

**Supplementary
Submission
No 7a**

**FIFTH REVIEW OF THE EXERCISE OF THE FUNCTIONS
OF THE LIFETIME CARE AND SUPPORT AUTHORITY**

Organisation: The Law Society of New South Wales

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THE LAW SOCIETY
OF NEW SOUTH WALES

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30 January 2014

The Honourable David Clarke, MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: lawandjustice@parliament.nsw.gov.au

Dear Mr Clarke,

The Twelfth Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council and the Fifth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council

The Law Society's Injury Compensation Committee ("the Committee") appreciates the opportunity to make this further submission to the Standing Committee on Law and Justice's Twelfth Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council ("the Twelfth MAA Review") and the Fifth Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council ("the Fifth Lifetime Care Review").

This submission is supplementary to the Committee's submission dated 12 November 2013 and addresses issues arising from the 2012/13 annual reports of the Motor Accidents Authority ("MAA") and the Lifetime Care and Support Authority ("LTCSA").

As the Standing Committee has advised that it is holding the reviews concurrently the Committee provides this supplementary submission in response to both reviews.

The Twelfth MAA Review

Insurer profits

The Committee considers that the material in the 2013 annual report ("the report") demonstrates that the level of insurer profits is still a significant impediment to the efficient functioning of the Compulsory Third Party (CTP) scheme ("the scheme"). At page 36 of the report, it is stated that the current estimate of average industry profit over the underwriting years from 2000 to 2012 is 19 per cent of premiums. This is grossly in excess of the profit margins in insurer filings which are at an average of about 8 per cent as detailed in the table at page 34. As explained on page 36 of the report:

"Historically, realised profit has been found to be higher than filed profit as claims costs emerged lower than initially expected".

It is noted that only 20 per cent of reported full claims for 2012 have been finalised at this stage, but if the historical trend continues to apply, the realised profit could be expected to increase significantly from the 5 per cent estimate based on the central estimate of claims liabilities.

In addition to the 19 per cent average annual profit, the chart on page 34 of the report indicates that over the underwriting years from 2000 to 2012 insurer expenses have amounted to 16 per cent. This is to be contrasted with the figure for legal and investigation expenses which is 12 per cent.

The discrepancy between the various figures for prospective profit and for realised profit at pages 34 and 35 of the report supports the proposition that claims liabilities have regularly been overestimated at the time of premium filings. It is therefore suggested that greenslip prices have been higher than they should have been if the anticipated claims liabilities had been more accurately assessed.

Claims frequency and propensity to claim

The Committee is pleased to see that the MAA has now included separate graphs for claims frequency and propensity to claim for Accident Notification Forms ("ANFs") and claims frequency and propensity to claim for full claims. These graphs on page 38 provide support for the proposition that for the period from 2009 to date any increase in claims frequency and propensity to claim has been predominantly due to the law changes dealing with ANFs which are outlined at the top of page 39. In particular, the Committee notes that ANF benefits were expanded from \$500 to \$5,000 in 2008 and then further expanded to include "at fault" drivers as from 2010.

Pre-filing requirements

The table at page 40 of the report demonstrates that legal representation is now occurring at an earlier stage and is increasing. This is not surprising given the extensive pre-filing requirements that are now imposed on the parties under section 89A to 89E of the *Motor Accidents Compensation Act 1999*. The Committee submits that it would be virtually impossible for an unrepresented litigant to navigate these unnecessarily complex provisions. In its earlier submission dated 12 November 2013, the Committee advocated for the removal of these pre-filing requirements.

The Fifth Lifetime Care Review

The Committee is pleased to see that the CEO of the LTCSA has made it clear that the Authority "will continue to focus on encouraging greater autonomy in participants to enable their choice and control in accessing treatment, rehabilitation and care services". For the reasons outlined in the Committee's earlier submission, the Committee supports this focus but maintains that recent developments (as set out in pages 7 to 9 of the earlier submission) suggest that autonomy is not always given the primacy which the Committee considers that it merits.

The Committee also notes that at Appendix 12 of the LTCSA report, a sum is reported as having been paid to Pricewaterhouse Coopers ("PWC") for analysis of the National injury scheme and levy review. It is expected that interaction with the National Disability Insurance Scheme would be a key concern for the LTCSA yet this is only mentioned briefly. The Committee would appreciate being provided with any actuarial report which has been produced by PWC and questions whether it is proposed for this analysis to be made public.

Should you have any inquiries concerning the content of this supplementary submission, please do not hesitate to contact the

Yours sincerely,

Ros Everett
President