

# 2022 Review of the Lifetime Care and Support scheme

Submission to the Standing Committee on Law & Justice

28 September 2022

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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 is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into the 2022 Review of the Lifetime Care and Support scheme which is being conducted by the Standing Committee on Law and Justice.
2. The ALA seeks to raise two issues for consideration by the Standing Committee on its review of the operation of the Lifetime Care and Support scheme.
  - a. Care Services
  - b. LTCS/NDIS Interface

## CARE SERVICES

3. The COVID-19 pandemic has presented widespread challenges for a wide range of private and institutional suppliers of care services. The pandemic itself, consequential reduction in foreign worker numbers and further consequential labour shortages have presented an industry wide challenge. The LTCS Authority and its care service providers have been no exception to the broader challenge.
4. LTCS scheme participants report to their legal representatives (ALA members) ongoing difficulties with maintaining care regimes for the catastrophically injured. Unfortunately, those with the most severe injuries do require extensive care hours and are heavily reliant upon those carers for basic daily tasks.
5. For some with the most traumatic of brain injuries, carers are present with them 24 hours a day, 7 days per week. Two carers can be required to assist with showering, dressing, meals and transport. The failure of a carer to turn up for their shift, whether it be due to agency difficulties or just last-minute illness, places considerable strain on the injured and places even more strain upon their family.
6. The ALA receives reports of family members stepping in to replace paid carers who become unavailable at short notice. Unfortunately, during the pandemic, this has become an all too regular event. If a carer calls in sick at 9.30 pm when they are meant to be conducting an overnight active care shift starting at 10.00 pm, then what all too often happens is that a replacement carer cannot be secured at short notice. A family member ends up spending the

night awake as carer to the detriment of their sleep, their health and their paid employment or other carer responsibilities the following day.

7. The ALA very much understands that “stuff happens”. The ALA understands that emergencies occur. However, it appears that there is very little reserve capacity built into care arrangements. The SCLJ is invited to ask the LTCS Authority what planning mechanisms it puts in place to meet the everyday occurrences of carers calling in sick at short notice.
8. The SCLJ is invited to ask the LTCS Authority as to the frequency with which care shifts are going unfilled even with pandemic conditions lifting. Further, in emergency situations, what percentage see alternate paid care sources and what percentage see family step up?
9. It is an absolute article of faith (some might say a shibboleth) at the LTCS Authority that they will not pay family members to provide care. The family member who steps up and provides the overnight care in the illustration above goes unpaid for their efforts, even if they end up missing work the next day or if the emergency care shift conflicts with their own employment obligations.
10. The ALA understands the LTCS Authority’s “thin end of the wedge” concerns about paying family members to provide care. The LTCS Authority wants family members to be family and not to become paid carers.
11. However, any time a carer does not show up for a shift and a family member substitutes in an emergency, the LTCS Authority saves money. The LTCS Authority does not pay the carer and the LTCS Authority does not pay the emergency substitute.
12. In effect, the ultimate reserve workforce for the LTCS Authority is unpaid family members. This is not a situation that should be tolerated, let alone accepted.
13. The SCLJ is invited to explore with the LTCS Authority what better mechanisms could be put in place to appropriately compensate family members who provide emergency care when paid carers fail to turn up. This is a situation clearly distinct from circumstances where family members elect to provide services, rather than utilise paid services that are otherwise available.
14. The ALA would ideally like to see those family members, who perform care tasks in emergency substitution for paid carers, being compensated even if it is on a retrospective, ex gratia, thank you for helping out on an emergency basis.

15. It is acknowledged that the situation is complex. The LTCS Authority does not want family members to be standard carers, unless by choice and on an unpaid basis. However, nor should family members be expected to be the unpaid reserve workforce when paid carers simply do not show up for their shifts. The fact that family step up in an emergency and the LTCS scheme saves money only encourages reliance on family as the reserve care workforce.

## **THE LTCS/NDIS INTERFACE**

16. For those who are eligible for LTCS membership, the LTCS scheme should be the substantive and theoretically the sole provider of injury related treatment and care services.

17. The ALA understands that there are some additional services available from the NDIS that are not available from the LTCS Authority. It is understood that the points of delineation between the two schemes are not crystal clear.

18. The SCLJ is invited to ask the LTCS Authority exactly what the NDIS might provide that the LTCS Authority does not and why the LTCS scheme does not meet a claimant's full accident related needs. The drafting intent of the two schemes is that they provide matching levels of services. The LTCS scheme was the forerunner and model for the NDIS.

19. Of far more concern is that the ALA has received anecdotal reports of LTCS scheme participants being encouraged to pursue NDIS entitlements ahead of and before asking for LTCS funding. The SCLJ is invited to ask the LTCS whether there are any strict prohibitions against any such suggestions being made in the LTCS Guidelines or other Rules. The SCLJ is encouraged to seek confirmation from the LTCS Authority that any rumour of such encouragement by the LTCS or its agents to pursue NDIS entitlements first is incorrect and that it has not occurred and will not occur.

## **Conclusion**

1. The Australian Lawyers Alliance (ALA) has welcomed the opportunity to have input into the 2022 Review of the Lifetime Care and Support scheme.
2. The ALA is available to provide further assistance to the Committee on the issues raised in this submission. Should you have any queries with respect to any matters outlined in this submission, please contact ALA spokesperson for personal injury and compensation – Andrew Stone SC at

**Joshua Dale**

**NSW President**

**Australian Lawyers Alliance**