Australian Lawyers Alliance

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Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

Reviews of the MAA and LTCSA: Answers to questions on notice

Dear Committee Secretary,

Thank you for the opportunity to appear before the committee in March.

Please find below our answers to the questions on notice:

1. **Re tabling of a report by the actuaries, Deloitte's**

Deloitte's provided authority for the release of a summary report only. Unfortunately we do not have the authority to release the full report.

2. **Re forcing of individuals into the Lifetime Care and Support Scheme**

In March 2006 the NSW Government tabled the *Motor Accidents (Lifetime Care and Support) Bill* 2006. The Bill was passed by both Houses of the NSW Parliament although the LTCS Bill was amended (with the consent of the Government) by the Legislative Council. The Bill received Royal Assent on 8 May 2006 with the Assent published in the Government Gazette of 12 May 2006. Prior to the Bill being passed, there was debate in parliament regarding whether participation in the scheme should be mandatory or voluntary, with a vote to amend the Act to require a claimant's consent for participation in the scheme being defeated 23-17 in the Legislative Council. The Bill was ultimately passed with wording that required **mandatory** participation in the scheme.

The Australian Lawyers Alliance has always been of the view that participation in the LTCS Scheme should be **voluntary.** Those claimants who would prefer to retain their rights to claim a lump sum should be able to do so.

Whilst there are many people for whom lifetime care is appropriate (the brain-damaged and those lacking the ability to appropriately manage a substantial sum of money) there are also many injured persons who have high levels of skill, are more than capable of managing their

own care and finances and who should be entitled to invest and/or spend their money in the way they consider appropriate. To deny those wishing to exercise that right and who have the intellectual capacity the freedom of choice, is an injustice and is contrary to the concept of individual responsibility and self-determination.

3. Re lodging of claims late

The Motor Accidents Authority's Annual Report 2012-2013 indicates that in that financial year, there were 60 assessments of late claim disputes. Of those 60 assessments, it was determined that 50 of the claims could be made late, and only 10 could not be made.

However, that same report indicates that the total number of applications for special assessment in that financial year was 171. In previous years it had been as high as 284. The report indicates that 75% of special assessment disputes are lodged to determine whether a late claim can be made.

This means that there were approximately 128 applications for assessment of a late claim dispute lodged with CARS in the 2013 financial year (and even more – up to 213 – in previous years). There would be many more matters where a late claim dispute is resolved by the parties prior to a matter proceeding to CARS.

There is a huge amount of work that goes into preparing a full and satisfactory explanation for a delay in lodging a claim. The explanations are required to go into minute detail regarding all time periods between the date of the accident and the date that the claim was lodged. Documents need to be obtained to support the explanation. The preparation of the explanation is time consuming and costly. Most claimants would be unable to provide the requisite explanation to the standard required without legal assistance.

Importantly, despite the fact that there are hundreds of late claim disputes every year, only 10 of those claims are ultimately prevented from proceeding. This means that insurers are challenging the lodgement of a large number of late claims that they *should be accepting*. There is no penalty for an insurer *unreasonably* rejecting a late claim. The only 'penalty sounds in a regulated costs item in the event the claim runs all the way through the CARS system and the claimant is ultimately allowed to make a late claim. The costs item is a maximum of $880 inclusive of GST.

ALA submits that the current late claims processes are inefficient and unjust. Insurers have collected premiums for late claims. The requirements imposed on claimants who make claims late, and the harsh penalty that exists (ie, not being able to make a claim at all) is disproportionate, particularly in light of the absence of any real penalty on the insurer for unjustifiability challenging a claim on this basis.

A suggested easy partial solution to the late claim 'problem' would be to extend the notice period. A simple extension of the notice period from 6 months to 12 months would cut down on a lot of the late claims issues that currently exist.

For the remainder of late claims, it may be that it is appropriate to retain the need to provide a full and satisfactory explanation for the delay in lodging the claim. However, the penalty for not being able to provide such an explanation should not be disentitlement to make a claim at all. Rather, the ALA submits that imposition of a financial penalty (say 5% of damages, up to a cap) would be a more appropriate measure. It would continue to incentivise early lodgement of claims, but would eliminate the harsh and disproportionate penalty that currently exists.

A further suggested solution which complements our proposed solutions is to create a financial disincentive for insurers to challenge late claims, except in circumstances where there are reasonable grounds for the insurer asserting that the explanation is not full and satisfactory.

Yours faithfully,

Jnana Gumbert
NSW President, Australian Lawyers Alliance