

**Submission
No 9**

**INQUIRY INTO FIRST REVIEW OF THE LIFETIME CARE
AND SUPPORT SCHEME**

Organisation: Australian Lawyers Alliance

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Review of the Lifetime Care and Support Scheme

Submission to NSW Parliament Standing
Committee on Law and Justice

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence. While maintaining our plaintiff common law focus, our advocacy has since expanded to criminal and administrative law, in line with our dedication to justice, freedom and rights.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the issues raised by the terms of reference of review of the Lifetime Care and Support Scheme by the NSW Standing Committee on Law and Justice.
2. We have had the benefit of reviewing the submission made by the NSW Bar Association, and endorse that submission in its entirety. We make three additional submissions.

Eligibility and disputes

3. There appears to be a lacunae in the legislation on eligibility and disputes. There is no restriction in number or in time on applications by insurers for a person to be included as a lifetime participant in the Scheme. What this means is that a person who has been an interim participant for two years, for example, who has been found by the Lifetime Care and Support (LTCS) Authority not to be eligible for life participation, can be subject to any number of further applications for lifetime participation by the Compulsory Third Party (CTP) insurer. The applications only cease when the injured person receives an award of damages which includes treatment and care.
4. CTP insurers have a financial incentive to put claimants into the LTCS Scheme. The making of multiple membership applications puts an unfair burden on participants. It can lead to uncertainty and distress for the injured person and creates delay and additional costs in the finalisation of other compensation entitlements.
5. An insurer should only be able to make one such application.

Quality standards and delivery of services

6. It is unclear what quality controls are in place to ensure that the services that are delivered are of an adequate standard of quality. It should not be up to the participant to complain where services are inadequate.
7. A number of participants refuse to accept that they have an injury, particularly where the injury is not clearly physically identifiable, such as a brain injury. People

can be experiencing symptoms whilst not accepting that they are suffering from an injury that requires treatment.

8. Our members are familiar with clients of this nature, who are often younger males who refuse to accept treatment and claim that they are fine (all the while getting into trouble with the criminal justice system and fathering children as a result of behavioural changes caused by their injuries).
9. What is the insurer's responsibility when the participant who needs their help declines treatment and falls off the radar?
10. What mechanisms does the provider of care and support under the LTCS Scheme, icare, use to address such problematic cases?

Guardianship orders

11. The ALA seeks clarity on the responsibility, capacity and willingness of icare to seek guardianship orders where there are none in place, in appropriate circumstances. This is probably most relevant where the participant has not been through legal proceedings (and so has not had advice from a lawyer).
12. There appears to be a belief on the part of icare that to make such an application would put them in conflict with the participant and that it is not part of their role. Where there is no one else, the ALA believes that it should be icare's role to make such applications.