The Hon. Chris Rath, MLC
Chair, Standing Committee on Law and Justice
NSW Parliament House
Sydney NSW 2000

17 November 2022

By email: law@parliament.nsw.gov.au

Dear Mr Rath,

2022 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

The Standing Committee on Law and Justice ("the Standing Committee") is in the process of conducting its 2022 review of the Compulsory Third Party insurance scheme.

In response to a request by the Standing Committee, the ALA provided relatively short submissions dated 28 September 2022. Those submissions have been published on the Parliament's website.

The submissions run to less than nine substantive pages. The submissions addressed various of the Clayton Utz recommendations for reform of the *Motor Accident Injuries Act* 2017 ("the MAI Act") following a comprehensive review of the operation of that Act.

Additionally, the submissions briefly addressed significant delays that motor accident scheme users are currently experiencing with Personal Injury Commission ("PIC") assessments, primarily medical assessments. The ALA recommended that the SCLJ review the operation of the PIC, with a particular focus on the delays that it was experiencing in medical assessments. The ALA recommended the retention of external management consultants to review the operation of the PIC to ensure it had the capacity to meet the demand for its dispute resolution services.

The submissions in relation to the PIC are set out at paragraphs 6 and 7 of the ALA submission and run to some twelve lines.

On 10 November 2022, the NSW President of the ALA, Mr. Joshua Dale, received by email a fourteen page letter from the President of the PIC, His Honour Judge Phillips, responding to the twelve lines of ALA submissions. The letter to Mr. Dale was shared extensively.

The carbon copy (cc) list was:

(a) The Hon Chris Rath, MLC, Chair, New South Wales Parliament Legislative Council Standing Committee on Law & Justice.
(b) The Hon Victor Dominello, MP, Minister for Customer Service and Digital Government.
(c) Ms. Joanne van der Plaat, President, New South Wales Law Society.
(d) Ms. Gabrielle Bashir SC, President, New South Wales Bar Association.
(e) Mr. Adam Dent, Chief Executive, State Insurance Regulatory Authority.
(f) Ms. Sophie Cotsis, MP, Shadow Minister for Industrial Relations, and Shadow Minister for Work Health and Safety.
(g) Ms. Yasmin Catley, MP, Shadow Minister for Customer Service, Shadow Minister for Digital and Shadow Minister for the Hunter.
(h) Mr. Richard Harding, CEO, icare NSW.
(i) Mr. Simon Cohen, Independent Review Officer.

It would seem that His Honour intended for the material in his letter to be available to the Standing Committee.

In the experience of the ALA, it is very unusual that:

i) A tribunal head and serving Judicial Officer would respond to a twelve line submission with a fourteen page letter (plus annexures).
ii) A tribunal head and serving Judicial Officer would elect to distribute such a letter so widely and publicly.
iii) A tribunal head and serving Judicial Officer would seek to engage in a public debate as to the operations of the tribunal over which he presides.

Hopefully it can be agreed that it is essential to the operation of the NSW compulsory third party insurance scheme that the PIC operate in a timely and efficient manner. The PIC is the body that is

tasked to resolve critical disputes over a motor accident victim's access to treatment expenses, lost wages and damages.

If the PIC takes twelve to eighteen months to resolve a medical dispute, then a claimant will be delayed in receiving necessary treatment, delayed in recovering lost wages and delayed in recovering damages. Motor accident victims can and do experience considerable additional stress and even illness as a consequence.

In so far as the President of the PIC has provided substantial further information with regards to the PIC operations and has elected to engage in debate with regards the efficiency of those operations, then the ALA is pleased to further engage. If the Standing Committee is to review PIC operations, the ALA has suggested relevant questions for the Standing Committee to ask to clarify various aspects of PIC operations, both current and historical.

CTP AND WORKERS COMPENSATION (WC) ARE DIFFERENT

Critical to an understanding of the two statutory schemes is an understanding of the differences between them. Just some of those differences include:

(a) One is an 'Insurance' scheme and the other is a compensation scheme.
(b) The two have very different compensatory regimes with different tests and thresholds. To give just one example, to recover treatment expenses in a workers compensation dispute, the treatment has to be "*reasonably necessary"* whilst in an CTP motor vehicle accident claim (MVA claim) the treatment has to be *"reasonable <u>and</u> necessary".*
(c) There are different prefiling requirements for a dispute to be put before the PIC. With an MVA claim, the claimant needs to first receive a decision from the insurer. The types of decisions span:

    i) Quantification of compensatory wage payments.
    ii) Permitting or denying treatment.
    iii) Conceding or disputing minor injury.
    iv) Conceding or disputing ongoing liability for statutory benefits.
    v) Conceding or disputing whether injuries are over the 10% WPI threshold.

For each and every one of these decisions, the claimant needs to seek a formal internal review from the insurer before a dispute can be lodged with the PIC. The CTP insurers have separate and "*independent*" internal review units. Effectively, the insurer makes the decision twice before there can be a dispute.

The internal review adds a month or more to the dispute resolution timeline.

There are no mandatory internal reviews in WC. The WC system sensibly abandoned mandatory internal reviews some years ago.

(d) There are different timeframes and processes in relation to disputes before the PIC.

(e) There are very different costs processes and regulations as between the two schemes that can lead to very different incentives in relation to the behaviours of participants in the two schemes.

To give an example of the effects of differences between the schemes, the President's letter reports that in the 2021/22 financial year, the Commission successfully resolved 70% of all [Work Injury Damages] mediations conducted by the PIC in the WC division.

The letter goes on to express that similar results could be obtained in the motor accidents division and in particular, with respect to medical treatment disputes.

The ALA is sceptical that 70% of MVA disputes (treatment or otherwise) could be mediated for the following reasons:

(a) The Workers Compensation scheme provides that no legal costs can be recovered by the insurers' legal representatives until the formal WID mediation. Claimant's legal representatives recover minimal costs pre-mediation. It follows that there are almost never any pre-mediation settlement discussions in WID matters. Both sides legal representatives wait until the mediation to commence negotiation in order to recover some costs for the work in preparing the matter.

The PIC has no power to assess or determine WID claims. Mediation serves only as a pre-hearing (District Court) settlement conference.

By way of contrast, in MVA matters there is a statutory obligation for the parties to engage in "*best endeavours*" to settle the matter before lodging with the PIC.

(b) The PIC does not currently mediate treatment disputes in the WC system. The PIC has no track record of mediating treatment disputes in the WC system. There is no evidentiary basis for the assertion that the PIC might be able to resolve 70% of all medical treatment disputes or even all low value treatment disputes in the CTP scheme. As set out above, before there can be a dispute lodged with the PIC over treatment in an MVA claim, not only does the claimant have to obtain a decision from the CTP insurer, but the claimant also needs to seek internal review with that insurer. It is only after internal review confirms the initial decision to deny treatment that the claimant can bring a dispute before the PIC. The PIC offers no analysis as to how treatment disputes are to be mediated in circumstances where the insurer has not only made an adverse decision, but confirmed that adverse decision on internal review.

(c) Due to the availability of IRO funding, the vast majority of disputes in the WC division of the PIC involve claimants with legal representation. The legal representation rates may not be as high in the Motor Accident division, especially for low value treatment disputes. It is anticipated that the lack of legal representation would be at its highest with the sorts of low value MVA treatment disputes that the PIC is contemplating mediating. The PIC has not addressed how it would go about conducting a fair mediation of a low value treatment dispute where the insurer is represented by a highly experienced and potentially legally qualified claims officer, whilst the claimant has no support and no legal representation.

The critical point to be made is that the two statutory systems (WC and CTP) are not comparable and any suggestion that they are is to ignore specific features of the motor accidents scheme such as the existence of internal review and poorer imbalances in the negotiating skills of the parties. What works in one system is not necessarily a solution to delays in a very different statutory system.

NOT ALL CTP DISPUTES ARE THE SAME

Even within the Motor Accident division of the PIC, there are a variety of different disputes which the PIC addresses. Some are remarkably simple and require nothing more than brief administrative consideration. Others require referral to a merit reviewer, a medical assessor or a PIC Member.

The different types of disputes involve different levels of activity. For example, where the person injured in a motor accident is a child, there is a mandatory exemption from a damages assessment by the PIC. Such cases proceed to court. The exemption application is lodged online. The insurer lodges a Reply (which invariably accepts that the claimant's date of birth mandates the exemption) and within days or weeks, the PIC issues an exemption certificate. There are no submissions. There is no hearing. The process of issuing these types of exemptions is a purely bureaucratic function that should be able to continue unabated through a pandemic by PIC staff working with a laptop from home as it is factual, straightforward and ought not to be the subject of any delay.

A merit review dispute over the quantification of the claimant's wages might require a telephone or AVL conference, but rarely requires a face-to-face hearing. At the height of a pandemic, the determination of some merit reviews ought to be able to continue with merit reviewers working remotely with suitable technological facilities (a laptop and a phone).

By way of contrast, a determination of a damages assessment is more complex. However, it can be done remotely and PIC assessments of damages continued through the pandemic. A medical assessment is the most administratively complex task for the PIC. It may involve scheduling multiple medical appointments and the frequent need for face-to-face physical examinations. It is unsurprising that medical assessments was the area of greatest delay during the pandemic.

Once a medical assessment is completed, the parties are entitled to seek a review of the decision. Again, differing levels of administrative complexity are involved. Once a review application has been filed and the other party has responded, a PIC official then has to make a decision on whether there are proper grounds for the review to be permitted. This is a administrative task that requires no further interaction with the parties.

By way of contrast, once a review is granted, there is the far more complex task of assembling three members of a review panel (one lawyer and two doctors) and arranging a further medical examination for the claimant (in person or by AVL).

The critical take-away from the foregoing is that aggregating the totality of the motor accident dispute applications and finalisations can produce aggregate numbers that do not provide a true indication of pressure points in the system and the true source of delays.

It is acknowledged that pandemic conditions create difficulties in terms of staff illnesses and the challenges of working from home. However, a significant number of the Commission's activities including exemption applications, merit reviews and determining review applications following medical assessments, all ought to have been able to have been continued throughout even the worst of the pandemic lockdowns.

When the President's letter of 10 November 2022 provides aggregate dates and identifies the source as the Personal Injury Commission Annual Review for 2021/22, there is no reference to relevant page numbers within the document. What the recently published Annual Review shows is that for 2021/22 there was a 6% gap between registrations (disputes lodged) and finalisations of those disputes lodged. Put simply, 6% more disputes were coming in the door than were being resolved over that 12 month period. [p.47]

Unfortunately, the PIC Annual Review does not provide a breakdown in the data as to the gap between registrations and finalisations by dispute category. To properly understand delays at the PIC it is necessary to look at delays within the various dispute categories.

A SHORT TERM ISSUE AS TO FEDERAL JURISDICTION MAY HAVE DISTORTED THE NUMBERS

The Commission's Annual Review discloses [p.50] that 11% of damages assessments were dismissed rather than settled or determined. There is no data provided for medical disputes or other dispute categories.

One of the reasons that the PIC was dismissing applications during the 2021/2022 financial year is because the PIC raised issues of Federal Jurisdiction. A series of District Court decisions and one Court of Appeal decision have identified that in fact very little of what the PIC does involves issues of Federal Jurisdiction. The vast majority of matters dismissed by the PIC on the basis of Federal Jurisdiction will not in the future be dismissed and will need to be heard and determined.

The dismissing of Federal Jurisdiction matters may have provided a one-off boost to the PIC's finalisation rate during 2021/2022 and may have masked what would otherwise have been a larger negative gap between registrations and finalisations. Dismissing a matter on the basis of Federal Jurisdiction sees the dispute reached within days. Properly determining the dispute takes considerably longer, which on referral back to the PIC following these judgments and determinations is likely to now significantly alter the data that will now be captured during the 2022/2023 financial year.

The PIC President's letter of 10 November 2022 does not engage in this level of detailed analysis, but rather relies on much broader assertions that the Commission has the capacity to meet the demand for its dispute resolution services.

In order to fully and properly understand the Commission's workings, it is necessary to understand the details of registrations (work in) versus finalisation (work completed) across the various dispute categories. This is data that has not been made available for public consultation and ought to be.

DELAYS IN MEDICAL ASSESSMENTS

What is clear from the PIC Annual Review is that there is a stark contrast between the delays in the motor accidents and workers compensation divisions.

According to the PIC Annual Review, 41% of all motor accident disputes were not resolved within twelve months, with the average days to resolution being 350 days. By way of comparison, 98% of workers compensation disputes were resolved within twelve months, with the average days to resolution (including allowing for appeals) being 122 days.

It is acknowledged that this comparison between systems is of modest utility, as there are many different dispute categories which increase and lower the respective averages.

More significantly, the aggregate data hides the extent of delays in medical assessments. The "*average*" resolution time for all CTP disputes is lowered by the fact that 4% of the disputes lodged with the PIC during the relevant period were applications for exemption. The majority of those

disputes require nothing more than a modest amount of bureaucratic 'paperwork'. Such disputes should be capable of completion inside of four to six weeks.

The existence of this 4% lowers the overall average figure for time for resolution of motor accident disputes.

The real issue is the delay in CTP medical assessments. That is the area where CTP claimants have been waiting twelve to eighteen months for a medical assessment. That is the area where the PIC acknowledges a sizeable backlog.

What would be a useful comparison is any comparison of the life cycle of MVA medical disputes, compared to WC medical disputes. The timeline for the two should be comparable. If there are substantial differences, then it would help to identify areas where the PIC may be performing well or under-performing across both systems. Unfortunately, no such comparable data is included in the President's letter of 10 November or in the PIC Annual Review.

There is encouraging data contained on page 4 of the 7 pages annexed to the President's letter of 10 November 2022. The data shows that from June 2022 through to October 2022, the clearance rate for all MVA dispute categories was over 100%, being 117% for the 2022 calendar year to date and 130% for the financial year to date.

Again, to ensure that this is genuinely good news, it is necessary to mine deeper into the data.

The clearance rate will jump if the PIC ups its dismissal rate of federally impacted matters. The ALA would very much like to see the registration v finalisation figures (i.e. the clearance rate) in relation to medical disputes alone, preferably stripping out those matters that are being *"finalised*" through the dismissal of proceedings on the basis of Federal Jurisdiction.

In short, before confirming that there is good news, it is critical to establish that the clearance rate is now over 100% for medical disputes. If the clearance rate for medical disputes is still below 100%, then the backlog will never be cleared.

DELAY AND THE BACKLOG

The President's letter of 10 November 2022 identified that the PIC inherited a backlog of motor accident disputes from the then SIRA DRS on the commencement of PIC operations on 1 March 2021. This backlog has further blown out, which the President's letter ascribes to the effects of the pandemic (and train strikes and floods and a very bad flu season). The President also criticises claimants (and their lawyers) for a failure to attend appointments. The causes identified by the PIC are all external to, and clearly beyond, the PIC's control.

Page 5 of the President's letter of 10 November states that the PIC elected to define "*the backlog*" as being matters filed prior to 1 January 2022. This backlog was measured to constitute 4,667 motor accident applications requiring a medical assessment. Ten months later, there are still 1,950 claimants or over 40% of the backlog of 2021 medical disputes still awaiting determination.

Where the ALA takes issue with the Commission's approach is the arbitrary cut-off date for the "*backlog*". Claimants who filed medical disputes on 1 or 2 January 2022 who are still waiting for a medical assessment date have now been waiting for ten months. They are not included in the Commission's definition of the backlog.

In reality, the PIC should be referring to "*the 2021 backlog*" and what may now be "*the 2022 backlog".*

The only information contained within the President's letter as to what has been occurring with applications lodged during 2022 is the following statement:

> *"The Commission is dealing with 2022 filings while at the same time attempting to dispense with the backlog (as defined)."*

With the very greatest of respect, this statement is unhelpful in its generality. Does this statement mean that the PIC is dealing with 2022 filings in relation to medical disputes by arranging medical assessments to a standard timeframe (within 1 month of receiving the Reply) or are all 2022 medical disputes on hold (unless somehow triaged as urgent) pending finalisation of medical disputes in the 2021 backlog.

It would seem tremendously unfair if October 2022 disputes are being allocated to medical assessors whilst October 2021 disputes are still awaiting allocation.

It would have been relatively straightforward for the PIC to identify how many medical assessments have been lodged in the first half of 2022 and how many have in fact been resolved (leaving aside those that have been dismissed as involving Federal Jurisdiction).

The President's letter of 10 November 2022 does say that the PIC is aiming to eliminate the defined backlog (i.e. the disputes filed pre 1 January 2022) by the third quarter of 2023. This would seem to indicate that some claimants who lodged medical disputes in 2021 will be waiting up to one and three quarter years for their medical dispute to be determined.

What the President's letter does not make clear is whether medical disputes filed in January, February and March 2022 (the 2022 backlog?) can expect a medical assessment date in 2022 or 2023 or whether the medical assessment of these matters will be waiting until 2024.

The President comments on page 7 of his letter, that *"….it is true that there are some delays in some aspects of the motor accidents division pertaining to our high use specialities, including psychiatry, rehabilitation and orthopaedics*…..". This statement is unarguably true. It also involves a substantial degree of understatement.

What the President's summation omits is any specificity as to the extent of the delay. In a 14 page letter, the PIC President does not mention that the claimants in the motor accident division have been, and for some considerable time to come, will experience delays up to eighteen to twenty months for a medical determination of their dispute where the dispute is over medical treatment or minor injury or WPI.

ARE THERE ENOUGH MEDICAL ASSESSORS?

The PIC President's letter of 10 November 2022 asserts that the current appointment of 159 medical assessors is sufficient to "*deal with the business as usual workload*". The suggestion that the PIC has a problem with the "*drop out rate"* of medical assessors is asserted to be without basis.

The ALA relies on the numbers.

As at 4 March 2019 the then DRS had 49 psychiatrists on the panel. As of the date of publication of the PIC Annual Review in 2022 the number of psychiatrists available to the PIC to conduct psychiatric assessments in motor accident matters was 30.

The President asserts that there is now a smaller panel able to provide more hours and more appointment times. No data is provided in support of this assertion.

The President advises in his letter that five new psychiatrists have been added to the PIC roster over an unspecified period of time. Whether this is positive news depends upon the drop-out rate over the same period.

The presentation of one half of the equation (the additional doctors coming onto the roster) is of little meaning without identifying the number who have dropped off the roster or reduced their availability over the corresponding period.

It is a relatively straightforward task to assess whether the PIC has sufficient doctors available to meet the demand for medical assessment. The PIC should be capable of analysing the average monthly demand over (say) the last six months for medical assessment of psychiatric injury. This would include psychiatric treatment disputes, minor injury disputes and WPI disputes.

The average monthly demand can then be compared to the average monthly supply of appointment times being made available by the current panel of psychiatric assessors.

Any such assessment needs to take into account that there will be cancellations and non-attendances for a variety of perfectly legitimate reasons.

If demand for appointments, plus cancellations, minus appointment availability is a positive number, then the scheme does not have enough psychiatric appointment times available to meet demand.

The ALA would be delighted to learn that such an analysis has occurred and would be delighted to see the results of that analysis.

The current lived experience of ALA members is that the PIC does not have sufficient doctors on its roster to meet the current demand and the outstanding backlog. Extraordinary delays are being experienced in relation to motor accident medical assessments.

NON-ATTENDANCES

Both the President's letter of 10 November 2022 and the annexed documents are critical of claimants for not attending medical appointments on the first occasion that an appointment is scheduled.

Before turning to the substance of this issue, it would help to better understand the data. The President refers to (for example) the PIC having scheduled over 700 appointments in September. It is not clear whether this means that there were 700 appointment times available or whether there were 350 appointment times available that the PIC sought to schedule individual claimants into, with a 100% rescheduling rate.

Similarly, it is unclear what is meant by the attendance rate for those 700 appointments in September 2022 only being 54%. Does this mean that 54% of claimants who confirmed availability to attend at the appointment, in fact attended and that there was 46% "*no show*" rate? Or does it mean something else?

Clarity around exactly what the PIC is measuring would be of assistance in understanding the nature of the problem.

Further, the President's correspondence does not distinguish between legally represented and non-legally represented claimants. Is there some difference in attendance rates as between the two groups?

If there is a better attendance rate in relation to workers compensation medical disputes, is that because there is a higher rate of legal representation in relation to workers compensation medical disputes?

In the documents annexed to the PIC President's letter is the following comment:

"Claimants and their lawyers should consider the appointment of a medical assessment to be analogous to a Commission hearing. Attendance should not be considered a discretionary activity, especially in a high use speciality."

It is worth emphasising that there is a significant difference between the arrangements that go into the setting of a hearing date before the PIC and the arrangements for allocation of a medical assessment.

A hearing is set down after consultation with both parties and confirmation as to their availability. A medical assessment is scheduled unilaterally, with little to no consultation to the claimant as to their availability.

Much as the PIC would like claimants to be able to structure their entire life around the Commission's needs, the reality for real people is a little different. Attendance at a scheduled medical examination can involve:

(a) Having to make childcare arrangements which are not always flexible.
(b) Having to make travel arrangements from a rural or regional area where freedom of travel is not always flexible.
(c) Having to take time off from work which is not universally flexible and where there is no wage payment to cover the lost time.
(d) In many instances, the need for a companion or carer to accompany a child or an intellectually disabled or traumatically brain injured or elderly or catastrophically injured person to the medical examination. The companion's childcare and work commitments have to be accommodated to meet the assessment time.
(e) Having waited twelve plus months for the allocation of an assessment, some claimants will have prebooked holidays or prebooked surgery or a variety of other activities that render the designated data unsuitable.

All of the above factors are taken into account when the parties consult and agree with the PIC upon a hearing date. None of the above factors are taken into account when the PIC unilaterally allocates a medical assessment date.

Comparing the two is fundamentally wrong.

The President's letter appears to contain some implied criticism that claimants' lawyers do not take PIC medical assessment dates seriously. Any such suggestion is rejected.

Claimants' lawyers have no interest in delaying or postponing the medical assessment process, save for the need to ensure that the claimant is in fact able to attend at the appointment taking into account all of the considerations as set out above.

FILING EXCESSIVE DOCUMENTS

On page 7 of the letter of 10 November 2022, the President identifies as one of the causes of delay in medical assessments a practice on the part of the "claimants' lawyers". The President says:

> *"Claimants' lawyers have a practice of filing hundreds if not thousands of pages of irrelevant medical records in their applications. Commission medical assessors frequently complain about this practice to me as a cause of great frustration."*

The President goes on to identify that reading these large amounts of "irrelevant" material causes delay in the issuing of certificates.

It is worth bearing in mind that the President is both the head of a tribunal and a judicial officer. Impartiality, restraint and fairness are the hallmarks of these offices.

It is the experience of claimants' legal representatives that insurers and their legal representatives are just as prone to lodge hundreds or thousands of pages of medical records with the PIC.

The ALA is concerned that the response of the President to ALA criticism of PIC activities is to single out and attack claimants' legal representatives conduct where criticism could be more fairly directed to all parties and addressed accordingly.

STRUCTURAL IMPROVEMENTS IN MOTOR ACCIDENT MEDICAL DISPUTES

On pages 6 and 7 of the President's letter of 10 November 2022 the President identifies a structural difference between the CTP and WC schemes in their approach to causation in medical disputes. The President extracts quotes out of a Bar Association submission, identifying that the Workers Compensation scheme approach to causation would be far preferable, in terms of putting the causation decision in the hands of a lawyer, rather than a doctor.

The President states his agreement with the Bar Association observation and notes that the ALA's submission to the Committee fails to mention, let alone address, the motor accidents dispute resolution model.

The letter of 10 November 2022 is the first statement that the ALA has seen from the President of the PIC that is critical of the CTP dispute resolution system in relation to determining causation in medical disputes.

However, the President's argument is not with the ALA, it is with SIRA and the government.

The ALA has long advocated (alongside the Bar Association) that causation in medical disputes be a legal approach rather than medically determined.

The history of the ALA agitating for changes in the way in which the CTP scheme addresses medical and legal causation stretches back over a decade. The PIC President's criticism of the ALA is therefore unwarranted and does not reflect the work the ALA has engaged in for over a decade as a not for profit organisation with charity status.

Experienced registry staff and an experienced assessment team will operate efficiently and productively. ALA members report an extensive array of mistakes and errors with injured claimants bearing the brunt of those errors.

The range of errors includes:

- PIC registry staff failing to promptly send out medical certificates after they have been received from a doctor.

- PIC registry staff directing a claimant to attend a medical appointment at Oxford Street in the City, where the appointment had been arranged with the doctor in Parramatta.
- PIC registry staff failing to expedite and allocate a claimant's medical appointment for in excess of 3 months following a decline in health. The claimant died before a medical assessment and certificate was issued.
- Doctors taking months to issue certificates after an examination has taken place.
- One medical assessor having not issued a decision after months, now requiring a mentor to be appointed to assist with decision writing.
- As acknowledged by the PIC President, two PIC Members requiring mentoring or supervision due to their failure to provide timely decisions.

The foregoing list is by no means exhaustive. The ALA does not have a data collection function as a not for profit organisation, with a committee made up of individuals who volunteer their time on a pro-bono basis. The ALA has no choice but to raise individual concerns and individual matters communicated by its members.

The PIC President reports that a staff turnover rate of approximately 20% is below departmental average. Again, closer examination of the data might yield a more precise analysis. The President does not cite the departmental average. Nor does he address whether the turnover rate covers those leaving the organisation (taking all of their accumulated knowledge with them) versus those promoted within the organisation to a new role (where their pre-existing knowledge presumably is part of the reason they have been promoted).

Turnover amongst the medical assessment staff is inevitable, but as the President of the PIC himself identifies, unsatisfactory pay rates and an unfriendly computer system appear to have unnecessarily driven a number of much needed doctors out of the system.

An independent and external audit of staff satisfaction and PIC merit review/medical assessor/Member satisfaction would provide an evidentiary basis for determining whether there are structural features within the PIC that should be addressed to maintain staffing levels.

THE NEXIS COMPUTER SYSTEM

The ALA intended no criticism of the PIC in relation to its current activities to replace the Nexis computer system. It is acknowledged that the Nexis system was developed by the then DRS under the supervision of SIRA in 2017/18. The system was designed to move from paper based to computer-based filings. The system has proved to be the subject of a great number of complaints and the ALA has strongly supported its replacement and welcomes the news that this is occurring.

The reason the ALA raised IT acquisition issues is to see that there is some accountability in relation to the disastrous failure of the Nexis system.

At present, it would appear that SIRA disowns any responsibility for the failure of the Nexis system, on the basis that dispute resolution is now a matter for the PIC. The PIC denies any responsibility for the acquisition of the Nexis system, as it occurred before the PIC was formed. The ALA agrees that the President and the PIC, with an inception date of March 2021 clearly had nothing to do with the acquisition and procurement of the Nexis system in 2017/2018.

The fact remains that the wasting of millions of dollars of NSW government money has not been investigated. There are seemingly no lessons that will be learnt about the failure of the previous acquisition process and an enquiry is not undertaken.

The ALA calls for accountability, in terms of assessing what went wrong with the acquisition of the Nexis system, how much money was spent on it, was that money productively spent and what lessons can be learnt for future computer acquisition programs.

The ALA looks forward to the PIC rolling out a new computer system. The ALA fully accepts that all due diligence and guidance was followed in the creation of this system. However, we expect that the same due diligence was employed in the acquisition of the failed Nexis system and if an enquiry is not conducted into that procurement the ALA's concern is that nothing will be learnt in regards to future procurements and/or no accountability or potential recovery will be had for the waste of millions of dollars of NSW government money that has been thrown away on the Nexis system that has not survived two years of operation.

CONCLUSION

The ALA maintains the view that there are unacceptable delays in PIC operations, in particular, in relation to medical assessments in motor accident matters. Much of the PIC's defence of these issues as set out in the President's letter of 10 November 2022 involves assertion as to capacity and lack of specific, targeted data. This letter has set out in detail the better quality data that could be provided in order to address the specific issues.

The ALA rejects the suggestion that the origin of its submissions is "*a poor experience in an individual matter or rumours and anecdotes".* The ALA is a national membership based not for profit organisation with over 1500 members, a large number of whom are directly engaged in representing claimants in the NSW CTP scheme. Their wide-ranging experience evidences a wide array of errors and delays in the lived user experience of the PIC, in particular in CTP medical assessments.

The ALA fully accepts that the pandemic has been enormously disruptive to PIC operations. The question is whether it is only the pandemic (and floods and flu and train strikes and non-co-operative claimants) that is the cause of PIC delays. In fourteen pages of letter and over twenty pages of material from the President, there is not a single acknowledgment of any error or omission or scope for improvement on the part of the PIC itself.

The ALA engages with the PIC and all other stakeholders relevant to the NSW CTP scheme in a collaborative, respectful and meaningful way. It has done so since the PIC's inception through the Stakeholder Reference Group forum and intends to continue to do so in the same way it has done to date.

However, it would be remiss of the ALA, as a membership organisation, to not comment that there is an unfortunate tenor to the correspondence from the PIC President and one which, as an organisation, we hope has been borne out of a misinterpretation of the intention of the twelve lines the ALA referenced in its submission to the Standing Committee on Law and Justice in its review of the NSW CTP scheme.

We trust that this clarifying letter makes clear the purpose in which the ALA sought to reference the PIC in those twelve lines in the ALA submission.

Thank you for your attention in this important matter. The ALA would be pleased to expand upon its concerns with regards to PIC operations, should the Standing Committee choose to devote further time to the subject as it is currently the most pressing issue in the motor accidents scheme.

Yours faithfully,

Joshua Dale
NSW President
Australian Lawyers Alliance

Genevieve Henderson
National President
Australian Lawyers Alliance

Roshana May
NSW Director
Australian Lawyers Alliance

Andrew Stone SC
Chair, NSW CTP Subcommittee
Australian Lawyers Alliance

CC:

- The Hon. Victor Dominello, MP, Minister for Customer Service and Digital Government.
- Ms Joanne van der Plaat, President, New South Wales Law Society.
- Ms Gabrielle Bashir SC, President, New South Wales Bar Association.
- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority.
- Ms Sophie Cotsis, MP, Shadow Minister for Industrial Relations, and Shadow Minister for Work Health & Safety.
- Ms Yasmin Catley, MP, Shadow Minister for Customer Service, Shadow Minister for Digital and Shadow Minister for the Hunter.
- Mr Richard Harding, CEO, icare NSW.
- Mr Simon Cohen, Independent Review Officer.
- His Honour Judge Gerard Phillips, President, PIC.