Submission
No 2

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


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**Theme:** Impairment threshhold


**Summary:** Coninuing issues need addressing such as

- are MAS and the AMA guides causing injustice?
- AMA guides and non-economic loss
- insurer profits and premiums
- nominal defendant cover for 'unregisterable' vehicles
- obligation to cooperate
- delay - liability and fraud
- insurance gap, settlement deeds and costs regulations

Lawyers for the People

AUSTRALIAN LAWYERS ALLIANCE



# 6th Annual Review of the Motor Accidents Authority and Motor Accidents Council

## February 2005

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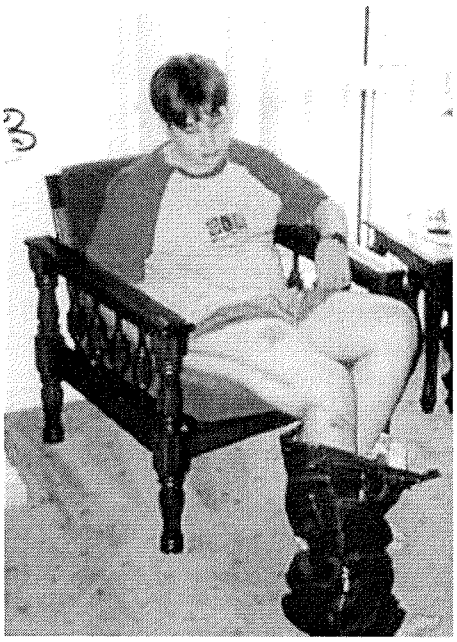
# Matt Davis

In May 2002 Matt Davis was traveling home from school by bus near Albury. He was 15 years old.

The bus driver suffered an epileptic fit and lost consciousness. The bus left the road and struck a tree at over 100km/h. The impact was so violent that the chairs were ripped from the floor of the bus. When rescuers arrived they found all the children piled at the front of the bus, tangled amid a wreckage of torn steel. Four children died in the accident.

Matt snapped the femur of his right leg and his left shoulder. He suffered an injury to his right shin that doctors call 'de-gloving'. A blunt object entered his leg just below the knee and traveled under the skin down to the ankle. The result was a portion of loose skin and flesh into which you could put your arm. It was full of grit from the accident and became infected. Matt was in surgery for four hours on the night of his accident. At one point the surgical team called for a priest, he was so close to death.



Matt subsequently spent seven weeks in hospital and underwent nine operations. The treatment of his right leg and left shoulder involved steel plates and screws. Matt was in a wheelchair for three months and had to have the plates in his leg re-fitted when his recovery did not proceed as hoped, and he suffered a further fracture. The de-gloving of his leg required skin grafts.

As a consequence of his injuries, this fit young man is no longer able to do the things he enjoys. He can't climb or bushwalk or play sport the way he used to. He can't help out with heavy work on the family farm. He has an ugly and embarrassing scar the length of his right thigh and below the right knee. The injuries and their treatment are very painful. Matt continues to suffer pain from his injuries every day.

Matt's injuries were assessed according to NSW law, under the *American Medical Association Guides to the Evaluation of Permanent Impairment* (the AMA Guides). He rated 8%. When they heard this figure, Matt and his parents couldn't believe it. Neither could his treating orthopedic surgeon. Because he didn't rate more than 10%, Matt is not entitled to damages for pain and suffering.

Matt Davis was a kid coming home from school like thousands of others every day across NSW. He did nothing wrong. Somebody else made the mistake that caused his painful and debilitating injuries. After a fight with the insurer, Matt recovered some money for his parents' out-of-pocket medical expenses. Despite evidence that the bus company knew the driver was prone to epilepsy, the insurance company is denying liability, calling the accident an act of god. Matt is still fighting the insurance company. If he wins in court he might be compensated for the reduced work options he will have later in life.

But Matt's pain, the time he had to spend in hospital, his scarring and the effect his disability will have on all aspects of the rest of his life is worth nothing in NSW.

Thanks to the Carr government and the AMA Guides, NSW motorists enjoy lower CTP insurance premiums, but at what cost?

# Contents

# Introduction

The Australian Lawyers Alliance – formerly the Australian Plaintiff Lawyers Association – has participated previously in reviews of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC). We are pleased to offer further submissions as part of the annual review process.

However, we are concerned to note that a number of our previous submissions, which have been endorsed by the Standing Committee on Law and Justice in its recommendations, have not been acted upon. Consequently, some of these previous submissions are repeated here.

The Lawyers Alliance continues to be very concerned with the use of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides) to assess impairment for the purposes of the greater than 10% threshold test for general damages. There is mounting evidence that the threshold is generating unfair outcomes, as the case of Matt Davis so clearly illustrates. Also disturbing is evidence that MAA officials are directing MAS assessors in the application of the assessment guidelines, contrary to the spirit and letter of the MACA and subordinate legislation.

Also of concern is the failure to amend section 33(5) of the *Motor Accidents Compensation Act 1999* (MACA) so that a person who is injured due to the negligent operation of an unregistered and 'unregisterable' vehicle will not be protected by the nominal defendant scheme. While there is some indication that amendment of this provision is in train, we feel that the issue warrants the Committee's further attention.

These two issues, which are of primary concern to the Lawyers Alliance, are explored in further detail, along with several other concerns, in the pages that follow. As in the past, Lawyers Alliance representatives will attend the oral hearings and look forward to continuing engagement in the review process.

## Are MAS and the AMA guides causing injustice?

During the second reading of the MACA Bill in 1999, the Honorable Ian MacDonald MLC, noted:

> "The bill provides for an objective method for determining the degree of permanent impairment. The American Medical Association's guidelines to permanent impairment will be used initially. However, there is scope for the Motor Accidents Authority to amend the association's guidelines and produce its own guidelines. **This will be done very quickly should there be any injustice in the association's guidelines and practice.** In fact, the Government, in conjunction with all the stakeholders in this process, will be looking at new guidelines." [1]

The assertion that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) provide an objective method of assessment is contradicted by the Guides themselves, and was challenged by the Law Society, APLA, the Bar Association and NRMA at the time.[2]

There is increasing evidence both that the AMA Guides do not provide an objective or consistent reference for doctors, and that their use by MAS assessors is subject to inappropriate and perhaps unlawful direction by MAA officials. Some of this evidence is set out below.

In light of this evidence of injustice, the government in conjunction with stakeholders including the MAA and MAC, should review the use of the Guides as foreshadowed by the Honourable Mr MacDonald MLC.

## Do the AMA Guides facilitate objective and consistent assessments?

The following is a passage from the introduction to the AMA Guides themselves:

> "Impairment percentages derived from the Guides criteria ***should not be used as a direct estimate of disability***. Impairment percentages estimate the extent of the impairment on whole person functioning and account for basic activities of daily living, not including work. The complexity of work activities ***requires individual analyses. Impairment assessment is a necessary first step*** in determining disability." [3]

As APLA has previously observed, no state in the United States, from where these guides have been borrowed, applies them in a motor accident scheme. The fact that they are stated to be of use only as a preliminary step itself casts extreme doubt on their suitability for the use to which they are put in the MACA.

The very notion of a whole-person impairment (WPI) assessment is difficult. The idea is that a doctor assesses an injury to an eye, or a toe, or the lumbar spine, and by reference to a series of tables provides a figure that expresses the injury as a percentage of impairment to the whole body. At no stage is the injury considered in the context of the individual's life or work as the Guides indicate should occur. The result is a convoluted half measure that is anything but objective.

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[1] *Hansard*, 22 June 1999 (emphasis added).
[2] See *Hansard* on debate over the Bill generally, circa 1999.
[3] *AMA Guide*, 5th Edition, p13 (emphasis added).

Here's a sample calculation taken from a *Medical Journal of Australia* article:[4]

> "...estimate severity of sensory deficit or pain according to Table 11a and that of motor deficit according to Table 12a; multiply the severity of the sensory and/or motor deficit by the appropriate [sic] percentage from Table 13; combine the sensory and motor impairment percentages using the Combined Values Chart to obtain the total upper extremity impairment; convert the upper extremity impairment to whole person impairment using Table 3..."

The Lawyers Alliance and other stakeholders have previously expressed concern over the suitability of the AMA Guides for the important role they play in the MACA scheme. Evidence such as that cited above, drawn from the Guides and academic comment on them is certainly powerful. But it is no longer necessary for the Committee, government or the MAA to consider the question academically. Cases litigated under the MACA system now provide clear practical illustrations of the injustice the Guides produce.

## Consistency

In *Mihalopoulos v Van Huen Vu,* a case reported in the MAAS Bulletin, wildly varying assessments of the same injured person were produced by the MAS assessor, a review panel and a third assessor.

Initially a Dr Beer assessed the injuries at 12% WPI. The insurer challenged this assessment on the basis that the injury was not yet stable. The Review Panel reassessed the injuries at 2% WPI. After an appeal by the claimant, the MAA was directed to reassess the injury. A second MAS Assessor, Dr Scougall, assessed the injury at 9%WPI.

Clearly the AMA guides do not provide a basis for consistent objective assessments.

## Does the MAA direct MAS assessors?

The published interlocutory judgment in *Catsicas v Mullaney*[5] found unwarranted and arguably unlawful communications between MAA officials and MAS assessors. David Catsicas's case is shocking, and warrants summary here.

David Catsicas was injured in a motor vehicle accident on 27 March 2001. As part of his claim, David was examined by MAS assessor Dr Apler on 7 August 2002, upon referral from the MAA.

Using the AMA Guides as required, Dr Apler certified David's WPI as 30%. His report and certificate were forwarded to the MAA on 9 August 2002. This correspondence was not copied to David, his lawyer, or any of the other parties to the claim.

On 29 October 2002, the MAA "wrote to Dr Apler requesting a review of sections of his report *that require some amendments*".[6]

Part of the letter is reproduced in the judgment:

> "1) on page 5, point 12, paragraph two of your report, you referred to his unusual presentation and of his carrying a list of the symptoms with him to

[4] Dr. Milton I Cohen reviewing AMA 4 and 5 for the *Medical Journal of Australia,* available online at: www.mja.com.au/public/bookroom/1998/cohen/cohen.htm l

[5] Newcastle District Court, No. 17 of 2003.

[6] *Ibid*, per Sidis DCJ, Reasons for Judgement on Notice of Motion, 30 July 2004, p6 (her Honour's emphasis).

medical appointments. Unfortunately, the parties may see this as bias and the whole paragraph is best removed from your report.
2) with regard to your assessment of impairment, page 7, social functioning, from MAA descriptors this sounds like it could be class 2? Could you please elaborate why you have assessed this as class 3 or change to class 2 upon your review?
3) on the bottom line of your table you have omitted to include %WPI. Could you please include?" [7]

Again, this letter "requiring amendments" was not disclosed to the parties.

In his revised report, again dated 9 August by the doctor, but date stamped as received by the MAA on 7 August, Dr Apler complied with all the directions in the letter from the MAA, including that regarding the social functioning assessment. The change from class 3 to class 2 resulted in a decrease in the WPI assessment from 30% to 11%.

On 4 February 2004, following another examination by a doctor retained by the defendant insurer, and a subsequent application to the MAA, David was again examined by Dr Apler.

Again Dr Apler prepared a draft report and a certificate, which were provided to the MAA but no other party. Again the MAA wrote to the doctor requesting he review the draft.

> "On page 9 of your report, under concentration, persistence and pace, you have rated the claimant as class 2. I note that the claimant maintained memory and concentration throughout the appointment of one and a half hours duration, and that persistence and pace may be affected by the claimant's physical complaints. Given this information, the parties may question the rating given. Could you please expand on the reasons behind your decision."[8]

Again the MAA did not disclose this correspondence to the other parties.

Again Dr Apler heeded the direction from the MAA, changing his report to rate concentration, persistence and pace as 2 rather than 1.

The result of this last report was that David's WPI was now assessed as less than 10%.

Accordingly, he was entitled to no general damages.

Following her account of these events, the judge observed that the correspondence between the doctor and the MAA was, "beyond power and unauthorized", "suggestive of bias on the part of the MAA", and resulted in, "an absence of procedural fairness in the process of medical assessment of the plaintiff".[9]

## Can the MAA refuse to disclose its direction of MAS assessors?

In the subsequent case of *Watkins v Power*,[10] the plaintiff attempted to uncover evidence of communications between the MAA and the MAS assessor by serving

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[7] *Ibid.*
[8] *Ibid*, p7
[9] Ibid, pp 8 and 9.
[10] Newcastle District Court, No. 642 of 2003, Reasons for Judgment published motion dated 20 August 2004, 14 October 2004.

subpoenae on them both. The MAA lawyers claimed public interest privilege over those communications on behalf of the MAA and the doctor.

In rejecting this argument the judge quoted clause 9.7 of the *Medical Assesment Guidelines,* which provides,

*"9.7 [medical assessor] is not to take into consideration, in the course of the assessment, any documentation or information that is not shared between the parties."*

This rule obviously applies to both the case of Robert Watkins, and to that of David Catsicas. The MAA directions to Dr Apler, requiring him to alter his report in the *Catsicas* matter, given that those communications were not public, was arguably contrary to clause 9.7.

The MAA has appealed the District Court decision in *Watkins* and is scheduled to again claim a public interest privilege over MAA communications with MAS assessors before the Supreme Court on 14 February 2005.

It is difficult to see how stakeholders can have any confidence in the objectivity of the medical assessment regime under the MACA when the MAA seeks to protect communications of a class already called into question in a published judgment through the device of privilege. A defining aspect of objectivity and procedural fairness is surely transparency.

**Question 1**

- Does the MAA or MAC intend to review the use of the AMA Guides in the light of evidence calling their objectivity into question, and that suggesting the AMA Guides are inappropriate as a final guide to the assessment of disability?

**Question 2**

- Does the MAA or MAC intend to review the direction given to MAS assessors by MAA staff?

**Question 3**

- On what policy grounds do the MAA and MAC maintain a right to confidentiality or privilege over official communications with MAS assessors? How does this claimed right to confidentiality or privilege sit within the objects of the MACA and the provisions of clause 9.7 of the *Medical Assessment Guidelines*?

# AMA Guides and non-economic loss

The previous section explored difficulties with the objectivity and consistency of WPI assessments performed subject to the AMA Guides and apparently unlawful covert direction of MAS assessors by the MAA. A related question is the fairness of the greater than 10% WPI threshold required before damages for non-economic loss can be awarded.

Right from the first debates over the MACA Bill, legal stakeholders and others have argued that the 10% threshold is too harsh; that persons with serious injuries will not pass the 10% test.

The Lawyers Alliance concurs strongly with this view. We have made the point and will continue to make it. It is difficult to see how the point can be made more clearly than by example. The Committee, the MAA and MAC and the government are referred to the case of Matt Davis.

It is also noteworthy that the government chose to circumvent its own legislation in the case of the Waterfall train disaster. Is the public to infer that the guidelines were too harsh to be applied in such a clear case of gross negligence on the part of a public authority? If they were too harsh for Waterfall, are they not too harsh for Matt Davis?

### Justice Policy Research Centre

It is also worth noting the views of other stakeholders as expressed during surveys conducted in 2004 by the Justice Policy Research Centre, on behalf of the MAA.

Some experienced staff from CTP insurers considered the 10% WPI threshold, or the method of assessing it, to be unfair.

Some MAS and CARS assessors also felt the 10% test to be unjust, arbitrary and difficult to apply.

Speaking to the Swiss Re insurance conference in September 2004, NSW Chief Justice Spigelman had this to say about the 15% threshold operative under the *Civil Liability Act* (CLA):

> "The introduction of a requirement that a person be subject to 15% of whole of body impairment - that percentage is lower in some States - before being able to recover general damages has been the subject of controversy. It does mean that some people who are quite seriously injured are not able to sue at all. More than any other factor I envisage this restriction will be seen as much too restrictive."[11]

The CLA threshold is generally considered to be more generous to claimants that the 10% WPI threshold. Indeed it was the operative limit when the NSW government announced that Waterfall victims would be exempted from the provisions of the MACA, as had people injured in the Glenbrook train accident.

Matt Davis's case might be dismissed by some with harder hearts. But it is hard to ignore such an example when taken with the dissent voiced by CARS assessors, MAS assessors, the highest judicial officer in the state and even CTP insurers themselves.

[11] The speech is available online at http://www.agd.nsw.gov.au/sc/sc.nsf/pages/spigelman_140904

The Lawyers Alliance respectfully submits that the weight of evidence against the AMA Guides is now far too great for it to simply be dismissed or disregarded. It is time for a serious review of the suitability of the Guides to the important gatekeeper role they play in the motor accidents scheme, and for that matter in the workers' compensation scheme.

**Question 4**

- In the light of criticisms of the operation of the greater than 10% WPI threshold for non-economic loss and the AMA Guides based assessment of that figure, does the MAA or MAC intend to recommend a review?

## Insurer profits and premiums

In evidence before the Committee during its 2004 review,[12] the general manager of the MAA observed that average insurer profit, expressed as a percentage of premium income, was about 10% prior to reform. He further observed that an aim of the new MACA scheme was to reduce insurer profit in this protected market. Mr Bowen stated that 5.5% profit was the minimum amount required.

The 2003-2004 MAA Annual Report sets out a table[13] showing insurer profit and premiums written for the years 2000 to 2003. While the table does not provide a percentage figure, it is easily calculated as follows

| Year | Premium Income (millions) | Profit (millions) | Profit as % of Premium Income |
|---|---|---|---|
| 2000 | $1325m | $315m | 23.77% |
| 2001 | $1321m | $282m | 21.34% |
| 2002 | $1342m | $277m | 20.64% |
| 2003 | $1388m | $217m | 15.63% |

Clearly the profitability of the current motor accidents scheme is far above the reasonable level as indicated by Mr Bowen. It follows that the scheme is failing to attain one of its major objectives – that is, to limit the amount of profit taken out of the scheme by insurers.

The Lawyers Alliance submits that there is a direct relationship between the increased profitability of this sector and the reduced rights to compensation of persons injured in motor vehicle accidents in NSW. Matt Davis and thousands like him are cross-subsidizing the profits of insurance companies. It would appear that there is scope either to further lower premiums, or to increase the access to compensation of injured people, either of which approaches would address the matter of excess profits being taken out of the scheme.

**Question 5**

- Do the MAA and the MAC maintain that profitability in the range 5.5% to 10% is appropriate for insurers operating in this scheme?

**Question 6**

- Do the MAA and the MAC accept that insurers' profitability since 2000 has far exceeded these levels, as set out above?

**Question 7**

- Do the MAA or the MAC intend to recommend changes that will allow for increased compensation, lower premiums or otherwise regulate the profit-taking currently occurring in the scheme?

[12] 16 February 2004.
[13] See page 104.

# Nominal defendant cover for 'unregisterable' vehicles

Section 33 of the MACA deals with claims against the nominal defendant. The point of these provisions is to provide protection for the people of NSW in circumstances where they are injured in a motor vehicle accident, but cannot locate or identify the responsible insured. They are a very important part of the whole structure of the MACA scheme, ensuring that the protection afforded to the people of NSW is comprehensive.

Subsection 33(5)(ii) limits the scope of coverage available through the nominal defendant. Only a vehicle that, 'immediately before the motor accident occurred, was capable, or would, following the repair of minor defects, have been capable, of being so registered' is covered by the nominal defendant scheme.

This limitation was intended to prevent nominal defendant coverage being extended to go-carts and other motorised vehicles that may cause injury, but which were never intended to be registered as motor vehicles for use on public roads in NSW.

However, as the case of Farren Lane[14] illustrates, insurers have attempted to use the provision for a perverse purpose, for which it was never intended. A very legalistic reading of section 33(5)(ii) might allow that a normal motorcar, unregistered at the time of the accident and in such a state of disrepair that it would not have been registrable with minor repairs, is excluded from cover.

The result is that all NSW road-users, including children and pedestrians, are at risk if they are injured by an unregistered vehicle that is incapable of registration. This outcome was never the intent of the legislation and the section must be amended, closing the loophole.

**Question 8**

- Has the MAA or the MAC undertaken research to determine whether the operation of section 33(5)(ii) is as described above?

- If so, is a report concerning that research available?

**Question 9**

- Irrespective of the answer to question 1 above, does the MAA, the MAC or the Committee intend to recommend to government that steps be taken to close the legislative loophole contained in section 33(5)(ii)?

**Question 10**

- Will the MAA, the MAC or the Committee recommend to government that amendment of s33(5)(ii) be retrospective, so as to protect those already affected by the provision, and those who may be affected in the interim, while the Committee's current recommendation is under consideration?

[14] *The Nominal Defendant v Lane* [2004] NSWCA 405.

## Obligation to co-operate

Section 85 of the MACA requires claimants to co-operate with insurers in settling claims. The duty extends to providing documents, and even requiring claimants to meet with insurance company claims investigators to make a statement about the accident.

It seems from the wording and structure of the provision that section 85 is made in pursuance of a stated object of the Act, 'to encourage the early resolution of compensation claims'.[15]

However, in the experience of Lawyers Alliance members, the use of section 85 by insurers often works to advance the interests of insurers but not necessarily to speed the resolution of claims or reduce costs. Certainly, the fact that the obligations imposed by section 85 apply only to claimants, with no correlative obligation of complete disclosure on defendants or their insurers, seems contrary to equity and fairness.

Very often insurance claims investigators will also meet witnesses and defendants to take statements concerning accidents. If plaintiffs are to prepare their cases properly, they also need to take statements from witnesses. Yet there is no obligation on insurers to share the information they uncover in their investigations, or any obligation on defendants to submit to examination. Such a reciprocal obligation of co-operation would result in substantial cost savings for claimants.

**Question 12**

- Has the MAA or the MAC reviewed section 85 in its practical operation and effect?

**Question 13**

- Do the MAA and the MAC agree that an amendment to the provision rendering the obligations reciprocal would further of the objects of the MACA as expressed at section 5(1)(b)?

[15] See s5(1)(b) MACA.

# Delay - liability and fraud

## Late withdrawal of admissions of liability

The MACA requires insurers to indicate whether they will admit liability within three months of notification of a claim. However, insurers can withdraw that admission at any subsequent stage.

The Lawyers Alliance understands that, in some cases, insurers have withdrawn admissions of liability some years into the processing of a claim, resulting in considerable delay.

### Question 14

- Has the MAA or MAC investigated any complaints regarding late withdrawal of liability admissions? Have the findings of any such investigation been published?

## Allegations of fraud

Fraud allegations by insurers also cause significant delay in the processing of claims and can also result in lengthy CARS negotiations being abandoned, as fraud provides a mandatory ground for CARS exemption.

### Question 15

- Has the MAA or MAC investigated and published the results of any inquiry into undue delay caused by late allegations of fraud?

# Insurance gap, settlement deeds and costs regulations

## Insurance gap

Various stakeholders have previously noted a gap in insurance coverage created by the definition of injury in the *Motor Accidents Act 1988.* Where previously all motor accident-related injuries were covered by motor accidents legislation, the reduced ambit of 'injury' under the new definition left certain types of injuries without cover. To our knowledge, no appropriate increase in the coverage available under public liability insurance has covered this gap.

During the review last year, the MAA reported that the Insurance Council of Australia had issued a circular calling on insurers to review their liability cover. To our knowledge, no further action has been taken in relation to this issue.

### Question 16

- Has the MAA or MAC taken further steps to address this gap in insurance coverage?

### Question 17

- Will the Committee recommend to government that steps – perhaps including measures taken outside the operation of the motor accidents scheme – be taken to address this problem?

## Settlement deeds

Most motor accident claims are settled between the claimant and the insurer. The instrument by which these settlements are recorded and rendered effective in law is the signing of a deed of settlement by both parties.

Lawyers Alliance members report that some insurers are settling claims on the basis of deeds that contain no date before which the settlement sum must be paid to the claimant. The result is that the claim can be concluded and the claimant prevented from taking further action by the terms of the deed, but the insurer is under no obligation to pay the settlement monies expediently. In some cases, payment has not been made for six months. Where the deed contains no date, the claimant is powerless to take action to enforce payment of the debt or recover interest.

Lawyers acting for claimants asked to sign such deeds have attempted, without success, to negotiate alterations to the wording of the deed to provide for a payment date. In our members' experience, these requests are denied, leaving claimants to choose between a defective settlement, or a court battle with all the attendant additional cost and stress.

The Lawyers Alliance submits that a simple change to the regulations, making a deed unenforceable and unregisterable unless it contains a provision allowing for a payment deadline, would solve the problem.

### Question 18

- Is the MAA or MAC aware of any complaints relating to deeds of settlement without payment deadlines?

**Question 19**

- Will the MAA or MAC, or the committee, recommend an amendment requiring all deeds to contain a payment deadline?

## Costs regulations

The MACA regulates costs recoverable on a party / party basis. The set fees have not been increased since the commencement of the Act.

Over time inflation has continued to drive up the costs of court and legal processes. Rent and salaries inexorably exert pressure on lawyers' fees. The result is that claimants now typically recover less of the legal fees spent on litigating a case than they could over five years ago, which eats into any compensation they recover. Lawyers have already reduced fees in this area in response to regulation. But lawyers can lower fees so far before the work ceases to be economically viable.

The Lawyers Alliance submits that it is impractical for costs regulations to remain static, taking no account of CPI or other relevant indices of inflation in legal and associated litigation costs.

**Question 20**

- Will the MAA, MAC or the committee recommend revisiting the fixed costs governed by regulation? If this recommendation is not made, what is the policy basis for declining to do so?

# The Australian Lawyers Alliance

## Background

The Australian Lawyers Alliance is the only national association of lawyers and other professionals which is dedicated to protecting and promoting justice, freedom and the rights of individuals. We have some 1,500 members and estimate that they represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. The Lawyers Alliance started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

## Corporate structure

APLA Ltd, trading as the Australian Lawyers Alliance, is a company limited by guarantee with branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a president-elect, who serves a one-year term in that role and then becomes national president in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by ten paid staff, who are based in Sydney.

## Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

## Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of continuing legal education/continuing professional development, with some 25 conferences and seminars planned for 2005. We host a variety of special interest groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for education, exchange of information, development of materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine, *Precedent,* is essential reading for lawyers and other professionals who are keen to keep up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.