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18 January 2023

Ms Bronwyn Martin
Director of Scheme Design, Policy and Performance
Motor Accidents Insurance Regulation
State Insurance Regulatory Authority
Level 14 & 15, 231 Elizabeth Street
SYDNEY NSW 2000

Dear Ms Martin,

Statutory Review of the Personal Injury Commission Act 2020 (NSW)

1. I am writing in my role as a Medical Specialist who frequently speaks with people injured in motor vehicle crashes, and also in my role as a medical researcher conducting research about recovery after injuries sustained in motor vehicle crashes. I am not commenting directly on the operations of the Personal Injury Commission.

Health data privacy issues

2. There is a right to privacy of medical information that is set out in the Australian Government Privacy Act 1988. As a medical practitioner, this right to privacy is an essential component in work as a health care professional. Personal information is not released without the specific consent of the patient. This is in conflict with the principle of “open justice” which is applied in disputes related to motor vehicle accident injury.

3. While there is the availability of redacting details of health-related information in motor accident injury disputes, it appears that this is not commonly applied. The publishing of personally identifying health related information about injured people has the potential for negative psychological impact on them with consequent limitation of recovery. It is well established that many people are psychologically distressed after motor vehicle crashes and involvement in disputes processes increases this distress. Processes involved in compensation schemes can assist or retard recovery and this is an example of a remediable potentially modifiable factor with reference to recovery.

Causation of injury

4. Causation of injury is a key issue in motor vehicle crashes. There are complex factors about the nature of the injury that can be sustained in a particular motor vehicle crash (or work injury). These relate to the damage to the body produced by energy exchanges that have relatively sudden discernible effects and are different to damage to the body caused by disease.

5. The definition of causation is set out in the motor accident guidelines and firstly involves a medical decision that “the alleged factor could have caused or contributed to worsening of the impairment” and secondly a non-medical determination that “the alleged factor did cause or contribute to worsening of the impairment”.

6. The medical determination is important to the fair and accurate determination of causation due to the complexity of the issues to be considered. These relate both to the specifics of the motor vehicle crash and the personal factors related to the injured person. Age, gender and, particularly, pre-injury health and disease are key factors to consider. These issues are increasingly important with the ageing of the Australian population. In view of this there is no cogent reason to change the causation of injury definition with reference to motor vehicle crashes. There are, however, good reasons to change the approach with reference to causation of injury for work injuries for the reasons given above and also because of the complexity of occupational related diseases.

Yours sincerely,

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Professor Ian Cameron