

Submission to the Productivity Commission Enquiry

Caring For Older Australians

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Who we are

Background

The Australian Lawyers Alliance is the only national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. 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 Lawyers Alliance 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.

Corporate Structure

APLA Ltd, trading as the Australian Lawyers Alliance, is a company limited by guarantee with branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a president-elect, who serves a one-year term in that role and then becomes National President in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by ten paid staff who are based in Sydney.

Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of individuals, especially the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of Continuing Legal Education/Continuing Professional Development, with some 25 conferences and seminars planned for 2008. We host a variety of Special Interest Groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for education, exchange of information, development of materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine, Precedent, is essential reading for lawyers and other professionals keen to keep up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.

From the large range of issues associated with aged care identified in the Productivity Commission Issues Paper May 2010 “Caring for Older Australians” the Australian Lawyers Alliance Elder law Special Interest Group has chosen to confine its submission to matters which it considers key issues impacting on quality of life and care for elderly people with complex health issues in residential care facilities.

Any policy to deliver quality of life and dignified living condition to around 400,000 Australians who are currently aged 85 and over 1.8 million Australians predicted to require aged care by 2050¹ needs to be developed on the basis that it is world best practice, effectively implemented and monitored by appropriately trained and empowered professionals.

This process must commence soon. If, as a nation, we cannot deliver quality of life to people who have contributed to its development, we will be failing a sector of the community which deserves to live with dignity and be treated with respect.

Maintaining personal dignity demands that people maintain maximum levels in personal care and personal decision making for as long as possible. Older Australians frequently live with complex medical conditions which impact on their level of independence.

The Disability Services Act (Qld) 2006 requires services to be focused on individual needs and “designed and implemented to ensure that the conditions of everyday life of people with a disability are the same as, or as close as possible to, the conditions of everyday life valued by the general community”².

This goal is equally applicable to the services which should be provided to older people in the community. This outcome requires appropriate levels of nursing staff with requisite skills to provide care from assist residents to perform personal care tasks and facilitate social and interactive opportunities.

This would start with a service response that places the individual at the centre of the service provided and results in a comprehensive assessment of the individuals needs. The individual plan derived from this assessment is then implemented to ensure quality of life³.

1 Treasury 2010, Productively Commission Issues Paper Caring for Older Australians p.1

2 S23(a) of Disability Services Act (Qld) 2006

3 Consistent with the Carter Report 2006 on “Challenging Behaviour and Disability”

To achieve this, the ALA has identified the following areas for reform:

1. Minimum levels of staffing to resident ratios which take into account the skill mix necessary to deliver best possible health outcomes;
2. Passing of nationally consistent legislation to require a minimum standard of training/ qualification at not less than AIN level (or equivalent) to qualify for employment in resident care facilities and that such training be nationally consistent and recognized by appropriate nurse training facilities.
3. Remuneration for nursing staff (of all levels) in aged care facilities should be at the same level as required in hospitals to attract talented and dedicated professionals to the sector.
4. Access to legal advice in a timely manner and in a format which is appropriate to older people. The ALA understands that there is a disempowerment of residents in at least some facilities due to lack of legal or personal support in addressing concerns arising from conditions at the facility⁴.

The ALA recommends an extension of existing services to provide advocacy services in situ so that people are able to exercise as much choice as possible in their life at this point. Such a service would need to be on an outreach basis, as people are unable to transport themselves etc.

The ALA Elder Law Special Interest Group⁵ submits that the seniors legal model currently in place (at least in Queensland) be extended to provide specialist residential care/health advocacy.

5. Programmes to recruit and professionally develop cohorts of suitably qualified nursing, medical and allied health staff with appropriate training specifically in the need of older Australians and recognition of these qualifications.
6. Development of a professional research resource, perhaps in line with the Canadian Centre for Elder Law⁶. As part of its responsibilities, such an organisation could monitor best practice nationally and internationally to ensure that the aged residential care sector services have information necessary to reach and maintain world's best practice.

⁴ Submission no 58:
www.pc.gov.au/data/assets/pdf_file/0009/100134/sub058.pdf

⁵ Australian Lawyers Alliance - Elder Law Special Interest Group:
www.lawyersalliance.com.au

⁶ Canadian Centre for Elder Law: www.bcli.org/ccel

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