

The value of gratuitous carers to clients, insurers and plaintiff lawyers

Carers Australia estimates that at any given time, 2.3 million Australians are providing unpaid care for family members or friends who suffer physical or mental disability, chronic illness, or are injured, elderly or frail. That's one in every five households. Given the invisibility of many carers, this is probably an underestimate of the numbers of people providing such care. Louise Hanby D'Wynn looks at the role of gratuitous carers in personal injury claims, and the support available to lawyers from carers associations in managing such claims.

Some 20 per cent of carers are 'primary carers'. That is, providing the main source of unpaid informal support. A conservative estimate of the value of such care is \$16 billion annually. Carers Australia estimates that it is closer to \$23 billion. The result is that some 74 per cent of community care services to people needing care and support is delivered by unpaid carers, resulting in a phenomenal saving in the cost of institutional care.

As plaintiff personal injury practitioners, we inevitably rely upon the assistance of gratuitous carers in the conduct of many claims. For example, carers may assist our clients in attending our offices and medico-legal appointments, help us locate evidence, and communicate with us on behalf of our clients. In cases where injury is catastrophic, or the plaintiff is ►

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particularly disabled, the burden upon carers is frequently increased as we rely upon them to assume the responsibilities of litigation guardians or administrators. This occurs, of course, without their being permitted to directly benefit from the outcome of that litigation.

The beneficiaries of the provision of gratuitous care services are not merely an unidentifiable, homogenous 'community'. They include our clients, ourselves and, inevitably, insurers. However, insurers are frequently suspicious of the motives of voluntary carers, yet quick to exploit the potential for gratuitously provided services wherever possible. Plaintiff lawyers will all have received letters from insurers rejecting requests for goods and services on the basis that 'compensation is for the claimant, not the carer'. Conversely, insurers seem to have few qualms in allocating responsibilities to other family members irrespective of age, disability, competing commitments, cultural concerns or family dynamics. Inevitably, the carer's role expands to include advocacy with the insurer and service providers, and the disputing of decisions to limit or terminate benefits.

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The Consequences of 'Carer Burnout'

The 'burning out' of unpaid carers ultimately has consequences for all stakeholders.

The efficacy of the plaintiff lawyer in addressing carer burnout is somewhat limited. The advantage of the plaintiff lawyer's involvement is that it is rendered in the context of professional legal privilege. Advocacy addressing the service needs of the client may certainly benefit the client and reduce the stresses upon the carer/caree relationship. However, legal services and skills may not necessarily or sufficiently encompass the needs of carers.

Furthermore, there is also a significant limitation as to the extent to which plaintiff lawyers can properly advise and support carers whose interests may be diverging from those of our clients, such as the spouse who is contemplating separation and divorce.

It would not be wise, however, to simply dismiss carer burnout as a problem that is peripheral to the claim on foot. It may not be helpful to the client's litigation or to the sustaining of a carer/caree relationship for advice and support to be rendered to the carer in circumstances in which the insurer will be directly informed of it (their rehabilitation officers) or where a record of that advice may be the subject of subpoena (the local doctor's notes). A carer whose frustrations and differences with a plaintiff (however transitory) have become known to the insurer will have diminished credibility in the event that they continue to advocate for the plaintiff or give evidence at trial.

The value of a confidential, consistent and informed source of advice, support and referral for any carer supporting a litigant ought to be apparent.

Carers Australia

Maria Bohan, Executive Director of Carers Victoria, kindly agreed to assist me in this article by providing me with an outline of Carers Australia's organisational structure, services, policies and perspectives, which has in turn been summarised below.

Carers Australia is the key body representing unpaid carers, who in turn are providing care for all the categories of persons described earlier, including the frail, the elderly and the catastrophically injured.

Carers Australia perceives that 78 per cent of carers are of workforce age who are excluded from employment and education opportunities by lack of support services, inflexible work practices and loss of assistance entitlements, resulting in many of them being severely financially and socially marginalised. These factors contribute to their role becoming unsustainable, to 'burnout' necessitating the institutionalisation of the people they care for. Carers Australia recognises that some

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carers feel that they have no choice but to be a carer, and some would rather not be in that role.

Carers Australia is funded by both State and Federal Governments. There is a national body and offices open in every state and territory in Australia. A central free-call number operates nationally.

The objectives and concerns of Carers Australia are met by three types of activity, as described below.

Information and Support

A call to the free-call number will enable a carer, or potential carer, to receive information and support on a confidential basis. The people taking the call are trained to understand the complex care system. Carers Australia does not manage individual cases, but will ascertain their caller's needs and refer them to the appropriate regional carer support services and condition specific services and organisations. An example of such services would be the location of a respite centre where carer support workers would purchase and broker respite care.

A fair proportion of callers to these services are very distressed. They call because they are experiencing family conflict regarding what is to be done for the person requiring care and the person who is to provide the care. They experience a sense of loss in relation to their own quality of life and that of the person cared for. A diminution of income and social isolation are constant factors for carers. Another theme of concern to carers and therefore to Carers Australia is the perception that alternative types of care are not safe or adequate in that they are delivered by staff with insufficient resources and training.

Education and Training

Carers Australia runs workshops in metropolitan areas, and on a rotational basis throughout country regions, including workshops on such issues as 'Accessing Appropriate Services', 'Looking After Yourself', 'Loss and Grief', and 'Caring for Someone with Dementia'. There are also workshops training paid workers to understand the needs of unpaid carers on a broad range of topics including palliative care. By educating the broader community, Carers Australia strives to decrease the isolation of carers in employment, socially and in their leisure.

Carer Representation

Carers Australia conduct policy work and systematic advocacy: hearing what carers have to say and conveying that information to decision-makers. During the 2001 Federal Election Carers Australia released a policy booklet: 'A Fair Go for Carers'. At federal and state levels, Carers Australia meet with relevant government members and their advisors, and sit on reference groups and committees. Examples of areas in which Carers Australia are currently advocating include the promotion of issues concerning young carers (under twenty-six years of age and school aged carers) and the concerns of carers generally in relation to nursing home and respite care.

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Considerations for Plaintiff Lawyers

Plaintiff lawyers may find benefits in referring carers to Carers Australia for assistance. Consideration may also be given to engaging the assistance of Carers Australia when challenging the approach of insurers to gratuitous carers, respite care or the selection of care for our clients.

On a broader level, Marie Bohan suggests that plaintiff lawyers might also consider the approaches of our own firms in relation to the provisions of leave and flexible work practices that take into account the commitments of employees to gratuitous care responsibility. **PL**

For further information on Carers Australia, including contact details for Carers Associations and Resource Centres in each state and territory, visit their website: www.carers.asn.au

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