

Standing Committee on Law and Justice

**Review of the exercise of the  
functions of the Motor  
Accidents Authority and the  
Motor Accidents Council**

Sixth Report

Ordered to be printed 20 May 2005 according to the  
Resolution of the House

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.**

Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council. Sixth Report / Legislative Council, Standing Committee on Law and Justice. [Sydney, N.S.W.] : The Committee, 2005. –124 p ; 30 cm. (Report ; no. 27)

Chair: Christine Robertson.

“Ordered to be printed 20 May 2005, according to the resolution of the House”.

“May 2005”.

ISBN 0-646-44724-6

1. New South Wales. Motor Accidents Authority.
2. Motor Accidents Council.
- I. Title
- II. Robertson, Christine.
- III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 27

363.125 (DDC22)

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## **Provisions of the *Motor Accidents Compensation Act 1999* relating to the role of the Committee**

### **S 28 Insurers to disclose profit margins**

- (1) A licensed insurer is required to disclose to the Authority the profit margin on which a premium is based and the actuarial basis for calculating that profit margin.
- (2) The Authority is to assess that profit margin, and the actuarial basis for its calculation, and to present a report on that assessment annually to the Parliamentary Committee.

### **S 97 Regulations**

- (1) The regulations may make provision for or with respect to any aspect of procedures to be followed under this Part, including provision for or with respect to:
  - (a) the manner of referring claims or disputes for assessment, and
  - (b) the documentation that is to accompany such a reference of a claim or dispute for assessment, and
  - (c) the manner of presenting documents and information to a claims assessor by the parties, including time limits for the presentation of the documents and information, and
  - (d) the making of assessments, and
  - (e) the manner of specifying an amount of damages, and
  - (f) the extension or abridgment of any period referred to in this Part.
- (2) The Motor Accidents Council may refer to the Parliamentary Committee any inconsistency between the regulations and the MAA Claims Assessment Guidelines and the Parliamentary Committee may review and make recommendations about the resolution of any such inconsistency.

### **S 177 Audit of accounting records and of compliance with guidelines**

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of a licensed insurer, including accounting and other records relating to:
  - (a) the manner in which its third-party funds and other funds are invested, or
  - (b) compliance with any guideline under this Act.
- (2) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the licensed insurer.
- (3) A licensed insurer must provide all reasonable assistance to enable the exercise of those functions.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.
- (5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (6) A licensed insurer or another person who contravenes any requirement imposed on the insurer or other person by or under this section is guilty of an offence. Maximum penalty: 100 penalty units.
- (7) The Authority may from time to time carry out an audit to determine the profitability of a licensed insurer and for that purpose may exercise the functions of a person appointed under subsection (1). The Authority is to report on any such audit to the Parliamentary Committee, on a confidential basis.
- (8) In this section, *accounting records* has the same meaning as in section 173.

### **S 210 Appointment of Parliamentary Committee**

- (1) As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Part.
- (2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the exercise of the functions of the Authority and the Motor Accidents Council under this Act.

## Terms of reference

1. That, in accordance with the provisions of section 210 of the *Motor Accidents Compensation Act 1999*, the Standing Committee on Law and Justice be designated as the Legislative Council Committee to supervise the exercise of the functions of the Motor Accidents Authority and Motor Accidents Council under the Act.
2. That the terms of reference of the Committee in relation to these functions be:
  - (a) to monitor and review the exercise by the Authority and Council of their functions,
  - (b) to report to the House, with such comments as it thinks fit, on any matter appertaining to the Authority or Council or connected with the exercise of their functions to which, in the opinion of the Committee, the attention of the House should be directed,
  - (c) to examine each annual or other report of the Authority and Council and report to the House on any matter appearing in, or arising out of, any such report,
  - (d) to examine trends and changes in motor accidents compensation, and report to the House any changes that the Committee thinks desirable to the functions and procedures of the Authority or Council,
  - (e) to inquire into any question in connection with the Committee's functions which is referred to it by the House, and report to the House on that question.
3. That the Committee report to the House in relation to the exercise of its functions under this resolution at least once each year.
4. That nothing in this resolution authorises the Committee to investigate a particular compensation claim under the *Motor Accidents Compensation Act*.

*Motion moved by the Hon Tony Kelly MLC and agreed to by the Legislative Council, Minutes of Proceedings, No 13, 25 June 2003, Item 5.*

## Committee membership

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**The Hon Christine Robertson MLC** Australian Labor Party *Chair*

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**The Hon Greg Pearce MLC** Liberal Party *Deputy Chair*

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**The Hon David Clarke MLC** Liberal Party

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**The Hon Amanda Fazio MLC** Australian Labor Party

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**Ms Lee Rhiannon MLC** The Greens

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**The Hon Eric Roozendaal MLC** Australian Labor Party

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## Chair's foreword

This report is the culmination of the Committee's Sixth Review of the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC). The report collates the information gathered during the review, including evidence from the Committee's sixth public hearing with representatives of the MAA and MAC and submissions from stakeholders.

It is now six years since the Motor Accidents Scheme was significantly reformed in 1999. The MAA has reported that the new Scheme is more efficient than the old Scheme, plus the Compulsory Third Party (CTP) insurance market continues to be competitive with premium levels decreasing for the best price for Sydney Class 1 vehicles. Overall, the MAA and MAC are fulfilling their functions under the *Motor Accidents Compensation Act 1999* and the Committee has made 14 recommendations to aid the MAA and the MAC in improving the function of the Scheme in specific areas.

The MAA has advised the Committee that stakeholder consultation forums held in 2003-2004 led to a policy and legislative reform agenda for the Motor Accidents Assessment Scheme. The MAA advise that these reforms will help to address the issue of delays in the claim handling process by encouraging better information and document exchange by the parties and streamlining processes. The Committee looks forward to the policy and legislative reform agenda being progressed and reviewing the outcomes in its next review.

I would like to thank a number of people for their participation in the Committee's review. The contribution of senior managers of the MAA and the MAC in providing the Committee with information and evidence has been appreciated. The Committee has also greatly valued the input of various stakeholders including legal professional bodies and advocacy groups as the Committee is aware of the time and resources involved in preparing submissions. I would also like to thank my colleagues on the Committee for their participation during this inquiry. I am also appreciative of the work undertaken by the Committee Secretariat in managing this inquiry.



Hon Christine Robertson MLC  
**Committee Chair**

# Executive summary

## Introduction (Chapter 1)

This is the Committee's Sixth Report on the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC). The Committee's Sixth Review examined issues arising from the MAA's Annual Report 2003-2004 and also explored several matters raised by stakeholders in submissions to the Committee. The review included a public hearing with the General Manager of the MAA, Mr David Bowen, the Chair of the Board of Directors and Chair of the MAC, Mr Richard Grellman and the Manager of the Insurance Division of the MAA, Ms Concetta Rizzo. Based on the information obtained during the review the Committee is of the view that the MAA and MAC are fulfilling their function under the Act. In this report the Committee makes 14 recommendations, aimed at improving specific aspects of the operation of the MAA and MAC.

## Performance overview (Chapter 2)

The Committee examined several issues relating to performance and the overall efficiency of the Scheme. Elements of the MAA and MAC performance examined include the exercise of the functions of the MAC, prudential responsibilities of the MAA and guidelines produced by the MAA. The Committee is of the view that the recommendations in this chapter would help to further improve the overall efficiency of the Scheme by progressing necessary reforms in the Motor Accidents Assessment Scheme (MAAS) and reviewing regulated legal costs.

## CTP insurance and the insurers (Chapter 3)

An important aspect of the Committee's review was the examination of the exercise of the MAA and the MAC in relation to Compulsory Third Party (CTP) Green Slip insurance and the insurers. The Committee examined several issues including the competitiveness of the CTP insurance market, premiums and insurer profits. The MAA advised that the CTP market continues to be a competitive market and noted that premium levels have decreased for the best price for Sydney Class 1 vehicles. Insurer profit was a significant issue, as in previous years, and the Committee again recommended that the MAA provide a separate and specific report on insurer profits to the Committee. Other issues examined by the Committee in this Chapter include the gap between CTP insurance and public liability insurance for certain accidents involving motor vehicles and the Green Slip Helpline.

## The claims process (Chapter 4)

The Committee examined several issues relating to the claims process for claims against CTP insurance, including delays in claims handling, consumer attitudes to claim forms, claims against the Nominal Defendant for unregistered vehicles and establishing loss of income for casual workers. The Committee noted that delays in the claims handling process is a key issue for stakeholders and users of the Scheme. The Committee is of the view that the recommendations in this chapter would help to further improve the functions of the MAA in relation to claims made under the Scheme by following through on the report for loss of income for casual workers and by moving forward on legislative amendments in relation to claims against the Nominal Defendant for unregistered and unregistrable vehicles.

## **Payment of claims (Chapter 5)**

Several matters relating to the payment of claims were examined by the Committee including compensation for non-economic loss, payments for catastrophically injured and a proposal to allow interim damages. The recommendations in this chapter would help to further improve the functions of the MAA in this area by further considering the proposal to allow interim damages, further investigating how long damages last for the catastrophically injured and conducting analysis on the level of damages awarded by New South Wales courts.

## **Injury prevention, treatment and rehabilitation (Chapter 6)**

The Committee's review included an examination of issues in relation to the MAA and the MAC functions for injury prevention, treatment and rehabilitation. Among other matters, the Committee looked at public education programs, alternative therapies for injury treatment and the MAA Grants Program. The Committee acknowledged that the preliminary results for a clinical study into health outcomes for whiplash sufferers have been positive and looks forward to reviewing the 3-5 year strategy for the MAA Grants Program.

## Summary of recommendations

- Recommendation 1** **13**  
That the Minister provide the Committee with an update on the progress of the reforms for the Motor Accidents Assessment Scheme, in relation to any future amendments to the Act and details of the changes the MAA are planning to make to guidelines used under the Motor Accidents Assessment Scheme.
- Recommendation 2** **16**  
That the MAA investigate methods, other than those used in the Justice Policy Research Centre research, to analyse the effects of costs regulation and review the legal costs scale.
- Recommendation 3** **25**  
That the Minister provide a copy of the report on four wheel drive claims experience to the Committee for its information and consideration and that the Minister advise the Committee on any actions the MAA are to take in light of the information or recommendations in that report.
- Recommendation 4** **30**  
That in order for the MAA to satisfy the statutory obligation set out in section 28 of the Act, the MAA present a separate and specific report on insurer profits annually to the Committee. The report should contain:
- the MAA's assessment of the profit margins and the actuarial basis for its calculation in relation to each of the licensed insurers, and
  - the data provided to it by the insurers pursuant to section 28(1) that forms the basis of their assessment.
- Recommendation 5** **31**  
That the Minister provide the Committee with further detail on what actions, if any, the MAA are required to take in light of receiving the legal advice on the issue of the gap between CTP insurance and public liability insurance for certain accidents involving motor vehicles.
- Recommendation 6** **42**  
That following the MAA's advice to the Minister on the issue of amending section 33(5) of the Act, the Minister advise the Committee on whether legislative amendments are going to take place and provide the Committee with details of the proposed amendments in relation to claims against the Nominal Defendant for unregistered and unregistrable vehicles.
- Recommendation 7** **42**  
That the Minister provide a copy of the report on establishing loss of income by casual workers to the Committee as soon as it is finalised.
- Recommendation 8** **49**  
That, in relation to the most recent figure of 18% of amendments to medical assessments involving changes to methodology and reasons for decisions, the MAA provide details to the Committee on what the amendments were to these assessments.

- Recommendation 9** **56**  
That, in the interests of both claimants and defendants, the MAA develop and implement a code of conduct for surveillance under the New South Wales Scheme, and that the code include when surveillance is appropriate and the manner in which surveillance should be conducted.
- Recommendation 10** **59**  
That the results of the review of the MAA Guidelines for the Assessment of Permanent Impairment be provided to the Committee as soon as possible for consideration as part of its next review.
- Recommendation 11** **60**  
That the Minister provide the Committee with an update on consideration of Recommendation 16 in the Fifth Report where the Committee recommended the Minister and the Attorney General consider amending the *Supreme Court Act 1970* and the *District Court Act 1937* to allow awards of interim damages in motor accident cases.
- Recommendation 12** **63**  
That the MAA's further research into the issue of damages lasting the lifetime of those catastrophically injured in motor accidents include investigations into:
- the basis of assessing damages for catastrophically injured, considering that it this has not changed from the old Scheme and
  - the possible benefits for implementing structured damages for the catastrophically injured.
- Recommendation 13** **67**  
That the MAA conduct analysis from their own databases on the level of damages awarded by the New South Wales courts in relation to personal injury suffered as a result of motor vehicle accidents since the 1999 amendments to the Scheme, in order to fulfil their obligation under section 206(2)(a) of the Act. Also, that once collected, this information be publicly accessible and updated annually.
- Recommendation 14** **78**  
That the MAA provide the Committee with a copy of the 3-5 year strategy for road safety and rehabilitation programs and make this strategy publicly available.

## Acronyms

<b>ANF</b>	Accident Notification Form
<b>CARS</b>	Claims Assessment Resolution Service
<b>CTP</b>	Compulsory Third Party
<b>MAA</b>	Motor Accidents Authority
<b>MAAS</b>	Motor Accidents Assessment Service
<b>MAC</b>	Motor Accidents Council
<b>MAS</b>	Medical Assessment Service
<b>NEL</b>	Non-Economic Loss
<b>WPI</b>	Whole Person Impairment

# Chapter 1 Introduction

## Committee's role to review the MAA and the MAC

- 1.1 The Motor Accidents Authority (MAA) is a statutory corporation that regulates the New South Wales Motor Accidents Scheme (the Scheme). The MAA was established by the *Motor Accidents Act 1988* on 10 March 1989 and continues to be constituted under the *Motor Accidents Compensation Act 1999* (the Act). The Motor Accidents Council (MAC) facilitates input from the various stakeholders in the Scheme.
- 1.2 Section 210 of the Act provides that a committee of the Legislative Council is to be charged with the responsibility of supervising the exercise of the functions of the MAA and MAC. The Legislative Council initially appointed the Standing Committee on Law and Justice (the Committee) to undertake this task in November 1999. The Committee was re-appointed in this current Parliament.<sup>1</sup>
- 1.3 The Committee has exercised its responsibilities in relation to the MAA and MAC by conducting periodic public hearings with the General Manager of the MAA, Mr David Bowen and the Chair of the Board of Directors and Chair of the MAC, Mr Richard Grellman. Six public hearings have been held to date and six Committee reports, including this report, have been published subsequent to those hearings. The hearings have focused on issues arising from the MAA's annual reports regarding the Scheme and the way in which the MAA and the MAC are exercising their functions.

## Conduct of the Sixth Review

- 1.4 The Committee conducted its Sixth Review between December 2004 and April 2005. The review examined the MAA Annual Report 2003-2004 and considered issues raised by stakeholders in submissions to the Committee.

### Stakeholder participation

- 1.5 In December 2004 the Committee invited approximately 40 individuals and organisations with an interest in the functions of the MAA and the MAC to participate in the Committee's inquiry by identifying specific issues of concern for the Committee to consider raising with the MAA.
- 1.6 Five responses were received raising many issues of interest to the Committee. Submissions were received from:
- The Royal Australasian College of Surgeons
  - The Australian Lawyers Alliance
  - The New South Wales Bar Association

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<sup>1</sup> Motion moved by the Hon Tony Kelly MLC and agreed to by the Legislative Council, Minutes No 13, 25 June 2003, Item 5

- Youthsafe
- The Law Society of New South Wales.

**1.7** These submissions are available through the Committee's homepage on the NSW Parliament website at [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice). Most of the issues raised in the submissions were subsequently considered by the Committee in its review.

**1.8** A number of other stakeholders responded that they had no issues or questions to raise this year. The Committee is grateful to those stakeholders who participated in the review particularly given the time and resources it takes to prepare submissions. The expertise of stakeholders greatly assists the Committee in its understanding of the various issues examined in this review.

**1.9** In the Committee's Fifth Report it was noted that the Committee would reassess its method of inquiry. In particular the report noted that:

The requirement for the Committee to report each year and the time frame for the release of the MAA's annual report has resulted in the Committee conducting its inquiry towards the end of the calendar year. The Committee's responsibility to review the exercise of the functions of the MAA and the MAC is too important to be conducted in such a short time frame. Stakeholders are not provided with a sufficient period in which to review the Annual Report and provide comprehensive submissions. The MAA and the MAC are not provided with adequate time to prepare constructive responses. Those factors ultimately influence the ability of the Committee to fulfil its role in monitoring the accountability of the MAA and the MAC.<sup>2</sup>

**1.10** On this note, as part of this review the Committee asked the MAA to provide feedback on the productiveness of involving stakeholders in the review, to which Mr Bowen advised:

We find that the process is extremely useful. We obviously attempt to balance a fully and comprehensive report in our annual report with not providing an unnecessary amount of information that simply serves to screen the important issues. The process of stakeholder questioning allows that to be filled out in a way that is of particular interest ...

I would be particularly urging you, if it is not done by way of submission, to invite some of the senior medical people involved in this scheme along, some of the people whom we have appointed as medical assessors who could provide, I think, quite a different view on the operation of the scheme.

Obviously the insurance industry is invited. I think it would be good if they were encouraged to give their views on the operation of the scheme and perhaps be answerable themselves on some of the matters that are of interest to the Committee. If it is not done by way of submission, whether you would wish to invite witnesses on those sorts of areas.<sup>3</sup>

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<sup>2</sup> NSW Legislative Council, Standing Committee on Law and Justice, Report 25, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Fifth Report*, April 2004, (hereafter referred to as 'Fifth Report'), p 1

<sup>3</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, p16

- 1.11 The Committee appreciates that the MAA finds the process of stakeholder participation useful. The Committee notes the MAA's advice and will reassess its method of inquiry for future reviews.

### **Hearing**

- 1.12 The Committee's sixth hearing was held on Tuesday 15 March 2005. Appearing before the Committee were the General Manager of the MAA, Mr David Bowen, the Chair of the Board of Directors and Chair of the MAC, Mr Richard Grellman and the Manager of the Insurance Division of the MAA, Ms Concetta Rizzo.

### **Questions on notice**

- 1.13 Before and during the hearing the MAA agreed to take a number of questions on notice in order to provide further information to the Committee than what was possible at the time of their appearance at the hearing. Answers to questions on notice are available through the Committee's homepage on the NSW Parliament website at [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice).

### **Report**

- 1.14 This report is divided into six chapters, each dealing with an aspect of the functions of the MAA and the MAC. Topics addressed in each chapter of this report are based on specific issues raised by stakeholders in their submissions and the response to those issues by the MAA and MAC.
- 1.15 Chapter 2 explores the overall exercise of the functions of the MAA and the MAC in terms of the performance of the Scheme.
- 1.16 Chapter 3 explores the exercise of the functions of the MAA and the MAC in relation to Compulsory Third Party (CTP) Green Slip insurance and the insurers. It examines several issues that arose during the course of the Sixth Review, including premiums, insurer profits and the CTP insurance market.
- 1.17 Chapter 4 surveys the exercise of the functions of the MAA and the MAC in relation to claims made under the Scheme. This chapter considers issues such as, delays in claims handling, consumer attitudes to claim forms, claims against the Nominal Defendant for unregistered vehicles and establishing loss of income for casual workers.
- 1.18 Chapter 5 explores the exercise of the functions of the MAA and the MAC in relation to the payment of claims made under the Scheme. It examines issues such as, compensation for non-economic loss, payments for catastrophically injured and a proposal to allow interim damages.
- 1.19 Chapter 6 examines the exercise of the functions of the MAA and the MAC in relation to the injury prevention, treatment and rehabilitation. It examines several issues including public education programs, alternative therapies for injury treatment and the MAA Grants Program.

- 1.20** The Committee's Fifth Report contained 17 recommendations. The Government's response to this report was tabled by the Hon Henry Tsang MLC on 16 November 2004.<sup>4</sup> The Committee acknowledges that some recommendations are under consideration by the Government and others have been implemented or actioned. There are a few recommendations from the Fifth Report that the Committee has identified in this current review as requiring further consideration by the Government, including the recommendation for the MAA to provide the Committee with a separate report on insurer profits and the recommendation in relation claims against the Nominal Defendant for unregistered vehicles.<sup>5</sup>
- 1.21** Based on the information obtained in the submissions, written answers to questions on notice and the public hearing, the Committee is of the view that the MAA and MAC are fulfilling their function under the Act. In this report the Committee makes 14 recommendations, aimed at improving specific aspects of the operation of the MAA and MAC.

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<sup>4</sup> NSW Legislative Council, Minutes of Proceedings No 83, 16 November 2004, Item 4, page 1134

<sup>5</sup> Recommendations 5 and 1, respectively, in the Fifth Report and Recommendations 5 and 7, respectively, in this report

## Chapter 2 Performance overview

The Committee's terms of reference include the monitoring and review of the exercise of functions by the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC). A key factor in monitoring the functions of the MAA is the efficiency of the Scheme. Other elements of the MAA and MAC performance examined in this chapter include exercise of the functions of the MAC and guidelines produced by the MAA.

### Scheme efficiency

**2.1** The Law Society has noted that the MAA defines 'scheme efficiency' in the MAA Annual Report 2003-2004 as 'where as much as possible of the premium dollar is returned to injured people as compensation'.<sup>6</sup> An indication of the efficiency of the scheme is given in the Annual Report:

In the current filing period, the projected return to claimants is 60% of total premiums representing a slight reduction from the previous year. Generally, the return to the claimant has been greater under the new scheme averaging 61.3% compared to 58% under the old scheme.<sup>7</sup>

Furthermore, of the actual payments made on finalised Year 1 claims, 86% was paid to claimants compared to 80% in the old scheme.<sup>8</sup>

**2.2** The Law Society raised the issue of whether 'allocative efficiency' is considered in terms of scheme efficiency, that is, whether the most appropriate amounts of compensation are being awarded to claimants according to their compensation needs.<sup>9</sup> The MAA advised that the amount of compensation awarded under the scheme does relate to injury severity but confirmed that the efficiency of the Scheme is measured on as much as possible of the premium dollar being returned to injured people as compensation:

The amount of compensation awarded under the scheme correlates with injury severity.

An efficient scheme is one where the injured person receives as much as possible and as little as possible is expended on transaction costs such as legal and investigation expenses. As the Law Society has quoted from the annual report the scheme has been successful in achieving this. '... of the actual payments made on finalised Year 1 claims, 86% was paid to claimants compared to 80% in the old scheme.'<sup>10</sup>

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<sup>6</sup> Motor Accidents Authority of NSW, *Annual Report 2003-2004* (hereafter referred to as MAA Annual Report 2003-2004), p99 and p110 as cited in submission 5, The Law Society of New South Wales, p9

<sup>7</sup> MAA Annual Report 2003-2004, p99

<sup>8</sup> MAA Annual Report 2003-2004, p109

<sup>9</sup> Submission 5, The Law Society of New South Wales, p9

<sup>10</sup> MAA answers to stakeholder questions on notice, p1

### Comparison between the old and new Scheme

- 2.3** Of interest to the stakeholders and the Committee was whether the MAA believes that the new Scheme is more efficient than the old Scheme. In this regard, the MAA informed the Committee:

On the basis of prospective measures based on insurer filings, the current Scheme is more efficient than the old Scheme: the return to the claimant has averaged 61.3% compared to 58% under the old scheme.<sup>11</sup>

- 2.4** During last year's review the MAA advised the Committee that in the coming year it would concentrate on examining the trends within the new Scheme rather than making comparisons between the new and the old schemes. On the issue of analysing trends within the new Scheme, compared to the process of comparing the old and the new Schemes, the MAA advised:

We attempted to provide information on an accident year basis in our annual report. On page 108 we have provided basically a snapshot as at the date of the annual report, which is June 2004. That presents a profile for each accident year, and you will see that there are various trends.

Although it is a good idea to look at each accident year, the fact is that, because there are different stages of development, it is difficult to compare them. What we do is look at each accident year at an equivalent stage of development, but if you wanted to do that for five accident years you would have an enormous amount of paper to go through. So we try to select the most salient features to be looked at ...

So I guess that is the difficulty we have always had in trying to provide you with information, provide information to the public, on an accident year basis. It takes a long time for each accident year to develop. What we have had to do then in presenting our table on page 104 [Annual Report] is that we must rely on actuarial estimates for what is happening in any accident year. The figures on page 104 are on the basis of underwriting year so it is slightly different, but we have had to rely on actuarial estimates to give us an idea of how each one of those underwriting or accident years will develop. So you will understand that when we look at accident year five or even accident year four there is a lot of estimates in whatever goes into those figures because it simply has not developed, whereas for the earliest accident year there are a lot less estimates, there is a lot less guess work. However, there are still estimates there because even for the first underwriting year about 80 per cent of claims are finalised but only about 50 per cent of the estimated incurred costs have been paid out. So I suppose the bottom line is that with presenting by accident year we come across that difficulty with the development stages.<sup>12</sup>

- 2.5** On the basis that an efficient scheme as one where the injured person receives as much as possible and as little as possible is expended on transaction costs such as legal and investigation expenses, the Committee acknowledges that the Scheme is more efficient than the old scheme.

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<sup>11</sup> MAA answers to stakeholder questions on notice, p2

<sup>12</sup> Ms Concetta Rizzo, Manager Insurance Division, MAA, Evidence, 15 March 2005, pp6-7

## Corporate Plan

- 2.6 The Committee notes that page 8 of the MAA's Annual Report 2003-2004 states that the Corporate Plan was revised in 2004. Mr David Bowen, General Manager, MAA, advised the Committee that the main points of difference between the old and new Corporate Plans was related to priorities:

The difference relates to the priorities, not to the general background and lead in and description of our role. So the difference was the corporate priorities for the 2004 year. That is the same in the current year, and next year we will engage in a new three-year plan, which will involve reviewing mission and vision and corporate role once again. . In 2003-04 the priorities were our continuous improvement project in the motor accidents assessment services. That is carried forward in the 2004-05 priorities as part of what we call the scheme reform package and the MAAS dispute resolution, so that is a carry forward.

The second priority in 2003-04 was a review of the prudential compliance role. That was an internal audit and we provided a copy of that report and the management response as an attachment to the replies to the Committee's questions on notice. So, that is no longer part of the 2004-05 plan. For 2003-04 there was a review of the grants program, again initiated by the board. That issue is going forward and is part of our corporate plan, but it is no longer a corporate priority.

The final one for 2003-04 was to develop a community participation program for people with spinal cord injury. That is now well up and running and is to the point of having been implemented, but the evaluation will not occur until late this year or early next year. By that time we will be able to report on it. The additional matters in 2004-05 were to provide advice to the Minister in relation to a lifetime tenant scheme. That priority was part of the current corporate plan and is ongoing, to turn the review of the grants program into a review of the strategic direction of the injury prevention and management program so that we do not look at only the grants but at the whole package of what we do in that area.

The final priority for 2004-05 was to review our insurer compliant strategy. We have done that and currently have a draft compliant strategy, and that has been issued to all of our key stakeholders for comment. We will have that finalised hopefully within the next two months.<sup>13</sup>

## MAA's prudential responsibilities

- 2.7 The Law Society has noted that the MAA's Annual Report 2003-2004 states that Ernst & Young 'would include a review of the prudential role [of the MAA] as part of its wider review of corporate governance. Ernst & Young began the review in June 2004 and will report to the MAA Board in 2004-2005'.<sup>14</sup>

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<sup>13</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, p 7

<sup>14</sup> MAA Annual Report 2003-2004, p19

- 2.8** The MAA advised that Ernst & Young completed the review in October 2004.<sup>15</sup> In relation to prudential responsibilities, the Ernst & Young report was to provide the MAA with information regarding the degree to which current procedures address its prudential responsibilities.<sup>16</sup>
- 2.9** The Ernst & Young report found that, in relation to prudential responsibilities, the MAA relies on the Australian Prudential Regulation Authority (APRA) to preform the role of primary prudential regulator as based on an existing memorandum of understanding. The report recommends the MAA work on a more detailed plan including a strategy and operational model for working with APRA as well as developing a plan on how the reliance on APRA for prudential responsibilities will work.<sup>17</sup>
- 2.10** The MAA comments in the Ernst & Young report that the MAA and APRA are working together to develop a more detailed plan for their relationship.<sup>18</sup>

### **MAA funding and surplus**

- 2.11** The MAA Annual Report 2003-2004 states that the main source of funding for the MAA was a levy of 1.6% on Compulsory Third Party (CTP) insurance premiums collected by licensed insurers.<sup>19</sup>
- 2.12** The Annual Report states that the MAA recorded a financial year deficit of \$18.539 million for the year ending 30 June 2004 which reduced the financial position of the MAA from a surplus of \$36.352 million at June 2003 to a surplus of \$17.813 million at June 2004. In the Fifth Report the MAA advised the Committee that the surplus of June 2003 would significantly decrease as additional funds held to fund Nominal Defendant payments for HIIH insolvency would be utilised in the 2003-2004 financial year:<sup>20</sup>

This was mostly the result of a net movement in the balance of accounts for HIIH operations of \$12.245 million. In addition, the Board of the MAA determined to run the Authority's budget at a deficit for the year as a way of reducing the overall surplus.<sup>21</sup>

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<sup>15</sup> MAA answers to stakeholder questions on notice, p1

<sup>16</sup> Ernst & Young: *Motor Accidents Authority of NSW Agreed Upon Procedures Review Corporate Governance Report of Factual Findings*, p1 (hereafter known as Ernst & Young: Report on Factual Findings)

<sup>17</sup> Ernst & Young: Report on Factual Findings, pp10-13

<sup>18</sup> Ernst & Young: Report on Factual Findings p11

<sup>19</sup> MAA Annual Report 2003-2004, p45

<sup>20</sup> Fifth Report, p8

<sup>21</sup> MAA Annual Report 2003-2004, p45

## The Motor Accidents Council

**2.13** The Chair of the MAC, Mr Richard Grellman, advised the Committee that the main purposes of the MAC is twofold:

Firstly, it provides the Authority and clearly the board of the Authority with a gateway to the key stakeholders. The stakeholders or service providers who are particularly interested in the workings of the scheme have very easy access to what is happening with the scheme and what is happening with the legislation. Secondly, and as importantly, because we have interested service providers or stakeholders at that table, it provides us with a mechanism to hear from concerned parties, who are often articulating on behalf of their constituents, issues of concern. It really is a very good environment for communication.<sup>22</sup>

### Membership

**2.14** Section 208(1) of the *Motor Accidents Compensation Act 1999* (the Act) requires that, in addition to the General Manager of the MAA and the Chair and Deputy Chair of the Board, nine other members are to be appointed to the MAC. In response to a question on notice the MAA informed the Committee of the current membership of the MAC:

The members of the Motor Accidents Council are appointed pursuant to section 208(1) of the *Motor Accidents Compensation Act 1999* as follows:

- the Chairperson of the Board of Directors of the Authority, who is to be the Chairperson of the Council - *Mr Richard Grellman*
- the Deputy Chairperson of the Board of Directors of the Authority, who is to be the Deputy Chairperson of the Council - *Ms Penny Le Couteur*
- 2 persons involved in the insurance industry appointed by the Minister after consultation with the Insurance Council of Australia - *Mr Douglas R Pearve* and *Ms Robyn Norman*
- 2 legal practitioners appointed by the Minister after consultation with the Councils of the Law Society and Bar Association - *Mr Andrew Stone* and *Vacant* (pending appointment for vacancy created by resignation of Ms Geraldine Daley)
- 2 health practitioners appointed by the Minister after consultation with the Australian Medical Association (NSW) Limited and such other associations of health practitioners as the Minister considers appropriate - *Dr John Frith* and *Dr Stephen Buckley*
- 1 person not involved in the insurance industry appointed by the Minister on the nomination of the NRMA - *Dr Michael Henderson*

<sup>22</sup> Mr Richard Grellman, Chair of the Board of Directors and Chair of the MAC, Evidence, 15 March 2005, p2

- 1 person appointed by the Minister after consultation with such associations concerned with injured persons as the Minister considers appropriate - *Ms Felicity Purdy*
- 1 person appointed by the Minister after consultation with such consumer organisations as the Minister considers appropriate - *Mr Michael Griffiths*
- the General Manager of the Authority - *Mr David Bowen*<sup>23</sup>

**2.15** The MAC has advised that in relation to the membership:

The current Council members were appointed by the Minister for a period of three years expiring in November 2005.

In November 2004, Ms Geraldine Daly (legal practitioner) resigned from her position as a Council member. Arrangements are underway for the appointment of a replacement legal practitioner member.<sup>24</sup>

**2.16** During the hearing Mr Grellman described the membership and workings of the MAC as follows:

There is a good working environment and the board can confront difficult issues. We do not all agree on every issue, which, I think, is a healthy sign that we can have our discussions and conclude the meeting on good terms. The Motor Accidents Council is a group of what I would call stakeholders and service providers. The council is a very important part of the fabric of the scheme. Because we have stakeholders that perhaps might sit on opposite sides of a particular issue, we have a little bit more potential for debate within the council. Again, that is undertaken in a very positive and constructive way. The council as a group will not agree on every issue but the discussions are always cordial and productive.<sup>25</sup>

### **Meetings**

**2.17** The MAC advised it met on five occasions during the 2003-2004 financial year. In addition to formal meetings, Council members attended a briefing on the MAA's Annual Report 2003-2004. A number of members also participated in MAA workshop activities held throughout the year.<sup>26</sup>

### **Exercise of functions**

**2.18** The functions of the MAC are set out in section 209(1) of the Act. In their submission, the Bar Association raised issues in relation to the function of the MAC. They noted that one of the functions of the MAC is to advise and make recommendations to the MAA on the MAA medical guidelines and was interested in what recommendations the MAC made regarding the

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<sup>23</sup> MAA answers to additional questions on notice, pp1-2

<sup>24</sup> MAA answers to additional questions on notice, p2

<sup>25</sup> Mr Richard Grellman, Evidence, 15 March 2005, p1

<sup>26</sup> MAA answers to additional questions on notice, p2

MAA medical guidelines during 2003-2004.<sup>27</sup> In response to this question the MAA advised the Committee:

The Council reviewed the following MAA medical guidelines and information guides during 2003/2004:

- *Managing Acute Low Back Pain – An Insurer’s Guide*
- *Traumatic Brain Injury, Care and Support Protocols*
- *Draft (revised) Guidelines for the Assessment of Permanent Impairment*
- *Treatment, Rehabilitation and Attendant Care Guidelines (2004)*

During 2003/2004, the Council monitored the implementation of the Motor Accident Service (MAAS) Continuous Improvement Project, which focussed on developing a new MAAS organisational structure that provides an integrated case management service.

The Council also considered progress of the MAAS User/ Participant Consultation project at its November 2003, March 2004 and May 2004 meetings. The project seeks to identify improvements that can be made to MAAS policies and processes.

During the reported period, the Motor Accidents Council also considered reports on motor accident scheme performance trends, based on quarterly scheme performance indicator updates. In addition, the Council provided input on the recommendations of the 5<sup>th</sup> MAA report of the Law and Justice Standing Committee.<sup>28</sup>

**2.19** The Committee noted that one of the functions of the MAC is to monitor the operation of the services provided under the Act for the assessment of injuries and the assessment of claims. The MAA was asked what steps the MAC has taken to monitor the operation of services provided for the assessment of injuries through the Medical Assessment Service (MAS) and the assessment of claims through the Claims Assessment Resolution Service (CARS) during 2003-2004. The MAC advised that quarterly performance reports on the operations of the MAS and CARS were considered by the Council.<sup>29</sup>

**2.20** As raised in the Bar Association’s submission a further function of the MAC is to monitor the operation of Part 3.2 (early payment for treatment of injured people). The MAC advised that the following steps are taken fulfil this function:

The operation of the provisions for early payment of injured people are monitored in the Motor Accidents Scheme annual report (as published in the MAA’s annual report). The MAC considers the Motor Accidents Scheme annual report and also receives a report on the scheme performance indicators each quarter.<sup>30</sup>

<sup>27</sup> Submission 3, The New South Wales Bar Association, pp5-6

<sup>28</sup> MAA answers to additional questions on notice, pp2-3

<sup>29</sup> MAA answers to stakeholder questions on notice, p38

<sup>30</sup> MAA answers to stakeholder questions on notice, p38

## Motor Accident Assessment Service (MAAS)

**2.21** The Law Society noted in their submission that page 32 of the MAA Annual Report 2003-2004 states that a policy and legislative reform agenda was developed to improve MAAS policies and processes, on the basis of consultation forums held with stakeholders between October 2003 and June 2004. It is further stated that this reform agenda will be pursued in 2004-2005.<sup>31</sup>

**2.22** The MAA advised that the following representatives of the legal and insurance industries participated in the consultation forums:

In the second half of 2003, the MAA engaged the Hon John Hannaford to undertake an independent consultation with key users of, and participants in the Motor Accident Assessment Service (MAAS). The purpose of the consultation was to review MAAS processes and procedures as they affect Service users and participants. The MAA invited users and participants who had extensive experience with the MAAS system to participate in the consultation process. Invitations were extended to legal practitioners, CTP [Compulsory Third Party] insurers, CARS and MAS assessors with extensive assessment experience, the Chair and Deputy Chair of the MAA Board and members of the Motor Accidents Council.

In relation to legal practitioners the MAA invited practitioners with a significant volume of matters lodged through the assessment service, across both primarily plaintiff and primarily defendant legal representatives. An invitation was also extended to the Law Society through the chair of the Personal Injury Committee. Invitations to insurers were forwarded to CTP claims managers to nominate experienced claims officers to participate.<sup>32</sup>

**2.23** The MAA advised the Committee that the objectives of the MAAS consultation process were to:

- identify issues of concern with the current processes from the perspective of users and participants
- provide suggestions for improvements/enhancements to existing processes
- determine how current processes can be enhanced and/or altered with a view to improving efficiency of the MAAS processes for all users.<sup>33</sup>

**2.24** The MAA also advised that the main aspects of the proposed reform agenda for MAAS identified through the consultation forums included:

- reducing the number of unnecessary/inappropriate disputes being referred to the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS)
- encouraging parties to clearly identify all issues in dispute

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<sup>31</sup> MAA Annual Report 2003-2004, p32

<sup>32</sup> MAA answers to stakeholder questions on notice, pp21-22

<sup>33</sup> MAA answers to stakeholder questions on notice, pp21-22

- encouraging better information and document exchange by the parties before lodgement of a MAS or CARS dispute, including strengthening requirements for third party document production
- reducing the ‘front end’ processing time for disputes, including consideration of electronic lodgement and the current legislative time limits for lodging CARS exception applications.<sup>34</sup>

**2.25** The MAA has advised the Committee that the majority of the proposed reforms for MAAS will be made through changes to guidelines, including assessment guidelines. The remainder will require legislative amendments to the Act, which have already been recommended to the Minister.<sup>35</sup> While implementation of the policy and guideline reforms is dependent upon the enactment of changes to the legislative framework governing MAAS, the Committee was advised that the MAA anticipates the reforms can be operational from late 2005.<sup>36</sup>

**2.26** The Committee acknowledges the efforts of the MAA and those involved in the consultation forums in developing the reform agenda. The Committee is interested in ensuring the reform agenda is progressed and requests that the Minister provide the Committee with an update on the progress of the reforms, in relation to any future amendments to the Act and details of the changes the MAA are planning to make to guidelines.

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### Recommendation 1

That the Minister provide the Committee with an update on the progress of the reforms for the Motor Accidents Assessment Scheme, in relation to any future amendments to the Act and details of the changes the MAA are planning to make to guidelines used under the Motor Accidents Assessment Scheme.

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### Guidelines

**2.27** One of the functions of the MAA is to issue and keep under review relevant guidelines made under the Act.<sup>37</sup> In relation to guidelines the MAA advised during the hearing that:

We produce treatment guidelines under the Motor Accidents Authority Scheme, not for all injuries or every injury but for those which are high volume matters, like whiplash or lower back pain, or involve regular therapies like physiotherapy, or are a high cost for the scheme, such as spinal cord and brain injuries.<sup>38</sup>

We regularly review the impairment guidelines, which are a tool to measure whole person impairment and, indeed, draft amendments to the guidelines are being submitted to the Motor Accident Council this afternoon. These are the sorts of

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<sup>34</sup> MAA answers to additional questions on notice, pp9-10

<sup>35</sup> Mr David Bowen, Evidence, 15 March 2005, pp4-5

<sup>36</sup> MAA answers to additional questions on notice, p11

<sup>37</sup> *Motor Accidents Compensation Act 1999*, section 206(d)

<sup>38</sup> Mr David Bowen, Evidence, 15 March 2005, p17

documents that we provide—care protocols for brain injury, or ways to resolve medical disputes and insurers' guide to managing lower back pain. For most of these we will produce an insurer's guide, we will produce a guide to the medical practitioner and we will produce a guide to the claimant. We have physiotherapists' guides.<sup>39</sup>

### **Guidelines for legal practitioners**

**2.28** An issue that arose at the hearing for the Committee's Sixth Review was the possible need for guidelines for legal practitioners:

The Committee may wish to think about whether it would be of some assistance to have some minimum standards imposed on legal practitioners in relation to their claimants about communication and about ensuring that information is provided in a timely manner, in the same way that there are obligations on insurers when they deal with claimants.<sup>40</sup>

**2.29** The Committee requested the MAA to expand on this issue. Mr Bowen advised the Committee:

I think the problem is that there are practitioners who come to this thinking that the best outcome for their client is to fight a matter all the way, and whose only interest is in maximising the level of compensation ... these matters under the new scheme are starting to drop back into similar sorts of delay patterns that we experienced over the old scheme, and that is going to take away a lot of the benefits of the scheme changes and a lot of benefits of having informal and quite flexible procedures.

I very heavily qualified my statements by saying that this was certainly not universal and certainly not amongst the majority of the users. We have many legal practitioners, with whom we are in regular communication, who recognise that this new scheme offers a wonderful opportunity to get a fair result. The decision makers at CARS are not bureaucrats; they are senior accredited specialist practitioners with coalface experience, who have the respect of all their colleagues. Their services should be utilised to resolve these matters rather than by way of adversarial proceeding.<sup>41</sup>

**2.30** The MAA advised that discussions need to take place between the Authority and the legal profession in relation to whether guidelines for legal practitioners would be beneficial:

The matters I would be looking at are certainly not to the sorts of levels of obligations we put upon the insurance industry, but it would be about timely response to matters that have come from insurance companies, in the same way that insurers have standards for timely response to matters that are raised by the claimant or the claimant's legal representatives.

I certainly think that there should be a full and frank discussion between the authority and the legal profession, solicitors and barristers involved in this area of work, about

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<sup>39</sup> Mr David Bowen, Evidence, 15 March 2005, p3

<sup>40</sup> Mr David Bowen, Evidence, 15 March 2005, pp4-5

<sup>41</sup> Mr David Bowen, Evidence, 15 March 2005, pp 12-13

such standards. I believe that the great majority would comply with what I would think are necessary minimum standards anyway. <sup>42</sup>

- 2.31** The MAA further stated that discussions between the Authority and the legal profession have not yet been initiated.<sup>43</sup> However, it is understood that these discussions may take place in the future.

## Justice Policy Research Centre research projects

- 2.32** The progression of research projects at the Justice Policy Research Centre was raised as an issue in the Bar Association's submission, to which the MAA updated the Committee as follows:

The studies on MAS assessors perceptions of MAS, CARS assessors perceptions of CARS and CTP insurers perception of MAS and CARS form part of a series of user surveys. Modules dealing with insurer and claimant legal representatives and MAS and CARS claimants are still to be completed. It is necessary to consider the findings not only in the context of the full report of each module but also in the context of the overall survey. Issues raised in the MAS and CARS assessor module have been raised with assessors and are the subject of on-going consultation and discussion with assessors.<sup>44</sup>

## Cost regulations

- 2.33** Regulation of legal costs was raised by stakeholders in previous reviews and again in this current review. For example, the Bar Association and the Australian Lawyers Alliance have noted that the regulated fees have not been indexed or increased since the introduction of the Act over five years ago. During the Committee's Fourth Review the MAA indicated that it considered it appropriate that the costs scale be reviewed and that appropriate consultations would take place.<sup>45</sup>
- 2.34** During the Fifth Review the Committee was advised that research into the effects of the costs regulation commissioned from the Justice Policy Research Centre had not been completed.<sup>46</sup> In relation to this study on cost regulation the MAA advised that it will not be completed as:

Professor Ted Wright, Belle Wiese Professor of Legal Ethics, Dean of Law and Head, School of Law, University of Newcastle and Director, Justice Policy Research Centre, has indicated that the project "ran into impossible difficulties in gaining access to lawyers' files. Basically the difficulty is a dual-layered one, from a researcher's point of view. Our previous research indicates that lawyers are generally very reluctant to give

<sup>42</sup> Mr David Bowen, Evidence, 15 March 2005, p 13

<sup>43</sup> Mr David Bowen, Evidence, 15 March 2005, p 13

<sup>44</sup> MAA answers to stakeholder questions on notice, p23

<sup>45</sup> NSW Legislative Council, Standing Committee on Law and Justice, Report 24, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Fourth report*, December 2002 (hereafter referred to as 'Fourth Report'), p48

<sup>46</sup> Fifth Report, p71

access to detailed cost information, and the position from a professional conduct point of view is probably that they need their clients' permission to give us access to the file. We proceeded on that basis, and then ran into the second layer of difficulty, in the form of a restrictive ethics clearance which required us to approach claimants in writing and to request a written permission (by return mail). Ultimately we got this permission only from 35 claimants - too small a number."<sup>47</sup>

- 2.35** The Committee acknowledges the challenges the Justice Policy Research Centre faced in conducting its research into the effects of the costs regulation, however, recommends that the MAA investigate other methods to analyse the effects of costs regulation and to review the costs scale.

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### **Recommendation 2**

That the MAA investigate methods, other than those used in the Justice Policy Research Centre research, to analyse the effects of costs regulation and review the legal costs scale.

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## **Conclusion**

- 2.36** Overall, the Committee believes that the Scheme is performing efficiently. The Committee is of the view that the recommendations in this chapter would help to further improve the overall efficiency of the Scheme by progressing necessary reforms in the MAAS and reviewing regulated legal costs.

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<sup>47</sup> MAA answers to stakeholder questions on notice, p30

## Chapter 3 CTP insurance and the insurers

This chapter explores the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) in relation to Compulsory Third Party (CTP) Green Slip insurance and CTP insurers. It examines several issues that arose during the course of the Sixth Review, including the competitiveness of the CTP insurance market, premiums and insurer profits.

### Competitiveness of the CTP insurance market

**3.1** The Committee was interested in the current competitiveness of the CTP insurance market and requested the MAA provide their view on the current state of the market and if there has been any significant changes in the last financial year. In response, Mr David Bowen, General Manager, MAA, told the Committee:

I think the market, from our point of view, has stabilised well and truly following a period of turmoil that was reflected across the whole general insurance industry. For some years we had a concern about the extent of the commitment of some of the insurers both for this particular market and perhaps more importantly for general insurance in Australia, which is in national terms quite a peripheral market. We have two big international companies and one Australian company, QBE, which is virtually an international insurance company. We regularly talk to their senior executives about that and we have a great level of comfort that they are here and will be staying in the market into the foreseeable future. However, that is about as predictable as the next insurance crisis and what might happen as a result of that.

The level of competition has been moving substantially over the past 12 months. We started to notice it about 18 months ago, with increased competition in some particular areas, particularly for fleet vehicles, small goods vehicles and the like. What we have noticed over the past six to 12 months is increased competition at what I call the consumer end of the market, the mums and dads with the sedan, where, while there have been competitive rates, there certainly has not been the level of competition for some years. The main insurers that target that area are IAG, which is the NRMA, QBE in some particular areas, AAMI and GIO. AAMI and GIO had best prices that left them a little out of the cutting edge of the competition, but in January of this year they refiled for significant reductions and took themselves into market leadership.

At the same time AAMI initiated an advertising campaign for CTP which we have not seen in New South Wales for probably—I am not sure whether we have seen it before; it would certainly be back in the early 1990s. We have yet to see the effect of that in terms of market share but we understand that it would be putting significant pressure on the level of competition because this is an extremely price sensitive product.<sup>48</sup>

**3.2** The Committee notes Mr Bowen's comments and the changes in competition of the CTP market, including increased competition in fleet vehicles and also around the general family

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<sup>48</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, pp20-21

type consumers. The Committee would be interested in examining the outcome of the AAMI advertising campaign on CTP market share in its upcoming reviews.

## Premiums

**3.3** Premiums have been an important issue that the Committee has examined in previous reviews. Premiums were examined in particular detail in the Fifth Report.<sup>49</sup> During the course of the Sixth Review the issue of premiums has continued to be an area of concern for stakeholders, including issues such as premium levels, premiums for young drivers and risk rating factors.

### Premium levels

**3.4** The MAA Annual Report 2003-2004 states that many of the State's motorists have benefited from two premium price reductions during the year and premium prices have fallen to pre-1996 levels, making them more affordable than ever for New South Wales motorists.<sup>50</sup>

**3.5** The Law Society noted that premium levels have not decreased as stated in the MAA Annual Report 2003-2004 and that at page 94 of the Annual Report it states 'the average premium (excluding GST) for a Sydney metropolitan passenger vehicle in the June 2004 quarter was \$343 compared to \$339 in the June 2003 quarter. The average premium over all New South Wales vehicles was \$332 in the June 2004 quarter compared to \$328 in the June 2003 quarter.'<sup>51</sup> The MAA provided the following in response:

The table on page 94 of the MAA's 2003/2004 Annual Report shows the average premium prices for the period December 1998 to June 2004. An updated table is set out below.

Quarter ending	Sydney class 1	Sydney class 1 best price	All classes
June 2003	339	299	328
September 2003	348	314	341
December 2003	352	306	351
March 2004	340	306	334
June 2004	343	299	332
September 2004	335	299	330
December 2004	337	299	339
March 2005		296	

**3.6** The MAA was asked to comment on recent trends of CTP premiums and provided the following response:

The premium filings commencing 1 July 2003 were made in an environment of increases in the cost of reinsurance and weakening estimates of future investment earnings. These factors, both of which are outside the control of the motor accidents

<sup>49</sup> Fifth Report, pp30-38

<sup>50</sup> MAA Annual Report 2003-2004, p5

<sup>51</sup> MAA Annual Report 2003-2004, p94 as cited in Submission 5, The Law Society of New South Wales, pp6-7

scheme, resulted in premium increases in the September 2003 and December 2003 quarters.

As outlined in the MAA's 2003/2004 Annual Report, insurers filed their proposed premiums with the MAA on 1 July 2003 and were not required to file again until April/ May 2004. Nevertheless, insurers voluntarily filed lower premiums with the MAA in the September 2003 quarter and continued to do so throughout the year.

As a result, the best price premium for a Sydney metropolitan passenger vehicle dropped from \$314 in December 2003 to \$306 in March and June 2004. At the same time, the average premium for a Sydney metropolitan passenger vehicle dropped from \$352 in December 2003 to \$343 in June 2004 and the average premium across all NSW vehicles dropped from \$351 in December 2003 to \$332 in June 2004.

There have been further reductions in premiums following the 1 July 2004 filings, with the best price for a Sydney vehicle dropping to \$299. All insurers reduced their premiums from between \$5 and \$19 at this time.

The best price for a Sydney metropolitan passenger vehicle has since reduced further to \$296 from 1 January 2005. The effect of this reduction on the average premium price will be assessed in the MAA's 2004/2005 Annual Report.<sup>52</sup>

**3.7** The Law Society also raised the issue of factors affecting the changes in premiums.<sup>53</sup> The MAA was asked to comment on factors outside their control, for example, reductions in the cost of reinsurance in the international reinsurance market, improvements in anticipated returns on investment and in automotive safety and to the extent premium changes can be seen as evidence of proof that the Scheme is going from strength to strength. The MAA replied:

Many factors affect the cost of premiums. The base premium is derived from the risk premium to which the insurer adds loadings for expenses, levies and a profit margin. The risk premium is the insurer's estimate of the cost of claims based on projected claims frequency and projected average claim size ...

The projected claims frequency and the projected claim size in turn are affected by many factors including:

- Trends in the number of vehicles in the NSW fleet and the rate of increases or decreases
- Trends in the rate of injuries/vehicle
- Trends in the rate of serious injuries/vehicle
- Trends in the propensity to claim
- Weather patterns
- The success of road safety initiatives
- Effectiveness level adopted by insurers reflecting the effectiveness of the legislation
- Wage inflation
- Superimposed inflation

<sup>52</sup> MAA answers to additional questions on notice, pp3-4

<sup>53</sup> Submission 5, The Law Society of New South Wales, p6

- Interest rate forecasts which will inform the discount rate used by insurers to discount projected future claim size into today's dollars.

Premium prices are affected by a range of factors – the most important of which is the risk premium. As has been noted there are a range of variables that can affect the level of the risk premium some of which are outside of the control of the scheme.

However while these other factors have affected the risk premium, the current premium prices also reflect the fact that the scheme is working in accordance with the assumptions that underpinned the scheme reforms introduced in 1999. The fact that this is occurring and the on-going success in giving effect to the scheme design principles as reflected in all of the MAA's scheme indicators, not just affordability, is the basis of the Chairman and General Manager's note that the scheme continues to go from strength to strength.<sup>54</sup>

**3.8** In response to the Bar Association's suggestion that the cut in premiums has largely been achieved by a reduction in benefits paid to the injured, the MAA advised that:

The aim of the 1999 legislative reforms was to achieve a significant reduction in Green Slip costs and to improve the scheme's operation. The legislation introduced key reforms:

- early notification of injury through medical practitioners via an Accident Notification Form (ANF)
- statutory provisions and guidelines to encourage the early resolution of compensation claims
- medical guidelines to encourage early and appropriate treatment and rehabilitation
- medical disputes determined through independent medical assessment (MAS)
- a new system for early dispute resolution (CARS)
- changes to damages, including the introduction of an objective threshold for access to non-economic loss based on an assessment of impairment
- increased regulatory role for the MAA to ensure insurer compliance with market practice and claims handling guidelines.

Under the Act [*Motor Accidents Compensation Act 1999*], claimants remain entitled to modified common law compensation, however the threshold test for access to damages for non-economic loss was altered. The test is whether the person is assessed as having more than 10% permanent whole body impairment as defined by the MAA's guidelines. The threshold was changed from a verbal threshold in the previous scheme to an objective medical evidence based threshold in the reformed scheme. This was necessary because of the deterioration of the verbal threshold. The cap for non-economic loss remained.

Economic loss payments were no longer available for the first five days loss of earnings and a cap on loss of weekly earnings, was introduced, to be indexed annually.

These changes to benefit levels were balanced by scheme improvements, which include:

- access to early payment for treatment expenses
- independent assessment of treatment needs

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<sup>54</sup> MAA answers to stakeholder questions on notice, pp11-12

- early determination of liability
- access to a forum for resolving disputes outside the court system, designed to reduce delay in claim settlement and the stress of litigation.

As part of the reforms, legal costs for motor accident matters were regulated. Claimants and their solicitors are able to contract out of these fixed fees, but insurers who are required to pay the claimant's legal fees will only have to pay the fixed amounts.<sup>55</sup>

**3.9** In its submission to the Committee, the Law Society was interested in assessing the Scheme's success in terms of the community benefit it generates.<sup>56</sup> The MAA was asked to provide information in relation to the importance that the public places on the level of Green Slip premiums as opposed to the level of compensation available under the Scheme. In response, the MAA informed the Committee:

In 1998 the MAA commissioned Woolcott Research Pty Ltd to undertake a study of motorists attitudes towards the then CTP Scheme and to examine their reactions to various alternative scheme models. The Woolcott study found that the “cost of CTP appears to be the main negative aspect of the [then] current scheme. 83% of respondents agreed that the [then] current CTP scheme is too expensive. Panellists complained that the cost of CTP appears to be increasing out of control”.

With regard to the level of compensation the study found that “Opinions over the fairness of the size of compensation payments, and who should receive them are quite mixed.

- 47% agree that people should not receive compensation if they only have minor injuries;
- 27% feel that it's not fair to give people large amounts of compensation;
- 53% agree that people should be entitled to compensation, regardless of whether they're in the right or wrong.”

In relation to scheme models the study found that there was “a clear preference for a two part no fault scheme” which is “both administrative and allows those with serious injuries to sue for further compensation.”<sup>57</sup>

**3.10** The Committee acknowledges that, over the last three quarters, including September 2004, December 2004 and March 2005, premium levels have decreased for the best price for Sydney Class 1 vehicles, in comparison to the premium levels in the corresponding quarters in the previous year.

### **Premiums for young drivers**

**3.11** The Bar Association raised the issue of premiums for young drivers:

In responding to questions raised by the Bar Association to last year's Standing Committee hearing the MAA stated: ‘Young drivers, as group, do not have a very

<sup>55</sup> MAA answers to stakeholder questions on notice, pp9-10

<sup>56</sup> Submission 5, The Law Society of New South Wales, p6

<sup>57</sup> MAA answers to stakeholder questions on notice, p10

good road safety record. The Green Slip premiums that they pay are significantly subsidised by older and safer drivers, as a community rating subsidy'. In short, young people would pay a significantly higher premium if it were not for the cross subsidy by older and safer drivers.

Whilst the new scheme has seen significant reduction in premium for older drivers there has been no significant reduction in premium for younger drivers. In effect there has been a partial unwinding of the degree of cross subsidy between older and younger drivers. Younger drivers continue to face premiums in excess of \$500 per year.<sup>58</sup>

**3.12** The MAA has advised that the policy decision to reduce the degree of subsidy between older and younger drivers was part of the second reading of the *Motor Accidents Compensation Bill 1999*. The Special Minister of State indicated that:

Under the new pricing regime, to achieve an average \$100 reductions means that not everybody will receive a full \$100 reduction in price and some will receive more than a \$100 reduction. A fundamental aim of the reform package is to increase competition among insurers by allowing insurance companies to price green slips with fewer constraints. Insurers will have greater flexibility in setting premiums so that better risks are rewarded with lower green slips.

I must emphasise that all New South Wales motorists will receive a reduction in green slip price. The actual amount of the reduction will vary, depending on how insurers assess the potential risks of motorists.<sup>59</sup>

**3.13** The MAA provided the following advice on the policy for the reduction of the cross subsidy between older and younger drivers:

In unregulated insurance classes, risk rating allows insurers to reject a risk or price it according to the true risk. In NSW, licensed insurers do not have a right to decline or refuse to renew a CTP policy. In this scheme, insurers are only able to distinguish particular risk factors by applying a bonus/malus across a class of drivers.

In addition, as the scheme is compulsory, there is an obligation to ensure premium affordability for all vehicle owners. It is acknowledged that the maximum Green Slip price is inadequate for the high risk market segment, in particular, owners aged 25 or under. It has been estimated that the real risk premium for drivers under 25 is over \$1,500 per year and for those under 20 it is over \$2,500. This is a measure of the real cost of injuries caused by these groups.

Accordingly, the scheme has maintained a community rating which creates cross subsidies through low risk groups paying additional premiums to provide a lower cost for high risk groups. Without community rating it is likely that the MAC Act's objective of affordable premiums would not be met. Without affordable premiums for all sections of the community, the universal compliance objective would be undermined. The consequence of this is there is little incentive for insurers to reduce their premium pool for high risks by offering higher competitive interval prices. Instead, the incentive is for insurers to reduce their discounts on good risks to further

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<sup>58</sup> Submission 3, The New South Wales Bar Association, p4

<sup>59</sup> NSW Legislative Council, Hansard, 3 June 1999, p902, as cited in the MAA answers to stakeholder questions on notice, p16

subsidise high risks. Reducing discounts also allows insurers to gain premium increases without altering their base price.

Taking into account these issues, the MAC Act retained community rating so younger drivers would not be faced with unaffordable premiums. However, it was identified that the Premium Determination Guidelines should be changed to create a system in which there is greater competition amongst insurers for good risks. The MAA has achieved this objective by adopting the concept of an elastic gap between an insurer's best price and the insurer's maximum price. This has the effect that when an insurer lowers its best price, the maximum price is reduced by a proportionately less amount. This makes it possible for insurers to compete for good risks by offering lower prices, and not be penalised by accepting business from a disproportionate number of the worst risks.

The concept of the elastic gap has been included in the Premium Determination Guidelines, which also includes a formula for insurers to apply to derive their maximum rate.<sup>60</sup>

- 3.14** The Bar Association raised concerns with the Committee that this policy may be socially regressive in as much as younger drivers are among those least able to afford the relatively higher premiums. The MAA advised that premiums for younger drivers have reduced:

Young drivers have benefited from reduced premiums following the 1999 legislation although to a lesser extent than lower risk groups. Before the reforms, the best price for under 25s in Sydney was \$537. Most young people in Sydney would have paid closer to \$550. At the present time under 25s are paying around \$515 excluding GST.<sup>61</sup>

- 3.15** The Committee agrees that the policy to subsidise premiums for younger drivers is necessary to uphold the objective of the *Motor Accidents Compensation Act 1999* (the Act) to provide affordable CTP premiums to the public. The concept of the elastic gap is useful to fulfil the objective of the Act to promote competition between insurers.<sup>62</sup>

### **Premiums for four wheel drive vehicles**

- 3.16** In the Fifth Report the Committee recommended that the Minister consider whether the cost of claims involving four wheel drives is higher than other sedans and whether a premium adjustment is necessary.<sup>63</sup> The Government response to the Fifth Report states that the MAA is undertaking a review of four wheel drive claims experience to be finished by the first quarter of 2005, at which point the MAA will provide advice to the Minister.
- 3.17** During the hearing the Committee requested the MAA to describe the nature of this review. Mr Bowen advised:

<sup>60</sup> MAA answers to stakeholder questions on notice, pp16-17

<sup>61</sup> MAA answers to stakeholder questions on notice, p17

<sup>62</sup> *Motor Accidents Compensation Act 1999*, section 5(1)(a) and 5(1)(d)

<sup>63</sup> Fifth Report, Recommendation 3, p37

Essentially we have data-matched claims by type of vehicle with the Roads and Traffic Authority [RTA] database to look at whether the experience of four-wheel drive vehicles is different to that of sedans. We have yet to deliver that report to the Minister. We are probably about two or three weeks away from doing so. We want to conduct some integrity checks on it. Our suspicion is that it will not show any significant difference in claims experience for four-wheel drive vehicles compared with sedans, but that does not mean that I do not think four-wheel drive vehicles continue to pose a road safety problem.

There may well be reasons to explain the claim pattern to date, and they would have to do with two things: firstly, four-wheel drive vehicles may well be safer for the passengers in them, compared to the passengers and other road users who might be involved in an accident with them. Secondly, the big four-wheel drive vehicles, which are probably the most significant problem at the moment, are still quite expensive and a real upsurge in use of them is only really up to a five-year phenomenon. Speaking with my road safety hat on, I have a considerable concern about what problems they may pose 10 years down the track when our high-risk young drivers are buying very large, powerful four-wheel drive vehicles. The combination of a big vehicle and a risk-taking driver may really pose a significant road safety problem.

The other element that is likely to come out in our analysis is that there is a significant difference between big four-wheel drives and small four-wheel drives, but that may simply mirror a difference that there is inexperience between big sedans and small sedans. We were working frantically to try to have it ready by this date, but it has been a tremendously difficult data-matching exercise. We have had to go back and identify each four-wheel drive vehicle because it is not recorded on the face of the RTA's drives database.<sup>64</sup>

- 3.18** The Committee was interested to know if the report would differentiate between four wheel drives that have collided with other vehicles and four wheel drives that have collided with pedestrians, and then provide the comparative costings against sedan crashes and sedans that have collided with pedestrians. Mr Bowen offered the following clarification on this issue:

It is looking at the cost of injury caused by four-wheel drives compared with the cost of injury caused by sedans. So it is whether that vehicle was at fault, not whether that vehicle was involved, and it will differentiate by the nature of the person who was injured as well as by the vehicle.<sup>65</sup>

- 3.19** During the hearing Mr Bowen advised the Committee that a report on the review of four wheel drive vehicle claims experience would be provided to the Minister in the near future.<sup>66</sup>

- 3.20** In March 2005, the Committee wrote to the Minister requesting a copy of the report for the Committee's information and consideration. The Committee requests that the Minister provide a copy of this report to the Committee for its information and consideration and the Minister advise the Committee on any actions the MAA are to take in light of the information or recommendations in the report.

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<sup>64</sup> Mr David Bowen, Evidence, 15 March 2005, p15

<sup>65</sup> Mr David Bowen, Evidence, 15 March 2005, p15

<sup>66</sup> Mr David Bowen, Evidence, 15 March 2005, p15

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### Recommendation 3

That the Minister provide a copy of the report on four wheel drive claims experience to the Committee for its information and consideration and that the Minister advise the Committee on any actions the MAA are to take in light of the information or recommendations in that report.

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#### Risk rating

- 3.21** In its last report the Committee recommended that the MAA examine the risk rating system, including rating based on gender, with a view to encouraging CTP insurers to implement additional risk rating factors.<sup>67</sup> The Government's response stated that the MAA regularly reviews rating factors and that the application of risk rating factors is, however, a matter for individual CTP insurers.
- 3.22** This issue was raised again in the Sixth Review and the MAA was asked if it can see any role for the Authority to encourage the insurers to include various risk rating factors, or review existing factors. In response, the MAA informed the Committee:

Pursuant to section 24 of the *Motor Accidents Compensation Act 1999*, the MAA issues Premium Determination Guidelines to licensed insurers for the determination of insurance premiums for third-party policies. Insurers may apply loadings and discounts to premiums according to these guidelines. The guidelines were revised in 1999 to encourage greater competition among insurers and to provide greater flexibility in pricing to reflect risk factors.

Prior to the 1999 *Act*, the allowable range was between 15% loading and 15% discount. Following the 1999 amendments, the maximum discount was extended to 25% for policyholders aged over 55. The maximum loading is currently 50%.

CTP insurers currently use the entire range of loadings and discounts available under the MAA Premium Determination Guidelines. These include:

- age of owner
- age of driver
- age of vehicle
- renewal/ new business
- business/ private use
- gender
- vehicle has comprehensive or third party property insurance
- Max No Claims Discount on comprehensive insurance
- Claims experience (number of at-fault collisions)
- Claims experience (number of collisions)
- Fleet vehicles
- Dealers (new cars)
- Traffic offences

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<sup>67</sup> Fifth Report, Recommendation 4, p38

The MAA regularly reviews risk rating factors. In 2000, for example, the MAA undertook a review of claims costs based on the age of the driver at fault. As a result of the review, the MAA replaced the pensioner vehicle classification by allowing an extended discount of 25% for owners over 55 with vehicles in the general vehicle categories. All insurers have taken up this allowance and apply it to their over 55 customers based on their own rating criteria.

More recently, in 2004 the MAA convened a working party with the RTA and CTP insurers to examine the feasibility of providing a safe driver discount on CTP premiums. The report of the working group formed part of the *Government Response to the Fifth Report of the Legislative Council Standing Committee on Law and Justice on the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*. The report indicates that it is probable that insurers are already offering the lowest rates to the safest drivers.<sup>68</sup>

- 3.23** The Committee recognises that the MAA is monitoring and reporting on premium levels and has undertaken recent work reviewing risk ratings. The Committee is of the view that, in the case of best premium prices for Sydney Class 1 vehicles, premiums have decreased and that it is likely that insurers are offering the lowest rates to the safest drivers based on risk rating factors.

## Insurer profits

- 3.24** Insurer profits is an issue that the Committee and stakeholders have raised in previous reviews and is another important issue for examination in this current review. The role of the MAA to report on insurer profits and levels of insurer profits are of particular interest to the Committee.

### Role of MAA to report on insurer profit and methodology

- 3.25** The Committee asked the MAA to clarify their role under section 28 of the *Motor Accidents Compensation Act 1999* (the Act) to verify filing information, to which the MAA advised:

Section 28 of the *Motor Accidents Compensation Act 1999* provides that a licensed insurer is required to disclose to the MAA the profit margin on which a premium is based and the actuarial basis for calculating the profit margin. The MAA is required to assess that profit margin and the actuarial basis for its calculation and present a report on that assessment annually to the Committee. This report on *projected profit* is included at pp 100 - 102 of the MAA's 2003/2004 Annual Report.

Section 5(2)(d) of the *Act* provides that insurers, as receivers of public money that is compulsorily levied, should account for their profit margins, and that their records should be available to the MAA to ensure that accountability. The MAA has included a report on *realised profit* at pp 102 – 104 of the 2003/2004 Annual Report.<sup>69</sup>

- 3.26** The MAA advised that it has made every effort to ensure that the profit component of the premium is assessed against objective criteria and has adopted a methodology prepared by

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<sup>68</sup> MAA answers to additional questions on notice, pp8-9

<sup>69</sup> MAA answers to additional questions on notice, p6

Taylor Fry actuaries. This methodology and its challenges were outlined in detail in the Fifth Report by the Committee.<sup>70</sup>

### **Level of insurer profits under the Scheme**

- 3.27** The issue of the level of insurer profits is a main concern for stakeholders, such as the Bar Association and the Law Society. At the hearing the Committee pursued this issue and questioned the MAA on the calculations of insurer profit being estimated at approximately 23.77 % of premiums for the year 2000 as per the figures on page 104 of the MAA Annual Report 2003-2004. Mr Bowen advised that:

The responsibility of the MAA is to consider when an insurer files for a premium whether that premium is reasonable. We have a statutory function to ensure that the premium provides an adequate but not excessive return on capital. The Taylor Fry report that you referred to [paragraph 3.26] is part of our basis of doing that assessment, in that we regard their indication of a 4.5 to 6 per cent profit, expressed as a percentage of premium, as being that which would be adequate. Obviously there is a range which would fall into the category of being "not excessive". Therefore the range that the MAA has allowed in premium filings has been between about 7.5 and 10 per cent of gross premium; it will vary because there is different capitalisation of insurers.

At the time we consider that, it is a construct build-up of the costs of issuing policies and the insurer's acquisition costs associated with writing the business, and the risk premium and that allowance for capital. The single biggest variant is the risk premium. In this scheme two things have happened: firstly, when the insurers filed in 1999, they filed on the basis of setting a risk premium that assumed the scheme reforms would be about 75 to 80 per cent effective. The MAA took the view at that time that that was not unreasonable, because the experience following the 1995 amendments had been that the scheme reforms had achieved about that level of impact; that they have been implemented at about 75 to 80 per cent of their effectiveness and that there was a huge amount of uncertainty giving the extent of the scheme changes and the introduction of new procedural tests and, of course, how well the threshold by way of a whole person impairment test for non-economic loss would work.

Subsequently two things have happened. Firstly, the scheme has performed at least at the level assumed in 1999, meaning that the risk premium in the 1999 filing, in hindsight, was too high. Secondly, something that was not predictable by anybody, the claim frequency has dropped. That is not something that has happened only in New South Wales. I and my counterpart in all the Australian States—and indeed it seems to be something of a western world phenomena at the moment—are grappling with the fact that fewer accidents are occurring. More importantly, the profile of injuries out of those accidents is less severe. So, when you have that type of trend the assumption is that you do not know until some years down the track that it is a trend. We now know that and that is reflected if you look at the table on page 104.<sup>71</sup>

- 3.28** The Committee noted that the profits as a percentage of premiums written in the table on page 104 of the MAA Annual Report 2003-2004 were reducing but raised the issue with the

<sup>70</sup> Fifth Report, pp40-44

<sup>71</sup> Mr David Bowen, Evidence, 15 March 2005, pp8-9

MAA that the figures are still not near the level of 10 % that the MAA allows. The MAA provided more recent figures for 30 June 2004 that demonstrate a profit margin of 8.7%:

As reported on page 94 of the MAA's 2003-2004 Annual Report, the total premium collected during the 2003/2004 financial year was \$1.45 billion. As reported on p 99 of the Annual Report, the most recent composition of the premium available to the MAA, based on the most recent filings, includes a profit margin of 8.7%. Applying the profit margin of 8.7% to the total premium collected gives a profit estimate of \$126 million.<sup>72</sup>

**3.29** Mr Bowen advised the following in relation to insurers profiting from the Scheme:

In terms of profit taking out of the scheme, while there have been releases of capital from CTP they would be in relation to reserves held against old scheme claims. So there has not actually yet been any profit taken out of the new scheme, but we anticipate that insurers would start to release capital from new scheme monies as they pay out their liabilities, probably in the current financial year. Bearing in mind not all insurers operate on the same financial year.<sup>73</sup>

**3.30** Mr Bowen was asked to comment on whether the MAA has rejected an insurers suggested premium because the profit allowance was excessive:

Over the last five years, profit margins have ranged from 7.5% to 10% for individual insurers, with an industry average between 7.7% and 8.7%. The MAA considers this range of profit margins to be reasonable although there have been on-going discussions with CTP insurers who believe that the level of profit derived from the Taylor Fry methodology is not adequate.

The MAA has returned filings because the amount allowed for profit was considered excessive, following a review of all of the insurer's assumptions in the filing. Such a decision varies by insurer and depends on the mix of risk in the insurer's portfolio as to what profit is appropriate.<sup>74</sup>

**3.31** The table on page 102 of the MAA Annual Report 2003-2004 indicates that there has been a steady increase in the weighted average of the projected insurer profit margins since 1999. In response to a question on notice, the MAA explained this increase:

The marginal increase in the projected profit margin in recent years can be attributed to the following factors:

- increased allocation of capital to CTP business in accordance with APRA standards;
- high after-tax return on capital invested;
- reduction in rates of return on capital invested;
- superimposed inflation (the major source of uncertainty in premium rates).<sup>75</sup>

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<sup>72</sup> MAA answers to questions on notice taken at hearing, p2

<sup>73</sup> Mr David Bowen, Evidence, 15 March 2005, p12

<sup>74</sup> MAA answers to additional questions on notice, p5

<sup>75</sup> MAA answers to additional questions on notice, p5

**3.32** The MAA was asked if it would be a fair assessment to say that profits are up for insurance companies partially because claim payments are down, or payments allowed under the new Scheme have reduced. In response Mr Bowen agreed:

Profits are likely to be up under the new scheme because claimed payments are down, partly as a result of the scheme changes and partly, in fact quite significantly, as a result of a change in causality and claiming rates. That is correct.<sup>76</sup>

**3.33** The MAA was asked to comment on whether the Authority monitors profit announcements by insurers in the New South Wales CTP market. For example, insurers such as IAG (NRMA), QBE and Promina (AAMI) announced record profits in 2004 from their global operations and whether return on CTP business comprise a significant feature in these record profits. The MAA replied that insurer profits are not analysed to provide this information:

As a State regulatory authority, the MAA concentrates on NSW CTP business but also takes into account insurers' overall solvency. The Australian Prudential Regulation Authority (APRA) regulates all insurers operating in Australia, concerning itself with the overall solvency of these companies.

The MAA monitors the financial operations of NSW CTP insurers using the APRA returns and audited annual reports submitted to the Australian Securities and Investment Commission (ASIC). The APRA returns only provide limited information on CTP insurance, and do not readily allow for the estimation of profit from CTP insurance and releases of reserves by year (let alone for NSW CTP). It should be noted that five of the seven active NSW insurers also write CTP in other states or territories of Australia. The ASIC returns do not provide an analysis of insurance business by class or state.<sup>77</sup>

**3.34** The Law Society has raised questions in relation to MAA discussions with APRA on reducing capital allocation for CTP thus permitting a reduced profit margin as a percentage of premiums, while still providing a reasonable return on reasonable capital allocation.<sup>78</sup>

**3.35** The MAA advised the following updated on discussions with APRA:

APRA has imposed minimum capital requirements (MCR) on general insurance companies and this varies by type of business ... capital allocation varies between companies and the MAA is bound by the capital allocation approved by APRA.

... If an insurer's MCR is for example \$300 million, it must demonstrate that it has assets (acceptable for solvency purposes, known as the "Capital Base") which exceed its liabilities by at least \$300 million.

APRA has, in the past, indicated that its preference is for a solvency coverage of 1.2. In other words, APRA would prefer an insurer's capital base to be 1.2 times its MCR.

The MAA reviews quarterly APRA returns, which currently show that NSW CTP insurers had solvency coverage exceeding 1.2 times MCR. The details of this analysis are subject to strict confidentiality agreements with APRA.<sup>79</sup>

<sup>76</sup> Mr David Bowen, Evidence, 15 March 2005, p12

<sup>77</sup> MAA answers to stakeholder questions on notice, p8

<sup>78</sup> Submission 5, The Law Society of New South Wales, pp2-3

- 3.36** The Committee recognises the complexities in calculating and analysing insurer profits and notes that, based on figures provided by the MAA, as at June 2004 the insurer profit margins were 8.7%, which is below the level of 10% allowed by the MAA.

#### **Statutory obligation to report to the Committee on insurer profit**

- 3.37** In its Fifth Report the Committee recommended that, in fulfilling its statutory obligation under section 28 of the Act, the MAA present a separate and specific report on insurer profits annually to the Committee.<sup>80</sup> This issue was also examined in the Fourth Report. The government's response to the Fifth Report referred to its response to the Fourth Report, stating that the MAA will include its statutory report on insurer profit in future annual reports, commencing with the 2002-2003 annual report.
- 3.38** As stated in the Fifth Report the Committee is concerned that the information provided on insurer profits in the Annual Report does not satisfy the statutory obligation set out in section 28. It is the Committee's interpretation of section 28 that the MAA is required to make a separate and specific report to the Committee each year assessing the profit margins on which premiums are based by each of the licensed insurers and the actual basis for their calculation.
- 3.39** The Committee is of the view that the insurer profit report to be provided to it should contain as much detail as possible to enable the Committee to form a comprehensive understanding of insurer profits within the Scheme. As stated in Recommendation 7 of the Fifth Report the Committee considers that the report contain not only the MAA's assessment of the profit margins and the actuarial basis for its calculation in relation to each of the licensed insurers, but also the data provided to it by the insurers pursuant to section 28(1) that forms the basis of their assessment.
- 3.40** The Committee remains concerned that the MAA is not satisfying the statutory obligation set out in section 28 and again recommends that the MAA present a separate and specific report on insurer profits annually to the Committee.
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#### **Recommendation 4**

That in order for the MAA to satisfy the statutory obligation set out in section 28 of the Act, the MAA present a separate and specific report on insurer profits annually to the Committee. The report should contain:

- the MAA's assessment of the profit margins and the actuarial basis for its calculation in relation to each of the licensed insurers, and
  - the data provided to it by the insurers pursuant to section 28(1) that forms the basis of their assessment.
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<sup>79</sup> MAA answers to stakeholder questions on notice, pp14-15

<sup>80</sup> Fifth Report, Recommendation 5, p40

## Insurance gap between CTP insurance and public liability insurance

**3.41** The issue of the gap between CTP insurance and public liability insurance for certain accidents involving motor vehicles was examined by the Committee during its Fourth and Fifth Reviews. In its Fifth Report the Committee recommended that the Minister consider the circumstances where accidents arising out of the use or operation of a vehicle fall outside the scope of the Act and review certain issues.<sup>81</sup> The Government response to the recommendation indicated that the MAA was seeking legal advice as to which kinds of motor vehicle accidents do not give rise to a claim against a CTP insurer or the Nominal Defendant and that the recommendation will be considered further in the light of that advice. Several stakeholders have again raised this issue with the Committee in the Sixth Review, including the Australian Lawyers Association and the Bar Association.

**3.42** The MAA has advised that the legal advice has been received:

Yes. The advice has assisted in clarifying the application of the *Motor Accidents Compensation Act 1999* to motor vehicle accidents involving a vehicle where the vehicle is not covered by a CTP policy and there is no right of action against the Nominal Defendant.<sup>82</sup>

**3.43** Further to this, the Committee was interested in the action the MAA has taken on the basis of the legal advice received and in relation to the Committee's previous recommendation:

The MAA previously advised the Committee that, in response to Questions on Notice submitted prior to the fifth review, the MAA has drawn the gap in public liability cover raised by the Bar Association to the attention of the Insurance Council of Australia. The MAA also indicated that it had been advised that the Insurance Council of Australia issued a General Circular to insurers on 28 November 2002 inviting companies to review their motor or personal liability cover under home contents to provide gap insurance.<sup>83</sup>

**3.44** The Committee requests that, in line with last year's recommendation, the Minister provide the Committee with further detail on what actions, if any, the MAA are required to take in light of receiving the legal advice on this issue.

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### Recommendation 5

That the Minister provide the Committee with further detail on what actions, if any, the MAA are required to take in light of receiving the legal advice on the issue of the gap between CTP insurance and public liability insurance for certain accidents involving motor vehicles.

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<sup>81</sup> Fifth Report, pp45-46

<sup>82</sup> MAA answers to stakeholder questions on notice, p3

<sup>83</sup> MAA answers to additional questions on notice, p7

## Green Slip Helpline

**3.45** In the previous two reviews the Committee has been interested in consumer attitudes and awareness of the Green Slip Helpline.

**3.46** The MAA provides a Green Slip Helpline to assist New South Wales motorists access the best Green Slip premium prices. These prices are also available on the MAA website.

During the reporting period, 27 per cent of owners of vehicles that the MAA targets its Green Slip price guide information to, used the MAA's premium information services to access Green Slip prices.<sup>84</sup>

**3.47** In the current review the Committee again raised this issue at the hearing and Mr Bowen advised the following on the level of use and success of the Helpline:

In the year ended June 2004 there were just on 152,000 calls to the green slip help line and 343,000 visits to the web site. That is the green slip web site so that is for the price information. We obviously have other web sites as well. We said that that represents about 27 per cent so it is close to one-third of our target audience, our target audience being those people who are buying a car as individuals—they are not corporations and fleets—and it is targeted to sedans, which is class A 80 per cent, motor cycles and small goods vehicles. So there is certainly scope to increase our penetration into the consumer information in that area. You might have noticed that we are running advertisements for that help line and the web site at the moment. It is coming to the end of a two-week run, and it would appear that they have close to doubled the inquiries that we are getting over that period.

For example, we issue a brochure through the RTA with motor vehicle registrations. No-one can recall it when you quiz them about market research, yet when we had, I think 18 months ago, a period where for a whole host of technical reasons it did not go out for a fortnight the calls and the hits on our web site dropped dramatically. So obviously people are taking it in and using the services but it has been the case with those that advertising has been effective.<sup>85</sup>

**3.48** The Committee considers that the Green Slip Helpline and the MAA website are a necessary and worthwhile service to the public. The Committee recognises the need for the MAA to continue its efforts in ensuring public awareness of the Helpline and website, such as through the recent advertising campaigns.

## Conclusion

**3.49** The Committee notes that the CTP market continues to be a competitive market. The Committee is of the view that the recommendations in this chapter would help to further improve the functions of the MAA in relation to CTP insurance and the insurers. By presenting a separate and specific report on insurer profits to the Committee the Authority will fully satisfy the Authority's obligation set out in section 28 of the Act, and aid the Committee in understanding this complex issue. Also, by providing the Committee with

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<sup>84</sup> MAA Annual Report 2003-2004, p33

<sup>85</sup> Mr David Bowen, Evidence, 15 March 2005, p21

details on actions the MAA may be required to take in light of legal advice on the issue of the gap between CTP insurance and public liability insurance, clarification can be reached on this issue in terms of whether or not there may be a need to identify changes to the Scheme.



## Chapter 4 The claims process

This chapter surveys the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) in relation to claims made under the Scheme. It examines several issues that arose during the course of the Sixth Review including, delays in claims handling, consumer attitudes to claim forms, claims against the Nominal Defendant for unregistered vehicles and establishing loss of income for casual workers. The exercise of the functions of the MAA in relation to the payment of claims is examined in Chapter 5.

### The claims process summary

- 4.1 Following is a brief and simplified version of the claims process under the Scheme as set out in the MAA publication *A guide for people injured in a motor vehicle accident on or after 5 October 1999*.
- 4.2 After a vehicle accident that causes injury, an injured person completes a claim form, either an Accident Notification Form (ANF) or a formal claim form, which is then sent to an insurer within 28 days of the accident. In the case of an ANF, the insurer admits provisional liability and pays up to the first \$500 of treatment. In some instances this can be the end of the claim if the claim total is \$500 or less. A formal claim form must be lodged within six months of the accident. Once the formal claim is lodged, which can be after or instead of an ANF claim, the insurer will then determine liability. Where liability is accepted the insurer pays reasonable and necessary treatment expenses.<sup>86</sup>
- 4.3 Disputes may be directed to the Medical Assessment Service (MAS) to determine whether or not treatment is reasonable and necessary, whether or not the injury has stabilised, the degree of permanent impairment and the impairment of earning capacity. After an injury stabilises, an injured person provides the insurer with all the particulars of the claim and the insurer makes an offer to settle. The Claims Assessment and Resolution Service (CARS) is used to resolve a claim if it is not settled and in certain cases provides a certificate to allow the claim to go to court. If an injured person rejects the CARS assessment then court proceedings can commence. The claim goes to court only if all other options fail.<sup>87</sup>

### Delays in claims handling

- 4.4 An issue of concern to the Committee and raised by stakeholders in their submissions is the delays in the claims handling process. Specific issues that arose during this current review that stakeholders believe may contribute to delays, which are addressed in this chapter, include, the increased number of assessments and review assessments for MAS and CARS and insurers withdrawing liability later in the claims process. As raised in the Committee's Fifth Report, delays in the MAS continue to be of particular concern to stakeholders.<sup>88</sup>

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<sup>86</sup> MAA, *A guide for people injured in a motor vehicle accident on or after 5 October 1999*, p19

<sup>87</sup> MAA, *A guide for people injured in a motor vehicle accident on or after 5 October 1999*, p19

<sup>88</sup> Fifth Report, pp65-68

**4.5** In its submission the Bar Association noted that, despite improvements, the MAS system still takes a minimum of six months to produce a completed assessment. In response the MAA identified several 'external' reasons for the delays and noted that the key issue to address is the failure of parties to meaningfully engage in trying to resolve the dispute before it comes to MAS. The MAA further noted that, as part of the current program of MAS reforms, consideration is being given to requiring the mandatory prior disclosure and exchange of all documents, which form the basis of the dispute.<sup>89</sup>

**4.6** The MAA provided further information about the external factors influencing the assessment period and the proposal to require prior disclosure and exchange of documents:

External factors influencing the MAS assessment period include:

- late lodgement of replies with MAS;
- rescheduling of appointments by clients;
- non-attendance of appointments by clients;
- the need for an average of two appointments per matter;
- client failure to provide sufficient information relating to a matter.

The proposal to require prior disclosure and exchange of documents is currently being considered by a representative group of insurer and legal profession stakeholders.<sup>90</sup>

**4.7** The MAA advised that the time frame for the implementation of this requirement is as follows:

The issue is being progressed as part of the MAAS policy and guideline reforms arising from the stakeholder consultation forums. Whilst implementation of the policy and guideline reforms is dependent upon the enactment of changes to the legislative framework governing MAAS, the MAA anticipates that the reforms can be operational from late 2005.<sup>91</sup>

**4.8** The Committee raised the issue of delays in claims handling at the hearing. Mr David Bowen, General Manager, MAA, advised the Committee that:

[T]here is the finalisation rate for all matters and that shows on average a dramatic improvement in the rate.<sup>92</sup>

**4.9** However, Mr Bowen went on to say that more complex claims are more likely to encounter delays in the claims handling process. In particular, he advised the Committee that:

[M]atters that involve an issue about impairment assessment are being delayed. They are not the small matters; they are getting into where there is perhaps a need for a medical assessment to assess impairment because the NEL [non-economic loss] threshold is coming into play. There was certainly a long period where matters did not go to the claims assessment service because of delays in getting medical assessments and I believe because no-one wanted to be first through the door for a new

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<sup>89</sup> MAA answers to additional questions on notice, p11

<sup>90</sup> MAA answers to additional questions on notice, p11

<sup>91</sup> MAA answers to additional questions on notice, p11

<sup>92</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, p21

assessment area; everyone wanted to see what would happen. We have perhaps reached the point where that has stabilised and is a little more predictable. But if you were to ask me the area of most concern where a delay issue could arise, it is around that area.<sup>93</sup>

**4.10** Mr Bowen further advised that in considering handling times for large and small claims:

I think the really big matters will work to their own timetables, because there are a whole lot of issues about injuries stabilising before they can be finalised, and there are no significant differences in the operation of the scheme, old to new. For all the small matters, it is working very well in getting early finalisation. It is the areas around the threshold that I would identify as being the ones that warrant the most closest monitoring going forward.<sup>94</sup>

**4.11** The Committee is of the view that delays in the claims handling process can contribute to increased stress to claimants and supports actions to streamline and speed up the claims process. The Committee acknowledges that the MAA is progressing the MAAS reforms, as outlined in Chapter 2, and that part of these reforms will focus on improving the MAS dispute process. The Committee notes Mr Bowen's comments that claims that involve the non-economic loss threshold are most likely to be the claims that are delayed and that these claims will continue to be monitored.

## Consumer attitudes to claim forms

**4.12** Stakeholders have raised the issue that forms that are meant to be simple are very complex and to complete them is time consuming. The Committee noted that 60% of notifications are lodged as full claims without an ANF, and in addition more than half of the cases, when the claimant initially lodges an ANF the claimant subsequently lodges a full claim. The MAA was asked to comment on the concern from practitioners and injured parties that complex forms and bureaucratic procedures are in place in what is meant to be a simple system. Mr Bowen replied:

Firstly, in relation to the claim form, it is a balance between all the information that the insurer needs to make an offer, or having a simpler form, but then a process of getting more information over time. The claim form is regularly reviewed. We review it in consultation with the insurers and legal practitioners. It represents something of a compromise. In terms of the bureaucratic nature of the assessment services, we have been working hard to make that simpler and easier to access. The forms are a key part of that. For people who are unrepresented, our claims advisory service provides a great deal of assistance to them.

In fact, the only group of participants at medical assessment for which there is no delay is the group of direct claimants, because they get assistance from the claims advisory service and are getting their matters within procedural time frames. Those claim forms were reviewed as part of the Hannaford process. We would like to review them again. I believe they probably reflect a reasonable balance at the moment;

<sup>93</sup> Mr David Bowen, Evidence, 15 March 2005, pp21-22

<sup>94</sup> Mr David Bowen, Evidence, 15 March 2005, pp21-22

certainly for the main users of the scheme it should not impose any onerous obligations or complexity.<sup>95</sup>

### **Accident notification forms**

**4.13** The Law Society raised the question that considering the amount payable for an ANF is statutorily limited to \$500, does the MAA consider that payments under the ANF scheme equate with full payment to injured persons of the funds for the treatment of their injuries?<sup>96</sup>

**4.14** In response the MAA provided the following clarification on the role of ANFs in the Scheme:

The introduction of ANFs has been one of the successes of the scheme. The ANF is a one-page form (plus a one page medical certificate to be completed by the doctor), which an injured person can obtain on his/her first visit to a general practitioner after the accident. On the medical certificate the doctor specifies the appropriate treatment for the person's injury. This means that insurers know immediately they receive an ANF what treatment should be paid for. All injured people can follow this simple procedure rather than completing a ten-page full claim form (plus a one page medical certificate plus a two page certificate of earnings).

While everyone who is injured can use the ANF to access payment for treatment more quickly, it is particularly useful for people with less serious injuries who can bypass the more complex and time-consuming full claim form completely. Insurers have a statutory obligation limited to \$500. However, in practice insurers make payments in excess of \$500 in cases where this additional treatment is reasonable and necessary, and so further assist claimants by avoiding the need for them to submit a claim form.

Furthermore, insurers are under an obligation under the Claims Handling Guidelines to advise claimants when they are nearing the dollar limit of the ANF and that a full claim form should be lodged within 6 months of the date of the accident for further payments. The MAA has audited insurer compliance with this requirement and found that all insurers were compliant.

Injured people can and do submit full claim forms, they do not limit themselves to ANFs. About 60% of notifications are lodged as full claims without an ANF. In addition, more than half of the cases where the claimant initially lodges an ANF the claimant subsequently lodges a full claim. This has become a constant over the life of the scheme and is consistent across insurers.<sup>97</sup>

**4.15** In the Fifth Report, the Committee recommended that the MAA give consideration to making Accident Notification Forms and any other pertinent documents available to all accident and emergency departments of New South Wales hospitals, particularly in country areas.<sup>98</sup> The Government's response states that the MAA has consulted with NSW Health and the Department has indicated that there is no objection to ANFs being placed in Emergency

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<sup>95</sup> Mr David Bowen, Evidence, 15 March 2005, p22

<sup>96</sup> Submission 5, The Law Society of New South Wales, p 10

<sup>97</sup> MAA answers to stakeholder questions on notice, pp2-3

<sup>98</sup> Fifth Report, Recommendation 11, p51

Departments. The MAA also advised that it has sent packages of ANFs to all Area Health Services and will continue to do so on a regular basis.

- 4.16 During the Sixth Review the MAA has advised the Committee that the Area Health Services are ensuring that the ANF's are placed in all Emergency Departments.<sup>99</sup> The Committee notes that their recommendation from the Fifth Review has been implemented.

### Obligations on claimants to cooperate with insurers under section 85

- 4.17 The Australian Lawyers Alliance raised the following issue with the Committee in their submission:

Section 85 of the *MAC Act* requires claimants to co-operate with insurers in settling claims. The duty extends to providing documents, and even requiring claimants to meet with insurance company claims investigators to make a statement about the accident. It seems from the wording and structure of the provision that section 85 is made in pursuance of a stated object of the Act, 'to encourage the early resolution of compensation claims'.<sup>100</sup>

However, in the experience of Lawyers Alliance members, the use of section 85 by insurers often works to advance the interests of insurers but not necessarily to speed the resolution of claims or reduce costs. Certainly, the fact that the obligations imposed by section 85 apply only to claimants, with no correlative obligation of complete disclosure on defendants or their insurers, seems contrary to equity and fairness.

Very often insurance claims investigators will also meet witnesses and defendants to take statements concerning accidents. If plaintiffs are to prepare their cases properly, they also need to take statements from witnesses. Yet there is no obligation on insurers to share the information they uncover in their investigations, or any obligation on defendants to submit to examination. Such a reciprocal obligation of co-operation would result in substantial cost savings for claimants.<sup>101</sup>

- 4.18 In relation to this issue the MAA advised the Committee:

As part of the MAAS [Motor Accidents Assessment Scheme] stakeholder consultations forums [as outlined in Chapter 2] the MAA has considered generally legislative provisions and guidelines concerning claims information and procedures. The progress and outcomes of the MAAS consultations have been considered by the MAC.<sup>102</sup>

- 4.19 The MAA and the MAC were asked whether an amendment to the provision rendering the obligations reciprocal would further the objects of the *Motor Accidents Compensation Act 1999* (the Act) as expressed at section 5(1)(b), that is, to encourage the early resolution of compensation claims. The MAA replied:

<sup>99</sup> MAA answers to additional questions on notice, p12

<sup>100</sup> *Motor Accidents Compensation Act 1999*, section 5(1)(b)

<sup>101</sup> Submission 2, The Australian Lawyers Alliance, p13

<sup>102</sup> MAA answers to stakeholder questions on notice, p17

The open exchange of information is viewed by the MAA as promoting the principles underpinning alternate dispute resolution upon which the Motor Accidents Assessment Service (MAAS) is based.

The MAA Claims Handling Guidelines place specific obligations upon insurers with respect to collecting information from and providing information to claimants, for example;

Clause 5.3 requires an insurer to provide a claimant with a copy of the police report

Clause 9 outlines requirements for information requests, including plain English, relevant and tailored to the claimant's circumstances and not duplicated, unless previous information was insufficient.

Clause 10.2 requires an insurer to provide the claimant with a copy of a treatment providers report, unless the treatment provider has indicated it would be inappropriate

The MAA audits insurer compliance with the Claims Handling Guidelines.<sup>103</sup>

- 4.20** The Committee notes that, as outlined in Chapter 2 of this report, the MAAS is undergoing reform through changes to guidelines used under the MAAS to encourage better information and document exchange between parties and possible amendments to the Act. The Committee also notes that in Chapter 2 a recommendation is made for the Minister to provide an update on the progress of these reforms.

## Claims against the Nominal Defendant for unregistered vehicles

- 4.21** On page 18 of the MAA Annual Report 2003-2004 the Nominal Defendant allocated 541 claims in the last financial year and returned 221 claims to claimants, claimants' solicitors or insurers, mainly due to the vehicle not being insured or the accident not occurring on a road. The MAA has provided figures to compare to previous years:

The number of Nominal Defendant matters returned as a percentage of the number of matters received since 1999/2000 is shown in the following table:<sup>104</sup>

Year	Percentage Returned
1999/2000	257/1132 = 23%
2000/2001	316/1079 = 29%
2001/2002	212/843 = 25%
2002/2003	339/919 = 37%
2003/2004	221/762 = 29%

- 4.22** As part of its Fifth Review, the Committee examined the issue of claims against the Nominal Defendant for injuries suffered by the negligent driving of unregistered motor vehicles.<sup>105</sup> In that review the Committee raised concerns expressed by the Bar Association and the

<sup>103</sup> MAA answers to stakeholder questions on notice, p17

<sup>104</sup> MAA answers to questions on notice taken at the hearing, pp6-7

<sup>105</sup> Fifth Report, pp14-16

Australian Plaintiff Lawyers Association (APLA) about the effect of the requirement in section 33(5) of the Act that in order to pursue a claim against the Nominal Defendant where injury has been caused by an unregistered vehicle, the vehicle must either be exempt from registration or immediately before the accident, was capable, or would, following repairs of minor defects, be capable, of being registered.

- 4.23** In response to this issue the MAA undertook to consider whether an amendment was required to clarify the intended operation of the section. The Committee was advised on 3 December 2003 that the MAA anticipated that it would be in a position to provide policy advice to the Minister in the ‘near future’. The MAA also undertook to consider several other issues in the context of its examination of this issue, as set out in the Committee’s Fifth Report.<sup>106</sup>
- 4.24** The Committee subsequently recommended that if, as a result of its examination of this issue, the MAA determines that the operation of the legislation does have the effect described by APLA and the Bar Association, the Minister should seek a legislative amendment.<sup>107</sup> The Government’s response to the report, which was provided to the Committee on 16 November 2004, stated that the Committee’s recommendation ‘is under consideration’.
- 4.25** Again, this issue remains of concern to stakeholders. For example, the Australian Lawyers Alliance raised this issue in their submission to the Sixth Review:

Also of concern is the failure to amend section 33(5) of the *Motor Accidents Compensation Act 1999* so that a person who is injured due to the negligent operation of an unregistered and ‘unregisterable’ vehicle will not be protected by the nominal defendant scheme. While there is some indication that amendment of this provision is in train, we feel that the issue warrants the Committee’s further attention.<sup>108</sup>

- 4.26** At the hearing the MAA advised the following in relation to whether legislative amendments are going to take place on this issue:
- We have provided advice on that to the Minister and the question as to whether that will lead to legislative amendments is a matter that would need to be addressed to the Minister. It certainly is the case that there will be incidents of people hit by vehicles who will not be covered by the nominal defendant scheme. Amendments to the Act will fix up some aspects of that, but it will never fix all them.<sup>109</sup>
- 4.27** The Committee requests that, as the MAA has provided advice to the Minister on this issue, the Minister advise the Committee on whether legislative amendments are going to take place and provide details of the proposed amendments.

<sup>106</sup> Fifth Report, p16

<sup>107</sup> Fifth Report, Recommendation 1, p17

<sup>108</sup> Submission 2, The Australian Lawyers Alliance, p4

<sup>109</sup> Mr David Bowen, Evidence, 15 March 2005, p27

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**Recommendation 6**

That following the MAA's advice to the Minister on the issue of amending section 33(5) of the Act, the Minister advise the Committee on whether legislative amendments are going to take place and provide the Committee with details of the proposed amendments in relation to claims against the Nominal Defendant for unregistered and unregistrable vehicles.

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**Establishing loss of income by casual workers**

- 4.28** In the Fifth Report, the Committee examined the experiences of casual workers establishing loss of income for the purpose of making claims. The Committee recommended that the MAA work with the licensed Compulsory Third Party [CTP] insurers to examine the experiences of casual workers in making claims, in order to identify whether they face any difficulties in establishing loss of income for claims purposes.<sup>110</sup> The Government response stated that the MAA has requested the Motor Accidents Insurers Standing Committee to report on the issues raised by the Committee in regard to claims by casual workers. It anticipated that the insurers' report would be available for the Committee's public hearing, which was held in March 2005.
- 4.29** The MAA advised that the Motor Accidents Insurers Standing Committee is primarily a consultative forum and is made up of the CTP managers for each of the licensed insurers. They meet as a group on a regular basis to discuss a range of operational issues concerning the scheme.<sup>111</sup>
- 4.30** During the hearing, the Committee was advised by the MAA that the report was not available at that time. The Committee was later advised by the Minister that the MAA has written to the Motor Accidents Insurers Standing Committee requesting that the report on establishing the loss of income for casual workers be finalised as a matter of priority.<sup>112</sup>
- 4.31** The Committee remains concerned about the potential difficulties faced by casual workers establishing loss of income in relation to claims with CTP insurers and is of the view that the report should be forthcoming.

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**Recommendation 7**

That the Minister provide a copy of the report on establishing loss of income by casual workers to the Committee as soon as it is finalised.

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<sup>110</sup> Fifth Report, Recommendation 12, p57

<sup>111</sup> Mr David Bowen, Evidence, 15 March 2005, pp17-18

<sup>112</sup> Correspondence from the Special Minister of State to Chair, 1 April 2005, p1

## Medical Assessment Service

- 4.32 The Medical Assessment Service (MAS) resolves disputes between injured people and insurers in relation to the medical issues in their CTP claim, primarily through medical assessments.<sup>113</sup> Delays in the MAS dispute process was addressed earlier in this chapter.

### Backlog in review of determinations

- 4.33 During the Fifth Review the MAA identified that there was a backlog in review determinations for the MAS but that it was anticipated that the backlog would be cleared up in the first few months of 2004.<sup>114</sup> The Bar Association noted that this backlog in fact persisted until the very end of 2004. In response to this the MAA advised:

The backlog in review applications and determinations was addressed in the second half of 2004 when additional positions were filled in the Review Team by people with the specific skill set to undertake the assessment of review applications and to exercise the power of the Proper Officer. From September to December 2004, there was a “blitz” on all outstanding review applications ... reducing a backlog of some 300 overdue matters to 86 as at 31 January.<sup>115</sup>

### Use of American Medical Association Guides to the Evaluation of Permanent Impairment

- 4.34 Several stakeholders have queried the use of the American Medical Association’s Guides to the Evaluation of Permanent Impairment (AMA Guides) and point to statements made by the Government when the Act was introduced that the MAA would amend the Guides or introduce its own should there be any injustice resulting from the use of the AMA Guides. Stakeholders have raised several concerns, suggesting that the use of these Guides are leading to injustice in some cases.
- 4.35 The Bar Association and the Australian Lawyers Alliance have specifically expressed concern about the objectivity and consistency of Medical Assessment Service assessments.

The Lawyers Alliance continues to be very concerned with the use of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides) to assess impairment for the purposes of the greater than 10% threshold test for general damages. There is mounting evidence that the threshold is generating unfair outcomes.<sup>116</sup>

<sup>113</sup> MAA Annual Report 2003-2004, p27

<sup>114</sup> Fifth Report, p 66

<sup>115</sup> MAA answers to stakeholder questions on notice, p26

<sup>116</sup> Submission 2, The Australian Lawyers Alliance, p4

**4.36** The Committee asked the MAA if they believed there had been any injustices with the use of the AMA guides:

I think it needs to be looked at in the context of what was intended to be achieved, which was to replace a very imprecise verbal threshold for access to non-economic loss with an objective medical test based on a clinical examination. Certainly there are a lot of cases where people who previously would have got non-economic loss no longer get it. I think there are some areas that warrant further examination. It there seems to me to be quite a significant variation in the level of impairment assessment as between, say, upper limb and lower limb impairment which warrants a look.

Many of the concerns that are expressed relate to cases where a person has had quite bad injuries from which they have made a full recovery. Under these guides if a person has no lasting disability or significant impairment there is no access to non-economic loss. There will be some issues around some injuries, but that I suspect is probably the basis of more of the criticisms of the application of them.

Without wanting to put words into the Minister's mouth, I think the Minister would always be open—and certainly the MAA is—to look at alternative means to create an access regime for non-economic loss that meets the criteria which is objectively medically based. We are certainly not the only compensation scheme grappling with this issue. These medical guidelines are used all around Australia in both workers compensation and CTP jurisdictions, and the heads of CTP have raised with the heads of the workers compensation authorities the potential for us to collectively work with the medical profession to try to get some guidelines to impairment and disability. I would not want to underestimate the extent of that task. It is a five to eight year project to create something like that.<sup>117</sup>

**4.37** Mr Richard Grellman, Chair of the MAC, was asked if this issue had been discussed at the MAC:

Yes. I think there is an open debate about whether or not the whole body impairment threshold has the right percentage and whether it is the right gateway. For so long as the scheme exists, that will be a live and open debate.<sup>118</sup>

**4.38** During the hearing the Committee asked the MAA if it has undertaken or does it intend to undertake a comprehensive review of the use of the AMA guides:

We have just about finished a review of the guides, which identified some particular areas of application where there were potential differing interpretations. The guides that are used are a combination of the *American Medical Association Guides to the Evaluation of Permanent Impairment*, over which sits a Motor Accidents Authority guide to interpreting that and reference to which sections are to be used when alternative diagnostic tools are available. This was really around tightening up. Obviously, we cannot rewrite the AMA guides; this is really tidying up our interpretive tool that sits on the top.<sup>119</sup>

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<sup>117</sup> Mr David Bowen, Evidence, 15 March 2005, pp29-30

<sup>118</sup> Mr Richard Grellman, Chair of the Board of Directors and Chair of the MAC, Evidence, 15 March 2005, p30

<sup>119</sup> Mr David Bowen, Evidence, 15 March 2005, p29

- 4.39** The Committee has been advised by the Minister that the draft MAA Guidelines for the Assessment of Permanent Impairment have been circulated for comment to all MAS impairment assessors, medical colleges, the Australian Medical Association, the Law Society and insurers.<sup>120</sup>
- 4.40** The Minister also advised that it is anticipated that these final draft guidelines will be available within the next few months and that the MAA will provide the Committee with a copy of the guidelines once they have been finalised.<sup>121</sup>

### **Medical treatment disputes**

- 4.41** The Committee asked the MAA at the hearing to comment on medical treatment disputes, to which the MAA advised:

The area of dispute over treatment is decreasing and I believe that is primarily because they are enough matters through there around some key treatment issues that decisions are starting to act as precedent value. They are not precedents but they provide information to users about what is reasonable and necessary on a range of usual therapies. In relation to impairment assessment, there will be differences between assessors about the correct application of guides to a particular injury. We have been working extremely hard with the assessors as a collegiate body to identify those areas in which there may be differences in interpretation or application of the guides and to get them to collectively come to a decision.<sup>122</sup>

- 4.42** The MAA advised the Committee that over the past 12 months there have been regular meetings of small panels of assessors who have a particular area of expertise in which we have identified potential inconsistency issues:

We ask them to resolve it. The whole philosophy behind this is that those types of medical issues should be determined by the experienced medical practitioners. We abide by that methodology and from the assessors' level of participation and acceptance of that process and the fact that they are deriving outcomes from it, it seems to be working quite well. However, I would not want to overstep the consistency concern. It has been suggested in some submissions to the Committee that that is a big, significant problem. The matters cited represent a very limited number of a much larger number of assessments that have gone through without there being any problems at all or any significant differences.

There is, and will continue to be, differences between what medical assessors determine as an appropriate assessment of impairment and what medico-legal experts reports provide to insurers and lawyers to be determined. Mostly that is caused by the lack of understanding by the medico-legal experts of the impairment guidelines. We recognise that and have quite a large education program to get out information about the impairment guidelines and their correct use.<sup>123</sup>

<sup>120</sup> Correspondence from the Special Minister of State to Chair, 1 April 2005, p2

<sup>121</sup> Correspondence from the Special Minister of State to Chair, 1 April 2005, p2

<sup>122</sup> Mr David Bowen, Evidence, 15 March 2005, p22

<sup>123</sup> Mr David Bowen, Evidence, 15 March 2005, p22

***Decrease in medical treatment disputes***

- 4.43** The Law Society has noted that the MAA Annual Report 2003-2004 states there has been a decrease in the number of treatment dispute outcomes over the previous year and that this was due to a decrease in the number of applications for resolution of medical treatment disputes, a decrease in the number of disputes per application and the requirement for parties to provide evidence that the treatment was in fact in dispute.<sup>124</sup>
- 4.44** The Committee asked the MAA to provide advice on why the number of medical treatment disputes was decreasing and whether such decreases were occurring as a proportion of the number of claims made, to which the MAA responded:

The decrease in the number of medical treatment disputes is largely due to a number of MAA initiatives to educate and assist parties in identifying and using appropriate treatment options and resolving treatment matters in dispute. The MAA has issued a number of guidelines and provides training in areas such as dealing with whiplash injuries (the largest injury group), use of attendant care for spinal cord injuries and managing anxiety resulting from motor accidents. Regular training sessions are held for physiotherapists, the largest treatment provider group. The TRAC Guidelines requires insurers who decline treatment requests to provide reasons for denial and advise parties of available dispute resolution process including internal processes. The Claims Handling Guidelines require treatment provider reports to be given to the injured person. MAAS requires evidence that treatment has been declined by the insurer before matter is allocated to assessment. The cumulative effect of these initiatives has had a positive impact in resolving treatment matters before they become disputes and come to MAAS.

The number of medical disputes increased each year from the start of the scheme and reached 1,312 in 2002-03. The number of disputes dropped by 39% in 2003-04 to 805. The proportion of claims with MAS treatment disputes has decreased over time although it must be noted that more recent years are less developed.<sup>125</sup>

<b><i>Year claim reported</i></b>	<b>1999-00</b>	<b>2000-01</b>	<b>01-02</b>	<b>02-03</b>	<b>03-04</b>	<b>Total</b>
% of claims with a MAS treatment dispute	9.7%	8.6%	6.6%	3.1%	1.0%	5.3%

**Official communications with MAS assessors and the assessment process**

- 4.45** The MAA maintain a right to confidentiality or privilege over official communications with MAS assessors. The Australian Lawyers Alliance requested the Committee to seek advice from the MAA on its claimed right to confidentiality or privilege and how this sits within the objects of the Act and the provisions of clause 9.7 of the *Medical Assessment Guidelines*, which

<sup>124</sup> MAA Annual Report 2003-2004, p28

<sup>125</sup> MAA answers to stakeholder questions on notice, p27

states that any assessor is not to take into account any documents or information that has not been shared between the parties.<sup>126</sup> The MAA replied:

The MAA maintains such communications are subject to public interest immunity. The issue is presently before the New South Wales Court of Appeal for hearing on 11 July 2005 in *Dr Ryan v Watkins*, matter No 40955 of 2004.

Under cl10.11-cl10.13.5 of the Medical Assessment Guidelines, the MAAS is able to provide guidance and support to its assessors in the finalisation of reports and certificates. Such communication between the MAAS and its assessors does not constitute the introduction of new information but interpretation and guidance on Guidelines issued by the MAA or prescribed by the Act and which are already in the public domain.<sup>127</sup>

**4.46** The Bar Association also raised concerns with the process of MAS ‘checking’ and amending of assessor’s reports:

Of equally significant concern are the internal operations of MAS in the assessment process. Clause 10 of the MAA Medical Guidelines provide that an assessor’s report must be submitted to MAS in draft form. MAS may request that a doctor amend a report in order to correct errors in the report. The types of errors which MAS are permitted to correct include: an obvious clerical or typographical error; an error arising from an accidental slip; an error arising from any omission; or any defect of form.

The MAA has previously provided assurances to Scheme stakeholders that the report checking process internal to the MAA (which had been causing delays of upwards of six months) was fair and neutral and impartial. Moreover, stakeholders were assured that the MAA in checking reports were not seeking to influence the substance of a doctor’s opinion. The MAA do not routinely provide such correspondence as passes between MAS and the assessors in the report checking process to parties who may be affected by such correspondence.<sup>128</sup>

**4.47** In response the MAA advised the Committee that:

[T]he MAA is committed to consistency in assessor decision-making and has implemented a number of “checks and balances” to promote assessor consistency, including assessor education and training, workshops and a rigorous performance monitoring framework. An essential part of assessor performance monitoring and evaluation is the “checking” of assessor reports.<sup>129</sup>

**4.48** The MAA advised the Committee that in December 2004, Mr B Zipser, Barrister, was requested to conduct an independent review of a sample of files relating to medical assessments which involved communication between MAS staff and assessors to ascertain

<sup>126</sup> Submission 2, Australian Lawyers Alliance, p8

<sup>127</sup> MAA answers to stakeholder questions on notice, pp28-29

<sup>128</sup> Submission 3, The New South Wales Bar Association, p10

<sup>129</sup> MAA answers to stakeholder questions on notice, p28

whether or not the communication between MAS staff and assessors raised any concerns regarding procedural fairness.<sup>130</sup>

**4.49** The MAA advised the Committee of the outcomes of this report:

Mr Zipser provided his report at the end of February 2005 and reported that for most(28) of the 34 files reviewed, “ the communications between MAS officers and medical assessors involved requests by MAS officers to medical assessors to correct errors or clarify matters requiring clarification in draft reports and certificates. On this basis, the communications with the assessors were appropriate and raised no grounds for concern.”

In the other 6 matters identified by Mr Zipser, 5 matters related to assessment reports undertaken by new assessors or assessors requiring specific guidance on issues noted in their performance review. These reports would have been targeted for review by MAS as part of its quality assurance regime and related to the correct application of guidelines and other published material. MAS’ quality assurance processes are a key strategy to ensuring quality and consistent decisions from assessors.

The other matter was an enquiry to an assessor due to an incomplete set of injuries being given to the assessor. No amendment was requested.<sup>131</sup>

**4.50** The Committee asked the MAA to provide further information in relation to Mr Zipser’s report, to which the MAA advised:

Data from the MAAS Case Management System (SIRIUS) shows that since the beginning of the motor accidents scheme, 25% of assessment reports have involved a request for amendment. Amendments may include correcting an administrative error (eg, an incorrect factual detail such as a date or address) or addressing an incorrect application of the guides or guidelines.

The most recent figures for January 2005 indicate that 82% of amendment requests involved administrative errors and 18% involved methodology and/ or reasons for decisions.

Mr Zipser was given unrestricted access to all MAS files that contained documented communication between MAS staff and an assessor. After reviewing 34 files, Mr Zipser advised the MAA that he was satisfied that this number was sufficient for the purpose of the review.<sup>132</sup>

**4.51** The Committee is concerned that some medical assessment reports are being amended by MAS staff and recommends that, in relation to the most recent figure of 18% of amendments to medical assessments involving changes to methodology and reasons for decisions, the MAA provide details to the Committee on what the amendments were to these assessments.

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<sup>130</sup> MAA answers to stakeholder questions on notice, pp28-29

<sup>131</sup> MAA answers to stakeholder questions on notice, pp28-29

<sup>132</sup> MAA answers to questions on notice taken at the hearing, p5

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## Recommendation 8

That, in relation to the most recent figure of 18% of amendments to medical assessments involving changes to methodology and reasons for decisions, the MAA provide details to the Committee on what the amendments were to these assessments.

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## Claims Assessment Resolution Service

- 4.52** The Claims Assessment Resolution Service (CARS) is an independent claims assessment and dispute resolution service. All disputed claims must go to CARS before they can go to court. CARS will assess the claim or find the matter not suitable for assessment, in which case an exemption certificate is issued, which allows the matter to proceed to a court hearing.<sup>133</sup>
- 4.53** A claim may be referred for assessment by CARS by either the claimant or the insurer. Generally, claims can only be referred after two months have elapsed since the insurer made an offer or settlement to the claimant.<sup>134</sup> Claims may, however, be referred for assessment at any time if the insurer has wholly denied the claims or the claim is in respect of the death of a person or it is a claim in respect of an injury which has not stabilised within three years of the accident.

### Late claim disputes

- 4.54** In their submission to the Committee, the Bar Association raised several questions in relation to the way in which insurers respond to the late lodgement of claims. In particular, the Association was interested in those claims assessed as ‘full and satisfactory’ late claim disputes, and the percentage of cases in which the explanation for late lodgement of the claim has been rejected by an insurer yet accepted by an assessor. In response the MAA advised:

In the period from the commencement of the scheme to 30 June 2004, CARS Assessors determined 200 matters concerning late claims. The insurer’s rejection of a late claim was upheld in 26.0% of assessed matters. In the period 1 July 2004 to 1 March 2005, CARS Assessors have determined 30 matters concerning late claims. CARS Assessors upheld an insurer’s rejection of a late claim in 56.7% of those matters.

CARS provides a forum for such applications to be determined. How parties access this forum is a matter for the parties. The CARS Assessor makes a decision on the application based on the information before them.<sup>135</sup>

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<sup>133</sup> Fifth Report, p59

<sup>134</sup> *Motor Accidents Compensation Act 1999*, section 91

<sup>135</sup> MAA answers to stakeholder questions on notice, p24

### Contributory negligence

**4.55** The Bar Association noted that, during past reviews the MAA has indicated a willingness to undertake a survey of claims involving contributory negligence, but that the limited number of matters in previous years that had been subject to CARS/court determination was insufficient to enable a suitable survey.<sup>136</sup> During the Fifth Review, the MAA indicated that given the number of matters now progressing through CARS it proposed to include the survey in its 2004 activities.<sup>137</sup> The MAA advised this survey has been completed and the following results were found:

An analysis of all matters finalised by CARS has been undertaken. As at 30 June 2004, 165 general assessment applications were finalised by CARS (7% of all finalised general assessment applications) in which the insurer alleged contributory negligence.

Of the 165 applications received in which contributory negligence was alleged;

- 109 settled without going on to assessment
- 5 matters were withdrawn
- 8 matters were dismissed
- 23 matters were assessed as unsuitable for assessment at CARS

Of the remaining 20 matters which proceeded to a determination by a CARS assessor

- 12 matters were assessed as not containing any element of contributory negligence
- 8 matters were assessed as containing an element of contributory negligence.<sup>138</sup>

**4.56** The MAA advised that from the very small number of relevant matters proceeding to assessment by a CARS assessor it is not possible to draw any conclusions in relation to whether insurers are making unwarranted allegations of contributory negligence in the belief that such allegations will preserve their right to seek a re-hearing of the CARS assessor's decision.<sup>139</sup>

### Increased number of assessments and review applications for MAS and CARS

**4.57** Page 29 of the MAA Annual Report 2003-2004 states that "the main feature of this reporting period is the significant increase in the number of applications for review received", which has increased by 112% over the previous year. In 2002-2003 there was 398 compared with 851 in 2003-2004. The report also states that the increase is broadly in line with the increased number of assessments conducted. The MAA was asked to comment on the number of applications for review as a percentage of assessments in comparison to previous years:

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<sup>136</sup> NSW Legislative Council, Standing Committee on Law and Justice, Report 19, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Third report*, February 2002, pp60-61, Fourth Report, p6 and Fifth Report, p61

<sup>137</sup> Fifth Report, p61

<sup>138</sup> MAA answers to stakeholder questions on notice, p25

<sup>139</sup> MAA answers to stakeholder questions on notice, p25

The number of applications for review as a percentage of MAS determinations during 2003/2004 is similar to previous years. As outlined on p 118 of the MAA's 2003/2004 Annual Report, review applications were received in 10.6% of cases in 2001/2002; 10.5% of cases in 2002/2003 and 11.6% of cases in 2003/2004.<sup>140</sup>

- 4.58** The Law Society has noted that the Annual Report indicates there has been an increase in the rates with which applicants are applying for a number of types of assessment under the Scheme and has quoted several passages of the annual report in this regard. In particular:

... in this reporting year CARS received 4,801 applications, which is a 14 per cent increase compared to the previous reporting period.<sup>141</sup>

... a large item of expenditure for 2003-04 was \$5.253 million incurred in medical assessor fees and a further \$1.035 million was incurred in CARS assessor fees, reflecting the increased number of matters assessed and finalised in 2003-04.<sup>142</sup>

- 4.59** The MAA Annual Report 2003-2004 also states:

The number of CARS applications continued to increase in the reporting period after a dramatic increase the previous year ... the number of CARS matters assessed has increased substantially from year to year. In the reporting period, a total of 2,449 matters were assessed, almost 80% more than the previous year. In particular, the number of 2A matters (general assessments) assessed increased from 162 to 662, an increase of more than 300%.<sup>143</sup>

- 4.60** As noted earlier in this chapter, stakeholders, such as the Law Society, suggest that the increase in CARS applications and applications for further medical assessment may result in increased processing delays.<sup>144</sup> The MAA advised that this is not the case:

The increase in CARS applications and applications for further medical assessment have not resulted in increased processing delays in MAAS. There have been significant improvements in processing times within the period and compared with previous years. The registration, acknowledgement and replies for both MAS and CARS applications have consistently achieved 97-99% compliance with the statutory timeframes.

Over 2003/4, there was a 22% reduction in the average time taken to finalise MAS matters, which include further assessment matters (from 184 days to 144 days). This trend has continued through 2004/5 to date.

In the same period, 84% of CARS matters were allocated to assessors within the statutory timeframe. The significant trend in CARS which impacts on finalisation has been the number of matters deferred by the parties- increasing from 38% at June 2004

<sup>140</sup> MAA answers to additional questions on notice, p10

<sup>141</sup> MAA Annual Report 2003-2004, p31 as cited in Submission 5, The Law Society of New South Wales, p8

<sup>142</sup> MAA Annual Report 2003-2004, p46 as cited in Submission 5, The Law Society of New South Wales, p8

<sup>143</sup> MAA Annual Report 2003-2004, pp119-120

<sup>144</sup> Submission 5, The Law Society of New South Wales, p8

to 64% at December 2004. As at June 2004 there was a significant backlog in dealing with Applications for Review of a medical assessment. This backlog was eliminated by December 2004 following an intensive “blitz”.

2003/4 saw the implementation of the reforms arising from the MAAS Continuous Improvement Project including the restructuring and resourcing of MAAS to meet projected workloads, the introduction of integrated case management teams working flexibly across all types of applications and improved work flows and procedures. A rigorous system of management and executive performance reporting and monitoring ensures workload trends are identified and addressed. The impact of these reforms have continued into 2004/5.<sup>145</sup>

- 4.61** The Committee notes that there has been an increase in the number of assessments and review applications for both MAS and CARS and acknowledges that this has not necessarily resulted in increased processing delays.

### **Denial and withdrawal of liability for claims by insurers**

- 4.62** Section 81 (3) of the Act provides that if an insurer fails to admit or deny liability for a claim within three months of being given notice of the claim, the insurer is taken to have denied the claim. Once the claim is deemed to have been denied, the claimant can apply for the matter to be exempted from the CARS.<sup>146</sup>

- 4.63** In its last report the Committee recommended that the MAA examine whether or not the Principal Claims Assessor has permitted any insurers an extension of time to make a decision on liability contrary to section 81 of the Act.<sup>147</sup> The Government’s response sets out and explains the relevant legislative provisions, but does not indicate whether the MAA has actually examined the issue to determine whether there have in fact been any instances where the Principal Claims Assessor has permitted any insurers an extension of time.

- 4.64** During the Sixth Review the MAA was asked to comment on whether an extension of time has been permitted, to which the MAA advised:

The Principal Claims Assessor has no power to extend time with respect to an insurer’s admission or denial of liability pursuant to s 81 of the *Motor Accidents Compensation Act 1999*.<sup>148</sup>

- 4.65** As noted earlier in this chapter, stakeholders, such as the Australian Lawyers Alliance and the Bar Association, have drawn the Committee’s attention to the effect of insurers withdrawing admission of liability on delays in processing claims. They note that while the Act requires insurers to indicate whether they will admit liability within three months of notification of a claim, insurers can withdraw that admission at any subsequent stage. They also advise that

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<sup>145</sup> MAA answers to stakeholder questions on notice, p20

<sup>146</sup> Pursuant to sections 91 and 92 of the *Motor Accidents Authority Act 1999*

<sup>147</sup> Fifth Report, recommendation 13, p58

<sup>148</sup> MAA answers to additional questions on notice, p12

they are aware of a number of cases where insurers have withdrawn admissions of liability some years into the processing of a claim, resulting in considerable delay.<sup>149</sup>

**4.66** The MAA advised that in relation to withdrawal of liability by insurers:

There have been thirteen cases referred to the MAA's Compliance Branch where insurers have withdrawn admissions of liability some time into the processing of a claim. The changes in liability have generally occurred as a result of the claim being reviewed by the insurer or their legal representative in preparation for a CARS assessment.

In the cases investigated by the MAA's Compliance Branch there was no indication that admissions of liability were withdrawn for the specific purpose of bypassing the CARS assessment procedure.

All thirteen cases referred, were investigated by the Compliance Branch. Two cases were found in favour of the insurer. In the remaining eleven cases the MAA issued Breach Notices (formal warnings) to two insurers for non-compliance with s80 of the Act. These insurers have subsequently implemented new policies/processes to ensure the accuracy of their determinations of liability.<sup>150</sup>

**4.67** The Committee notes that the Principal Claims Assessor has no power to extend time with respect to an insurer's admission or denial of liability under the Act. The Committee acknowledges that the MAA's Compliance Branch has and will continue to investigate where insurers have withdrawn admissions of liability some time into the processing of a claim.

## Complaints about claims handling

**4.68** The MAA Annual Report 2003-2004 states that the compliance branch received 84 complaints relating to the way CTP insurers managed claims, relating mainly to non-compliance with the claims handling guidelines.<sup>151</sup> This is a slight increase on the 80 complaints received in 2002-2003.<sup>152</sup>

**4.69** The MAA provided the following advice on the kind of outcomes achieved through their complaints process as outlined in the flow chart at Appendix 2:

Our approach is to send it initially to the insurer for an internal review, and if that does not succeed in solving the matter it is then investigated within the MAA's compliance branch. We obviously stream those investigations, depending upon the level of seriousness and the level of potential breach. The document sets out the enforcement options that are available to the MAA, the circumstances in which they would be used, and the responses from the insurers that could mitigate or lessen the enforcement penalty. There were 11 matters in which we issued breach notices to insurers this year. They related to what we regard as quite serious matters and late changes in liability decisions. We view those as potentially prejudicial to the claimant.

<sup>149</sup> Submission 2, The Australian Lawyers Association, p14

<sup>150</sup> MAA answers to stakeholder questions on notice, pp25-26

<sup>151</sup> MAA Annual Report 2003-2004, p15

<sup>152</sup> MAA Annual Report 2002-2003, p16

Had it not been for the two insurers involved, making significant changes to their procedures so it would not happen again, the penalty would have been far more severe than a breach notice. It is a fairly escalating enforcement procedure.<sup>153</sup>

**4.70** In particular, the Committee was interested in the additional six complaints relating to the cost of CTP premiums. The MAA advised the Committee that:

Four of the six complaints involved queries as to whether the correct premium had been charged. Three of these complaints were resolved in favour of the complainant and one was resolved in favour of the insurer.

Of the remaining two complaints, one involved a complaint by an insurer's agent regarding high risk customers and the other involved the cancellation of a policy. Both of these complaints were resolved in favour of the complainants.<sup>154</sup>

## **Allegations of fraud**

**4.71** The Bar Association has raised the following issue with the Committee:

An allegation of fraud on the part of a CTP insurer provides a mandatory ground for exemption of a claim. The Bar Association is aware of a number of recent cases in which a claim has proceeded for several years to the point of a CARS assessment only for the CTP insurer to then allege fraud. This inevitably causes significant further delays in the matter which must then be exempted and sent off to court.<sup>155</sup>

**4.72** Similarly, the Australian Lawyers Alliance noted that 'fraud allegations by insurers also cause significant delay in the processing of claims and can also result in lengthy CARS negotiations being abandoned, as fraud provides a mandatory ground for CARS exemption.'<sup>156</sup>

**4.73** The MAA provided the following information in relation to allegations of fraud:

From 1 July 2003 to 28 February 2005 there has been one referral by a CARS assessor to the MAA's Compliance Branch of a late allegation of fraud by an insurer under section 117 of the Act.

The investigation of the above matter referred was inconclusive on the issue of whether the claimant had knowingly made a false or misleading statement in a material particular. The Principal Compliance Officer (PCO) considered that the insurer's actions were not unreasonable under the circumstances. The insurer had attempted to have this issue resolved through CARS by seeking an adjournment of the CARS assessment to permit a further assessment at MAS of a doctor's report based on new video surveillance. However, an adjournment of the CARS assessment was declined. The insurer consequently sought an exemption from CARS on the grounds that the doctor's report based on new video surveillance demonstrated that the claimant had

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<sup>153</sup> Mr David Bowen, Evidence, 15 March 2005, p16

<sup>154</sup> MAA answers to questions on notice taken at the hearing, p3

<sup>155</sup> Submission 3, The New South Wales Bar Association, p17

<sup>156</sup> Submission 2, The Australian Lawyers Alliance, p14

knowingly made a false or misleading statement. An exemption from CARS was granted and the matter settled before going to court.<sup>157</sup>

- 4.74 The MAA also advised that the Principal Claims Assessor (PCA) has requested CARS assessors to refer instances of late allegations of fraud by insurers to the PCA for monitoring. The PCA may refer such matters to Compliance Branch for investigation.<sup>158</sup>

## Covert surveillance

- 4.75 The Bar Association has expressed concern about the absence of any regulations or rules governing the conduct of New South Wales CTP insurers in surveillance activities. Last year the MAA expressed the view to the Committee that surveillance was overused by New South Wales CTP insurers.<sup>159</sup> The MAA updated the Committee on the following developments for guidelines regarding the conduct of covert surveillance by CTP insurers:

The MAA's Claims Handling Guidelines state under general principles that surveillance investigators should operate in a professional and ethical manner and should comply with applicable privacy legislation. There were no complaints received by the MAA in 2003-2004 relating to surveillance.

The Transport Accident Commission (TAC), which administers Victoria's CTP transport accident compensation scheme, has produced guidelines on the conduct of surveillance. The MAA distributed the TAC guidelines to all Claims Managers for their consideration at a Claims Managers' meeting on 17 February 2005. At this meeting the MAA's Principal Compliance Officer recommended that insurers adopt the following principles used by TAC in relation to surveillance:

- Surveillance should be "passive" observation in places regarded as "public";
- Surveillance should not involve any inducement, entrapment or trespass;
- Surveillance should only be used when:
- other less intrusive methods of investigation are considered ineffective or inadequate or have been tried and found inconclusive;
- the claim is of such a nature to warrant the use of covert surveillance and where there is adequate evidence to suggest that the claimant may be:
- misrepresenting his/her disability,
- claiming excessive disabilities,
- malingering, or
- involved in the commission of a fraud;
- the benefits arising from obtaining relevant information by covert surveillance are considered to outweigh the intrusion on the privacy.

All requests for surveillance and all surveillance reports should be vetted by quality assurance officers to ensure that there is no breach of any law or guideline or ethical impropriety.<sup>160</sup>

<sup>157</sup> MAA answers to stakeholder questions on notice, p21

<sup>158</sup> MAA answers to stakeholder questions on notice, p21

<sup>159</sup> Fifth Report, pp70-71

<sup>160</sup> MAA answers to stakeholder questions on notice, pp18-19

- 4.76** The Committee acknowledges that, while there were no complaints received by the MAA in 2003-2004 relating to surveillance and that the MAA's Principal Compliance Officer recommended that insurers adopt particular principles used by Transport Accident Commission in relation to surveillance, developing a code of conduct for covert surveillance will give surveillance investigators under the New South Wales Scheme a clear guide for their conduct and may off set any future complaints on this issue.

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### **Recommendation 9**

That, in the interests of both claimants and defendants, the MAA develop and implement a code of conduct for surveillance under the New South Wales Scheme, and that the code include when surveillance is appropriate and the manner in which surveillance should be conducted.

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### **Conclusion**

- 4.77** The Committee notes that delays in the claims handling process is a key issue for stakeholders and users of the Scheme. The Committee is of the view that the recommendations in this chapter would help to further improve the functions of the MAA in relation to claims made under the Scheme by following through on the report for loss of income for casual workers and by moving forward on legislative amendments in relation to claims against the Nominal Defendant for unregistered and unregistrable vehicles.

## Chapter 5 Payment of claims

This chapter explores the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) in relation to the payment of claims made under the Scheme. It examines several issues that arose during the course of the Sixth Review, including compensation for non-economic loss, payments for catastrophically injured and a proposal to allow interim damages. The exercise of the functions on the MAA and the MAC in relation to making claims and the claims process is examined in Chapter 4.

### Claims payment data

- 5.1 At the request of the Committee the MAA provided the following breakdown of claim payments:

#### Breakdown of claim payments<sup>161</sup>

	Old Scheme	New Scheme (as at 30/6/04)	Average / Claim (Old scheme)	Average / full claim (New scheme)
<b>Total</b>	\$1,371.0m	\$861.0m	\$19,600	\$17,400
<b>Non-economic Loss</b>	\$412.5m	\$114.8m	\$5,900	\$2,400
<b>Economic Loss</b>	\$331.8m	\$253.4m	\$4,800	\$5,200
<b>Treatment and other care</b>	\$326.5m	\$361.1m	\$4,700	\$7,300
<b>Investigation Costs</b>	\$86.7m	\$43.2m	\$1,300	\$900
<b>Legal Costs</b>	\$213.6m	\$88.5m	\$3,100	\$1,800

- 5.2 As noted in Chapter 3 of this report, Mr David Bowen, General Manager, MAA, advised the Committee that claim payments are down as a result of the scheme changes and partly as a result of a change in casualty and claiming rates.<sup>162</sup>

### Compensation for non-economic loss

- 5.3 The 1999 reforms limited access to compensation for non-economic loss (NEL) to claimants with Whole Person Impairment (WPI) of greater than 10%. As highlighted in table above, claim payments for NEL have significantly reduced for the new Scheme in comparison to the old Scheme.
- 5.4 The MAA provided the Committee with the following information regarding claims for non-economic loss:

Under the Act [*Motor Accidents Compensation Act 1999*], claimants are entitled to modified common law compensation, however the threshold test for access to

<sup>161</sup> MAA answers to questions on notice taken at the hearing, p2

<sup>162</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, p12

damages for non economic loss was altered. The test is whether the person is assessed as having more than 10% permanent, whole body impairment as defined by the MAA's guidelines. The cap for non economic loss remained.

The threshold was changed from a verbal threshold to an objective medical evidence based threshold. This was necessary because of the deterioration of the verbal threshold.

The verbal threshold provided for in section 79 of the *Motor Accidents Act 1988* eroded to the extent that soft tissue strains were receiving non-economic loss awards. In an effort to stem the erosion, in 1995 the threshold was amended (see section 79A) to provide that non-economic loss awards could only be made where that loss of the injure person was at least fifteen percent of a most extreme case. As well an objects clause (at section 2A(1)(2)(i)), was inserted into the legislation, expressly stating that an aim of the legislation was to limit benefits for non-economic loss in the case of relatively minor injuries. Despite the amendments, the threshold continued to deteriorate. The impact of the deterioration in the verbal threshold was heightened by the fact that whiplash injury represented almost 40% of claims, and the flow on cost was the major driver of the increasing and unaffordable CTP premiums.<sup>163</sup>

- 5.5** In their submissions to the Committee the Australian Lawyers Alliance and the Bar Association have reiterated concerns expressed in previous Committee Reviews that the 10% WPI threshold for access to non-economic loss is too harsh and that many people with serious injuries will fail to meet the 10% test. For example, the Bar Association stated:

Last year the MAA stated that the intention of the new Scheme was to limit access to non-economic loss (NEL) to claimants with Whole Person Impairment (WPI) greater than 10%. In particular, it was intended to deny NEL to those with soft tissue 'whiplash' injuries to the neck and back. The Special Minister of State has previously stated that the legislative intention was to allow recovery of NEL to the 10% of claimants who were most seriously injured.

The figure of 10% WPI is an arbitrary and at times capricious line drawn to separate those deemed worthy of compensation for the pain and suffering caused by their injuries from those deemed unworthy. The purported intention is to reflect what the Scheme can afford...

The Bar Association is aware of an increasing number of cases of claimants who ought to be considered as 'seriously injured' who are receiving no compensation for NEL due to the operation of the AMA IV Guidelines.<sup>164</sup>

- 5.6** The MAA was asked to provide detail on numbers and payments relating to non-economic loss:

Excluding interstate claims and ANFs [Accident Notification Forms], there are 13,390 year 1 full claims of which 11,466 are finalised (86%). Of the 11,466 finalised, 813 (6.1%) have NEL payments totalling \$64.2 million, giving an average of \$78,910 per finalised claim.

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<sup>163</sup> MAA answers to stakeholder questions on notice, p33

<sup>164</sup> Submission 3, The New South Wales Bar Association, p6

A further \$55.1 million has been paid or incurred on 515 of the 1,924 open claims, representing an average payment of \$107,072.

In total, \$119.3 million has been paid or incurred on 1,328 year 1 claims (finalised and open). Of full claims 9.9% have either a payment for NEL or are reserved for NEL. (Number = 8.3% of full claims + ANFs, excluding interstate claims).<sup>165</sup>

- 5.7** During the hearing the Committee asked the MAA if it was undertaking any work in relation to the 10% WPI threshold for access to NEL, for example to review the suitability of the 10% threshold and the AMA guides used in the Scheme:

We regularly review the impairment guidelines, which are a tool to measure whole person impairment and, indeed, draft amendments to the guidelines are being submitted to the Motor Accident Council. The 10 per cent threshold is established in the legislation. It was dealt with as part of the Minister's review of the Motor Accident Scheme as required by the legislation and in his report on that review that was tabled round about 18 months to two years ago and so it really is not a matter which the Motor Accident Authority would be further reviewing.<sup>166</sup>

- 5.8** The Committee remains concerned with access to NEL, however, notes that the Minister has advised the Committee that the MAA is currently completing the review of the MAA Guidelines for the Assessment of Permanent Impairment, as mentioned in Chapter 4, which are used to interpret the AMA Guides and establish the 10% WPI threshold and recommends that the results of the review be provided to the Committee as soon as possible for consideration.

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### Recommendation 10

That the results of the review of the MAA Guidelines for the Assessment of Permanent Impairment be provided to the Committee as soon as possible for consideration as part of its next review.

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### Proposal to allow interim damages

- 5.9** As stated in the Fifth Report, the purpose of interim damages is to provide for a plaintiff by means of interim payments pending trial and final assessment of damages.
- 5.10** In the Fifth Report the Committee recommended that the Minister and the Attorney General consider amending the *Supreme Court Act 1970* and the *District Court Act 1973* to allow awards of interim damages in motor accident cases. The Government's response stated that the Committee's recommendation is under consideration.<sup>167</sup>

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<sup>165</sup> MAA answers to stakeholder questions on notice, p33

<sup>166</sup> Mr David Bowen, Evidence, 15 March 2005, p18

<sup>167</sup> Fifth Report, p79

**5.11** In this current review the Law Society raised this issue in their submission:

Furthermore, practitioners have raised with the Law Society of NSW the issue of the payment of interim damages in motor accidents matters, and the injustices that can be caused to motor accidents victims as a result of the operation of the current provisions of the *Supreme Court Act 1970* and the *District Court Act 1973*.<sup>168</sup>

**5.12** During the hearing the MAA was asked if there were any developments in relation to the Committee's recommendation. The MAA advised that:

A range of matters relating to procedural amendments and some others like that, which have been the subject of consideration and advice to the Minister and further questions on that would now need to be directed to the Minister.<sup>169</sup>

**5.13** The Committee remains concerned with the difficulties such a situation may place on the victims of motor vehicle accidents and their families. The Committee therefore recommends that the Minister provide the Committee with an update on consideration of the recommendation on this issue in the Fifth Report.

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**Recommendation 11**

That the Minister provide the Committee with an update on consideration of Recommendation 16 in the Fifth Report where the Committee recommended the Minister and the Attorney General consider amending the *Supreme Court Act 1970* and the *District Court Act 1937* to allow awards of interim damages in motor accident cases.

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**Payments to people with catastrophic injuries****5.14** In their submission to the Committee, the Bar Association raised the following issue in relation to the MAA's measure of 'fairness' in the operation of the Scheme and the adequacy of compensation payments to the seriously injured in need of long-term care:

At page 113 of the 2003-2004 Annual Report the MAA analyses fairness in the operation of the new Scheme in a context of serious brain injury claims. It is stated that the Scheme is intended to provide a fair and equitable system for claimants, ensuring that the most seriously injured receive maximum compensation. An analysis thereafter follows to demonstrate that the seriously brain injured are receiving approximately the same level of compensation under the new Scheme as they did under the old Scheme.

This analysis overlooks the most fundamental of questions. Is the compensation received by the seriously brain injured under both Schemes actually adequate?<sup>170</sup>

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<sup>168</sup> Submission 5, The Law Society of New South Wales, p4

<sup>169</sup> Mr David Bowen, Evidence, 15 March 2005, p19

<sup>170</sup> Submission 3, The New South Wales Bar Association, p8

**5.15** In response to the issues raised by the Bar Association the MAA advised:

The legislative reforms sought to increase the proportion of the premium dollar going to injured persons, particularly those with serious injuries. To see how the scheme affects claimants with serious injuries, the MAA examined the experience of claimants with severe brain injuries whose claims related to accidents between October 1999 and September 2000. These 116 claims are reasonably well advanced.

The MAA examined more thoroughly the 28 finalised brain injury claims with liability fully accepted (24%) compared to 21 (20%) such claims relating to the final year of the old scheme. In the new scheme 4 percent have been litigated compared to 52 percent in the old scheme. The reforms sought to establish a non adversarial climate in which to resolve claims. These reforms have clearly had a beneficial impact on reducing the number of severely injured claimants taking their claim through the court system.

As intended by the reforms, payments to seriously injured people have not been affected. In fact, the average payment has increased by 3%. Non economic loss payments were made on 20 of the finalised new scheme claims and 19 old scheme claims. The average payment for non economic loss is 24% higher under the new scheme.

Administration costs such as legal and investigation costs have decreased in the new scheme and as a consequence the amount of the premium dollar returned to injured people, especially to seriously injured people, has increased.<sup>171</sup>

**5.16** Youthsafe's submission to this Sixth Review was also concerned about long term support for the catastrophically injured:

Youthsafe is aware that the MAA has been involved in moves towards legislative change with regard to long term care for all people catastrophically injured in motor vehicle accidents. It is expected this would assist in addressing equity of access issues that arise in a fault based scheme where many people seriously injured on the roads can be left stranded in inappropriate environments or fail to achieve appropriate levels of independence and community participation. With the proposed new long term care model Youthsafe considers that prospective data collection and review will be important considerations in determining the impact of the changes and in identifying where refinements may be needed. Beyond equity of access in the first instance, it is critical for long term support for young people injured through road trauma to continue to be accessible throughout their lifespan and to be flexible to accommodate changing needs over time. This includes moving from rehabilitation through periods of increased independence to periods where greater support is required, for example where secondary problems may arise intermittently or where aging impacts on support needs. Long term support also needs to be respectful of the background and lifestyle of individuals. Therefore in relation to long term support Youthsafe would be interested in the following:

Expected ongoing participation of the MAA in the development, implementation and review of operation of the new long term care scheme for people with catastrophic injuries.

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<sup>171</sup> MAA answers to stakeholder questions on notice, p32

Directions the MAA is taking to ensure appropriate and flexible long term support for people who are injured through road trauma, particularly young people who require this support over a longer period of time and whose needs are more likely to change over time.<sup>172</sup>

- 5.17** The MAA advised the Committee that the damages for the seriously injured are adequate to meet long-term needs however, for a variety of reasons the awards often have not lasted a person's lifetime.<sup>173</sup> The MAA was asked to expand on this and inform the Committee what the Authority is doing to address it:

The MAA has had a long-term interest in the issue of the care needs of people with catastrophic injury. It was a predecessor to this Committee that put the issue very much on the agenda as part of the 1997-98 review of the Motor Accidents Scheme. The process of gathering information for that review identified the fact that for a variety of reasons awards made to people under this scheme, and more generally in personal injury, lasted on average 17 years.

When we put that against the profile for serious and catastrophic injury under the scheme—which is predominantly people under 30, and in fact the majority under 25 are predominantly young men—you realise that at a point where their care needs are going to start to escalate, which is from their forties, as the ageing effect increases their level of disability, on average they are running out of their money and they are falling back on to the welfare system for both income and care support needs.

The comment about the adequacy of damages there is really to note that there has been no change in the basis of assessing damages for catastrophically injured from old scheme to new scheme. We made an attempt last year to look at this in the context of spinal cord injury. We identified 48 matters where a person with a spinal cord injury had received an award exceeding \$1 million pre-1996, so that we wanted to come at them at a point in time where there had been some years elapsed and we could have a look at how they were going and how they thought they were going. Unfortunately, we just were not able to get enough contact. There was a surprisingly high death rate; about eight of those 48 had died and we were unable to contact another 20-odd. Of the 24 or 22 we finally contacted, only six consented to participate. So we did in fact interview all of those, but it does not provide a basis for really drawing very many conclusions.

It would be ideal to try to repeat that in the area of brain injury, but you would appreciate brain injury is even more compounding because quite often you cannot go and interview the person yourself, you have to try and talk to their carers, particularly if it is severe or high-level, they are not going to be in a position to provide you with adequate responses to that. We know even those matters that are managed by the Protective Commissioner if there has been any sort of reduction at all for contributory negligence the money will run out well before the person's lifetime. So there are other ways to try and come and look at this, but we have got to investigate that further.<sup>174</sup>

- 5.18** The Committee remains concerned that damages are not lasting the lifetime of people with catastrophic injuries and notes that the MAA is continuing to investigate this issue. The

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<sup>172</sup> Submission 4, Youthsafe, p2

<sup>173</sup> MAA answers to stakeholder questions on notice, p32

<sup>174</sup> Mr David Bowen, Evidence, 15 March 2005, pp24-25

Committee recommends that the MAA's further investigations into this issue include the basis of assessing damages and whether damages could be structured to last the lifetime of those catastrophically injured in motor accidents.

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### Recommendation 12

That the MAA's further research into the issue of damages lasting the lifetime of those catastrophically injured in motor accidents include investigations into:

- the basis of assessing damages for catastrophically injured, considering that it this has not changed from the old Scheme and
  - the possible benefits for implementing structured damages for the catastrophically injured.
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### Discount rate applied to awards for future care

**5.19** The Bar Association also noted that one of the major factors affecting the level of compensation received by the seriously injured is the discount rate applied to awards for future care:

The High Court has determined that the common law discount rate for damages awards in Australia will be 3%. Both the *Motor Accidents Act 1988* and the *MAC Act* mandate a discount rate of 5%. The UK Government has recently reduced the discount rate applicable to awards of future care for personal injury cases to 2%. This was on the basis that a higher discount rate resulted in a significant under-funding of future needs for the seriously injured.<sup>175</sup>

**5.20** In response the MAA advised:

The MAA notes that the prescribed statutory discount rate applying under section 127 of the *Motor Accidents Compensation Act 1999* is the same rate as applies to the former motor accidents scheme pursuant to section 71 of the *Motor Accidents Act 1988*.

The MAA also notes that Parliament recently had the opportunity to consider the appropriateness of this statutory discount rate for future economic loss in personal injury matters, when giving consideration to the provisions of the *Civil Liability Act 2002* which also provides for a five percent statutory discount rate (section 14). This section in the civil liability legislation was approved by Parliament.<sup>176</sup>

**5.21** The MAA further advised the Committee that it is not aware of any information or evidence, which would indicate the MAA should provide advice to Government regarding a change to the discount rate.<sup>177</sup>

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<sup>175</sup> Submission 3, The New South Wales Bar Association, pp8-9

<sup>176</sup> MAA answers to stakeholder questions on notice, p33

<sup>177</sup> MAA answers to questions on notice taken at the hearing, p6

### **National catastrophic care scheme**

- 5.22** In the Fifth Report the Committee noted that the MAA had been working closely with other State agencies and has had discussions with the Commonwealth Government and other States in relation to a proposal for a national catastrophic care scheme.<sup>178</sup> The Committee requested the MAA provide an update on its involvement on the proposed national catastrophic care scheme, which it did:

The proposal is being developed at two levels, quite understandably one at a State level and the other as the national level. My involvement at a national level was on a lifetime care working party that was convened by a group called the Insurance Issues Working Group, which is a group of Treasury officials and which was report into the Heads of Treasury Group. The Commonwealth Finance Minister chairs that with the State Treasurers. The Experts Working Group really was convened for the purpose of developing some options the funding of which could then be costed by consulting actuaries. I understand the consulting actuaries are continuing to work on that to the Heads of Treasury Group. I am not in a position to say anything more about how far that is progressing at a national level. At State level the matter has progressed to the point where advice has been provided to government and that is under consideration within government at the moment.<sup>179</sup>

### **Schedule of payments for orthopaedic cases**

- 5.23** As noted in their submission, the Royal Australian College of Surgeons advised that a schedule of payments would be useful for orthopaedic cases that was indexed for extra complicated procedures.<sup>180</sup>
- 5.24** This information was requested from the MAA who advised:

In the Motor Accidents Scheme medical services are paid in accordance with the Australian Medical Association (AMA) List of Medical Services and Fees. This List is reviewed, updated and reissued by the AMA annually, and the MAA gazettes the new list each year. This List covers all medical interventions, including surgery. The MAA does not wish to enter into negotiations with each medical group about their fee structure when the AMA List covers most medical interventions, has been in existence since 1973 and takes account of both practice costs and net income when calculating the AMA recommended fees.<sup>181</sup>

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<sup>178</sup> Fifth Report, p89

<sup>179</sup> Mr David Bowen, Evidence, 15 March 2005, p28

<sup>180</sup> Submission 1, Royal Australian College of Surgeons, p1

<sup>181</sup> MAA answers to stakeholder questions on notice, p34

## Late payment of settlement monies

- 5.25** The Australian Lawyers Alliance brought the issue of late payment of settlement monies to the Committee's attention:

Most motor accident claims are settled between the claimant and the insurer. The instrument by which these settlements are recorded and rendered effective in law is the signing of a deed of settlement by both parties. Lawyers Alliance members report that some insurers are settling claims on the basis of deeds that contain no date before which the settlement sum must be paid to the claimant. The result is that the claim can be concluded and the claimant prevented from taking further action by the terms of the deed, but the insurer is under no obligation to pay the settlement monies expeditiously. In some cases, payment has not been made for six months. Where the deed contains no date, the claimant is powerless to take action to enforce payment of the debt or recover interest.

Lawyers acting for claimants asked to sign such deeds have attempted, without success, to negotiate alterations to the wording of the deed to provide for a payment date. In our members' experience, these requests are denied, leaving claimants to choose between a defective settlement, or a court battle with all the attendant additional cost and stress. The Lawyers Alliance submits that a simple change to the regulations, making a deed unenforceable and unregisterable unless it contains a provision allowing for a payment deadline, would solve the problem.<sup>182</sup>

- 5.26** The MAA advised there had been two complaints relating to the late payment of settlement monies:

Since 1 July 2003 there have only been two complaints relating to the late payment of settlement monies. The first resulted from a delay by the insurer in seeking a notice from Centrelink. The second complaint involves the refusal by an insurer to accept the inclusion of an interest clause for late payment of settlement monies in a deed of release. The MAA is presently investigating this matter.<sup>183</sup>

- 5.27** The MAA further commented that the insurer has a statutory obligation to pay settlement monies expeditiously and it is a requirement of the MAA's Claim Handling Guidelines:

An insurer is under a statutory obligation to pay settlement monies expeditiously. Requirement 12.6 of the MAA's Claims Handling Guidelines states that: 'The insurer will pay the settlement monies within 20 days of settlement, unless the insurer is waiting for receipt of notice of workers compensation recovery, Centrelink payback or Health Insurance Commission payment. In those circumstances settlement monies will be paid within 20 days of receipt of those notices, if required for settlement.'

When an insurer is waiting for receipt of notice of workers compensation recovery, Centrelink payback or Health Insurance Commission payment, the insurer may require more than 20 working days to effect the payment of settlement monies.

<sup>182</sup> Submission 2, The Australian Lawyers Alliance, p15

<sup>183</sup> MAA answers to stakeholder questions on notice, p19

Nevertheless, should an insurer not pay settlement monies within a reasonable timeframe, the claimant or their legal representative, in the first instance, can make inquiries to the insurer, and if the issue is not resolved or the insurer has not complied with 12.6, the claimant's solicitor can also make a complaint to the Principal Compliance Officer (PCO) of the Motor Accidents Authority.<sup>184</sup>

- 5.28** The Committee acknowledges the concerns of the Australian Lawyers Alliance and the impact the late payment of settlement monies can have on claimants. The Committee notes the MAA is investigating these complaints.

### **Statistics on level of damages awarded by the courts**

- 5.29** The MAA has a function under section 206(2)(a) of the *Motor Accidents Compensation Act* (the Act) to conduct research and collect statistics or other information on the level of damages awarded by the courts. In the Fifth Report, the Committee recommended that the MAA implement the collection of comprehensive statistics on the level of damages awarded by the New South Wales courts in relation to personal injury suffered as a result of motor vehicle accidents since the 1999 amendments to the Scheme. The Committee recommended that the MAA should undertake an analysis of the damages awarded and the emerging trends and that once collected this information should be publicly accessible and updated annually.<sup>185</sup>

- 5.30** The Government's response to this recommendation states:

The MAA has consulted with the Honourable Justice RO Blanch AM, Chief Judge of the District Court as to the feasibility of the Court providing the MAA with copies of all judgments in motor accident cases brought under the *Motor Accidents Compensation Act* 1999. The Chief Judge has advised that it is not possible for the Court to provide information about the damages awarded under Act as the court does not separately record motor accident cases and, further, that few of the judgements of the Court are electronically recorded or available in hard copy. The MAA claims data enables trends in claims payments and administration costs, for example legal costs and investigation costs, to be closely monitored for all CTP claims.

- 5.31** The Law Society raised this issue in their submission and during the hearing the Committee asked the MAA to comment on how it intends to meet its statutory obligation:

We have got to a point now where time will take care of it in that with the motor accidents list at that stage it was important to distinguish within the motor accidents list between matters proceeding through court under the old scheme and matters under the new scheme. Time will take care of that as the matters predominately going through the court will increasingly be new scheme matters. We do on our own data base report the level of awards and now heads of damage, but it is a very small subset of finalised matters because even for those matters that are commenced at court the great bulk of those will still settle.

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<sup>184</sup> MAA answers to stakeholder questions on notice, p19

<sup>185</sup> Fifth Report, Recommendation 17, p80

- 5.32** The MAA advised that they could meet their statutory obligation under section 206(2)(a) by doing analysis from their own database, which is filled in by the insurers.<sup>186</sup>
- 5.33** The Committee still believes that statistical analysis of damages awarded by the courts should be undertaken by the MAA, in compliance with section 206(2)(a) of the Act.
- 5.34** The Committee recommends that, in order for the MAA to meet their statutory obligation under section 206(2)(a) of the Act, the Authority conduct analysis from their own database on the level of damages awarded by the New South Wales courts in relation to personal injury suffered as a result of motor vehicle accidents since the 1999 amendments to the Scheme. Once collected this information be publicly accessible and updated annually.

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### **Recommendation 13**

That the MAA conduct analysis from their own databases on the level of damages awarded by the New South Wales courts in relation to personal injury suffered as a result of motor vehicle accidents since the 1999 amendments to the Scheme, in order to fulfil their obligation under section 206(2)(a) of the Act. Also, that once collected, this information be publicly accessible and updated annually.

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### **Conclusion**

- 5.35** The Committee is of the view that the recommendations in this chapter would help to further improve the functions of the MAA in relation to the payment of claims by moving forward on the proposal to allow interim damages, further investigating how long damages last for the catastrophically injured and conducting analysis on the level of damages awarded by New South Wales courts.

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<sup>186</sup> Mr David Bowen, Evidence, 15 March 2005, p26



## Chapter 6 Injury prevention, treatment and rehabilitation

This chapter examines the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) in relation to injury prevention, treatment and rehabilitation. It examines several issues that arose during the course of the Sixth Review, including public education programs, alternative therapies for injury treatment and the MAA Grants Program.

### Injury prevention

**6.1** A significant aspect of the MAA's role is to encourage and support injury prevention. One of the specific functions of the MAA under the *Motor Accidents Compensation Act 1999* (the Act) is to provide funding for measures for preventing or minimising injuries from motor vehicle accidents and for safety education.<sup>187</sup> The MAA Annual Report 2003-2004 states that the number of road casualties has stabilised around 29,500 per annum for the last three years and the annual number of Compulsory Third Party (CTP) claims has decreased since the start of the new Scheme in October 1999.<sup>188</sup>

#### Injury prevention public education programs

**6.2** The Law Society raised the issue of evaluation procedures regarding public education programs to ensure they are the most effective educational tools for promoting road safety to young people and an appropriate use of the MAA's resources.<sup>189</sup>

**6.3** The MAA advised that in the road safety area, evaluation of education and awareness projects typically focuses on whether they have reached the target audience, the effectiveness of the message and whether it has increased awareness and influenced intention to change behaviour.<sup>190</sup>

**6.4** The Committee noted that, at the time of the hearing there were recent news reports in relation to pedestrian accidents and the presence of alcohol. The Committee requests that the MAA advise how successful the October – November 2003 public education campaign and pedestrian safety campaign that MAA jointly funded with the Roads and Traffic Authority (RTA) were and how they were evaluated.

**6.5** The MAA advised that:

In 2003/04, the MAA, in partnership with the RTA, developed a public education campaign to raise awareness about pedestrian safety. The campaign utilised television,

<sup>187</sup> *Motor Accidents Compensation Act 1999*, section 206(f)

<sup>188</sup> MAA Annual Report 2003-2004, p35

<sup>189</sup> Submission 5, The Law Society of New South Wales, p7

<sup>190</sup> MAA answers to stakeholder questions on notice, p36

print, radio and outdoor media and urged pedestrians and drivers to “watch out” for one another.

The campaign was primarily directed at two road user groups – young drivers aged 18 to 39 and pedestrians aged 55 and over. The ‘drivers’ element comprised a television advertisement, a bus shelter poster and two radio ads with the tagline “Watch out, people about”. The ‘pedestrians’ element comprised two radio and two press advertisements with the tagline “Watch out, cars about”.

The campaign sought to:

- raise awareness about the number of pedestrian accidents occurring on metropolitan roads;
- encourage drivers to “watch out” in areas of high pedestrian traffic;
- raise awareness among older people of the risks they face as pedestrians; and
- promote safer road crossing practices among older pedestrians.

Post campaign tracking of the campaign period indicated successful increases in community awareness of pedestrian safety issues. Overall campaign awareness was especially strong with drivers (69%) compared to pedestrians (44%) and with males (69%) compared to females (44%) and with younger respondents.<sup>191</sup>

**6.6** The MAA also advised that a public education campaign to address “drink walking” is proposed for 2004-2005 and is expected to cover both metropolitan and country urban areas. The campaign seeks to raise awareness among young people of drink walking as a road safety issue.<sup>192</sup>

**6.7** The MAA Annual Report 2003-2004 notes at page 36 that the four additional Arrive Alive festivals were held in 2004 in Campbelltown, Wollongong, Newcastle and Wagga Wagga. The Committee was interested to see how successful these festivals are in promoting the “Arrive Alive” message. Mr David Bowen, General Manager, MAA, told the Committee:

Under the Arrive Alive Program, which is a youth road safety program we have been looking at innovative ways of delivering messages to young people about fairly straightforward and simple messages about risk-taking behaviour, speed and alcohol. We understand very well that the message is only taken in depending upon the medium through which it is delivered and we embarked on a strategy of broadening the delivery options through our sporting sponsorship and the use of sportsmen and women to deliver messages directed to small groups through providing funding directly to young people for delivering messages in the community through the medium of film or local advertising. The Alive festivals were an attempt to build upon this to establish a link back to the MAA to get people to come to our Arrive Alive web site.

In the years prior to these festivals we have done that in a targeted way through music, through sponsorship of Homebake and the Big Day Out and through promotional activities on our Arrive Alive web site, which got an enormous response. For our Big Day Out sponsorship we had tens of thousands of entrants who had to make up a road safety message around the mascots for the Big Day Out that year, which were Drunky, Speedy and Sleepy, or something like that. It was just about making young

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<sup>191</sup> MAA answers to questions on notice taken at the hearing, p4

<sup>192</sup> MAA answers to questions on notice taken at the hearing, p4

people think about the purpose of it. The Alive festival was an attempt to take that out of those big events and make it more community based. In terms of expenditure on road safety it was very low cost. We are evaluating that whole program at the moment. Originally it was a three-year program and we extended it out to five.

It will run out at the end of 2007. We will then have to go back and look at it as a collective group of events and activities. It is extremely hard to measure the success of programs that are aimed at changing attitudes. It is very easy to measure in economic terms whether you get a reduction in accidents from enforcement, better road building or a better car design. But when you are trying to target someone's changing attitude you really have no great base other than their own recall of the message. There is no way to indicate whether it has led to a change in behaviour, but in terms of message recall, in terms of these events driving people to our web site where they pick up other messages. They evaluated very well, particularly well compared, for example, with more generic advertising.<sup>193</sup>

**6.8** In response to the question about why the MAA chose the Wollongong, Newcastle, Wagga Wagga and Campbelltown sites, Mr Bowen replied:

We were just trying to get a broad spread. It was not targeted in any other way. But with, if you like, the community identity and the purpose of it being to attract a local community from which you could deliver messages pertinent to that community. For example, although these festivals had some headline acts it was quite important to us that they engaged and used local bands. Rather than do something generically in Sydney we picked what we regarded as being identifiable areas that we could go into whether people in those areas identified themselves as being part of that community.<sup>194</sup>

**6.9** The Committee also requested information on the sort of indicators the MAA used to evaluate on-site festivals. The MAA advised that the evaluation was through exit interviews of people leaving and also through the changes in accessing their web site immediately post the event.<sup>195</sup> The MAA also advised the Committee that detailed telephone interviews were conducted at a later stage:

The post event evaluation found that overall recall and understanding of the specific road safety messages was consistently high across all events. More detailed telephone interviews conducted six weeks after the festivals indicated that:

- Recall of messages was still strong, particularly in relation to drink driving and speeding;
- Interviewees considered that the messages had had a strong impact on them;
- Interviewees considered that they understood the risks and consequences of drink driving and speeding;
- Speeding and the use of mobile phones were reported by interviewees to be the highest reported risk taking behaviour.<sup>196</sup>

<sup>193</sup> Mr David Bowen, General Manager, MAA, Evidence, 15 March 2005, p19

<sup>194</sup> Mr David Bowen, Evidence, 15 March 2005, p19

<sup>195</sup> Mr David Bowen, Evidence, 15 March 2005, pp19-20

<sup>196</sup> Correspondence from the Special Minister for State to the Chair, 1 April 2005, p3

- 6.10** The Committee believes that public education campaigns for injury prevention are of great importance to the Scheme. The Committee is of the view that it is important to continue to run these campaigns in an effort to increase public awareness on road safety and help reduce accidents and fatalities.

### **Injury treatment and rehabilitation**

- 6.11** The specific functions of the MAA under the Act in relation to the provision of acute care, treatment, rehabilitation, long term support and other services for persons injured in motor vehicle accidents is to:

- monitor those services;
- provide support and funding for programs that will assist effective injury management;
- provide support and funding for research and education in connection with those services that will assist effective injury management; and
- develop and support education programs in connection with effective injury management.<sup>197</sup>

- 6.12** The Committee raised the issue of alternative therapies such as acupuncture and cupping for injury treatment and whether these are covered by the Scheme. The MAA advised that in relation to alternative therapies:

The *Motor Accidents Compensation Act (1999)* provides that an insurer is obliged to pay for a claimant's treatment, rehabilitation and attendant care costs that are "reasonable and necessary" in the circumstances. The MAA and insurers have developed a decision making tool for insurers and a brochure for service providers to assist decision making about what might constitute "reasonable and necessary" treatment, rehabilitation and attendant care.

The MAA has also developed guidelines for treatment and rehabilitation to assist the management of the most commonly occurring motor accident injuries. The guidelines provide information for clinical decision-making and claims management and were developed by working parties representing various medical associations.

Recommendations about treatment in the guidelines are based on the evidence available from clinical trials. Alternative therapies are included in these recommendations. For example, the *Guidelines for the Management of Whiplash Associated Disorders* recommends mobilisation, manipulation and acupuncture as an appropriate treatment for Whiplash-Associated Disorders in certain circumstances.<sup>198</sup>

- 6.13** The MAA Annual Report 2003-2004 states that in 2003, the currently licensed CTP insurers were audited for compliance with the statutory guidelines, *Treatment, Rehabilitation and Attendant*

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<sup>197</sup> *Motor Accidents Compensation Act 1999*, section 206(3)

<sup>198</sup> MAA answers to questions on notice taken at the hearing, p3

*Care Guidelines.* These guidelines require insurers to actively assist claimants to obtain early and appropriate access to treatment, rehabilitation and attendant care.<sup>199</sup>

- 6.14** Page 22 of the MAA Annual Report 2003-2004 states that the results of the 2003 audit of these guidelines showed that 3 out of 6 insurers exceed the required standards. The MAA was asked to provide information on how the other three insurers performed, to which they advised:

Two of the three insurers received a satisfactory result but were required to provide further documentation and a self-assessment report in November 2003 to demonstrate compliance with specific compulsory criteria.

The remaining audit was postponed until April 2004. The insurer provided monthly reports to the MAA and auditors until completion of the audit at this time. A satisfactory rating was achieved in all areas.<sup>200</sup>

- 6.15** In the opening statement at the hearing Mr Bowen raised that issue of health outcomes and advised that health outcomes of people involved in the motor accidents compensation scheme is an important issue for the Authority.<sup>201</sup> The MAA commissioned the Committee of Presidents of the Medical Colleges to undertake a literature and research study into clinical studies that had been undertaken around the world in a variety of compensation schemes:

The finding from that report was absolutely clear, that is, a person who gets caught up in a compensation system has a much poorer health outcome than a person with a similar injury who is not involved in the compensation system. It is really quite important not to attribute that to the conduct of the person who is injured. It really is an extremely complex matter to explain and it has more to do with, I believe, the stresses of the complexity of the compensation system, which can prolong injury and recovery. I regard that as being the most significant target that this scheme, and therefore the MAA, has to address. We have been doing so. Today I foreshadow one particular success we have had.<sup>202</sup>

- 6.16** The MAA has advised it has commissioned PriceWaterhouseCoopers to undertake a clinical study into the health outcomes of whiplash sufferers and the benefits of producing guidelines for medical practitioners and whiplash sufferers:

The reason we chose whiplash is that it is the most prevalent injury in motor vehicle accidents. More than 40 per cent of claims will involve a whiplash claim, and it can be quite debilitating if a person does not get on to an early recovery. In fact, it can lead to years of treatment for those who do not recover quickly and early.

... [W]e decided that this would be an appropriate area to conduct a clinical study on whether or not producing this information [guidelines] and whether or not the scheme reforms had made a difference, and I can foreshadow today that in May/June this year

<sup>199</sup> MAA Annual Report 2003-2004, p22

<sup>200</sup> MAA answers to additional questions on notice, p14

<sup>201</sup> Mr David Bowen, Evidence, 15 March 2005, p2

<sup>202</sup> Mr David Bowen, Evidence, 15 March 2005, pp2-4

we will release the report on a very detailed study looking at health outcomes for people with whiplash.<sup>203</sup>

**6.17** Mr Bowen outlined to the Committee the methodology used in this study as follows:

The way it has occurred has been to look at three cohorts or groups of people who sustained whiplash at six-monthly, 12-monthly and two-yearly intervals by way of interview with those people. It is being conducted on our behalf by PricewaterhouseCoopers and a team they put together, including health economists and, most importantly, Professor Ian Cameron from the Rehabilitation Studies Unit. Recently they gave us a presentation on this and, hopefully, they will publish it in a medical journal come May, but the outcomes are quite stark. We have a 1999 group of people injured pre the scheme, a 2001 group and a 2003 group, and the final interviews will occur in September this year.<sup>204</sup>

**6.18** Mr Bowen provided the Committee with the preliminary findings for this study:

The payments for the people in 2001 compared to 1999 are much faster for the treatment payments—that is quite critical to the result—and the payments for the 2003 three group are faster again. For those matters, the 2001 claims are being finalised at an earlier point in time, so the person has made a recovery and they have been able to finalise their claim. For the 2003 group, which is post the guidelines, it is faster again. They are getting treatment earlier and they are getting it faster. But then by way of looking at the health measures we use what is called standard form 36, which is a standard format used to measure population health. It is, in fact, a self-report so you ring up and there are 36 questions you use to get to the person's physical, social and mental wellbeing. The intent was to look at what was the level of disability two years after a whiplash injury, what was the level of pain being sustained by the person and what was the quality of life on a self-reported basis.

The difference between 2001 and 1999 showed a 46 per cent improvement on those outcome measures, which, when they reported this to us, the health economists in the group were sort of jumping up and down because this is a level of improvement that is nearly impossible to achieve in clinical interventions and, of course, what makes it even more profound is that that was occurring despite the fact, or probably in conjunction with fact, that there had been a reduction in payment. The reduction in payment was because people are getting earlier and better treatment and they were not getting it for prolonged periods of time. It would appear, even though the second study, the 2003 group, have not had a two-year follow-up, that on all of those measures there is improvement again from 2003 to 2001. I regard this as being the single best thing the scheme has achieved and that the MAA has achieved, and I know that Professor Cameron believes it is so critically important that he will seek to publish those results in an international medical journal.<sup>205</sup>

**6.19** The Committee acknowledges that the preliminary results for this clinical study into health outcomes for whiplash sufferers are positive. The Committee looks forward to reviewing the finalised report once available.

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<sup>203</sup> Mr David Bowen, Evidence, 15 March 2005, p2

<sup>204</sup> Mr David Bowen, Evidence, 15 March 2005, p3

<sup>205</sup> Mr David Bowen, Evidence, 15 March 2005, p4

## MAA Grants Program

- 6.20** Page 22 of the MAA Annual Report 2003-2004 states that 58 applications were received for the MAA's annual rehabilitation Grants Program and funding of \$2.9 million was approved. Of those 58 applications 42 projects were successful. The other 16 projects were rejected on a number of grounds including failure to meet the selection criteria, lower rating compared to other applications or prohibitive costs.<sup>206</sup>
- 6.21** The MAA has advised that the number of applications for funding under the MAA's annual rehabilitation Grants Program has been consistent over the last five years. The quality of submissions can vary. The MAA endeavours to provide applicants with sufficient information to assist them to prepare appropriate applications and to provide opportunities for submission of further information if necessary.<sup>207</sup>
- 6.22** The MAA was asked to comment on why the \$2.9 million figure is down considerably from last years figure of \$7.5 million and the reason for this:<sup>208</sup>

In 2002/2003, MAA funding of \$5.75 million was approved for 10 capital projects aimed at facilitating spinal cord injury and rehabilitation services. Funding for capital development is made available intermittently by the MAA rather than on an annual basis.<sup>209</sup>

### Evaluation of projects funded under the Grants Program

- 6.23** The MAA advised that evaluation procedures are in place regarding the various projects funded under the Program (eg Arrive Alive, sports sponsorship including women's netball and soccer and the Rabbitoh's, the Local Government Grants Program and the Kids Need a Hand in Traffic campaign) to ensure that they are the most effective educational tools for promoting road safety to young people and an appropriate use of the MAA's resources:

An evaluation strategy is developed for individual projects at their commencement. The evaluation measures used vary according to the objectives of the project being undertaken.

In the road safety area, evaluation of education/awareness projects typically focuses on whether they have reached the target audience, the effectiveness of the message and whether it has increased awareness and influenced intention to change behaviour.

In the area, of rehabilitation and research projects, the focus is more on whether, the project will improve treatment or services for the target population, to what extent and how quickly.<sup>210</sup>

<sup>206</sup> MAA answers to additional questions on notice, p14

<sup>207</sup> MAA answers to additional questions on notice, pp14-15

<sup>208</sup> MAA 2002-2003 Annual Report, p22

<sup>209</sup> MAA answers to additional questions on notice, p15

<sup>210</sup> MAA answers to stakeholder questions on notice, p36

- 6.24** The MAA assured the Committee it has measures in place to ensure that there is a capacity to facilitate research to establish sound evidence bases and to involve appropriate road safety and injury management expertise in initiatives supported through the Program:

The MAA has good access to expertise in both road safety and rehabilitation fields to support the Program. For example, the MAA provides funding for the Injury Risk Management Research Centre (University of NSW) and the Chair of Rehabilitation Studies (University of Sydney) and has good relationships with government and non-government agencies in both fields. In addition, the MAC has members with road safety and medical expertise that can be readily utilised by the MAA.<sup>211</sup>

### **Review of the Grants Program**

- 6.25** Stakeholders raised issues with the Committee in relation to the outcome of the review of the Grants Program that was announced in the MAA Annual Report 2003-2004.<sup>212</sup> Youthsafe and the Law Society raised several issues in relation to the review.
- 6.26** Youthsafe state in their submission:

In the MAA's 2003-2004 Annual Report there is reference to a *Review of the Grants Program*. Given the significance of this program in furthering road safety and injury management Youthsafe would be interested in the following:

- The outcome of this review both in terms of improving the overall direction and management of the program to ensure that it remains highly relevant and effective into the future with robust and rigorous processes for selecting and managing individual grants.
- MAA's intentions for the future operation of the program consequent to the Grants Program review, particularly in relation to addressing issues relevant to young people.
- Measures that would be taken to ensure that there is a capacity to facilitate research to establish sound evidence bases and to involve appropriate road safety and injury management expertise in initiatives supported through the Grants Program.
- Ongoing review strategies.<sup>213</sup>

- 6.27** The MAA advised the following in relation to the review of the Grants Program:

PWC [PriceWaterhouseCoppers] completed a review of the performance of this program for the MAA in 2004.<sup>214</sup>

A number of recommendations to improve the performance of the program were made in particular in the areas of strategic direction; improved selection processes and management of grants and improvements to evaluation.

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<sup>211</sup> MAA answers to stakeholder questions on notice, p36

<sup>212</sup> MAA Annual Report 2003-2004, p25

<sup>213</sup> Submission 4, Youthsafe, pp1-2

<sup>214</sup> PricewaterhouseCoopers, *MAA: Review of the Grants Program*, at Appendix 3

Two consultants have commenced working with the MAA to develop a 3-5 year strategy for the MAA's road safety and rehabilitation programs.<sup>215</sup>

### ***3-5 year strategy for the MAA's road safety and rehabilitation programs***

**6.28** The MAA has outlined the process of the 3-5 year strategy:

This process is focussing on reviewing the MAA's current role in road safety and rehabilitation in NSW, reviewing the current priorities and programs and identifying some new areas and activities. Ideas being considered include focusing on fewer, larger, longer term projects aimed at MAA priorities. There are a number of projects that the MAA is committed to over the next 3-4 years. These will continue and newer projects/approaches will be developed concurrently.

The strategy will be finalised by mid 2005 for commencement in July in accord with the MAA's corporate planning cycle.<sup>216</sup>

**6.29** The MAA was asked what main aspects of the MAA's road safety and rehabilitation role will it cover:

The road safety and rehabilitation programs strategy will review the MAA's current role in road safety and rehabilitation. The goal of the MAA in injury prevention is to reduce the occurrence of motor vehicle accidents that involve serious and high incidence injuries. On this basis, young people (particularly as drivers and passengers), children, pedestrians and motorcyclists have been identified as a priority for MAA initiatives.

The MAA has a number of aims in relation to injury management including:

- to ensure that insurers meet their obligations under the *Act*;
- to promote appropriate treatment of injured people; and
- to foster the development of improved rehabilitation and long term care services for this population.

The injury types/ issues to be targeted through injury management strategies include: management of whiplash and soft tissue injuries, rehabilitation and life time care for claimants with severe brain or spinal cord injury and retrieval and trauma management.

Current programs will also be reviewed and areas and activities identified that have the potential to add value to the CTP scheme.<sup>217</sup>

**6.30** The MAA stated that the strategy will take into account the results of the review of the performance of the Grants Program.<sup>218</sup>

<sup>215</sup> MAA answers to stakeholder questions on notice, p35

<sup>216</sup> MAA answers to stakeholder questions on notice, p35

<sup>217</sup> MAA answers to additional questions on notice, p15

<sup>218</sup> MAA answers to additional questions on notice, p16

- 6.31** The MAA advised the Committee that it is committed to ensuring a broad and high level of public awareness of opportunities through the Grants Program and that this issue will be considered as part of the implementation of the 3-5 year strategy.<sup>219</sup>
- 6.32** The Committee acknowledges the MAA's efforts in Grants Program and requests that once completed a copy of the 3-5 year strategy be provided to the Committee for its information and be made publicly available.

---

#### **Recommendation 14**

That the MAA provide the Committee with a copy of the 3-5 year strategy for road safety and rehabilitation programs and make this strategy publicly available.

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### **Conclusion**

- 6.33** The Committee is of the view that the recommendation in this chapter would help to further improve the functions of the MAA in relation to injury prevention, treatment and rehabilitation. In particular, by making publicly available the 3-5 year strategy for road safety and rehabilitation programs, the public awareness of the MAA Grants Program would increase and the future direction of the Grants Program can be considered in grant applications organisations or people make to the program.

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<sup>219</sup> MAA answers to stakeholder questions on notice, p36

## Appendix 1 Minutes

### Minutes No 12

12:30pm Tuesday 7 December 2004  
Room 1153, Parliament House, Macquarie St, Sydney

#### 1. **Members present**

Ms Robertson (in the Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

...

#### 6. **Inquiry into the MAA and the MAC**

Resolved, on the motion of Mr Pearce, that the Committee hold a public hearing with the General Manager of the Motor Accidents Authority, the Chair of the Motor Accidents Council and Senior Managers of the Motor Accidents Authority in March 2005, on a date to be confirmed by the Secretariat in consultation with the Chair, subject to Members' availability.

Resolved, on the motion of Mr Pearce, that the Committee write to the list of stakeholders distributed by the secretariat to invite them to participate in the Sixth Review of the MAA as well as any other stakeholders identified by the Secretariat in consultation with the Chair, with responses due 4 February 2005.

...

#### 9. **Next meeting**

The Committee adjourned at 1.20pm *sine die*.

Rachel Callinan  
Director

## Minutes No 14

8:45am Tuesday 15 March 2005

Room 814-815, Parliament House, Macquarie St, Sydney

### 1. **Members present**

Ms Robertson (Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

### 2. **Confirmation of minutes**

Resolved, on the motion of Ms Fazio, that the Minutes of Meeting No 13 be amended by inserting under item 6 “that the Committee write to the Hon John Della Bosca MLC, Minister for Industrial Relations, seeking additional information in order to commence the inquiry”, and adopted.

...

### 5. **Sixth review of the exercise of the functions of the MAA and the MAC**

#### *MAA response to questions on notice*

The Chair tabled the MAA response to questions on notice received from Minister Della Bosca on 7 March 2005 and circulated to members (memo 53) on that date.

Resolved, on the motion of Ms Fazio, that, in order to better inform all those participating in the inquiry process, the Committee make use of the powers granted under standing order 233(1), and section 4(2) of the Parliamentary Papers (Supplementary Provisions) Act 1975, to publish the MAA’s response to questions on notice received from Minister Della Bosca on 7 March 2005.

#### *Declaration by the Chair*

The Chair requested that it be noted in the Minutes that she is currently a client of the MAA.

#### *Public Hearing*

Witnesses, media and public were admitted.

Mr David Bowen, General Manager, MAA, Mr Richard Grellman, Chair of the MAC and Ms Concetta Rizzo, Manager, Insurance Division, MAA, were sworn in and examined.

Witnesses took a number of questions on notice during the hearing and agreed to accept additional questions from the Committee arising out of the hearing. The Chair requested that answers be returned to the Committee Secretariat by Friday, 1 April 2005

Evidence concluded and witnesses withdrew. Media and public withdrew

***Deliberative***

Resolved, on the motion of Mr Pearce, that the transcript of the public hearing for the Sixth review of the exercise of the functions of the MAA and the MAC held on 15 March 2005 be published.

Resolved, on the motion of Ms Fazio, that the Chair write to the Hon John Della Bosca MLC, Special Minister for State, to request a copy of the MAA report on accidents involving four wheel drives.

**6. Adjournment**

The Committee adjourned at 12.30pm until 9.30am on Thursday 17 March 2005 (public hearing for back-end home detention Inquiry).

Rachel Simpson  
A/Director

## Minutes No 17

1:00pm Wednesday 6 April 2005

Room 1153, Parliament House, Macquarie St, Sydney

### 1. Members present

Ms Robertson (Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

### 2. Confirmation of minutes

Resolved, on the motion of Ms Rhiannon, that Minutes No 15 and 16 be confirmed.

### 3. Correspondence

Chair tabled correspondence:

Correspondence received:

- 4 April 2005, from Minister Della Bosca, providing written answers to questions taken on notice by the MAA at hearing on 15 March 2005

Correspondence sent:

- 24 March 2005, to Minister Della Bosca, requesting a copy of the review of four-wheel drive vehicle claims experience

Resolved, on the motion of Mr Pearce, that the answers to questions taken on notice by the MAA at the hearing on 15 March 2005 and the written answers to Committee questions to the Department of Corrective Services as part of the Committee's inquiry into back-end home detention, be published.

### 4. ...

### 5. Adjournment

The Committee adjourned at 1:30pm *sine die*.

Rachel Simpson  
A/Director

**Minutes No 18**

10:00 am Friday 13 May 2005

Room 1153, Parliament House, Macquarie St, Sydney

**1. Members present**

Ms Robertson (Chair)

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal (from 12 noon)

**2. Apologies**

Mr Roozendaal (until 12 noon)

...

**5. Confirmation of minutes**

Resolved, on the motion of Mr Pearce, that Minutes No 17 be confirmed.

**6. Correspondence**

The Chair tabled correspondence received:

***MAA Inquiry***

- 15 April 2005, facsimile from David Bowen, Motor Accidents Authority of NSW providing approval for referring to various MAA documents in the Committee's report and these documents being appended to the report, provided the (*Motor Accidents Authority of NSW Agreed upon Procedures, Review, Corporate Governance Report of Factual Findings*) and Pricewaterhouse Coopers (*Motor Accidents Authority Review of the Grants Program*) are reproduced in their entirety.

...

**11. Sixth review of the MAA and MAC*****Chair's draft report***

The Chair submitted her draft report titled '*Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Sixth Report*', which had been previously circulated to Members of the Committee. Once circulated, the report was accepted as being read.

The Committee considered the draft report.

Resolved, on the motion of Mr Pearce, that paragraph 1.13 be amended by omitting the words 'The Committee found this process useful in obtaining additional and more technical information that may not be easily presentable at a hearing'.

Resolved, on the motion of Mr Pearce, that paragraph 1.21 be amended by omitting the words 'operating well and'.

Resolved, on the motion of Mr Pearce, that paragraph 2.7 be omitted.

Resolved, on the motion of Ms Fazio, that paragraph 2.13 be amended by omitting the words ‘to reduce’ and inserting the words ‘which reduced’ instead.

Resolved, on the motion of Mr Pearce, that paragraph 2.32 be amended by inserting ‘However, the Committee understands that these discussions may take place in the future’ at the end of the paragraph.

Resolved, on the motion of Mr Pearce, that paragraph 2.33 and Recommendation 2 be omitted.

Resolved, on the motion of Mr Pearce, that paragraph 2.38 be amended by omitting the words ‘and commends the MAA and MAC for their efforts’ and ‘considering guidelines for legal practitioners participating in the Scheme’.

Resolved, on the motion of Mr Pearce, that paragraph 3.23 be amended by omitting ‘MAA’s efforts in monitoring and reporting on premium levels and the Authority’s recent work on reviewing risk ratings’ and inserting ‘that the MAA is monitoring and reporting on premium levels and has undertaken recent work reviewing risk ratings.’

Resolved, on the motion of Mr Pearce, that paragraph 3.49 be amended by omitting the words ‘and acknowledges the MAA for its efforts in monitoring premium levels and insurer profits’.

Resolved, on the motion of Mr Pearce, that the evidence referred to in footnote 92 be quoted in the text at paragraph 4.8.

Resolved, on the motion of Ms Fazio, that paragraph 4.8 be amended by omitting the words ‘However, Mr David Bowen, General Manager, MAA advised that’ and that a new paragraph be inserted containing the words ‘However, Mr Bowen went on to say that more complex claims are more likely to encounter delays in the claims handling process. In particular, he advised the Committee that’.

Resolved, on the motion of Mr Pearce, that paragraph 4.15 be amended by omitting the words ‘commends the MAA and the Area Health Services for their efforts in making ANFs more readily available to the public’ and inserting the words ‘notes that their recommendation from the Fifth Review has been implemented.’

Resolved, on the motion of Mr Pearce, that a new paragraph be inserted following paragraph 4.49 containing the words ‘The Committee is concerned that some medical assessment reports are being amended by MAS staff and recommends that, in relation to the most recent figure of 18% of amendments to medical assessments involving changes to methodology and reasons for decisions, the MAA provide details to the Committee on what the amendments were to these assessments’ and that a recommendation be inserted to reflect the new paragraph.

Resolved, on the motion of Mr Pearce, that Recommendation 9 be amended by inserting the words ‘in the interests of both claimants and defendants’ at the beginning of the recommendation and that the words ‘specific guidelines for the conduct’ in the recommendation be omitted and the words ‘code of conduct’ be inserted instead and that the words ‘and that the code include when surveillance is appropriate and the manner in which surveillance should be conducted’ be inserted at the end of recommendation 9.

Resolved, on the motion of Mr Pearce, that paragraph 4.76 be amended by omitting the words ‘and acknowledges the MAA’s actions in progressing improvements to the MAAS process, as outlined in Chapter 2, to assist in reducing delays’.

Resolved, on the motion of Mr Pearce, that a recommendation be inserted following paragraph 5.8 stating: ‘That the results of the review of the MAA Guidelines for the Assessment of Permanent Impairment be provided to the Committee as soon as possible for consideration as part of its next review.’

Resolved, on the motion of Mr Pearce, that paragraph 5.18 be amended omitting the words ‘acknowledges the MAA’s efforts and the challenges it faced in conducting research into how long damages last for the catastrophically injured and notes that the MAA will continue to investigate this issue’ and the words ‘and notes that the MAA is continuing to investigate this issue’ be inserted after the words ‘people with catastrophic injuries’.

Resolved, on the motion of Mr Pearce that paragraph 5.35 be amended by omitting the words ‘The Committee acknowledges that the MAA is generally performing well in relation to its functions for the payment of claims under the Scheme, although some specific concerns have been raised by stakeholders’.

Resolved, on the motion of Mr Pearce, that paragraph 6.10 be amended by omitting the words ‘and commends the MAA’s efforts in supporting and conducting these campaigns as well as the Authority’s actions in evaluating the campaigns’.

Resolved, on the motion of Mr Pearce, that paragraph 6.19 be amended by omitting the words ‘and commends the MAA and those involved in the study’ and omitting ‘and notes that the MAA is fulfilling its function by conducting and supporting such research into health outcomes’.

Resolved, on the motion of Mr Pearce, that paragraph 6.32 be amended by omitting the words ‘acknowledges the MAA’s efforts in Grants Program’.

Resolved, on the motion of Mr Pearce, that paragraph 6.33 be amended by omitting the words ‘the Committee acknowledges that the MAA is generally performing well in relation to injury prevention, treatment and rehabilitation’.

Resolved, on the motion of Ms Rhiannon, that the Executive summary, as amended to reflect changes in the report, be adopted.

Resolved, on the motion of Ms Fazio, that the Chair’s Forward be circulated to members and that members give any suggested changes to the Chair as soon as possible.

Resolved, on the motion of Ms Rhiannon, that the Secretariat be permitted to correct typographical and grammatical errors in the report prior to tabling.

Resolved, on the motion of Ms Rhiannon, that the report, as amended, be adopted.

Resolved, on the motion of Ms Rhiannon, that the report be signed by the Chair and presented to the House in accordance with Standing Order 227(3) and 230(5).

Resolved, on the motion of Ms Rhiannon, that pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing

Order 223, the Committee authorises the Clerk of the Committee to publish the report, minutes, correspondence, submissions (excluding confidential submissions), transcripts and documents tabled during hearings.

**12. Adjournment**

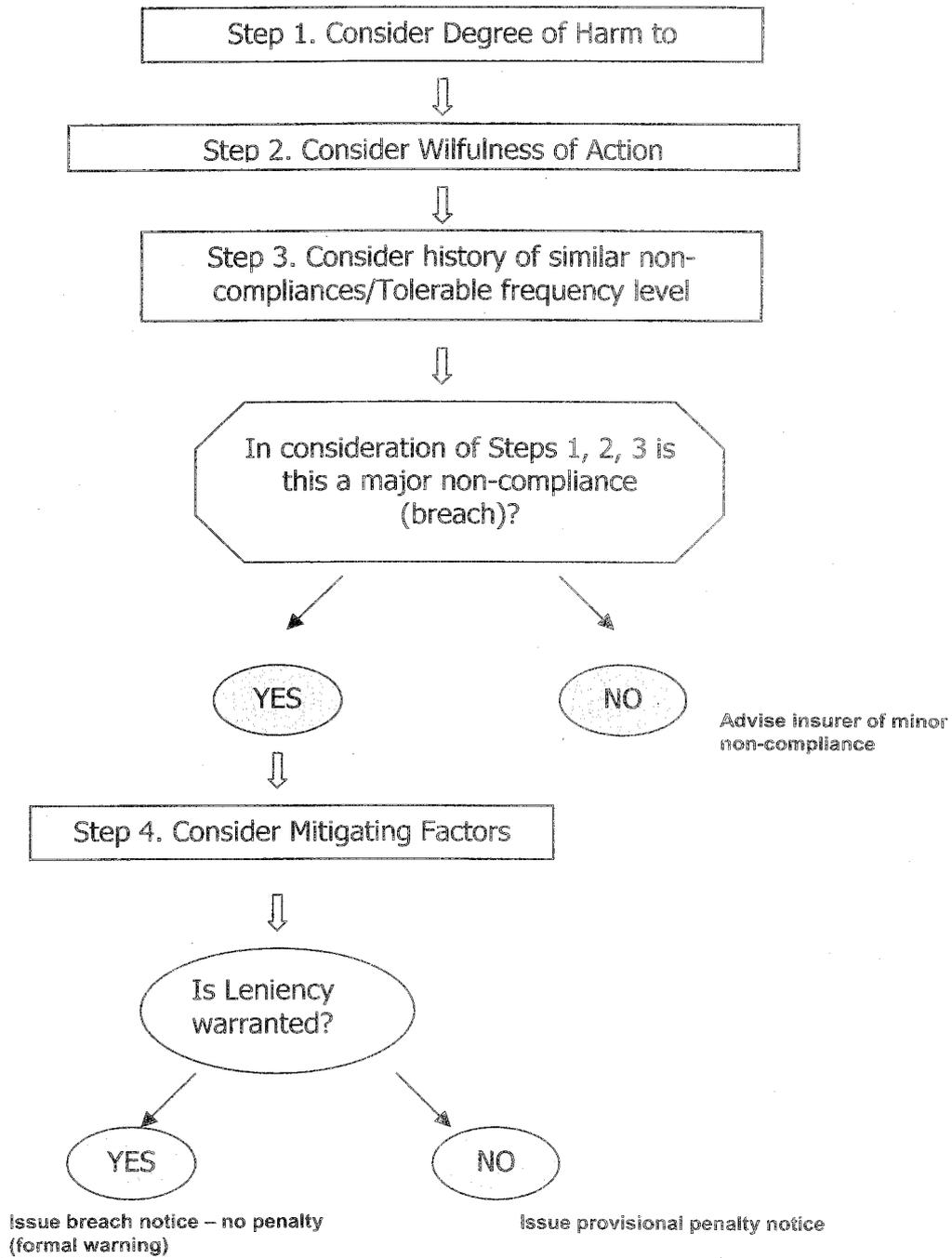
The Committee adjourned at 11:25pm until 9.30am on Monday 6 June 2005 (community based sentencing inquiry public hearing).

Rachel Simpson  
A/Director



## **Appendix 2 MAA complaints flowchart as cited in the Draft MAA Regulatory and Enforcement Policy: Appendix: MAA response to insurer non-compliance**

**Appendix: MAA response to insurer non-compliance**



## **Appendix 3 PricewaterhouseCoopers – MAA Review of the Grants Program – Part 1: Brief Report**



PricewaterhouseCoopers  
ABN 52 780 433 757

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**Motor Accidents Authority  
Review of the Grants Program  
Part 1: Brief Report**

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## Motor Accidents Authority

### Review of the Grants Program

#### Part 1: Brief Report

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### 1 Executive summary: key recommendations

The Grants Program has not had a long history and throughout it the Program has been evolving. The MAA is clearly in step with its peer organisations in maintaining involvement in the Grants Program. This review provides one of the first opportunities to take stock of how the Grants Program can mature and realise its full potential in the road safety area. The review team identified five main areas of recommendation:

#### 1.1 Improved strategic direction

**Recommendation 1:** The recommendation of the review team was that a clearer, more consistently articulated and fully integrated strategy be developed for the Grants Program.

#### 1.2 Inter and intra sectoral relationships

**Recommendation 2:** It was the recommendation of the review team that, as part of the development of the strategic planning for the Grants Program, the nature and value of the potential relationships with other parties in the road safety and rehabilitation arena for the Program be specifically articulated.

#### 1.3 Improvements to process of selection and management of Grants

##### 1.3.1 Selection of grants

**Recommendation 3:** The recommendation of the review team was development of a single process for an annual round of calls for expressions of interest, with assessment and selection based on the well-developed processes used by other agencies which fund initiatives.

It was further recommended that, where expressions of interest are considered outside the annual round, the same rigour for assessment needs to be applied to ensure adequate project quality being funded.

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### 1.3.2 Management of the Grants

**Recommendation 4:** The recommendation of the review team was that there should be development of simple, purpose specific processes for management of the grants, with emphasis on their consistent application and documentation.

### 1.3.3 Tracking funding

**Recommendation 5:** The recommendation of the review team was that both payed accounting and accrual accounting systems should be included to effectively track funding allocations over time.

## 1.4 Improvements to evaluation

**Recommendation 6:** The recommendation of the review team was that an evaluation strategy, supported by an evaluation framework be developed for the Grants Program. It should be used to assess performance of the Program, and inform future strategic and funding decisions in an evidence based fashion.

## 1.5 Future funding arrangements to sustain the Program

**Recommendation 7:** The recommendation of the review team was that continued funding over longer funding cycles be allocated against strategic objectives of the MAA, in order to sustain the Program and its appropriate development.

## 1.6 Conclusion

The MAA has a unique role to play in road safety and rehabilitation. As a small dedicated regulator it is more likely to be in touch with a wider range of issues than mainstream agencies. In part this reflects that it has a broader range of stakeholders. While it has not yet achieved its full potential in the prevention arena, the MAA has demonstrated innovation in the Grants Program, and that some funded projects have made outstanding contributions to road safety and rehabilitation. The highest priorities for realising the full potential of the Grants Program are:

- activities to strengthen the strategic focus of the Grants Program
- formalising processes for review of grant applications
- evaluating the outcomes of funded projects
- securing appropriate arrangements for ongoing funding for the Grants Program.



## 2 Background

The Motor Accidents Authority (MAA) has a responsibility for reducing:

- motor vehicle traffic crashes (MVTCs)
- the disability arising from them
- their consequent costs for the CTP scheme.

Part of the way that the MAA meets these responsibilities is through its Grants Program. The sponsorship of projects to contribute to the reduction in the burden of MVTC injury has been a part of the MAA's strategic objectives since its establishment in 1989. However, the Grants Program has grown substantially over recent years, both in size and in scope, and, as can be expected, there is a need to consider systems for gaining maximum return for investment. To assist in this regard, the MAA required a review of the performance of the Grants Program in terms of its operation, outcomes and sustainability.

The present report describes the findings and recommendations of the review. The specific aims of the review were to consider:

- (a) the MAA's involvement in road safety and rehabilitation funding compared with other jurisdictions, both national and international
- (b) the quality and efficacy of the processes around the selection and management of grants
- (c) the performance of the Grants Program, including performance against the MAA's legislative responsibilities and the objectives of its Corporate Plan and the Grants Program
- (d) possible improvements to the Program
- (e) appropriate future funding arrangements required to sustain the Program.

The report describing the review and its findings is in 3 parts. This report, Part 1 – Brief Report, provides in summary form the main features of the approach to the review, key findings of the review and the recommendations made by the review team. For more detailed discussion of all aspects of the review, Part 2 - Full Report, should be consulted, together with Part 3, the Appendices.



### 3 Methodological approach

Three main methods were used to meet the aims of the project:

- Interviews were undertaken with key representatives of a selection of other relevant agencies, using a standardised interview template. Both national and international agencies were contacted.
- A systematic description of the processes and procedures for the selection and management of grants was obtained using process mapping methods.
- An expert review of the achievements of the Grants Program was undertaken, using a sample of activities primarily focused on projects funded since 1999. The sample was designed to provide a purposeful spread across year of approval (since 1999) and whether the project was completed or not, and was weighted to include a greater proportion of the projects at higher levels of funding to ensure adequate representation of these higher cost projects. A full description of the sampling method is provided in section 3.3.1 of the Full Report.

These methods are described in detail in section 3 in the body of the Full Report.



## 4 Key Findings

The MAA has energetically and enthusiastically taken up the challenge of its Act to engage in activities to improve road safety and rehabilitation in NSW. We understand that there was substantial activity through the Grants Program in the early 1990's, with the establishment of the Brain Injury Rehabilitation Program. Clearly, the intensity of funding can be varied as needs of strategic activity dictate. The scope of the MAA's activities has again increased over recent times. Information provided by the MAA indicates that allocation of funds for new projects increased approximately 6 fold over the review period, from a total of around \$M 2.5 in 1999-2000 to around \$M 12.8 in 2003-2004. Accompanying this increase in funding, the spread of activities has also increased. Currently the Program covers a very broad spectrum of initiative areas and has achieved a high level of activity for its investment. Alongside the increase in activity, the Program has been developing increasing structure. Considerable effort has clearly been expended to develop strategic underpinnings for the Program.

### 4.1 How the MAA's involvement in road safety and rehabilitation initiatives compares with other jurisdictions, nationally and internationally

Consultation with comparable agencies nationally and internationally indicates that it is the norm for compensation and regulatory agencies to engage in prevention activities. The populations served by the agencies varied from approximately 1.5 in the smallest jurisdiction (South Australia) to approximately 4.9 million people in the largest jurisdiction (Victoria). Where information about dedicated funding for road safety and rehabilitation initiatives was available, recent figures indicated that funding ranged from 3.6 million to \$10 million (Canadian dollars).

Agencies differ in how they interpret that they should engage in this social responsibility in terms of scope and approach. However, there is universal agreement that agencies should be involved in reducing the burden of motor vehicle traffic crash trauma, injury and disability. This view is in line with the increasing understanding, nationally and internationally, in compensation schemes that efficiency/ effectiveness relies on prevention and injury management.

Further details of findings regarding the key similarities and differences between the contacted organisations can be found in section 4.1 of the full report, and complete details of interviews can be found in Appendix 11.



## 4.2 Quality and efficacy of the processes related to selection and management of grants

### 4.2.1 *In principle, from the process maps*

From the processing mapping, it is clear that systematic structured processes are in place for the MAA Grants Program, although they differ depending on whether the project focuses on road safety or rehabilitation. The people involved, the relevant documentation and infrastructure related to each step, as well as possible exceptions can be found in section 4.2.1 of the Full Report and represented in Figure 4.1 in that section.

### 4.2.2 *In practice, from review*

The review identified issues for further development associated with the approach to assessment and selection of grants, and a need to develop a systematic best practice approach to the process. Specifically, the review highlighted the following:

- Two different procedures were evident for the road safety and rehabilitation projects. The rationale for the existence of the two different procedures is not clear, and was not, in the view of the review team, considered justified. Having to manage two different processes for a set of activities that share fundamental commonalities is considered unnecessarily cumbersome and more likely to hamper rather than enhance the development of best practice in selecting and managing the Program across the board.
- The importance of a suitable methodology for the success of a project was in general, underemphasized in the processes. It was often under specified in proposals and underemphasized in the grant assessment process. It was the view of the review team that the appropriateness of the method/approach should be paramount for all initiatives. Irrespective of project type the method or approach is the crux to understanding the potential for success, and the potential risks of failure, of the project proposal.
- The systematic use of peer review and expert advice was not in general evident. The lack of systematic inclusion of expert review throughout the assessment and selection process for all project types poses considerable risks to the process. Given that the Grants Program covers a very broad range of technical area ranging from technical medical science, clinical medicine and health sciences research, social science through to social marketing, market research and related areas, it is untenable to expect that all necessary expertise is available internally within the MAA. To address the need for technical advice the MAA, like other similar organisations, makes use of external peer review. Unfortunately, the peer review and expert advice is not systematically utilised and consideration of conflict of interest was not evident in the material examined.



- Excellent follow-up with grantees was evident in the process; however processes to deal with issues that arise during follow-up are not well developed.
- Documentation, with sign off was not consistently evident in the sample of projects reviewed. In collating the review the basic review material sought was not easily accessible, nor ultimately available for many of the grants. This included the absence of formal proposals for projects, the absence of documentation of MAA deliberations around projects and decisions concerning them, and the absence of final reports.
- To some extent, processes appeared to be more developed in the rehabilitation portfolio, in line with the fact that the road safety area is a more recent area for the MAA's involvement.
- In general, little evidence was available about the value or contribution of projects once completed. There was, for instance, limited evidence of the promotion of outcomes of funded projects. Similarly, little evidence was available around the evaluation of specific projects (either by the MAA or the project itself) or their contribution to the Program's performance or the MAA's strategic objectives.

#### 4.3 The performance of the Program

Overall the review showed that:

- From the sample of grants reviewed, it is clear that the initiatives funded by the Program cover a wide range of areas and, in general, focus on important target groups and objectives identified in strategic plans and legislative responsibilities of the MAA.
- In many instances, the MAA gets extremely good value for money. Many projects are not being costed on a full cost recovery basis and a number of projects have been successful in achieving uptake from seeding grants, for instance in the service development and community initiative area of rehabilitation.
- Excellence was evident in both portfolios.
- The projects were spread across the spectrum of both potential contribution to strategic MAA objectives and evidence of quality of their achievements. This spread suggests that improvements to the process for selection, management and evaluation of projects would allow the Program to more effectively contribute to achievement of the MAA's strategic objectives and to more effectively maximise on investment in the Program.
- Evaluation of completed projects was in general poor and evaluation of their contribution to the strategic objectives of the Program was also



weak. Accordingly, much of this review was based on potential of projects to contribute, rather than evidence of achievement.

The remainder of this section considers specific key findings from the review of the sample of projects from the Grants Program. The sample is summarised in the categories provided by the MAA. The data on which these key findings are based can be found in sections 4.3.1 and 4.3.2 of the Full Report, and in Appendix 7.

#### *4.3.1 Performance of the Grants Program*

##### *4.3.1.1 Overview of performance of the road safety grants*

Projects' rating of potential contribution to strategic objectives tended to be towards the lower end of the scale, with no projects rated at the highest level of potential for contribution. Projects from the Education, Sponsorship and, in particular, the Research categories were more likely to be found at the middle to higher levels of the scale. Arrive Alive and Driveways projects were more likely to be rated at the lower end of the scale and Community Initiatives were distributed across the scale.

Evidence for the quality of achievements of the completed road safety projects tended to be rated towards the lower end of the scale. The majority of completed projects scored in the medium to low range on evidence of achievement. The exception to this was the Research category, where projects were more likely to score at the higher end of the scale and over a quarter scored at the top of the scale.

The leading three categories of funding in the road safety portfolio (Education and Awareness, Sponsorship and Research) accounted for around \$M12.5 over the review period. Overall, the projects in these categories were reviewed as having:

- a need for improvement in assessment processes
- a need for improvement in documentation
- a need for improvement in evaluation
- medium level potential to contribute to strategic objectives
- considerable variability in availability of evidence of quality and achievement for completed projects, but tending to moderate levels of evidence in the main.

##### *4.3.1.2 Overview of performance of rehabilitation grants*

In contrast to the road safety projects, ratings of potential contribution to strategic objectives of the rehabilitation projects tended to be towards the higher end of the scale, with some projects from all categories except Sponsorship rated at the highest level of potential for contribution. In



particular, Service Development projects were more likely to be found at the higher end of the scale.

Evidence for the quality of achievements of the completed rehabilitation projects, was spread across the spectrum. Completed projects in the Research and Service Development categories were more likely to be rated at the higher end of the scale for evidence of quality of achievement. Sponsorship, Community Initiative and Education projects were most likely to be scored at the lower end of the scale for evidence of quality of achievements.

The leading three categories of funding in the rehabilitation portfolio (Service Development, Research and Community Initiatives) accounted for nearly \$M50 of funding over the review period. Overall, the projects in these categories were reviewed as having:

- a need for improvement in assessment processes
- a need for improvement in documentation
- medium to high potential to contribute to achievement of strategic objectives
- considerable variability in evidence of quality and achievement ranging from low to high levels.

#### *4.3.2 Cost benefit – performance of projects by funding level*

- For most project categories in both the road safety and the rehabilitation portfolios, lowest levels of funding (< \$20k) were associated with lowest ratings of potential contribution, suggesting that distribution of funds across many small projects is unlikely to deliver against strategic objectives at the individual project level.
- Small projects may collectively have more strategic potential, but this would need to be harnessed by the MAA through formal strategic funding allocation and evaluation processes.
- On the other hand, highest levels of funding were not necessarily associated with highest ratings of potential contribution to strategic objectives. Not surprisingly, only Rehabilitation Community Initiatives and Service Development projects were better rated as funding level increased. Most likely this reflects the resource intensive nature of these projects. For other categories (e.g. Road Safety Sponsorship, Research in both portfolios) moderate levels of funding were associated with best ratings of potential.
- Given that highest levels of funding were not universally associated with the highest ratings of potential, suggesting that funding level alone does not guarantee the quality of the projects sought by the Grants Program.



- A similar pattern was evident for the small group of projects which had been most highly funded in the Program. For the 14 projects in the sample which had been allocated \$500k or greater, ratings for their potential to contribute to strategic objectives covered the entire spectrum. Nearly half were rated as having low to moderate potential to contribute to strategic objectives, with the remaining 8 being rated as having high potential. It is noteworthy that the majority of highly rated projects among these initiatives at the highest levels of the funding came from the rehabilitation portfolio (N=7) with only one road safety initiative being rated above moderate potential.
- Funding level was also no guarantee of adequate evidence of achievement being available. For highly funded ( $\geq$  \$500k) projects from both portfolios, the majority of completed ones (7 of 9 projects) were considered to have low levels of evidence for quality of achievement.
- These findings suggest that, beyond a minimum level of funding careful assessment of the potential of projects must be assessed, and evidence of delivery by projects against potential is crucial to guide future funding.

#### *4.3.3 Issues of evidence*

- Effort to consider the performance of the Program was clearly evident, but strategic evaluation of the Program and its projects was considered an area with substantial development potential.
- Evaluation of completed projects, at the individual project level, was in general poor.
- Evaluation of the contribution of projects to the strategic objectives of the Program was also in general weak.
- Evaluation efforts have not been systematic and have tended to be restricted to process oriented achievements (e.g. whether or not initiatives reflected involvement in a high priority area).
- Reliance on project based evaluation means that evaluation tends to remain very process based, given that it needs to coincide with the conclusion of the project.
- The absence of an evidence based approach presents a problem for the Grants Program because it limits the extent to which the portfolio of projects and their achievements can be used to drive the strategic agenda of the Grants Program.



#### 4.4 Overall strategic direction of the Grants Program

- Overall, the review team found clear indication of considerable thought and energy devoted to developing and considering the strategic objectives of the Grants Program.
- Some examples of responsiveness to identified areas of need in appropriate ways were evident where initiatives had been pro-actively sought to address key areas of need.
- However, there was often limited evidence of linking of selection and assessment of activities to the articulated goals of strategies and, in turn, to funding decisions and allocation, using an evidence based approach. For instance, it was not clear when and how a decision to fund a project through the Grants Program might be made outside of the call for expressions of interest around nominated priority areas.
- The review committee recognised that it might be entirely appropriate to respond to areas of priority need outside the standard proposal process. The issue that was raised for the review committee, however, was the need for establishment of a protocol for positioning the Grants Program (and all its activities) within the MAA's overall initiatives, in order to ensure alignment of all funded initiatives through the Program with the objectives set for it.
- The review committee was strongly of the view that a mixed strategic model is needed, combining both proactive (seeking tenders in key areas) and reactive components (capitalising on innovation through the expressions of interest) to engage appropriate providers for the Program by focusing on strategically appropriate areas of endeavour.

### Recommendations

The Grants Program has not had a long history and throughout it the Program has been evolving. The MAA is clearly in step with its peer organisations in maintaining involvement in the Grants Program. This review provides one of the first opportunities to take stock of how the Grants Program can mature and realise its full potential in the road safety area. The review team identified five main areas of recommendation:

#### 4.5 Improved strategic direction

**Recommendation 1:** The recommendation of the review team was that a clearer, more consistently articulated and fully integrated strategy be developed for the Grants Program. The strategy should:



- position the Program within the MAA's overall strategic objectives, identifying areas that are high priority for MAA involvement and those which are not
- be developed on an evidence based platform concerning areas of need, and would benefit from expert input during its formulation and peer review after its development
- have a realistic timeframe, possibly a 3 to 5 year cycle recognising that it will identify both shorter and longer term strategic goals, and shorter and longer term initiatives to achieve those goals. Consideration should be given to how critical longer-term strategic initiatives will continue to be supported on a long-term basis through recurrent funding
- ensure that assessment of proposed activities are directly linked to the articulated outcomes and goals of strategic directions, and funding decisions should clearly reflect strategic aspirations
- ensure that proposals are actively sought in areas of high need, rather than in the general area
- enable multiple initiatives to be linked to achievement of high level strategic objectives and thereby provide coherence to the direction of activities. This is particularly important given that various avenues will often be required to achieve complex longer term high level goals.

#### 4.6 Inter and intra sectoral relationships

**Recommendation 2:** It was the recommendation of the review team that, as part of the development of the strategic planning for the Grants Program, the nature and value of the potential relationships with other parties for the Program be specifically articulated.

The review confirmed that there are many potential parties with which the MAA can and should forge relationships. These included other prevention agencies such Roads and Traffic Authority (RTA), other agencies with an interest in injury and disability management (e.g. Department of Ageing, Disability and Home Care (DADHC)), and the NSW Department of Health. As well, links with the industry, non-government and community sectors offer potential benefits. The review team also recognised that the quality of such relationships was not entirely within the MAA's control. Decisions about the nature and role of these relationships, in general, and for the Grants Program in particular should be underpinned as follows:

- The Grants Program Strategic Plan should define the development of these relationships.
- The development of the relationship should support the strategic direction identified for it.



## 4.7 Improvements to process of selection and management of Grants

### 4.7.1 Selection of grants

**Recommendation 3:** The recommendation of the review team was development of a single process for an annual round of calls for expressions of interest, with assessment and selection based on the well-developed processes used by other granting agencies. The hallmarks of those processes include:

- rigorous, independent and appropriate peer review
- use of an appropriately constructed expert panel for considering proposals and reviews
- a robust and appropriately weighted scoring system
- transparent allocation of rank ordering of projects, with the top projects (to the extent of funding) being recommended for funding by the expert panel.

The preferred model of the review team was to have a single expert panel for both the road safety and the rehabilitation areas ensuring inclusion of appropriate expertise to assess the community and education initiatives.

As an extension of Recommendation 3, the recommendation of the review team was that where applications for funding come outside the formal annual round, there should be no less rigour in adherence to providing an appropriate proposal (including methodology) or in assessment of the application by appropriate peer review. In addition to the annual round of calls for expressions of interest, it can be expected that the MAA will consider proposals apart from the annual round. Sometimes these may come from responses to requests for tender or from ad hoc proposals. The rigour of the process of considering proposals for funding needs to be maintained.

All funding decisions should be fully documented with designated sign off.

### 4.7.2 Management of the Grants

**Recommendation 4:** The recommendation of the review team was that there should be development of simple purpose specific processes for management of the grants, with emphasis on their consistent application and documentation.

There are well developed models from other agencies on which suitable processes could be based. These would need to be properly resourced.



#### 4.7.3 Tracking funding

**Recommendation 5:** The recommendation of the review team was that both payed accounting and accrual accounting systems should be included to effectively track funding allocations over time.

At present, funding is allocated to a project, irrespective of its duration, making it difficult to fully track investment in a particular area at a particular time.

#### 4.8 Improvements to evaluation

**Recommendation 6:** The recommendation of the review team was that an evaluation strategy, supported by an evaluation framework be developed for the Grants Program. The evaluation strategy and its framework should:

- include indicators for evaluation of process, of short term outcome and of long term outcome in order to identify achievement of Program goal, with evaluation of both implementation and the impact of implementation of initiatives essential
- recognise that many initiatives will have an indirect but nevertheless measurable contribution to high level outcomes such as the reduction in the burden of injury and disability (e.g. education initiatives), and/or may only yield benefits in the ultimate outcome after some time has elapsed
- operationalise specific indicators which reflect the specific evaluation questions that are themselves a reflection of the strategic goals and objectives of the Program
- establish evaluation projects within the Program to feed into the overall Program evaluation so that overall achievements can be discerned. Once developed, the evaluation framework also provides a structured approach for reporting project and Program achievements against strategic objectives of the Program
- not exist in a vacuum. The results of the evaluation should be fed back into the refinement and development of the ongoing Program strategy. The results of the evaluation should also be fed into a communication strategy for appropriate dissemination to the MAA's stakeholders.

#### 4.9 Future funding arrangements to sustain the Program

**Recommendation 7:** The recommendation of the review team was that continued funding over longer funding cycles be allocated against strategic objectives of the MAA would sustain the Program and its appropriate development.



This might be best achieved by allocating funds over a specified period, and establishment of a trust to administer the fund. The trust should have sufficient funds to operate the Grants Program as well as control the funds allocated to initiatives. Four observations by the review team underpin this recommendation:

- There is a need for the Program to have a source of funding independent of the main stakeholders in reducing the burden of MVTC injury and disability, for instance health agencies, to ensure that the MAA can champion its specific objectives and not have these inadvertently subsumed by mainstream agendas.
- There needs to be recognition of the critical role of the MAA in the event of the development of long term care initiatives where its role is likely to expand and/or diversify.
- The need for the funding for the Grants Program needs to be considered as independent of other financial / operational demands of the MAA, in order to enable funding to reflect strategic objectives, over the appropriate (multi-year) strategic planning process.
- It needs to be recognised that it will be important for the MAA to determine an appropriate transaction cost, factored into funding arrangements, against the background of achievable benefit for the Program.