

**Submission
No 19**

**INQUIRY INTO THE EXERCISE OF THE FUNCTIONS OF
THE LIFETIME CARE AND SUPPORT AUTHORITY AND
THE LIFETIME CARE AND SUPPORT ADVISORY
COUNCIL - FOURTH REVIEW**

Name: Medical specialists

Date received: 20/10/2011

20 October 2011

The Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

By email: lawandjustice@parliament.nsw.gov.au

Dear Director,

Re: The eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council and the fourth review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

We are an informal group of medical specialists who provide assessments and treatment to people injured in motor vehicle accidents in New South Wales. We are making a submission to this Review as the Motor Accidents Authority and the Lifetime Care and Support Authority have been in operation for sufficient time for us to comment on their operation and to reflect on the effects of the Schemes on injured people.

The Whole Person Threshold

The threshold of greater than 10% whole person impairment restricts access to non economic loss to people with serious injuries and significant permanent impairment. The effect of this is that the more seriously injured people receive these payments and this is an appropriate response to their needs.

The whole person impairment percentage system based on the American Medical Association's Guides to the Evaluation of Permanent Impairment has ensured that there is objectivity in the evaluation of the long term effects of the injuries sustained in the motor vehicle accident. This system is far superior to the use of a threshold of a percentage of "a most extreme case" which has no objectivity, or scientific validity, and is a "pick a number" system that is not fair or equitable to injured people.

There is good reliability of impairment evaluations between assessors using the whole person impairment percentage system when well trained assessors are used. There are a few medical practitioners who produce invalid assessments. These practitioners should be obliged to complete refresher training and demonstrate competency. WorkCover NSW has been proactive in this area and their approach should be adopted by the Motor Accidents Authority.

Causation

The current system in which causation in the Motor Accidents Insurance Scheme is determined by the medical specialist is appropriate. The medical criteria for causation are clearly stated in the American Medical Association's Guides to the Evaluation of Permanent Impairment Fourth Edition

and the Motor Accidents Authority Permanent Impairment Guidelines. These are well understood by suitably trained medical specialists and injured people. Injured people accept that medical specialists should apply these principles of causation as an essential component of the permanent impairment evaluation.

It is our opinion that the recent Nguyen determination was not related to causation but rather due to a misunderstanding of the provisions of the American Medical Association's Guides to the Evaluation of Permanent Impairment Fourth Edition and the Motor Accidents Authority Permanent Impairment Guidelines. Unfortunately this decision has compromised an impairment evaluation system that has been used in tens of thousands of assessments internationally. Amendments to the Motor Accidents Authority Permanent Impairment Guidelines should be made to clarify these issues.

Lifetime Care and Support Scheme – entry and exit provisions

This Scheme has greatly improved the lives of people who sustain extremely severe injuries in motor vehicle accidents in New South Wales. It is recognised as a model scheme and it can form a foundation on which the proposed (Australian) National Injury Insurance Scheme is built. Because the Scheme provides care and support over the lifetime it is able to provide assistance for future needs that cannot accurately be predicted at the stage of interim participation. Even when the decision about lifetime participation is made (two years after injury) the person's very long term needs are not clear in many cases.

It is important that valid and reliable criteria are set for participation in the Scheme. The current criteria are appropriate but are likely to require fine tuning as there is further experience with the Scheme. As examples, the amputation criteria are to be altered slightly to improve clarity, and the lifetime participation criteria for people with traumatic brain injury should be reviewed when further data is available.

Because people with extremely severe injuries may not recognise their longer term care and support needs, the current arrangements whereby people cannot 'opt out', and whereby referral to the Scheme can be made by any interested party, should continue.

Should you have inquiries about these submissions, please contact Dr Ian Cameron on
or

Yours sincerely,

Ian Cameron

Peter Burke

Michael Fearnside

David Johnson

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