

Submission  
No 2

## **INQUIRY INTO REVIEW OF THE MAA AND THE MAC - EIGHTH REVIEW**

**Organisation:** Accident Victims Alliance

**Name:** Ms Judie Stephens OAM

**Telephone:**

**Date received:** 9/08/2007

---



What can be imagined can be achieved

Hon Christine Robertson MLC  
 Chair  
 Standing Committee of Law and Justice  
 Parliament House, Macquarie Street  
 Sydney NSW 2000

Hand Delivered 25 July 2007

Dear Hon. Robertson,

**AVA QUESTIONS DIRECTED TO THE MAA FOR THE LAW AND JUSTICE  
 COMMITTEE REVIEW OF THE MOTOR ACCIDENTS COMPENSATION ACT 1999**

**PUBLIC STATEMENT**

Thank you for your letter dated 9 July 2007 inviting my submission to the Standing Committee Eighth review of the exercise of the functions of the MAA and the MAC. This is my identical submission dated 31 January 2006 with the enclosure of Premier Bob Carr dated 18 July 2005 regarding Misappropriation of Third Party Settlements. I feel some topics need to be revisited.

Accident Victims Alliance has recently been formed. We are in our infancy and will work to ensure that all victims of accidents and their families will receive fair and reasonable treatment, care, support and compensation regardless of fault.

AVA will work to ensure that the legal system, financial managers, the insurance industry and the statutory compensation schemes properly acknowledge and meet the needs of victims.

Our mission statement is:

*To provide direction and support to people injured in accidents and their families/carers and to advocate for fair and reasonable sustainable solutions. To support the MAA Lifetime Care and Support for all catastrophically injured accident victims.*

**LIFETIME CARE AND SUPPORT (LTCS)**

I have for over a decade promoted the fairness of Lifetime Care and Support and it is vital that this particular initiative is legislated in the NSW Parliament this year. This will ensure catastrophically injured victims are not forced on the litigation trail. This new legislation ensures accident victims are guaranteed that their care and rehabilitation needs will be met for the term of their life.

Jackson, you, Minister John Della-Bosca and I were present with Premier Carr for the launch of Lifetime Care and Support in May 2005. Sadly, my darling Jackson passed away on Sunday 18 December 2005. In Jackson's case, his Third Party Settlement was only used for three years. This is very unfair.

**QUESTIONS**

- 1 What is the progress with developing the LTCS proposal?
- 2 How will the quality of the care be assured?
- 3 Who will determine the level of care needed?
- 4 Who will choose the carer?
- 5 What happens if a client is unhappy with the carer or the quality of care provided?
- 6 What services other than care will be provided?
- 7 How will the LTCS scheme provide assistance with accessing;
  - a) schooling;
  - b) vocational training;
  - c) employment;
  - d) housing; and
  - e) transport?
- 8 What arrangements will be made to provide support to families of people (particularly children) who are catastrophically injured?
- 9 Can people who are injured prior to the commencement of the scheme and receive a lump sum settlement buy into the scheme?
- 10 Investment of the funds that will support the Lifetime Care and Support initiative. Who will manage these funds? Who will monitor and audit this fund manager?

**NO- FAULT BENEFITS**

In the recently published Report on Personal Injury Compensation Legislation by the General Purpose Standing Committee No 1, at Recommendation 19 the Committee recommended that the Government examine and publish a report on the merits or otherwise of introducing universal, no-fault compensation under the NSW Motor Accidents Scheme.

- 11 Has the MAA undertaken any work in the past in examining the benefits of a full no-fault scheme?

The AVA notes that Victoria has a full no-fault scheme

- 12 What is the average premium in Victoria compared to NSW?
- 13 How many people receive benefits in Vic compared to NSW?
- 14 What percentage of premiums is returned by way of compensation benefits?
- 15 If NSW returned same level of benefits as in Victoria how much more money would have been available to injured people since commencement of the new scheme in 1999?

**INSURER PROFITS**

The AVA notes that the MAA Annual Report indicates that insurer profits are well above what is allowed in the CTP insurer filings.

- 16 What is the MAA's estimate of insurer profits in dollars for the period from 1 Oct 1999 to 30 Sept 2005?
- 17 How does this compare in dollar terms to what was estimated in the filings and why is it so much higher?
- 18 How does this compare to profit levels in other States?
- 19 If NSW had a no-fault scheme on the same basis as Victoria, how much of the money estimated for insurer would be available for compensation benefits for injured people?



## LEGAL COSTS

- 20 What is the MAA's estimate of legal costs in dollar terms for the period 1 Oct 1999 to 30 Sept 2005?
- 21 How does this compare with the level of legal costs in other States?
- 22 If NSW had a no-fault scheme on the same basis as Victoria, how much of the money estimated for legal costs would be available for compensation benefits for injured people?

## TREATMENT GUIDELINES

The AVA notes from the MAA Annual report that trauma recovery and improved treatment are priority funding area for the MAA's injury prevention and management program.

- 23 What is the MAA doing to improve trauma recovery?
- 24 Does the MAA have a view to whether the current system of trauma recovery best meets the needs of people injured in motor vehicle accidents?
- 25 What is the MAA doing to promote improved treatment of people injured in MVAs?

## FINANCIAL MANAGEMENT


- 26 By way of further explanation, please advise us of who will manage these funds? From my personal dismal experience this should not be Third Party Insurers nor the Office of the Protective Commissioner NSW.

Mr Bowen, we look forward to your reply. Please be aware that we will publish your reply on AVA website.

Thank you for your attention and reply. Please feel free to contact me if you require any further information.

Yours sincerely,

Judie Stephens OAM



cc Interested Parties including Motor Accidents Authority.

PS You may like to visit our Accident Victims Alliance [www.avaa.asn.au](http://www.avaa.asn.au) website.



What can be imagined can be achieved

18 July 2005

Premier Bob Carr  
 Premier of New South Wales  
 Governor Macquarie Tower  
 Level 40, 1 Farrer Place  
 Sydney NSW 2000

*COPY*

Dear Premier Carr,

### **Misappropriation of Third Party Settlements**

**Surely this can't be right.....**

Recently much midnight oil has been burnt by us - two long-time friends - over issues arising from lump sum settlements in third party claims. Recently a key concern crystallised for us in our thinking. It is a concern currently affecting a number - possibly a very large number - of claimants, and we would like to share it with you.

When a third party claim is settled, the Court considers the evidence and the needs of the injured person (which are documented in financial plans for the Court's consideration), and an appropriate settlement amount is authorised. The insurer then pays that sum to the injured person, with the understanding that it will be used along the lines of the promise to the Court. During the legal process the Court often appoints a trustee (either the Office of the Protective Commissioner of NSW or another complying trustee) as a financial manager for the injured person. After settlement, then, the insurer and the Court have completed their roles, believing that the money will be used for the purposes for which it was promised and paid.

*However if this settlement money is then not applied to or is withheld from paying the injured person's needs that were outlined and formed the basis of the Court's decisionmaking, then surely a promise has been broken, with possibly sinister outcomes.* The withholding of appropriate funds to pay for certain specified needs could mean that the person who was granted the settlement in the first place is subsequently denied some or all of the services, proper care and support upon which the settlement was actually based. Obviously this could lead to diminished health and, in the most extreme situation, the individual could even die. Withholding of payment means that the assets of the injured person increase while their quality of life decreases or, at the extreme, the estate of that person has increased at the price of their life.

So if the injured person is disadvantaged in this way, whom might this action advantage? The first party might ostensibly be the trustee (financial manager), because the partial or full withholding



from paying appropriate needs means that the trustee has greater funds under management, and that of course results in higher fees being payable to them.

But there is also a second possibility. Consider the extreme and tragic circumstance of the injured person dying. The insurance company has paid out funds in good faith but some or all of these may not have been applied for the needs of the injured person. If that person died, under current legislation the funds would then pass to the next of kin. One cannot help but postulate that this creates a potential conflict of interest and, in some cases, a possible reason to deny care.

This whole issue raises many challenging questions.

- ***How to ensure that the settlement proceeds go to the injured individual as ruled***, rather than simply creating an ever-increasing asset base to be managed and paid for? This cannot just be about the trustee capturing the funds to manage. Where are the true checks and balances?
- ***If the funds are not going to be applied in line with the Court's decision*** (on the basis of financial documents submitted during Court proceedings), ***why has the insurer been asked to pay those funds in the first place?*** In that case, the insurer could well have paid out a higher settlement than was ultimately going to be used. It is most certainly in the insurance companies' best interests to know that funds are going to be applied as outlined and required. If not, surely it would mean a lower settlement payout by the insurer, which would reflect in lower premiums and higher share dividends. Just think... Any lack of integrity by trustees in applying funds to the needs for which they have been paid out is probably adversely impacting third party insurers' premiums, which consequently affects every policyholder and shareholder of the insurance industry.
- ***How to take away the whole muddy issue surrounding beneficiaries?*** If the injured individual died, why should those assets then pass to others who have not been injured or financially impacted? After all, the settlement was made to provide for a specific set of needs for the injured individual, not to create wealth (and even possible conflict of interest) for beneficiaries.

So may we repeat.... Surely this can't be right. This is not the way the system was meant to work, neither for the insurer and their funds paid out in good faith, nor for the Court who endeavour to hand down a financially adequate decision for an injured individual, nor - most specifically - for the injured person themselves.

May we ask you to assist in finding a fair and equitable solution for all parties? ***What we are seeking is that the payments paid by insurers actually go to the injured party to meet their needs, not those of others.*** Somehow there needs to be change:

We remain, yours sincerely, two most concerned individuals.....

Judie Stephens

Christine Bull