

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

Organisation: NSW Farmers' Association
Name: Mr Shaughn Morgan
Position: Chief Executive
Telephone: 8251 1700
Date received: 3/05/2010



Shaughn Morgan
Chief Executive

Ref: 012210sm

27 April 2010

The Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

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3 MAY 2010

LAW & JUSTICE

Dear Committee Chair

RE: REVIEW OF MOTOR ACCIDENTS COMPENSATION ACT 1999

I write to you on behalf of NSW Farmers' Association ('the Association') in relation to correspondence regarding the *Motor Accidents Compensation Act 1999* ('MAC Act').

The Association wishes to draw the Committee's attention to the interaction between the MAC Act and the *Workers' Compensation Scheme Act 1987* ('WC Act'). In particular, the Association seeks to highlight the confusing, costly and inefficient operation of the two Acts which is apt to produce litigation to determine if the work related injury occurred as a result of an unsafe system of work or an injury to which the MAC Act would apply. Significantly, the operation is further complicated when a claim involves an unregistered motor vehicle, including agricultural plant, used exclusively on private property.

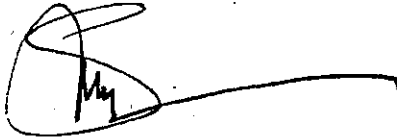
Further, the Association is concerned that the failure to distinguish between workers compensation claims not related to the use of public roads or vehicles registered and insured under the Compulsory Third Party Scheme, erodes the integrity of the NSW Workers Compensation Scheme. This is due to an easing of the normal restrictions that the WC Act places upon the claiming of common law damages, if the claim arises under Chapter 5 of the MAC Act, by the operation of s 151E of the WC Act. The Association is broadly supportive of the guarantees under s 151E and its resulting reduction of third party consultancy fees and believes that it has greatly strengthened the overall viability of the NSW Workers Compensation Scheme.

In order to resolve uncertainty, the Association seeks to propose a provision which extends the operation s 3B(1)(b) of the MAC Act to explicitly preclude compensation in circumstances when the injury is work-related involving an unregistered vehicle not being driven on a public road. Presently this provision of the MAC Act excludes 'work injury claim[s]... in respect of the death of or injury to a coal miner'. The Association believes that confining claims involving a workplace injury arising as a result of the use of an unregistered vehicle to the WC Act represents a commonsense proposition.

The Association seeks to highlight that the failure to explicitly extend the application of the exemption to other industries has resulted in a lack of certainty as to when either Act applies. The difficulty raised by failing to specifically outline liability excluded by the MAC Act has been referred to in the dissenting judgement of Kirby J in *Nominal Defendant v GLG Australia Pty Ltd* [2006] HCA 11, a case dealing with similar provisions in the *Motor Accidents Act 1988* ('MA Act'). Justice Kirby outlines that without clear exceptions, such as that for coal miners, that the MA Act provides for compensation in many areas which are not related to 'injuries "which arise from crashes and collisions on the roads"'. Specific reference is made that this could include the use of an unregistered forklift within a workplace, even if it otherwise would be compensable under the NSW Workers Compensation Scheme.

On the bases outlined above, it is the Association's belief that the MAC Act should be confined solely to target the rehabilitation and compensation of injuries arising as a result of registered motor vehicles on public roads. The Association therefore advocates that the MAC Act should not apply to the use of unregistered vehicles operating in a workplace. Any failure to exclude liability from the MAC Act for injury arising as a result of the use of unregistered motor vehicles, including agricultural plant, used exclusively on private property, creates costly legal uncertainty which is transferred directly to the consumer and threatens the operational integrity of the NSW Workers' Compensation Scheme.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Shaughn Morgan', with a long horizontal line extending to the right.

Shaughn Morgan
CHIEF EXECUTIVE