

Summary of report on the inquiry into NSW Motor Accidents Scheme (CTP Insurance) – interim report

Martin Bell, Martin Bell & Co, Sydney South

These are challenging times for plaintiff lawyers and the interests of injured persons. The last decade of erosion appears to be ongoing if the Interim Report on the Motor Accidents Scheme is anything to go by.

The NSW Standing Committee on Law and Justice was given terms of reference to enquire into and report on the Motor Accidents Scheme (MAS) and CTP Insurance on 12 December 1995 with the Interim Report issued on 12 December 1996. This is a selective summary of that report. The scope of the terms of reference included examining and reporting on the role of insurers, their accountability and the concerns of insurees, levels of claims and compensation, as well as legal fees and "other such matters". Chaired by Brian Vaughan, NSW Labor Member of the Legislative Council, with Helen Sham-Ho (Liberal) as Deputy Chair, it is constituted by four Labor Members, two Liberals and Fred Nile.

The Committee seems foremost concerned with the level of premiums. Significantly, the need for compensation justice for injured litigants does not seem to be the Committee's foremost priority.

In the many submissions made to the Committee, the most informed and memorable submission came in David Bennett QC's address at the April 1996 public seminar. He said the issue was not about economics at all. It is about justice and that social justice demanded that society provide full common law compensation to those injured on the road through no fault of their own, regardless of the cost. He said the difference between a premium of \$380.00 and \$500.00 was trivial and that if people in the community had difficulty in paying premiums of \$500.00, the Government could address this through a subsidy system or differential premiums.

The Committee received 93 submissions and published all but individual case studies in four separate volumes. The report records that APLA's submission, whilst being received after the closing date, was taken into consideration!

Recommendation 4 is that MAA facilitate continuing discussions between insurers concerning Section 37 and 45. The Committee concluded that a specific forum was required to lodge complaints in relation to the handling of claims, particularly where the Motor Accidents Act rehabilitation guidelines had not been followed and that such forum must be able to provide a quick objective and satisfactory resolution of the complaint. Unfortunately there has been no discussion of the need for implementation of statutory mechanisms to enforce payments once liability has been determined, leaving aside the need for mandatory early determination of liability. In Part 3 of its report the Committee indicated that it would welcome comments on mechanisms for early determination of liability and this is something which APLA could address. Most disturbingly, the Committee made no mention of the attack presently being waged by insurers on the right to representation of injured persons. The more arrogant example being the policy of the NRMA to write to injured persons directly, notwithstanding representation by a solicitor. Urgent action is required to ensure that this policy is withdrawn.

The Committee enquired into the financial performance of insurers and considered the level of payout to claimants as compared to the provision for claims incurred but not yet reported and administrative expenses and profits. Whilst premiums paid under the scheme totalled \$6.2 billion, payouts only totalled \$3.3 billion. This \$2.9 billion black hole should be re-examined in the light

of any scrutiny of legal costs.

A number of recommendations were made regarding children. Firstly, unless an insurer has admitted liability within three months of an infant's claim there should be a presumption of admission at the end of that period, with respect to infants under the age of 10 or less. Further, that Section 45 should be amended to provide for insurers to give notice after three years that they intend to cease making payments unless there is an appropriate certificate from an accredited medical practitioner indicating that the injuries have not sufficiently stabilised to enable a prognosis to be made such that the matter could be resolved by a Court hearing. If no such certificate were forthcoming within six months the insurer could cease making payments.

The first recommendation concerning the needs of those requiring long term care involves the MAA completing its work developing and costing a model for the provision of long-term care on a no fault basis by the end of April 1997, based upon Tasmania's future care programme. The Committee recommends that this form the basis for further consultation and discussion prior to the final report in mid 1997.

Structured settlements attracted the recommendation that the MAA commission a costing of the extra financial burden that the Policy would place upon the New South Wales Scheme.

Section 79A attracted the recommendation of further monitoring! The valiant attempts by the Law Society and others to bring about a more modest threshold has unfortunately proven unsuccessful to date.

With a major hold on the CTP insurance market, the NRMA has dedicated substantial resources to influence this enquiry. One area of concern to plaintiff lawyers is the

suggestion of a “Table of Maims”-like approach to the assessment of impairment and assessment of damages. The NRMA also suggested the use of a standardised medical report. The Committee’s recommendation is that the report of the NRMA Task Force provide the basis of further consultation and discussion prior to development of a definitive recommendation with respect to these issues.

A disturbingly unbalanced partial conclusion seems to have been reached by the Committee with respect to the issue of legal costs. One example is the statement that “many disputes under the Act of late have been finalised through the judicial process, could, through alternative dispute resolution mechanisms, be successfully settled and determined to the satisfaction of the parties involved, and at a lesser cost to the scheme.” The Committee neverthe-

less has recommended the Justice Research Centre (JRC) report provide the basis for further consultation and discussion prior to the development of a definitive recommendation.

Section 50A was considered and the Committee seems to have concluded that this is an adequate amendment not requiring modification, without appreciating the inherent shortcomings of this section and the apparent scope for abuse by insurers as a tool to frustrate litigants.

In relation to alternative dispute resolution (ADR) the Committee has indicated that it would welcome information as to ADR mechanisms and recommended the MAA respond favourably to a request for funding from the JRC to extend its research into claiming behaviour and legal costs and ADR. Notwithstanding submissions by groups such as the Injured Persons Association as to the

desire of injured persons to be represented by their lawyer, the committee does not seem to have grasped the importance of the role of plaintiff lawyers and the need for equity in both the costs allowed for the insurer and the injured person in investigating and presenting their respective cases.

The Committee made a recommendation in relation to acquired brain injury representation and the need for specialist accreditation programmes to deal specifically with this area.

Overall the clear message of the “Interim Report” for plaintiff lawyers is the need for a united voice on plaintiff issues so as to meet the presently overwhelming imbalance of influence by insurer interests.

Martin Bell is an APLA member with a general plaintiff’s practice in Sydney’s south.

Torts in the Nineties (NEW)

Comparable Verdicts in Personal Injury Claims

Personal Injury Law Manual

Compensation Court Monthly Summaries (NEW)

Medicine and Surgery for Lawyers (NEW)

Tort Law Review

Motor Vehicle Law

LBC INFORMATION SERVICES...
Providing quality information to APLA members.

**Call us today to discuss your information needs on
 1800 252 314 (freecall) or Sydney (02) 9936 6444**

