THE LAW SOCIETY
OF NEW SOUTH WALES

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Mr D Ferguson
Executive General Manager
Lifetime Care and Support Authority of NSW
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SYDNEY NSW 2000

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Dear Mr Ferguson,

Review of the Lifetime Care and Support Guidelines

I am writing on behalf of the Injury Compensation Committee of the Law Society of NSW ("the Committee") with respect to the review of the Lifetime Care and Support Guidelines. You have invited comments on Parts 1, 5 and 6 of the draft Guidelines.

The Committee welcomes the opportunity to provide feedback but notes that the review of the Guidelines is being done in stages. While the Committee embraces a person-centred/participant-focused approach, the Guidelines need to be read as a whole and the Committee is concerned that by dealing with the review in stages there is scope for some loss of cohesion between the separate Parts. The Committee would therefore welcome the opportunity to participate further in an overall review of the final draft Guidelines once the staged reviews are completed.

The Committee makes the following comments with respect to specific clauses:

Part 1 – Eligibility for Participation

Clause 2.7(b) refers to a *"treating specialist"*. To make this clause consistent with clause 3.2, the Committee submits that the word *"treating"* should be replaced with the word *"medical"*. The reason for this is that an injured person may not have a treating specialist and in those circumstances where the application is made on behalf of the injured person or the insurer, a Medical Certificate completed by an appropriately qualified medical specialist for the motor accident injury should suffice.

Clause 5.7 defines a traumatic brain injury as *"an insult to the brain"*. The Committee submits that such an insult may occur in the absence of any of the requirements in clause 5.8, namely, a post traumatic amnesia greater than one week, a very significant impact to the head causing coma for longer than one hour or a significant brain imaging abnormality . For example, a brain injury may be caused by a motor accident through hypoxia resulting in permanent impairments of cognitive, physical and/or psychological functions but not otherwise meet the eligibility criteria. The Committee submits that clause 5.8(b) should include after the words *"a significant brain imaging abnormality"* the words *"or hypoxia"*.

The Committee notes the introduction of clause 5.9. While a measure of pre-existing injury or disability is appropriate, the Committee is concerned that clause 5.9(c) may not fairly assess the extent to which an injured person has suffered injury and ongoing disability as a result of the motor accident injury. For a score on FIM or Wee FIM to be at least 2 less than their pre-injury score, there will need to be a significant deterioration in the injured person's functional independence.

By way of example, an injured person with a pre-existing traumatic brain injury may have a pre-existing moderate impairment in comprehension with a FIM score of 3. For that score to be reduced by at least 2 as a result of a motor accident injury, the injured person would be reduced to total assistance with communication. The Committee considers that the subtleties of traumatic brain injury are such that a variation of 1 on the pre-injury score as a result of the motor accident injury may significantly affect an injured person's independence. The Committee submits that it would be unjust to leave that injured person without appropriate treatment and care despite having sustained a traumatic brain injury that otherwise meets the eligibility criteria.

The Committee welcomes the introduction of a time limit on making applications as set out in clause 8. However, the summary of changes on page 3 incorrectly identifies that there is a timeframe within which an application must be made to the Claims Assessment and Resolution Service. No such time limit exists. Nevertheless, a three year time limit for making an application to the Scheme is seen by the Committee as an appropriate period.

Clause 8.2 adopts the words *"exceptional circumstances"*. The Committee is concerned that this phrase is not otherwise defined and is not found in the *Motor Accidents Compensation Act 1999* in dealing with time limits under sections 36, 73, 109 or 110. Instead, the concept of a *"full and satisfactory explanation"* is used as defined in section 66(2). For consistency in the approach to determining whether a time limit within an aspect of the Scheme should be extended, the Committee submits that there ought to be consistency between the *Motor Accidents Compensation Act 1999*, the *Motor Accidents (Lifetime Care and Support) Act 2006* and their respective Guidelines. On that basis, the Committee submits that clause 8.2 should be amended to read:

> *"The Authority may extend this time limit if there is a full and satisfactory explanation for the delay in making the application. An applicant who submits an application more than three years after the date of the motor accident injury must advise the Authority in writing of the full and satisfactory explanation of the cause of the delay."*

Part 5 – Assessment of Treatment and Care Needs

The draft Guidelines remove the previous clause 3 relating to the appointment of a Lifetime Care and Support Coordinator. The Committee submits that this is an important provision to assist a severely injured person in dealing with the Scheme's application process. The support of a coordinator to an injured person will allow them to properly understand the application process, the benefits available to them and how the services will be delivered. The Committee submits that the role of a coordinator should be restored to the Guidelines.

Part 6 – Determination of Reasonable and Necessary Treatment and Care Needs

The Committee notes that clause 2.6 appears to broaden the Authority's discretion in determining whether a provider of treatment, item or services is suitable. The Committee embraces the consultative process with the injured person that the Guidelines outline but notes the intrinsic difficulty that continues for an injured person who wishes to receive part or all of their care from a family member who is not an approved provider under Part 18.

The Committee submits that in order to consider clause 2.6 fully, any proposed amendments to Part 18 of the Guidelines need to be considered concurrently, and the Committee would welcome the opportunity to make further submissions with regard to the interplay of Part 6 and Part 18 once the staged review of Part 18 has commenced.

The Committee is grateful for the opportunity to provide comments. Should you have any enquiries relating to this submission please contact the Committee's policy lawyer, Leonora Wilson by email at leonora.wilson@lawsociety.com.au or by phone on 9926 0323.

Yours sincerely,

Michael Tidball
Chief Executive Officer