

## **Part 17: Buying into the Lifetime Care and Support Scheme**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 7A (5), 7B(5), 28 and 58.

This version of Part 17 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any application to buy into the Lifetime Care and Support Scheme (the Scheme) made on and from that date, whether for interim or lifetime participation and whether determined or otherwise, and to all participants in the Scheme, whether interim or lifetime and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any or parts of this Guideline. Waiving observance of all or part of this Guideline in any particular circumstances is not an indication that Lifetime Care will waive observance of this or any other Guideline in any other circumstances.

### **1 Background**

#### **Relevant sections of the legislation**

*Motor Accidents (Lifetime Care and Support) Act 2006*

#### **7A Persons injured before commencement of Scheme may “buy in”**

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring before the relevant Scheme commencement date (a pre-commencement injury) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme in respect of a pre-commencement injury only if the person would have been eligible to participate in the Scheme:
  - (a) had the motor accident occurred immediately after the relevant Scheme commencement date, and
  - (b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.
- (4) An application for a person to become a participant in the Scheme in respect of a pre-commencement injury cannot be made by an insurer.

- (5) The LTCS Guidelines may make provision for or with respect to how a person's contribution for participation in the Scheme in respect of a pre-commencement injury is to be determined.

**7B Persons injured in motor accidents occurring outside NSW may “buy in”**

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring outside New South Wales (whether before or after the commencement of this section) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme under this section only if the person would have been eligible to participate in the Scheme:
- (a) had the motor accident occurred in New South Wales, and
- (b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.
- (4) An application for a person to become a participant in the Scheme under this section cannot be made by an insurer.
- (5) The LTCS Guidelines may make provision for or with respect to how a person's contribution for participation in the Scheme under this section is to be determined.

1.1 An injured person who sustained a motor accident injury prior to the commencement of the Scheme or was injured in a motor accident occurring outside NSW may buy in to become a lifetime participant in the Scheme if their injury meets the eligibility criteria specified in Part 1 of the Guidelines.

1.2 Lifetime Care will calculate the amount required to provide services to meet the injured person's reasonable and necessary treatment, rehabilitation and care needs because of the motor accident injury, for the injured person's lifetime. Buying into the Scheme is voluntary and will be subject to an agreement between Lifetime Care and the injured person or their guardian.

**2 Application to buy in**

2.1 An application to buy into the Scheme can be made by or on behalf of the injured person. An application must be in writing and must be accompanied by sufficient information to allow Lifetime Care to determine that the injured person's motor accident injury meets the criteria in the Guidelines and the injured person would have been eligible to participate in the Scheme, had their motor accident occurred after the applicable Scheme commencement date or within NSW.

2.2 Lifetime Care may deny an application to buy into the Scheme if the injured person's injury does not meet the eligibility criteria in Part 1 of the Guidelines, being the current version in

force at the time of the application to buy in. If an application is denied, the injured person may dispute Lifetime Care's decision about their eligibility to the Scheme in accordance with the Guidelines.

### **3 How Lifetime Care calculates cost to buy in**

- 3.1 Lifetime Care requires information about the injured person's previous and current treatment, rehabilitation and care needs to calculate the cost for the injured person to buy into the Scheme. This information includes, but is not limited to:
- a) the current age of the injured person, and their age at the time of injury;
  - b) the nature and severity of the injured person's injury;
  - c) current objective assessment of the injured person's functional status. *For example, using the FIM™ or WeeFIM®, the Care and Needs Scale (CANS) and American Spinal Injury Association (ASIA) scale for spinal cord injury;*
  - d) objective assessments of the injured person's previous and current treatment, rehabilitation and care needs; and
  - e) the nature, frequency and duration of services utilised to meet these treatment, rehabilitation and care needs, including any variations in care needs during periods of transition.
- 3.2 Lifetime Care may arrange for the injured person to be assessed for the above information to be obtained. Lifetime Care will fund the reasonable and necessary cost of any assessment/s required. A copy of the assessment/s will be provided to the injured person.

### **4 What the buy-in amount includes**

- 4.1 The amount determined by Lifetime Care to buy into the Scheme will include:
- a) the full lifetime expenses in providing for the injured person's reasonable and necessary treatment, rehabilitation and care needs as they relate to the motor accident injury in respect of which the injured person is a participant in the Scheme and as are reasonable and necessary in the circumstances, as outlined in section 6(1) of the Act and the LTCS Guidelines, and
  - b) the administrative and associated costs incurred by Lifetime Care in managing the injured person as a lifetime participant in the Scheme.

### **5 Lifetime Care's notification of the amount required to buy in**

- 5.1 Lifetime Care will notify the injured person in writing of the amount required for the injured person to buy in, which includes information as to how Lifetime Care has calculated the buy-in amount.
- 5.2 The entire buy-in amount will be paid to Lifetime Care upfront.
- 5.3 Lifetime Care will pay the buy-in amount into the Lifetime Care and Support Authority Fund (the Fund) in full once received.

5.4 In exceptional cases, Lifetime Care may consider security over real property in lieu of cash payment after liquidation of personal assets to meet the buy-in amount.

## **6 Buy in as a lifetime participant**

6.1 After the injured person has paid the buy-in amount to Lifetime Care in full, Lifetime Care will write to the injured person to confirm that they have become a lifetime participant and that the buy-in amount has been paid into the Fund. Lifetime Care cannot request any additional payments from the injured person once a buy-in amount has been paid.

6.2 Once the injured person has become a lifetime participant, the person has the same obligations and entitlements as any other lifetime participant in the Scheme.