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

**LIFETIME CARE AND SUPPORT (CATASTROPHIC INJURIES) AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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Treasurer**

## **LIFETIME CARE AND SUPPORT (CATASTROPHIC INJURIES) AMENDMENT BILL 2016**

### **INTRODUCTION**

This Explanatory Statement relates to the Lifetime Care and Support (Catastrophic Injuries) Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### **OVERVIEW OF THE BILL**

The *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (the LTCS Act), which commenced on 1 July 2014, gives effect to the first stage of the ACT Government's commitment under the Heads of Agreement (the Agreement) with the Commonwealth, to implement a National Injury Insurance Scheme (NIIS) to provide reasonable and necessary care and support to all those catastrophically injured in a motor vehicle accident in the ACT. Under the arrangements, eligible injured persons' treatment and care needs are managed through the Lifetime Care and Support (LTCS) Scheme. Work accident is the next category for implementation of the NIIS under the Agreement.

The purpose of the Bill is to implement the NIIS for work accidents in the ACT consistent with the nationally agreed minimum benchmarks. The Bill extends the existing LTCS Scheme to provide lifetime care to catastrophically injured workers covered by the *Workers Compensation Act 1951* (WC Act) where the injury was suffered after 30 June 2016 or the passing of the Bill, whichever is later. It amends the LTCS Act, the WC Act and Workers Compensation Regulation 2002.

A lifetime care and support scheme in the ACT will provide those catastrophically injured at work with a continuum of lifelong care where their needs are met in a timely manner, without the added stress to those injured, and their family, of managing a fixed settlement.

The principal features of the LTCS Scheme coverage for work accidents are as follows:

- It is to apply to catastrophically injured workers covered by the WC Act, where the injury was suffered arising out of, or in the course of, the worker's employment where the ACT is the state of connection;
- It includes journey claims and workers catastrophically injured where there has been serious and wilful misconduct; but excludes professional sports and self-inflicted injuries;
- It includes provisions similar to those that apply to motor accident injuries in relation to making an application, determining eligibility for the scheme, treatment and care needs assessments; dispute resolution, including allowing parties relevant to workers' compensation claims to bring disputes;

- It includes powers for the LTCS Commissioner to manage injured workers in a similar way as those injured in motor accidents and provisions to switch-off certain requirements under the WC Act applicable to injured workers where the injured worker is a participant in the LTCS Scheme;
- It excludes from participation anyone who has received damages for future treatment and care in relation to the work injury; and
- It includes provisions to allow for funding the LTCS Scheme for workers, including the determination and collection of levies to be paid into the LTCS Fund.

## **HUMAN RIGHTS IMPLICATIONS**

The Bill is considered to be consistent with the *Human Rights Act 2004*. It seeks to extend the benefits of a current statutory indemnity insurance scheme, the LTCS Scheme, to persons injured while at work. This means that all the reasonable and necessary treatment and care needs, as assessed under the Act, will be made available to a worker participant, providing the person with ongoing certainty that the costs of their treatment and care will be met.

The Bill does extend provisions that allow for information to be shared between the LTCS commissioner, insurers, hospital, the NSW Lifetime Care and Support (LTCS) Authority, and anyone approved by the LTCS commissioner. These provisions may engage section 12 of the *Human Rights Act 2004*, the right to privacy and reputation, or be considered to trespass on personal rights and liberties. The provisions however provide participants with a clear expectation as to the type of information and who that information will be shared with lawfully under the Act. The provisions are required as part of the operation of the LTCS scheme as they will assist in identifying those who are eligible for the Scheme earlier and ensure that the costs of treatment and care are met by the Scheme properly.

## **OUTLINE OF THE PROVISIONS**

### **Clause 1      Name of Act**

This clause sets out the name of the Act as the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016*.

### **Clause 2      Commencement**

This clause provides for the commencement for the Act to be on the day after its notification day. This means the Act will commence a day after it is notified on the Legislation Register. For the application of the Act to worker injuries, see section 6 of the bill.

### **Clause 3      Legislation amended**

This clause specifies that the Act being amended by this bill is the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (the LTCS Act). It also amends the *Workers Compensation Act 1951* (the WC Act) and the *Workers Compensation Regulation 2002*.

#### **Clause 4      Section 6**

This clause amends section 6 of the LTCS Act to provide that in addition to those injured in motor vehicle accidents the LTCS Act also applies to workers. For the purpose of the LTCS Act, the meaning of “workers” is defined by Chapter 3 of the WC Act. The coverage of the LTCS Act will apply where the worker suffered a personal injury arising out of, or in the course of the worker’s employment; the worker is catastrophically injured as defined in section 15 of the LTCS Act; and the ACT is the state of connection (section 36A of the WC Act refers). The LTCS Act will apply to journey claims (refer section 36 of the WC Act); or where the injury is attributable to the worker’s serious and wilful misconduct (refer section 82, WC Act).

For the avoidance of doubt, any worker who meets the definition of catastrophic injury (see section 15(1)) in the LTCS Act will be considered to have a serious and permanent disablement; therefore any serious and wilful misconduct is irrelevant for the purposes of eligibility for the LTCS Scheme (refer s. 82 of the WC Act).

The amendment makes clear that the LTCS Scheme does not apply to an injury suffered by a worker where the injury was self-inflicted; or where the worker was injured as a result of engagement in professional sport.

The LTCS Act will cover workers who are injured after 30 June 2016 or the date of notification of the Bill, whichever is the later date. This is to clearly provide for the application of the scheme to new injuries after 30 June 2016 or a later date.

#### **Clause 5      Purpose of the Act – Section 7(a)**

This clause amends section 7 to extend the purpose of the Act to provide for an indemnity insurance scheme that cover the lifetime treatment and care needs of people who have sustained catastrophic work injuries that arose out of or in the course of their employment in addition to people who have suffered catastrophic motor accident injuries. The current section also provides that a purpose of the Act is to ensure that the Scheme is fully funded to cover both injury streams.

#### **Clause 6      Section 8 heading**

This clause replaces the reference to the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act) in the existing heading as terms used in the WC Act are referenced with the extension of the LTCS Scheme to cover work injuries.

#### **Clause 7      New section 8(2)**

This clause inserts a new sub-section to provide that the terms used in the WC Act, unless defined in this Act, are to have the same meaning as in the WC Act. The change is associated with the extension of the LTCS Scheme to cover work injuries.

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

This clause replaces the words ‘motor accident injuries’ with the words ‘injuries to which this Act applies’ to extend the functions of the LTCS commissioner to cover both work injuries as well as motor accident injuries.

**Clause 9      Section 11(2), new note**

This clause is associated with the amendment in clause 8 and inserts a reference to section 6, which sets out the injuries to which the LTCS Act applies as it relates to the functions of the LTCS commissioner under the Act.

**Clause 10      Participation in LTCS Scheme – eligibility – Section 15(1)**

This clause replaces the words ‘motor accident injuries’ with the word ‘injuries’ as eligibility for the LTCS Scheme would extend to those with a work injury as a consequence of the changes to sections 6 and 11(2) of the LTCS Act.

**Clause 11      Section 15(1), note 1**

This clause substitutes a new note 1 to make clear that eligibility for the LTCS Scheme extend to those catastrophically injured as a result of a motor accident or arising out of, or in the course of a worker’s employment as defined under section 6 of the LTCS Act.

**Clause 12      New section 15(2A)**

This clause inserts a new subsection to put beyond doubt that LTCS Scheme coverage also extend to an injured worker who is imprisoned because of a conviction of an offence against a law of the Territory, State, the Commonwealth or another Territory, even if section 83 of the WC Act provides that no compensation is payable to a worker while imprisoned.

**Clause 13      Section 15(3)**

This amendment removes the words ‘motor accident’ from section 15(3) to extend section 15(3) to both motor accident injuries and work injuries. This makes clear that (as for motor accident injury) a person is not entitled to participate in the LTCS Scheme if they have received damages for future economic loss in relation to the person’s treatment and care needs for a work injury.

**Clause 14      Section 15(3), note 1**

This clause removes note 1 which refers to a definition of ‘motor accident injury’ in the dictionary of the LTCS Act. This change is associated with the extension of the LTCS Scheme to cover motor accident injuries and work injuries.

**Clause 15      Section 15(4) (a)**

This clause replaces the words ‘a motor accident injury’ with the words ‘an injury’ in relation to the criteria in the LTCS guidelines to be satisfied for entry into the LTCS Scheme.

The change is a consequence of the extension of the eligibility to participate in the LTCS Scheme under section 15(3) to both motor accident injuries and work injuries.

**Clause 16 Section 15(4)(b)**

This clause removes the words ‘motor accident’ from section 15(4)(b). The amendment makes clear that the LTCS Guidelines may include further information to be applied in determining a person’s eligibility to participate in the LTCS Scheme as a result of a motor accident injury or work injury.

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

This clause replaces the words ‘motor accident injury’ with the words ‘the person’s injury’ so that in line with the extension of the LTCS Scheme to cover work injuries, an eligible worker may also apply to become a participant in the LTCS Scheme.

**Clause 18 Section 16 (2)(c)**

This clause removes the words ‘motor accident’ so that an insurer for a motor accident claim as well as a workers’ compensation insurer or self-insurer may apply to the LTCS commissioner for the injured person to become a participant in the LTCS Scheme.

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

This clause removes note 3, which refers to a reference to ‘motor accident claim’ under the CTP Act.

**Clause 20 Section 16(6), except note**

This clause substitutes section 16(6) to provide that the Minister responsible for Workplace Health and Safety or director-general responsible for the Workplace Health and Safety under the WC Act is able to direct an insurer or self-insurer to make a claim (just as the CTP regulator may direct a CTP insurer to make a claim).

**Clause 21 Section 16(7)**

This clause replaces the words ‘the CTP regulator’s direction’ with the words ‘a direction under subsection (6)’. The amendment is associated with the amendment to strengthen the section 16(6) requirements, as discussed at clause 20.

**Clause 22 Sections 16(8), definition of *insurer***

This clause substitutes section 16(8) to expand the definition of *insurer* in the LTCS Act to include (in addition to a CTP insurer or nominal defendant in relation to a motor vehicle injury claim):

- the workers compensation insurer for the employer – if the injured person’s employer is insured;
- the employer – if the injured person’s employer is self-insured; and
- the Default Insurance (DI) Fund – if the injured person’s employer is not insured.

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

This clause removes the words ‘motor accident’ from sections 17, 20(3) and 21(2)(c) as a result of the extension of the LTCS Scheme to cover both motor vehicle injuries and work injuries. The amendments to the provisions provide for:

- the requirements for application, including the authorisation to obtain information relevant to the work injury, are the same as for a motor vehicle accident injury;
- the period of a person’s interim participation is the same for work injuries as it is for motor vehicle accident injuries; that is, an injured person cannot be accepted as an interim participant more than once for the same injury; and
- a workers compensation insurer or self-insurer or Default Insurance Fund can make an application in regards to a person injured at work, in addition to the injured person or someone on the injured person’s behalf.

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

This clause removes note 3, which refers to a reference to ‘motor accident claim’ under the CTP Act.

**Clause 25 Section 22 heading**

This clause substitutes a new section that deals specifically with the effect of the LTCS Scheme on motor accident claims. A new section is inserted by clause 26 to address the effect of the LTCS Scheme on workers compensation claims.

**Clause 26 New Sections 22A**

This clause inserts a new section that deals with the effect of the LTCS Scheme on workers compensation claims. The amendment makes clear that (i) the LTCS Scheme will not limit or affect a worker’s compensation claim under the WC Act except as specifically provided by that Act; and (ii) the time limits for a worker’s compensation claim under the WC Act or the *Limitations Act 1985* in relation to a cause of action on a claim for damages will not run while a person is an interim participant in the LTCS Scheme.

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

This clause removes the words ‘motor accident’ from the provisions of the LTCS Act to make clear that the LTCS commissioner’s assessment of the participant’s treatment and care needs relate to participants injured at work as well as those injured in motor vehicle accidents; and the guidelines for the payment of an injured worker’s treatment and care needs under the LTCS Scheme is to apply in the same way as for a participant with a motor vehicle injury.

**Clause 28 Dispute about eligibility – Sections 34(1)**

This clause replaces the words ‘a motor accident injury’ with the words ‘an injury’. The amendment enables workers compensation insurers and self-insurers to bring a dispute about an injured worker’s eligibility to join the LTCS Scheme, in addition to the injured person and their representatives. This ensures that the same mechanisms for dispute resolution for motor accident injuries also apply for work injuries in the LTCS Act.

**Clause 29      Sections 34(1)(b)**

This clause removes the words ‘motor accident’ from section 34(1)(b). The amendment is associated with amendments to section 34, as discussed under clause 28.

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

This clause removes note 3, which is a reference to ‘motor accident claim’ under the CTP Act.

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

This clause removes the words ‘motor accident’ from section 38(1)(b). The amendment provides that workers compensation insurer and self-insurers (as defined under section 16(8) – definition of *insurer* in clause 28) can apply for review of a decision by an eligibility assessment panel under section 37 of the LTCS Act, in addition to the injured person and their representatives. The reason for the amendment is discussed in clause 28.

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

This clause removes a note, which makes reference to ‘motor accident claim’ under the CTP Act.

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

This clause replaces the words ‘a motor accident injury’ with the words ‘an injury’. This amendment provides that a decision of an eligibility panel under section 40(1) is final and binding for the LTCS Act and any court proceeding under the Act, is applicable to both motor accident injuries and work injuries, which are injuries to which the Act applies.

**Clause 34      Division 7.2 heading**

This clause substitutes a new heading to refer to ‘Disputes about Injuries’ to extend Division 7.2 to apply to both motor accident injuries and work injuries.

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

This clause expands the definition of *interested person* in section 45 to provide that in addition to the workers compensation insurers, self-insurers, the injured person and their representatives, the Default Insurance (DI) Fund can also bring a dispute about work injuries, where the injured person is eligible to make a claim for payment against the DI fund. The amendment ensures consistency with the definition of *insurer* as defined under section 16(8) (refer to clause 22).

**Clause 36      Section 47 heading**

This clause substitutes a new heading to refer to ‘Disputes about injury – application’ to extend Division 7.2’s application to both motor accident injuries and work injuries.



**Clause 37 Section 47(1), except notes**

This clause substitutes a new section 47(1) to provide that an interested person may dispute the commissioner’s decision about whether an injury is an injury for the purposes of the LTCS Act. In the case of a work injury this relates to whether the injured person is a worker. The amendment accords interested parties in relation to a work injury claim the same rights to dispute a decision about a work injury claim as is available to interested parties to dispute a motor accident injury claim.

**Clause 38 Section 47(1), new notes**

This clause inserts notes 3 and 4 to the provision to provide reference to the injuries set out under section 6, which includes a work injury and the definition of worker.

**Clause 39 Section 48 to 52 headings**

This clause substitutes new headings to refer to ‘Disputes about injury’ in relation to sections 48 to 52 inclusive, as a consequence of extending Division 7.2 to both motor accident injuries and work injuries.

**Clauses 40 Treatment and care assessor — cooperation of participant – Section 59**

This amendment substitutes a new provision which extends the requirement on the participant to cooperate in relation to an assessment of the participant’s treatment and care needs – to the participant’s employer as well, if the participant has a work injury. The amendment provides that if the participant has a work injury that is covered under the LTCS Scheme, the employer must comply with any reasonable request made by the treatment and care assessor that relates to the employee’s treatment and care needs assessment. The amendment further provides that an *employer* of a participant in the LTCS scheme is the employer that last employed the worker consistent with the meaning of employer as defined under section 87(2) of the WC Act.

An employer has an obligation to provide any service identified in an LTCS treatment and care assessment under a new section inserted into the WC Act. This is a consequential amendment and is discussed further in relation to clause 1.10.

**Clause 41 Section 61(3)(a)**

This clause removes the word ‘original’ from the term ‘original determination’ in section 61 as it is redundant. This is a technical amendment that corrects a drafting error.

**Clause 42 New section 66A – Contacting former LTCS interim participant**

This clause inserts a new section 66A, which provides for the circumstances where the LTCS commissioner may directly contact a former LTCS participant of the Scheme. The amendment allows the LTCS commissioner to contact *former participants* directly, regardless of whether they have legal representation or not, regarding the treatment and care they received under the Scheme and for the purpose of assessing the effectiveness and

efficiency of the LTCS Scheme. This will assist the LTCS commissioner in undertaking functions under the Act, such as reviewing the operation of the scheme.

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

This clause replaces the words ‘at the rate’ with the words ‘the rate’. This is a minor technical amendment that corrects a grammatical error.

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

This clause replaces the existing definition of a *required contribution period* with definitions relating to motor accident injuries and work injuries.

**Clause 45      Section 72, new definitions**

This clause is associated with the amendment in clause 44 and inserts a new definition of *required contribution period* for work injuries (section 83(1A) refers). The amendment is consequential on the changes to section 83.

**Clause s 46 and 47      Meaning of *contribution period* – div. 10.1 Section 73(1) and new notes**

This clause provides that a determination be in writing in relation to a contribution period. This amendment clarifies the nature of the determination and will enable the LTCS commissioner to determine a different contribution period for different classes of matters i.e. in relation to motor accident injuries and in relation to work injuries.

New notes are inserted by clause 47 to draw the reader’s attention to sections 46 and 48 of the Legislation Act in relation to the making of a determination.

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

This clause inserts a new section 78(aa) to provide that levies paid into the LTCS Fund to cover work injuries are appropriated for the purpose of the LTCS Fund. The amendment also inserts a reference to a new section 84B (refer clause 57) to provide that the LTCS commissioner may determine and collect a LTCS levy for a contribution period to manage liabilities in relation to the work injuries covered by the LTCS Scheme.

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

This clause inserts a new subsection to make clear that regardless of how funds are determined or sourced to cover the liabilities of LTCS Scheme, all moneys in the LTCS Fund can be used to discharge any LTCS Scheme liability. The policy intent is that while levy amounts may be determined differently for the two injury streams (i.e. either motor accident injuries or work injuries); and collected from different sources (e.g. income from interest earned on levies), monies in the LTCS Fund will be used to discharge the liabilities of the Scheme and need not be accounted for separately. .

This amendment ensures efficiencies in administration, investment and management and will allow for smoothing of funding within the total injury pool where one injury stream's actual experience may vary from the actuarial forecasts in a given year. It is intended, however, that there will be no cross-subsidisation between the two injury streams.

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

This clause replaces a reference to 'subsection (4)' in section 80(6) with a reference to 'subsection (5)'. This is a technical amendment that corrects a cross-reference.

**Clause 51 Section 80(7)**

This clause replaces a reference to 'subsection (3)' in section 80(7) with a reference to 'subsection (4)'. This is a technical amendment that corrects a cross-reference.

**Clause 52 Section 83 heading**

This clause amends the heading of this section, which is consequential to the amendments in clauses 60 to 62 inclusive.

**Clause 53 Section 83(1)**

This clause makes clear that before the beginning of each contribution period relating to motor accident injuries, the LTCS commissioner must separately determine the amount of required fund contribution for motor accident injuries.

The amendment is associated with the amendment discussed in clause 54 which adds the requirement that the LTCS commissioner must also determine, in writing the amount needed to be contributed to the LTCS fund in each contribution period for work injuries.

**Clause 54 New section 83(1A)**

This clause inserts a new section to provide that the LTCS commissioner must determine the required fund contribution for work injuries (to underpin the levy amounts) to be contributed to the LTCS Fund in a contribution period. The required fund contribution determined to cover work injuries must fully fund the present and likely future liabilities of the Fund for that injury stream only. In other words, the required fund contribution for work injuries must be based on the risk for work injuries alone, not motor vehicle injuries. The amendment also includes matters that the LTCS commissioner must have regard to in determining a required fund contribution for work injuries; such as payments needed to be made from the fund during the contribution period and to provide for any other matters the LTCS commissioner should prudently make provision for in managing work injury liabilities under the Scheme.

**Clause 55 Section 83(3)**

This amendment provides that the amount of required fund contribution for motor vehicle injuries or work injuries must be determined in accordance with the report of an

independent actuary. This clause is consequential to the amendments in clauses 53, 54 and 55.

**Clause 56      Section 84**

This clause amends section 84 to provide that the LTCS commissioner must determine separate levy amounts for the two injury streams – motor accident injuries and work injuries – that must be contributed to the LTCS Fund in any given contribution period.

Further, each levy amount determined by the LTCS commissioner to apply for each injury stream must be an amount that the LTCS commissioner reasonably believes will result in the required fund contribution being contributed to the fund for that contribution period.

**Clause 57      New sections 84A to 84C**

This clause inserts new sections 84A to 84C, setting out how the LTCS levy amount is to be determined by the LTCS commissioner for motor accident injuries and work injuries respectively. There is no material change to the determination of the LTCS levy amount for motor vehicle injuries (section 84A refers).

In determining a LTCS levy amount for work injuries, the amendment provides as follows:

- the LTCS commissioner may determine a LTCS levy amount for a contribution period payable by a workers' compensation insurer or self-insurer (section 84B);
- the levy amount payable may be a fixed amount; a percentage of the gross written premium (for an insurer); or the notional gross written premium (for a self-insurer); or a combination of a fixed and a percentage of the gross or notional written premiums (section 84B(1));
- the methodology used in determining the levy applicable to insurers and self-insurers may be prescribed in the LTCS guidelines, and may be based on different criteria for the determination of premiums for workers compensation policies under the WC Act (sections 84B(1) and (2));
- the LTCS commissioner must give each workers compensation insurer or self-insurer a written notice setting out the levy amount payable and the date by which payment must be made. If no time for payment is stated in the notice, payment must be made no later than 30 days after the notice is received by the insurer or self-insurer (section 84C(1) and (2)).

The amendment also makes clear that if the levy amount is not paid by the insurer or self-insurer within the time stated in section 84C (1) and (2), the amount is a debt owing to the Territory by the insurer or self-insurer and is recoverable in a court of law or the ACT Civil and Administrative Tribunal (or ACAT).

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

This clause removes the words 'motor accident' from the provision to ensure that the method for determining the present value of the LTCS commissioner's treatment and care

liabilities in Division 10.2 is equally applicable to motor accident injury and work injury liabilities under the Scheme.

**Clause 59      New section 90A**

This clause inserts a new provision to provide that the LTCS commissioner is entitled to recover the present value of its treatment and care liabilities for a work injury in relation to a participant if the participant's employer was uninsured when the work injury occurred. The amendment defines an employer to be uninsured if the employer does not hold a compulsory insurance policy under section 144 of the WC Act that applies to the participant at the time of the participant's work injury. The provision does not apply to an employer who is a self-insurer.

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

This clause expands the list of persons with whom the LTCS commissioner may exchange information about the treatment and care needs of a participant in the LTCS Scheme to include a workers compensation insurer and the Default Insurance Fund, consequential to the extension of the LTCS Scheme to cover work injuries.

**Clause 61      Section 94(1)(b)**

This amendment is associated with the amendment in Clause 69 and deletes the words 'motor accident' to extend the application of section 94 to cover motor accident injuries and also work injuries.

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

This clause inserts new subsections regarding the exchange of information between the LTCS commissioner and the participant's employer, where the participant has a work injury. The amendment provides that information about the participant's treatment and care needs may be shared with the participant's employer only if the information is relevant to the employer's obligations under WC Act, or relates to the LTCS commissioner's assessment of the participant's treatment and care needs (under section 23). The exchange of information must be in accordance with the LTCS guidelines.

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

This clause substitutes a new definition of *information* in section 94 to make clear that the nature of the information that may be shared encompass both information (a) used to make an assessment under section 23 about the participant's treatment and care needs; and (b) on expenses paid or payable under the Scheme for treatment and care.

**Clause 64      Dictionary, note 3**

This clause deletes the word 'insurer' from *note 3* as a reference to licensed insurer for the purposes of the CTP Act is already included in *note 3*.

**Clause 65 Dictionary, new note**

This clause inserts a new note to the dictionary to reference the definitions in the WC Act that are relevant to work injuries under the LTCS Act. This amendment is consequential to the extension of the LTCS Scheme to cover work injuries under the WC Act.

**Clause 66 Dictionary, new definitions**

This clause inserts the following new definitions in the dictionary as a consequence of the extension of LTCS Scheme to cover work injuries:

Claim in relation to an injury – to include both a motor accident claim or for a work injury, a workers compensation claim.

CTP insurer in relation to a motor accident claim – is an insurer under the CTP Act.

Injury – to mean an injury to which the LTCS Act applies

Insurer for an injured person’s claim – to mean a CTP insurer if the injured person has a motor accident injury; and a workers compensation insurer or self-insurer if the injured person has a work injury.

Self-insurer – to take the meaning of the term as defined under the WC Act

Worker – to take the meaning of worker as defined under the WC Act.

Workers compensation – to mean a claim for compensation for a work injury as defined under the WC Act.

Workers compensation insurer – to mean insurer approved by the Minister under section 145 of the WC Act.

Work injury – to mean an injury to a worker arising out of, or in the course of, the worker’s employment.

**Clause 67 Dictionary, definition of *required contribution period***

This amendment deletes the existing definition of a *required contribution period* and is associated with the changes to section 83 and changes to the defined term as amended in clauses 44 and 45.

**Clause 68 Dictionary, new definitions**

This clause is associated with the amendment in clause 67 and inserts two new definitions relating to the *required contribution period* that are relevant to motor accident injuries and work injuries respectively.

## Schedule 1: Consequential Amendments

### Part 1.1 Workers Compensation Act 1951

#### Clause 1.1 New section 70(2A) to (2C)

This clause inserts new provisions to provide that an employer is not liable for any treatment and care needs or excluded treatment and care needs of a worker (as defined under section 9 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (the LTCS Act) while the injured worker is a participant in the LTCS Scheme.

The amendment also makes clear that the employer remains on risk to pay the costs of any treatment and care needs of a worker until the worker is accepted as a participant in the LTCS Scheme; and after the worker ceases to be a participant.

#### Clause 1.2 Section 82, new notes

This clause provides for a note to cross reference to section 6(4)(b) of the LTCS Act (Clause 4). The note explains that the LTCS Act applies to an injury of a worker that is attributable to the worker's serious and wilful misconduct.

#### Clause 1.3 Section 83, new notes

This clause provides a cross reference to section 15(2A) of the LTCS Act (Clause 12). The note explains that despite section 83 of the WC Act, an injured worker is eligible to participate in the LTCS Scheme even though the person is imprisoned.

#### Clause 1.4 New section 96A

This clause inserts a new section to Part 5.4 to exempt an insurer from establishing or giving effect to a Personal Injury Plan (PIP) under Part 5.4 of the WC Act while the injured worker is a participant in the LTCS Scheme. The amendment also provides that the insurer's obligations to establish and give effect to a PIP apply if the injured worker ceases to be a participant in the LTCS Scheme.

#### Clause 1.5 Section 97(1), new note

This clause inserts a note that cross-references section 96A (clause 1.4) to explain that the insurer's PIP obligations would not apply under section 97 of the WC Act, if the injured worker is a participant in the LTCS Scheme. The amendment is associated with the amendment to section 96A under the WC Act.

#### Clause 1.6 Section 98(1), new note

This clause inserts a note to make clear that the insurer is not required to provide information to the employer and the injured worker about a PIP, if the injured worker is a participant in the LTCS Scheme i.e. a PIP is not required for an injured worker who is a participant in the LTCS Scheme.

**Clause 1.7     New part 5.5A**

This clause inserts a new Part 5.5A which sets out the obligations required of insurers in respect of injured workers who are participants in the LTCS Scheme following information provided to the insurer by the LTCS Commissioner about the injured workers' treatment and care needs assessment. This provision removes the requirement for an injured worker to comply with the PIP under Part 5.4 of the WC Act while the injured worker is a LTCS Scheme participant.

The new provision also requires a) the LTCS Commissioner to give the insurer a copy of the assessment of the injured worker's treatment and care needs for the work injury under section 23 of the LTCSA Act; and b) for the insurer to give the employer and the injured worker a statement to the effect that the workers entitlement to weekly compensation may stop if the worker unreasonably refuses to comply with the LTCS commissioner's section 23 assessment of the LTCS participant's treatment and care needs.

**Clause 1.8     New section 137(2A)**

Section 137 provides for how a worker may commute their rights to compensation. This clause inserts a new section that requires that before a worker who may be eligible for LTCS Scheme makes a claim to commute their rights for treatment and care under section 137(2) of the WC Act, an application must be made to participate in the LTCS Scheme.

**Clause 1.9     New section 142(3A)**

Section 142 provides a general obligation to provide vocational rehabilitation. This clause inserts a new subsection to exempt an employer from having to provide vocational rehabilitation under Chapter 7 of the WC Act while the injured worker is a LTCS participant in the LTCS Scheme.

**Clause 1.10    New section 142A**

This clause inserts a new section to provide that the employer has an obligation to provide vocational rehabilitation to an injured worker who is a participant in the LTCS Scheme. The requirement on the employer to assist the worker's return to work excludes an obligation on the employer to pay for vocational rehabilitation but includes a requirement to participate, for example, to implement specific requirements in relation to the management of the worker's workload or to find suitable employment to return an injured worker to the workplace.

The amendment makes clear that an employer commits an offence if the employer is given a copy of the assessment of the workers' treatment and care needs for the workplace injury under section 23 of the LTCS Act and the employer fails to provide the service required to be provided under the assessment to assist the worker's return to work. The offence applies if



there is a failure of the employer to provide the service and attracts a maximum penalty of 50 penalty units.

The amendment also provides the employer with a defence, if the employer proves that his failure to provide the required service was reasonable. For example, an employer does not commit an offence if he is able to prove that it is not feasible or practicable to provide the workplace modifications required by a treatment and care assessment under the LTCS Act. The defendant has a legal burden in relation to the defence (see section 59(b) of the Criminal Code 2002) as it involves matters that would be within the peculiar knowledge of the defendant, i.e. a reasonable excuse for failing to provide the service. Note, the penalty is monetary, no imprisonment is proposed. To require the defendant to prove the defence, i.e., on the balance of probabilities, is considered a permissible reasonable limitation under section 28, *Human Rights Act 2004*.

**Clauses 1.11 – 1.12 Section 144(1), definition of compulsory insurance policy, paragraph (a) and new note**

These clauses amend the definition of compulsory insurance policy under section 144 to exclude liability from the insurance policy for assessed treatment and care needs of injured workers who are covered by the LTCS Scheme. Clause 1.12 inserts a note that references ‘LTCS Scheme’ and ‘participant’ as terms defined under the LTCS Act.

**Clause 1.13 New section 182EA**

This clause inserts a new section to require that the worker must apply to be considered a participant in the LTCS Scheme, before a claim for damages under part 9 of the WC Act can be made by the worker in respect of the work injury. This amendment restricts the injured worker’s right to common law damages for treatment and care, where a worker suffers a catastrophic injury and is subsequently accepted as a participant in the LTCS Scheme. It is designed to avoid double payment for treatment and care costs.

**Clause 1.14 New part 9.4**

This clause inserts a new part 9.4 to restrict the right to common law damages or a settlement made to an injured worker, who is a participant in the LTCS Scheme relating to treatment and care needs or any excluded treatment and care as defined under the LTCS Act. For the avoidance of doubt, the injured person will continue to be able to seek a settlement amount for common law entitlements other than for treatment and care. An award of damages that includes an injured worker’s treatment and care needs payable under the LTCS Scheme would not meet the nationally agreed NIIS minimum benchmarks.

The amendment also makes clear under section 186B that a payment made by the LTCS commissioner does not constitute a confirmation of a cause of action for the purpose of section 32A of the *Limitations Act 1985*.

**Clause 1.15 Dictionary, new definitions**

This clause inserts new definitions in the dictionary to cross-reference definitions in the LTCS Act noted in amendments made to the WC Act as a consequence of extending the LTCS Scheme to cover catastrophic work injuries. The new definitions that include ‘assessed treatment and care needs, excluded treatment and care, LTCS Act, LTCS commissioner, LTCS scheme, participant, treatment and care needs, and work injury’ are to take the meaning defined under the LTCS Act.

## **Part 1.2      Workers Compensation Regulation 2002**

### **Clause 1.16      New section 75(2A)**

This clause inserts a new sub-section to make clear that in setting a premium to fully fund claim liabilities under section 75(2)(a) of the Regulations, the amount of claim liabilities is not to include an injured worker's treatment and care costs as a participant in the LTCS. This is to ensure there is no double payment of premium cover for such liabilities given that a separate levy is payable under the LTCS Act to fully fund the treatment and care liabilities for catastrophic work injuries covered under the LTCS Scheme.