

## LIFETIME CARE AND SUPPORT – RAMIFICATIONS FOR QUEENSLAND INSURERS

Once the Motor Accidents (Lifetime Care and Support) Act 2006 (NSW) is fully operational, Queensland insurers liable in respect to some motor vehicle accidents occurring in New South Wales will be obliged to make payment of a present value sum on account of lifetime care and support to the Life Time Care and Support Authority and not to the injured individual.

The sum payable by the Insurer is to be determined under the legislation by the Authority and the prospect for the insurer being able to negotiate these two substantial heads of damage will be severely limited.

The Motor Accidents (Lifetime Care and Support) Act 2006 (NSW) sees the establishment of a Lifetime Care and Support Authority in NSW. The authority is charged with the task of processing applications and selecting candidates to be provided with lifetime care and support. Eligible persons are those injured as a consequence of motor vehicle accidents in New South Wales. Successful candidates will probably be those persons who suffer brain damage, quadriplegia, tetraplegia and the like from motor accidents in New South Wales. The authority is also armed with the responsibility of management of funds levied from vehicle registration and insurers, and to pay for and oversee the provision of medical services and care to those successful candidates for life.

The provision of the service is not based on fault. All victims of accident fulfilling the injury criteria set out in the legislation and approved by the authority are candidates for lifetime care and support.

Once the scheme is fully operational eligible persons accepted by the Authority, who choose to bring an action in negligence where the accident arises from someone else's fault, will not recover from the insurer compensation for future medical care, or paid services. Those heads of damage will be excluded from the claim, as the injured party will receive those benefits via the authority. In most cases, it is expected the injured party will be in receipt of those benefits from the authority from the moment of release from hospital and long before any litigation claim resolves.

Section 54 of the Motor Accidents (Life Time Care and Support) Act 2006 entitles the authority to recover as a debt due to the authority the present value of treatment and care liabilities of a participant in the scheme from the negligent driver and/or its compulsory third party

### INSURANCE ALERT

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injury insurer. The effect of the legislation where the insured is negligent is to pass payment of certain heads of damage for treatment and care not to the injured individual but to the Authority.

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