



12 April 2016

The Honourable Victor Dominello, MP  
Minister for Innovations & Better Regulations  
GPO Box 5341  
SYDNEY NSW 2001

**Partners**  
Vic Petrovich  
Anthony Macri

**Contact**  
Vic Petrovich  
[REDACTED]

Our Ref: VP:LG:11/192

Dear Sir

### **Motor Accident Compensation Act Legislative Changes**

I write to you as the managing partner of NSW Compensation Lawyers.

I write to individually and not part of a legal association or part of a lobby group but simply to advise you of a number of very important issues which I believe can be recognised and rectified to reduce the cost of the green slip CTP scheme.

#### **Costs:**

The costs of the scheme are significantly inflated and I would dare to suggest reflect some deceiving accounting. Currently insurance companies and the Motor Accidents Authority Medical Assessment Service (which conduct independent medical assessment to determine whole person impairment) pay their doctors full market rates for medical reports. However, as a result of Motor Accidents Compensation Act Cost Regulations the injured Claimant is penalised and forced to pay the same full market rate but receives only a fraction of that payment back as costs. It is important to note that the balance of any such disbursement for medical reports and indeed other medico-legal expenses is then treated as a legal cost by insurance companies since the difference in the cost paid and the cost recovered from the insurer must be deducted from the injured claimant's compensation settlement.

In my view this would cause a drastic misrepresentation of legal costs. I **attach** a copy of Schedule 2 of the maximum fees for medico-legal services. Currently the market rate for a medico-legal report for an orthopaedic surgeon is in the sum of \$1,300.00 but the amount recoverable is only a maximum of \$720.00. Similarly, most General Practitioners charge between \$250.00 and \$450.00 per medical report but the maximum amount recoverable under the regulations is \$130.00.

Insurance companies often engage more than one medico-legal specialist forcing an injured claimant to respond with similar evidence. Again, this practice increases costs.

**nswcompensationlawyers** ABN 28 116 746 886

**P** +61 2 9601 0088  
**F** +61 2 9601 0588  
**E** info@nswcl.com.au

**nswcl.com.au**

Level 3, 7 Secant Street, Liverpool NSW 2170 ■ PO Box 3425 Liverpool Westfield NSW 2170 ■ DX 5010 Liverpool

Sydney ■ Liverpool ■ North Shore ■ Wollongong ■ Central Coast ■ Newcastle

Liability Limited by a Scheme Approved Under Professional Standards Legislation.



The Medical Assessment Service is responsible for resolving whole person impairment disputes. Such disputes are very important in motor accident litigation because they are the difference between an entitlement to damages for pain and suffering and no entitlement. A threshold of 11% whole person impairment exists. These applications are very numerous. Every application to MAS will involve a cost of between \$1,300.00 and \$2,600.00 or more being incurred depending upon how many specialists or doctors MAS uses to determine the dispute. The only purpose for the existence of MAS is to entertain such whole person impairment disputes. The cost of running MAS on a yearly basis, I believe, could exceed \$20,000,000.

There seems to be some reluctance in the industry to dismantle the Medical Assessment Service despite a very simple solution to the issue of whole person impairment disputes and the cost associated with it.

#### Remedy:

With respect of the first issue above I believe it is important for insurance companies to pay indemnity costs and at a much higher rate to prevent the practice of solicitors having to charge their clients for costs and expenses that should normally be paid by insurance companies. It is a tradition in litigation that costs follow the cause. In other words, the winning party is awarded costs. For some reason insurance companies have been successful in creating a piece of legislation and a regulation which requires claimants to pay a large component of legal costs. To then suggest that Solicitors are charging their clients for this gap is deceiving.

The Medical Assessment Service is not required. Their function is completely superfluous in the litigation world and in particular in motor accident claims. Section 16 of the *Civil Liability Act* 2002 contains a schedule of damages for non-economic loss in the form of a sliding scale. I **attach** a copy of that schedule for your attention. The schedule clearly fulfils the objective of not awarding any damages for minor claims which fulfil the criteria of injuries categorised between 1% and 14% of the most extreme case (the most extreme case being equivalent to a quadriplegic). Thereafter damages begin to be awarded at 15% of the most extreme case and at a minimal monetary value. As the percentage increases so does the monetary value. A simple amendment to the legislation which adopts this sliding scale would in one swoop save at least \$20,000,000 in costs from the system.

#### Delay:

Most motor accident claims cannot be resolved for a minimum of nine months and up to a year because this is the standard time that it takes for a condition to stabilise. Under the current Motor Accident Authority Guidelines the medical assessor must certify that a condition is stable before an assessment of whole person impairment can be made. The greatest cause of delay within the current frame work is the Medical Assessment Service and the precondition that a injured claimant must have 11% whole person impairment before a claim for pain and suffering damages can be made. The immediate delay is one year in order for injuries to stabilise. Following the lodgement of an application for assessment of whole person impairment another three months delay is encountered before the insurer responds and MAS allocates the matter to an assessor. Another three month delay is then experience before a medical assessor is able to see an injured claimant to undertake the assessment. An initial delay of one year is caused by the current requirement to utilise MAS to resolve a dispute.

Thereafter, there are even more delays. Often medical assessment certificates by MAS are the subject of review (medical appeal) or further assessment (based upon new evidence or deterioration). These two methods of challenging MAS assessments statistically show that MAS gets their assessments wrong frequently if not regularly and their decisions are overturned by Appeal Panels based upon further evidence. The delay caused by review applications and further assessments easily accounts for another one year. Overall, the Medical Assessment Service is responsible for at least one and half years of delay in litigation and significantly increasing costs. Dismantling of the Medical Assessment Service would substantially reduce legal costs and the time it takes to resolve claims.

I am unable to understand stakeholders to the current scheme do not recommend simple yet very effective changes that will result in immediate savings and reduction in delay.

Generally:

Claims officers and lawyers are not interested in delaying litigation or prolonging it. Both parties look forward to an easier, more effective and cheaper way of processing and litigating claims. There is no doubt that claimants should be entitled to legal representation and insurance companies should have experienced claim staff.

It seems to me the most obvious way of improving the system and significantly reducing costs and delay is to simply dismantle the Medical Assessment Service and implement a sliding scale for damages for pain and suffering. The scheme must maintain integrity and work fairly. The previous changes made to the scheme which resulted in the formation of CARS (Claims Assessment Resolution Service) which resolves the quantum of claims is effective and reduces costs a delay. However, the benefit of having CARS has been offset by MAS.

As a practitioner who practices in this area every day, I believe and respectfully suggest that you give strong consideration seeking full disclosure from the Motor Accidents Authority in relation to the cost of maintaining the Medical Assessment Service and the efficacy of its function.

I firmly believe that if the Medical Assessment Service was dismantled motor accidents claims would not last in excess of 12 months and the cost of litigation would fall by 50%.

Should you wish to discuss any aspect of this letter any further then I am more than happy to communicate with you either by telephone or in person.

Yours faithfully

**nsw compensation lawyers**

**[71-320] SCHEDULE 2 — MAXIMUM FEES FOR MEDICO-LEGAL SERVICES**

**SCHEDULE 2 — MAXIMUM FEES FOR MEDICO-LEGAL SERVICES**

(Clause 13)

Table

		\$
<b>Appearances as witnesses</b>		
1	Medical practitioners and other medical professionals called to give evidence other than expert evidence, per hour (or proportionately if not for a full hour) to a maximum of \$495	260
2	Medical practitioners and other medical professionals called to give expert evidence:	
	(a) for the first one and a half hours (including time travelling to the court from the medical professional's home, hospital, place of practice, office or other place and return to that place from the court)	605
	(b) for every full hour after the first hour and a half (or proportionately if not for a full hour)	260
	to a maximum of \$2,165	
3	Travelling allowance in connection with appearance as witness	0.40 per kilometre
4	Accommodation and meals in connection with appearance as witness	reasonable costs
<b>Medical reports</b>		
5	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending general practitioner:	
	(a) if a re-examination of the patient is not required	130
	(b) if a re-examination of the patient is required	195
6	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending specialist:	
	(a) if a re-examination of the patient is not required	260
	(b) if a re-examination of the patient is required	350
7	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by a specialist who has not previously treated the patient:	
	(a) if an examination of the patient is not required	350-435

		\$
Act	(b) if an examination of the patient is required	400-720 (depending, in both cases, on the complexity of the matter, the number of documents to be studied and the amount of research required)
	8 Charges for copying medical reports	1 per page
	<b>Cancellation fee</b>	
	9 Fee if appearance or medical report is not required	No more than 50% of the relevant amount specified in this Table