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COUNCIL

14 November 2011

Ms Christine Nguyen
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

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

Dear Nguyen,

The Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council and the Fourth review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

Thank you for your correspondence dated 26 October 2011 enclosing the transcript of the Public Hearing conducted by the Standing Committee on Law and Justice (the Standing Committee) on Monday, 10 October 2011.

A number of questions were taken on notice by Ms Danielle De Paoli and the responses to these questions are set out below.

Medical Assessment Service (MAS) costs

The Injury Compensation Committee (Committee) has made previous submissions to the Standing Committee that MAS costs should be increased. The Committee notes that this issue has been canvassed at length as part of both the 2008 and 2010 Costs Working Party discussions. The Committee submits that an appropriate allowance is \$1000 per MAS application, but not exceeding \$3000 in respect of any one claim.

Opting out of the Lifetime Care and Support Scheme (the Scheme)

The Committee has submitted that an Applicant should be entitled to opt out of the Scheme. The Committee submits that it is for the individual Applicant to make this decision. Should an authority be required to determine whether an Applicant may opt out of the Scheme, the Committee submits that a District Court Judge is the appropriate authority. In this instance the Judge will need to be satisfied that the injured person has received appropriate financial advice as to the financial repercussions of opting out of the Scheme. The Committee notes that this is an existing process in place regarding matters involving those with a legal disability.

Opting out of the Scheme when the Applicant has a capacity issue

The Committee has been asked to provide further submission's regarding opting out of the Scheme when the Applicant has an impairment and a capacity issue. As stated by the Hon Sarah Mitchell "[The Applicant] might be affected in such a way that they choose not to be involved when in fact they probably should be."

The Committee submits that the ramifications of this issue varies depending on the nature of the injuries. For example, the mental capacity of a paraplegic is significantly different to that of an Applicant with a severe brain injury. In instances where there is a severe brain injury a Judge should be required to give approval for any opting out of the Scheme. The Judge will likely want to be informed during this process of the views of any guardian or tutor. The Judge will want to make sure that the Scheme participant has sought appropriate advice on opting out and that an appropriate financial management order is in place.

External review of the Scheme

The Committee submits that a body which adheres to best practice in decision making should hold no fears for independent review of its decisions. Unless such a review facility is available then the body is not truly transparent and entrenched views and practices requiring reform will remain entrenched.

The Committee has submitted that an external review of the Scheme's decisions be conducted. The Committee applauds the existence of a right to challenge the decisions of the Lifetime Care and Support Authority (the Authority) on care and treatment disputes under the existing legislation through an Assessor and, less often, through a Review Panel. However the Committee notes that these are not truly independent persons. Given the impecuniosities of Scheme participants the only way to create an effective review process is to make allowance for a costs order to be paid out of the Scheme funds if the challenge to the Authority's decision is successful.

At present the only provision for costs to be paid under the existing Scheme is in respect of the claimant's eligibility for inclusion within the Scheme. This is only in respect of the very limited question of whether an injury is a motor accident injury. There is no provision for costs in relation to all other decisions made by the Authority in respect of treatment and care needs. This includes issues relevant to the cost of house and car modifications and travel costs and the cost of house cleaning or personal care etc.

The Committee objects to this as the amount involved in these disputes can often be substantial. The Committee submits that the appropriate person to review these decisions is a CARS Assessor, or in the case of smaller disputes involving less than say \$5,000, perhaps a member of the Consumer, Trader and Tenancy Tribunal. The injured person should not face the prospect of an adverse costs order should his or her review application be unsuccessful.

The Committee is grateful for the opportunity to provide further submission to the Standing Committee.

Yours sincerely,

Ms Danielle De Paoli
Member of the Law Society Injury Compensation Committee