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CLJ 22-04
WJ 06/1180

The New South Wales Bar Association

00/334-4

10 April 2006

Ms Rachel Callinan
Director, Standing Committee on Law & Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Callinan

Seventh Review of the exercise of the functions of the MAA and MAC

I refer to your letter dated 4 April 2006.

The Committee has asked the Bar Association to outline our concerns in respect of the perceived trend whereby insurers make late allegations of fraud or of 'false and misleading statements' by claimants.

To put the issue in context, it should be appreciated that for the CTP insurers, the CARS assessment process is binding. They have no right of review or appeal. Further, in the interests of keeping the CARS process simple and efficient there is no capacity for insurers to issue subpoenas for the production of documents.

At present, the only mandatory grounds of exemption of a matter from CARS under the Claims Assessment Guidelines are where:

1. liability is denied;
2. more than 25% contributory negligence is alleged;
3. the claimant suffered from a legal disability; or
4. an insurer alleges fraud for a false and misleading claim.

The Bar Association is aware of a number of cases where insurers have made allegations of a false or misleading claim on very scant evidence. It is thought that the allegation was made in order to engineer a mandatory exemption from the CARS process. In alleging a false or misleading statement, the insurer is not required to provide any proof or evidence to the MAA; the mere making of the allegation is enough to force an exemption to occur.

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However, the MAA has recently addressed and fixed this problem. Under new Claims Assessment Guidelines which take effect from 1 May 2006, the allegation of a false and misleading claim will no longer be a mandatory ground for exemption, but rather a discretionary ground for exemption. The insurer will now need to satisfy the Principal Claims Assessor (PCA) that there are proper grounds to suspect fraud or a material false and misleading statement before an exemption is granted.

The need to demonstrate to the PCA that there is a proper ground for alleging a false and misleading claim is the check that (until now) had been missing. With the amendment to the Guidelines the Bar Association is hopeful that the occasional abuse of process in making an unjustifiable allegation of a false or misleading statement by a claimant merely to gain an exemption from the CARS process will be stopped.

Should you believe we may be able to be of further assistance, please contact me on ph 9229 1735.

Yours sincerely



P.A. Selth
Executive Director