

**Submission
No 12**

**12TH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF
THE MOTOR ACCIDENTS AUTHORITY**

Organisation: Physical Disability Council of NSW

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12th Review of the NSW Motor Accident Authority

Prepared for the Law and Justice Committee

NSW Parliament

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Prepared by the Physical Disability Council of NSW

Physical Disability Council of NSW
St Helens Community Centre
3/184 Glebe Point Road
Glebe NSW 2037

Freecall: 1800 688 831

Phone: 02 9552 1606

Fax: 02 9552 1606

Fax: 02 9552 4644

Web: <http://www.pdcn.nsw.org.au/> Email: admin@pdcnsw.org.au

Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (ie self advocate).
- To educate and inform stakeholders (ie about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council appreciates the opportunity to consider, and make comment as part of the annual review conducted by the NSW Parliament Law and Justice Committee into the NSW Motor Accident Authority.

Discussion

As part of the 12th review of the Motor Accident Authority (MAA), this submission prepared by the Physical Disability Council of NSW (PDCN) focuses on the following issues:

- Provision of information
- Reforms to the NSW Compulsory Third Party Insurance Scheme
- Implementation of the National Injury Insurance Scheme

Spinal Cord Injuries (SCI), Acquired Brain Injury (ABI), burns, blindness and orthopaedic fractures all may result in catastrophic injury depending on the severity.

Each year in Australia, about 250 people are diagnosed with persisting SCI due to traumatic causes such as motor vehicle accidents. The proportion of males to females is 4:1, with the highest incidence of SCI occurring in people aged between 15–34 years. Just over half of these cases have injury to the cervical spinal segments and as a result have impaired function of both upper and lower limbs. Recent trends show a second cohort with a slightly high amount of people with a SCI over 55 years. Injury to the cervical cord may result in a range of secondary complications that affect their health and well-being such as pressure areas, urinary tract infections, pain, spasticity and psychosocial issues such as depression.

In Australia the incidence of ABI is approximately 14,000 new cases per annum. For both males and females ABI is most common between the ages of 18- 25 years and there is an increased incidence of ABI amongst Indigenous Australians. In Australia, trauma resulting from motor vehicle accidents accounts for about two-thirds of moderate and severe cases of

ABI, with falls and assaults the next most common cause. Due to the severity of catastrophic injury, approximately 76% of people needing support through the Lifetime Care and Support Authority (LTCSA) have an ABI.¹

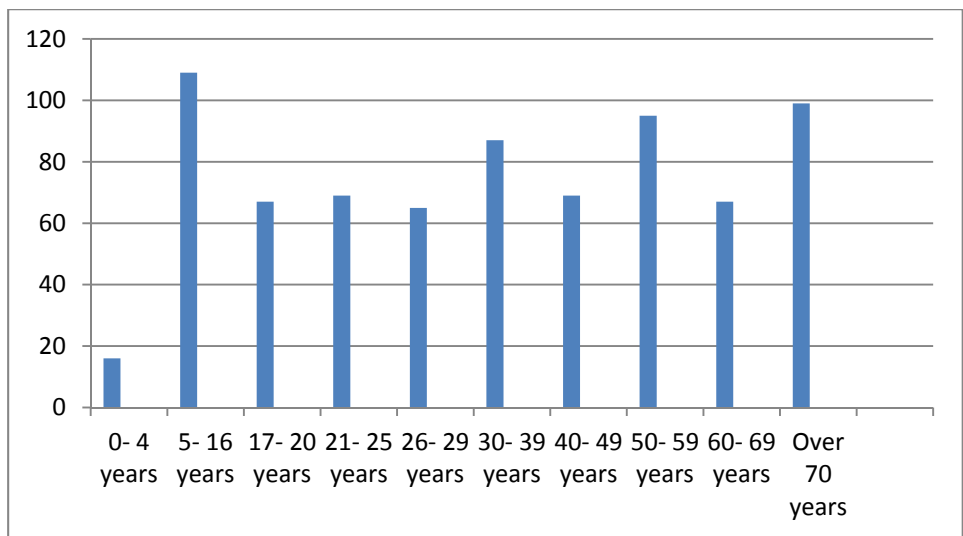


Figure 1: Crash data of female pedestrians aged over 50 years also shows a slight increase in injuries due to the impact of ageing.

Currently the provision of information on the MAA website is very limited when trying to access information using the 'search' icon. The subject keys available on the MAA Homepage are also very limited, and are geared towards the legal and health professions.

Claimants trying to access information on topics such as 'rehabilitation', 'spinal' or 'lifetime care and support', are unable without access to a password. As a consequence it is recommended that the MAA invest in resources that will increase the type information available. Additionally information needs to be made available in a variety of formats to facilitate easy retrieval of MAA information. As a benchmark the Victorian Transport Accident Commission (TAC) website could be used as this has a 'search' icon that is easy to use, and provides a large selection of information from the following search keys:

- Claims and Support Information
- Road Safety
- For Health and Service Providers

It is essential that claimants can easily access all types of relevant information as part of facilitating empowerment, person- centred services, and to enable the implementation of personal goals such as community participation and the return to work.

¹ The Actuaries Institute 2013 Injury Schemes Seminar (2013) Andrew Nicholls- General Manager NSW Motor Accident Authority, Don Ferguson- General Manager NSW Lifetime Care and Support Authority

² NSW Government Department of Roads and Maritime Services- Road traffic crashes in NSW (2012) Table 27b: Casualties, degree of casualty, road user class, sex, age **Degree of Casualty: Injured**

The following concerns were discussed as part of the NSW MAA Compulsory Third Party Green Slip Insurance Scheme Reforms:

- Current insurance costs
- Inefficiency of the current scheme
- Increasing number of road casualties
- Time delay before reaching a settlement and payment of damages

Whilst the benefits in NSW for claimants seeking damages are more generous than other states and territories, the cost of a green slip has increased from by 70% from approximately \$325 to \$525 since 2008. Additionally there has also been a substantial decline in efficiency over the past ten years, with more being spent on legal fees, over and beyond the costs associated with medical care and treatment. Since 2006 the average size of claims has risen considerably, predominantly due to claimants with minor injuries and access to legal representation.

Due to inefficiencies claimants in NSW frequently wait between 3- 5 years post injury before receiving payment, (excluding those receiving services from Lifetime Care and Support Authority- LTCSA), whereas in Victoria the majority of claimants receive payment more rapidly in less than 3 years.³

Due to the concerns identified above the MAA has identified the following reforms:

- Universal cover
- First party cover
- Payments made sooner, based on need
- Simpler claims system
- Common law will be retained for some
- A simpler Scheme with fewer disputes
- Some reform to premiums needed
- Lower Green Slip premiums and better outcomes⁴

Universal cover will provide better support for all claimants no matter whether at fault or not. These reforms will mean a fundamental shift away from an adversarial system to one focused more on recovery outcomes, similar to those proposed the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS).

It was recommended by the Productivity Commission that the NIIS be operated separately from the NDIS, and that states and territories establish secretariats that are:

- Governed by a federated body
- Implements a no- fault insurance framework for people catastrophically injured in the workplace, home or in the community

³ The Actuaries Institute 2013 Injury Schemes Seminar (2013) Andrew Nicholls- General Manager NSW Motor Accident Authority, Don Ferguson- General Manager NSW Lifetime Care and Support Authority

⁴ NSW Government – NSW Motor Accident Authority (2013) Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme

- Ensures consistency in eligibility, definitions and assessment
- Reports on services relative to the minimum benchmark of care and support services
- Manages a comprehensive database, facilitates sharing of data and ensures consistent monitoring of performance, including actuarial valuations and client outcomes
- Works to eliminate any unwarranted variations in scheme design.

The NIIS is being governed by the Australian Government through the Commonwealth Treasury office and seeking agreed minimum benchmarks and consistent performance outcomes from states and territories. With the current inconsistency with the adoption of different legal frameworks among the different states of Australia, consistency for NIIS eligibility, definitions and assessment will be hard to achieve. Currently Victoria and Tasmania have adopted a no-faults legal framework, the ACT, South Australia, Western Australia and Queensland are still using common law, and NSW has adopted a hybrid scheme. The framework adopted in NSW provides no-fault coverage which allows payments for care, therapy, equipment, home alterations, lost wages, vocational retraining, as well as a capped lump-sum payments for permanent disability, and a common law framework that allows the injured person to pursue an at-fault claim for damages which cover pain and suffering, and compensation for financial loss over their lifetime.

Where there is an increased incidence of injury later in a persons' life, such as for women pedestrians aged between 50- 80 years access to the NIIS may be limited. The eligibility criteria for the NDIS is limited to people aged less than 65 years of age, and if the NIIS adopts identical eligibility criteria access to this cohort may be unfairly limited. As a consequence each state body will need to consider whether to adopt identical eligibility criteria for the NIIS and the NDIS. Whilst the Productivity Commission has recommended consistency between the NDIS and the NIIS, PDCN believes that where there are national trends in increased injury later in life there may be good grounds to provide different eligibility criteria to the NIIS than the NDIS.

Previous reviews of the Motor Accident Authority have identified the need to obtain consistent performance outcomes to determine functional impact post injury. Rather than trying to identify one performance outcome that meets the needs of all claimants, it is recommended that the MAA consider a broader mix of different performance outcomes that can be selected according to the particular type of injury and individual need, similarly to that used by the Victorian Transport Accident Commission. For further information please see attached - <http://www.tac.vic.gov.au/providers/clinical-resources/outcome-measures>

Following a Commonwealth Government Issues Discussion Paper on the NIIS, The Treasury identified a number of issues requiring further investigation. Importantly these issues identified the need to investigate coverage of the different types of unregistered motor vehicles accidents used on private property such as farms (including 'off-road' dirt bikes and quad bikes), the occurrence of bicycle accidents, and the severity of injury.⁵ Possible sources of information may include data from the National Hospitalisation Morbidity database via the Australian Institute of Health and Welfare.

⁵ Australian Government- The Treasury (2013) Document 1- Issues Paper National Injury Insurance Scheme

As part of implementation of the NIIS it is recommended that bodies such as the MAA and/or LTCSA provide additional funds for innovative projects such as the;

- Sargood Centre – An accommodation facility with 14 new apartments for people with recent SCI designed as a “home away from home.” Each apartment will be designed to have its own external entrance, kitchenette, en suite, bedroom(s) and living room, combined with state of the art technology including automation, aids and appliances, environmental control, communication and information technology. Each of the apartments will be designed so that it can be adapted for individual needs.
- University of Technology Sydney Robotics – Research into equipment and assistive devices for people with disability.