

**INQUIRY INTO REVIEW OF THE EXERCISE OF THE
FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY
AND THE MOTOR ACCIDENTS COUNCIL - SEVENTH
REVIEW**

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**The Law Society
of New South Wales**

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2 March 2006

The Hon Christine Robertson MLC
Chair
Legislative Council Standing Committee
on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Robertson

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

Thank you for inviting the Law Society to participate in the continuing review into the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council.

As your Committee would be aware, the Legislative Council General Purpose Standing Committee No 1 inquiry into personal injury compensation legislation examined the impact and effectiveness of changes to civil liability, workers compensation and motor accidents law made principally between 1999 and 2002. The General Purpose Standing Committee's Report 28 was tabled in Parliament on 8 December 2005. The report recognised the inconsistency and inequality of the current systems of compensating people who are injured through the negligence of others. It recommended fundamental changes to the existing compensation schemes, and made specific recommendations for changes to the *Motor Accidents Compensation Act 1999* and the scheme administered pursuant to that Act.

While the Society does support a number of the report's key recommendations, its findings are not entirely consistent with the Law Society's Tort Law Reform Policy.

The Law Society believes that there should be a uniform and fair compensation system for all tort victims – whether injured in work accidents, motor accidents or in any other area of public liability – under unifying legislation modelled on the *Civil Liability Act 2002*. No-fault compensation schemes remove the rights of injured to recover lump sum damages and allow non-judicial determination of the rights of victims. Rather than creating a new personal injury compensation tribunal, as recommended in Report 28, the Society is of the view that the District Court is the most appropriate jurisdiction for a single dispute resolution forum for all personal injury matters. The Society also proposes that the maximum damages that injured people can receive for pain and suffering should be equated with the current cap of \$416,000 under the *Civil Liability Act*.

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Nevertheless, the Society believes that it would be most valuable for your Committee to review the General Purpose Standing Committee's Report 28, and raise its findings and recommendations with the Motor Accidents Authority, particularly with regard to the following issues:

- Disclosure to Parliament by insurers operating in the public liability market of basic market, premium, claims and liability data (see Recommendation 3).
- Discontinuance of the use of the MAA Medical Assessment Guidelines based on the American Medical Association Guides (see Recommendation 4) – this would enable compensatory damages to be assessed to meet the individual needs of each claimant.
- Replacement of the existing 10% whole person impairment test for the recovery of non-economic loss damages under s. 131 of the *Motor Accidents Compensation Act 1999* (see Recommendation 7) – in the Society's view, it should be replaced by with a similar threshold as is used for claims for non-economic loss damages under the *Civil Liability Act 2002* – namely 15% of 'a most extreme case'.
- Provision for the recovery of *Sullivan v Gordon* type damages (see Recommendation 13).
- Amendment of the *Motor Accidents Compensation Act 1999* (see Recommendation 11):
 - to reduce the current 5% discount rate on damages for future economic loss paid as a lump sum under s. 127 of the Act to a 3% discount rate
 - to repeal s. 124 of the Act preventing the award of damages for loss of earning capacity in respect of the first five days during which loss was suffered
 - to change the maximum amount of economic loss damages that may be awarded for loss of net weekly earnings under s. 125 of the Act to an amount that is three times the average weekly earnings at the date of the award, consistent with s. 12 of the *Civil Liability Act 2002*.

I trust that the above will assist your Committee in its current review.

Yours faithfully



June McPhie
President