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Dear Sir/Madam

**RE: PRODUCTIVITY COMMISSION DISABILITY REPORT**

I refer to the Productivity Commission draft report released in February of this year. I note that a statement made by myself has been used to support a conclusion that, in the context of catastrophic injury/disability, the retention of common law damages has resulted in a limitation being placed on no fault benefits.

In the context of catastrophic injury/disability I wish to strenuously object to my statement being used to support this proposition. The statement I made was made in a general sense in the course of describing, in an article, the key elements of the Tasmanian system for compensating motor vehicle accident acquired injury generally. When one considers the issues as they relate to sufferers of catastrophic injury/disability the comment has absolutely no validity in the Tasmanian context. Indeed in the context of catastrophic injury/disability where the individual requires daily care the no fault payments provided by the Motor Accidents Insurance Board in this State have no limit beyond the needs of the individual sufferer.

Whilst not stated I think the comparison is best drawn between the operation of the model overseen by the Motor Accidents Insurance Board in Tasmania and the Workers Compensation System that operates also in this State for workplace injury and disease. In the latter context common law rights have been substantially removed and the replacement of them with no fault benefits have, in many instances, resulted in inadequate coverage for the losses and expenses incurred due to injury.

Indeed it is my firm opinion that the hybrid system operating in this State for sufferers of injuries acquired as a result of the use of a motor vehicle accident affords a smooth, supported and just process and outcome for sufferers of catastrophic injury/disability. This is to the extent that many of the negatives identified in your report as operating in the context of

acquired catastrophic injury/disability through motor vehicle accidents have been significantly mitigated within this State or simply no longer exist. Examples of this are as follows:

**1. Legal costs:**

- The majority of a litigants costs will be funded by the Motor Accidents Insurance Board upon successful conclusion of the claim on a common law basis;
- Legal costs are not only incurred in the context of common law actions. Disputation can and often does occur in the context of the payment of no fault benefits. As is the case with common law claims the majority of these costs will be funded by the Motor Accidents Insurance Board in the event that the applicant is successful;
- Most Plaintiff lawyers who operate within this State do so on a speculative basis. That is they are not paid for their professional fees incurred in the matter if and until the successful conclusion of the matter. In addition the Motor Accidents Insurance Board will pay out of pocket expenses incurred by a claimant pursuing a common law action when obtaining medical reports if those medical reports are supplied to the Motor Accidents Insurance Board within 6 months of receipt and proceedings have been commenced. The combination of these factors therefore places a claimant in a position of having little financial impediment to accessing the common law system.

**2. Delay:**

- In my experience the Motor Accidents Insurance Board work pro-actively to ensure matters are case managed efficiently thereby avoiding unnecessary delay;
- It is a rare matter in this day and age that matters continue in the common law system for 20 years as referred to in your report. If there is delay it is more often than not due to the particular requirements of the injured person and generally to enable some assessment with a degree of precision as to their future outcome and thereby allowing the value of their needs to be ascertained for example, a person injured as a young child;
- In a common law context the pursuit of a claim does not disentitle a claimant from the receipt of scheduled benefits. Accordingly during the period it takes to finalise a common law action a Plaintiff is more likely than not in receipt of income and treatment supports funded by the Motor Accidents Insurance Board.

**3. Reduction in outcomes for risk of litigation:**

- In my experience the Motor Accidents Insurance Board in this State has taken the approach of providing early admissions with respect to liability wherever they are appropriate. Accordingly persons injured in motor vehicle accidents where liability is clear will receive an admission from the Board with respect to

liability thereby avoiding time, expense and cost involved in establishing liability and further avoiding the perception of risk on liability and consequent discount on damages.

**4. The unpredictability of future outcomes and the potential for mismanagement of lump sum payments:**

- These concerns have been captured and ameliorated by the State of Tasmania, for sufferers of catastrophic injury/disability requiring daily care by the introduction of the daily care provisions of the Board's Act in that these provisions preclude the award or payment of lump sums for daily care and in their stead these costs are continued to be met by the Board as and when they are incurred for the duration of the individual's needs.

Little has been said in the Report about the positives of the system that currently operates in Tasmania in the context of personal injury through motor vehicle accident. Yet there are many positives that can be identified and include the following:

1. Financial outcomes that are tailored to individual losses;
2. In the context of severe injury/disability requiring daily care access to unlimited funding commensurate with the cost of need together with access to purpose built facility when required;
3. Access to no fault benefits of income support, treatment expenses;

I trust that the above more clearly clarifies my views as to the operation of the system for compensating catastrophic injury/disability in this State acquired by way of motor vehicle accidents. If you require any further clarification regarding the above matters or generally please feel free to contact me.

Yours faithfully  
**OGILVIE JENNINGS**

Per: \_\_\_\_\_

**LEIGH MACKAY**