Submission No 8

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

Name: Name suppressed

Date received: 11/08/2011

Summary Table:

Introduction

, I was involved in a MVA in NSW and have suffered under the current legislation surrounding the MAA and the NSW compensation Act. The following is the difficulties I (and a number of others I have spoken with) have faced while trying to navigate what is supposed to assist the recovery of or compensate MVA victims in NSW. I have now been receiving a Centrelink disability pension for the last years.

My injuries

For the last years I have been suffering.moderate to severe pain as the result of "mechanical impingement" of my inter-scapular spinal area. An injury that has neither broken bones nor any other major damage associated with it. What is does cause is constant pain ranging from heavy dull ache to a severe stabbing pain, depending on associated movement. Whiplash is the second injury. The pain from my injuries severely limits my ability to concentrate and to perform even the simplest tasks at times. The pain is the main contributor to my depression that ranges from moderate to severe.

Initial Insurer Assistance – Lack thereof

Initially, I received basic information from my own insurer as to initial actions and contacts. The insurer for the party at fault was not so forthcoming. After lodging my initial claim, twice the

Insurer tried to close the case – once while I was waiting for the Insurer to send the forms and secondly during the time I was trying to complete the forms. I had NO ASSISTANCE completing the forms other than my contact with the MAA. This is contrary to the legislations that requires that the Insurer to assist in any way.

There is no provision for persons who require (i.e. severely injured, intellectually impaired, physically incapable, etc) assistance in completing the lengthy claim form.

Ongoing Insurer Assistance – Lack thereof

I have had firsthand experience of the Insurer "Doctor Shopping" (the act of finding a doctor that gives you the result you pay for). The Insurer paid for an initial Occupational Therapist (OT) report that stated I required home assistance, which was not forthcoming. After my continually requests for the home assistance that Insurer was advised I needed, they hired another OT to write a report stating that I didn't need the assistance. The OT lied to me before entering my premises stating that she was "worked for by the courts to investigate my needs" – She was hired by the Insurer. I contacted the MAA to see about the MAA supplying an independent OT to assess me, to which I was told that they provided independent doctors and not OTs – the Insurer's last OT report stood. The solicitor I was forced to take on for this case has since paid for an OT report that is more in line with the initial OT report. The payment for this will be from any settlement as I have never had the funds to pay for any medical reports myself. I have not been able to get the assistance I require without lengthy delaying on the part of the Insurer, if

provided at all. Lack of funds on my part meant limited treatment. Not once did the Insurer offer the option of paying upfront, EXCEPT for travel to attend medical appointments organised by the Insurer.

Initial stalling by the Insurer resulted in a settlement offer by the Insurer of approx, $4500. This offer has since been replaced by an offer of $40,000. When I refused this offer (as it would not cover my basic future out of pocket expenses), legal pressure was brought to bear, forcing me to seek legal assistance.

The legislation and procedures around the MAA is unintentionally biased towards the Insurers and not the victims of motor vehicle accidents in NSW.

Proper Officer - not Common Sense

My initial understanding of the duties of the "Proper Officer" was to assess medical evidence with current other medical evidence to arrive at a proper outcome. I was severely mistaken. I have since found out that the Proper Officer makes sure all is right within law of medical reports. I had reports from a psychologist and psychiatrist diagnosing me with depression as a secondary affect of the MVA. The MAA "independent" psychologist (which I have since been told by a 3rd party, contract to these same insurers as well) reported no such depression. This is the same psychiatrist that wrongly diagnosed an ABC radio personality as not suffering depression. The statement from the Proper Officer was that "it was his professional medical opinion" and the report is proper.

Why not rename to Legal Officer? – There is nothing proper about the position.

What checks guarantee medical professionals contracted by the MAS as to ability and independence?

Current Injury Table and greater than 10% Figure

My back and neck injuries which have been assessed as permanent and stable result in a Whole Person Injury of 7% - according to the independent MAS doctor. I know the tables are devised the Americans and I understand the reasoning behind the tables. Unfortunately, like many things now days, very little common sense goes into academic matters. My back and neck injury prevent me from doing almost all activities I used to do. My arms are fine and uninjured BUT I can't lift anything greater than about 6Kg because of the compression this causes on my spine which increases the pain to excruciating levels even with the pain medications (Tramadol and Oxicontin) I am taking. My legs are intact and uninjured; yet, I can no longer run and cannot walk far due to the impact these activities cause by again increasing the pain. I'd rather I'd of lost my arm in the accident than have suffered the injury to my back I do have – It results in a higher WPI and is less debilitating. Where is the common sense in that?

NO common sense in WPI assessment regarding back injury – need reassessing independent of the American tables used.

3 Year Period for Court Action Inadequate

As I have already stated, my case is still ongoing after years. The reasons behind this are due to Insurer manipulation. The Insurer had delayed on matters until after the 3 year period – they then brought legal pressure to bear. I have another secondary condition of Sleep Apnea brought on by weight gain due to the inability to exercise. The MAA assessor recommended a C-PAP machine be supplied, and it was ... for the first 9 months of the 12 month period before attending the MAA assessor again. In the 3 month period the Insurer left me without a C-PAP machine, directly before attending the MAA assessor, my situation reverted back to what it was on the initial visit. The result is that I am in a second 12 month period before being assessed again.

The Insurers and their lawyers know the legislation and the loopholes and how to manipulate same, and the MAA cannot stop them doing so. I would suggest the 3 year limit be increased in line with the statute of limitations, which I believe to be 6 years. 3 years is too short a time frame to cover all cases.

Summary

Current legislation does NOT adequately protect MVA victims, but instead ensures Insurer manipulation and inadequate compensation. Does not keep premiums down but ensures Insurer profits at the expense of persons of NSW.