

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

Organisation:

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Partially Confidential

Submission

Seventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council

Terms of reference

In relation to the terms of reference I specifically confine myself to item 2(b) *"to report to the House, with such comments as it thinks fit, on any matter appertaining to the Authority or Council or connected with the exercise of their functions to which, in the opinion of the Committee, the attention of the House should be directed."*

I wish to address the Committee and draw their attention to the following experiences which I have had under the MAA system. I believe my personal experiences within this system pertain to the exercise of the MAA functions and to which the attention of the House should be directed.

I ask you to please consider and read the following; it will not take very long and hopefully, will provide some valuable insight into the realities of the MAA system and processes.

- I am a legal practitioner, not ordinarily practising in the area of personal injury law, but family law and discrimination/human rights.
- I am absolutely appalled by the manner in which the MAA administrative process operates in this State. The MAA administers both CARS and MAS administrative processes.
- The administrative process itself operates without judicial oversight ultimately and this factor (lack of independent scrutiny) leads to an abuse of individual human rights within NSW.
- The MAA administrative bodies and processes lead ultimately to a denial of natural justice to the individual in this State and a total lack of due process.
- The essence of a democratic society is the separation of powers with foundational principles of Australian law and justice being due process and natural justice. These principles are sadly lacking under the MAA administration.
- The MAA administrative process was originally devised as a means of avoiding lengthy, expensive litigation and providing individuals injured in a motor accident with a straightforward, inexpensive means of quickly settling their claim and thereby lessen suffering.
- The MAA administers CARS and MAS and these mechanisms are anything but straightforward and inexpensive.

- I have had personal experience and exposure to these administrative and pseudo judicial processes and I will provide you with just a tiny fraction of my experiences in this minefield.
- I was injured in a motor vehicle accident almost 5 ½ years ago.
- The party at fault turned in front of the vehicle I was a passenger in. The car was "written off" due to the damage and I was taken to Hospital.
- I have injuries resulting from that accident which I won't go into at length, but suffice to say lead to constant and continual pain that I will live with for the rest of my life and which are progressively getting worse, limiting mobility and every aspect of my life.
- My injuries were initially minimised by all concerned including the doctors until recent objective tests verified what I had known since time of the accident.
- I have been in this system now for over **5 ½ years**. I have been through one MAS Assessment and a Review; an Application for Further Assessment and another MAS Assessment which it appears the insurer's solicitor will now apply to have reviewed without good reason.
- I have attended 7 so called medical "specialist" appointments to date and now the insurer for the at fault party wants me to attend another 3 medical specialist appointments, presumably with the aim of trying to counteract previous reports favourable to me i.e., over the 10% threshold.
- This will mean that I will have attended in total **ten (10) medical specialist appointments for medico-legal reports** in this time, often with doctors specialising in the same area of medicine. These ten doctors exclude the treating doctors I have seen which result in "real" medical opinion, or treatment being exercised.
- Even the Court's have now prevented this kind of abuse of process from occurring (competing medical reports from same specialist with different results depending upon whether complainant, or insurer pay for same).
- The first MAS Assessment led to a finding of one injury which could not be reported on in the MAS Report because it was not specified originally in the right terminology for assessment.
- The MAS Assessor made a really important medical discovery thereafter, verified on objective medical tests, but was restricted by his terms of reference under the MAA system from commenting on the condition.
- This outcome initially puzzled me as I incorrectly assumed doctors were there to assist you. However, I later learnt it was a rule within the MAA system. This issue resulted in further major administrative problems with a Review and Application for Further Assessment and more years going by.

- I note in the recent guidelines that MAS Assessors are no longer able to even comment to the individual on any medical condition not down for assessment (no doubt due to my case).
- The second MAS Assessor (arising from Application for Further Assessment) made a finding on causation but could not make a finding on whole person permanent impairment because it was determined that my injuries have still not stabilised.
- I have been advised because this finding was made by the MAS Assessor I could apply to the CARS Assessor for exemption enabling the matter to go to court and finally be resolved.
- However, I am now met with not only an Application for Review (to be applied for by insurer for at fault party's solicitor) which will take another year to process, but I am further advised the CARS Assessor could take up to 18 months to make a finding as to whether the matter should go to court, or not.
- This may mean there is no determination in relation to my injuries for another 2 years so I will have been in the system for 7 ½ years by this time!
- I have been asked to respond to further and better particulars sent by the insurer's solicitor (for at fault party) which I can only say would not be deemed "reasonable" by any court in the land, but that I am advised I need to respond to.
- If a subpoena of this nature were issued in a court I could object on the grounds that it is nothing more than a fishing expedition. For example asking me to provide names of doctors I saw 7 years prior to the date of the accident when all disclosure is made in the numerous medical reports they have before them.
- However, I am advised there is nothing I can do in response to this abuse of process under the MAA system.
- Equally the insurer's (for the other party) solicitor has hounded my State Government employer with the same so called request for "further and better particulars" asking questions of the most intrusive and inappropriate nature.
- I have had the insurer for the other at fault party sending letters to my doctors with the Statutory Declaration I signed upon commencing the MAA process asking them to forward "all" my medical notes.
- I have not advised this insurer of all the doctors I have seen in the last 5 ½ years so how did they know I had seen them?
- The covering letter to the doctors by the insurer asks for the release of "all my medical notes" not just those pertaining to the accident.
- As a result the insurer has sent me copies of my own confidential doctor/patient notes and records that relate to totally different and highly personal medical conditions which have absolutely nothing to do with the accident. These records have been sent by the insurer to everyone else involved in the matter including

the CARS Assessor etc. I would like to ask what has happened to doctor/patient confidentiality in this State when this is happening?

- I have outlaid around \$10,000 in medication, CAT scan guided cortico-steroid blocks in various parts of my body, MRI, CAT Scan, medical reports and the list goes on over this time without recompense.
- I nearly died the last time I was admitted to Hospital as a result of the symptoms from the injuries due to a drug being administered that I was allergic to. I have had other allergic reactions to other drugs they have prescribed to try and assist me.
- I have now developed an ulcer from use of the anti-inflammatory drugs prescribed over the years for me to treat symptoms arising from my injuries.

The MAA is supposed to be a user friendly system for the injured party not at fault. I can provide as much detail as you like to indicate that it is far from same. It is a system designed to frustrate, exacerbate and increase psychological injury for people injured in a motor vehicle accident.

2 It is a system that is exceedingly expensive to operate within
3 because legal practitioners working in the area contract out of the
4 schedule and charge huge amounts of money to run matters in this
system.

2 I will repeat I have been in this system for over 5 ½ years now with still
3 no end in sight. It could be 7 – 10 years before this matter resolves, is
4 this a reasonable, feasible or just outcome?

I battle to continue to work which is hard enough given I take pain relief medication every day and I am penalised by the system for doing so. I find it difficult enough to just get through each day. However, I am continually bombarded with documents to deal with from the opponent insurer, more medical specialists to see and depending upon whom they are paid by the results will differ to the most extraordinary and un-scientific/objective degree. This in itself causes further distress. There are also the most incredible inaccuracies, unquestioned and unscrutinized in these so called objective medical reports.

Each time I receive these requests to attend more doctors, or provide more information or material my emotional/mental state suffers and the vicious circle continues. This is not a fair, just or reasonable administrative process and I believe there is a need for judicial oversight and review at every step of the administrative process.

To contemplate increasing the powers of the MAA or the CARS Assessors, often little more than general legal practitioners as recommended in the last review is a frightening prospect. I intend to pursue this matter vigorously as the system is designed to break people, physically, spiritually, financially and emotionally and I will not allow them to achieve this goal. I will pursue this matter not only on behalf of myself but for those in my situation experiencing the same pain. If necessary I will pursue it through the media and anyone that will listen because the MAA administrative and totally beaurecratic process leads to an abuse of individual human rights and Australia/NSW should not be sanctioning this inhumane system for the sake of insurer profitability.