



Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016

A2016-25

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Section 6	2
5 Purpose of Act	
Section 7 (a)	5
6 Section 8 heading	5
7 New section 8 (2)	5
8 Functions of LTCS commissioner	
Section 11 (2)	6
9 Section 11 (2), new note	6

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Contents

	Page	
10	Participation in LTCS scheme—eligibility Section 15 (1)	6
11	Section 15 (1), note 1	6
12	New section 15 (2A)	6
13	Section 15 (3)	7
14	Section 15 (3), note 1	7
15	Section 15 (4) (a)	7
16	Section 15 (4) (b)	7
17	LTCS scheme—initial application to participate Section 16 (2)	7
18	Section 16 (2) (c)	8
19	Section 16 (2) (c), note 3	8
20	Section 16 (6), except note	8
21	Section 16 (7)	8
22	Section 16 (8), definition of <i>insurer</i>	9
23	Sections 17, 20 (3) and 21 (2) (c)	9
24	Section 21 (2) (c), note 3	9
25	Section 22 heading	10
26	New section 22A	10
27	Sections 23 (1) and (2) (b) and 30 (5) (b)	10
28	Dispute about eligibility Section 34 (1)	11
29	Section 34 (1) (b)	11
30	Section 34 (1), note 3	11
31	Eligibility assessment panel—review of decision Section 38 (1) (b)	11
32	Section 38 (1) (b), note	11
33	Decision under this division binding Section 40 (1)	11
34	Division 7.2 heading	12
35	Definitions—div 7.2 Section 45, definition of <i>interested person</i> , new paragraph (d)	12
36	Section 47 heading	12
37	Section 47 (1), except notes	12

Contents

	Page	
38	Section 47 (1), new notes	13
39	Sections 48 to 52 headings	13
40	Section 59	13
41	Treatment and care assessor's determination—review Section 61 (3) (a)	14
42	New section 66A	14
43	Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement Section 70 (3) (c)	15
44	Definitions—div 10.1 Section 72, definition of <i>required contribution period</i>	15
45	Section 72, new definitions	15
46	Meaning of <i>contribution period</i> —div 10.1 Section 73 (1)	15
47	Section 73 (1), new notes	16
48	Appropriation of certain amounts for LTCS fund New section 78 (aa)	16
49	Payments from LTCS fund banking accounts New section 79 (2)	16
50	Investment of amounts in LTCS fund banking accounts Section 80 (6)	17
51	Section 80 (7)	17
52	Section 83 heading	17
53	Section 83 (1)	17
54	New section 83 (1A)	18
55	Section 83 (3)	18
56	Section 84	19
57	New sections 84A to 84C	20
58	Meaning of <i>present value of treatment and care liabilities</i> —div 10.2 Section 88	22
59	New section 90A	22
60	Exchange of information New section 94 (1) (aa) and (ab)	23
61	Section 94 (1) (b)	23
62	New section 94 (1A) and (1B)	24

Contents

	Page	
63	Section 94 (2), definition of <i>information</i>	24
64	Dictionary, note 3	24
65	Dictionary, new note	25
66	Dictionary, new definitions	25
67	Dictionary, definition of <i>required fund contribution</i>	26
68	Dictionary, new definitions	26
Schedule 1	Consequential amendments	27
Part 1.1	Workers Compensation Act 1951	27
Part 1.2	Workers Compensation Regulation 2002	35



Australian Capital Territory

Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016

A2016-25

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

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

1 Name of Act

This Act is the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

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

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

- [Workers Compensation Act 1951](#)
- [Workers Compensation Regulation 2002](#).

4 Section 6

substitute

6 Application of Act

- (1) This Act applies only in relation to the following injuries:
 - (a) an injury (a ***motor accident injury***) suffered by a person—
 - (i) as a result of a motor accident that happened or happens in the ACT after 30 June 2014; and
 - (ii) whether or not the person was at fault in the motor accident; and
 - (iii) if at least 1 motor vehicle involved in the motor accident had CTP cover under the [CTP Act](#) at the time of the motor accident;

(b) an injury (a *work injury*) suffered by a worker if—

Note **Worker**—see the dictionary.

(i) the injury occurs after the later of the following:

(A) 30 June 2016;

(B) the date the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016* is notified; and

(ii) the injury arises out of, or in the course of, the worker's employment, within the meaning of the *Workers Compensation Act 1951*, section 31 (General entitlement to compensation for personal injury); and

(iii) the ACT is the Territory or State of connection in relation to the worker's employment.

Note **Territory or State of connection**—see the *Workers Compensation Act 1951*, s 36A.

(2) A regulation may make provision for or in relation to limiting the application of this Act to a stated class of people.

Note 1 A reference to an Act includes a reference to a provision of an Act (see *Legislation Act*, s 7 (3)).

Note 2 Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see *Legislation Act*, s 48).

- (3) For subsection (1) (a), a motor vehicle involved in a motor accident is taken to have had CTP cover under the [CTP Act](#) at the time of the motor accident if—
- (a) a CTP policy was in force for the motor vehicle at that time; or
 - (b) a compulsory third-party insurance policy was in force for the motor vehicle under the law of a jurisdiction other than the ACT at that time; or
 - (c) the motor vehicle was owned by the Commonwealth, or an entity representing the Commonwealth, at that time; or
 - (d) there is a right of action against the nominal defendant under the [CTP Act](#) in relation to the motor accident; or
 - (e) there would be a right of action against the nominal defendant under the [CTP Act](#) in relation to the motor accident if the cause of the motor accident was the fault of the responsible person or driver of the motor vehicle in the use or operation of the motor vehicle.
- (4) For subsection (1) (b) (ii), each of the following is an injury arising out of, or in the course of, the worker's employment:
- (a) an injury received by a worker on an employment-related journey (within the meaning of the [Workers Compensation Act 1951](#), section 36 (Journey claims));
 - (b) an injury that is attributable to the worker's serious and wilful misconduct (within the meaning of the [Workers Compensation Act 1951](#), section 82 (When is compensation under Act generally not payable?)).

- (5) However, this Act does not apply to an injury suffered by a worker if the injury—
- (a) is intentionally self-inflicted; or
 - (b) is sustained as a result of the worker's engagement in professional sporting activity.

Note **Professional sporting activity**—see the [Workers Compensation Act 1951](#), dictionary.

5 Purpose of Act Section 7 (a)

substitute

- (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

6 Section 8 heading

substitute

8 Terms used in other Acts

7 New section 8 (2)

after the notes, insert

- (2) A term used in the [Workers Compensation Act 1951](#) has the same meaning in this Act.

**8 Functions of LTCS commissioner
Section 11 (2)**

omit

motor accident injuries

substitute

injuries to which this Act applies

9 Section 11 (2), new note

insert

Note Section 6 sets out the injuries to which this Act applies.

**10 Participation in LTCS scheme—eligibility
Section 15 (1)**

omit

a motor accident injury

substitute

an injury

11 Section 15 (1), note 1

substitute

Note 1 Section 6 sets out the injuries to which this Act applies.

12 New section 15 (2A)

insert

(2A) Despite the *Workers Compensation Act 1951*, section 83 (No compensation while imprisoned), a person with a workplace injury is eligible to participate in the LTCS scheme even though the person is imprisoned.

13 Section 15 (3)

omit

motor accident

14 Section 15 (3), note 1

omit

15 Section 15 (4) (a)

omit

a motor accident injury

substitute

an injury

16 Section 15 (4) (b)

omit

motor accident

**17 LTCS scheme—initial application to participate
Section 16 (2)**

omit

the motor accident injury

substitute

the person's injury

18 Section 16 (2) (c)

omit

motor accident

19 Section 16 (2) (c), note 3

omit

20 Section 16 (6), except note

substitute

- (6) The insurer may be directed to apply for the injured person to become a participant in the LTCS scheme by—
- (a) if the injured person has a motor accident injury—the CTP regulator; or
 - (b) if the injured person has a work injury—the Minister or director-general responsible for the [Workers Compensation Act 1951](#).

21 Section 16 (7)

omit

the CTP regulator's direction

substitute

a direction under subsection (6)

22 Section 16 (8), definition of *insurer*

substitute

insurer—

- (a) for a claim made by an injured person in relation to a motor accident injury, means—
 - (i) if the injured person is a CTP insured person—the CTP insurer for the person; or
 - (ii) if the injured person is not a CTP insured person—the nominal defendant; or

Note ***CTP insured person***—see the [CTP Act](#), s 16.

- (b) for a claim made by an injured person in relation to a work injury, means—
 - (i) if the injured person’s employer is insured—the workers compensation insurer for the employer; or
 - (ii) if the injured person’s employer is self-insured—the employer; or
 - (iii) if the injured person’s employer is not insured—the DI Fund.

Note ***DI Fund***—see the [Workers Compensation Act 1951](#), dictionary.

23 Sections 17, 20 (3) and 21 (2) (c)

omit

motor accident

24 Section 21 (2) (c), note 3

omit

25 Section 22 heading

substitute

22 Effect of LTCS scheme on motor accident claims etc

26 New section 22A

in part 4, insert

22A Effect of LTCS scheme on workers compensation claims etc

- (1) This Act does not limit or otherwise affect the application of the *Workers Compensation Act 1951* in relation to a work injury of an injured person who is, or is eligible to become, a participant in the LTCS scheme, except as provided by that Act.
- (2) While an injured person is an interim participant in the LTCS scheme in relation to a work injury, time does not run for the *Workers Compensation Act 1951*, section 120 (Time for taking proceedings generally) or a provision of the *Limitation Act 1985* in relation to a cause of action on a claim for damages—
 - (a) relating to the work injury; or
 - (b) relating to any other injury suffered by the person as a result of the work injury.

27 Sections 23 (1) and (2) (b) and 30 (5) (b)

omit

motor accident

28 **Dispute about eligibility**
Section 34 (1)

omit

a motor accident injury

substitute

an injury

29 **Section 34 (1) (b)**

omit

motor accident

30 **Section 34 (1), note 3**

omit

31 **Eligibility assessment panel—review of decision**
Section 38 (1) (b)

omit

motor accident

32 **Section 38 (1) (b), note**

omit

33 **Decision under this division binding**
Section 40 (1)

omit

a motor accident injury

substitute

an injury

34 Division 7.2 heading

substitute

Division 7.2 Disputes about injuries

**35 Definitions—div 7.2
Section 45, definition of *interested person*, new
paragraph (d)**

insert

- (d) if the injured person is eligible to make a claim for payment against the DI fund—the DI fund manager.

Note 1 *Claim for payment*—see the [Workers Compensation Act 1951](#), s 170.

Note 2 *DI fund* and *DI fund manager*—see the [Workers Compensation Act 1951](#), dictionary.

36 Section 47 heading

substitute

47 Dispute about injury—application

37 Section 47 (1), except notes

substitute

- (1) An interested person may, by written notice to the LTCS commissioner, dispute the commissioner’s decision about—
- (a) whether an injury is an injury to which this Act applies; or
 - (b) for a work injury—whether the injured person is a worker.

38 Section 47 (1), new notes*insert**Note 3* Section 6 sets out the injuries to which this Act applies.*Note 4* **Worker**—see the dictionary.**39 Sections 48 to 52 headings***substitute***48 Dispute about injury—referral to principal claims assessor****49 Dispute about injury—review panel****50 Dispute about injury—reasonable legal costs****51 Dispute about injury—maximum legal costs****52 Dispute about injury—legal costs not payable****40 Section 59***substitute***59 Treatment and care assessor—cooperation of participant etc**

- (1) A participant in the LTCS scheme and, if the participant has a work injury, the participant's employer, must comply with any reasonable request made to the participant by a treatment and care assessor in relation to an assessment of the participant's treatment and care needs, including a request to undergo a medical or other examination by a health practitioner.

Note **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

- (2) In this section:

employer, of a participant in the LTCS scheme with a work injury—
see the *Workers Compensation Act 1951*, section 87 (2).

**41 Treatment and care assessor’s determination—review
Section 61 (3) (a)**

omit

original

42 New section 66A

insert

66A Contacting former LTCS interim participant

- (1) This section applies to a person (a *former participant*) who—
- (a) has been an interim participant in the LTCS scheme; and
 - (b) because of the level of improvement in the person’s health, is not eligible to be accepted as a lifetime participant.
- (2) The LTCS commissioner may contact the former participant directly (whether or not the former participant has legal representation) in relation to treatment or care the former participant received as a participant in the LTCS scheme, including for the purpose of assessing the effectiveness and efficiency of the scheme.

**43 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement
Section 70 (3) (c)**

omit

at the rate

substitute

the rate

**44 Definitions—div 10.1
Section 72, definition of *required contribution period***

omit

45 Section 72, new definitions

insert

required fund contribution for motor accident injuries—see section 83 (1).

required fund contribution for work injuries—see section 83 (1A).

**46 Meaning of *contribution period*—div 10.1
Section 73 (1)**

after

determined,

insert

in writing,

47 Section 73 (1), new notes

insert

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

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

**48 Appropriation of certain amounts for LTCS fund
New section 78 (aa)**

after the note, insert

(aa) fund levies paid under this part in relation to work injuries;

Note Section 84B deals with fund levies payable under this part in relation to work injuries.

**49 Payments from LTCS fund banking accounts
New section 79 (2)**

insert

(2) To remove any doubt, a payment required to be made by the LTCS commissioner under part 6 in relation to an injury to which this Act applies is paid from the total amount appropriated under section 78 for the purposes of the LTCS fund.

**50 Investment of amounts in LTCS fund banking accounts
Section 80 (6)**

omit

subsection (4)

substitute

subsection (5)

51 Section 80 (7)

omit

subsection (3)

substitute

subsection (4)

52 Section 83 heading

substitute

83 Determination of amounts to be contributed to LTCS fund

53 Section 83 (1)

omit everything before paragraph (a), substitute

- (1) Before the beginning of each contribution period relating to motor accident injuries, the LTCS commissioner must determine, in writing, the amount needed to be contributed to the LTCS fund in the contribution period (the ***required fund contribution for motor accident injuries***)—

54 New section 83 (1A)

insert

- (1A) Before the beginning of each contribution period relating to work injuries, the LTCS commissioner must determine, in writing, the amount needed to be contributed to the LTCS fund in the contribution period (the *required fund contribution for work injuries*)—
- (a) to fully fund the present and likely future liabilities of the LTCS commissioner under part 6 (Payments under LTCS scheme) in relation to people who become participants in the scheme because of work injuries suffered during the contribution period; and
 - (b) to meet the payments needed to be made from the fund (other than payments under part 6) during the contribution period; and
 - (c) to provide for any other matters the LTCS commissioner should, in all the circumstances, prudently make provision for in relation to liabilities under part 6.

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

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

55 Section 83 (3)

after

required fund contribution

insert

for motor accident injuries or work injuries

56 Section 84

substitute

84 Determination of LTCS levy

- (1) The LTCS commissioner must determine a levy (a *LTCS levy*) for each of the following:
 - (a) the contribution period for which a required fund contribution is determined in relation to motor accident injuries;
 - (b) the contribution period for which a required fund contribution is determined in relation to work injuries.

- (2) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 Power to make the determination includes power to make different provision in relation to different matters or different classes of matters, and to make a determination that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

Note 3 The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

- (3) For subsection (1), each LTCS levy must be an amount that the LTCS commissioner reasonably believes will result in the required fund contribution for the contribution period being contributed to the fund.

57 New sections 84A to 84C

insert

84A Determination of LTCS levy—motor accident injuries

- (1) The LTCS commissioner may determine a LTCS levy relating to motor accident injuries for a contribution period as any of the following:
 - (a) a fixed amount;
 - (b) a percentage of the premium payable for a CTP policy;
 - (c) a combination of a fixed amount and percentage of the premium payable for a CTP policy.
- (2) A LTCS levy may be determined to differ according to any classification or other criteria for the determination of premiums for CTP policies as provided for by the CTP premium guidelines.

Note 1 Power to make a statutory instrument in relation to a matter includes power to make a provision in relation to a class of matter (see [Legislation Act](#), s 48 (2)).

Note 2 **CTP policy**—see the [CTP Act](#), s 18.
CTP premium guidelines—see the [CTP Act](#), s 39.

84B Determination of LTCS levy—work injuries

- (1) The LTCS commissioner may determine a LTCS levy relating to work injuries for a contribution period payable by a workers compensation insurer or self insurer as any of the following:
 - (a) a fixed amount;
 - (b) a percentage of—
 - (i) for a workers compensation insurer—the gross written premiums for the insurer; and

- (ii) for a self-insurer—the notional gross written premium for the self-insurer;
 - (c) a combination of a fixed amount and percentage of the gross or notional gross written premiums.
- (2) The LTCS guidelines may make provision in relation to the methodology for apportionment to be used for determining a LTCS levy relating to work injuries for a contribution period.

Note The LTCS guidelines are made under s 93.

- (3) A LTCS levy relating to work injuries determined for a contribution period may differ according to any classification or other criteria for the determination of premiums for workers compensation policies as provided for by the *Workers Compensation Act 1951*.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act*, s 104).

Note 2 Power to make a statutory instrument in relation to a matter includes power to make provision in relation to a class of matter (see *Legislation Act*, s 48 (2)).

Note 3 *Gross written premiums, notional gross written premium and self-insurer*—see the *Workers Compensation Act 1951*, dictionary.

Note 4 *Workers compensation insurer*—see the dictionary.

84C Notice of LTCS levy—work injuries

- (1) If the LTCS commissioner determines a LTCS levy under section 84B, the commissioner must give each workers compensation insurer and self-insurer a written notice—
 - (a) setting out the details of the levy; and
 - (b) requiring the workers compensation insurer or self-insurer to pay the amount of the levy payable by the workers compensation insurer or self-insurer within the time stated in the notice.

- (2) If no time for payment is stated in the notice, payment must be made not later than 30 days after the day the workers compensation insurer or self-insurer receives the notice.
- (3) If a workers compensation insurer or self-insurer does not pay the levy payable by the insurer or self-insurer within the time required under the notice given to the insurer or self-insurer, or within the time required under subsection (2), the amount of the levy is a debt owing to the Territory by the insurer or self-insurer.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (4) The LTCS commissioner may amend or revoke a notice given under this section.

58 **Meaning of *present value of treatment and care liabilities*—div 10.2**
Section 88

omit

motor accident

59 **New section 90A**

insert

90A **Recovery of LTCS payments from uninsured employer**

- (1) This section applies if—
 - (a) a participant in the LTCS scheme has a work injury; and
 - (b) when the work injury happened, the participant’s employer was uninsured.

- (2) The LTCS commissioner may recover as a debt from the employer the present value of the commissioner's treatment and care liabilities in relation to the participant's work injury.
- (3) In this section:

employer does not include a self-insurer.

uninsured—an employer of a participant with a work injury is *uninsured* if the employer does not have a compulsory insurance policy that applies to the participant in relation to the participant's work injury.

Note *Compulsory insurance policy*—see the *Workers Compensation Act 1951*, s 144.

Self-insurer—see the *Workers Compensation Act 1951*, dictionary.

60 Exchange of information New section 94 (1) (aa) and (ab)

insert

- (aa) a workers compensation insurer;
- (ab) the DI Fund;

Note *DI Fund*—see the *Workers Compensation Act 1951*, dictionary.

61 Section 94 (1) (b)

omit

motor accident

62 New section 94 (1A) and (1B)

insert

- (1A) If a participant in the LTCS scheme has a work injury, the LTCS commissioner may exchange information about the participant's treatment and care needs with the participant's employer only if the information relates to the employer's obligations under—
- (a) the LTCS commissioner's assessment of the participant's treatment and care needs under section 23 (Assessment of participant's treatment and care needs); or
 - (b) the *Workers Compensation Act 1951*.
- (1B) The exchange of information under this section must be in accordance with the LTCS guidelines.

Note The LTCS guidelines are made under s 93.

63 Section 94 (2), definition of *information*

substitute

information, about the treatment and care needs of a participant in the LTCS scheme, includes—

- (a) information used to make an assessment under section 23 about the participant's treatment and care needs; and
- (b) the expenses paid or payable by the LTCS commissioner under the scheme in relation to the treatment and care.

64 Dictionary, note 3

omit

- insurer

65 Dictionary, new note

insert

Note 4 The [Workers Compensation Act 1951](#) contains definitions relevant to this Act. For example, the following terms are defined in the [Workers Compensation Act 1951](#), dictionary:

- claim for payment
- compulsory insurance policy (see s 144)
- DI fund
- DI fund manager
- gross written premiums
- notional gross written premium
- professional sporting activity
- self-insurer
- Territory or State of connection (see s 36A)
- worker.

66 Dictionary, new definitions

insert

claim, in relation to an injury, means—

- (a) for a motor accident injury—a motor accident claim; or
- (b) for a work injury—a workers compensation claim.

Note ***Motor accident claim***, for a motor accident—see the [CTP Act](#), s 77.

CTP insurer, in relation to a motor accident claim, means an insurer under the [CTP Act](#).

injury means an injury to which this Act applies.

Note Section 6 sets out the injuries to which this Act applies.

insurer, for an injured person's claim, means—

- (a) if the injured person has a motor accident injury—a CTP insurer; or
- (b) if the injured person has a work injury—a workers compensation insurer or self insurer.

67 Dictionary, definition of *required fund contribution*

omit

68 Dictionary, new definitions

insert

required fund contribution for motor accident injuries, for division 10.1 (Funding the LTCS scheme)—see section 83 (1).

required fund contribution for work injuries, for division 10.1 (Funding the LTCS scheme)—see section 83 (1A).

worker, in relation to a work injury—see the [Workers Compensation Act 1951](#), chapter 3 (Meaning of worker).

workers compensation claim means a claim for compensation for a work injury under the [Workers Compensation Act 1951](#).

workers compensation insurer, in relation to a workers compensation claim, means an insurer approved by the Minister under the [Workers Compensation Act 1951](#), section 145.

work injury means an injury to a worker arising out of, or in the course of, the worker's employment.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Workers Compensation Act 1951

[1.1] New section 70 (2A) to (2C)

insert

(2A) Despite subsection (1) (a), (b) and (c), the employer is not liable to pay the costs of any treatment and care needs, or excluded treatment and care, of a worker who is a participant in the LTCS scheme—

- (a) that relate to a work injury for which the worker is a participant in the scheme; and
- (b) that arise while the worker is a participant in the scheme.

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

LTCS scheme—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

Treatment and care needs, of a participant in the LTCS scheme—see [LTCS Act](#), s 9.

Work injury—see the [LTCS Act](#), dictionary.

(2B) Subsection (2A) applies—

- (a) whether or not the treatment and care are assessed treatment and care needs under the [LTCS Act](#); and
- (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and
- (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge.

Note **LTCS Act**—see the dictionary.

LTCS commissioner—see the [LTCS Act](#), dictionary.

- (2C) To remove any doubt, the employer is liable to pay the costs of any treatment and care needs, or excluded treatment and care, of a worker under subsection (1)—
- (a) until the worker is accepted as a participant in the LTCS scheme; and
 - (b) if the worker ceases to be a participant in the LTCS scheme.

[1.2] Section 82, new notes

insert

Note 1 The [LTCS Act](#) applies to an injury to a worker arising out of, or in the course of, the worker's employment, including an injury that is attributable to the worker's serious and wilful misconduct (see [LTCS Act](#), s 6 (4) (b)).

Note 2 [LTCS Act](#)—see the dictionary.
[LTCS scheme](#)—see the [LTCS Act](#), dictionary.

[1.3] Section 83, new notes

insert

Note 1 A worker with an injury to which the [LTCS Act](#) applies is eligible to participate in the LTCS scheme even though the worker is imprisoned (see [LTCS Act](#), s 15 (2A)).

Note 2 [LTCS Act](#)—see the dictionary.
[LTCS scheme](#)—see the [LTCS Act](#), dictionary.

[1.4] New section 96A

in part 5.4, insert

96A Application—pt 5.4

- (1) This part does not apply in relation to an injured worker who is a participant in the LTCS scheme.

Note **LTCS scheme**—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

- (2) To remove any doubt, this part does apply in relation to an injured worker who ceases to be a participant in the LTCS scheme.

Example

an injured worker who is an interim participant in the LTCS scheme who is not accepted as a lifetime participant in the scheme

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

[1.5] Section 97 (1), new note

insert

Note This section does not apply if the injured worker is a participant in the LTCS scheme (see s 96A (1)).

[1.6] Section 98 (1), new note

insert

Note This section does not apply if the injured worker is a participant in the LTCS scheme (see s 96A (1)).

[1.7] New part 5.5A

insert

Part 5.5A Obligations in relation to LTCS participants

110A LTCS participants—provision of information about assessment of treatment and care needs

- (1) This section applies if—
- (a) an injured worker is a participant in the LTCS scheme in relation to a workplace injury for which an insurer is, or may be, liable to pay compensation; and
 - (b) the LTCS commissioner gives the insurer a copy of the assessment of the injured worker's treatment and care needs for the workplace injury under the [LTCS Act](#), section 23 (Assessment of participant's treatment and care needs).

Note **LTCS Act**—see the dictionary.

LTCS scheme—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

- (2) The insurer must give the employer and injured worker a statement to the effect that the worker's entitlement to weekly compensation may stop if the worker unreasonably fails to comply with the requirements of the assessment under the [LTCS Act](#), section 23.

Note 1 The injured worker also has an obligation to comply with any reasonable request the LTCS commissioner makes in relation to an assessment of the injured worker's treatment and care needs, including a request that the injured worker undergo an examination by a health practitioner (see [LTCS Act](#), s 26).

Note 2 The LTCS commission may exchange information about a LTCS participant's treatment and care needs with the participant's employer in certain circumstances (see [LTCS Act](#), s 94).

[1.8] New section 137 (2A)

insert

- (2A) However, if the worker is eligible to participate in the LTCS scheme, before the worker commutes an existing right to compensation under subsection (1), the worker must apply under the [LTCS Act](#) to participate in the LTCS scheme.

Note **LTCS Act**—see the dictionary.

LTCS scheme—see the [LTCS Act](#), dictionary.

[1.9] New section 142 (3A)

insert

- (3A) Also, this section does not apply if the worker is a participant in the LTCS scheme.

Note **LTCS scheme**—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

[1.10] New section 142A

insert

142A Vocational rehabilitation—LTCS participants

- (1) An employer commits an offence if—
- (a) a worker engaged by the employer is a participant in the LTCS scheme in relation to a workplace injury; and
 - (b) the LTCS commissioner gives the employer a copy of the assessment of the worker’s treatment and care needs for the workplace injury under the [LTCS Act](#), section 23 (Assessment of participant’s treatment and care needs); and
 - (c) under the assessment, the employer is required to provide a service to assist the worker’s return to work; and

(d) the employer fails to provide the service.

Maximum penalty: 50 penalty units.

Note **Assessed treatment and care needs**—see the [LTCS Act](#), s 29.

LTCS scheme—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

- (2) It is a defence to a prosecution for an offence against subsection (1) (d) if the defendant proves that the defendant had a reasonable excuse for failing to provide the service.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

[1.11] Section 144 (1), definition of *compulsory insurance policy*, paragraph (a)

after

of this Act

insert

(other than liability for assessed treatment and care needs of participants in the LTCS scheme)

[1.12] Section 144 (1), definition of *compulsory insurance policy*, new note

insert

Note 2 **LTCS scheme**—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

[1.13] New section 182EA

in part 9.3, insert

182EA Application to participate in LTCS scheme

- (1) This section applies if—
 - (a) a worker is proposing to make a claim for damages in relation to an injury for which a claim for compensation has been made, or may be made, under this Act or under the statutory workers compensation scheme of a place outside the ACT; and
 - (b) the worker is eligible to participate in the LTCS scheme in relation to the injury.
- (2) Before the worker brings a court proceeding based on the claim against a respondent for the claim, the worker must apply under the [LTCS Act](#) to participate in the LTCS scheme.

Note **LTCS Act**—see the dictionary.

LTCS scheme—see the [LTCS Act](#), dictionary.

[1.14] New part 9.4

insert

Part 9.4 LTCS scheme participants

186A LTCS scheme participant—no damages etc for treatment, care and support

- (1) This section applies to a person who is a participant in the LTCS scheme in relation to a workplace injury.

Note **LTCS scheme**—see the [LTCS Act](#), dictionary.

Participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

- (2) An award of damages or offer of settlement made to the person in relation to the workplace injury must not include an amount for the person's treatment and care needs, or any excluded treatment and care, that—
- (a) relate to the workplace injury; and
 - (b) arise while the person is a participant in the LTCS scheme.

Note **Excluded treatment and care**—see the [LTCS Act](#), s 9.
Treatment and care needs, of a participant in the LTCS scheme—see the [LTCS Act](#), s 9.

- (3) This section applies—
- (a) whether or not the treatment and care needs are assessed treatment and care needs under the [LTCS Act](#); and
 - (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and
 - (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge on a gratuitous basis.

Note **LTCS Act**—see the dictionary.
LTCS commissioner—see the [LTCS Act](#), dictionary.

- (4) In this section:
workplace injury—see section 86.

186B Effect of payments under LTCS Act on limitation period

- (1) To remove any doubt, a payment made by the LTCS commissioner under the [LTCS Act](#) does not, for the [Limitation Act 1985](#), section 32 (Confirmation), confirm a cause of action under this Act.

(2) In this section:

payment, by the LTCS commissioner, means a payment that is made voluntarily or in accordance with a requirement under the [LTCS Act](#).

[1.15] Dictionary, new definitions

insert

assessed treatment and care needs, of a participant in the LTCS scheme—see the [LTCS Act](#), section 29.

excluded treatment and care—see the [LTCS Act](#), section 9.

LTCS Act means the [Lifetime Care and Support \(Catastrophic Injuries\) Act 2014](#).

LTCS commissioner—see the [LTCS Act](#), dictionary.

LTCS scheme—see the [LTCS Act](#), dictionary.

participant, in the LTCS scheme—see the [LTCS Act](#), dictionary.

treatment and care needs, of a participant in the LTCS scheme—see the [LTCS Act](#), section 9.

work injury—see the [LTCS Act](#), dictionary.

Part 1.2 Workers Compensation Regulation 2002

[1.16] New section 75 (2A)

insert

(2A) For subsection (2) (a), the amount of claims liabilities of the insurer does not include the treatment, care and support costs of a participant in the LTCS scheme.

Note *LTCS scheme*—see the [LTCS Act](#), dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 April 2016.

2 Notification

Notified under the [Legislation Act](#) on 12 May 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Lifetime Care and Support (Catastrophic Injuries) Amendment Bill 2016, which was passed by the Legislative Assembly on 5 May 2016.

Acting Clerk of the Legislative Assembly

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