

Five Year Review of the ACT Lifetime Care and Support Scheme

Section 100 of the Lifetime Care and Support
(Catastrophic Injuries) Act 2014

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TABLE OF CONTENTS

Scope of Review

Part 1 Introduction – Background and Overview

Part 2 What the Scheme provides and how support is delivered

Part 3 Disputes and complaints

Part 4 Qualitative assessment of the Scheme’s objectives

Part 5 Quantitative assessment of the Scheme’s objectives

Part 6 Risks to the Financial viability of the Scheme

Part 7 Conclusions of the Review

Appendix 1 – ACT LTCS Qualitative Review 2019 by MODD Research + Evaluation

Appendix 2 – Section 100 Review of the LTCS Act by Finity Consulting

Scope of Review

Legislative Requirements

The purpose of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014 (LTCS Act)* is set out in section 7 of the Act as follows:

7 Purpose of Act

The purpose of this Act is to –

- (a) Provide an indemnity insurance scheme to respond to the reasonable and necessary treatment and care needs of people who have suffered a catastrophic injury –*
 - (i) in a motor accident; or*
 - (ii) arising out of, or in the course of, their employment; and*
- (b) ensure that the scheme is fully funded.*

Section 100 of the LTCS Act specifies:

100 Review of Act

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

Terms of Reference

Pursuant to section 100 of the LTCS Act the terms of reference for the Review are to:

Review the operation of the LTCS Act over the 5 year period from the commencement of the LTCS Scheme on 1 July 2014 to 30 June 2019 for the motor vehicle accident injuries stream, and over the 3 year period from the extension of the LTCS Scheme to cover work injuries from 1 July 2016 to 30 June 2019; and report on the extent to which the quantitative and qualitative LTCS Scheme objectives have been achieved.

- *Objective 7 (a) 'To provide an indemnity insurance scheme to respond to the reasonable and necessary treatment and care needs of people who have suffered a catastrophic injury – (i) in a motor accident; or (ii) arising out of, or in the course of, their employment'.*

(1) In terms of the quantitative element of the objective:

- *provide an analysis and statistical profile of scheme participants, including by participant injury type;*
- *compare the ACT participant profile including by injury type and severity, to the profile of participants in other schemes;*
- *provide an analysis of the treatment and care payments made by the scheme by service type; and*

- *provide the estimated average cost of claims by participant injury type, disaggregated by participant benefit payment category.*

(2) *In terms of the qualitative element of the objective:*

- *Review whether, and to what extent, LTCS Scheme treatment and care services for participants in (a) the motor vehicle injury category and (b) the work injury category have been delivered efficiently and effectively;*
- *Review participants' perceptions of the impact of the transfer of administration and delivery of the Scheme benefits from the ACT government to the NSW Lifetime Care and Support Authority (NSW LTCSA) in September 2015;*
- *Review participants' perceptions of the improvements (including system design and administrative changes) made to the Scheme; and*
- *Review participants' perceptions as to whether changes are necessary to improve the: (a) way services / benefits under the Scheme are assessed and delivered to them; and (b) effectiveness of the services provided to them through the scheme.*
- *Objective 7(b) "To ensure that the scheme is fully funded".*

In terms of the quantitative elements of the objective:

- *Review the drivers of the LTCS levy, including the estimated participant numbers and the average estimated cost of claims; and*
- *Review changes, and drivers for the changes, in the LTCS motor vehicle accident levy and work accident levy and benchmark against other similar schemes.*

Part 1 – Background and Overview

Commitment to the motor accident injury and work injury NIIS streams

The ACT Government implemented the LTCS Act as part of its commitment to the implementation of a National Injury Insurance Scheme (NIIS) for motor accident and work catastrophic injuries – part of the national disability reforms recommended by the Productivity Commission (PC).¹

Following the Heads of Agreement on the National Disability Insurance Scheme (NDIS) signed by the Commonwealth and the ACT on 19 April 2013, the ACT:

- established the NIIS for motor accidents through the LTCS Act on 1 July 2014; and
- implemented on 1 July 2016 the NIIS for work injuries through an extension of the LTCS Act giving effect to a full NIIS scheme for workers.

The ACT LTCS Scheme is based on the NIIS nationally agreed minimum benchmarks determined by the Council of Australian Governments (COAG).

¹ In 2011 the Productivity Commission recommended the establishment of a no-fault National Injury Insurance Scheme (NIIS) for people catastrophically injured in an accident be implemented and funded by State Governments. The NIIS would complement the NDIS and would reduce the burden on the injured to have to prove their incapacity within the adversarial at-fault systems (PC Inquiry Report, 2011:790).

Overview of the Lifetime Care and Support (LTCS) Scheme

The LTCS Scheme provides reasonable and necessary on-going treatment and care to catastrophically injured persons as a result of a motor accident or private sector work accident in the ACT. Injuries covered by the Scheme include spinal cord injuries, traumatic brain injury, amputations, severe burns and permanent blindness (see <http://apps.treasury.act.gov.au/lcass> for more information).

The LTCS Scheme covers pedestrians; cyclists; and people travelling on, or in motor bikes and motor vehicles as long as there is at least one registrable vehicle involved in a motor accident that occurs on or after 1 July 2014, regardless of who is at-fault for the accident. As a result, it extends motor vehicle accident coverage beyond what is currently available under Compulsory Third Party (CTP) Insurance that does not cover someone at-fault, involved in a single vehicle accident or a blameless accident. The new Motor Accident Injuries Scheme that commences on 1 February 2020 will provide coverage for everyone injured in a motor vehicle accident, regardless of fault (except for those who break the law). The LTCS Act was extended to apply to cover private sector catastrophic work injuries² that occur from 1 July 2016.

The LTCS Scheme is underpinned by specialised early intervention and lifelong access to medical and rehabilitation care. This reduces the stress on those injured and their families associated with litigating claims to meet ongoing treatment and care costs, and whether a lump sum payment will meet their needs for the rest of their life. The Scheme creates an enhanced pathway for severely injured people to increase their chances for recovery as much as possible to their pre-accident lives and full community living.

LTCS Scheme arrangements

Under section 10 of the LTCS Act, the Minister must appoint a public servant as the LTCS Commissioner of the ACT.³ The Commissioner's functions are *inter alia* to:

- monitor the operation of the Scheme and accordingly, conduct research and collect statistics;
- provide advice to the Minister on the administration, efficiency and effectiveness of the Scheme; and
- issue and monitor the Scheme's guidelines.

The appointment of a LTCS Commissioner ensures independence in relation to certain functions such as determining the LTCS Scheme Levy and decisions made under the Scheme. The Commissioner is supported by staff from the Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

Funding of the LTCS Scheme

The LTCS Act establishes the LTCS Fund as a separate reporting entity under the *Financial Management Act 1996*. In order to fully fund the provision of care and support to catastrophically injured participants, the LTCS Scheme is funded by two separate levies:

- for motor accident injuries a levy is applied to all CTP policies issued under the *Road Transport (Third-Party Insurance) Act 2008*; and
- private sector work injuries are funded through a separate levy collected from those workers' compensation insurers and self-insurers writing workers compensation policies for the purposes of the *Workers Compensation Act 1951 (WC Act)*.

² ACT public sector workers are covered by Comcare under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

³ The position of the Executive Branch Manager, Financial Framework Management and Insurance Branch, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) was appointed by the Minister as the LTCS Commissioner for a period of three years commencing 16 September 2019.

The amount of the levy is determined annually by the LTCS Commissioner based on independent actuarial advice on the total fund contribution amount required annually to cover each injury stream.⁴ The required total fund contribution must fully fund the estimated present and likely future liabilities of new catastrophically injured people accepted into the Scheme for each injury stream for that period. This ensures there is no cross-subsidisation between the work injury and motor accident injury streams when setting the levies for the Scheme.

Partnership with NSW Lifetime Care and Support Authority

The signing of the Intergovernmental Agreement (**IGA**) by the ACT and NSW Governments in February 2015 formalised an agreed framework⁵ for the delivery of services by NSW Lifetime Care and Support Authority (**NSW LTCSA**) to participants of the ACT LTCS Scheme.

The ACT entered into these arrangements with the NSW Government as:

- The ACT Scheme mirrors the NSW LTCS Scheme;
- the NSW LTCSA is recognised as a leader for its specialisation in early-intervention management and delivery of care and support services to people with serious and complex injuries;
- having NSW LTCSA administer LTCS scheme benefits ensures consistency in the provision of care and support benefits to scheme participants across the ACT-NSW region; and
- the ACT would face diseconomies of scale in setting up its own LTCS Scheme delivery arrangements, with relatively few participants.

To give effect to the partnership arrangements, the LTCS Commissioner has delegated the necessary powers to allow the NSW LTCSA to deliver LTCS services to ACT participants, including: participant treatment and care assessments; payment of treatment and care expenses; dispute handling; and communications and exchange of information with participants under LTCS scheme.⁶

From 1 September 2015 the NSW LTCSA officially commenced providing full co-ordinated LTCS treatment, care and rehabilitation services to ACT participants catastrophically injured in a motor accident. From 1 July 2016, this was extended to cover catastrophic private sector work injuries.

Part 2 – What the LTCS Scheme provides and how support is delivered

Eligibility criteria

Part 1, section 6 of the LTCS Act provides the eligibility criteria for participation in the Scheme. An application in relation to a motor accident injury must demonstrate that the injury occurred on the public road in the ACT after 30 June 2014; at least one motor vehicle had CTP cover; and the motor accident injury meets the severe injury criteria under section 15 of the LTCS Act and Part 1 of the Lifetime Care and Support Guidelines (**LTCS Guidelines**).

An application in relation to a work injury must demonstrate that the injured person is a worker and the injury “arose out of, or in the course of” the worker’s employment under the WC Act; that the

⁴ Section 84 of the LTCS Act provides that the LTCS Commissioner must determine separate levy amounts for the two injury streams, that must be contributed to the LTCS Fund in any given contribution period.

⁵ The IGA is underpinned by a) a legally binding Care and Support Agreement that sets out the terms by which the NSW LTCSA administers the LTCS scheme and the terms of remuneration of that service; and b) an Operations Manual that details the practice and procedures by which the NSW LTCSA will deliver LTCS scheme services to ACT participants.

⁶ *Lifetime Care and Support (Catastrophic Injuries) Act 2014* Delegation 2015 (No.1) – Notifiable Instrument NI2015-518 dated 31/8/2015.

injury occurred after 30 June 2016; the ACT is the State of connection in relation to the worker's employment; and that the work injury meets the severe injury criteria requirements noted above.

Part 4, section 15 of the LTCS Act and Part 1 of the LTCS Guidelines detail the necessary criteria and injury categories under which a person can apply. The injuries covered by the Scheme are spinal cord injuries, traumatic brain injury, amputations, severe burns and permanent blindness. These categories each have their own medically established methods for determining the level of loss of function or the degree of impairment that an applicant has sustained through a motor accident or work injury. The LTCS Guidelines also specify the required evidence that needs to be recorded.

Participation in the Scheme means that a person's treatment and care needs will be met by the Scheme and are therefore not recoverable as damages under either the Compulsory Third Party Insurance Scheme or Private Sector Workers Insurance Scheme. An injured person is not eligible to participate in the LTCS Scheme if the person has been awarded common law damages for their treatment and care needs in relation to the injury.

Applying to the Scheme

Participation in the Scheme is either as an interim participant or a lifetime participant. An application to join the LTCS Scheme can be made by or on behalf of the injured person, or by an insurer for a motor accident claim or work injury claim. This is intended to facilitate the best early intervention outcomes for the catastrophically injured person.

All participants commence in the Scheme as 'interim participants' for up to two years. During this time, the Scheme pays for any reasonable and necessary treatment, rehabilitation and care related to the motor accident or work injury.

After two years, an interim participant may be eligible to become a 'lifetime participant'. Children cannot apply for lifetime eligibility until they are at least five years old. Decisions about whether an interim participant is accepted as a lifetime participant are made before the end of the interim participation period. If it is assessed that the injured person is likely to meet the eligibility criteria beyond two years, the person is accepted into the scheme for life.

Necessary and Reasonable Treatment, Care and Support

Part 5, section 23 of the LTCS Act provides for the assessment and payment of the participant's reasonable and necessary treatment, rehabilitation and care services related to the injury.

Treatment and care needs are defined in section 9 of the LTCS Act to include:

- medical treatment (including pharmaceutical treatment);
- dental treatment;
- rehabilitation;
- ambulance transportation;
- respite care;
- attendant care services;
- aids and appliances;
- prostheses;
- education and vocational training;
- home and transport modification; and
- workplace and educational facility modifications.

Part 6 of the LTCS Guidelines provide that the LTCS Commissioner will only fund treatment and care services that are the result of a motor accident or work injury for which the injured person had been

accepted as a participant in the Scheme and if the services requested are within the scope of the Scheme.

How benefits are delivered to participants

Person Centred Methodologies

In delivering benefits to participants, the NSW LTCSA employs a 'person-centred' service delivery model, which underpins LTCSA staff interactions with participants and their families. The approach focusses on involving participants and family members in the rehabilitation process – including decisions around services to be delivered and the setting of recovery and rehabilitation goals.

The person-centred service delivery model is focussed on getting people back to their pre-injury roles as much as possible. This is achieved through facilitating choice and greater participant control to ensure that they are not just consulted but are directing the treatment and care they need to support their goals.

Through the support of coordinators (i.e. allied health professionals employed by the NSW LTCSA) and a professional case manager (private providers funded by the LTCS Scheme to assist the participant and their families) assigned to each participant on entry to the scheme, service planning is integrated into the treating teams in the hospital phase. The care management team (comprising the case manager and the LTCSA coordinator) is directly involved with participants from the earliest possible stage of the participant's rehabilitation journey and are able to understand and integrate all aspects of the injured person's life into their rehabilitation case management.

Service initiatives and quality assurance

The LTCSA's care and service provision model is supported by a suite of policies and initiatives committed to effective communication, quality assurance and investments in models that optimise rehabilitation outcomes for scheme participants. Approaches to delivering treatment and care benefits to ACT participants, include:

- (i) MyPlan – a collaborative planning approach to assist and plan for services and to support participants' needs at different stages of their injury journey from initial recovery to rehabilitation and re-establishing pre-injury lifestyle health and wellbeing (as much as possible).⁷
- (ii) Communication Protocol – promotes communication excellence with participants and their care coordinators and service providers in the LTCS scheme by setting minimum standards for expected levels of communication. The Protocol is reviewed and revised to include additional guidance in response to participant feedback.
- (iii) Safeguarding Framework – assists staff to balance participant safety and protections, with the rights of participants to make choices and take risks.
- (iv) Decision Making Framework – enables NSW LTCSA staff to fast track low risk decisions hence reducing the time taken to process requests. This framework is in response to participant feedback of delays in the processing of some service requests.
- (v) In-Voc programs – offers early intervention programs for people suffering spinal cord injury and brain injuries. The program is designed to assist them to return to work or to participate in unpaid work trial programs.
- (vi) Sargood at Collaroy⁸ – a world-first rehabilitation centre equipped with the latest adaptive exercise technology and staffed by qualified on-site exercise physiologists. The centre is purpose built for people with spinal cord injuries and their families to receive respite and

⁷ *MyPlan* introduced in January 2015, replaced traditional rehabilitation planning with person-centred planning and enabled ACT participants to exercise greater control over service planning.

⁸ More information on *Sargood* is available on their website <https://sargoodoncollaroy.com/about-sargood-on-collaroy/>

to gain skills to live a full life. ACT participants have received treatment and care at Sargood.

- (vii) Self-management plans – support participants to have more control over how their support services are organised and delivered. Under a self-management agreement, participants who want to manage their support needs are paid their approved funding each month to enable them to arrange, manage and pay for their own supports.

NSW LTCSA has established panels of approved attendant care providers and suppliers of equipment and home modifications to ensure quality services and value for money is provided.

NSW LTCSA has frameworks and criteria to screen allied health service providers for service quality, ensuring that providers meet minimum criteria such as qualification levels. Funds are also provided to train providers to ensure they are equipped to deliver services effectively to people with complex and severe injuries.

The LTCSA quality assurance framework ensures processes and outcomes are measured and continually improved, for example, through continuously developing, implementing and enhancing the communication protocol for coordinator contact with participants.

Part 3 – Disputes and complaints

Disputes

Part 7 of the LTCS Act includes provisions for dispute resolution in relation to disputes concerning scheme eligibility and treatment and care when an applicant or participant disagrees with a decision taken under the LTCS Act and informal dispute processes have been unsuccessful.

A dispute can be lodged by an individual or an insurer in relation to whether an injury meets the legal definition of a motor accident injury under the LTCS Act; an injured person's medical eligibility to enter the scheme; or in relation to the participant's treatment and care needs assessment. Each of these disputes has a different resolution process.

The LTCS Commissioner performs a role in the resolution of disputes about whether an accident is a motor accident injury or a work injury (under Part 7, Division 7.2). Where such decisions made by the LTCS Commissioner are disputed, they are referred to a Principal Claims Assessor (**PCA**) who establishes a panel of Claims assessors to hear the dispute.

The NSW LTCSA has a role regarding disputes about:

- (i) an applicant's medical eligibility to enter the Scheme (under Part 7, Division 7.1) – disputes of this nature are initially reviewed by an independent assessment panel organised by the NSW LTCSA. If the outcome after review is still disputed, the applicant, the insurer or the LTCSA can apply, under certain circumstances, for a review by a new panel – the eligibility review panel; and
- (ii) treatment and care needs (under Part 7, Division 7.3) – disputes of this kind are initially reviewed by a dispute assessor appointed by the LTCSA. If the decision of the assessor is disputed, an application for review can be made.

The following outlines the statistics regarding disputes and complaints handling for the LTCS Scheme.

Motor accident injury and work injury disputes (Part 7, Division 7.2)

Motor accident injury or work injury disputes are resolved through referral to a panel of three legal representatives that form the Claims Assessment Panel. These disputes rarely occur, however, one dispute of this type was lodged in 2016 -17 in response to the LTCS Commissioner's decision to

reject an application as it did not meet the criteria of a motor vehicle accident for the purposes of the LTCS Act. This dispute centred around an emerging form of transport and whether it met the required legal definition.

The dispute was resolved in July 2018, overturning the Commissioner’s decision and resulting in the applicant being admitted as an LTCS Scheme participant. The dispute took 10.5 months to resolve.

In line with the Panel’s determination of the dispute, the LTCS Commissioner paid the applicant’s reasonable legal costs incurred for legal services provided in relation to dispute.

Eligibility disputes (Part 7, Division 7.1)

Eligibility disputes occur when there is disagreement with a decision by the LTCS Commissioner in relation to whether a person meets the medical eligibility criteria to become a scheme participant. No dispute of this type has been received since the Scheme commenced in 2014.

Treatment and care disputes (Part 7, Division 7.3)

Treatment and care disputes occur when a scheme participant disagrees with a decision not to fund a requested treatment or care support. During the five years that the Scheme has operated, only one dispute was lodged in relation to a treatment and care decision. The dispute was in relation to garden maintenance within a care program and the outcome was reversed by the dispute assessor.

NSW LTCSA advised the dispute took 82 days to resolve and was within the expected timeframes.

Complaints

Since September 2015 the NSW LTCSA has received and handled complaints from ACT scheme participants, family members and legal representatives.

The NSW LTCSA uses a three-level model⁹ when managing ACT participant complaints with:

- level 1 complaints being resolved by a frontline staff member (the majority of complaints);
- level 2 complaints are escalated to an internal review process, and are investigated and resolved by a complaints team that is independent of the frontline team who support the participant; and
- level 3 complaints that require further review, being forwarded to an external agency, such as the Ombudsman.

The majority of complaints have come from scheme participants and their families (see Table 3.1). Since the Scheme commenced in 2014, 13 complaints (comprising 11 level 1 complaints; and two level 2 complaints) were lodged. On average, all level 1 complaints were resolved within a day, while level 2 complaints took 19 days to resolve.

Table 3.1 – Number of Level 1 and level 2 Complaints by type

Level 1	COMPLAINANT TYPES		Level 2	
Participant	3	Participant		Nil
Service Provider	3	Service Provider		Nil
Family/friend	3	Family/friend		2
Insurer/legal rep	2	Insurer/legal rep		Nil
Member of Parliament	Nil	Member of Parliament		Nil

⁹ The Complaints handling Model and processes are detailed in LTCSA’s *Customer Feedback Procedure*.

NSW LTCSA has advised that all frontline and escalated complaints have been resolved within key performance indicator (KPI) timeframes.¹⁰

Table 3.2 provides more detail on the types of complaints made.

Table 3.2 – Number of Level 1 and level 2 Complaints by type

Nature of Complaint	COMPLAINTS			
	Level 1 - Frontline		Level 2 - Escalated	
	No. of complaints	Avg time to resolve *	No. of complaints	Avg time to resolve *
Level of service – NSW LTCSA	7		Nil	
Level of service – provider	1		2	
Funding decision	3		Nil	
Policy/Procedures	Nil		Nil	
Guidelines/legislation	Nil		Nil	
Privacy	Nil		Nil	
TOTAL	11	1 day	2	19 days

*Business days.

Part 4 – Qualitative Assessment of the LTCS Act objectives

The LTCS Commissioner has statutory functions to monitor the operation of the LTCS Scheme including the efficiency and effectiveness of the delivery of Scheme benefits. To that end, the LTCS Commissioner conducts a client satisfaction survey of scheme participants annually as part of the strategy to monitor participant outcomes and for quality improvement purposes.

Oversight of the operation of the Scheme also occurs through regular updates provided by NSW LTCSA on participant recovery and rehabilitation progress and planning; and half yearly reference group meetings with NSW LTCSA to discuss broader operational issues.

Participant Satisfaction Surveys

MODD Research and Evaluation (MRE) was commissioned to undertake the Scheme's first participant experience research survey in 2016 and subsequent surveys in 2017 and 2018. Insight Consulting Australia undertook the 2019 participant experience research survey. Only participants who had been in the Scheme for longer than 6 months were eligible to undertake the research survey.

The participant surveys each year sought feedback on different aspects of the benefits delivered by the LTCS Scheme and not all participants were surveyed each year. Aspects included for example, whether the Scheme was meeting participant's recovery needs at their stage of recovery and rehabilitation; their experience with the lifetime application assessment process (2017); and participant experience of the interaction between the LTCS Scheme and the workers' compensation scheme (2019).

¹⁰ Key Performance Indicators (KPIs) for resolving complaints: **Frontline (Level 1)** = 2 business days; **Escalated (Level 2)** = 20 business days.

Review of the Scheme's Qualitative objectives and Terms of Reference

The LTCS Commissioner has commissioned MRE to undertake an independent review of the qualitative elements of the LTCS Scheme's objective¹¹ to inform the Review. In relation to the qualitative elements, section 7(a) of the LTCS Act defines the purpose of the Act as to –

“... provide an indemnity insurance scheme to respond to the reasonable and necessary treatment and care needs of people who have suffered a catastrophic injury – (i) in a motor accident; or (ii) arising out of, or in the course of, their employment”.

In assessing whether and how the LTCS Scheme responds to the reasonable and necessary treatment and care needs of people with catastrophic injuries, MRE's report (see the “ACT LTCS Qualitative Review 2019” by MODD Research + Evaluation at [Appendix 1](#)) primarily draws on participant feedback from past LTCS participant surveys to assess the extent to which LTCS Scheme benefits have been delivered efficiently and effectively to support participant needs at different stages of their recovery and rehabilitation.

A summary of the Report's findings in relation to the terms of reference is as follows.

- 1. Review whether, and to what extent, LTCS Scheme treatment and care services for participants in (a) the motor vehicle injury category and (b) the work injury category have been delivered efficiently and effectively*

The report notes that whether the scheme's benefits have been delivered efficiently and effectively may be determined by the extent to which the Scheme has met participants' needs.

The Report noted there was considerable participant good will and gratitude towards the LTCS Scheme and most respondents are very positive about the way the Scheme has met their needs. MRE notes that: “Some respondents have commented on their surprise and gratitude for how tailored services have been to the participant's needs and circumstances” (p.11).

“Overall, across the years, the feedback is overwhelmingly positive” (p. 8).

Further, “the financial support for treatment, rehabilitation, care and equipment and assistance navigating health systems and finding appropriate medical and allied health specialist are frequently cited by respondents as particular sources of overall satisfaction” (p. 4).

Factors cited by participants that the Scheme is meeting their needs included their positive relationship with their case managers and coordinators; and the person-centred planning approach used to give them greater control over their rehabilitation goal development and service planning.

While issues occur (for example, where services and equipment issues were delayed or required attention), these were usually resolved through the assistance of the case manager or coordinator.

Importantly, what is critical to the Scheme's success in meeting needs is that systems and communications are in place to identify and rectify issues where they occur, in a manner that is

¹¹ MRE has also undertaken annual participant research surveys for NSW Lifetime care and support scheme over several years and is familiar with NSW's service delivery model and frameworks.

timely and satisfactory to participants. The Report reflected that this is borne out by the low numbers of complaints and disputes lodged to date.

A tension was noted between the scheme responding to identified needs and the desire for participants to have a list that gives all possible benefits they may be entitled to within the Scheme. The Report noted that reiterating information on the scheme's scope at three to six months is part of the communications protocol to address this.

A strength of the Scheme is that, "systems and processes that support delivery of services to participants, such as the communications protocol, *MyPlan* are continually reviewed against research and feedback and revised to provide better services" (p.12).

2. Review participants' perceptions of the impact of the transfer of administration and delivery of the Scheme benefits from the ACT government to the NSW Lifetime Care and Support Authority (NSW LTCSA) in September 2015

The Report noted the transfer of LTCS administration to NSW LTCSA was seamless for participants and was aided in part by the continuity of the case managers that indicated to participants the transfer was 'business as usual'. Issues with Scheme provisions, such as a delays in receiving equipment, were unrelated to the transfer to NSW administration.

3. Review participants' perceptions of the improvements (including system design and administrative changes) made to the Scheme;

The Report considered participant feedback on various system improvements that have been introduced since 1 July 2014 to service provision – in particular, *MyPlan* and revisions to the communications protocol.

Participant perceptions of *MyPlan* have been positive in that it facilitates tailored supports that take account of participant injury-related needs and gives them greater control over goal setting and service planning. It also assisted in promoting continuity of services and care in the lead up to the review for lifetime application after two years.

The revisions to the communications protocol set a benchmark for the minimum level of communication that is expected to occur between front line staff and participants. The revised protocol also makes explicit the requirement of coordinator contact with interim participants at six months prior to the expiry of the interim participation period to explain the review process at two years, and to address any anxieties about the review and assist with plans to transition out of the Scheme if this is likely to occur.

*4. Review participants' perceptions as to whether changes are necessary to improve the:
(a) way services / benefits under the Scheme are assessed and delivered to them; and
(b) effectiveness of the services provided to them through the scheme.*

The Report noted "in the context of very positive feedback, there are few issues existing in the evidence that required a response. Issues have been in relation to communication, such as discussions on the two-year review, and these have been addressed by revisions to the communications protocol.

Another issue raised concerned attendant care assistance. The Report noted that the LTCS Scheme provides for attendant care services among other supports. However, family members who are in a position to, may choose to take on a management and/or care role, to varying extents, to best support their participant family member. For some family members who choose to take on a carer's

role, the Report noted that there was a sense that “*formal acknowledgement of their input is only partial*” and that “*... the Scheme is limiting by remunerating only carers from a care agency ...*” (p. 17). MRE noted that family members recognised that remuneration for family carers was outside the scope of the Scheme provisions.

Part 5 - Quantitative assessment of the LTCS Act objectives

The LTCS Commissioner has responsibility for the setting of the motor accident injury and work injury levies to fully fund the operations of the Scheme. The Commissioner’s determination of the required fund contribution for motor accident injuries and work injuries must be made in accordance with the report of an independent actuary.

Review of the Scheme’s quantitative objectives and Terms of Reference

The LTCS Commissioner commissioned Finity Consulting Pty Ltd (the LTCS Scheme Actuary) to undertake an independent review of the quantitative elements of the LTCS Scheme’s objective to inform the Review. The Scheme Actuary is well placed to undertake an independent review of the quantitative aspects of the LTCS Act, given the Actuary’s understanding of the ACT Scheme’s design and extensive knowledge of similar schemes operating in other jurisdictions.

In relation to the quantitative elements, section 7(a) of the LTCS Act defines the purpose of the Act as to – “*... provide an indemnity insurance scheme to respond to the reasonable and necessary treatment and care needs of people who have suffered a catastrophic injury ...*”. Section 7(b) of the LTCS Act provides that the purpose of the Act is “*... to ensure that the scheme is fully funded*”.

The Actuary’s Report “Section 100 Review of the Lifetime Care and Support (Catastrophic injuries) Act 2014” is at [Appendix 2](#). A summary of the Report’s findings and observations follows.

Participant Profile

As at 30 June 2019, the ACT LTCS Scheme had accepted 12 participants into the Scheme, with one pending potential participant who has since been accepted into the Scheme. Ten of the participants have been accepted as motor accident injuries and the other three participants have been accepted as work injuries. Five of the participants have been accepted as lifetime participants, with the other participants currently interim participants. All participants who have been assessed for lifetime participation have been accepted.

The actual make-up of scheme participants to date has differed somewhat from expectations. ACT participants are spread across most age categories at the time of the injury including children under age 15. In general, the average age of motor injury participants has been younger than expected.

The bulk of ACT participants are male, with male drivers historically suffering a much higher proportion of severe motor injuries. Male participants in the Scheme are around 85 per cent and are roughly in-line with the experience to date for schemes in NSW and QLD. Almost 70 per cent of participants to date have suffered a traumatic brain injury which is broadly in line with the expected proportion of 74 per cent and the historical experience observed in other jurisdictions. The other participants in the Scheme have spinal cord injuries.

There have been more motor accident injuries in each year than work injuries in the ACT Scheme. This is in line with the general expectation that motor injuries will account for a greater overall proportion of catastrophic injuries. The greatest proportion of motor accident injuries have been motor-cycle riders. All work injuries were from motor accidents either in the course of employment or journey claims.

Around half of ACT Scheme participants sustained their injuries in accidents where they had likely been ‘at-fault’ or blameless; thus highlighting the benefit of the Scheme to motorists who previously

would have been ineligible to receive support for their injuries under the current Compulsory Third Party Insurance Scheme (workers were already covered on a no-fault basis under worker's compensation schemes).

Participant Treatment and care costs

The Scheme Actuary notes that the category split of payments in the ACT Scheme to date is consistent with a Scheme in the early years of operation where the majority of payments relate to hospital, rehabilitation and equipment costs. Over the longer term, as participants' injuries stabilise, it is expected that attendant care costs will form the majority of expenses in line with the longer-term benchmark.

The extremely small number of participants in the ACT Scheme at present means that there will be considerable variation year on year in the amount of payments being made by category type, depending on the nature and severity of injuries.

Although participants with brain injuries represent 70 per cent of participants in the Scheme, they represent only half of payments made to date, reflecting spinal injuries having higher costs than brain injuries especially in the early years post injury when there are high hospital, home modification and equipment costs.

Across all participants accepted into the Scheme at 30 June 2019, the current average expected cost per participant is \$4.6 million. This cost reflects both payments made to date and actuarial estimates of participants' expected future costs. Spinal injuries (\$4.8 million) are more expensive while brain injuries (\$4.5 million) are slightly less expensive. The average expected cost per participant for brain injuries is dominated by attendant care costs. For spinal cord injuries, the major driver of cost is also attendant care, however, these participants have higher other costs such as equipment and home modifications compared to brain injuries.

The Scheme Actuary noted that both work and injury streams showed significant volatility in the split of payments from year to year. However, as the ACT Scheme matures, payment splits are expected to stabilise at levels that are more in line with expectations.

Drivers of the LTCS levy

Under the LTCS Act, the LTCS Commissioner is required to assess the amount needed to be contributed to the LTCS fund in each contribution period that will:

- fully fund the present and likely future liabilities of the LTCS Commissioner under part 6 of the LTCS Act (for payments under LTCS Scheme) in relation to people who become participants in the scheme because of a motor accident or work injury suffered during the contribution period; and
- meet the payments needed to be made from the LTCS fund (other than payments under part 6) during the contribution period; and
- provide for any other matters the LTCS Commissioner should, in all the circumstances, prudently make provision for in relation to liabilities under part 6.

The amount needed is an amount that together with anticipated investment income is equal to the best estimate of the cost of meeting the liability (in inflated dollars) when the liability becomes payable.

The LTCS work injury levy and motor accident levy are set every year based on actuarial advice. The Scheme Actuary notes that the two major drivers of cost for the LTCS levy are participant numbers and the average cost per participant.

Since the commencement of the Scheme, the motor accident levy has increased by \$3.00 or 1.7 per cent across the stream's 5 years of operation; from \$34 to \$37. The report states that "this

low rate of increase reflects the fact that overall costs have emerged lower than expected, with lower expected participant numbers partially offsetting the increase in expected costs per participant” (p. 20).

“The current premiums are within a reasonable range and are expected to fully fund future participant costs. Changes to future levy rates should reflect the experience to date, but also the uncertainty that exists and the volatility that has been observed to date” (p. 20).

Fully funding the LTCS Scheme

The number of actual new participants in the Scheme has been volatile across the years since the Scheme commenced, varying between zero and five per year. Although the number of participants across the five years has been lower than that estimated at the time of setting the LTCS levies by 50 per cent, this level of volatility is to be expected. The reduction in total expected participants is mostly in relation to the motor injury stream. Both brain and spinal injury participant numbers have been less than expected.

The ‘actual’ estimated average cost per participant for accepted participants to date is 31 per cent higher than that estimated at the time of setting the LTCS levies. This is due to the higher than anticipated severity mix of brain injuries.

Overall scheme costs to date have been much lower than anticipated (35 per cent lower), driven by the fewer participants than expected, partially offset by the higher estimated average cost per participant.

Based on the analysis of the expected cost per participant at 30 June 2019, and the Scheme holding net assets of \$18.1 million at 30 June 2019, Finity considers that the Scheme is fully funded.

Part 6 – Risks to the Financial viability of the LTCS Scheme

Net Assets of the LTCS Fund

The key financial risk for the LTCS fund is associated with the sufficiency of the levies collected and investment earnings to fund the lifetime treatment and care costs of current participants in the LTCS Scheme.

At 30 June 2019, the LTCS fund’s current assets (\$3.7 million) are sufficient to meet its current liabilities (\$2.4 million). Further, its total assets (\$65.7 million) also exceed its total liabilities (\$47.6 million) indicating that based on the latest liability estimates the fund has sufficient assets to fund its liabilities as they fall due.

The investment returns that contribute towards the sufficiency of funds are exposed to market fluctuations. This means that both the investment returns and the underlying investment assets can fluctuate year on year from that estimated at the time of setting the LTCS levies. The associated risk is mitigated by ensuring funds are invested in multi-asset unit trusts in accordance with the LTCS fund’s approved investment strategy that aims to achieve the long-term funding of the LTCS Scheme.

A significant amount of actuarial estimation surrounds the liability estimates due to the long-term nature of these liabilities and given the LTCS Scheme has only a short period of claim payment history to date. The LTCS fund expects variability each year (‘unders and overs’) for the actual costs of participants compared with the average estimated costs used when setting the LTCS Levies each year. This is due to participants’ actual age, type of injury, injury severity and their individual circumstances varying from the estimated average costs. Liabilities can also vary due to movements in inflation and discount rates.

Given these uncertainties, the LTCS fund's current net asset position of \$18.1 million hence provides some buffer against the risk of decreasing investment revenue and asset values and increasing participant liabilities.

Part 7 – Conclusion

The motor accident and work injury streams of the LTCS Scheme have only been in operation for five and three years respectively. For a long-tailed scheme that focuses on providing lifetime care and treatment to its participants, the Scheme is in its infancy. To put this into perspective, for a participant aged five years old, they may have another 75 years or so to live.

MODD Research and Evaluation (MRE), focussing on reviewing the qualitative aspects of the Scheme, found that overwhelmingly participants were positive about the way in which the Scheme met needs. Treatment and care services for participants have been delivered efficiently and effectively.

Respondents to surveys also frequently cited the financial support for treatment, rehabilitation, care and equipment; assistance navigating health systems; and finding appropriate medical and allied health specialists, as particular sources of overall satisfaction.

Communication is a key requirement for good service delivery and meeting participants' needs in any programme. The LTCS Scheme is designed to be responsive to identified needs that fall within its purview. In this context, MRE notes that respondents were very positive about their relationships with their current case managers and coordinators – such as taking time to listen to them, explaining things clearly and involving them in decision making.

Participants also provided positive feedback on improvements made to the Scheme, such as the introduction of *My Plan*, and very positive feedback regarding how services are assessed and delivered.

As expected with any scheme, and perhaps more so with a Scheme providing services to participants with complex injuries and needs, there have been some disputes and complaints. In the context of the many daily decisions made with regard to the treatment and care of participants, these numbers are small – a total of 2 disputes and 13 complaints since the commencement of the LTCS Scheme.

Importantly, disputes and complaints have been handled effectively under the Scheme's dispute resolution arrangements. MRE notes that where such issues occur, there are systems and mechanisms in place for people to raise their issues and have them resolved as quickly as possible, and when this has occurred, the complaints and disputes have been resolved within specified timeframes.

The Scheme Actuary, focussing on reviewing the quantitative aspects of the Scheme, notes that uncertainty exists around the long-term nature of the liabilities and the Scheme is subject to volatility given the extremely small number of participants. This results in significant uncertainty with respect to determining the actual utilisation of funded supports both year on year and in total.

The Actuary also notes that Scheme costs to date have been much lower than anticipated (35 per cent lower), driven by fewer participants than expected (50 per cent lower). However, this has been partially offset by the higher estimated average cost per participant (31 per cent higher), driven by the higher than anticipated severity mix of brain injuries for the current participants. The Actuary considers that the Scheme is fully funded as at 30 June 2019 given the Scheme has net assets of \$18.1 million.

The current premiums are within a reasonable range and have been set to ensure the Scheme is fully funded, that is, there is provision for the cost of providing future treatment and care to new participants over their expected lifetime.

