

**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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Theme:

Summary:

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To: <lawandjustice@parliament.nsw.gov.au>
Date: Tuesday, 31 January 2006 3:19
Subject: MAA/MAC submission

To Michael Phillips,

Attached is the Australian Lawyers Alliance's submission for the review of the exercise and functions of the MAA/MAC.

Kind Regards,

Patrick McCarthy

Legal & Policy Officer

Australian Lawyers Alliance

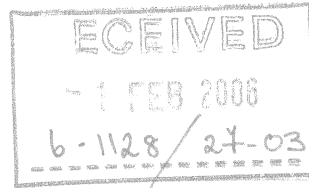
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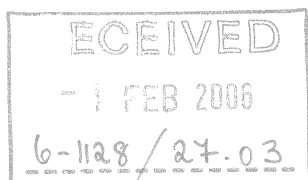
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**SEVENTH REVIEW OF THE
EXERCISE OF THE FUNCTIONS
OF THE MOTOR ACCIDENT AUTHORITY
AND THE MOTOR ACCIDENTS COMMISSION**

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REVIEW OF THE EXERCISES AND FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND MOTOR ACCIDENTS COMMISSION

Introduction

The Australian Lawyers Alliance (formerly the Australian Plaintiff Lawyers Association) has contributed to the *Motor Accidents Compensation Act 1999* review for many years. Some of the concerns raised in previous years again feature in this submission.

The issues we would like to address in our submission are as follows:

- Motor Accident Authority (MAA) as an effective regulator
- Promoting appropriate treatment of injured persons
- Providing medical and claims assessments
- The Long Term Care and Support Scheme (LTCS)
- *Sullivan v Gordon*¹ damages
- The effectiveness of the compulsory third party (CTP) scheme

The Australian Lawyers Alliance would be happy to make oral submissions or provide further submissions should the committee find it advantageous.

Our recommendations and comments follow in point form.

¹ (1999) 47 NSWLR 319

Issue 1 MAA as an effective regulator

- The MAA should be aiming for a higher level of insurer compliance (currently 88%).
- The CTP insurer market cannot be said to be competitive, with the best greenslip price for Sydney motorists dropping from \$306 in June 2004 to only \$296 in June 2005.
- CTP profits are well in excess of predictions in premium filings. Given these excessive profits, the MAA should intervene with a view to reducing greenslip costs and increasing benefits for the injured.
- CTP profits are clear evidence that premium monies that should be apportioned to injured people are not being awarded to them by the system.

Issue 2 Promoting appropriate treatment of injured persons

- The MAA should be aiming for a higher level of CTP insurer compliance with treatment, rehabilitation and attendant care guidelines. Its present rating is only noted as 'satisfactory'.

Issue 3 Providing medical and claims assessments

- Medical Assessment Service (MAS) assessments are still too inconsistent.
- MAS assessors require ongoing QA assessments by MAA.
- The MAS assessment process still takes too long.
- MAS finalisation rates require improvement.
- Psychiatric and physical assessments should be combined.
- A common complaint is that assessors are biased against the claimant. The appointment and use of assessors should be reviewed.

- The Claims Assessment and Resolution (CARS) assessment process still takes too long.
- CARS finalisation rates require improvement.
- A more equitable and efficient alternative would be to incorporate motor accidents as part of the *Civil Liability Act 2002*.

Issue 4 Long Term Care and Support Scheme

- This system is a good initiative for those at fault or in the case of inevitable accident, but those injured as a result of another person's negligence should have the option to seek a lump sum. The Lawyers Alliance made a submission in August 2005 on the proposed NSW Lifetime Care and Support Scheme. The following is a link to that submission on our website for your further information:

http://www.lawyersalliance.com.au/documents/public_affairs/australian_lawyers_alliance_ltc_s_submission_2005.pdf

Issue 5 *Sullivan v Gordon* damages

- The Australian Lawyers Alliance recommends that such claims should be reinstated. The Lawyers Alliance made a submission to the NSW Government on the statutory restoration of *Sullivan v Gordon* damages which stipulates that *Sullivan v Gordon* damages be reinstated. The following is a link to that submission for your further information:

http://www.lawyersalliance.com.au/documents/public_affairs/20051103_submission_to_the_nsw_government.pdf

Issue 6 Effectiveness of the CTP scheme

The CTP scheme is not effective, as it is neither fair nor efficient.

Efficiency would be increased with:

- The abolition of MAS;
- Simplifying forms; and
- Recruiting additional senior experienced legal practitioners as CARS assessors.

Fairness would be improved with:

- Assessing non-economic loss by CARS assessors based on the *Civil Liability Act 2002* scale for non-economic loss without the deductibles; and
- Replacing the 5% table of multipliers with a 3% table of multipliers.



WHO WE ARE

Background

The Australian Lawyers Alliance is the only national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. We have some 1,500 members and estimate that they represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. The Lawyers Alliance started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

Corporate Structure

APLA Ltd, trading as the Australian Lawyers Alliance, is a company limited by guarantee that has branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a president-elect, who serves a one-year term in that role and then becomes National President in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by ten paid staff who are based in Sydney.

Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of Continuing Legal Education/Continuing Professional Development, with some 25 conferences and seminars planned for 2005. We host a variety of Special Interest Groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for education, exchange of information, development of materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine *Precedent* is essential reading for lawyers and other professionals keen to keep up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.