

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

[2006-16]



New South Wales

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Notes—

- **See also**
[Motor Accidents \(Lifetime Care and Support\) Amendment Bill 2014](#)

Authorisation

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New South Wales

Contents

| | |
|---|----|
| Long title | 6 |
| Part 1 Preliminary | 6 |
| 1 Name of Act | 6 |
| 2 Commencement | 6 |
| 3 Definitions | 6 |
| 4 Application of Act | 7 |
| 5 Interpretation—Motor Accidents Compensation Act 1999 | 8 |
| 5A Treatment and care needs | 8 |
| Part 2 Participation in Scheme | 9 |
| 6 (Repealed) | 9 |
| 7 Eligibility for participation in the Scheme | 9 |
| 7A Persons injured before commencement of Scheme may “buy in” | 9 |
| 8 Application for participation in the Scheme | 10 |
| 9 Acceptance as a participant | 10 |
| 10 (Repealed) | 11 |
| 11 Effect of Scheme on motor accident compensation claims and limitation periods | 11 |
| Part 2A Payments under Scheme | 11 |
| 11A Assessed treatment and care needs of participants to be paid for by Authority | 12 |
| 11B Payment not required in certain circumstances | 12 |
| 11C Approved providers | 13 |

| | |
|---|----|
| Part 3 Dispute resolution | 13 |
| Division 1 Disputes about eligibility | 13 |
| 12 Definitions | 13 |
| 13 Appointment of assessors | 13 |
| 14 Referral of disputes to Assessment Panel | 14 |
| 15 Review of Assessment Panel's determination..... | 14 |
| 16 Determinations to be binding | 15 |
| 17 Costs of assessment..... | 15 |
| 18 No legal costs payable by Authority | 15 |
| 19 Authority monitoring and oversight..... | 15 |
| Division 2 Disputes about motor accident injury | 15 |
| 20 Determination of disputes | 15 |
| 21 Legal costs..... | 16 |
| Part 4 Treatment and care needs assessment | 17 |
| 22 Definitions | 17 |
| 23 Assessment of treatment and care needs of participants | 17 |
| 24 Dispute about Authority's assessment—determination by assessor | 17 |
| 25 Review of assessor's determination | 18 |
| 26 Effect of assessment | 18 |
| 27 Co-operation of participant..... | 18 |
| 28 LTCS Guidelines | 19 |
| 29 No legal costs payable for assessment or review | 19 |
| Part 5 Payments to hospitals, doctors and others | 19 |
| 30 Bulk billing arrangements for hospital, ambulance and other expenses | 19 |
| 31 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement | 20 |
| 32 Maximum fees payable for medical treatment and other treatment or services not provided at hospitals or for treatment at private hospitals | 20 |
| Part 6 Administration | 21 |

| | |
|---|----|
| Division 1 Constitution of Authority | 21 |
| 33 Constitution of Authority | 21 |
| 34–36 (Repealed) | 21 |
| 37 Financial year | 21 |
| Division 2 Management of Authority | 22 |
| 38 The Minister | 22 |
| 39, 40 (Repealed) | 22 |
| 41 Delegation of functions | 22 |
| 42 Seal of Authority | 23 |
| Division 3 Functions of Authority | 23 |
| 43 Functions of Authority | 23 |
| Division 4 (Repealed) | 24 |
| Part 7 Funding of the Scheme | 24 |
| 47 Definitions | 24 |
| 48 Lifetime Care and Support Authority Fund | 24 |
| 49 Determination by Authority of amount to be contributed to Fund | 25 |
| 50 Contributions to Fund by third-party policy holders | 26 |
| 51 Payment and collection of Fund levy | 26 |
| 51A Refund of Fund levy | 27 |
| 52 Records relating to collection of Fund levies | 27 |
| 53 Audit of Fund levy records | 28 |
| 54 Recovery of lifetime care and support payments—uninsured and interstate vehicles and third party tortfeasors | 28 |
| 55 Unearned premiums surplus resulting from introduction of the Scheme | 30 |
| Part 8 Miscellaneous | 30 |
| 56 No contracting out of Act | 30 |
| 57 Act to bind Crown | 30 |
| 58 LTCS Guidelines | 31 |
| 59 Service of documents on Authority or Advisory Council | 31 |

| | |
|--|-----------|
| 60 Exchange of information..... | 31 |
| 61 (Repealed) | 31 |
| 62 Protection of assessors | 31 |
| 63 Regulations..... | 32 |
| 64 Nature of proceedings for offences..... | 32 |
| 65 (Repealed) | 32 |
| 66 Auditor-General to report on Costing Study..... | 32 |
| 67 Review of Act..... | 33 |
| 68 (Repealed) | 33 |
| Schedules 1, 2 (Repealed) | 33 |
| Schedule 3 Savings, transitional and other provisions | 33 |

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



New South Wales

An Act to provide a scheme for the lifetime care and support of persons injured in motor accidents; and for other purposes.

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:

approved provider—see section 11C (2).

assessed treatment and care needs—see section 11A (2).

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.

Board means the Safety, Return to Work and Support Board established under the *Safety, Return to Work and Support Board Act 2012*.

Chief Executive Officer means the Chief Executive Officer of Safety, Return to Work and Support holding office as such under Chapter 1A of the *Public Sector Employment*

and Management Act 2002.

excluded treatment and care needs—see section 5A (2).

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).

relevant Scheme commencement date, with respect to a person who has suffered motor accident injuries, means:

- (a) 1 October 2006 if the person was under 16 years of age at the time of the motor accident that caused the injuries, or
- (b) 1 October 2007 in any other case.

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 5A.

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 suffered by a person as a result of a motor accident occurring on or after the relevant Scheme commencement date.

Note—

Section 7A provides for a limited exception to this provision.

- (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*.

5A Treatment and care needs

- (1) For the purposes of this Act, the ***treatment and care needs*** of a participant in the Scheme 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) aids and appliances,
 - (h) prostheses,
 - (i) education and vocational training,
 - (j) home and transport modification,
 - (k) workplace and educational facility modifications,

(l) such other kinds of treatment, care, support or services as may be prescribed by the regulations under this paragraph.

(2) Despite subsection (1), the treatment and care needs of a participant do not include any treatment, care, support or services of a kind declared by the regulations to be **excluded treatment and care needs**.

Part 2 Participation in Scheme

6 (Repealed)

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.

7A Persons injured before commencement of Scheme may "buy in"

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring before the relevant Scheme commencement date (a **pre-commencement injury**) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme in respect of a pre-commencement injury only if the person would have been eligible to participate in the Scheme:
 - (a) had the motor accident occurred immediately after the relevant Scheme commencement date, and

(b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.

- (4) An application for a person to become a participant in the Scheme in respect of a pre-commencement injury cannot be made by an insurer.
- (5) The LTCS Guidelines may make provision for or with respect to how a person's contribution for participation in the Scheme in respect of a pre-commencement injury is to be determined.

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 3 years of age or over who is accepted as an interim participant remains an interim participant for a period of 2 years only.
- (5A) A person under 3 years of age who is accepted as an interim participant remains an interim participant until the person is 5 years of age.
- (5B) If a person who is an interim participant is accepted as a lifetime participant, the person ceases to be an interim participant on that acceptance 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 (Repealed)

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 2A Payments under Scheme

11A Assessed treatment and care needs of participants to be paid for by Authority

- (1) The Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person while the person is a participant in the Scheme.
- (2) The **assessed treatment and care needs** of a person who is a participant in the Scheme are those treatment and care needs that are assessed by the Authority, in its treatment and care needs assessment, to be treatment and care needs that:
 - (a) are reasonable and necessary in the circumstances, and
 - (b) relate to the motor accident injury in respect of which the person is a participant.
- (3) No expenses are payable in respect of:
 - (a) excluded treatment and care needs, and
 - (b) treatment and care needs that are not assessed treatment and care needs.
- (4) 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.
- (5) 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 and relate to the motor accident injury in respect of which the person is a participant.

11B Payment not required in certain circumstances

- (1) The Authority is not required to make a payment in relation to the following:
 - (a) any treatment, care, support or service provided to a participant in the Scheme on a gratuitous basis (that is, anything provided to a participant for which the participant has not paid and is not liable to pay),
 - (b) any treatment, care, support or service that is required to be provided by an approved provider but is provided by a person who is not, at the time of the provision, an approved provider.
- (2) However, the Authority may elect to make a payment in relation to any treatment, care, support or service referred to in subsection (1) if the Authority is of the opinion that special circumstances exist that justify such payment.
- (3) The LTCS Guidelines may make provision for or with respect to determining whether special circumstances exist that justify payment in relation to any treatment, care,

support or service referred to in subsection (1).

- (4) To avoid doubt, this section applies even if the treatment, care, support or services concerned are provided in connection with the provision of the assessed treatment and care needs of a participant in the Scheme.
- (5) This section has effect despite section 11A.

11C Approved providers

- (1) The following treatment, care, support or services (provided in connection with the provision of assessed treatment and care needs of a participant in the Scheme) are to be provided only by an approved provider of the treatment, care, support or service:
 - (a) attendant care services,
 - (b) any other treatment, care, support or services (other than the services of a medical practitioner) identified in the LTCS Guidelines as treatment, care, support or services that are to be provided by an approved provider.
- (2) An **approved provider** of a service is a person, or a person of a class, approved by the Authority (or by any other person specified in the LTCS Guidelines), in accordance with the LTCS Guidelines, to provide the treatment, care, support or service under the Scheme.
- (3) The LTCS Guidelines may also make provision for or with respect to the standards of competency of approved providers.

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.
- (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.

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.

34-36 (Repealed)

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 or the Chief Executive Officer, give directions to the Board or Chief Executive Officer with respect to the exercise of their respective functions under this or any other Act to the extent they relate to the Authority.
- (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 and the Chief Executive Officer 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 and the Chief Executive Officer are not, in the exercise of their respective functions under this or any other Act to the extent they relate to the Authority, subject to the control and direction of the Minister.

Note—

See also the [Safety, Return to Work and Support Board Act 2012](#) which includes other provisions relating to the management of the Authority.

39, 40 (Repealed)

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) a member of staff of the Authority, or
 - (b) a person of a class prescribed by the regulations or of a class approved by the Board.

42 Seal of Authority

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

- (a) in the presence of the Chief Executive Officer or a member of staff of the Authority who is authorised for the purpose by the Chief Executive Officer, and
- (b) with an attestation by the signature of the Chief Executive Officer or that member of staff 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.
- (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), (f) (Repealed)
- (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) (Repealed)
- (5) The Authority cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions. Under section 4K of that Act, a reference in this Act to a member of staff of the Authority is a reference to staff so employed or to persons of whose services the Authority makes use.

Division 4

44-46 (Repealed)

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,
 - (c1) money paid into the Fund under section 7 of the *Safety, Return to Work and Support Board Act 2012*,
 - (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 2A (Payments under Scheme),
 - (b) the remuneration, allowances, office accommodation and other associated costs of the Chief Executive Officer, the Board and members of staff of the Authority, being an amount determined by the Chief Executive Officer on a proportionate basis in respect of the various relevant authorities within the meaning of the *Safety, Return to Work and Support Board Act 2012*,

(c) (Repealed)

(d) all payments required to meet expenditure incurred in relation to the functions of the Authority, 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.

(3A) Money in the Fund is also authorised to be made available for investment as provided by section 7 of the *Safety, Return to Work and Support Board Act 2012*.

(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 2A (Payments under Scheme) 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 2A) 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 2A.

(2) The amount required to fully fund a liability of the Authority under Part 2A 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 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.

51A Refund of Fund levy

- (1) The Fund levy is to be refunded, on a pro rata basis, to any person to whom a third-party policy was issued if the policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates (except where the registration is cancelled under Division 3 of Part 4 of the *Fines Act 1996*).
- (2) The Authority may give directions or issue guidelines to licensed insurers with respect to the administrative arrangements of licensed insurers for payment of refunds under this section.

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:
- (a) amounts already paid by the Authority under Part 2A 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 2A 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*.
- (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.
- (11) This section does not permit the Authority to recover the present value of its treatment and care liabilities in respect of injuries to a participant in the Scheme if the participant paid an amount to the Authority under section 7A (1) in respect of those injuries.

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.

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.

Editorial note—

For guidelines issued pursuant to this section see Gazettes No 118 of 22.9.2006, p 8155; No 132 of 28.9.2007, p 7511; No 119 of 8.10.2010, p 5105 and No 54 of 25.5.2012, pp 2245, 2248, 2251, 2253, 2254.

59 Service of documents on Authority or Advisory Council

- (1) A document may be served on the Authority 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 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 (Repealed)

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 the Local Court.

65 (Repealed)

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.
- (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 (Repealed)

Schedules 1, 2 (Repealed)

Schedule 3 Savings, transitional and other provisions

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Motor Accidents (Lifetime Care and Support) Amendment Act 2009

Motor Accidents Compensation Amendment Act 2010

Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of [Motor Accidents \(Lifetime Care and Support\) Amendment Act 2009](#)

2 Interim participation

Section 9 (5A) and (5B), as inserted by the [Motor Accidents \(Lifetime Care and Support\) Amendment Act 2009](#), extend to a person who:

- (a) on the commencement of those subsections is an interim participant, and
- (b) was younger than 3 years of age at the time the person became an interim participant.

Part 3 Provisions consequent on enactment of [Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012](#)

3 General operation of amendments

- (1) An amendment made to this Act by the [Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012](#) (**the amending Act**) applies in relation to any claim made on or after the relevant date, regardless of whether the claim is made in relation to past or future treatment and care needs.
- (2) To avoid doubt, subclause (1) applies even if the motor accident concerned occurred before the relevant date or the claim relates to a person who was a participant in the Scheme before the relevant date.
- (3) In this clause:

claim means a claim within the meaning of the [Motor Accidents Compensation Act 1999](#) or a claim or request for payment in relation to treatment and care needs made to a licensed insurer or the Authority under this Act.

the relevant date means the date of introduction into Parliament of the Bill for the amending Act.

4 Approved providers

An approval given by or on behalf of the Authority under section 10 that was in force immediately before the omission of that section, and the insertion of section 11C, by the [Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012](#) is taken, on that omission and insertion, to be an approval under section 11C.