

## SECOND REVIEW OF THE LIFETIME CARE AND SUPPORT AUTHORITY

**Organisation:** Australian Lawyers Alliance  
**Name:** Mr Anthony Scarcella  
**Position:** NSW Branch President  
**Date received:** 14/05/2009

---



13 May 2009

The Hon Christine Robertson MLC  
Chair, Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
Macquarie St Sydney  
NSW 2000

Dear Ms Robertson,

**Second Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council**

The Australian Lawyers Alliance would like to thank the Standing Committee on Law and Justice for the opportunity to comment on the Second Review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

The Australian Lawyers Alliance is a national association of lawyers, primarily practising in the areas of personal injury. It is estimated that our membership represents no fewer than 200,000 people nationwide each year. The Lawyers Alliance started out 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 – injured accident victims. The Lawyers Alliance approaches this particular submission via the expertise and auspices of its NSW branch.

The Lawyers Alliance has had the opportunity to consider the submissions of the NSW Bar Association and endorses its submissions, particularly the following elements:

The purpose of the Lifetime Care and Support Authority (LTCS) is to manage the rehabilitation and care needs of those seriously injured in motor accidents in NSW. Nonetheless, participants in the scheme need adequate access to legal advice and advocacy services in order to allow the full realisation of their legal rights under the scheme. Participants should also be able to recover their legal costs where appropriate. By virtue of their disabilities, participants or potential participants in the LTCS are inherently vulnerable and may not have adequate support from family and friends to ensure, for example, that assessments of their treatment and care needs are appropriate. For this reason, the Lawyers Alliance submits that adequate access to independent legal advice and assistance services is extremely important.

The LTCS operates on the basis of both interim and permanent participation. As the Bar Association noted, interim participation is appropriate for those who have suffered traumatic brain injury from which they may recovery within a two-year period. However, the automatic categorisation of those suffering spinal cord injuries as interim participants has significant implications for resolving their legal claims for general damages and economic loss. Clearly, the final determination as to whether an injured person will become a permanent participant can significantly affect the settlement and resolution of their compensation rights. Therefore, the Lawyers Alliance submits that those suffering spinal cord injuries should be accepted as permanent participants in the scheme.

The Lawyers Alliance also mirrors the concerns of the NSW Bar Association regarding the legal validity of the guidelines under the *Motor Accidents (Lifetime Care and Support Scheme) Act 2006* ('the Act') as being *ultra vires*, or beyond power. Section 6 provides the LTCS with the obligation to pay for treatment and care needs that are reasonable and necessary for the participant. There are many examples of unnecessary restrictions being placed on participants to claim costs that are reasonable and necessary given their personal circumstances. For example, the LTCS reduces payments for air conditioning, by factoring in any other family members that may benefit. Therefore, as the Bar Association noted, a quadriplegic mother with three children will be able to recover only one-quarter of the costs of her air

conditioner. This is clearly inequitable, as the participant has a reasonable and necessary need for an air conditioner to regulate her body temperature and this should not be reduced by virtue of the participant's home and family situation. While recognising that guidelines can create consistency in a scheme, the Lawyers Alliance submits that the LTCS should be flexible enough to take into account individual circumstances of a participant when determining appropriate treatment and care.

If there is any way the Lawyers Alliance can assist the Committee further on these issues, please do not hesitate to contact our office on 02 9258 7700.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Scarcella', with a stylized, elongated vertical stroke to the left.

Anthony Scarcella  
NSW Branch President