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Personal Injury Commission
Statutory Review Consultation
SIRA

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Dear Sir/Madam

PERSONAL INJURY COMMISSION STATUTORY REVIEW

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. The ALA office is located on the land of the Gadigal of the Eora Nation.

The ALA welcomes the opportunity to provide a submission to SIRA for the statutory review of the *Personal Injury Commission Act 2020*.

We note that the purpose of the statutory review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The ALA is of the view that the policy objectives of the Act remain valid and appropriate and that the terms of the Act remain appropriate for securing those objectives. Specifically, we note section 3 of the Act and continue to agree with the objectives set out therein.

While we understand that the statutory review will not make recommendations relating to the design and operation of the CTP and workers compensation schemes, we urge in the strongest possible terms for the terms of reference for the statutory review to be expanded to consider the actual operations of the Personal Injury Commission in delivering on the policy objectives set out under section 3 of the Act.

Of particular concern to the ALA and its members are the following:

1. The significant delays in medical assessments (and some legal assessments) in particular, before the motor accidents division of the Personal Injury Commission. This is the area in which ALA members have lodged the greatest number of complaints with the ALA with regard to the Personal Injury Commission's delivery upon its policy objectives. Whilst the ALA acknowledges that the Commission has had to contend with unprecedented pressures in the form of the global pandemic and government sanctioned lockdowns preventing in person assessments, the ALA contends that the pandemic is not the only cause of significant delays being experienced in the motor accident division of the Personal Injury Commission.

For example, in circumstances where psychological assessments can take place by video link rather than in person, there appears to be no reasonable explanation as to why individuals who suffer psychological injuries are experiencing the same delays in having their matters assessed compared to those who have physical injuries which require in-person assessments on most occasions.

Further, the pandemic does not explain why assessments of legal disputes by legally qualified PIC Members result in delays of upwards of 6 months for a decision after a hearing has been conducted or for an assessment on the papers.

The PIC publishes figures on how many assessments it concludes in a month. However, it does not publish data on the length of the current queues for medical assessments. It does not identify the timelines of PIC Member decisions and the length of delays.

This is a fundamental accountability measure. The ALA submits that an injured person has the right to know how long the queue is and where they sit in the queue, in the context of being at the front of the queue or the back of the queue and the likely length of time it will take for their dispute to be resolved.

2. Prior to the inception of the Personal Injury Commission an external provider was engaged by the then DRS to produce an electronic portal for the purposes of creating an online registry for motor accident disputes. The ALA understands that this portal may have been intended to be serviceable for both the workers compensation and the motor accident divisions of the Personal Injury Commission. No merger of computer functions has occurred and the two separate portals operate as between the workers compensation and motor accidents divisions of the Commission.

The user experience of the motor accident portal has been extremely negative. From its first launch, ALA members have consistently complained of the portal not functioning, not being accessible, causing significant delays in the uploading of material and adding additional costs to engaging with the Personal Injury Commission.

The ALA understands that a new external provider is being engaged to design an entirely new portal in order to respond to the failures of the current portal. This occurs against the background of millions of dollars being spent on the first portal and efforts to make it work.

The ALA submits that there should be an independent review on how significant amounts of public monies were allocated to a portal that has had such poor function and reliability that it has to be completely abandoned after less than 4 years of operation. Why has it become necessary to have an entirely new provider engaged to design an appropriate portal that both works and is user-friendly?

This independent enquiry ought to engage not only with the deficiencies in the portal but also with the decision-making process as to how that portal and/or provider came to be engaged in the implementation of an online registry for the Personal Injury Commission. There has been a procurement failure, but no transparency or accountability for the failure and what, if any, steps are being taken to recover public money.

3. There is a lack of information being made public about the Personal Injury Commission's processes and results. This constitutes a lack of the accountability envisaged by section 3(f) of the *Personal Injury Commission Act 2020*. To date there does not appear to be any readily available information accessible in a public domain that details any of the following:
 - (a) The number of current cases before the Personal Injury Commission in both the workers compensation and motor accidents divisions;
 - (b) The time it takes from the date of filing of any particular application (broken up by subgroup, for example, in the motor accidents division, medical disputes and/or damages assessments) to the date a decision is made.
 - (c) The number of medical disputes currently before the Commission, including the estimated time it will take to assess an application from start to finish of the assessment process.

The ALA submits that it is perfectly reasonable for the injured (reliant upon Commission dispute resolution services) to know how long it will take for the Personal Injury Commission to allocate that matter to a medical assessor and then secondly, how long it will take for a decision to be made. The ALA notes there appears to be considerably lesser delay in the workers compensation division, yet, in the motor accident division the user experience is typically in excess of 12 months.

4. The ALA hears of significant turnover in Commission staff. This in turn generates workload and training issues. It leads to more mistakes and more delays. SIRA is invited

to review (or recommend external review of) the work culture and staffing levels at the PIC to consider whether the organisation is staffed to meet the demand for its services.

5. Similarly, the ALA hears of a significant number of doctors not being willing to work for the PIC. Further, the ALA hears that doctors working for the PIC have been prohibited as part of their ongoing engagement at the PIC from making any comment in relation to any issues that they have with PIC operation. Critical to understanding PIC operations and delays in medical assessments is for SIRA, in conducting the review, to have those at the conference to identify shortcomings in PIC processes.

In all of the circumstances, given the consistent and ongoing concerns being raised by ALA members, we submit on their behalf that the terms of reference for this statutory review are far too narrow. The day to day operations of the PIC are the real issue, not the statutory objects clauses.

The ALA urges the appointment of an independent external management consultancy to review the day to day operation of the Personal Injury Commission in the context of it delivering on the policy objectives of the Act.

The ALA welcomes the opportunity to engage in such a process if it were to be considered and otherwise thanks SIRA for its invitation to comment on the current statutory review. If you would like to discuss any aspect of this submission further, please do not hesitate to contact us.

Yours faithfully



Joshua Dale
NSW President of the Australian Lawyers Alliance

cc The Minister for Customer Relations - Dominello Forum
Shadow Minister responsible for the motor accident scheme
The Chair, Standing Committee on Law & Justice