

# Motor Accidents Compensation Act (1999)

## Survey of year 1 open claims

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## **Summary and conclusions**

The MAA conducted a survey of claims relating to accidents in the first year of the operation of the Motor Accidents Compensation Act, which were not finalised in 2002.

### **Insurer survey**

Insurers provided detailed information on 4,726 open claims, in 90% of which claimants were legally represented which is not surprising as they are the more complex/serious claims.

#### ***Insurer made an offer***

Insurers had made offers on 55% of the claims. In more than half of these claims with offers, the insurer was awaiting a counter offer from the plaintiff or some other action to be taken by the plaintiff.

Almost 20% of cases were awaiting MAS decisions.

In a small number of cases (3%) it was treating doctors or medical legal opinions that were needed before progress could be made.

In 14% there were disagreements between the two parties where it was not possible for the MAA to identify from the survey whose turn it was to act. A medical assessment would be appropriate to settle the majority of these disputes but neither side had approached MAS.

Of the claims where the insurer had made an offer there were very few issues concerning injury stability and only a handful of cases had proceeded to court.

#### ***Insurer has not made an offer***

Insurers had not made an offer in the remaining 45% of cases. In a significant minority of these cases (13%) this was due to the fact that injuries had not stabilised or had only recently stabilised.

However, in one third of cases the progress of the claim depended on action from plaintiffs, for example by providing particulars or clarifying their intention to proceed with their CTP claim after consideration of their Workers' Compensation rights. MAS was the reason for delay in 14% of matters and CARS in 1%. Doctors were responsible for delay in 6% of cases. A small number of matters (3%) were awaiting court hearings.

There was a greater level of disagreement between parties in this group, with disputes in 19% of cases. The disputes were related to liability in 10% of cases.

### **Conclusions**

A major cause of delay is the failure of plaintiffs (90% of whom are legally represented) to make counter offers and to provide particulars. The MAA intends to have further discussions with insurers and the Law Society to assist them in identifying ways in which all parties may better assist claimants.

Contrary to anecdotal reports from all parties prior to the survey, MAS was not responsible for the majority of delays. The MAA will continue to address the delays at MAS by

- Staff recruitment
- Recruitment of more assessors
- Improving accuracy of assessors' reports by providing tailored training
- Increasing the appropriate use of MAS especially in impairment disputes.

### **Claimant survey**

In addition to requesting detailed information from insurers on year 1 claims, the MAA also followed up directly with claimants to gather their view of the claims settlement process. Responses have been received from 977 claimants (24% response rate). The MAA has completed its analysis of the survey of claimants at this stage.

The MAA intends to make further contact with claimants where there appears to be a delay due to poor responses from the insurer or the solicitor, with a view to prompting early attention to these claims.

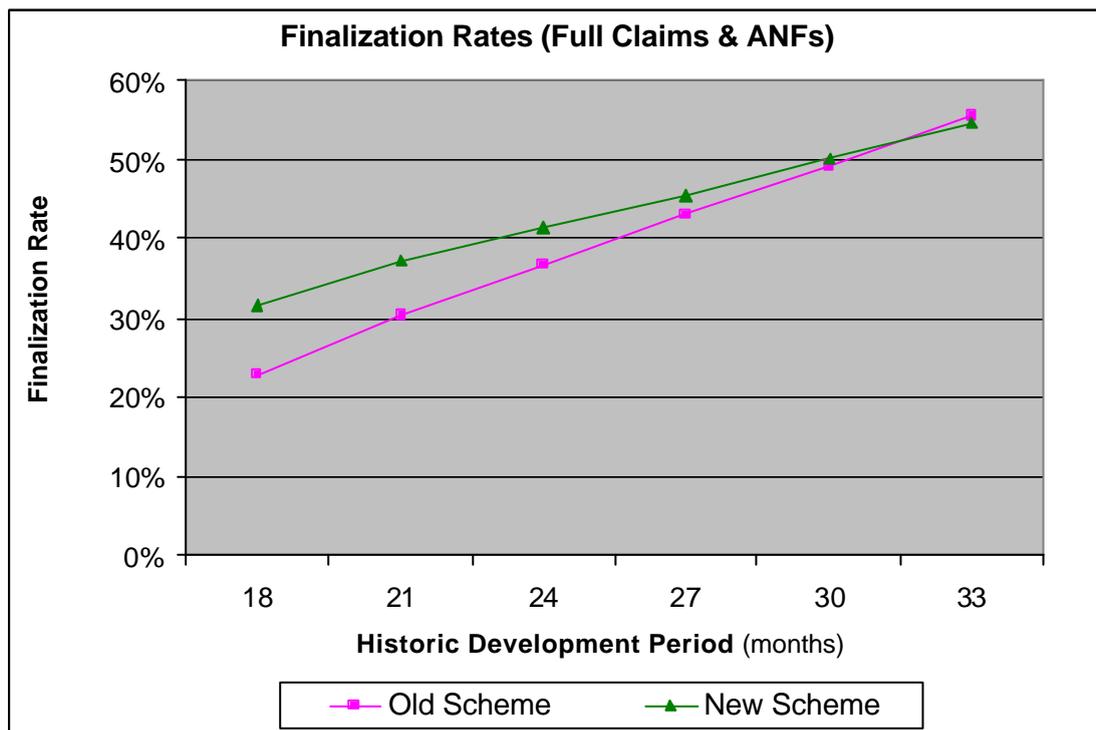
## Introduction

At the end of March 2002, insurers had received over 37,000 notifications including both full claims and unconverted ANFs, since the new scheme was introduced on 5 October 1999.

The finalisation rate under the new scheme has been better than the finalisation rate under the previous scheme, as the graph shows and is still at a comparable level. However, the MAA was concerned that the variation in total payments between schemes might be a result of a slow down in finalisations of those claims for which there was an NEL entitlement under the old Act but which were unlikely to get over the 10% WPI threshold.

The MAA decided to obtain a clearer picture

1. by collecting specific reasons from insurers why year 1 open claims had not resolved and also
2. by asking claimants themselves for their views of the progress of their claims.



## Survey of insurers

At the end of March 2002, insurers had received 13,323 full claims relating to accidents in the first year of the scheme. Of these 5,394 (41%) were finalised, leaving 7,929 full claims still open. The MAA surveyed a total of **7,113** open claims from year one where the claimant was over 16 at the time of the accident and the claims were notified before 1 January 2002.

The MAA asked insurers to provide information by the end of August 2002. Information was received on 6,272 claims (88%) of which 1,212 had finalised or settled since the end of March. A further 334 claims were excluded from the survey mainly because they were either workers compensation recoveries (from a workers compensation insurer not an individual claimant) or interstate claims, leaving **4,726** claims.

## Insurer survey results

Legal representation amongst these 4,726 claims was approximately 90%, which is not surprising as they are the more complex/serious claims.

The main reasons that insurers identified for the delay in settlement were:

- Insurer awaiting a counter offer from claimant/representative (27%)
- Awaiting a determination from MAS (17%) (eco loss 4%, not eco loss 10%, tt 1%)
- Outstanding particulars (13%)
- Medical dispute, not at MAS (9%)
- Claimants' workers compensation rights being considered/pursued (8%)
- Injuries not stable (parties agree) or only recently stable (7%)
- Liability dispute, not at CARS (5%)
- Awaiting CARS special/general assessment (2%)
- CARS exempt – litigation not commenced (2%)
- CARS exempt – litigation commenced (1%)
- Awaiting CARS decision on exemption (<1%)
- Other main reason (8%)

There were very few cases where the main reason for delay was an unresolved dispute about quantum of NEL (<1%) or about any other head of damage (2%). There was a minority of claims (10%) awaiting a MAS decision on WPI and/or stability, which could become a dispute about quantum of NEL.

Of the 4,726 claims, insurers had made offers in 2,601 cases (55%) and had not made an offers in 2,125 cases (45%). The subsequent analysis looks at these two groups separately.

### Insurer had made an offer

Insurers had made offers on 2,601 claims. The most common reasons for non-finalisation amongst these claims were:

- Awaiting counter-offer from claimant/representative (46%)
- At MAS (19%)
- Medical dispute (but not yet referred to MAS) (10%)
- Awaiting further particulars (7%)

Combined, these reasons accounted for 82% of the non-finalised claims where the insurer had made an offer.

The table below outlines all the main reasons that the claims were still open.

<b>Main reason claim not settled (where insurer had made an offer)</b>	<b>Number</b>	<b>Percent</b>
Quantum under negotiation .....	1,304	50.1
<i>Awaiting counter offer from claimant/representative</i>	1,200}	
<i>Dispute over quantum (not non-economic loss)</i>	79}	
<i>Dispute over quantum (non-economic loss).....</i>	25}	
At MAS awaiting decision or result of assessment.....	497	19.1
Medical dispute but not yet referred to MAS.....	253	9.7
Outstanding particulars .....	181	7.0
Workers compensation being considered/pursued.....	89	3.4
At CARS awaiting assessment .....	70	2.7
Injury not stable or only recently stable .....	66	2.5
Exempt from CARS .....	18	0.7
Liability in dispute .....	8	0.3
Claim settled but legal costs in dispute .....	8	0.3
Procedural dispute .....	7	0.3
Other reason .....	100	3.9
<b>Total.....</b>	<b>2,601</b>	<b>100.0</b>

### **Negotiations**

Of the 2,601 cases in which the insurer had made an offer, half (1,304 claims) were involved in negotiations over quantum before further progress towards finalisation could be made. The majority of those (1,200) were awaiting counter offers. Of the remaining 104, 79 were in dispute over quantum (not NEL) and 25 were in dispute over the amount of NEL.

### **Medical Assessment Service (MAS)**

A further 497 claims (19%) were at MAS awaiting decisions on issues such as WPI, stability of injuries and economic loss. Most of the claims at MAS (295, or

60%) were awaiting a decision on Whole Person Impairment and/or stability (but not economic loss). The second major group of claims at MAS were 131 cases (26%) waiting for a decision on economic loss (with or without WPI or stability issues).

***Medical dispute (not at MAS)***

The third largest main group consisted of 253 claims (9.7%) that were in dispute about medical issues such as WPI or stability, but had not yet been to MAS. At least some of these could be expected to go through MAS in the future.

***Outstanding particulars***

In 181 claims (7%), the insurer needed more information, for example, a treating doctor's report, medico-legal report, initial particulars or further particulars. In a minority of these instances (5 claims) the information was required but had not been requested by the insurer. In the remaining claims it appeared that action was required on the part of the claimant or their representative.

***Workers compensation***

In 89 claims (3.4%) the claimant was pursuing or considering pursuing entitlements under Workers Compensation.

***Claims assessment and resolution service (CARS)***

Seventy claims (2.7%) were at CARS awaiting assessment. Most of these were awaiting general assessment (66) and the remaining 4 claims were awaiting results of a special assessment.

which is not surprising as they are the more complex/serious claims.

In 66 claims (2.5%) either the parties agreed that the injuries were not yet stable or injuries had only recently stabilised.

***Other reasons***

Other subgroups included claims that were exempt from CARS, claims where liability was in dispute, claims that were settled except for a dispute about legal costs, and claims involving a procedural dispute. These each accounted for less than 1% of the 2,601 claims.

### **Insurer had not made an offer**

The insurer had not made offers in 2,125 claims. The most common reasons for non-finalisation amongst these claims were:

- Awaiting further particulars (20%)
- At MAS (14%)
- Delayed/absent injury stability (14%)
- Workers compensation rights being considered/pursued (13%)
- Liability in dispute (10%)

Combined, these reasons accounted for 70% of the non-finalised claims where the insurer had not made an offer.

The table below outlines all the main reasons that the claims were still open.

<b>Main reason claim not settled (where insurer had not made an offer)</b>	<b>Number</b>	<b>Percent</b>
Outstanding particulars .....	425	20.0
At MAS awaiting decision or result of assessment.....	289	13.6
Injury not stable or only recently stable .....	286	13.5
Workers compensation being considered/pursued.....	272	12.8
Liability in dispute .....	211	9.9
Medical dispute but not yet referred to MAS.....	173	8.1
Exempt from CARS .....	141	6.6
Under negotiation .....	97	4.6
Procedural dispute .....	63	3.0
At CARS awaiting assessment .....	12	0.6
Other.....	156	7.3
<b>Total.....</b>	<b>2,125</b>	<b>100.0</b>

### ***Outstanding particulars***

Amongst claims where the insurer had not made an offer, the largest group consisted of 425 claims (20%) with outstanding particulars. Of these, 267 cases (63%) were waiting for initial or further particulars from the claimant or their representative. In 129 cases the insurer was waiting for a treating doctor's report or a medico-legal report. In a small number of cases (29 claims) information was required but had not been requested by the insurer.

### ***Medical Assessment Service (MAS)***

A further 289 claims (13.6%) were at MAS awaiting decisions on issues such as WPI, stability of injuries and economic loss. Most of the claims at MAS (194, or 67%) were awaiting a decision on Whole Person Impairment and/or stability (but not economic loss). The second major group of claims at MAS were 55

cases (19%) waiting for a decision on economic loss (with or without WPI or stability issues).

***Injury stability***

In 286 claims (13.5%) injury stability was the major factor. In the majority of cases (184 claims) both parties agreed that the injuries were not stable.

***Workers compensation***

In 272 claims (12.8%) the claimant was pursuing or considering pursuing entitlements under Workers Compensation.

***Liability***

Liability was in dispute in 211 claims (9.9%) but no CARS exemption had yet been applied for or granted.

***Medical dispute (not at MAS)***

The next main group consisted of 173 claims (8.1%) that were in dispute about medical issues such as WPI or stability, but had not yet been to MAS. At least some of these would be expected to go through MAS in the future.

***Exempt***

A total of 141 (6.6%) claims were either exempt from CARS (131) or awaiting a decision on exemption (10). Liability had been in dispute in 119 of the exempt cases, and of those, 49 had proceeded to litigation and 70 had not.

***Negotiations***

Negotiations over quantum were the primary factor in 97 cases (4.6%).

***Procedural dispute***

There was a procedural dispute in 63 claims (3%), of which 53 concerned providing a full and satisfactory explanation (for example reasons why a claim was submitted late). The remaining 10 claims involved other procedural disputes.

***Claims assessment and resolution service (CARS)***

Twelve claims (0.6%) were at CARS. Six were awaiting a general assessment and six awaiting results of a special assessment.

## **Survey of claimants**

In addition to requesting detailed information from insurers on year 1 claims, the MAA also followed up directly with claimants to gather their view of the claims settlement process. Claimants were sent a survey form if

- their postcode was in NSW
- the claim was not associated with a fatal accident
- the claim was not a workers' compensation recovery
- the injury sustained was not serious - only injuries with MAIS (maximum injury severity) between 1 and 3 were included.

After these exclusions, there was a pool of 4,504 claimants. The address information collected by the MAA includes street number, street name (excluding street, avenue, crescent etc). To find the full correct address for each claimant the file of 4,504 claims was matched against Australia Post addresses to provide valid postal addresses. As a result of this matching process, valid addresses could not be found for 179 claims, resulting in 4,325 letters mailed out.

### **Claimant survey results**

Responses have been received from 977 claimants, and 313 envelopes were returned by Australia Post. The response rate then is  $977/4,012 = 24\%$ , which is to be expected from this kind of survey without follow-up.

Claimants reported that a further 94 claims in this group had settled.

### **Further action**

The MAA has completed its analysis of the survey of claimants at this stage.

However, the MAA will make further contact with claimants where there appears to be a delay due to poor responses from the insurer or the solicitor with a view to prompting early attention to these claims.