Submission No 5

REVIEW OF THE MAA AND THE MAC - EIGHTH REVIEW

Organisation: Law Society of NSW

Name: Mr Geoff Dunlevy

Position: President

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The Law Society
of New South Wales

Tel +61 2 9926 0333
Fax +61 2 9231 5809
www.lawsociety.com.au
170 Phillip Street
Sydney NSW 2000
Australia
ACN 000 000 699

Fax

To:	Rachel Callinan, Director
Fax:	9230 3416
Organisation:	Legislative Council
Department:	Standing Committee on Law & Justice
From:	SHERIDA CURRIE
Department:	PRACTICE
Fax:	9233 7146
Date:	21 August 2007
Pages to follow:	3

If you did not receive all the pages, please contact me on (02) 9926 0252.

Subject: Review of the exercise of the functions of the MAA and MAC

Message:

Rachel

Submission from Law Society's Injury Compensation Committee follows.

Regards,

SHERIDA CURRIE
Senior Legal Policy & Research Officer
Practice Department

The Law Society
of New South Wales
ACN 000 000 699

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21 August 2007

Ms Rachel Callinan **BY FAX: 9230 3416**
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Callinan

Re: Eighth review of the exercise of the functions of the MAA and 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.

The Law Society's Injury Compensation Committee is pleased to raise the following matters for the consideration of your Committee.

*Anomalies regarding assessments pursuant to the 4th Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (**AMA4**)*

Since the introduction of the Motor Accidents Compensation Act in October 1999 the method of assessment of pain and suffering damages (non-economic loss) has been drastically changed, by recourse to the utilisation of AMA4. Prior to the changes, insurers continually argued that excessive compensation was being paid in relation to pain and suffering damages for minor accidents.

It is the Injury Compensation Committee's belief that the resultant changes have gone too far, in that less than 10% of all claimants are entitled to pain and suffering or non-economic loss damages.

The Motor Accidents Compensation Act states in Section 131 that no damages will be awarded for non-economic loss unless the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.

Assessment of non-economic loss as a percentage in spinal injury is often by way of Diagnosis Related Estimates (DRE).

A classic example of the inequity of the current legislation and associated assessment of percentages can be found in the assessment of two separate spinal vertebral sites.

In the event that an injured person sustains a DRE III category to the lumbar or sacral vertebrae and that is the only injury, then the assessment is exactly 10%. If, however, that same injury is to the cervical or thoracic vertebrae then the assessment is 15%. The implications of this are obvious. One injured person is awarded nil compensation for non-economic loss, and a second category person would receive a substantial award for non-economic loss.

It is submitted that no medical practitioner would state that the disability arising from a T12 vertebrae is so different from an L1. No medical practitioner would state that the one example warrants compensation for non-economic loss, and the second does not.

The Law Society is strongly of the view that the utilisation of the American Medical Association Guidelines should be abandoned. Even the authors of the American Medical Association Guidelines state that the Guidelines should not be utilised in relation to consideration of compensation claims.

By way of contrast, the 5th Edition of the American Medical Association Guidelines to the Evaluation of Permanent Impairment (AMA5) has the flexibility in assessments so that there is a range of percentages depending upon their degree of impairment within the DRE category. For instance, the DRE III example above, rather than being absolute at 10% or 15%, might be 10% through to 13% and 15% through to 18% respectively. The 5th Edition of the AMA Guidelines is utilised in workers compensation claims. It appears that it is solely for political reasons that AMA4 has been imposed in assessing New South Wales motor accident claims.

A second example is the DRE II category. The assessment of the spine is made up of three separate regions. In the event that all three are affected and are assessed at DRE II then the injured person will achieve 15%. Yet if two of the regions are affected it is 10%. Without exceeding the 10% threshold a claimant is not entitled for compensation for non-economic loss. This person could be significantly disabled.

A further example of inequity is the fact that psychiatric injury cannot be added to physical injury in determining the degree of permanent impairment. The anomaly is that, if the injured person is assessed at greater than 10% for either physical or psychiatric injury, then in assessing the level of compensation the psychiatric and physical injury disabilities can both be taken into account. There is no rationale at all behind this criterion. It is apparent that physical and psychiatric injuries need to be treated differently by different practitioners with different treatment regimes. Again, a claimant is inadequately compensated by not allowing a combination of the psychiatric and physical injuries to accumulate to give 10% impairment or greater.

I am pleased to confirm that the Chair of the Injury Compensation Committee, Law Society Councillor Scott Roulstone, and Committee member Denis Mockler will be attending before your Committee on Monday, 27 August 2007 at 1.45pm.

I trust that the written and oral submissions made on behalf of the Law Society's Injury Compensation Committee are of assistance in determining the issues to be examined in your current review.

Yours sincerely

Geoff Dunlevy
President