

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

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A separate submission has also been lodged for the First Review of the LTCSA and LTCSAC and is available for download from that inquiry web page.



**The Law Society
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29 April 2008

Mr Simon Johnston
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

BY FAX: 9230 3416

Dear Mr Johnston

Re: Ninth review of the exercise of the functions of the MAA and MAC

I refer to the letter from the Hon Christine Robertson MLC dated 10 March 2008 inviting the Law Society to participate in the continuing review into the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council.

The Law Society of New South Wales again wishes to highlight its meaningful working relationship with the Motor Accident Authority (MAA) and the detailed feedback provided by the Authority to the Society throughout the course of each year. The Law Society also appreciates being afforded continuing opportunities in which to provide both written and oral submissions to the Standing Committee on Law and Justice. Detailed submissions were provided to your Committee on 21 and 22 August 2007 and Law Society representatives gave oral evidence before the Committee on 27 August 2007.

The focus of the submissions and evidence given by the Law Society in 2007 was the Medical Assessments Service. This submission focuses on the Claims Assessment and Resolution Service and the Law Society of New South Wales, through its Injury Compensation Committee, makes the following comments for consideration by your Committee:

1. **CARS System Generally**

The Law Society is of the view that the legal and procedural framework of the assessment of motor accident claims is generally working effectively. When assessing criteria performance affordability, effectiveness, fairness and efficiency the Law Society submits that the system is adequately achieving the four criteria indicators.



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The stakeholder input from all relevant stakeholders has been highly beneficial to success of the system and, in this regard, the strong communication levels between the MAA and the Law Society remain important in maintaining scheme effectiveness. The Law Society extends its thanks to key personnel within the MAA, namely Mr David Bowen, Ms Carmel Donnelly, Ms Belinda Cassidy and Mr Cameron Player.

2. Cost Indexation/Regulations

As has been noted in your Committee's previous Reports, the Law Society is currently engaged in a review of the impact of the Cost Regulation, in consultation with the MAA. An independent consultant, FMRC, has been appointed to conduct the study. The methodology for the study has been determined and currently members of the Law Society are being consulted in relation to the provision of data and materials so as to assist in the study. This study is ongoing, however, should reach finalisation around July or August 2008.

More acutely, however, the Law Society wishes to express its concern in relation to perceived delays in the revision of costs as a result of the 2007 legislative amendments to claims and dispute resolution procedures. It is understood that it is intended that this legislation will be proclaimed to commence on 1 October 2008. The creation of the "front-end loading system" will require substantial further early work for solicitors in the preparation of claims. However, there has been no amendment of the Cost Regulation to adequately compensate solicitors for the extra work. Legal costs were indexed in 2005, and there has been no review by way of indexing since that date.

Apart from the Cost Study which is currently on foot (as outlined above) the Law Society commends to the Standing Committee on Law and Justice, with some urgency, that legal costs require commensurate increases as a result of the changed system. This is over and above the Indexation issue, last attended to in 2005.

3. Insurers' Communications With Self-Represented Claimants

The Injury Compensation Committee of the Law Society of New South Wales considered this matter at length during 2007. Indeed, there were a number of examples of insurers communicating with self-represented claimants whereby "pro-forma" letters were perceived to be giving an unfair advantage to insurers. Furthermore, a number of complaints had been initiated against insurers, one at least of which had been upheld.

There have been direct communications between the Law Society and one major CTP insurer which, it is anticipated, will bring about a substantial change in relation to that insurer's communications with clients.

It is the view of the Law Society that further guidelines should be promulgated relevant to all seven CTP insurers, which would delineate an appropriate pro-forma letter which would not disadvantage self-represented claimants.

The Law Society appreciates the fact that these matters are currently covered in the existing Guidelines, however in this regard it is considered that the guidelines need re-formulating so as to only allow certain statements to be made by insurers to self-represented claimants concerning procedure, attendances at medical appointments, offers of settlement and the like.

The Law Society would only be too pleased to assist in relation to the redrafting of such Guidelines.

An indicative letter has been forwarded to all participating CTP insurers, however responses have not been forthcoming.

4. Potential CARS Assessor Bias

Paragraph 3.103 of the Eighth Report of the Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accident Council and following considered the potential conflict of interests of MAS Medical Assessors. Those matters were dealt with in comprehensive detail in both submissions and oral evidence given to the Committee.

The Law Society believes that different criteria are in place in relation to perceived conflicts of interest concerning medical assessors, as is highlighted in paragraphs 3.112, 3.113 and 3.114 of the Eighth Report.

The issue of potential conflicts of interest concerning CARS Assessors has been extensively canvassed during 2007 at regular MAAS Reference Group (MRG) meetings. Upon review of the Guidelines, and in furtherance to the consultative process within MRG, the Law Society is of the view that the current Guidelines adequately cover potential conflicts concerning CARS Assessors. In this regard there are no proposals for change.

5. Whole Person Impairment

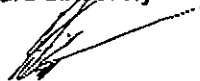
Again, WPI issues were extensively canvassed in both written submissions and oral evidence to your Committee's Eighth Review in 2007, particularly in the application of the AMA Guidelines, the inconsistency of MAS reports, the reported anomalies concerning physical and psychiatric injuries (and the inability to utilise both in assessing a WPI of above 10%). The Law Society strongly reiterates its submissions in 2007, as set out in paragraph 3.75 and following in the Eighth Report. Further, the Law Society firmly supports the submissions and oral evidence of the New South Wales Bar Association set out in paragraphs 3.80 through to 3.86.

6. Conclusion

The Law Society of New South Wales trusts that the above submissions will be of assistance to the Committee in its continuing review of the system.

Thank you for seeking the participation of the Law Society in the Ninth review of the exercise of the functions of the MAA and MAC. Should you require any further assistance in relation to certain aspects to the submission, or generally, please do not hesitate to contact me.

Yours sincerely



Hugh Macken
President