



THE LAW SOCIETY
OF NEW SOUTH WALES

LJ10/1522

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LAW & JUSTICE

22 July 2010

Ms Rachel Callinan
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Ms Callinan,

Re: Inquiry into the exercise of the functions of the Motor Accidents Authority and Motor Accidents Council - Tenth Review and inquiry into the exercise of the function of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council – Third Review

I refer to your letter dated 17 June 2010 and the enclosed transcript of evidence and questions on notice.

I have no amendments to the transcript. However, I would like to note that the statement made by Mr Concannon that "...there is a danger the more specialised it becomes that you will only have a limited number of firms in the city that are able to provide that specialised legal advice" (last paragraph page 28) is the personal view of Mr Concannon and is not the view of the Law Society of NSW. The Law Society of NSW believes that a legal practitioner or firm is capable and able to provide specialist legal advice on motor accident claims irrespective of whether they are in an urban or regional location.

In response to the three questions taken on notice please see below.

How do we overcome the problems of Zotti v AAMI Limited (2009) NSWCA 323? What are your views on what this Committee should recommend immediately?

I note that the High Court is to hear the matter of *Zotti v AAMI* when it next sits from the 27 July 2010. Accordingly, any legislative change should be postponed until such time as the High Court hands down judgment in this matter.

If the High Court upholds the decision of the NSW Court of Appeal which restricts the definition of "motor accident" the Law Society of NSW is concerned that some drivers on public roads will not be insured for third party purposes if they were at fault in the accident and an injury was sustained not during the accident itself but at some subsequent time.

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In the event the High Court does uphold the decision of the NSW Court of Appeal then the Law Society of NSW supports legislative amendment to sections 3 and 3(1)A to widen the definition of "motor accident" to include an injury that is sustained at a subsequent time to the incident or accident.

Under section 3 of the Act a "motor accident" is defined in the Act as meaning an incident or accident involving the use or operation of a motor vehicle that causes the death of or injury to a person where the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) during:

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control.

The Law Society of NSW notes and supports the NSW Bar Association submission that the definition of "motor accident" be amended to include "or as a consequence of" after the word "during". I note that this would also require amendment to section 3A (1) so that it mirrors the drafting of section 3.


Is failure to or improper servicing of motor vehicles likely to be considered the fault of the owner driver?

I refer to the example provided by the Hon. Lynda Voltz (page 26) that is, a semitrailer is at a set of lights. It has a leaking pipe which leaks oil on the road. A cyclist comes through after the semitrailer and is injured as a result.

It is likely that this scenario would not fall within the definition of "motor accident" in light of the decision in *Zotti v AAMI*. For an incident or accident to fall within the definition of "motor accident" there must be a temporal connection between the defect in the vehicle and one of the listed events in the definition. While, under the decision in *Dominello v Dominello & Anor* [2009] NSWCA 95 it is likely that this scenario would have fallen within the definition of "motor accident", it is arguable that *Zotti v AAMI* has overturned this decision.

If you have any further questions please feel free to contact Nelson de Sousa on 02 9926 0209 or nelson_desousa@lawsociety.com.au in the first instance.

Yours sincerely,


Mary Macken
President
Law Society of NSW