

Lifetime Care Sexuality Policy

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icare NSW acknowledges the Traditional Custodians, Stewards and languages groups of Australia and we recognise their connection throughout time to lands and water. We admire the collective knowledge, wisdom, strength and resilience of First Nations communities and peoples.

We acknowledge and pay respect to Elders, past, present and those of the future, for they will hold the memories, traditions and hopes of First Nations peoples and culture. We pay respect to our First Nations customers, colleagues, stakeholders, and partners in Reconciliation.

Our offices are located on the lands of the Eora (Sydney), Darkinjung (Gosford), Awabakal (Newcastle) Dharug (Parramatta) and Tharawal (Wollongong) nations.

1. Purpose

This policy provides guidance on the treatment, rehabilitation and care services that the Lifetime Care and Support Scheme (Lifetime Care) can pay for in relation to a participant's injury related sexuality and sexual health needs.

2. Scope

This policy applies to:

- participants (of consenting age) in the Lifetime Care and Support Scheme requiring support with injury related sexuality and sexual health needs.
- Lifetime Care staff, and service providers funded by Lifetime Care, when supporting a participant with injury related sexuality and sexual health needs; in making requests for treatment, rehabilitation and care services; and making decisions on requests.

3. Key concepts

Sexuality

Sexuality is defined as the way people experience and express themselves sexually. The World Health Organization (WHO) working definition of sexuality is:

“...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships.

While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors.” (WHO, 2006a)

Sexual health

The World Health Organization (WHO) working definition of sexual health is:

“... a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity.

Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.” (WHO, 2006a).

Rights-based principles

The United Nations' Convention on the Rights of Persons with Disabilities (CRPD) was ratified by Australia in 2008 and operates on the principle of respect for the individual's dignity and autonomy by promoting the individual's freedom to make choices, to be an independent and effective participant in society, and to enjoy equality of opportunity. The Australian National Standards for Disability Services 2013 and the Disability Inclusion Act 2014 enshrine these principles (see Appendix 1).

Lifetime Care encourages staff and service providers to adopt a right-based approach when supporting participants with injury related sexuality and sexual health needs; and in making decisions about requests for treatment, rehabilitation and care services to meet those needs.

A rights-based approach involves the participant being at the centre of decision-making, with appropriate and tailored supports to enhance their ability to make decisions if required. A rights-based approach should balance dignity of risk for the participant to have the freedom to make decisions and choices that may expose themselves to a level of risk, with icare's duty of care to ensure the safety of the participant and others.

A rights-based approach does not mean that all the sexuality services that a participant chooses to engage with can be paid for by Lifetime Care.

Services must still be related to treatment and care needs as prescribed in section 5A of the Motor Accidents (Lifetime Care and Support) Act 2006 (the Act).

Consent

The legal age for consensual sex is 16 years in NSW and most Australian states/territories (see Appendix 1).

No-one can consent to sexual intercourse or interactions on behalf of another person. A person must provide their own free and informed consent to sex or sexual intimacy. An appointed Guardian, Person Responsible or Nominee do not have authority to provide consent on a person's behalf to sex or sexual intimacy. Consent, as it relates to a person with disability consenting to a sexual relationship, is the permission or agreement given by the person to the relationship, as long as both people are of legal age. To give valid consent the person must understand what they are consenting to, it must be given freely, and the person must be able to exercise the right to refuse or stop a sexual relationship/activity.

The NSW Family and Community Services Decision Making and Consent Guidelines provides further guidance on consent and sexual relationships (see Appendix 1).

4. Policy principles

- Lifetime Care acknowledges that sexuality is part of a person's identity which develops throughout life and plays an important role in a person's quality of life.
- Lifetime Care recognises the impact that severe injuries can have on a person's sexuality and sexual health.
- Lifetime Care encourages a person-centred, rights-based approach that enables participants, their families/carers and service providers to discuss and respond to their injury related sexuality and sexual health needs openly and proactively.
- Lifetime Care can only pay for services related to treatment and care needs as prescribed in section 5A of the Motor Accidents (Lifetime Care and Support) Act 2006 (the Act).
- In accordance with the Act and Lifetime Care and Support Guidelines 2018 (the Guidelines), sexuality and sexual health services must be related to the injury and be assessed by Lifetime Care as reasonable and necessary.
- Services must be delivered by appropriately qualified and experienced service providers.
- Lifetime Care encourages staff and service providers to use supported decision-making principles to enable participants to make informed choices regarding their injury related sexuality and sexual health needs. Participant rights and confidentiality should be respected, whilst maintaining duty of care to ensure the safety of participants and others.

5. What services for sexuality and sexual health can Lifetime Care pay for?

Lifetime Care can pay for treatment, rehabilitation and care services to assist a participant to explore, understand and respond to their injury related sexuality and sexual health needs.

Services must be related to treatment and care needs as prescribed in section 5A of the Act (see Appendix 1). The Lifetime Care and Support Guidelines, 2018 (the Guidelines, also known as regulations) are issued under the Act and provide additional guidance.

Services must be requested as part of a plan and assessed by Lifetime Care as reasonable and necessary. Part 6 of the Guidelines (Determination of reasonable and necessary treatment and care needs) outlines the criteria to determine a participant's treatment and care needs. Lifetime Care will assess a participant's needs on a case by case basis, applying the criteria specified in relevant parts of the Guidelines, and any other criteria or information Lifetime Care considers relevant in the circumstances.

i) Service providers

Treatment and rehabilitation services should be provided by an appropriately qualified and experienced service provider that is registered with the relevant governing body (where applicable).

Attendant Care services should be provided by an attendant care provider approved by Lifetime Care.

Equipment prescribers are required to meet the qualifications and experience listed in the Professional Criteria for Prescribers (available on the icare website www.icare.nsw.gov.au) and equipment should be provided by one of Lifetime Care's equipment panel providers (where possible). Equipment considered to be Group 2 or 3 must be requested on an Equipment Request Form.

ii) Services

Injury related treatment, rehabilitation and care services that Lifetime Care can pay for may include:

Medical treatment including pharmaceuticals (see Part 22 of the Guidelines) such as:

- Consultation with a medical professional or sexual health specialist
- Prescription pharmaceuticals to support sexual function
- Assisted fertility treatments for participants who are unable to conceive naturally because of their injury related needs.

Rehabilitation (see part 7 of the Guidelines) such as:

- Psychology or counselling services
- Specialist sex therapy/psychosexual therapy services with a qualified health professional (where the therapy is provided with clothes on and no physical touch is involved)
- Other allied health or registered nursing services to maximise a participant's physical, cognitive or communication function to be able to engage in sexual relationships
- Positive behaviour support planning for participants and their supporters
- Education about injury related sexuality and sexual health needs for participants and families, including understanding the impacts of injury
- Education for participants with cognitive impairment such as safe sex practices, understanding consent, and safe use of the internet (social media or dating sites)
- Education for service providers, such as training for support workers about participant specific needs to support engagement in sexual activity.

Attendant Care services (see part 8 of the Guidelines) such as:

- Support worker assistance to enable participant engagement in sexual activity e.g. transfers, dressing/undressing, positioning, set up of equipment.

A support worker cannot be present in the room during a sexual act, or directly assist a participant with a sexual act.

Equipment (see part 13 of the Guidelines) required as a result of injury related sexuality needs such as:

- Positioning equipment to support participant engagement in sexual activity
- Sexual assistive devices.

6. What services for sexuality does Lifetime Care not pay for?

Lifetime Care cannot pay for services that are not treatment and care needs in any of the categories prescribed in section 5A of the Act.

Lifetime Care understands that some participants may choose to engage the services of a sex worker. A participant's choice and right to use a sex worker will be respected and treated with confidentiality. However, sex worker services are not a reasonable expense within any of the categories of treatment and care needs prescribed in the Act. Lifetime Care is unable to pay for sex worker services or any related costs such as room hire or participant travel costs to attend a sex services premises.

Lifetime Care may be able to pay for other services that are in the categories of treatment and care needs to enable a participant to access a sex worker, where they require support because of their injury related needs.

7. What services to support a participant to access a sex worker can Lifetime Care pay for?

Rehabilitation and care services to support a participant to access a sex worker must be related to the participant's injury, requested as part of a plan, and assessed by Lifetime Care as reasonable and necessary.

Examples of rehabilitation and care services related to supporting access to a sex worker that Lifetime Care can pay for may include:

Rehabilitation such as:

- Education and support to assist a participant to understand the costs and to plan their budget to pay for sex worker services
- Support to identify a suitable sex worker in their local area that can meet their injury related needs and has accessible premises where required.

Attendant care services such as:

- Support worker assistance for a participant who has injury related needs for support to travel to, or physically access a sex services premises.
- Payment of support worker hourly rates and support worker travel costs (e.g. public transport fares) can be considered, participant travel costs cannot be funded.
- Support worker assistance to enable participant engagement in sexual activity e.g. transfers, dressing/undressing, positioning, set up of equipment.

A support worker cannot be present in the room during a sexual act, or directly assist a participant with a sexual act.

i) Legal considerations

Lifetime Care, or any funded service provider, cannot support a participant to engage in an illegal activity. Sex work is legal and regulated in NSW and the legal age for a sex worker's client is 16 years (see Appendix 1). However, someone under 18 years cannot enter a sex services premises (e.g. brothel).

Service providers working with Lifetime Care participants in other Australian states or territories must check the legal status and regulation of sex work before supporting a participant or requesting any services from Lifetime Care related to supporting a participant, to access a sex worker.

8. Supporting participants with sexuality needs

Lifetime Care encourages staff and service providers to uphold a person's decision-making rights and if required, enhance their ability to make decisions with tailored support. Staff and service providers should use supported decision-making principles to enable participants to make informed choices and decisions regarding their injury related sexuality and sexual health needs. Participant rights should be respected, whilst balancing their dignity and icare's duty of care to ensure the safety of participants and others.

Decision-making capacity for ability is decision specific and can be impacted by many contextual factors. A person's decision-making ability should always be assumed. Decision-making ability can be built with good information and meaningful support.

Anyone providing support to a participant with a cognitive impairment for sexuality or sexual health needs has a duty of care to ensure that the person has all the information and support they need to allow them to make an informed decision and be capable of providing informed consent. If there are legitimate concerns about a participant's capacity to make decisions about, or consent to, having sexual relations or any other aspect of sexuality or sexual health, service providers should refer to The Capacity Toolkit (see Appendix 1) for guidance.

Any requests for treatment, rehabilitation and care services for sexuality and sexual health needs should be documented in the participant's plan, including any identified risks and supported decision-making principles applied. Service providers should refer to Lifetime Care's My Plan Manual (see Appendix 1) for further guidance on Lifetime Care's approach to person-centred planning.

The NSW Family and Community Services, Sexuality and Relationship Guidelines (see Appendix 1) provide a range of guidance for any person who is supporting a person with a disability with their sexuality needs, including rights-based principles, supported decision-making, consent, duty of care and dignity of risk.

i) Participants aged 16-17 years

The NSW Department of Education is responsible for school curriculum that includes sexuality and relationships. Lifetime Care may be able to pay for other injury related education and supports for sexuality and sexual health, with consent from a parent or guardian.

9. Appendix 1: Policy context and references

International
<p>United Nations Convention on the Rights of Persons with Disabilities (CRPD): www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html</p> <p>World Health Organization definitions: www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/</p>
National
<p>National Standards for Disability Services 2013: www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services</p> <p>Child Family Community Australia – Age of consent laws aifs.gov.au/cfca/publications/age-consent-laws</p>
NSW
<p>Crimes Act 1900: www.legislation.nsw.gov.au/view/html/inforce/current/act-1900-040</p> <p>Disability Inclusion Act 2014: legislation.nsw.gov.au/#/view/act/2014/41/full</p> <p>Family & Community Services, Sexuality and Relationship Guidelines, v1.0 January 2016 and Decision Making and Consent Guidelines, v1.0 January 2016: www.facs.nsw.gov.au/inclusion/disability/good-to-great-framework</p> <p>Department of Communities & Justice, Capacity Toolkit, 2008: www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capacity_tool.aspx</p> <p>Summary Offences Act 1988: www.legislation.nsw.gov.au/view/html/inforce/current/act-1988-025</p>
Lifetime Care and Support Scheme
<p>Motor Accidents (Lifetime Care and Support) Act 2006: www.legislation.nsw.gov.au/#/view/act/2006/16</p> <p>Lifetime Care and Support Guidelines 2018: www.icare.nsw.gov.au/injured-or-ill-people/motor-accident-injuries/guidelines-and-policies/</p> <p>My Plan Manual: https://www.icare.nsw.gov.au/practitioners-and-providers/healthcare-and-service-providers/planning-with-an-injured-person</p>

Version	Date	Authors	Summary of changes
1	27/09/2021	Liza Maclean	Approved by Dr Nick Allsop

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