified classes of persons.

#### **5 Interpretation—Motor Accidents Compensation Act 1999**

Words and expressions used (but not defined) in this Act have the same meanings as in the *Motor Accidents Compensation Act 1999*.

## Part 2 Care and support for Scheme participants

### 6 Scheme participants' treatment and care needs to be paid for by Authority

- (1) The Authority is to pay the reasonable expenses incurred by or on behalf of a person while a participant in the Scheme in providing for such of the treatment and care needs of the participant as relate to the motor accident injury in respect of which the person is a participant and as are reasonable and necessary in the circumstances.
- (2) For the purposes of this Act, the *treatment and care needs* of a participant are the participant's needs for or in connection with any of the following:
  - (a) medical treatment (including pharmaceuticals),
  - (b) dental treatment,
  - (c) rehabilitation,
  - (d) ambulance transportation,
  - (e) respite care,
  - (f) attendant care services,
  - (g) domestic assistance,
  - (h) aids and appliances,
  - (i) artificial members, eyes and teeth,
  - (j) education and vocational training,
  - (k) home and transport modification,
  - (l) workplace and educational facility modifications,
  - (m) such other kinds of treatment, care, support or services as may be prescribed by the regulations.
- (3) As an alternative to paying the expenses for which it is liable under this section as and when they are incurred, the Authority may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant.
- (4) The LTCS Guidelines may make provision for or with respect to determining which treatment and care needs of a participant in the Scheme are reasonable and necessary in the circumstances.

### 7 Eligibility for participation in the Scheme

- (1) A person who has suffered a motor accident injury is eligible to be a participant in the Scheme in respect of the injury if the person's injury



satisfies the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme.

- (2) Participation in the Scheme may be as a lifetime participant or an interim participant and for that purpose the LTCS Guidelines are to establish criteria for eligibility for lifetime participation and criteria for eligibility for interim participation in the Scheme.
- (3) A person is not eligible to be a participant in the Scheme in relation to an injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, for future economic loss in respect of the treatment and care needs of the participant that relate to the injury.
- (4) The LTCS Guidelines may make provision for or with respect to eligibility for participation in the Scheme, including provision for or with respect to the criteria that a motor accident injury must satisfy for the injured person to be eligible for participation in the Scheme in respect of the injury and the determination of whether a motor accident injury satisfies those criteria.

#### **8 Application for participation in the Scheme**

- (1) An application for a person to become a participant in the Scheme in respect of a motor accident injury is to be made to the Authority and can only be made by or on behalf of the person or by the insurer of a claim made by the person in respect of the injury.
- (2) An application by an insurer does not require the consent of the person.
- (3) The MAA may direct the insurer of a claim made by a person in respect of an injury to make an application for the person to become a participant in the Scheme, and the insurer must comply with such a direction.
- (4) An application is to be made in the form approved by the Authority and is to set out or be accompanied by such particulars and information as may be required by the approved form.
- (5) The Authority may require the injured person to provide authorisation for the Authority to obtain information and documents relevant to the motor accident injury from specified persons in connection with the application.
- (6) The LTCS Guidelines may make provision for or with respect to applications to become a participant in the Scheme, including provision for or with respect to:
  - (a) the making and determination of applications (including the information required to be provided in connection with an application), and

- (b) requiring an insurer to pay the costs of any assessment required by the LTCS Guidelines in connection with an application, and
- (c) imposing restrictions on the time within which an application can be made or requiring the deferring of the making of an application until an injury has stabilised.

### **9 Acceptance as a participant**

- (1) A person becomes a participant in the Scheme if the Authority is satisfied that the person is eligible to be a participant and accepts the person in writing as a participant in the Scheme, either as a lifetime participant or an interim participant (according to the person's eligibility).
- (2) If the Authority is satisfied that a person is eligible to be a participant and that application for the person's acceptance as a participant has been duly made, the Authority must accept the person as a lifetime participant or an interim participant (according to the person's eligibility).
- (3) A person accepted as an interim participant must be accepted as a lifetime participant if the Authority becomes satisfied during the person's interim participation in the Scheme that the person is eligible for lifetime participation in the Scheme.
- (4) A person accepted as a lifetime participant in the Scheme remains a participant for life.
- (5) A person accepted as an interim participant remains a participant for a period of 2 years only. If the person is accepted as a lifetime participant before the end of that 2 years, the person ceases to be an interim participant on being accepted as a lifetime participant and then remains a participant for life.
- (6) A person cannot be accepted as an interim participant more than once in relation to the same motor accident injury.
- (7) The expiration of a period of interim participation in the Scheme does not prevent subsequent acceptance of the person as a lifetime participant in the Scheme.

### **10 Approval of treatment and care providers**

- (1) The LTCS Guidelines may make provision for or with respect to:
  - (a) the approval (by accreditation or otherwise) by or on behalf of the Authority of persons (*approved providers*), other than medical practitioners, to provide any service in connection with the provision of the treatment and care needs of a participant in the Scheme, and

- (b) the standards of competency of approved providers, and
  - (c) requiring services provided in connection with the treatment and care needs of a participant in the Scheme (other than the services of a medical practitioner) to be provided only by approved providers.
- (2) If the LTCS Guidelines require services to be provided only by approved providers, the Authority is not required to pay any expenses incurred by or on behalf of a participant in the Scheme in providing the services concerned unless those services are provided by an approved provider.

**11 Effect of Scheme on motor accident compensation claims and limitation periods**

- (1) This Act does not limit or otherwise affect the application of the *Motor Accidents Compensation Act 1999* in respect of a motor accident injury of a person who is or who is eligible to become a participant in the Scheme, except as specifically provided by that Act.
- (2) While a person is an interim participant in the Scheme in respect of an injury, time does not run for the purposes of section 109 (Time limitations on commencement of court proceedings) of the *Motor Accidents Compensation Act 1999* or a provision of the *Limitation Act 1969* in respect of a cause of action on a claim for damages that relate to the injury or to any other injury suffered by the person as a result of the motor accident concerned.

## **Part 3 Dispute resolution**

### **Division 1 Disputes about eligibility**

#### **12 Definitions**

In this Division:

*Assessment Panel* means a panel of assessors convened under this Division to determine a dispute under this Division.

*assessor* means a person appointed under this Division as an assessor for the purposes of this Division.

*Review Panel* means a panel of assessors convened under this Division to review a determination by an Assessment Panel.

#### **13 Appointment of assessors**

The Authority is to appoint medical practitioners and other suitably qualified persons to be assessors for the purposes of this Division.

#### **14 Referral of disputes to Assessment Panel**

- (1) If there is a dispute as to whether a motor accident injury suffered by a person satisfies criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme, the dispute can be referred to an Assessment Panel for determination.
- (2) The dispute can be referred by the Authority or by notice to the Authority given by or on behalf of the injured person or by the insurer of the injured person's claim.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Assessment Panel to determine a dispute referred under this section.
- (4) The Assessment Panel to which a dispute is referred for determination is to determine the dispute and is to give a certificate as to its determination setting out the reasons for its determination.

#### **15 Review of Assessment Panel's determination**

- (1) The determination of an Assessment Panel can be referred for review by a Review Panel, but only on one or more of the following grounds:
  - (a) a change in the condition of the injured person, being a change that occurred or that first became apparent after the dispute was referred for determination by the Assessment Panel and that is capable of having a material effect on the determination,
  - (b) the availability of additional relevant information about the injury, being information that was not available, or could not reasonably have been obtained, before the dispute was referred

- for determination by the Assessment Panel and that is capable of having a material effect on the determination,
- (c) the determination was not made in accordance with the LTCS Guidelines,
  - (d) the determination is demonstrably incorrect in a material respect.
- (2) A determination can be referred for review:
- (a) by or on behalf of the injured person, or
  - (b) by the insurer of the injured person's claim, or
  - (c) by the Authority.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Review Panel to review the determination of the Assessment Panel.
- (4) The Review Panel can confirm the determination of the Assessment Panel or it can revoke that determination, substituting its own determination and giving a certificate as to its determination.

#### **16 Determinations to be binding**

The determination of an Assessment Panel (or of a Review Panel on the review of an Assessment Panel's determination) as to whether a motor accident injury satisfies criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme is final and binding for the purposes of this Act and any proceedings under this Act.

#### **17 Costs of assessment**

- (1) The costs of determinations and reviews of determinations under this Division are payable by the Authority.
- (2) The costs of determinations and reviews under this Division include the necessary costs and expenses of travel and accommodation incurred by the injured person, and by a parent or other carer of the injured person in order to accompany the injured person, in attending a panel for the purposes of the determination or review.

#### **18 No legal costs payable by Authority**

- (1) No legal costs are payable by the Authority for or in respect of legal services provided to an injured person or an insurer in connection with the referral of a matter for or the making of a determination or review of a determination under this Division.
- (2) In this section, *legal services* and *legal costs* have the same meanings as in the *Legal Profession Act 2004*.

**19 Authority monitoring and oversight**

- (1) Determinations and reviews under this Division are subject to relevant provisions of the LTCS Guidelines relating to the procedures for the referral of disputes for determination or review of determinations and the procedure for determination.
- (2) The Authority may arrange for the provision of training and information to assessors to promote accurate and consistent determinations and reviews under this Division.

**Division 2 Disputes about motor accident injury**

**20 Determination of disputes**

- (1) An interested person who disputes a decision of the Authority as to whether an injury is a motor accident injury may request the Authority to refer the dispute for determination under this section.
- (2) Each of the following is an *interested person*:
  - (a) the person whose injury is the subject of the Authority's decision,
  - (b) the insurer of a claim made by the injured person in respect of the injury,
  - (c) the Nominal Defendant.
- (3) The Authority is to refer the dispute to the Principal Claims Assessor under Part 4.4 of the *Motor Accidents Compensation Act 1999*, who is to convene a panel of 3 claims assessors under that Part to determine the dispute.
- (4) The panel is to determine the dispute and certify in writing as to its determination giving reasons for its determination.
- (5) The panel's determination as to whether an injury is a motor accident injury is final and binding for the purposes of this Act and any proceedings under this Act.

**21 Legal costs**

- (1) The panel determining a dispute under this Division is to include in its determination a determination of the amount of the reasonable legal costs payable by the injured person for or in respect of legal services provided to the person in connection with the referral for determination of and the determination of the dispute.

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- (2) The Authority is to pay those reasonable legal costs of the injured person as assessed by the panel. No other legal costs are payable by the Authority for or in respect of legal services provided to an interested person in connection with the referral for determination of and the determination of a dispute under this Division.
  - (3) The regulations may make provision for or with respect to fixing maximum legal costs for legal services provided to a person in connection with the referral for determination of and the determination of a dispute under this Division.
  - (4) A legal practitioner is not entitled to be paid or recover for a legal service an amount that exceeds any maximum legal costs fixed for the service by the regulations under this section.
  - (5) This section does not entitle a legal practitioner to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.
  - (6) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 2004* and the regulations under that Act. An assessment under that Act of any legal costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
  - (7) In this section, **legal services** and **legal costs** have the same meanings as in the *Legal Profession Act 2004*.

## **Part 4 Treatment and care needs assessment**

### **22 Definitions**

In this Part:

**assessor** means a person appointed under this Part to make an assessment in relation to a disputed assessment under this Part.

**Review Panel** means a panel of assessors convened under this Part to review an assessment under this Part.

### **23 Assessment of treatment and care needs of participants**

- (1) The Authority is to make an assessment of the treatment and care needs of a participant in the Scheme.
- (2) The assessment is an assessment of the participant's treatment and care needs that are reasonable and necessary in the circumstances, and as relate to the motor accident injury in respect of which the person is a participant in the Scheme.
- (3) An assessment of treatment and care needs is to be made in accordance with the LTCS Guidelines.
- (4) The Authority is to certify in writing as to its assessment of the treatment and care needs of the participant including its reasons for any finding on which the assessment is based, and is to give a copy of the certificate to the participant.

### **24 Dispute about Authority's assessment—determination by assessor**

- (1) If a participant in the Scheme disputes an assessment or any aspect of an assessment by the Authority of the treatment and care needs of the participant, the Authority must, at the request of the participant, refer the dispute to an assessor for determination.
- (2) A participant cannot make such a request more than 28 days after the Authority gives the participant a copy of the Authority's certificate of assessment of the treatment and care needs of the participant.
- (3) The Authority is to appoint health professionals and other suitably qualified persons to be assessors for the purposes of this Part.
- (4) The assessor who determines a dispute about the treatment and care needs of a participant is to give a certificate to the Authority and the participant certifying as to the assessor's determination and setting out the assessor's reasons for any finding on which the determination is based.



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**25 Review of assessor's determination**

- (1) The Authority or a participant can refer an assessor's determination of a dispute about the treatment and care needs of the participant for review by a Review Panel, but only on one or more of the following grounds:
  - (a) the availability of additional relevant information about the treatment and care needs of the participant, being information that was not available, or could not reasonably have been obtained, at the time of the assessor's determination and that is capable of having a material effect on the determination,
  - (b) the assessor's determination was not made in accordance with the LTCS Guidelines,
  - (c) the assessor's determination is demonstrably incorrect in a material respect.
- (2) An assessor's determination can be referred for review not later than 28 days after the assessor's certificate of determination is given to the Authority and the participant.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Review Panel for the review of an assessor's determination.
- (4) On its review, the Review Panel can confirm the assessor's determination or can revoke the assessor's determination and substitute its own determination, giving the Authority and the participant a certificate of the determination and setting out the Review Panel's reasons for any finding on which its determination is based.
- (5) In conducting its review, a Review Panel must take into account any written submissions prepared by or on behalf of the participant that are submitted to the Panel.

**26 Effect of assessment**

- (1) The Authority's assessment of the treatment and care needs of a participant is final and binding for the purposes of this Act and any proceedings under this Act.
- (2) The Authority is to revise its assessment to make any changes that may be necessary to give effect to any determination by an assessor or Review Panel of a dispute about those treatment and care needs.
- (3) The Authority's assessment of the treatment and care needs of a participant supersedes any earlier assessment by the Authority of those needs.

**27 Co-operation of participant**

A participant in the Scheme must comply with any reasonable request made by the Authority or an assessor in connection with an assessment of or dispute about the treatment and care needs of the participant, including a request to undergo a medical examination or other examination by a health professional.

**28 LTCS Guidelines**

- (1) The LTCS Guidelines may make provision for or with respect to the assessment of the treatment and care needs of a participant in the Scheme.
- (2) In particular, the LTCS Guidelines may make provision for or with respect to the following:
  - (a) the procedures to be followed in connection with such an assessment,
  - (b) the intervals at which such assessments are to be carried out,
  - (c) the methods and criteria to be used to determine the treatment and care needs of participants,
  - (d) the information to be provided by participants for the purposes of or in connection with assessments.
- (3) An assessment of the treatment and care needs of a participant in the Scheme is to be carried out in accordance with the LTCS Guidelines.

**29 No legal costs payable for assessment or review**

- (1) No legal costs are payable by the Authority for or in respect of legal services provided to a participant in the Scheme in connection with an assessment under this Part of the treatment and care needs of the participant or the determination or review of a determination under this Part of a dispute about such an assessment.
- (2) In this section, *legal services* and *legal costs* have the same meanings as in the *Legal Profession Act 2004*.

## **Part 5 Payments to hospitals, doctors and others**

### **30 Bulk billing arrangements for hospital, ambulance and other expenses**

- (1) Bulk billing arrangements may be entered into by the Authority with respect to:
  - (a) the payment of expenses incurred in connection with the treatment of participants in the Scheme at hospitals, or
  - (b) the payment of expenses incurred in transporting participants in the Scheme by ambulance, or
  - (c) the payment of other treatment expenses incurred by participants in the Scheme.
- (2) A bulk billing arrangement is an arrangement made with the Minister for Health, the MAA, service providers or others acting on their behalf for the payment by the Authority of any such expenses of participants in the Scheme at the rate provided by the arrangement.
- (3) For the purposes of this section, the treatment or transport of participants in the Scheme includes the treatment or transport of persons classified as participants in the Scheme in accordance with a bulk billing arrangement.

### **31 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement**

- (1) This section applies to:
  - (a) payment for the treatment of participants in the Scheme at hospitals, and
  - (b) payment for conveying participants in the Scheme by ambulance, and
  - (c) payment for any medical or dental treatment of, or rehabilitation services provided to, participants in the Scheme,in any case where payment for the expenses concerned has not been made, and is not required to be made in accordance with a bulk billing arrangement under this Part.
- (2) The rate at which such a payment is required to be made by the Authority under this Act is as follows:
  - (a) in the case of treatment at public hospitals—at the rate determined by the Minister for Health by order published in the Gazette,
  - (b) in any case in which a maximum rate is fixed under section 32—at the maximum rate so fixed,

- (c) in a case to which a rate referred to in paragraph (a) or (b) does not apply—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.
- (3) If the Authority does not make that payment, the body or person who provided the treatment or service to which the payment relates may recover the payment from the Authority as a debt in a court of competent jurisdiction.

**32 Maximum fees payable for medical treatment and other treatment or services not provided at hospitals or for treatment at private hospitals**

- (1) This section applies to:
  - (a) the fee payable for any medical treatment of a participant in the Scheme, and
  - (b) the fee payable for any dental treatment of a participant in the Scheme, and
  - (c) the fee payable for any rehabilitation service provided to a participant in the Scheme, and
  - (d) the fees payable for any attendant care services provided to a participant in the Scheme,but does not apply to any such treatment or service that is provided at a hospital (whether to an in-patient or out-patient) and for which any payment is required to be made to the hospital and not to the treatment or service provider.
- (2) This section also applies to the fee payable to a private hospital for any treatment at the hospital.
- (3) The regulations may make provision for or with respect to fixing the maximum amount for which the Authority is liable in respect of any claim for fees to which this section applies.
- (4) Any such fees may (but need not) be fixed by reference to fees recommended by the Australian Medical Association or other professional association or by reference to any schedule of fees.
- (5) A payment by the Authority in respect of a service provided in connection with the treatment and care needs of a participant in the Scheme is to be made consistently with any regulations under this section.
- (6) This section does not prevent the inclusion in the LTCS Guidelines of provision as to the appropriate allowance for fees to which this section applies and that are not fixed by regulations under this section.

## **Part 6 Administration**

### **Division 1 Constitution of Authority**

#### **33 Constitution of Authority**

- (1) There is constituted by this Act a corporation with the corporate name of the Lifetime Care and Support Authority of New South Wales.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

#### **34 Board of Directors**

- (1) There is to be a Board of Directors of the Authority.
- (2) The Board is to consist of the following directors:
  - (a) the Chief Executive Officer of the Authority,
  - (b) 4 part-time directors appointed by the Governor on the recommendation of the Minister.
- (3) Of the part-time directors:
  - (a) one is to be a person nominated by the Treasurer, and
  - (b) three are to be persons of the Minister's own choosing.
- (4) One of the part-time directors is to be appointed as the Chairperson of the Board and one is to be appointed as the Deputy Chairperson of the Board.
- (5) A person can be both a director of the Board and a member of the Advisory Council.
- (6) A person can be both a director of the Board and a director of the Board of the MAA.
- (7) Schedule 1 has effect with respect to the Board.

#### **35 Chief Executive Officer**

The Chief Executive Officer of the Authority is the Chief Executive Officer holding office as such under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

#### **36 Staff of Authority**

- (1) Such staff as may be necessary to enable the Authority to exercise its functions may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

- (2) The Authority may arrange for the use of the services of any staff or facilities of a government department or a public or local authority.
- (3) The Authority may engage such consultants as the Authority requires to assist it in the exercise of its functions.
- (4) For the purposes of this Act, a person who is employed under subsection (1) or whose services are made use of under subsection (2) is an officer of the Authority.

**37 Financial year**

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

**Division 2 Management of Authority**

**38 The Minister**

- (1) If the Minister is satisfied that it is desirable in the public interest to do so, the Minister may, by notice in writing to the Board of Directors of the Authority or the Chief Executive Officer of the Authority, give directions to the Board or Chief Executive Officer with respect to the exercise of their respective functions.
- (2) The Minister cannot give a direction under this section to the Board or the Chief Executive Officer in respect of the exercise of any function of the Board or the Authority under section 49 (Determination by Authority of amount to be contributed to Fund) or 50 (Contributions to Fund by third-party policy holders).
- (3) The Board of Directors of the Authority and the Chief Executive Officer of the Authority must comply with any direction given under this section by the Minister to the Board or Chief Executive Officer, as the case requires.
- (4) The Authority must include in its annual report particulars of each direction given under this section during the year to which the report relates.
- (5) Except as provided by this or any other section of this Act, the Board of Directors of the Authority and the Chief Executive Officer of the Authority are not, in the exercise of their respective functions, subject to the control and direction of the Minister.

**39 Board of Directors**

- (1) The Board of Directors of the Authority has the function of determining the administrative policies of the Authority.
- (2) In exercising that function, the Board must ensure that, as far as practicable, the activities of the Authority are carried out properly and efficiently.

**40 Chief Executive Officer**

- (1) Subject to this Division, the affairs of the Authority are to be managed and controlled by the Chief Executive Officer of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer of the Authority is taken to have been done by the Authority.

**41 Delegation of functions**

- (1) The Authority may delegate to an authorised person any of the functions of the Authority (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section:  
*authorised person* means:
  - (a) an officer of the Authority, or
  - (b) a person of a class prescribed by the regulations or of a class approved by the Board of Directors of the Authority.

**42 Seal of Authority**

The seal of the Authority is to be kept by the Chief Executive Officer of the Authority and may be affixed to a document only:

- (a) in the presence of the Chief Executive Officer or an officer of the Authority authorised for the purpose by the Chief Executive Officer, and
- (b) with an attestation by the signature of the Chief Executive Officer or that officer of the fact of the affixing of the seal.

**Division 3 Functions of Authority****43 Functions of Authority**

- (1) The Authority has such functions as are conferred or imposed on it by or under this or any other Act.
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- (2) The Authority also has the following functions:
  - (a) to monitor the operation of the Scheme under this Act, and in particular to conduct (or arrange for other persons to conduct) research into and to collect statistics in relation to the operation of the Scheme,
  - (b) to advise the Minister as to the administration, efficiency and effectiveness of the Scheme,
  - (c) to publicise and disseminate information concerning the Scheme,
  - (d) to issue and keep under review the LTCS Guidelines under this Act,
  - (e) to provide administrative and other support to the Advisory Council, sufficient to assist the Advisory Council to meet its priorities,
  - (f) to provide advice and make recommendations to the Advisory Council on such matters as the Advisory Council requests or the Authority considers appropriate.
- (3) The Authority has the following functions in relation to the provision of care, treatment, rehabilitation, long term support and other services for persons who have sustained motor accident injuries:
  - (a) to monitor those services,
  - (b) to provide support and funding for programs that will improve delivery of those services,
  - (c) to provide support and funding for research and education in connection with the delivery of those services.
- (4) The Authority is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Advisory Council.

#### **Division 4 Lifetime Care and Support Advisory Council**

##### **44 Constitution of Advisory Council**

- (1) There is constituted by this Act a corporation with the corporate name of the Lifetime Care and Support Advisory Council of New South Wales.
- (2) The Advisory Council is subject to the control and direction of the Minister, except in relation to the contents of any advice, report or recommendation given to the Minister or the Authority.



**45 Membership and procedure of Advisory Council**

- (1) The Advisory Council is to consist of the following 8 members:
  - (a) 2 health practitioners appointed by the Minister after consultation with the Australian Medical Association (NSW) Limited and such other associations of health practitioners as the Minister considers appropriate,
  - (b) 2 persons appointed by the Minister after consultation with such organisations concerned with the treatment and care of injured persons as the Minister considers appropriate,
  - (c) 2 persons appointed by the Minister after consultation with such organisations representing the interests of severely injured persons as the Minister considers appropriate,
  - (d) 1 person of the Minister's own choosing, who is to be the Chairperson of the Advisory Council,
  - (e) the Chief Executive Officer of the Authority.
- (2) One of the appointed members of the Advisory Council is to be appointed by the Minister as the Deputy Chairperson of the Advisory Council.
- (3) Schedule 2 has effect with respect to the Advisory Council.

**46 Functions of Advisory Council**

- (1) The functions of the Advisory Council are as follows:
  - (a) to advise the Minister on any matter relating to the lifetime care and support scheme under this Act that the Advisory Council considers appropriate or that the Minister refers to the Advisory Council for advice,
  - (b) to advise and make recommendations to the Authority on, and to keep under review, the LTCS Guidelines,
  - (c) to monitor the operation of the services provided under this Act,
  - (d) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The Advisory Council may seek advice from any appropriate source, and accordingly is not limited to seeking advice from bodies constituted under this Act.
- (3) The Advisory Council is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Authority.

## Part 7 Funding of the Scheme

### 47 Definitions

In this Part:

**financial year** means a year commencing on 1 July.

**licensed insurer** has the same meaning as in the *Motor Accidents Compensation Act 1999*.

**third-party policy** has the same meaning as in the *Motor Accidents Compensation Act 1999*.

### 48 Lifetime Care and Support Authority Fund

- (1) There is established a fund, to be known as the Lifetime Care and Support Authority Fund, belonging to and vested in the Authority.
- (2) The following is to be paid into the Fund:
  - (a) Fund levies paid under this Part in connection with the issue of third-party policies,
  - (b) the interest from time to time accruing from the investment of the Fund,
  - (c) money required to be paid into the Fund by or under this or any other Act,
  - (d) all other money received by the Authority and not otherwise appropriated.
- (3) The following is to be paid from the Fund:
  - (a) all payments required to be made by the Authority under Part 2 (Care and support for Scheme participants),
  - (b) the remuneration, allowances, office accommodation and other associated costs of the Chief Executive Officer of the Authority, the part-time directors of the Board of Directors of the Authority and staff of the Authority,
  - (c) the remuneration, allowances and other associated costs of members of the Advisory Council,
  - (d) all payments required to meet expenditure incurred in relation to the functions of the Authority or the Advisory Council, where money is not otherwise provided for that purpose,
  - (e) all other money required by or under this or any other Act to be paid from the Fund.

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- (4) The Authority may invest money in the Fund that is not immediately required for the purposes of the Fund:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the Authority to invest money in the Fund—in any other manner approved by the Minister with the concurrence of the Treasurer.

#### **49 Determination by Authority of amount to be contributed to Fund**

- (1) The Authority is to determine, before the beginning of each relevant period, the amount required to be contributed to the Fund:
  - (a) to fully fund the present and likely future liabilities of the Authority under Part 2 (Care and support for Scheme participants) in respect of persons who become participants in the Scheme in respect of motor accident injuries suffered during that period, and
  - (b) to meet the payments required to be made from the Fund (other than payments under Part 2) during that period, and
  - (c) to make provision for such other matters as the Authority should, in all the circumstances, prudently make provision for in connection with liabilities under Part 2.
- (2) The amount required to fully fund a liability of the Authority under Part 2 is an amount that is sufficient to provide a sum of money that together with anticipated investment income is equal to the best estimate of the cost of meeting the liability (in inflated dollars) as and when the liability falls due.
- (3) The Authority's determination in respect of a relevant period is to be made in accordance with the report of an independent actuary engaged by the Authority on the recommendation of the Board to report to the Authority on the amount required to be contributed to the Fund as referred to in subsection (1).
- (4) A **relevant period** is a financial year or such other period as the Authority determines from time to time to be a relevant period for the purposes of this section. Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must not be longer than 12 months.
- (5) The amount determined by the Authority under this section for a relevant period is the **required Fund contribution** for that period.

**50 Contributions to Fund by third-party policy holders**

- (1) The required Fund contribution for a relevant period is to be made by the payment to the Authority of a levy (the *Fund levy*) by persons to whom third-party policies are issued during the relevant period.
- (2) The Fund levy is to be an amount determined by the Authority and is to be an amount that will result in the required Fund contribution for the relevant period being contributed to the Fund.
- (3) The Fund levy can be determined as a fixed amount or as a percentage of the premium payable for a third-party policy, or as a combination of a fixed amount and percentage of premium.
- (4) A Fund levy can be determined to differ according to any classification or other criteria for the determination of third-party policy premiums as provided for by the MAA Premiums Determination Guidelines (under Part 2.3 of the *Motor Accidents Compensation Act 1999*).
- (5) The Authority is to notify each licensed insurer of the Fund levy determined for a relevant period.

**51 Payment and collection of Fund levy**

- (1) The Fund levy for a relevant period is payable to the Authority by each person to whom a third-party policy is issued during the relevant period and is to be collected, in conjunction with the payment of the premium for the policy, on behalf of the Authority by the insurer who issues the policy.
- (2) A licensed insurer is not to issue a third-party policy to a person unless the Fund levy payable by the person has been paid. Section 14 (Cancellation of third-party policies) of the *Motor Accidents Compensation Act 1999* applies in respect of the Fund levy payable in connection with the issue of a third-party policy in the same way as it applies in respect of the premium payable for the policy.
- (3) Fund levies collected by a licensed insurer are to be paid to the Authority at the times and in accordance with such arrangements as the Authority may notify to the insurer from time to time.
- (4) If a payment required to be made by a licensed insurer has not been paid as and when required under those arrangements:
  - (a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
  - (b) the amount of the required payment together with interest calculated at the rate of 15% per annum compounded quarterly (or, where another rate is prescribed by the regulations, that other rate) may be recovered from the insurer as a debt due to the Authority.

- (5) A certificate purporting to be signed by the Chief Executive Officer of the Authority as to the amount of a payment required to be made under this section by a licensed insurer specified in the certificate and the due date for payment is admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (6) The obligation of a licensed insurer to make a payment under this section in respect of any period during which the person was a licensed insurer does not cease merely because the person subsequently ceases to be a licensed insurer.

## **52 Records relating to collection of Fund levies**

- (1) A licensed insurer must keep such accounting and other records in relation to Fund levies collected by the insurer under this Part:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (2) The regulations may prescribe the manner in which collection of Fund levies is to be accounted for in any such records.
- (3) A licensed insurer must lodge with the Authority returns in relation to Fund levies collected by the insurer under this Part in such form, containing such particulars and accompanied by such documents:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (4) Returns must be lodged at such other times as may be prescribed by the regulations or, subject to the regulations, at such times as the Authority, by notice served on the insurer, directs.
- (5) The Authority may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.
- (6) A licensed insurer who contravenes any requirement imposed on the insurer by or under this section is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.

## **53 Audit of Fund levy records**

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records of a licensed insurer relating to Fund levies collected by the insurer under this Part.

- (2) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect relevant accounting and other records of the licensed insurer.
- (3) A licensed insurer must provide all reasonable assistance to enable the exercise of those functions.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.
- (5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (6) A licensed insurer or another person who contravenes any requirement imposed on the insurer or other person by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

**54 Recovery of lifetime care and support payments—uninsured and interstate vehicles and third party tortfeasors**

- (1) The Authority is entitled to recover from the appropriate person as a debt due to the Authority the present value of its treatment and care liabilities in respect of the motor accident injury of a participant in the Scheme if:
  - (a) the injury was caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle, and
  - (b) at the time of the motor accident there was no third-party policy in force in relation to the motor vehicle concerned.
- (2) If the participant suffered the motor accident injury as a result partly of the participant's contributory negligence, the amount that the Authority is entitled to recover under this section is to be reduced in proportion to the participant's share in the responsibility for the injury.
- (3) If the participant suffered the motor accident injury as a result partly of the fault of a person (other than the owner or driver of a motor vehicle), the Authority is entitled to recover from that person as a debt due to the Authority such proportion of the present value of its treatment and care liabilities in respect of the injury as corresponds to the person's share in the responsibility for the injury.
- (4) The present value of the Authority's treatment and care liabilities in respect of a motor accident injury is the sum of the following amounts:

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- (a) amounts already paid by the Authority under Part 2 in respect of the treatment and care needs associated with the motor accident injury,
- (b) the present value of the amounts that the Authority estimates will become payable by the Authority in the future under Part 2 in respect of the treatment and care needs associated with the motor accident injury.
- (5) The **appropriate person** from whom the Authority may recover is:
- (a) unless paragraph (b) applies—the person who at the time of the motor accident was the owner of the motor vehicle or, if at that time some other person was driving the motor vehicle, the owner and the driver jointly or either of them severally, or
- (b) 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 New South Wales or under a law of the Commonwealth—the insurer under that policy or the person liable under that scheme.
- (6) The Authority is entitled to recover under this section in respect of a motor accident injury of a participant in the Scheme only if the injury is an injury to which Chapter 3 of the *Motor Accidents Compensation Act 1999* applies (as provided by section 3B of that Act).
- (7) It is a sufficient defence in any proceedings to recover under this section against the owner (whether severally or jointly with the driver) of a motor vehicle if the owner establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without the owner's authority.
- (8) It is a sufficient defence in any proceedings to recover under this section against the driver of a motor vehicle (whether severally or jointly with the owner) if the driver establishes to the satisfaction of the court that, at the time of the occurrence, the driver was driving the motor vehicle with the authority of the owner (or had reasonable grounds for believing and did in fact believe that the driver had such authority) and that the driver had reasonable grounds for believing and did in fact believe that a third-party policy was in force in relation to the motor vehicle.
- (9) The Authority is not entitled to recover under this section from the owner or driver of a motor vehicle that, at the relevant time, was not required to be registered or was exempt from registration or, if required to be registered, was not required to be insured under the *Motor Accidents Compensation Act 1999*.
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- (10) The certificate of the Authority as to the present value of the Authority's treatment and care liabilities in respect of a motor accident injury is evidence of the matters certified for the purposes of any proceedings in connection with this section.

**55 Unearned premiums surplus resulting from introduction of the Scheme**

- (1) MAA Premiums Determination Guidelines under Part 2.3 of the *Motor Accidents Compensation Act 1999* are to ensure that any unearned premiums surplus (***LTCS premiums surplus***) of insurers that results from or in connection with the operation of this Act is taken into account for the purpose of subsidising the premiums payable for policies of insurance under that Act issued within 12 months after the surplus accrues.
- (2) The MAA Premiums Determination Guidelines may make provision for or with respect to identifying LTCS premiums surplus and determining how insurers are to apply that surplus.



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## Part 8 Miscellaneous

### 56 No contracting out of Act

This Act applies despite any contract to the contrary.

### 57 Act to bind Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 58 LTCS Guidelines

- (1) The Authority may issue guidelines (*LTCS Guidelines*) for or with respect to any matter that by this Act is required or permitted to be the subject of those guidelines.
- (2) The Authority may amend, revoke or replace LTCS Guidelines.
- (3) LTCS Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) LTCS Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the guidelines for that purpose, on the day so specified.
- (5) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a guideline under this section in the same way as those sections apply to a statutory rule.

### 59 Service of documents on Authority or Advisory Council

- (1) A document may be served on the Authority or the Advisory Council by leaving it at, or by sending it by post addressed to, the Authority's office or, if it has more than one office, any of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority or the Advisory Council in any other manner.

### 60 Exchange of information

The Authority is authorised to exchange information concerning the treatment and care needs of participants (including the expenses that are paid or payable by the Authority under the Scheme in relation to those needs) with licensed insurers within the meaning of the *Motor Accidents*

*Compensation Act 1999* and such other persons or bodies as may be approved by the Authority.

**61 Personal liability**

- (1) In this section:  
*body* means the Authority, the Board of Directors of the Authority or the Advisory Council.
- (2) A matter or thing done by a body, by a member of a body or by a person acting under the direction of a body does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a body or a person so acting personally to any action, liability, claim or demand.

**62 Protection of assessors**

- (1) A matter or thing done or omitted to be done by an assessor under Part 3 or 4 in the exercise of the assessor's functions does not, if the matter or thing was done or omitted in good faith, subject the assessor personally to any action, liability, claim or demand.
- (2) An assessor under Part 3 or 4 is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as an assessor.
- (3) Any liability that would attach to a person were it not for the operation of subsection (1) attaches instead to the Crown.

**63 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**64 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

**65 Consequential amendments of Motor Accidents Compensation Act 1999 No 41**

The *Motor Accidents Compensation Act 1999* is amended as set out in Schedule 3.

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**66 Auditor-General to report on Costing Study**

- (1) In this section:  
*Costing Study* means the study entitled *NSW CTP No-Fault Long Term Care Costing Study* prepared by PricewaterhouseCoopers Actuarial Pty Ltd (ACN 003 562 696) and issued on 17 June 2005, which forms the Appendix to the New South Wales Government publication entitled *Lifetime care and support for people with a catastrophic injury from a motor vehicle accident* (ISBN 1 876958 22 7) issued by the Motor Accidents Authority in June 2005.
- (2) The Auditor-General is to conduct a review of the Costing Study in order to determine whether the assumptions and costing projections set out in the Study are soundly based.
- (3) The Auditor-General must, as soon as practicable after the expiration of the period of 6 months commencing on the date of assent to this Act, prepare a report on the conclusions reached on that review and furnish a copy of the report to the Minister.
- (4) The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (6) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

**67 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Section 68      Motor Accidents (Lifetime Care and Support) Act 2006 No 16

Part 8            Miscellaneous

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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**68 Appointment of Parliamentary Committee**

- (1) As soon as practicable after the commencement of section 33 (Constitution of Authority) and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Act.
- (2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the exercise of the functions of the Authority and the Advisory Council under this Act.

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## Schedule 1 Provisions relating to Board of Directors of Authority

(Section 34)

### 1 Definitions

In this Schedule:

**Board** means the Board of Directors of the Authority.

**director** means any director of the Board.

**part-time director** means a director of the Board other than the Chief Executive Officer.

### 2 Deputies of part-time directors

- (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time director, and the Minister may revoke any such appointment.
- (2) In the absence of a part-time director, the director's deputy:
  - (a) may, if available, act in the place of the absent director, and
  - (b) while so acting, has all the functions of the director (other than any functions the director has as Chairperson or Deputy Chairperson of the Board) and is taken to be a director.
- (3) A person while acting in the place of a part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a director is taken to be an absence of the director.

### 3 Terms of office of part-time directors

Subject to this Schedule, a part-time director holds office for such period (not exceeding 3 years) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 4 Remuneration

A part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

**5 Vacancy in office of part-time director**

- (1) The office of a part-time director becomes vacant if the director:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may at any time remove a part-time director from office.

**6 Disclosure of pecuniary interests**

- (1) If:
- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

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- (2) A disclosure by a director at a meeting of the Board that the director:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) The Board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of such fee as may be determined by the Board from time to time.
- (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

#### **7 Filling of vacancy in office of part-time director**

If the office of a part-time director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a part-time director.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

**9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**10 Quorum**

The quorum for a meeting of the Board is 3 directors.

**11 Presiding member**

- (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.
- (2) In the absence of both the Chairperson and the Deputy Chairperson, another part-time director elected to chair the meeting by the directors present at the meeting is to preside at the meeting.
- (3) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which the directors (or some of them) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or



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- (b) a meeting held in accordance with subclause (2), the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.
  - (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
  - (5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**14 Committees**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not directors of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

**15 First meeting**

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

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## Schedule 2 Provisions relating to Advisory Council

(Section 45)

### 1 Definitions

In this Schedule:

**appointed member** means any member of the Advisory Council, other than the Chief Executive Officer of the Authority.

**Chairperson** means the Chairperson of the Advisory Council.

**Deputy Chairperson** means the Deputy Chairperson of the Advisory Council.

**member** means any member of the Advisory Council.

### 2 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member (other than the Chief Executive Officer of the Authority), and the Minister may revoke any such appointment.
- (2) In the absence of a member (other than the Chief Executive Officer of the Authority), the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member (other than any functions the member has as Chairperson or Deputy Chairperson) and is taken to be a member.
- (3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### 3 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 4 Allowances

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

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**5 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) is absent from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may at any time remove an appointed member from office.

**6 Disclosure of pecuniary interests**

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.

- (2) A disclosure by a member at a meeting of the Advisory Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Advisory Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Council otherwise determines:
- (a) be present during any deliberation of the Advisory Council with respect to the matter, or
  - (b) take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Advisory Council for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Council.
- (7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing that arises by reason only of the member having the qualification required for appointment.

#### **7 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

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**8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**9 General procedure**

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Council.

**10 Quorum**

The quorum for a meeting of the Advisory Council is 5 members.

**11 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Advisory Council.
- (2) In the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present is the decision of the Advisory Council.

**13 Transaction of business outside meetings or by telephone**

- (1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of the voting members is taken to be a decision of the Advisory Council.

- (2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),each member has the same voting rights (if any) as they have at an ordinary meeting of the Advisory Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**14 Attendance by non-members**

- (1) A person authorised by the Advisory Council or Chairperson may attend a meeting of the Advisory Council, and may participate in the meeting to the extent that the Advisory Council determines.
- (2) A person attending a meeting of the Advisory Council under this clause cannot cast a vote at the meeting.

**15 First meeting**

The Minister is to call the first meeting of the Advisory Council in such manner as the Minister thinks fit.

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## **Schedule 3      Consequential amendments of Motor Accidents Compensation Act 1999**

(Section 65)

**[1]    Section 27A**

Insert after section 27:

**27A    Effect of Lifetime Care and Support Scheme payments**

A determination of the cost of claims and settlement expenses for the purposes of this Part must take account of the effect on the cost of claims of section 130A (No damages for expenses covered by Lifetime Care and Support Scheme).

**[2]    Section 43A**

Insert after section 43:

**43A    Application of Chapter to treatment covered by Lifetime Care and Support Scheme**

This Chapter does not apply in respect of treatment of an injured person while the person is a participant in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* if expenses incurred in connection with that treatment are required to be paid under Part 2 of that Act.

**[3]    Section 61 Status of medical assessments**

Insert after section 61 (2) (b):

- (b1) whether any treatment to be provided to the injured person is reasonable and necessary in the circumstances, or

**[4]    Section 61 (7)**

Insert “, (b1)” after “(b)”.

**[5]    Section 61 (8) (b)**

Insert “, (b1)” after “(b)”.

**[6] Section 120 Claims register**

Insert after section 120 (3):

- (3A) The Authority and the Lifetime Care and Support Authority are authorised to exchange information concerning claims under this Act, payments made to or on behalf of participants in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* and the treatment and care needs of those participants.

**[7] Section 120 (5) (e)**

Insert at the end of section 120 (5) (d):

, and

- (e) details of which the Authority is informed under this Act of payments made to or on behalf of participants in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* and of the treatment and care needs of those participants.

**[8] Section 130A**

Insert after section 130:

**130A No damages for expenses covered by Lifetime Care and Support Scheme**

No damages may be awarded to a person who is a participant in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* for economic loss in respect of the treatment and care needs (within the meaning of that Act) of the participant that relate to the motor accident injury in respect of which the person is a participant in that Scheme and that are provided for or are to be provided for while the person is a participant in that Scheme.

[Second reading speech made in—

Legislative Assembly on 9 March 2006

Legislative Council on 4 April 2006]

BY AUTHORITY