

Submission

No 5

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

Organisation:

Name:

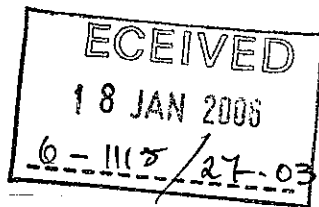
Telephone:

Date Received: 18/01/2006

Theme:

Summary

Partially Confidential



To whom it may concern

On this 2 February 2006 I, _____, provide my submission for the **Parliamentary Inquiry - Inquiry - Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council - Seventh review**

Summary

Due to my experiences resulting from a hit and run motor vehicle accident I would like to see the following recommended actions result in changes to the *Motor Accident Compensation Act 1999*:

Action 1 – That the 28 day limitation for injury claims be increased to a minimum of three months where the incident is hit and run and a Nominal Defendant claim is likely;

Action 2 – That the insurance companies be required to ask specific questions of claimants that relate to injury and CTP claims when claimants place a motor vehicle accident, CTP, or Third Party Property claim and then inform claimants of the MAA and how to make claims against the ‘Nominal Defendant’.

Action 3 – Remove all clauses (such as s. 124) from the legislation that preclude victims of motor vehicle accidents from receiving full compensation for their direct economic losses; and

Action 4 – Add a clause that provides full compensation for bona-fide victims for all injury and claim related in-direct economic losses resulting from a motor vehicle accident.

Background

I was involved in a serious hit and run head-on motor vehicle incident on the Pacific Highway, south of Bulahdelah at 5:20 am on Wednesday the 27th April 2005 in which a log fell off the back of a timber truck and slid underneath my new car at a closing speed of 200 kph. I was travelling north at the time. The log flipped my car onto its roof, the car then bounced off the tarmac, causing it to become airborne and colliding with a guard rail upside-down before coming to rest upside down in the south bound lane of the highway facing east. The truck did not stop. To date the Police have not

charged anyone, and after the six month statute of limitations on such incidents expired on the 27th October 2005 the Police ceased to investigate the incident.

Relative to the state of the vehicle which was a write-off, I had minor injuries. Those injuries included bruising, cuts, abrasions and whiplash to my neck and lower back. I spent a total of four weeks off work. The vehicle undoubtedly saved my life.

Concerns & Recommendations

I have two main concerns with regard to the incident that specifically relate my CTP claim and to this inquiry.

Concern 1 – I was unable to make a claim against a specific third party due to the lack of owner/insurer information. As a consequence I was not able to place a direct claim for immediate medical treatment (eg Doctors visits, physio, massage, ambulance etc). It took me two weeks to find out I could claim against the ‘Nominal Defendant’, and another two weeks to establish that I needed to make a claim through the Motor Accident Authority (MAA). I was only able to make the appropriate links after repeated phone interactions with my motor vehicle insurer, the NRMA. Bear in mind I was in shock and so therefore was not working at my best capacity.

When I was able to finally touch base (on day 28 after the incident) with the MAA I was informed the four week (28 day) window for immediate claims had expired and I had to fill in specific forms to have my medical expenses reimbursed. This 28 day statute is defined in:

S.48 Notification of motor accident to police and submission of accident notification form to insurer

An injured person is not entitled to payment for treatment expenses under this Part unless:

(c) the accident notification form is submitted to the insurer within 28 days after the motor accident (or within such other period as the form requires),

Subsequent to filling in the forms sent by the MAA it took several months for an insurance company to be identified and my direct out of pocket medical expenses to be reimbursed.

As a result of my experiences I believe that two actions should be undertaken to mitigate both the time frame for injured victims to seek medical treatment (and therefore financial compensation for treatment) and the total lack of a coordinated information system to inform victims of their rights.

Those actions and their justification are set out below:

Action 1 – That the 28 day limitation for injury claims be increased to a minimum of three months where the incident is hit and run and a Nominal Defendant claim is likely.

This action will provide claimants with more time in which to place a claim, particularly if the potential claimant has been seriously injured/incapacitated and does not have a spouse, close family and/or friends etc, or as in my case the incident was hit and run. It will also provide more time for a spouse, family or friends to make representations on behalf of the injured person.

Action 2 – That the insurance companies be required to ask specific questions of claimants that relate to injury and CTP claims when claimants place a motor vehicle accident, CTP, or Third Party Property claim and then inform claimants of the MAA and how to make claims against the ‘Nominal Defendant’.

For example, when the insured contacts the insurance company via phone to make a motor vehicle claim, it would not be difficult for the insurance company to add specific questions to their standard pro-forma to include:

- Was anyone injured? Yes/No;
- If yes, was another vehicle involved? Yes/No;
- If yes, did you get the details of the other vehicle? Yes/No
- If no, (the insurance company should be obliged to inform the insured with a statement similar to the following) “in your situation are you aware you can make a CTP claim against the ‘Nominal Defendant’ via the MAA? You have 28 days (or three months as I have proposed) to do so and you can contact the MAA on 1800 ??? ???etc
- Do you have any questions (if yes the Insurance Company must have the relevant information at hand to pass onto the claimant).

This action is proposed to fill the information gap between the claimant and the complexities of claiming for compensation when the perpetrator of an incident does not stop at the scene of an incident that causes injury. Given the circumstances it should be the obligation of the Insurance companies to provide this information, not for hospitals, police and other public service providers not directly involved in compensation, and therefore Insurance Company issues.

Concern 2 – My understanding of the proposal for major changes to the *Motor Accident Compensation Act 1999* (MAC Act) was to minimise the dollar amount of claims the insurance companies argued were getting out of control and thus driving up premiums. While I have not seen any substantial reduction in premiums, I note that I have had significant out of pocket expenses resulting from a motor vehicle incident that was not my fault. Those expenses include direct and indirect costs associated with: making insurance claims, phone calls, increased power bill at home (due to not going to work), lost sick leave (\$1500), time spent chasing up information from Police, Insurance Companies, medical practitioners (estimated to be at least 40 hours) etc. While some of these costs are reimbursed (eg travel to and from treatment) many are not.

Of particular concern is the following clause from the MAC Act 1999:

Part 5.2 – Damages for economic loss

S. 124 Damages for economic loss--no compensation for first 5 days of loss of earnings etc

No damages for economic loss due to loss of earnings or the deprivation or impairment of earning capacity is to be awarded in respect of the first 5 days (whether or not consecutive days) during which the plaintiff suffered that loss because of the injury.

Why is it that the insurance companies have been given a get out of paying compensation card with this clause and many like it? If someone is injured as a result of a motor accident and that is proven, and they are not able to claim for compensation for pain and suffering because they fall under the 10% injury threshold (which is another problem), they should not be penalised for their economic losses by further losses being imposed in legislation. Such clauses also fail to address one of the objects of the Act that being:

1(b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims.

Clause 124, and many others that ensure Insurance Companies are divested of their economic responsibility, should be removed, and/or the right of a victim to sue in common law should be reintroduced. The insurance companies cannot have it both ways.

In this context I make the following suggestions:

Action 3 – Remove all clauses (such as s. 124) from the legislation that preclude or discriminate against bona-fide victims of motor vehicle accidents from receiving full compensation from their direct economic losses.

This action is proposed to ensure that economic loss directly attributed to injury from a motor vehicle incident/accident is directly compensated, with no exclusions or exemptions for the insurer.

Action 4 – Add a clause that provides full compensation for bona-fide victims for all injury and claim related in-direct economic losses resulting from a motor vehicle accident.

This action is proposed to provide coverage for indirect costs and losses associated with the injury and subsequent insurance claims, as a result of that incident/accident. As with the 10% injury threshold for pain and suffering claims, it is suggested that a percentage of total injury costs (eg 10%) be awarded to the injured claimant as compensation for pain and suffering as well as indirect expenses not covered otherwise. For example, if the total cost for medical and associated expenses for personal injury resulting from a motor vehicle incident/accident is \$8000, the insurance companies should provide a final one-off payment at the closure of the claim of \$800 to cover indirect costs.

Willingness to attend the inquiry

I am willing to attend the inquiry and present my case and arguments