

**Submission
No 13**

SECOND REVIEW OF THE LIFETIME CARE AND SUPPORT AUTHORITY

Organisation: The Law Society of NSW
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18 May 2009

Ms Rachel Callinan
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

BY FAX: 9230 3416

Dear Ms Callinan

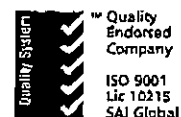
Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

I refer to the letter from the Hon Christine Robertson MLC dated 30 March 2009 inviting the Law Society to participate in the second review of the exercise of the functions of the Lifetime Care and Support (LTCS) Authority and the Lifetime Care and Support Advisory Council.

In making this submission, the Law Society's Injury Compensation Committee (ICC) has had the benefit of seeing the comments made by the New South Wales Bar Association in its letter to you of 6 May 2009.

The ICC endorses the submissions made by the Bar Association and commends them to the Standing Committee as issues that are appropriate to be raised with the LTCS Authority. The ICC strongly supports enhancement of review and appeal mechanisms and echoes the Bar Association's concerns about the *ultra vires* nature of the LTCS Guidelines *vis a vis* the Act.

The ICC has carefully considered the Standing Committee's First Report, Review of the Exercise of the Functions of the Life Time Care and Support Authority and the Life Time Care and Support Advisory Council published in October 2008 (the Report). The ICC specifically endorses Recommendation 1 which seeks legislative amendment to provide that children aged less than 3 years when injured are not assessed for participation in the Scheme until they are at least 5 years of age, and Recommendation 2, seeking formal consideration of the range of options for independent review of decisions and the provision of independent advice and advocacy for applicants and participants in the Scheme.



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The Government has now introduced the Motor Accidents (Lifetime Care and Support) Amendment Bill 2009 which proposes making the following changes to the Lifetime Care and Support Scheme:

- (1) to enable a person who sustained severe injuries from a motor vehicle accident prior to the commencement of the scheme to participate in the scheme by using part of his or her lump sum award to buy in to the scheme.
- (2) to extend the interim participation period for children who are less than three years old at the time of the motor vehicle accident.

The Law Society was not consulted about the detail of the Bill and the ICC is currently considering it.

At paragraph 4.49 of the First Report it is noted that the Standing Committee considered the Law Society's submissions about participants' inability to opt-out of the Scheme but has not formed an opinion at this stage in relation to opt-out provisions. The ICC urges the Committee to continue to carefully monitor developments in the future in this regard as the Law Society maintains that participants with the requisite mental capacity should always be able to opt-out of the system and manage their financial affairs.

Paragraphs 4.106 and following reflect concerns about the current process for the review of decisions. Making provision for independent advice and advocacy would enable Scheme participants to seek a proper review of bureaucratic decisions affecting their levels of care and other support provided by the LTCS Authority. As has been highlighted to the Standing Committee previously, participants in the Scheme may not have family or friends capable of advocating on their behalf in a review of decisions affecting the care and support of the scheme participant. The ICC notes that the LTCS Authority is currently considering options for the provision of advocacy services to participants in the Scheme.

The Law Society fully endorses the comments made by the Bar Association that decisions must be capable of being appealed or reviewed, with participants being afforded the opportunity to be legally represented.

At paragraph 4.111 of the First Report, the Authority responded to the Law Society's concerns as to non-judicial review by stating that much of a participant's participation and eligibility in the Scheme is dependent upon expert medical, rehabilitation, and care and support advice. These medical issues are acknowledged; however it should also be acknowledged that independent medical opinion obtained on behalf of a Scheme participant may well differ markedly from recommendations by the Authority's medical team as to treatment and arrangements for providing care and support. There may well be objective and subjective criteria demonstrating a need for different levels of care and support. Scheme participants have no say as to whether they should be placed in or remain within the Scheme, but it should be recognised that administrative decisions made on a participant's behalf by a Scheme of professionals should be open to a review or appeal in the judicial sense.

Thank you for inviting the Law Society to participate in the Second Review of the exercise of the functions of the LTCS Authority and the LTCS Advisory Council. Should you require any further assistance in relation to certain aspects to the submission, or generally, please do not hesitate to contact me.

Yours sincerely



Joseph Catanzariti
President