

Standing Committee on Law and Justice

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

## **Second Report**

Ordered to be printed 27 February 2001

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

### Part 8.3 Supervision of Authority and Motor Accidents Council

#### 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.

#### 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.

## Terms of Reference

- 1) That, in accordance with the provisions of section 210 of the *Motor Accidents Compensation Act 1999*, which commenced on 5 October 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 the 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 the Commission on their functions;
  - b) to report to the House, with such comments as it thinks fit, on any matter appertaining to the Authority or Commission 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 Commission 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 Commission;
  - 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 is required to 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 Standing Committee on Law and Justice to investigate a particular compensation claim under the *Motor Accidents Compensation Act*.<sup>1</sup>

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<sup>1</sup> Motion moved by the Hon J Della Bosca MLC, Special Minister of State, and agreed to by the Legislative Council, Minutes of the Proceedings, No 28, 30 November 1999, p 296.

## **Committee Membership**

The Hon Ron Dyer MLC **Australian Labor Party Committee Chair**

The Hon John Ryan MLC **Liberal Party Deputy Chair**

The Hon Peter Breen MLC **Reform the Legal System Party Member**

The Hon John Hatzistergos MLC **Australian Labor Party Member**

The Hon Janelle Saffin MLC **Australian Labor Party Member**

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## Chair's Foreword

This is the second report of the Committee in relation to its role in supervising the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC).

Section 210 of the *Motor Accidents Compensation Act 1999* 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. In November 1999, the Legislative Council appointed the Standing Committee on Law and Justice to undertake this task.

The Committee has determined to exercise its responsibilities in relation to the MAA and MAC, initially at least, by conducting periodic public hearings with the Chair of the MAC and the General Manager of the MAA. The hearing held on 8 May 2000 was the first such hearing. The hearing on 11 December was the second such hearing.

This report consists of the transcript of the hearing held on 11 December 2000, together with written answers to questions on notice provided by the MAA. The focus of the hearing on 11 December was on the MAA's 1999/2000 annual report, together with a further report prepared by the MAA which analysed the first year's operation of the new Motor Accident Compensation Scheme.

The new Motor Accidents Compensation Scheme is still in its early days. Although the MAA's report on the first year of the new scheme provides some valuable information, it will remain some time before the full effects of the new scheme become clear. The Committee is also looking forward to receiving further information from the MAA over the months ahead about the methodology to be adopted to report to the Committee on insurer profit margins each year, as required under section 28 of the *Motor Accidents Compensation Act 1999*.

As with the hearing conducted in May 2000, the Committee is of the view that it would be premature for the Committee to express any firm views about the operation of the new scheme at this stage, though it is clear that the annual cost of obtaining a greenslip has been reduced markedly. However, there are two matters on which the Committee has decided to include recommendations in this report. One of those recommendations relates to accountability and the provision of publicly available information about the performance of the scheme. Whilst pleased to receive the MAA's report on the first year of the new scheme, the Committee was concerned that the performance information on the scheme was not included in the MAA's annual report. The Committee is of the view that the annual report, which is required to be tabled in Parliament according to statute, is the appropriate place for key performance information about the scheme to be provided. Alternatively, the *Motor Accidents Compensation Act 1999* could be amended to include a statutory requirement for the tabling each year of a report on scheme performance. Without such an amendment, the provision of consistent, reliable information to the Parliament about scheme performance remains dependent upon the goodwill of the MAA.

The second recommendation concerns the MAA's program of rehabilitation grants, with particularly reference to the Brian Injury Rehabilitation Program. The Committee is surprised that the MAA underspent to the amount of \$871,109 in the area of rehabilitation grants during 1999/2000, and that the amount allocated for rehabilitation grants will be further reduced during 2000/2001. Members of the Committee are only too aware of the significant level of need for services in the community for persons with an acquired brain injury. In view of this level of need, the Committee is of the view that

the MAA should reconsider its existing policy of only allocating rehabilitation grants for research and capital works.

Apart from these two recommendations, the rest of this report is provided for information only. The Committee trusts that this report will serve a useful role in informing the Legislative Council, Members of Parliament generally, and others with an interest in the Motor Accidents Compensation Scheme, about current issues in relation to the new scheme and the way in which the MAC and MAA are exercising their functions.

Prior to the hearing on 11 December 2000, I wrote to a range of organisations and individuals inviting them to nominate issues or questions they would like the Committee to raise at the hearing. A number of detailed responses were received. On behalf of the Committee I would like to thank all those individuals and organisations who responded to the Committee's request.

Finally, I would like to thank the General Manager of the MAA, Mr David Bowen, and his staff for their co-operation and assistance with the hearing and the provision of detailed written answers to the Committee's questions.

**Hon Ron Dyer MLC**

**Chair**

## **Summary of Recommendations**

### **Recommendation One**

*The Committee recommends that the MAA include in its annual reports detailed information about the performance of the Motor Accidents Compensation Scheme. Alternatively, the Motor Accidents Compensation Act 1999 could be amended to require the tabling in Parliament each year of a detailed report on scheme performance.*

### **Recommendation Two**

*The Committee recommends that the MAA reconsider its previous decisions not to provide recurrent funding to the Brain Injury Rehabilitation Program under its program of rehabilitation grants.*



## Opening Statement from the MAA

DAVID BOWEN, General Manager, Motor Accidents Authority, Level 22, 580 George Street, Sydney,

CONCETTA RIZZO, Manager, Insurance Division, Motor Accidents Authority, Level 22, 580 George Street, Sydney, and

ADRIAN MARK GOULD, Consulting Actuary, Level 4, 5 Elizabeth Street, Sydney, affirmed and examined.

The Hon. JANELLE SAFFIN: Before we start could I make the comment that I have only now received the answers from the Motor Accidents Authority [MAA] and have not had an opportunity to read them. I do not know when they were provided to the Committee, but the fact that I have only now received those answers makes it extremely difficult for me to comment and ask informed questions. It may be that I have to reserve my right to ask questions at a later date.

CHAIR: I indicate that the annual report of the authority was tabled quite late and that has led to a compression of the timetable. The answers to questions on notice posed by the Committee, the Law Society and the Bar Association were received just before 11.00 a.m. last Friday. Accordingly, that is as much notice as we have had. I regret that, but we shall just have to do the best we can this morning. Mr Bowen, I invite you to make a brief opening submission to the Committee.

Mr BOWEN: Perhaps I might comment upon that. The authority was well aware of the needs of the Committee in putting our report together. However, we felt that it was appropriate to try to get statistics on the full year's operation of the scheme, which involved returns not coming in until well into November. There was then analysis of those returns and putting it all together in a report to the Committee, so were also suffering under time constraints. I pass on apologies from Richard Grellman, the Chair of the Board of the Motor Accidents Authority and the Chair of the Motor Accidents Council. He has been detained overseas and was unable to be present today, but he has indicated to me that he would like to pass on a request to you as Chair of the Committee and to any member of the Committee that, if they wish, they can contact him to gauge his perception of how the scheme is operating.

The Motor Accidents Authority welcomes this opportunity to present a report and answer questions on the first year of operation of this scheme. The senior officers of the MAA have found the process of preparing the report and responding to questions a valuable means of assessing the scheme. It has confirmed two things: first, that regulation is made valuable when it is transparent and accountable, and the process of accountability through the Motor Accidents Council and through this Committee has helped the MAA to consider and improve its functions. For example, some of the questions and issues that have arisen in this process have made the staff of the MAA stop and think about what we are measuring and why. We regard that as being a very good outcome.

Second, this process has confirmed my view of the scheme performance indicators of affordability, efficiency, effectiveness and fairness and the correct measures of the operation of the scheme. The MAA has attempted to provide detailed answers to questions on notice, with the exception of a series of questions from the Bar Association concerning the reasoning behind decisions of the Principal Claims Assessor. It is quite appropriate that the authority be questioned concerning the administration of the operation of the Motor Accident Assessment Service, but the MAA cannot direct a claims assessor in the conduct of an assessment, and it is not appropriate that this forum be used to ask questions concerning the reasons for decisions or which require an opinion on an interpretation of the Act taken by the Principal Claims Assessor. For that reason we have not addressed those questions in detail.

In very brief terms, the summary of the report that has been provided to the Committee is that the scheme is operating within the cost assumptions that underpin the scheme reforms and operating generally positively, as measured against the scheme performance indicators. However, the MAA still finds itself in the frustrating position of having to say that it is too early to tell in relation to some of the key scheme reforms. I wish to briefly touch upon some of those areas that have been the focus of many of the questions to the Committee, and particularly the questions from the legal profession.

First, the MAA is very aware of the strong anecdotal evidence from solicitors that there has been a significant reduction in the number of people who make a claim, as distinct from obtain benefits, under the accident notification form. The evidence at the end of the first year is equivocal on this point. Overall notifications are up, from which positive conclusions have been drawn in our report about access to the scheme and early access to compensation, but it will be some time—and perhaps another MAA can properly assess the ultimate claiming rate.

The second issue is access to non-economic loss compensation. Again, there has been a suggestion put to me, and it is implicit in the submissions from the legal profession, that the access to non-economic loss will be limited to less than the assumed 10 per cent. Indeed, it has been suggested to me that it will be limited to only about 5 per cent of clients. As these claims involve people with serious injuries, it was not expected by the MAA that there would be many, if any, claims for non-economic loss settled in the first year. That has proven to be the case.

However, the MAA has otherwise attempted to assess the impact of the impairment guidelines, and has undertaken a review of 110 files supplied by CTP insurers which have been sent for a paper assessment. The result of that process suggests to the Motor Accidents Authority that the access to non-economic loss compensation will be in line with predictions; that is, that about 10 per cent of claimants, representing those with the most serious injuries, will meet the greater than 10 per cent whole person impairment threshold. Recently, when this issue was raised at a presentation that the MAA gave to the Law Society's personal injury committee, I extended an offer to the committee to provide 50 or more completed files to go through the same process for the solicitors, so that we could give them an assessment based on their files as well.

I wish to make one other comment about the impairment guidelines. The guidelines were produced in close consultation with medical expert advisory groups. Details of those groups and that process were submitted at the last of the Committee's hearings. The purpose of the guidelines is to obtain consistent

and objective means of measuring whole person impairment. So they are a measurement tool. If the result of the use of those guidelines in accordance with the legislation is that significantly more or significantly less claimants access non-economic loss than was anticipated, then it will require a policy response. The MAA's view is that it will not, and indeed cannot, manipulate those guidelines to achieve a desired result.

I also wish to briefly mention in opening the issue of insurer profit, because it is a matter upon which the MAA has a specific statutory charter to report to this Committee. At the last hearing I indicated that work had commenced on setting a methodology to allow the authority to better fulfil this task. Subsequently, the MAA released two issues papers, copies of which have been sent to the Committee, and it has taken the responses to those papers into account in developing a preferred approach to measuring profit. This obviously has involved us in extensive consultation with the industry and also with the Australian Prudential Regulatory Authority [APRA], which is the overall industry prudential regulator.

The MAA will apply its proposed methodology as a trial run on the next round of premium filings. Mr Gould from Taylor Fry is here to assist in answering any questions about that process. I would also extend to the Committee an offer that, if any members wish to sit down with me and Mr Gould, or any other officers, to work through that process in detail—because it is very complicated—we are more than willing to do so.

Finally, the assessment of profit is only one part of the MAA's regulatory responsibilities. Since the passage of the *Motor Accidents Compensation Act* the authority has promulgated a range of guidelines that cover insurer behaviour and set in place audit and reporting programs. These serve two purposes. First—and, in my view, the primary purpose, particularly at this early stage—is to assist the industry in improving practices. Second—and only if that first purpose fails—it is to penalise bad behaviour. While the authority has had, during the first 12 months, isolated occasion to censure some insurers concerning breaches of the claims handling guidelines, I would like to put on record my view that the industry has generally made some very significant and positive changes to the way in which it deals with claimants, and is to be commended for this.

Mr Chairman, we now have for you a presentation by Ms Rizzo which covers the operation of the scheme against the four scheme performance indicators, which we presented to the last hearing of the Committee.

CHAIR: Before Ms Rizzo does that, I might deal with two formal matters. First of all I might announce that the Committee members present at this stage, apart from me, are the Hon. Janelle Saffin and the Hon. P. Breen. Also present is the Hon. Dr A. Chesterfield-Evans, who is present not as a member of the Committee but as a member of the Legislative Council. Dr Chesterfield-Evans has the right to ask questions, if he wishes, but not to participate in the subsequent deliberations of the Committee.

Ms RIZZO: The material to which I will refer has been included in the report from the Motor Accidents Authority. Basically, it is a summary of the four indicators. The four indicators that have been referred to in our report are affordability, effectiveness, efficiency, and fairness. The first one,

affordability, is straightforward. It looks at how affordable the premiums are for the motoring public. There are three measures that we have used. On each of those measures, the affordability has improved. With regard to premiums to 30 September 2000, first of all the average premium for an ordinary motor car in Sydney is the bottom part of the graph. After the introduction of the new Act, the premium has reduced. In fact, it has reduced from \$441 in June 1999 to \$345 in September 2000. While that has reduced, average weekly earnings have in fact gone up.

The next graph shows the pattern of the premium as compared to average weekly earnings. It has dropped from 48 per cent before the Act to 37 per cent after. In regard to affordability, in the first year of the new Act, insurers were under an obligation to ensure that the majority of ordinary motor cars in Sydney had a premium of less than \$330. In fact, over 70 per cent of premiums were under that level. So that was a clear majority. In addition to that, insurers, in their premium filings for the second year under the new Act, have estimated that the majority of premiums for the ordinary motor car in Sydney will be under \$318; that is, excluding GST. So a summary of affordability is that before the Act to after the Act, on a number of indicators, the premium has reduced.

The second indicator is effectiveness, which measures how well the scheme is working. To do this we have looked at claim numbers and claim payments. The claim numbers show, on the bottom line, that, compared to the equivalent period in the previous year—so it is a like with like comparison—15 per cent more injured people have had access to compensation. I should note that under the Act there are both full claims which can be made, and accident notification forms, which allow people to have access to medical treatment payments much more quickly. With regard to timing, there has been an improvement of 14 per cent in the time from the accident to the notification date. That is partly because of the introduction of this new form of applying for compensation. In addition to that, looking at full claims, there has been an improvement of 7 per cent in the time that insurers have finalised those claims.

If we exclude legal and investigation costs—which do not go to the claimant, and do not go to their treatment—the total amount of payments that have been made, only on full claims, not on ANFs, is \$10.2 million, compared to \$11.2 million in the previous year, which is a decrease. But when we look at the average compensation payment that has been made to claimants, it is an increase of almost 10 per cent. The graph which refers to payment profile shows the types of payments that have been made. The very first bar shows that there has been an increase in payments for treatment expenses—for medical and other health professionals.

There have been three important decreases. The first is in economic loss payments, the second is in non-economic loss payments, and the third is in investigation costs. All three of those are consistent with what the Act intended to happen—a reduction in economic loss, with no economic loss to be paid for the first five days off work; a reduction in non-economic loss to be paid according to the impairment threshold; and a reduction in investigation costs, one aspect of transaction costs.

In summary, as far as effectiveness is concerned, there is a better reach; more people are accessing compensation more quickly. As I said, medical payments have increased. Three sorts of payments have decreased, as intended by the Act. The amount of money going to lawyers has not decreased at this stage, but the proportion of legal representation for full claims has decreased from 60 per cent to 50

per cent. In addition to these early indicators, we have also put in place the evaluation of the services that the MAA has established—the claims assessment and resolution service, and the medical assessment service—and that evaluation will commence next year.

The third indicator is efficiency. This means that, as a proportion of the premium dollar, the amount that goes to claimants must be as high as possible. In order to do that, we need an increase in payments and a decrease in transaction costs— transaction costs mean legal costs, investigation costs, insurer profits and insurer expenses. This information comes from two sources. In the right hand column are the current filings which insurers must lodge with the MAA, and they are estimates. In the first column are the actuarial allocations based on what actually happened between accident years 1993 and 1998.

What you will see from that is that payment benefit, which is called scheme efficiency, has increased from 58 per cent to 62 per cent and at the same time acquisition costs have increased as well. Legal and investigation costs have decreased from 15 per cent to 11 per cent. Claims handling expenses have not increased as a percentage. Insurance profit loading has decreased from 10 per cent to 8 per cent. The additional comment I should make about this slide is that the premium itself has decreased in the most current filings. So although the percentages, for example, for claims handling costs have not decreased, the actual quantum has.

The Hon. J. F. RYAN: What are acquisition expenses?

Ms RIZZO: Acquisition expenses are what the insurer must pay to acquire the business, and they include infrastructure, re-insurance costs, money that the insurers must spend on their computer systems, their branch networks, those sorts of expenses.

The Hon. Dr A. CHESTERFIELD-EVANS: Marketing?

Ms RIZZO: Yes, marketing as well. In brief, for efficiency, as you can see, the transaction costs have decreased except for acquisition costs, which did go up from 13 per cent to 15 per cent largely because of re-insurance and also computer systems. In addition, as Mr Bowen said, we have put in place a methodology to report to the Committee on both prospective and retrospective profit. Furthermore, the MAA has also commissioned research to evaluate the effectiveness of the legal costs regulations. As you saw in a previous graph, legal costs have not decreased at this stage but we would expect under the legal costs regulations that legal costs would decrease.

The Hon. JANELLE SAFFIN: Is that research with the justice research centre?

Ms RIZZO: It is. The last indicator is fairness. As you have seen from the slides before, there has been quicker and easier access to compensation, and there has been quicker finalisation of claims. In addition, the MAA has established a new service called the claims advisory service, which has an outreach program and this is to help claimants with their claim forms and applications to MAS and CARS, the assessment services. As far as fair treatment for claimants by the insurers, the MAA has, as

Mr Bowen has referred to, put in place claims handling guidelines and treatment guidelines for insurers to accommodate into the way they provide their services. The insurers will be audited on both of these guidelines next year.

With regard to fair treatment for claimants by health and allied professionals, the MAA has put in place treatment guidelines to act as standards for the profession to incorporate into the way it treats claimants. Lastly, evaluation of the MAA services has been put in place. That is with the justice research centre as well. By this time next year we will be able to evaluate the impact of the scheme on seriously injured people as those claims develop. In summary, in terms of affordability, premiums have reduced on a number of indicators. In terms of scheme efficiency, some transaction costs have dropped, notably investigation costs and insurer profit margins. At the same time, scheme efficiency has increased from 58 per cent to 62 per cent. As for effectiveness: more insured people have accessed earlier compensation more quickly and claims are being finalised more quickly. Medical payments have increased and investigation costs, as I said, has decreased. In our opinion these signs indicate that the response to the Act is heading in the right direction.

# Chapter 1      Questions Arising from the hearing on 8 May 2000

## 1.1      Structured Settlements

**Question:** *Following the failure of the Commonwealth Government in May 2000 to proceed with taxation reform that would have facilitated the use of structured settlements, what steps has the MAA taken to pursue this issue?*

**Answer:**

The Structured Settlements Group, chaired by David Bowen, General Manager of the MAA, continues to meet on a regular basis to discuss the reform proposal and lobbying efforts. The group comprises a broad variety of interest groups including, the Australian Plaintiff Lawyers Association, Australian Medical Association, Injuries Australia, the Insurance Council of Australia, the Law Council of Australia and United Medical Protection.

As noted at the last hearing there was considerable effort put into forwarding a detailed submission to the Federal Government in favour of structured settlements for consideration in the context of the last Federal Budget.

This was not successful. While the Federal Government has not ruled out the possibility of reform, it appears unlikely to be accepted in the near future.

The Structured Settlements Group continues to meet to co-ordinate activity to promote the tax change necessary to facilitate structured settlements.

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CHAIR: My first question deals with structured settlements. You will recall that that was the first question I asked last May and it is the first question on notice to which a response has been given. Do you know the Commonwealth Government's reasons for not proceeding with the desired taxation amendment in May this year? Has the Commonwealth articulated any reasons for its failure to proceed with that desired amendment to the taxation law, despite what I understand was the recommendation of some finance treasury committee within the Government?

Mr BOWEN: I recall that at the last hearing we were quietly confident that we would get a positive result in the last Federal budget because of the breadth of the groups that were promoting structured settlements and the strength of the argument, if I might say so. The Commonwealth Government did not proceed with that in the budget process and has not at this stage provided the structured

settlements group or any of the individual members with reasons for that, other than that it considers it to be a particularly complex issue. So in that sense there has not been a final no from the Commonwealth Government, only that it is still under consideration but drawing the conclusion that it is not likely to proceed in the immediate future.

CHAIR: You have not lost hope but you cannot give the Committee a firm indication, I take it?

Mr BOWEN: The issue is again before the Federal Government in the context of representations that medical profession and medical defence unions are making on the issue of medical indemnity insurance. I know that they are all raising the issue of structured settlements as part of those submissions so it is still being promoted.

The Hon. J. F. RYAN: Do you know what the obstacle was? Was it simply a straight political decision or were there submissions to the Federal Government which countered the sorts of submissions New South Wales would have made through your organisation?

Mr BOWEN: There was a fairly detailed submission provided to the Government and indeed through the whole process there was a lot of very good questioning of the details of that submission on every occasion. The committee went back with answers to the particular questions raised, including quite extensive meetings at officer level with Treasury officials. I could perhaps draw some conclusions but I hesitate to do so because there has been no written response from the Commonwealth Government, and I think it would be unfair to give my sense of what its reasoning might be without it having put that down in writing.

The Hon. J. F. RYAN: Is it simply a budget allocation, or is there some structural problem which we need to address?

Mr BOWEN: We are aware that the concerns of the Commonwealth Treasury—this is the Treasury officials—relate to the potential for this to operate as a precedent for other tax law changes that might favour one group over another, and that seems to be probably the major stumbling block.

CHAIR: I take it that no fundamental criticism has been made of the form or the merits of the submissions that were before the Commonwealth Government.

Mr BOWEN: No. There has been some hard questioning about the cost-benefit analysis that was prepared by a Melbourne-based actuary before the committee. It is making some conclusions about the ultimate significant saving to the Commonwealth based on some early lost tax income as against the amount it might have to pay out later on social security once people have used up their compensation entitlements. After the first submission was put and the questioning process, the committee in fact had the analysis re-done at a much more conservative level so that we could say, "Well, even if you use almost conservative assumptions, there will still be significant savings to the Commonwealth out of the process."

The Hon. Dr A. CHESTERFIELD-EVANS: Is it likely that the Commonwealth would lose a lot of tax from them?

Mr BOWEN: The profile shows that the Commonwealth loses some tax income which is the tax on interest earned on the settlement during the early years that a person has his or her settlement invested. That applies then the usual or the average term upon which a settlement lasts, which is very rarely that whole person's life. In fact, the history is that these lump sum compensation payments are used up much more quickly than ever anticipated and after that of course the person then becomes a claimant upon the social security, welfare and hospital systems. So what you have is a pattern and it is in our structured settlements report, which I think we may have tabled at the last hearing, there is a line of some small lost income for maybe 10 years or 12 years, after which there is a significant increase in the amount that would be paid by health and welfare payments.

The Hon. Dr A. CHESTERFIELD-EVANS: But you would have some actuarial concept. My understanding is that they discount future payments to such a large extent, compared to ones that are more immediate in time, that the figure after about ten years or 15 years becomes very small, does it not?

Mr BOWEN: That is correct.

The Hon. Dr A. CHESTERFIELD-EVANS: Given that situation, do you think this is influencing the Commonwealth Government's thinking? Let me ask it another way. You must have done actuarial calculations in your submissions.

Mr BOWEN: Yes, that is correct, and they take into account, as I have said, that lost income, that lost tax revenue during the period in which a person is getting income from interest on the invested lump sum. It shows that that is significantly less than what is eventually paid out to support that person once he or she has used up all of his or her settlement moneys.

The Hon. Dr A. CHESTERFIELD-EVANS: So in fact the short-term tax benefit does not outweigh the other in the long term from the Commonwealth's point of view?

Mr BOWEN: No. The long-term cost significantly outweighs the short-term loss of tax revenue for structured settlements. That is also because most people, even with quite catastrophic injuries, have life expectancy approaching normal, which is a significant change to 10 years ago. So people who have been compensated 10 years and earlier will not have been compensated on the basis of a normal life expectancy. Funds naturally run out. The information that is available to us from studies conducted all around the world on lump sum compensation schemes shows that money is used up well within the period for which it is intended to compensate the person.

The Hon. Dr A. CHESTERFIELD-EVANS: So if you have done the actuarial calculations which show that the Government would be better off with a structured settlement, what precedents would there be that would affect its decision? If the Government is going to make money out of it, unless the Government disputes your calculations, would it not grab that option?

Mr BOWEN: I do not disagree with you, and that is the argument that the structured settlement group has been putting to the Federal Government. The issue would be that to accommodate that, there would have to be a view taken that interest on a specific type of arranged settlement—that is, a structured settlement—is not considered to be taxable income. While our view is that the number of people who would take advantage of that it is very small—it is only a benefit to people who have significant lump sum compensation payments of at least a million dollars plus, and you might have 300 to 400 people maximum Australia wide—I think that the Commonwealth has the concern that in making a tax law change, that not only has a small effect but is also setting a precedent for providing similar types of tax-change benefits to other groups or people, perhaps.

The Hon. Dr A. CHESTERFIELD-EVANS: Do you know which ones they are?

Mr BOWEN: No.

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## **1.2 Long term care of the very seriously injured**

**Question:** *Can the MAA provide an up-date on work that has taken place since the 8 May hearing in relation to consideration of options for the long term care of the very seriously injured, including a proposal for a no-fault scheme for this group? Has the Long Term Care working party been reconvened as planned? Is the MAA working with other organisations and stakeholders with an interest in this area, such as those concerned with medical indemnity coverage (refer to the letter from John Walsh, dated 23 November 2000)?*

**Answer:**

The MAA has just received the draft report on the cost of providing no-fault long term care. The actuary, John Walsh, was asked to:

- update the previous costing work done on this project, including the impact of the GST, the 1999 legislation and the latest data from the claims register;
- adjust the previous costing work to account for a number of funding options; and
- identify and quantify current government spending on this target group.

Issues being considered as part of this ongoing project include the threshold for access to care, options for delivering the care and the basis of funding.

Once the final report from John Walsh is received the MAA will convene the Long Term Care Working Party which will include representatives from NSW Department of Health, Department of Ageing and Disability, ICA, Paraquad, AQA and the Brain Injury Association. John Walsh will also be participating.

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CHAIR: I refer now to another matter, that is, long-term care of the very seriously injured. In response to the Committee's question on notice you have indicated that the Motor Accidents Authority [MAA] has just received a draft report on the cost of providing no-fault, long-term care from an actuary, Mr John Walsh. In relation to the draft report, are the likely costs broadly the same as those identified by the former Standing Committee on Law and Justice in December 1997? Does the MAA have a feel for whether the various stakeholders might be more willing to consider this proposal now than they might perhaps have been in the past?

Mr BOWEN: I will have to answer you on the basis of the discussion I had with Mr Walsh because his report in fact arrived on my desk on Wednesday morning, at much the same time as did the questions from this Committee. Quite frankly, I have not had an opportunity to look at his report yet but in a briefing that he provided to me and other officers of the MAA, he indicated that his preliminary conclusions were that the numbers of people involved and the costs were very much the same as in his previous report to the Motor Accidents Authority in 1997. I would be fairly confident that the groups who formed part of the long-term care working party previously are still interested in pursuing options to better improve long-term care for both compensable and non-compensable persons who are injured in motor vehicle accidents.

The authority is doing more work prior to reconvening that working party, and that additional work is focusing upon looking at different types of care delivery. We recently visited the Transport Accident Commission [TAC] Victoria which has a very, very good program in terms of care provision. It is looking at quite different options other than just in-home care or nursing home care or, indeed, group home care. It has options that involve people being given control of their own care. For example, people may have an allocation of a certain number of hours of care per week and they can use that as it suits them.

They can in fact bank that care if they want to have some weeks at home when they are not doing very much and then have a carer to be able to go on holidays. Those sorts of innovative approaches to care need to be factored in to any conclusions that we draw. We are quite keen to identify all of those options and have Mr Walsh take a look at them and their cost implications before we draw back the working party. I envisage, however, that that is something—as it is already under way—that will be concluded probably by about March or April next year. I would envisage reconvening the working party at about that time.

### 1.3 Role of Psychologists in Impairment Assessments

**Question:** *Attachment 17 to the Report on the First year of the New Scheme lists the Assessors appointed to deal with Treatment Disputes, including a number of psychologists. Has the MAA resolved the issue of the role of psychologists in assessments of impairment (refer to pages 71-72 of the Committee's report on the 8 May hearing)?*

**Answer:**

Treatment disputes are dealt with by relevant health professionals. As noted in the request, the MAA and the Australian Psychological Society and Psychology Registration Board has selected psychologists for its panel. These psychologists will resolve disputes about treatment issues, eg the need for counselling services.

In relation to impairment assessment, currently the MAA's interim impairment assessors are all doctors and psychiatrists who conduct psychiatric impairment assessments, although it is noted that the training for impairment assessments is open to any interested parties, including psychologists. The MAA recommends that insurers and solicitors use people trained in impairment assessments to conduct their impairment assessments.

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The Hon. J. F. RYAN: Can you clarify the position in relation to the current and future role of psychologists in assessments of impairment?

Mr BOWEN: Yes. There is no role for psychologists in assessment of impairment as assessors under the Motor Accidents Medical Assessment Service because the impairment guidelines require that the assessor be a medically trained person. However, we are not limiting those who may undertake the impairment assessment training, so that will be open to psychologists to go through that training program if they wish, and they may then provide reports and, I suppose, their own assessments to insurers or claimants. But they will not be medical assessments conducted by the medical assessment service: that will be limited to medically trained people. We have had significant discussions with the relevant professional body. We have a big involvement of psychologists as medical assessors dealing with treatment disputes and that seems to be quite satisfactory to that profession at this stage.

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### 1.4 Reporting on insurer profit margins

**Question:** *Attachment 4 to the Report on the First year of the New Scheme outlines the status of current discussions in relation to the measurement of capital and profit in CTP insurance. What is the MAA's current timetable for*

*determining a preferred methodology for the measurement of insurer profit margins, and for reporting to the Committee as mandated under Section 28 of the Motor Accidents Compensation Act 1999? Could the MAA provide a verbal briefing at the 11 December hearing, which elaborates on the issues discussed in this attachment?*

**Answer:**

Attachment 4 represents the MAA's preferred approach but this is subject to ongoing discussions with the industry concerning details of the methodology and implementation. The MAA's aim is to finalise the methodology on prospective profit in mid March 2001. The MAA will apply this methodology to the next round of premium filings from insurers which it is expected will be in either June or September 2001. The MAA will report to the Committee as mandated under section 28 in the next annual report on scheme performance.

In addition to the methodology for reporting on insurers' prospective profit as set out in their filings, the MAA is finalising a methodology for reporting on retrospective profit, that is the profit outcome for past accident years. The MAA has commissioned Taylor Fry Consulting Actuaries to prepare recommendations based on the MAA's options paper and taking into account responses to that paper. This document will be available soon and the MAA will provide the Committee with a copy.

At the request of the Committee's secretariat, the MAA has invited Adrian Gould from Taylor Fry to attend the hearing on 11 December 2000 and to provide the Committee with answers to their questions.

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The Hon. J. F. RYAN: There are a couple of issues arising from our previous report. The promise was made to the Committee that by now we would have two issues papers on assessing insurers profit and a long-term strategy outlined for the assessment of insurer profits. The annual report, which is contained in the folder I show you, made some reference to answers to questions. I recall reading that you are awaiting a response from an actuary in regard to some of those issues. But what happened to the two issues papers that you promised us would be circulated at the end of October last year?

Mr BOWEN: The issues papers were prepared and circulated.

The Hon. JANELLE SAFFIN: To whom where they circulated?

Mr BOWEN: I must admit that I was reasonably confident that we had provided them to the Committee.

CHAIR: I am advised that there was an issues paper dealing with capital and profit that was circulated in May or perhaps June this year.

The Hon. J. F. RYAN: Has there been a response to those?

Mr BOWEN: It is also my recollection that, when we provided that to the Committee, we offered a briefing in the letter accompanying it. Those papers were circulated and we have had responses to them primarily from the industry. As a result of that, we have settled a preferred methodology for looking at the measurement of profit in the insurer's premiums, and that preferred methodology is set out in attachment four to this report. That is what we call the assessment of prospective profits. In terms of the assessment of retrospective profit or an assessment of the overall scheme performance, we have engaged Mr Gould to provide us with a summary of where that is up to, and that is imminent.

It has been made more difficult by the fact that the Australian Prudential Regulatory Authority is changing or has a number of papers out, proposing changes to the way in which it will assess solvency and capital adequacy and in terms of the reports that it will require insurers to submit to it. Our view is that it is the primary prudential regulator of the insurers and what we do in this area needs to fit in with what its proposals are, and that is why that has been a little bit more delayed. This proposal which is set out in attachment four is one which we would intend to apply to the next round of premium filings. I have indicated in response to questions that we anticipate that that will either be in June or September. There are two likely triggers for either of those dates.

Because we are entering sort of uncharted territory here and there are no precedents for us to apply, we want to do that first one as a trial run. We would certainly see that we will be reporting results of that to this Committee but we really regard this as a learning experience for ourselves and for the industry in applying it on the first round.

The Hon. J. F. RYAN: While we are still on the issue of insurer profits, a little while ago in the briefing that Ms Rizzo gave, she referred to something called "acquisition extensors" in a table which referred to filings from 1993 and 1998. One of the things she mentioned was the costs of re-insurance. I recognise that this is a technical point but re-insurers, in the main, are insurers too. What potential is there for insurers to simply move one aspect of their profit one stage down the line to put it away from the capacity of the MAA to look at? It may well be that a re-insurer makes a substantial profit that somehow or other trickles back to the local brokers and insurers, which escapes your attention. Is there any chance of that occurring, given that re-insurance appears to be a factor now?

Mr BOWEN: There is a provision in our Act—section 173, from memory, and if it is not that, it is very close to it—which requires the insurers to get approval from the MAA if their re-insurance will exceed 15 per cent of the gross premium, otherwise we also have access through the premium filing process to the cost of re-insurance and can determine whether that cost is reasonable, given our knowledge of what is happening in the re-insurance market at a given time. I make one additional comment on acquisition costs: it is not unexpected that acquisition costs will increase as a percentage when the overall amount of premium collected decreases because they represent a fairly fixed cost per policy

issued and in that sense they are unavoidable. As the amount of premium decreases and that fixed cost stays the same, it is going to increase as a percentage of the total premium.

The Hon. J. F. RYAN: But if the benefits paid out under the scheme are lessened, should there not be a decrease in the cost of re-insurance? They cannot have it both ways, can they?

Mr BOWEN: Most of the re-insurance costs will relate to large claims where we are not expecting any significant—or not expecting any decrease at all—in benefit payments.

Mr GOULD: I will make just a couple of points to amplify the previous point made by David Bowen. Typically, the nature of re-insurance arrangements with this scheme would be that the insurer concerned would retain the first portion of costs of claims arising from a particular motor accident, regardless of how many individual claimants there were. The amount that would be retained by the individual insurer would typically vary anywhere from about \$2 million to about \$5 million, depending on which insurer is involved. You are actually looking at only a very small proportion of claims by number but large individual claims that will exceed that limit. As David said, those large claims that are expected to be little, or not at all, affected by the 1999 legislative amendments.

The other point I would make is that the heading which Ms Rizzo showed as acquisition expenses I think contains five subcomponents, which are: insurers' internal operating expenses; commissions that insurers pay to third party intermediaries through whom they sell their business; the net cost of reinsurance, which we have been referring to; and the two statutory levies, one being the MAA's own levy to fund the cost of the MAA's operations, and the other being the RTA levy or commission, which is essentially for use of the RTA's services involved in running the scheme.

The Hon. J. F. RYAN: I notice that one of the problems that the MAA suffered up until now was that there seemed to be some sharing of the use of the same actuary, in that the MAA's actuary was pretty much the same actuary who prepared the original insurance files. I notice that Mr Gould comes from Taylor Fry. Is that an indication that at least two different companies that are independent of each other are now carrying out this work, or is there still some relationship between Taylor Fry and Trowbridge?

Mr BOWEN: No, there is no relationship between Taylor Fry and Trowbridge. During my time at the MAA, the MAA has used, first, Tillinghurst and now Taylor Fry as its consulting actuary. In both instances, one of the conditions of engagement was that those agencies would not prepare premium filings for CTP insurers in New South Wales—and I suspect that that may be correct for most of the history of the scheme.

The Hon. J. F. RYAN: I recall some evidence being given that Trowbridge were involved in both. In any event, another issue was raised in the Committee's last report on which I do not think there have been questions put to you in writing. You might recall that at pages 43 to 45 there was discussion by the Committee about deeming certain injuries as being over the 10 per cent threshold, particularly related to the issue of parents losing children in an accident in which the parents themselves were not

involved. I think written answers were provided by either the Law Society or the Bar Association relating to how one treats the fact that parents have to go on and that may not necessarily show up as indicating that they are 10 per cent impaired because parents have to go about the business of being parents in any event.

There was some discussion about that matter, and you said, as is recorded in Hansard, that it was an issue that needed to be looked at. Has the issue been looked at? I understand that a change to the law was needed to recognise the fact, as agreed by all parties, that parents who lost a child in a car accident in which they themselves were not involved would be deemed to have suffered a 10 per cent impairment and therefore would be entitled to make claims. It was not an event that happened very often, so it would not be a significant impost on the scheme. Has anything been done to advance what appears to be a reasonably simple but necessary change?

Mr BOWEN: If I could answer the question in two parts. Firstly, I recall that discussion. I think I indicated that one of the reasons that we thought it warranted an examination was that where these impairment guidelines are used in statutory schemes in other States they are then accompanied by a form of death benefits, that is, a set amount of money that would be payable in the circumstance of a parent losing a child, and the like, and that we would look at that further. Indeed, that is an issue that that policy area of our authority has on a list of many things that would need to be further considered when the Act is next looked at in the parliamentary context.

The other issue was an alternative means of dealing with this, which was to deem certain things to be over 10 per cent within the context of the guidelines. A number of such ones were looked at. It has been difficult doing that, in terms of the psychological and behavioural guidelines. The guidelines themselves were only completed and promulgated in March, just before this hearing took place. They are radically different from what has gone before, in an attempt to put a percentage whole-person impairment on a psychological injury. As such, they have involved officers in the MAA with extensive discussion with the professional associations. We are really only coming to the conclusion of some of those discussions now. We are finding that the feedback to the MAA is generally positive but that these guidelines will need some tinkering. In answer to one of the questions we have indicated that, even though the guidelines are yet to be applied in any cases, we would propose to do a further review in March next year.

The Hon. J. F. RYAN: Do you know of any cases in which the circumstance to which I have referred has been presented to the MAA—that is, a parent who has lost a child in an accident in which the parents were not involved and they have not passed the 10 per cent threshold because, to use your words on page 37 of your responses, they have not been able to demonstrate a 10 per cent impairment under an assessment made by a psychiatric medical assessor?

Mr BOWEN: I am not aware of any such cases, and I believe I can say with reasonable confidence that no applications that would fit into those categories have been made to the medical assessment service. Of course, it may be that because of the application of our Act to other transport industries, particularly rail, that issue will be looked at in the context of claims arising from the Glenbrook rail disaster.

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The Hon. JANELLE SAFFIN: With regard to premiums, why did you not include country people? Why did you include only city people, and what information do you have for country people?

Mr BOWEN: There were three graphs included there. We focused upon the metropolitan class 1 premium because it is the base from which all other premiums are calculated on our relativity table and it is the overwhelming number of vehicles. However, there was also shown on the graph the premium across all classes, and the whole three of them have shadowed each other. So that if you take a sedan in the country, the premium relativity is 80 per cent of that for metropolitan areas, and the decrease in the country had been proportionately the same.

The Hon. JANELLE SAFFIN: What does it mean for country people? You were able to say that premiums have decreased for city people. What is the situation for country people?

Mr BOWEN: The premiums have decreased by exactly the same percentage rate for country people. In fact there will be a larger increase for the country people from the filings from 5 October this year because we have reduced the relativity for the country based on fewer claims and less costly claims.

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## **Chapter 2      Questions arising from the Report on the First Year of the New Scheme (in addition to those questions raised by stakeholders)**

### **2.1            State of the industry**

**Question:** *On page 11 of the Report on the First Year of the New Scheme it is noted that there are now eight companies licensed to sell NSW CTP insurance. Does the MAA have a view as to the number of licensed insurers required to sustain a competitive CTP market in NSW? Does the MAA have any concerns about the relative market share of the licensed insurers?*

**Answer:**

During the twelve months to 30 September 2000, three licensed insurers have ceased to write CTP business. They are NZI, RSA and SGIO.

The MAA is not able to offer a detailed explanation for these companies withdrawal. However, the following comments may assist.

NZI had a very small market share and indicated to the MAA that its business structures did not allow it to compete with the other insurers.

RSA is the parent company for AAMI, which is also a CTP licensed insurer. In 1999 the company applied to the MAA for approval of AAMI managing the RSA claims. MAA approval was given. In March 2000, RSA indicated that it no longer wished to write CTP business in its own name but would remain in the CTP business through its subsidiary AAMI. Under an existing reinsurance arrangement, 100% of AAMI's liabilities are re-insured to RSA.

SGIO is a wholly owned subsidiary of NRMA. In December 1999, the company applied to the MAA for approval of NRMA managing the SGIO claims. MAA approval was given. In May 2000, the SGIO indicated that it wished to cease writing CTP business and NRMA agreed that it would issue SGIO renewals.

It is also noted that the MAA is currently dealing with a number of applications in relation to a proposed joint venture between Allianz and HIH. HIH has two subsidiary companies, in FAI and CIC, which are licensed to write CTP business. As these applications are under current consideration, no details can be provided at this stage.

The MAA is satisfied that these developments have not significantly affected competition in the CTP market. In each filing the licensed insurer discloses the desired amount of market share upon which their premiums are based. The aggregate information from the recent round of filings maintains a long trend whereby the amount which all licensed insurers indicate a desire to write exceeds 100%. This is a good indicator that the market remains competitive.

Nevertheless the Board of the MAA has discussed what initiatives may be taken to ensure that the market remains competitive both amongst current licensed insurers and to facilitate new entrants to the market.

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CHAIR: I raise the matter of your response to the question dealing with the state of the industry. In response to a question on notice you said that during the 12 months to 30 September this year three licensed insurers have ceased to write CTP business: New Zealand Insurance, Royal Sun Alliance and SGIO. Towards the end of your comments you say:

The board of the MAA has discussed what initiatives may be taken to ensure that the market remains competitive both amongst current licensed insurers and to facilitate new entrants to the market.

I invite you to make some brief supplementary comments to the Committee about what is necessary to ensure that the market remains competitive, particularly in the face of some departures from the ranks of the licensed insurers during the first 12 months.

Mr BOWEN: I might commence by noting the comment directly above the one you have quoted, that we are confident that at the moment there is a sufficient level of competition amongst the insurers to keep some pressure on premiums being competitive. I will answer the question in two parts. Firstly, to promote some competition amongst existing insurers, the MAA has already undertaken some analysis of its claims database to identify different risk variables so that we can invite insurers to price on different risk factors.

You may recall that I indicated at the last hearing that we would do some work on that, and certainly even when the legislation went through Parliament the Minister indicated that he was going to ask the MAA to do some work on that. We subsequently did some work in terms of both age and gender. In the premium relativity changes that were introduced in October this year, we have provided for an extended discount to over 55s, based on the fact that people over 55 years of age are much less likely to cause accidents involving serious injury. That has been picked up to varying degrees by different insurers, depending upon whether they want to target that end of the market.

We also did an analysis based on gender, which showed that across all age groups women were less likely than men to cause a claim involving serious injury. To my knowledge, one or two insurers have responded to that by particularly taking the young women off the highest loading, recognising that

there is a difference between the claims experience of young women compared to that of young men. It is a development that I see going further. We have also done some work with some of the other classes. We have done quite a lot of work looking at claims and risks in the heavy vehicle industry and in promoting accreditation schemes. Those have not come to fruition yet, but in due course I would like to think that through having a safety accreditation scheme there could be reports for vehicles that sign up to that scheme.

We have very recently had some discussion with the Bus and Coach Association about looking at a similar sort of accreditation scheme, and to recognise within that one large class that there is quite a disparity between claims coming from long-distance coaches or coaches that are going out on charter compared to buses that are doing more normal runs. We are trying to provide a lot more information into the marketplace that will allow for more innovative pricing of risk. Secondly, while we have concluded that there are sufficient insurers to have a competitive market at the moment, the board has taken the view that it should promote this scheme as one that other insurers should be perhaps interested in coming into. Over the course of this year we have had three approaches, including one cautious approach, from other insurers which have prompted discussions taking place, but there are no new entries at this stage.

The Hon. Dr A. CHESTERFIELD-EVANS: Have any left?

Mr BOWEN: Those three left. I have given the reasons. New Zealand Insurance were a very small market share, and to be quite frank I think that they had probably been pottering around looking for a reason to drop out of CTP for some time and the new Act was a trigger for that. RSA had acquired a 100 per cent ownership in AAMI, so they are still a participant in the market through AAMI. Similarly, initially when NRMA acquired SGIO, they tended to keep two licences. They have now taken the view that they will just operate through NRMA. In terms of underwriting, it has been only a very small withdrawal of underwriting facilities, even though three licensees have withdrawn.

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## **2.2 Treatment, Rehabilitation and Attendant Care Guidelines for CTP insurers**

**Question:** *Attachment 8 to the Report on the First Year of the New Scheme is the Treatment, Rehabilitation and Attendant Care Guidelines for CTP Insurers, dated November 2000. Could the MAA explain the operation of these guidelines, with particular reference to the handling of disputes as to what is "reasonable and necessary" treatment, rehabilitation or attendant care? Have any such disputes been dealt with to date by the Motor Accident Assessment Service?*

### **Answer:**

These guidelines require insurers to develop policies and procedures in the area of treatment, rehabilitation and care, and to demonstrate their staff know of and comply with the policies and

procedures. The guidelines require insurers to develop a procedure that ensures decision making on these issues is fair, consistent and based on sound, relevant medical information. For example, the insurer should request rehabilitation plans that have clear goals and ways of measuring claimants' progress towards the goal. Decisions on whether to pay for treatment and rehabilitation should be based on treating doctor, therapy or other medical reports. If the insurer declines treatment or rehabilitation it must let the service provider know of the reasons for their decision. It would not be enough to say it is not "reasonable and necessary". If the insurer declines to pay for treatment, rehabilitation or care it must let the claimant know of their options for resolving the dispute, including referral to the Medical Assessment Service.

There have been 69 Medical Assessment Service applications received to the end of November 2000. Twenty two of those were requesting assessment of a "reasonable and necessary" treatment dispute. Of the 22 matters, 10 have been assessed, 1 resolved at informal conference, 7 were withdrawn and 4 are pending.

The outcomes of the matters assessed by the Medical Assessment Service are provided as Attachment "A".

## Chapter 3 Questions Arising from the MAA's Annual Report 1999/2000

### 3.1 Insurer rehabilitation responsibilities

*Question: On page 26 of the Annual Report reference is made to on site audits of CTP insurers in relation to their rehabilitation responsibilities. Reference is made to 3 insurers achieving only a "partial achievement rating" and requiring re-auditing. What sort of issues arose in these audits and what steps have been taken to improve the performance of the relevant insurers?*

**Answer:**

In January 1998 the MAA issued "Section 37 Guidelines" for CTP insurers. These guidelines were developed to promote best practice in the insurers' management of rehabilitation. The guidelines were introduced in conjunction with an education and self-assessment program as the concept of a "continuous improvement" audit was new to the insurers. The overall aim was to ensure that all insurers developed policies and procedures in the rehabilitation area and to promote some consistency across insurers in how they approached rehabilitation. They asked the insurers to identify all claimants who would require rehabilitation services, to inform the claimant of their rehabilitation rights and responsibilities (a MAA brochure was supplied), to refer for rehabilitation if the claimant was not already receiving rehabilitation, to approve rehabilitation plans within a specified timeframe, to provide reasons why they were refusing to pay for rehabilitation, to monitor the claimant's progress and to ensure that the claimant's community integration needs were met on completion of the rehabilitation program.

The guidelines were audited by the MAA. Three insurers achieved a partial satisfactory rating. They were reaudited 12 months after the initial audit, instead of 2 years. The main reason for requiring a reaudit at 12 months rather than 2 years was that the insurers had not formalised their rehabilitation policies and procedures and their communication process with claimants and service providers. Every insurer had to submit an action plan with time frames addressing the issues raised in its audit report. They then had to regularly report on their progress and were provided with feedback on their progress. Prior to the 12 month audit the three insurers submitted a self assessment. At this second audit all three achieved a satisfactory rating, one insurer, in particular, demonstrating an impressive improvement.

The guidelines have been reviewed using the results of the 1999 audit and expanded following the new *Motor Accidents Compensation Act 1999*. Decisions concerning treatment and attendant care have been added to the guidelines. The new guidelines are the Treatment, Rehabilitation and Attendant Care Guidelines. The aim of the guidelines and the audit is to promote consistency in decision making within the insurer on treatment, rehabilitation and attendant care. This is regardless of whether the decision is made by the insurer's rehabilitation adviser or claims officer. This will require the insurer to have developed a procedure on how to make these decisions.

The insurers will be audited in April and May 2001 on these new guidelines. The MAA plans to mention in its annual report the names of those insurers who do well at this audit.

### **3.2 Claims**

*Question: On page 31 of the Annual Report there is a table which shows the claiming rate in 1999-2000 as 0.5 claims per injury. How does this claiming rate compare with CTP schemes in other common law jurisdictions? Is the claiming rate sustainable, or is it inevitable that there will be a gradual rise in the claiming rate up to 1994/95 levels over the next few years?*

#### **Answer:**

The 1999-2000 claim rate (claims per injury) of 0.5 on page 31 of the MAA's annual report is based on the estimated expected number of full claims which will ultimately be made. The equivalent rate including ANFs is 0.6.

No comparative information on claims per injury is available. However, comparative figures from other common law or modified common law jurisdictions are available on claims frequency that is, the number of claims / 1,000 registered vehicles. The NSW figure for 1999-2000 is 3.9 (based on full claims only) and 4.8 (including both full claims and ANFs). Claims frequencies reported for 1999-2000 by Western Australia and Queensland are 3.4 and 4.5 respectively. The claims frequency for NSW is comparable with that for Queensland.

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The Hon. JANELLE SAFFIN: In relation to claiming rates, is the MAA not concerned about the comments provided to the former law and justice committee by a leading actuary to the effect that problems with the former scheme could be attributed in large part to failure to anticipate the rapid rise in claiming rates in 1994 and 1995? This claiming rate should have been expected in view of the experience but it was not. Do you have a comment about that? Are you anticipating those sorts of things now?

Mr BOWEN: Even with the benefit of hindsight it is very difficult to say whether the MAA should have anticipated the fairly dramatic increase from 1992 to about 1994 in the number of claims. Certainly the industry, which had to price the risk, did not anticipate it. It reduced premiums well below sustainable levels and incurred significant losses for a couple of years. Notwithstanding the ability to make comparisons to other schemes, something I have learnt in a short time is that you can only learn a little bit from other places. Each has its own environment and culture within which it operates. In our responses we have produced comparisons with Queensland. It is hard to say why there should be significant differences between common law schemes in Queensland and the New South Wales yet there quite clearly are in terms of levels of legal representation, speed with which matters happen and the like.

As far as I know there were no actuaries at the time who were saying that we were getting it wrong. They were working on information that they had available. Turning that experience to apply it to the current filings, I think that what we would say is that the whole history of scheme changes suggests that there is a honeymoon period for the first two or three years. That is as a result of two things. Firstly, change itself often means a dropping off in the intensity with which matters are pursued as all the players in the industry become accustomed to the changes. The litigation-driven component particularly slows down quite a lot. Matters going through to court slow down a lot. They take longer to come through and to be taken into account.

Secondly, the early experience often represents the changes to the small claims, which are settled quicker. You anticipate seeing the impact of the changes the most with the small claims. This was true in the 1995 amendments and is true again in this round. Because the impact on small claims will be greatest we expect to see that come through much earlier. We engaged Mr Gould to continue to monitor developments of the old scheme as well as the new. We measured that against the actuarial predictions at the time the changes were brought into play. That is an instructive piece of information for us to determine whether the scheme might go next. It is also fair to say that we have made an assessment of where the scheme can go wrong and we have prepared proposals to respond to a variety of circumstances in which the scheme is not performing as it was anticipated it would when the scheme changes were introduced. But that is by way of protective work in case it is needed. I am not sure whether I have satisfactorily answered the question.

The Hon. JANELLE SAFFIN: You have not answered it at all.

Mr GOULD: Could I supplement that with a couple of observations? If one considers that the motor accidents scheme requires fault of another party to be demonstrated for a party to be able to claim compensation, one can estimate that one might ultimately expect that about 60 to 70 per cent of people with significant injuries arising from motor accidents would be entitled to make some form of claim, that is, be able to establish at least some fault on the part of a person other than themselves. So one might anticipate that one would get of the order of 60 to 70 per cent of injured people ultimately making a claim.

During the first two to three years of the operation of the scheme after 1989 it was a considerable surprise to many people, including the Motor Accidents Authority senior officers at the time, that the proportion of injured people claiming appeared to be only around 40 per cent. A certain amount of analysis was commissioned by the Motor Accidents Authority at the time which concluded that in the early years most of the people with severe injuries who were entitled to make a claim seemed to be doing so, but there was a surprising lack of people with less severe injuries making claims. This was in the early 1990s.

There was some expectation that there would be a slow increase in the proportion of people injured who would make claims but two things occurred which rendered those projections significantly wide of the mark with the benefit of hindsight. One was that the increase in that ratio of people making claims to people injured increased rather more quickly than people had anticipated. The other was that as well

as the proportion of people claiming increasing the average cost of claims increased quite sharply in real terms at the same time. The combination of both of those events resulted in premiums at one stage having been set to low and then increasing very sharply over short period.

The Hon. JANELLE SAFFIN: We have that in past evidence, but thank you for allowing us to hear it again.

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### **3.3 Freedom of Information**

**Question:** *On page 35 of the Annual Report reference is made to five applications under Freedom of Information legislation which were refused during the year? Could the MAA provide the Committee with further information on the nature of the applications and the reasons for their refusal?*

**Answer:**

Two of the FOI requests were applications for accident claim forms from one solicitor acting on behalf of two clients. The requested documents were not held by the MAA and the two matters were determined as per Section 28(1)(b) of the FOI Act.

The remaining three FOI requests refused were applications for internal review. These were made by three CTP insurance companies, who each sought review of the MAA's earlier determination to release certain documents in relation to another FOI application. That other FOI application was an application from a solicitor acting on behalf of their client seeking October 1999 premium filing information for each of the CTP insurance companies regarding bonus/malus and base rates for each premium classification and geographical zone. The General Manager determined to uphold the determinations in that other matter to release various documents, and as such the requests from the CTP insurance companies were refused. The information requested in the original FOI application was released to the original applicant.

### **3.4 Consultants**

**Question:** *On page 36 of the Annual Report reference is made to the use of consultants. Could the MAA provide further information in relation to the "new scheme related work" undertaken by "*

Answer:

Snowberg Pty Ltd is the company of Mr Tim Webber. Mr Webber has extensive experience in the insurance industry and was engaged at short notice prior to the commencement of the *Motor Accidents Compensation Act* to produce a first draft of guidelines for the operation of the Medical Assessment Service and the Claims Assessment and Resolution Service. This work was undertaken prior to the commencement of the Act so as to ensure that the Assessment Services would be able to operate from day 1.

As part of this consultancy he produced first drafts of guidelines and a variety of forms required by the Assessment Services.

Mr Webber also assisted the General Manager in identifying potential staffing needs for the Assessment Division and in preparing position descriptions for senior positions in the Division.

Following the recruitment of Ms Belinda Cassidy as Principal Claims Assessor and Manager of the Assessment Division, the development of the Guidelines and forms came under her control and was finalised in detailed discussion with the insurance industry and legal and medical professions.

### **3.5 Rehabilitation Grants**

**Question:** *On page 57-59 of the Annual Report reference is made to the under-expenditure of \$871,109 in Rehabilitation Grants and to the deferral of Rehabilitation and Awareness & Prevention Grant expenditure. The approved budget for 2000-2001 shows a further fall in Rehabilitation Grants to \$2,000,000. Could the MAA explain the under-expenditure and the further reduction in the budget for rehabilitation grants for 2000-2001, particularly in view of the increase in income to \$19,722,000 in 2000-2001? Is the MAA withdrawing from its previously central role in relation to programs such as the Brain Injury Rehabilitation Program? If so, why?*

**Answer:**

As part of its commitment to reduce the incidence and impact of road trauma in NSW the MAA provides funding for Injury Prevention (road safety) and Injury Management (rehabilitation) initiatives. In the past, the MAA has budgeted an amount for both road safety projects and rehabilitation each year without having details of specific projects that will be funded. This was necessary as the MAA unlike other organisations, accepted applications for funding at any time of the year.

This meant however that in some years, expenditure was less than budgeted as:

- New project applications can take considerable time to be suitably developed for approval by the MAA Board
- Even when MAA Board approval is granted projects can require considerable time to commence

- The MAA does not provide the total amount of funding at the commencement of the project. Rather funding is provided on a quarterly basis for the duration of a project. This is necessary for ensuring that projects achieve progress and their objectives.

The MAA is gradually moving towards a more structured approach to the Grants program including setting annual priorities for funding and calling for applications once each year. This was commenced for the first time in 1999/2000 for the rehabilitation projects and may apply to road safety projects in the future. The MAA received 46 applications and approved approximately 20 projects and funding of \$2.2 million. Approval of the projects was not possible until late in the financial year (March) due to the significant changes to the Motor Accidents legislation and the operations of the MAA. This also contributed to the under-expenditure as payments to projects did not commence until the end of the financial year.

The MAA remains firmly committed to ensuring that people injured in motor accidents have access to the medical and rehabilitation services they require. Particular emphasis is placed on ensuring that the needs of people with serious injuries such as spinal cord injury and brain injury are met. Therefore the MAA is particularly supportive of programs such as the Brain Injury Rehabilitation Program (BIRP) and continues to provide funding for a significant number of projects in this area. For example of the projects approved in 99/2000, approximately \$1million was allocated to brain injury projects including \$350,000 for service development within the BIRP and approximately \$600,000 towards research projects aimed at improving health outcomes of people with brain injury.

While the MAA will continue to support these areas it is important to note that there are a number of policy constraints on MAA project funding. The most significant of these is that MAA funding is for new initiatives only, rather than projects that require recurrent funding. This means that while the MAA can provide funding for the development of new services and programs, ongoing funding needs to be secured from sources other than the MAA.

Calls for funding of rehabilitation projects in relation to 2000/2001 have been made. The funding priorities are:

- Investigating the effectiveness of different approaches to the short and longer term management of:
  - whiplash associated disorders in people injured in motor vehicle crashes
  - post traumatic stress disorder in people injured in motor vehicle crashes
  - chronic pain in people injured in motor vehicle crashes
- Evaluation of trauma systems and programs for people injured in motor vehicle crashes

- Investigation of deficiencies and opportunities for improvement of trauma care for people injured in motor vehicle crashes
- Promotion of the use of evidence based practice by allied health services, particularly in psychology, occupational therapy

Submissions for projects outside these priority areas will also be considered to the extent they contribute to the objectives of the MAA Grants program.

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CHAIR: I refer to acquired brain injury. You have provided a substantial response to question 11. You say among other things that there are a number of policy constraints on MAA for project funding. You go on to say, "The most significant of these is that MAA funding is for new initiatives only rather than projects that require recurrent funding." I was reading this material last night and I was particularly interested and, I must say, also concerned to read that. Is there a case for the MAA perhaps now adopting a more flexible approach which could perhaps include some recurrent funding for BIRP purposes? I think I would be correct in saying that most of the people entering those services do so as a result of motor vehicle accidents. I think that I am also correct in saying that fewer than 50 per cent of them are receiving compensation under the current scheme. Could you explain to the Committee why that is a policy constraint, that is, that recurrent funding seems to be ruled out?

Mr BOWEN: The authority has taken the view that it has only a limited amount of financial resources to provide to rehabilitation programs and that it should focus on capital requirements. The whole establishment of the brain injury program was funded from capital provided by the MAA and research. As soon as you lock up a component of your funding into a recurrent service requirement it takes that funding out for ever being available to other sorts of initiatives. Brain injury remains a very significant focus for the Motor Accidents Authority. The answer to the question details the significant funding that has been and continues to be applied to brain injury. That will not change. The other issue is that you start to be placed in the position of picking between different sorts of services—which should and should not get recurrent funding. You do that in the knowledge that you will not be able to recurrently fund all the services that merit some support from the authority. The demand is greater than the ability of the MAA to meet out of its resources.

CHAIR: My concern arises partly from the fact that there is an absence of a long-term no-fault scheme. I remember visiting a facility, which I think was funded by the Motor Accidents Authority, at Castle Hill when I was Minister for Community Services. Does the pickup funding normally come from a department such as Community Services or from the Department of Health?

Mr BOWEN: It usually will come from the Ageing and Disability Department. We still provide money for establishments. During the last 12 months I have opened brain injury community outreach centres in the Central Coast and Newcastle. The property was purchased and all the renovations were made with MAA funding but support staff are picked up through the Ageing and Disability Department.

The Hon. P. J. BREEN: I think that last time you were before the Committee you referred to a special hat. People could turn a light on by thinking.

Mr BOWEN: That is the brain switch as I recall, a spinal cord injury project. I would have to find out where that is up to. It is one of quite a number of innovative research programs that we have funded. It might have been a two or three year one. I have not seen a final report on that but I can get you a progress report.

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The Hon. JANELLE SAFFIN: My question goes back to when you were talking earlier about brain injury. You said that the authority made a decision about the value of recurrent versus one-off capital projects. I have just had a quick look at the answer and it talks about the MAA in a sense being restricted to that. Was that a policy decision of the authority and of the board or management?

Mr BOWEN: It is. The board of the authority does two things. One, it approves our budget each year, which includes the amount—

The Hon. JANELLE SAFFIN: I am aware that it does that, but in answer to my question, was that a decision of the general manager or—

Mr BOWEN: No, it was a decision of the board.

The Hon. JANELLE SAFFIN: So it is a policy decision of the board?

Mr BOWEN: Yes.

The Hon. JANELLE SAFFIN: Is that being examined again in light of the underexpenditure of those moneys?

Mr BOWEN: Each year the board looks at what will be the funding priorities for the rehabilitation funds for a given year and it approves them, and then we go through the process of advertising, calling for grant applications and then payouts.

The Hon. JANELLE SAFFIN: Can that be looked at? I know it is difficult.

Mr BOWEN: It is looked at every year.

The Hon. JANELLE SAFFIN: The question of recurrent funding is difficult, but that does not mean one should not do it.

Mr BOWEN: The concern is not so much that it is difficult but that the demand for recurrent funding would enormously exceed—

The Hon. JANELLE SAFFIN: You know that and I know that.

Mr BOWEN: There is an extent as to how much you would need to increase the levy on motorists in a fault-based scheme to support services.

The Hon. JANELLE SAFFIN: I do not mind if you do not do it, but your answer was not sufficient either way. There was no rationale provided as to why you do not do it.

CHAIR: Would I be correct in assuming that the policy decision to which you refer in your answer was taken some years ago under previous legislation?

Mr BOWEN: It is a decision that I suppose is reaffirmed each year. During the early years of the scheme all of the funds were essentially used to meet capital demand and once that started to lessen it is then whether you focus upon recurrent service provision or upon research, and the board at that stage—I could not give you the particular year but I suspect that it would be about 1995—decided to focus on research and innovative services, and that has been reaffirmed by boards ever since.

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CHAIR: I return to the brain injury matter for a moment. I understand what you are saying about a reluctance on policy grounds to enter into recurrent spending. I simply make the point that perhaps 10 years ago when the authority decided to grant some capital funding to various facilities there was, so to speak, nothing around to assist in the brain injury area. Now there are some such facilities and it is very much to the credit of the authority that they exist. However, does that alter the picture, in your view, to any extent? Arguably, there is less money now than there once was for capital funding. Dare I say that the door might have opened, albeit slightly, to permit recurrent funding?

Mr BOWEN: Certainly the two priorities in terms of expenditure on rehabilitation have been, and continue to be, brain injury and spinal injury just because of the huge costs they are to this scheme and because the claimants who suffer those sorts of injuries are the ones with the greatest need. Having said that, there are other areas that are worthy of research and that will benefit health outcomes for people who are injured in motor vehicle accidents. The task for the board is to balance all of those varying demands against the amount of budget it has available, or which it sets to ensure the best possible use

of the funds. To date, the board has taken the view that that is best done by not starting down the track of recurrent funding.

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## **Chapter 4      Questions raised by Stakeholders**

### **4.1            Law Society**

#### **4.1.1        Insurer Profit**

##### **Question 1**

###### *Question 1.1*

*What are the MAA's current estimates with regards to the total amount of profit which the CTP licensed insurers are expected to generate on the first accident year of the New Scheme?*

###### **Answer 1.1**

The MAA's statutory requirement in assessing premium filings is to consider whether the premium allows for an insurer to nominate a profit margin that represents an adequate return on capital.

Insurers' filings are prepared and certified by an actuary and require sign-off from the Chief Executive Officer that the filing is accurate. In analysing premium filings the MAA makes comparisons between insurers' actuarial assumptions and the MAA's own actuaries' assumptions made to calculate the risk premium. In addition, the MAA also considers the reasonableness of expenses including acquisition costs.

The MAA is satisfied that the profit component of premiums as shown in filings is reasonable on the basis of information currently available to insurers. Ultimate profit depends on the ultimate claims cost and expenses incurred including insurer's acquisition costs, claims handling expenses, legal expenses and investigation expenses.

In future, the MAA will apply its own methodology to the reporting of prospective profit. The MAA's aim is to finalise the methodology on prospective profit in mid March 2001. Attachment 4 of the MAA's report represents the MAA's preferred approach, subject to ongoing discussions with the industry concerning details of the methodology and implementation. The MAA will apply this methodology to the next round of premium filings from insurers, which will be in either June or September 2001. The MAA will report to the Committee as mandated under section 28 in the next annual report on scheme performance.

In addition to the methodology for reporting on insurers' prospective profit as set out in their filings, the MAA is finalising a methodology for reporting on retrospective profit, that is the profit outcome for past accident years. The MAA has commissioned Taylor Fry Consulting Actuaries to prepare recommendations based on the MAA's options paper and taking into account responses to that paper. This document will be available soon and the MAA will provide the Committee with a copy.

*Question 1.2*

*What measures does the MAA have in place to ensure that insurers' profits are not being hidden in over inflated reserves for incurred but not reported claims?*

*Answer 1.2*

The MAA's own consulting actuaries prepare an annual report on the pure risk premium. This premium is derived from actual claims experience. The MAA uses this pure risk premium to compare with estimates included by insurers in their premium filings.

As discussed in response to question 1.1, the MAA will apply its own methodology for reporting on insurer profit to the next round of premium filings from insurers.

The MAA's methodology for reporting on retrospective profit will be based on actual scheme performance in terms of claim rates and payments made by insurers, with minimal reliance on insurers' estimates of claims outstanding.

*Question 1.3*

*Considering the Minister's comment that "the final claims cost for any given period will not be known until many years down the track ... All of these costs must be accounted for to determine the profit level", how has the MAA been able to determine that "Insurer profit has dropped from 10% to 8%?"*

*Answer 1.3*

Refer to answer to question 1.1.

*Question 2**Question 2.1*

*Considering that there is unlikely to be any significant change in the manner in which eligibility for compensation is determined under the New Scheme, what provisions exist to ensure that insurer premiums do not rise after the first year of the New Scheme's operation, and that insurer profits do not become excessive?*

*Answer 2.1*

Clause 14 of Schedule 5 of the *Motor Accidents Compensation Act 1999* provides that the majority of policies for passenger motor vehicles in metropolitan areas were to cost no more than \$330 for a period of 12 months. This was achieved over the first twelve months operation of the scheme with a minimum of 60% of policyholders, and up to 80% of policyholders for some insurers, achieving this result

The Act commenced on 5 October 1999 and the operation of clause 14 ended on 4 October 2000.

The Insurers refiled for premiums effective from 5 October 2000, and on the basis of their current filings, insurers estimate that premiums for the majority of Sydney passenger vehicles will be \$318 or less (excluding GST), a further reduction from the first year of the scheme.

For further information refer to the answer to question 1.1. If the scheme continues to perform according to the costs assumptions underlying the scheme reforms the MAA expects any increase in CTP premiums will be in line with AWE.

## **4.1.2 Fee Regulation Provisions**

### Question 3

#### *Question 3.1*

*Have any solicitors elected to receive their legal costs under Schedule 1 of the Motor Accidents Compensation Regulation (No. 2) 1999, rather than contracting out?*

#### Answer 3.1

As part of its evaluation and review of the scheme an evaluation of the impact of the scheme on legal costs and in particular the effect of the Motor Accidents Compensation Regulation (no 2) will be undertaken in the first six months of 2002. (See Attachment 3 to the MAA report).

#### *Question 3.2*

*If so, how many?*

#### Answer 3.2

Refer to the answer to question 3.1.

### Question 4

#### *Question 4.1*

*Will the Motor Accidents Compensation (No 2) Amendment (Costs) Regulation 2000 (the "Proposed Regulation"), be gazetted?*

#### Answer 4.1

The Motor Accident Compensation Regulation (No. 2) 1999 commenced on 17 December 1999. There is currently a proposal under consideration by the Special Minister of State to make amendments to the Regulation. The Minister has sought further consultation on a particular amendment relating to the regulation of medico-legal costs. When further advice is provided it is then a matter for the Minister as to when and in what form the regulation is made.

Question 4.2

*If not, why not?*

Answer 4.2

Refer to the answer to question 4.1.

Question 4.3

*Is so, when?*

Answer 4.3

Refer to the answer to question 4.1.

Question 4.4

*Will the gazetted version of the Proposed Regulation be in the same form as the version which was previously circulated to the Law Society, and to other motor accidents scheme stakeholders, for comment?*

Answer 4.4

Refer to the answer to question 4.1.

Question 5

Question 5.1

*What steps, if any, does the Motor Accidents Authority intend to take regarding medical report duplication?*

Answer 5.1

A number of mechanisms are in place within the new scheme to reduce the duplication of medical reports.

In regard to medico-legal reports the draft Motor Accidents Compensation Regulation (No 2) 1999 at Clause 14 (1) places a limitation upon the costs that may be included in an assessment or award of damages for the provision of medico-legal reports. Costs are limited to one medical expert in any specialty, unless there is a substantial issue as to the stabilisation of the injury or degree of permanent impairment in which case costs are payable in respect of two medical experts.

The MAA Claims Handling Guidelines as amended and published in the Government Gazette of 8 December 2000 at 3.8.2 stipulate;

*“When a medical report from a treating doctor is provided to the insurer, a copy of the report is to be provided to the claimant within ten days of receipt of the report, except if the doctor has indicated in writing that this would be inappropriate.”*

### **4.1.3 Claims Advisory Service**

#### Question 6

##### *Question 6.1*

*Are those working in the Claims Advisory Service legally qualified?*

##### Answer 6.1

The Claims Advisory Service offers procedural information on how to make a claim and in relation to making applications to CARS and MAS, consequently, the service does not employ legal practitioners.

##### *Question 6.2*

*If they are not legally qualified:*

- (a) how will they know if they are issuing potential claimants under the New Scheme with legal advice?*
- (b) how will they know when a claimant should be seeking legal advice?*
- (c) what professional indemnity arrangements exist in relation to any potential misstatement which may be made by such an adviser in the provision of legal advice?*

##### Answer 6.2

The CAS staff deals with procedural information only and advises callers that they do not give legal advice. E-mails from CAS are accompanied by the following notice:

“Notice to Claims Advisory Service customer. Please note that Claims Advisory Service staff are not permitted to give legal advice. They will assist with procedural enquiries only. This should not be taken to be or acted upon as if it was legal advice.”

If a caller specifically asks to be given legal advice it is suggested that they contact the Law Society on 9373 7300 and seek the name of a personal injury accredited solicitor in their area.

When it appears to the CAS staff that the inquiry relates to issues beyond the scope of the service, callers are advised that further information is available from the CTP insurer managing the claim or a legal practitioner. All brochures relating to claims suggest that people seeking advice may choose to contact a solicitor.

In death cases, catastrophic injury cases, infant cases and cases involving other such complexities the CAS staff may suggest that the caller might like to seek legal advice in making the claim.

As the CAS does not give legal advice the normal provisions relating to public sector employees apply, that is, liability coverage by a Treasury Managed Fund.

#### **4.1.4 Medical Treatment Costs**

##### Question 7

###### *Question 7.1*

*Does the MAA intend to recommend a reduction in the amount allowed for medical treatment fees under the New Scheme in its 2001 review?*

###### Answer 7.1

The maximum amount insurers must pay for treatment costs for motor accident victims under the 1999 Act are based on the Australian Medical Association's List of Fees. This list covers most medical services.

The AMA List of Fees is revised and published annually. The AMA has just released its most recent List and the MAA will review the medical fees in light of the new list.

##### Question 8

###### *Question 8.1*

*Does the MAA expect that the role of lawyers within the New Scheme will substantially decrease in the future from its current level?*

###### Answer 8.1

The MAA expects that the level of involvement of lawyers in the system will reflect the need that claimants have for legal advice and assistance.

The cost assumptions underlying the new scheme include a 40% reduction in legal costs achieved from two developments. These are, first, a reduction in the number of claimants who need legal representation (this is shown in the report on scheme performance indicators), and second, reduction in the amount of legal fees for less complex matters, through the introduction of fee regulation. This is not apparent at this stage in relation to payments for finalised claims but that probably reflects a timing factor. Certainly the anecdotal advice from plaintiff lawyers is that there has been a reduction in legal work and a reduction in billable fees for motor accident work. As noted in the MAA Report (Attachment 3) this will be examined as part of the scheme evaluation in 2002.

The MAA is of the view that most large and certainly all complex claims will benefit from having a lawyer involved. The MAA is also of the view that where a claimant for whatever reason wishes to be represented by a lawyer there should be no impediment to having such representation. The MAA does not believe that the current cost regulation is such an impediment but rather represents a reasonable fee for the level of work that is required. In particular it is noted that where a matter is excluded from CARS on any of a variety of grounds including complexity then the costs regulation will not apply.

The extent to which a claimant may need a lawyer will also be determined in part by how they are dealt with by the insurer. To this end the MAA is closely monitoring the way in which insurers deal with unrepresented claimants and an examination of this is a key part of the future audit program.

## 4.1.5 Premiums

### Question 9

The MAA Report states, on page 7 and under the heading “Premium Trends”, that “[I]f the Government had not introduced the new Act, the premium would now be greater than \$480 (excluding GST).”

#### *Question 9.1*

*On what actuarial information was the \$480 figure based?*

#### Answer 9.1

In June 1999 the average price for Sydney metropolitan vehicles was \$441. Based on ongoing analysis of old scheme claims experience there continues to be an escalation in claims payments which indicates claims escalation of 10% per annum (4% AWE, 6% superimposed inflation). The 10% claims escalation gives an additional \$44, which would have been reflected directly in premiums. This would amount to \$485.

### Question 10

#### *Question 10.1*

*Does the MAA consider that weighted best price would remain an effective indicator during periods of intense inter-insurer competition for market share?*

#### Answer 10.1

The MAA would keep the indicator under review to see if it remains appropriate. Note that this indicator is one of three that have been included.

The majority of Sydney metropolitan passenger vehicle premiums are at the lower end of the premium range. Compared to an average premium, the weighted best price is a better indicator of the premium that the majority of motorists would expect to pay.

### Question 11

Under the heading “Proportion of premiums under \$330”, the MAA Report states, at p.8 that “At 30 September 2000 insurers reported that more than 70% of premiums for metropolitan passenger vehicles were \$330 or less (excluding GST) – a clear majority.”

#### *Question 11.1*

*Does the above statement mean that, for each of the licensed CTP insurers, the majority of policies issued at 30 September 2000 were under \$330?*

## Answer 11.1

Yes. In the year from 5 October 1999 the majority of premiums for a Sydney metropolitan passenger vehicle were \$330 or less for each insurer. The range was 52% to 86% for individual insurers.

#### 4.1.6 Accident Notification Forms

## Question 12

## Question 12.1

*Considering that:*

- *there was no equivalent to the ANF form under the Motor Accidents Act 1988 scheme (the “1988 Scheme”);*
  - *an ANF can be lodged without having to lodge a formal claim; and*
  - *many ANF notifications may not translate into full claims,*
- how is it meaningful to compare the number of notifications under the New Scheme (which will contain notifications which are not claims), with the number from the 1988 Scheme (which will just be made up of claims)?*

## Answer 12.1

The comparison is meaningful as it shows that injured people can more easily and quickly access compensation under the new scheme. Because of the introduction of ANF’s access to compensation is available more easily to a greater number of injured people than before. The ANF is easier to complete than the claim form. An injured person is still able to lodge a full claim for either additional treatment costs or for other heads of damage.

## Question 13

## Question 13.1

*Considering that*

- *there was no equivalent to the ANF form under the 1988 Scheme;*
  - *an ANF can be lodged without having to lodge a formal claim; and*
  - *many ANF notifications may not translate into full claims,*
- how is it meaningful to compare the “time from the accident to the lodgement of the notification” under the new scheme (which will contain notifications which are not claims), with that under the 1988 Scheme (where the only notifications were for claims)?*

## Answer 13.1

The new scheme provides quicker access to compensation.

## Question 14

### Question 14.1

*It is understood that when WorkCover introduced a form similar to the ANF, to be filled out by General Practitioners, several years ago, it engaged in an extensive education campaign to inform GPs of their responsibilities with regards to this form. Was the Motor Accidents Authority campaign carried out with the same intensity and resources as the WorkCover campaign? If not, why not?*

### Answer 14.1

The Accident Notification Form has 2 sections - the medical certificate that is completed by the medical practitioner and information on the accident is completed by the injured person. The medical certificate was developed in consultation with medical groups and insurers. The information required on the medical certificate is standard and is not difficult for the medical practitioner to complete. The ANFs were mailed to all registered doctors prior to the commencement of the scheme with a covering letter. Articles were placed in their specialist media explaining the new scheme. A series of seminars was delivered around the state in September to December 1999, to metropolitan and regional areas on the new scheme and the ANF. The seminars were organised through local Divisions of GPs and widely publicised. They were conducted in Broken Hill, Orange, Newcastle, Central Coast, Wollongong, Nowra, Albury, Wagga Wagga, Tamworth, Armidale, Coffs Harbour, Lismore, Blacktown, Sydney CBD and Parramatta.

In May and June 2000 the MAA conducted a random telephone survey of 200 medical practices to establish the level of awareness of the accident notification form. The survey results showed that 40% of practices were aware of the form.

A second survey of injured people who had submitted ANFs was conducted in September. Of these people

- 41% obtained their ANF from their GP
- 30% obtained an ANF from an insurer
- 8% from a solicitor
- 5% sought assistance from a solicitor in completing the ANF.

As a result of these two surveys it was decided to conduct a second ANF distribution campaign. The information from the first survey of medical practices indicated that the best point of contact was the practice manager rather than the individual doctors. 3110 pads of ANFs, brochures about the scheme and a small notice advertising of the Advisory Service were sent out using a mailing list of all medical practices supplied by AMP Co.

This mail out was followed up by a telephone survey to all the medical practices to confirm that the ANFs had been received and that the practices knew how to use them. Of the 3110 practices on the list 2856 were contacted. 393 were sent additional information, 1215 were familiar with the ANF. The information gained in this survey will be used to consider what additional education needs to be provided to medical practitioners about the ANF and the scheme.

## Question 15

Page 10 of the MAA Report states that “The introduction of the ANF has resulted in quicker access to early treatment payments for a greater number of injured people.”

## Question 15.1

*What financial and/or statistical information forms the basis of this statement?*

## Answer 15.1

Table 1 (page 10) shows that a greater number of injured have been able to access compensation than before the new scheme. Table 2 shows that compensation is being accessed more quickly, both in terms of time to lodgement and time to finalisation.

## Question 15.2

*How can this statement be made with any confidence, considering that page 15 of the report states that “[I]t is still too early in the scheme to assess the experience of the most seriously injured”*

## Answer 15.2

Both statements are correct at the present time. The figures in the MAA report show that there is quicker access to early treatment payments for a greater number of injured people. At the same time it is also true that injuries sustained by the most seriously injured people will require some time to stabilise and therefore some time is needed for their claims experience to develop.

## Question 16

## Question 16.1

*Considering that:*

- *there was no equivalent to the ANF form under the 1988 Scheme;*
- *an ANF can be lodged without having to lodge a formal claim; and*
- *the amount paid out pursuant to an ANF may only represent a fraction of what the claimant eventually receives as part of their claim, how is it meaningful to compare the time from an accident to the receipt of “compensation” under the new scheme (which will include payouts under ANF’s), with the time from an accident to the receipt of “compensation” under the 1988 Scheme (ie the time to a claim payment)?*

## Answer 16.1

The comparison is meaningful from the point of view of injured people and how easily and quickly they can access compensation.

#### **4.1.7 Claims Assessment Service**

##### Question 17

##### Question 17.1

*Considering that the MAA Report indicates that:*

- *there are fewer full claims being lodged under the New Scheme,*
- *there are fewer lawyers than before advising would-be claimants, and*
- *the staff of the Claims Assessment (Advisory) Service appear to not be legally qualified, what safeguards exist in the New Scheme to ensure that those entitled under the scheme to make a full claim are properly legally advised, and are aware of their rights?*

##### Answer 17.1

Information about the claims process and entitlements to compensation under the motor accidents scheme has become widely available under the provisions of the *Motor Accidents Compensation Act 1999*.

In addition to information services such as the insurer operated Claims Information Service(CIS) and the MAA's Claims Advisory Service (CAS), treatment providers have a greater awareness of the scheme.

The MAA Claims Handling Guidelines impose obligations upon insurers managing claims to inform the claimant of next steps in the claims process and options for review of insurer decisions. Outlined below are some examples of the information that must be provided, as a condition of an insurer's licence, to a claimant.

*"An insurer must;*

*2.7 when possible advise an injured person that they are nearing the expiration of the time limit or dollar limit of the notification period, and that a claim form (with or without a medical certificate) will be required for further payments.*

*respond to reasonable requests by a claimant for assistance in making a claim. If the request is in writing this should be done within three days of the request, or if by telephone within one day. Alternatively the insurer can refer the claimant to the MAA Claims Advisory Service.*

*3.8.2 If a disagreement arises in relation to any medical issues covered by Section 58 of the Act, the insurer should advise the claimant of the availability of the MAA Medical Assessment Service to resolve disagreements.*

*5.1.3 Either the insurer or the claimant can refer a disagreement about medical treatment expenses to the MAA. An insurer should advise within ten days of receipt of the account if any medical treatment expense will not be paid and advise the claimant of their right to refer the disagreement about payment of a medical account to the MAA Medical Assessment Service."*

The MAA continues to provide general information through its web site and brochures.

As always, the MAA advises injured people that they have a right to seek legal advice and representation. All brochures relating to claiming under the scheme make reference to the NSW Law

Society as a contact point to obtain the name of a lawyer and further information about compensation entitlements. Brochures suggest that injured people seek the assistance of a personal injury accredited lawyer if they choose to seek legal advice.

It should be noted that all of this information is a product of the new scheme. This should be compared to the old scheme where claimants had no information other than that provided by a lawyer.

Refer to Attachment “B” showing the number of callers to the Claims Advisory Service.

#### Question 18

##### *Question 18.1*

*Can the MAA provide more details as to the nature of this outreach service?*

##### Answer 18.1

The MAA outreach service is designed to assist applicants who have chosen to represent themselves in making applications to CARS and MAS. The service does not offer legal advice.

The aim of the service is to provide initial contact with the applicant, to explain the procedures at MAAS to them, to remind them of medical and assessment appointments and to answer any questions they may have about how the system works. Where an applicant may seem to want additional assistance which goes beyond procedural information provided by the CAS, the service may suggest that they contact the Law Society to get the name of a personal injury accredited solicitor in their area.

(The service is modelled largely on the service provided by the Commonwealth Administrative Appeals Tribunal which assists unrepresented claimants make their appeals).

##### *Question 18.2*

*Is the aim of the service to replace the role of lawyers in the New Scheme?*

##### Answer 18.2

The CAS aims to assist injured persons making a claim by offering procedural information and administrative support through its outreach service. It is in no way intended to replace the services provided to injured persons by legal practitioners.

## **4.1.8 Claims Payments**

#### Question 19

##### *Question 19.1*

*Is it not misleading to state that the percentage of greenslip premiums going to injured persons may have increased by 4% (58% to 62%), considering that:*

- *the amount actually paid to injured persons has been significantly reduced as premiums themselves have become cheaper, and*
- *as the MAA Report stated, payments to claimants made under the New Scheme were a total of 10% lower than under the 1988 Scheme.*

#### Answer 19.1

Scheme efficiency is defined as the proportion of the premium that is paid out as claimant benefit, rather than in transaction costs (legal costs, medico-legal costs, investigation costs, insurer profit). The new scheme seeks to reduce the premium for the benefit of the premium-paying motorist while at the same time aiming at a level of efficiency which will optimise the benefit to the claimant.

Scheme efficiency of 58% was estimated by Ernst & Young ABC for the five year period from 1993 to 1998. Scheme efficiency can vary from accident year to accident year and as reported by Mr Bowen to the Committee previously it was as low as 52 – 55% towards the end of the old scheme. (See page 8 of *Legislative Council Review of the exercise of the Motor Accidents Authority and the Motor Accidents Council June 2000*).

By way of comparison with other schemes around the world, they seem to fall between 50% and 75%. In Queensland's 1999/2000 CTP premium, scheme efficiency was reported to be 67%.

#### Question 20

##### *Question 20.1*

*Considering that payments made by the licensed CTP insurers in:*

- *September 1999 would have related to mature claims from any previous accident years under the 1988 Scheme;*
  - *September 2000 would have only related to claims and ANFs under the New Scheme; and*
  - *the MAA Report indicates on page 15 that many claims under the New Scheme have not yet matured,*
- How is it meaningful to compare the September 1999 and September 2000 payment amounts and use them as a basis for claiming cost savings?*

##### Answer 20.1

The comparison is made between two years; one before the scheme and one after the scheme was introduced, based on one year of development.

The Old Act period relates to claims from accidents between 5 October 1998 and 30 September 1999. This year is analysed on the basis of the experience *at 30 September 1999*. It includes only those claims notified to insurers between 5 October 1998 and 30 September 1999 which related to accidents during that period. The payment experience relates only to those claims lodged during the period relating to accidents during the period, and includes only those payments made during the same period 5 October 1998 – 30 September 1999.

The New Act period relates to claims from accidents between 5 October 1999 and 30 September 2000. This year is analysed on the basis of the experience *at 30 September 2000*. It includes only those claims notified to insurers between 5 October 1999 and 30 September 2000 which related to accidents during that period. The payment experience relates to those claims lodged during the period relating to

accidents during the period, and includes only those payments made during the same period 5 October 1999 – 30 September 2000.

This is a like with like comparison.

*Question 20.2*

*In comparing the New Scheme and 1988 Scheme payments, why did not the MAA simply compare the payments made in relation to the first accident year of the New Scheme (at the end of that year) with the payments made in relation to the September 1988-September 1999 accident year of the 1988 Scheme (at the end of that year)?*

**Answer 20.2**

See answer to question 20.1.

**Question 21**

*Question 21.1*

*What costs are included in the category “other” in the graphs?*

**Question 21.1**

Payments that do not fall in to the other categories are coded as other. For example, the category includes funeral expenses, and payments made on claim recoveries by interstate insurers.

#### **4.1.9 Fraud Prevention**

**Question 22**

*Question 22.1*

*Considering that:*

- *investigation services provide some safeguard against fraud within compensation systems, and that*
- *investigation costs are being reduced within the new scheme,*

*how does the MAA intend to provide an equivalent safeguard, which will prevent fraud, within the New Scheme?*

**Answer 22.1**

The MAA believes that the reduction in investigation costs is not indicative of a decrease in the vigilance with which false claims are detected and pursued within the scheme. The reduction in investigation costs appears to be the result of earlier and better decision making by insurers and the limitation of investigative resources to cases that merit investigation.

*Question 22.2*

*What estimates does the MAA have of the number of fraudulent claims which are likely to be made under the New Scheme, and the total cost of these claims per year?*

**Answer 22.2**

The *Motor Accidents Compensation Act 1999* retains previous provisions relating to false claims, those provisions have been extended to cover the accident notification and claims assessment processes.

The MAA has not been advised by insurers, or by other scheme participants, of any increase in the number of fraudulent claims. The instance of fraud within the motor accidents scheme is not an issue of major concern as for some time scheme design has minimised opportunities for false claims.

**Question 22.3**

*Has the affect of an increase in fraud in the New Scheme been taken into account with regards to the MAA's evaluations of the New Scheme's efficiency?*

**Answer 22.3**

Refer to answer to question 22.2.

**4.10 Evaluation of Scheme****Question 23****Question 23.1**

*How does the MAA plan fit in with the planned Justice Research Study of the operation of the New Scheme?*

**Answer 23.1**

Attachment 3 of the MAA's report shows the plan for the evaluation of the Act. This evaluation will answer the following major questions:

- Has the scheme succeeded in increasing the proportion of claims that are resolved without disputes or the need to resort to formal dispute resolution processes?
- Has the new scheme succeeded in reducing the proportion of claims that are litigated in the District Court?
- How fair do the participants perceive the processes and outcomes of the new scheme (particularly MAS and CARS) to be?
- What effect has the new scheme had on legal and related transaction costs of claiming?

In addition to this evaluation that will be undertaken by an independent consultant, the MAA will also undertake compliance audits to review the insurers' application of the Claims Handling Guidelines and the Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines.

The first report under the Claims Handling Guidelines will be a self report provided by the insurers to the MAA in December 2000. The Guidelines and the self report are Attachments 6 and 7 respectively of the MAA's report. The MAA will commence the audit process in April 2001.

All insurers will be audited against the TRAC guidelines in May 2001.

*Question 23.2*

*Is the MAA study separate from the JRC study?*

**Answer 23.2**

Refer to answer to question 23.1.

*Question 23.3*

*If the MAA study is separate from the JRC study, has it commenced yet?*

**Answer 23.3**

Refer to answer to question 23.1.

**Question 24**

*Question 24.1*

*What further details does the MAA have regarding this proposed evaluation program?*

**Answer 24.1**

The details of the plan can be found in attachment 3 of the MAA's report.

**4.11 Scheme Transaction Costs**

**Question 25**

Page 14 of the MAA Report contains two pie charts, the second of which (Figure 6) is entitled "Current premium filings: insurer's assumptions".

*Question 25.1*

*On what actuarial or other data was Figure 6 based?*

**Answer 25.1**

Refer to the answer to question 1.1.

## **4.12 Future Directions**

### Question 26

#### *Question 26.1*

*Does the MAA plan to eventually merge with WorkCover to form a single regulator of the workers compensation and motor accidents schemes?*

#### Answer 26.1

The MAA has not been asked to consider such a proposal.

#### *Question 26.2*

*If yes, is this planned merger of the two bodies predicated on both the workers compensation scheme and the motor accidents scheme becoming significantly smaller and more bureaucratic?*

#### Answer 26.2

Not applicable, given response to 26.1

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## **4.2 Bar Association**

### **4.2.1 Maximum award for NEL**

#### *Question 1.1*

*What steps will be taken to insure that the maximum figure under Section 134 is lifted to match the maximum previously available under Section 79 and 79A of the 1998 Act?*

#### Answer 1.1

The inconsistency between non-economic loss caps has been remedied through an amendment to section 134 of the *Motor Accidents Compensation Act 1999*, contained in the Statute Law (Miscellaneous Provisions) Bill (No 2) 2000, which was passed by Parliament on 1 December 2000.

#### *Question 1.2*

*Will the amendment be retrospective to ensure that persons unfortunate enough to suffer a catastrophic injury in the past 12 months are not disadvantaged as a consequence of the anomaly?*

#### Answer 1.2

The Statute Law amendment will commence on January 1, 2001. The amendment will apply the cap to matters finalised after that date. No claimant should be prejudiced by the inconsistency, given that the

inconsistency was at the maximum end of the scale and for a limited period. Catastrophic injuries take considerable time to stabilise to enable the proper quantification of damages. The MAA is unaware of such a claim being settled in the limited time the new scheme has been operating.

#### **4.2.2 The Claims Advisory Service**

In the preamble to the Bar Association's questions about the Claims Advisory Service, criticism was made of the commentary provided to the Motor Accidents Council (MAC) on agenda item 4. The agenda item concerned the use of impairment case studies by CAS.

The MAA acknowledges that the comment was inappropriate and notes that it is not representative of the use that will be made of the case studies by CAS. In order to remedy any confusion that may have arisen amongst members of the Council, the matter will be clarified at the first Council meeting of the New Year.

##### *Question 2.1*

*Does the Motor Accidents Authority now take the position that it is the role of the Claims Advisory Service to convince claimants whether or not they may have a greater than 10% whole person impairment?*

##### *Answer 2.1*

CAS provides general information about the scheme, including the description of entitlements and their procedures. The MAA does not take the view that the service's role extends to convincing claimants of their level of impairment.

##### *Question 2.2*

*How many staff does the Claims Advisory Service Employ providing advice?*

##### *Answer 2.2*

Currently CAS has 4 staff.

##### *Question 2.3*

*Of those staff, how many are legally qualified?*

##### *Answer 2.3*

CAS is an information service, consequently, none of its staff are legally qualified.

##### *Question 2.4*

*What, if any, internal audit measures does the MAA apply to review and assess the accuracy and impartiality of advice given by the Claims Advisory Service?*

**Answer 2.4**

CAS provides training and regular feedback to its staff. This includes weekly meetings where issues are discussed. There is a CAS manual, which is currently in draft form. The manual includes scripts for answers to standard questions. Because the service provides procedural advice the question of partiality does not arise.

The information provided is based largely on a description of the scheme's operation, the claims handling guidelines, CARS and MAS guidelines.

Callers are referred to the insurer or the solicitor acting on their behalf for more detailed or specific information relating to their individual claims.

**Question 2.5**

*What, if any, external audit measures does the MAA apply to review and assess the accuracy and impartiality of advice given by the Claims Advisory Service?*

**Answer 2.5**

As the information provided by the service is procedural there is no need for an external audit of impartiality. The service will however be evaluated as part of the review process.

**Question 2.6**

*If there is no external audit of the advice provided by the Claims Advisory Service, why not?*

**Answer 2.6**

Refer to the answer to question 2.5.

**Question 2.7**

*What data does the MAA collate to indicate the frequency, nature and extent of advice given by CAS?*

**Answer 2.7**

CAS keeps statistics on all calls, the details recorded include; who the caller is and the nature of the call. Refer to Attachment A.

The subjects CAS keeps records of are:

- ANF request or advice
- CLAIM FORM request or advice
- MAS/CARS form request
- SCHEME general advice
- MAS dispute or specific enquiry
- CARS dispute or specific enquiry
- DRIVES enquiry

Green Slip price  
PROPERTY damage  
INSURANCE – other  
OTHER - general  
COMPLAINT against insurer

As well as keeping manual statistics the MAA has a q-master system which counts all inward calls through the 1300 number and written records are kept of more complex calls. With calls where there is reason to believe that the caller will contact CAS again records are kept so the CAS staff will be familiar with the particular situation.

*Question 2.8*

*On how many occasions has the Claims Advisory Service recommended to claimants that they seek legal advice from a qualified legal practitioner?*

**Question 2.8**

CAS does not keep statistics of the number of instances where a person might be advised to contact a lawyer. Many of the callers to CAS already have legal representatives, in these instances it is always suggested that they speak to them. All written information includes the suggestion that legal advice may be sought.

*Question 2.9*

*What public liability insurance does the Authority carry to cover any potential liability for negligently provided advice? Is it considered prudent to carry such insurance?*

**Answer 2.9**

As CAS does not give legal advice the normal provisions relating to public sector employees apply, that is, liability coverage by a Treasury Managed Fund.

*Question 2.10*

*What guidelines exist to regulate the conduct and advice given by the Claims Advisory Service?*

**Answer 2.10**

The conduct of CAS employees is guided by the MAA Code of Conduct. Guidelines for information provided by the service include general scripts for commonly asked questions, reference is also made to the MAA's various gazetted guidelines.

*Question 2.11*

*What is the average wait time on a call made to the Claims Advisory Service?*

**Answer 2.11**

The wait is 21 seconds.

**4.2.3 Deemed Denial of Liability**

*Question 3.1*

*Is it the policy of the Principal Claims Assessor and the Motor Accidents Authority to give full and proper weight to Section 81 of the Act?*

**Answer 3.1**

For the purposes of an exemption under Section 92(1)(a) a distinction is drawn between a denial of liability made by an insurer under Section 81(1) and a deemed denial of liability under Section 81(3). Where liability has been deemed denied in a matter, an exemption may however, be granted, depending upon the circumstances, under section 92(1)(b).

*Question 3.2*

*If so, on what basis does the Principal Claims Assessor refuse to treat a deemed denial of liability under Section 81 as determinative of an exemption under Section 92?*

**Answer 3.2**

The Principal Claims Assessor determines each and every application on the facts and merits of the case.

*Question 3.3*

*Does the Principal Claims Assessor have any legal advice in support of such an interpretation of the Act?*

**Answer 3.3**

Refer to the answer to question 3.2.

*Question 3.4*

*Is so, who has provided such advice and what is that advice?*

**Answer 3.4**

Refer to the answer to question 3.2.

*Question 3.5*

*What monitoring has been conducted by the Motor Accidents Authority as to insurers' compliance with Section 81?*

**Answer 3.5**

As part of its claims database, the MAA collects information related to compliance with section 81 from insurers. The MAA will prepare a report based on this information early in the New Year. In addition, this aspect of claims handling will be included in the MAA's 2001 audit of insurers against the Claims Handling Guidelines.

*Question 3.6*

*Having regard to claims lodged since the introduction of the 1999 Act, in what percentage of cases has each insurer under the scheme failed to admit or deny liability within three months? Which insurer is performing best at meeting its obligation to provide a response on liability within three months? Which insurer is performing worst? Is the MAA collecting such data, and if not, why not?*

**Answer 3.6**

Refer to answer to question 3.5.

**4.2.4 Legal Costs Regulations***Question 4.1*

*When are the agreed amendments to the cost regulations to be gazetted?*

**Answer 4.1**

The Motor Accident Compensation Regulation (No. 2) 1999 commenced on 17 December 1999. There is currently a proposal under consideration by the Special Minister of State to make amendments to the Regulation. The Minister has sought further consultation on a particular amendment relating to the regulation of medico-legal costs. When further advice is provided it is a matter for the Minister as to when and in what form the regulation is made.

*Question 4.2*

*When introduced, will the amendments to the cost regulations be made retrospective to avoid injustice to persons who have incurred such expenses during the first twelve months of operation of the scheme?*

**Answer 4.2**

There is no statutory power to make a retrospective regulation.

#### **4.2.5 Glenbrook and the 10% threshold for NEL**

##### *Question 5.1*

*What steps has the MAA taken to review the guidelines for psychological impairment since the introduction of the 1999 Act?*

##### **Answer 5.1**

The MAA Medical Assessment Guidelines which address the assessment of physical permanent impairment were gazetted on 17 December 1999. These Guidelines are based on the American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition) 1995.

The Guidelines for the assessment of psychiatric permanent impairment took longer to prepare and were only finalised and incorporated into the guidelines in March 2000. These psychiatric guidelines were developed by a working party of psychiatrists and other relevant specialists and involved consultation with the relevant medical colleges and with stakeholders and service providers of the Motor Accidents Scheme.

To date there have been no psychiatric impairment assessments by MAS although there are three applications pending. This is to be expected as it would usually take at least 18 months to 24 months for such conditions to stabilise.

MAS held its first training session on the psychiatric guidelines in November and will be offering three more courses in the first half of 2001. Feedback is being received from psychiatrists who have participated in the training course. MAS also proposes to seek feedback from psychiatric assessors after completion of assessments.

In addition, informal discussions have taken place with the Australian Psychology Society who have nominated representatives for a working party on the mental and behavioural disorders. The MAA is waiting for further nominations and will commence a formal review next year.

##### *Question 5.2*

*Does the Authority believe that the guidelines for assessment for permanent impairment in relation to psychological injuries currently provide for fair and just compensation to those who suffer psychological injuries?*

##### **Answer 5.2**

The Impairment Guidelines were developed after a full and detailed consultative process with the psychiatric profession and other stakeholders.

The MAA believes that the guidelines provide an independent and medically based, valid assessment procedure to determine a proper estimate of the degree of whole person impairment. It should be noted that the Guidelines are used to determine eligibility for non economic loss. A person who suffers a psychological injury will continue to receive compensation for all their reasonable and necessary treatment and rehabilitation expenses, and for any other economic loss which they have incurred.

*Question 5.3*

*In cases involving nervous shock following a death, does the Authority believe that the use of functionality as the sole measure of loss represent a fair assessment?*

**Answer 5.3**

Refer to answer to question 5.2.

*Question 5.4*

*Consider the following hypothetical: a parent loses one of two young children in a motor vehicle accident. By virtue of the need to continue caring for the remaining child the parent is unable to prepare the child's lunch, drive the child to school and supervise the child's homework of an evening. However, the parent is only able to perform those tasks with the use of anti depressant medication and spends a number of hours each day in the deceased child's room crying. The parent is unable to return to work. The level of grief and bereavement is persistent. On the Bar Association's understanding of the relevant guidelines the limited level of functionality demonstrated by the parent would be sufficient to ensure that there was no award for non economic loss. Is this analysis of such a hypothetical case study correct? Is such an outcome just and fair?*

**Answer 5.4**

A parent with a child killed in a motor vehicle accident is entitled to make a claim under Section 141 of the *Motor Accidents Compensation Act 1999* if:-

(a) the parent was the driver of or a passenger in or on a motor vehicle involved in the accident or the parent, when the accident occurred, was present at the scene of the accident

OR

(b) the parent, as a consequence of the death of the child, suffers a demonstrable psychological or psychiatric injury that will result in a 10% permanent impairment. This psychological or psychiatric injury must be demonstrable and not merely a normal emotional or cultural grief reaction.

Whether the particular parent could demonstrate the 10% permanent impairment will depend on the particular medical fact of the case, and the assessment made by the psychiatric medical assessor.

*Question 5.5*

*Are the Medical Assessment Guidelines more stringent than originally estimated?*

**Answer 5.5**

At this stage there is no indication this is the case.

*Question 5.6*

*Is so, will they be reviewed? When?*

Answer 5.6

Refer to answer to question 5.1.

#### **4.2.6 Financial Performance of the Scheme**

The MAA reported to the Motor Accident Council in November 2000 that in the first twelve months of the scheme insurers reported \$1.4 billion gross premium income. In the same period, insurers made payments of \$14.6 million on claims and ANFs under the new scheme. In asserting that insurers are ahead by \$1.385 billion, the Bar Association has not taken into account the claims cost which must be met in the future for all claims related to accidents occurring in the first accident year of the new scheme. The premiums collected for an accident year must fully fund all claims relating to accidents occurring in that year.

The MAA's consulting actuary Adrian Gould from Taylor Fry Actuaries has estimated that the ultimate cost of claims relating to accidents occurring in the first year of the scheme will be \$1.148 billion in fully inflated and undiscounted terms. In other words this will be the ultimate cost that insurers will incur by the time they have paid out all claims, in future dollars. The estimate of the ultimate payout in today's dollars is \$914 million (inflated and discounted).

Before a comparison can be made between the ultimate claims cost and the amount of premium collected, account must be taken of all expenses incurred and to be incurred. These include insurer's acquisition costs, claims handling expenses, legal expenses and investigation expenses.

As the Bar Association accepts, there are complex considerations to be taken into account when determining the profit returned to insurers. The MAA is addressing these issues by establishing methodologies to report to the Law & Justice Committee on profit.

The MAA's aim is to finalise the methodology for reporting on prospective profit in mid March 2001. The MAA will apply this methodology to the next round of premium filings from insurers which will be in either June or September 2001. The MAA will report to the Committee as mandated under section 28 in the annual review of scheme performance.

In addition to the methodology for reporting on insurers' prospective profit as set out in their filings, the MAA will also establish a methodology for reporting on retrospective profit, that is the profit outcome for past accident years. The MAA has commissioned Taylor Fry, Consulting Actuaries to the MAA, to prepare a document on the status of current discussions with the insurance industry and to provide recommendations for the way in which to proceed. This document will be available soon and the MAA will provide the Committee with a copy.

*Question 6.1*

*What rate of return on funds invested did the CTP Insurers maintain for the 1999-2000 period?*

**Answer 6.1**

Anticipated investment returns have been explicitly allowed for in insurers' preparation of their filings and in the MAA's review of those filings. The methodology to be established by the MAA will take into account investment earnings in deriving insurer profit.

*Question 6.2*

*What were the administration costs of the insurers under the scheme for the first twelve month period of its operation?*

**Answer 6.2**

Insurers' administration costs will also be analysed regularly as part of the profitability analysis methodology, which is being developed.

*Question 6.3*

*Which actuary has prepared the estimate of \$1.148b in contingent liabilities from accidents occurring during the first twelve months of the scheme?*

**Answer 6.3**

The MAA's consulting actuary Adrian Gould of Taylor Fry Consulting Actuaries prepared this preliminary estimate.

*Question 6.4*

*Can the Authority provide a breakdown of the \$1.148b estimate in terms of the amount that it is estimated will be required to cover contingent liabilities from accidents occurring in the first twelve months and in each future year of the operation of the scheme?*

**Answer 6.4**

The estimate relates to the financial year 1999-2000. It relates to the last three months of the previous scheme and the first nine months of the new scheme. The estimate includes projected claim payments for all future years arising from accidents during 1999-2000. The estimate is unavoidably extremely uncertain due to:

- great uncertainty about ultimate effects of the new Act on claims costs;
- being based on the data as at 30/6/00, ie only 9 months after inception of the new Act, and
- very early stage of development of the 1999/00 accident year.

The table shows the projected claim payments arising from accidents in 1999/00.

Payment year ending 30 June	Projected claim payments during year arising from accidents during the 1/7/99 to 30/6/00 year:	
	Amount of payments	Value discounted back to 1/7/99 at 6% p.a.
	\$m	\$m
2000	14	14
2001	99	90
2002	262	226
2003	295	241
2004	192	148
2005	127	92
2006	81	56
2007	42	27
2008	16	10
2009	7	4
2010 and later	13	6
<b>Total</b>	<b>1,148</b>	<b>914</b>

#### Question 6.5

*Does the MAA yet have sufficient information to indicate whether insurers are making a sustainable return on equity invested such as to insure the stability of the scheme or whether insurers are receiving excess profit?*

#### Answer 6.5

In 1998 Ernst & Young ABC prepared an analysis for the MAA showing that profitability for insurers had varied substantially by accident year. As part of the MAA's future reporting on profit it is intended that the MAA's consulting actuaries will undertake a similar exercise to estimate profit.

Profit estimates in the insurers' filings have been accepted by the MAA as representing reasonable returns. They are determined on the basis that the scheme continues to perform according to the assumptions underlying the legislation.

### 4.2.7 Public Access to MAS and CARS Assessments

#### Question 7.1

*Is the approach of refusing to publish CARS decisions but allowing insurers to freely exchange the same decisions between themselves and even publish them, appropriate?*

#### Answer 7.1

Advice has been obtained from the Crown Solicitor that the MAA cannot publish determinations or reports which identify the claimant. The Principal Claims Assessor is therefore, preparing case summaries which have all personal identification information removed.

The MAA has no power to restrain parties to an assessment from divulging details. The MAA would seek to discourage anyone from producing information with personal identifying information.

The MAA has initiated discussions with the Insurance Council to extend the ICA voluntary Privacy Code for General Insurance to CTP business. It is understood that all CTP insurers are at presently complying with the code.

*Question 7.2*

*What does the MAA intend to do to rectify such an anomalous situation?*

*Answer 7.2*

Refer to the answer to question 7.1

*Question 7.3*

*Who at the MAA will have responsibility for determining which decisions are de-identified and published?*

*Answer 7.3*

The Principal Claims Assessor in consultation with senior CARS and MAS assessors, will identify matters which raise legal and factual issues of interest. The aim of circulating decisions is to provide information to the legal profession and insurance industry and other stakeholders and service providers to improve access to the service and improve use of the service.

It should be noted that the Assessment Service is not a court or tribunal of record. Prior decisions do not set a precedent.

*Question 7.4*

*To avoid the risk of the perception of the Authority publishing an unrepresentative selection of cases if the Authority insists on not publishing all cases, is the Authority prepared to transfer the task of determining which decisions are to be de-identified and published to an independent panel?*

*Answer 7.4*

The MAA will consult with assessors on possible matters of interest for publication. The assessors are already independent of other stakeholders and accordingly, the MAA does not consider it necessary to establish another independent panel for this purpose.

## **4.2.8 Independence and Transparency**

*Question 8.1*

*What protocols does the MAA have in place to regulate and control the consultative functions of decision making officers of the Authority?*

### Answer 8.1

The MAA Corporate Governance Statement is included in the Annual Report at pp.60-63.

The Motor Accidents Authority defines its Corporate Governance as the set of arrangements it has in place to clarify the roles and responsibilities of the Minister, Board of Directors, Council and management and the relationships between them

The Authority is a statutory body representing the Crown and is required to comply with generic public sector responsibilities and accountabilities. These include legislative responsibilities of:

Audit

Occupational Health and Safety

Annual Report

Freedom of Information

Independent Commission Against Corruption

Ombudsman

Equal Employment Opportunity

Public Finance and Audit

Anti-Discrimination

Protected Disclosures

All staff of the Authority are employed under the Public Sector Management Act 1988 and are governed by a Code of Conduct. The three Senior Executive Service (SES) appointees are covered by the SES Code of Conduct (which covers all SES appointees in NSW) as well as the requirements applicable to MAA staff

Both Codes include specific standards of Personal and Professional Conduct, Ethical Decision – Making, Confidentiality of Official Information and address the issue of Conflict of Interest.

Codes of Conduct illustrate the values and behaviours expected and the obligations of staff. The Codes of Conduct are underpinned by the ethical principles of integrity, impartiality, responsiveness to the public interest, accountability and honesty.

The actions and decisions of staff of the MAA are subject to examination by the same government watchdogs as other government authorities.

### Question 8.2

*What protocols or guidelines does the Authority have in place to promote and protect the independence of those officers of the Authority in decision making positions.*

### Answer 8.2

The Motor Accidents Assessment Service (MAAS), incorporating MAS, CARS and the Claims Advisory Service, has a stand alone data base and file management system. MAAS has its own registry and record management system located at the Service's offices at Level 21, 580 George Street, Sydney.

MAS Assessors and CARS Assessors are doctors, lawyers and other suitably qualified individuals, with a current practice in their field, who undertake case work for MAAS rather than being "full time employees."

Although a CARS Assessor is an officer of the Authority, whilst undertaking assessment duties, Section 105 of the Act makes it perfectly clear that a CARS Assessor is not subject to the control or direction of the Authority in regard to any of the decisions that affect the interests of the parties to an assessment.

Both MAS and CARS Assessors are subject to guidelines detailing the practice and procedure to be employed whilst undertaken assessment service duties. The Guidelines have been developed in accordance with administrative law principles and aim to promote procedural fairness.

#### *Question 8.3*

*Where the Authority meets with individual stakeholders under the scheme, what steps does the Authority take to ensure minutes are kept of meetings and that such minutes are made publicly available?*

#### **Answer 8.3**

The Motor Accidents Authority meets regularly with stakeholders in the scheme in a variety of forums. In addition, the Act imposes obligations on the MAA to consult with stakeholders at certain stages.

The more formal consultation with stakeholders is through the Motor Accidents Council which is established under the Act. The Council is composed of the Chairman of the Motor Accidents Board, the General Manager and representatives of all stakeholders, including the legal profession, insurers, medical and rehabilitation services and community representatives. The Council meets every two months.

The General Manager of the Authority also meets monthly with the insurers and the Insurance Council of Australia Motor Accidents at the Motor Accidents Industry Standing Committee (MAISC).

There are numerous other forums in which the Authority meets and consults with stakeholders. Depending on the formality and purpose of a meeting, minutes may be taken (eg the Council has formal agenda and minutes are taken as does the MAISC). However, if the purpose of the meeting is a training session, minutes would not be taken.

### **4.2.9 Infants**

#### *Question 9.1*

*On what basis does the Authority assess legal incapacity for the purpose of Section 92 exemptions?*

#### **Answer 9.1**

The MAA does not assess legal incapacity. These decisions are made by claims assessors independently.

*Question 9.2*

*Is the Authority concerned that its adopted approach may be arbitrary and can turn upon the speed with which an insurer and the Authority handle the assessment of a claim?*

**Answer 9.2**

Refer to the answer to question 9.1.

*Question 9.3*

*Is the Authority concerned about a public perception that such an arbitrary determination of legal incapacity may give rise to a perception of manipulation and bias?*

**Answer 9.3**

Refer to the answer to question 9.1.

**4.2.10 Bureaucratic Overload**

*Question 10.1*

*How many forms has the MAA created?*

**Answer 10.1**

**MAA**

The MAA has created only one new form, the Accident Notification Form (ANF). To obtain up to \$500 in treatment expenses an injured person would need to complete an Accident Notification Form.

The standard claim form as approved by the MAA is not a new form.

**Claims Assessment and Resolution Service (CARS)**

CARS has created ten new forms to apply for five different types of disputes in CARS. The number of forms actually used by the claimant will depend upon the level of disputation within the claim.

To apply to have a special assessment at CARS a Form 5A would be completed. A party responding to such an application would do so via a Form 5R.

An application for an exemption from the CARS process would be made on Form 1A. A reply by the other party to the claim to an application would be completed on a Form 1R.

An application for a Preliminary Determination by the CARS is via the completion of a Form 4A and reply by the other party to the claim is via a Form 4R.

To apply to the CARS to have a general assessment, a party completes a Form 2A. The other party to the dispute replies to the application on a Form 2R.

In the rare instance a party wishes to have a further general assessment of the claim, a Form 3A initiates the process. The other party would be invited to complete a reply to the application on a Form 3R.

### Medical Assessment Service (MAS)

MAS has created three new forms.

A party to a claim where a dispute arises over treatment or impairment may seek the assistance of the MAS in resolving the dispute. To have a dispute about the treatment resolved a party may apply to the MAS using a MAS Form 1. The other party may reply to the application using a MAS Form 3.

Where a dispute arises over impairment or injury stabilisation an application to the MAS may be made using MAS Form 2. The other party is entitled to reply to the application via the MAS Form 2.

#### *Question 10.2*

*Has the Authority "road tested" the Form 2A?*

#### *Answer 10.2*

The MAA is presently monitoring the use of Form 2A with a view to revising the form. Any revised form will be market tested prior to release.

#### *Question 10.3*

*Is the MAA using the Fourth Edition AMA Guide and if so are they currently available for purchase?*

#### *Answer 10.3*

Medical Assessors undertaking impairment assessments use the MAA Medical Guidelines-Guidelines on the assessment of the degree of permanent impairment of an injured person. The MAA Medical guidelines were published in the Government Gazette and are available at the MAA website, [www.maa.nsw.gov.au](http://www.maa.nsw.gov.au). The Guidelines use as their basis the American Medical Association Guides to the Evaluation of Permanent Impairment as their basis. The AMA Guides are widely used. The Guides are available through AMCo, the Medical Co-operative bookshop.

#### *Question 10.4*

*What mechanisms does the MAA have in place to monitor consumer acceptance of the MAA's forms and guidelines?*

#### *Answer 10.4*

The MAA will internally monitor consumer acceptance of MAA forms and guidelines.

Independent researchers have been engaged to undertake external monitoring of consumer acceptance.

#### **4.2.11 Rehearings**

##### *Question 11.1*

*Why do the cost penalties for a party failing to improve on their position when relitigating a CARS assessment only apply to claimants and not to insurers?*

##### **Answer 11.1**

The Act distinguishes between assessments of liability for a claim and the amount of damages for that liability. The costs penalty provision applies to the assessment of the amount of damages for liability under a claim. Where the insurer accepts liability under the claim, section 95(2) provides that an assessment of the amount of damages is binding on the insurer. A note to the sub-section details the cost penalty provisions application, where a claimant does not accept the CARS damages assessment.

Given the circumstances in which the costs penalty applies it is unnecessary to extend such a provision to insurers.

##### *Question 11.2*

*Would the system be fairer if either party were subject to cost penalties for failing to improve on a CARS assessment when a claim is to take to litigation*

##### **Answer 11.2**

Refer to the answer to question 11.1.

##### *Question 11.3*

*Why should a claimant have to bear the burden of costs in a court case in circumstances where the claimant wished to accept the CARS assessment, where the court gives a similar award to the CARS assessment and where it was the insurer who forced the matter to litigation?*

##### **Answer 11.3**

Refer to the answer to question 11.1.

#### **4.2.12 Five Day Ban on Economic Loss**

##### *Question 12.1*

*How is the term “day” to be interpreted by claims assessors?*

##### **Answer 12.1**

Section 124 of the *Motor Accidents Compensation Act 1999* prohibits the award of damages for the first five days of economic loss, whether or not those days are consecutive, during which the claimant suffers the economic loss.

To date no such assessment has been undertaken by CARS. It is anticipated that the assessment will be subjective, to be consistent with the calculation of economic loss under the Act.

Consequently, a claimant who worked 12 hour shifts on a three day on four day off roster would not be compensated for the first five days as determined by the worker's usual pattern of work.

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### **4.3 Australian Medical Association (NSW) Limited.**

The AMA sought comment on amendments to the Motor Accidents Compensation (No 2) Regulation.

Response: Refer to Question 3 of the Law Society's submission and Question 4 of the Bar Association submission.

#### ATTACHMENT "A"

##### Claims Advisory Service

Detailed list of number of callers and nature of calls.

Stats for this year by nature of caller are :

Month	red person	legal	medical	insurer	other	total
January	82	34	21	0	18	155
February	174	43	20	0	39	276
March	61	27	22	3	45	158
April	131	43	10	0	33	217
May	245	67	38	4	93	447
June	251	40	19	7	67	384
July	132	76	23	15	31	277
August	235	163	44	13	48	503
September	186	61	115	18	100	480
October	243	130	53	23	206	655
November	290	170	57	26	215	758
December						
Total	2030	854	422	109	895	4310

### MEDICAL ASSESSMENT SERVICE

Applications received to 30 November 2000

- 69 MAS applications received to 30.11.00
- 42 requesting assessment of permanent impairment
- 22 requiring assessment of permanent impairment ONLY
- 6 have been assessed, 2 withdrawn, 13 are pending
- 1 is a request for a further assessment of permanent impairment; injuries were not stabilised when this was assessed by MAs previously

- 20 requesting assessment of permanent impairment and impairment of earning capacity
- 13 have been assessed, 2 were withdrawn wholly, 5 are pending
- 2 requesting assessment of impairment to earning capacity ONLY
- 1 withdrawn before assessment, 1 is pending
- 2 requesting assessment of stabilisation ONLY
- 2 are pending
- 23 requesting assessment of a treatment dispute
- 13 requesting assessment of reasonable & necessary treatment ONLY
- 4 have been assessed, 1 resolved at informal conference, 4 were withdrawn before assessment, 4 are pending
- 9 requesting assessment of reasonable & necessary treatment in addition to other assessments
- 6 have been assessed, 3 were withdrawn before assessment
- 1 requesting assessment of causation of treatment in addition to other assessments; this has been assessed

#### OUTCOMES:

- Permanent Impairment assessments (N=42):
- 19 assessments done to date, 12 involving assessment of permanent impairment AND earning capacity, one involving assessment of earning capacity only, because application for assessment of permanent impairment was withdrawn by the applicant.
- 18 assessments pending, 5 involving assessment of impairment to earning capacity too
- 4 matters wholly withdrawn before assessment (one withdrew the assessment of permanent impairment but proceeded with assessment of impairment to earning capacity)
- Permanent Impairment Assessments completed (N=18)
- 11 cases where injuries were found to be not stabilised, so no binding determination could be made
- in 1 of these the injuries were likely to exceed 10% once stabilised; in all other cases injuries NOT likely to exceed 10% once stabilised
- all of these “not stabilised” cases involved soft tissue injuries, except one involving a knee fracture and one involving a child with a healed fractured femur.
- in 1 of these, application has been made for a further assessment, this is pending.
- 7 cases where injuries were found to be stabilised and a binding determination was made – in all cases the injuries did not exceed 10%
- All these cases involved soft tissue injuries, except two cases involving a fractured ankle.
- In one case the determination was that the soft tissue injuries were stabilised and under 10%, but the post-concussion syndrome was not stabilised and impairment arising from this could not be assessed.
- In one case the assessment of permanent impairment was withdrawn but assessment of impairment to earning capacity proceeded.
- There have been no cases yet where a binding determination has been made that injuries exceed 10%.

#### Impairment of earning capacity assessments completed (N=12):

- In 3 cases, a partial impairment of earning capacity was confirmed. In 2 of these the claimant had not been employed at the time of the accident, in the other the claimant had been employed and had returned to their pre-injury job, but would be impaired for other types of work.
- In 9 cases, no impairment of earning capacity was confirmed. In one of these it was noted that the claimant was unfit for work, but this was not related to the MVA

Reasonable and Necessary treatment assessments completed (N=10):

STI neck – facet blocks further physio reasonable

STI neck / back – only 3 further physio treatments reasonable

STI neck / back – limited past chiropractic treatment and past ultrasound were reasonable, future chiropractic is not

STI neck / back – limited past physio was reasonable, proposed specialist investigations are reasonable;

Fractured knee - Proposed vocational assessment is reasonable

STI neck / back - Proposed future physiotherapy not reasonable, past investigations and physio were reasonable but proposed further MRI scan is not.

STI neck / back - Future physiotherapy, massage & acupuncture not reasonable

Fractured ankle - Future physiotherapy treatment not reasonable

STI neck / back - Proposed future investigations not reasonable, decision regarding physiotherapy is pending

STI neck / back & post-concussion syndrome - Decision regarding future physio and exercise program is pending.

Causation of treatment assessments completed (N=1)

STI neck / back & previous back injury – past physiotherapy and strengthening program was reasonable, proposed future supervised exercise program is reasonable but further passive treatment is not.

#### Claims Assessment and Resolution Service

Applications received to 30 November 2000

- 169 applications including
- 2 applications for general assessment of the quantum of a claim (allocation in both deferred to allow for MAS permanent impairment assessments)
- 3 applications for special assessment – section 96 dispute (one withdrawn, two determined with the result there is no jurisdiction)
- 159 applications for exemptions (36 pending)
- 123 determinations
- 50 exempted due to denial of liability by insurer
- 22 exempted due to deemed denial of liability by insurer
- 1 exempted on basis that claimant is an infant
- 26 not exempted due to subsequent admission of liability
- 19 not exempted due to time limits (section 91)
- 5 not exempted for other reasons
- 2 applications have been made by insurers all other have been made by claimants
- In 3 applications the claimant has not had legal representation

CARS matters have been rejected for the following reasons:-

Not signed

Form not completed

List of document incomplete or documents not attached

Use of wrong form – particularly in exemptions use the 1A for 92(1)(a) only, use form 4A for the discretionary exemptions allowed under section 92(1)(b)

## **Chapter 5 Evidence arising from the MAA's answers to questions raised by stakeholders**

### **5.1 Glenbrook and the 10% threshold for NEL**

The Hon. P. J. BREEN: I was distracted during your response to Mr Ryan's last question. He was asking you about the 10 per cent threshold for pain and suffering. You mentioned the Glenbrook rail accident. Could you explain again the relationship between the 10 per cent pain threshold and the consequences of the Glenbrook rail accident?

Mr BOWEN: The Transport Administration Act provides that compensation for injuries in rail accidents is to be determined in accordance with the damages provisions of the Motor Accidents Act. Prior to 1999 that provision was located in the Motor Accidents Act. Given that it did not deal with motor accidents, in 1999 it was moved in amendments to the Transport Administration Act, but it had been there since the Motor Accidents Act was introduced in 1988. The consequence is that the damages provision of the Motor Accidents Act limit entitlement to non-economic loss to those who exceed the 10 per cent threshold. There are also provisions of our Act that limit entitlement of parental claim to those who witnessed or were psychologically affected by a child's death providing that the psychological effect was greater than 10 per cent, as mentioned on the impairment scales. There is a justiciable issue as to how those provisions are applied. I understand that is being pursued through the Glenbrook litigation.

The Hon. P. J. BREEN: So it would be futile to ask you how many people in the Glenbrook rail inquiry have been unable to claim as a result of the 10 per cent threshold?

Mr BOWEN: I have no information at all on that.

The Hon. P. J. BREEN: Is there any way of knowing with regard to motor vehicle accidents generally how many people are no longer claiming as a result of that 10 per cent threshold?

Mr BOWEN: I can tell you what the assumption is in terms of the effect of the Act. The assumption was that the number of people who would be eligible for non-economic loss would reduce from about 40 per cent under the old Act to 10 per cent—the 10 per cent most seriously injured—under the new Act. In terms of what effect that is happening on settlements that are outside of the assessment service, I cannot say. I would think it would be factored in by both claimants and their legal representatives and insurers.

But having said that, we would not have anticipated that there would be very many, if any, claims that would get close to being at or over 10 per cent that would have stabilised at this point in time. That was indeed true even looking at the old scheme. If you looked at the amount of non-economic loss paid on so-called claims in the 12 month development period, it was very low even under the old scheme

because these are people with serious injuries and it would not be expected that their injury would have stabilised and they would finalise a claim all within 12 months.

The Hon. P. J. BREEN: There was an assumption, though, that there were a lot of people with soft tissue injury, particularly neck injuries, who would not qualify under the 10 per cent threshold and I would have expected that there should be a dramatic drop in numbers given that those people had represented a considerably large proportion of claims in the past. Certainly in other States such as Queensland where these restrictions are not in place, the number of people who could claim was considerably higher than in New South Wales.

Mr BOWEN: Well, the number of people who can claim compensation here is exactly the same. It is their entitlement to the non-economic loss component that has been restricted. We certainly were not expecting nor have we seen any reduction in the number of claims being made.

The Hon. P. J. BREEN: What about 10 per cent whole-of-body impairment? Should that not result in far fewer people claiming?

Mr BOWEN: There would be far fewer people entitled to non-economic loss, but they will still have other damages that have been incurred for which they will make a claim. Concept may be able to advise me otherwise but I would doubt that there would be very many, if any at all, in the history of this scheme where people received a non-economic loss entitlement without any other form of compensation.

The Hon. P. J. BREEN: Is it fair to say that you are now processing those in the office of the Motor Accidents Authority [MAA]?

Mr BOWEN: We have, the figures in here somewhere, 60-odd applications for medical assessment, but quite a few less for impairment. My recollection is about of those, only one has gone to a final assessment because in the other cases the injury had not stabilised. The assessor was unable to make a final determination.

## **5.2 Level of legal representation**

The Hon. P. J. BREEN: The anecdotal evidence is that lawyers certainly in the suburbs are not receiving claims from people with motor accident injuries. The question is: Where are they going? Are they going direct the authority or to somewhere else such as specialist lawyers?

Mr BOWEN: The drop-off in legal representation on claims is not as dramatic on our data as perhaps some members of the legal profession suggest. There has been a drop-off in the level of legal representation from 60 per cent to 50 per cent, which is significant. But what it is showing is that 50 per cent of claims that are notified onto our claims database by the insurers have a lawyer involved for

the claimant, which is still a reasonably high amount. I am not sure what the explanation is. A lot of lawyers are telling you and telling me the same: they are not getting any clients walking in the door. It is not supported by the evidence available to us. The only explanation I have is that in addition to that reduction from 60 per cent to 50 per cent there has been a compression in the number of practitioners who are doing this work and whether it has, as you suggest, compressed into more specialist firms is perhaps one explanation for it.

The Hon. P. J. BREEN: In one firm that I know of, I believe I have mentioned it to you on another occasion, the turnover previously was something like \$2 million a month in motor vehicle accident work. Now it is down to half a dozen claims a month. That seems to be a dramatic drop.

Mr BOWEN: It certainly does, but I have no explanation why that is being reported when we still have indications that 50 per cent of claimants have a legal representative. It is not sustained by the information we have available to us.

The Hon. Dr A. CHESTERFIELD-EVANS: You said there are 60 claims for non-economic loss which claim to be over the 10 per cent threshold, of which only one has stabilised, is that the figure you have given?

Mr BOWEN: I will find that for you. There have been 60 applications for medical assessment services. I am sure there is nowhere near that many for impairment assessment. It is in an attachment to our response tabled today to the questions, which shows the number of matters and their disposition at both medical assessment service and claims assessment service.

The Hon. JANELLE SAFFIN: Does the 60 per cent to 50 per cent drop represent new or existing claims?

Mr BOWEN: No. Only claims under the new Act can go to medical assessment. So, they are claims where the injury has occurred since 5 October 1999.

The Hon. JANELLE SAFFIN: Is that where the 10 per cent drop in lawyers relates to?

Mr BOWEN: Yes, that is where it drops.

The Hon. Dr A. CHESTERFIELD-EVANS: Are you referring to attachment A?

Mr BOWEN: It is on page 50 of the answers to questions on notice. It is an attachment to those answers. The summary indicates that there were 42 applications for assessment of permanent impairment. Of that, 22 required only an assessment of permanent impairment, others raised other issues. Of those 22, six were assessed, two were withdrawn and there are 13 pending. Of the other 20,

which involved permanent impairment and another issue, 13 were assessed, two withdrawn, five pending. It also sets out the results.

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The Hon. P. J. BREEN: I note the authority is catering for unrepresented claimants. In answer to some questions from the Law Society you referred to the outreach service and compared it with the service provided by the Commonwealth Administration Appeals Tribunal, which assists unrepresented claimants making appeals. On page 23 of your responses to questions, at the top of the page the Law Society asked:

Is the aim of the service to replace the role of lawyers in the New Scheme.

Your response states:

The CAS aims to assist injured persons making a claim by offering procedural information and administrative support through its outreach service. It is in no way intended to replace the services provided to injured persons by legal practitioners.

That response does not directly answer the question. There is a concern by the Law Society and by a number of legal practitioners that ultimately this scheme will replace the need for a lawyer when there is no question of dispute about liability. Do you have an observation about that?

Mr BOWEN: Our interest in this scheme is making sure that claimants receive their fair entitlements to compensation as required by the legislation. The MAA has set up its outreach service because there is an expected drop-off in the level of legal representation and we wish to provide assistance to people who are proceeding with their claim on their own behalf. But the true test as to whether or not a claimant can get through, process a claim and have it dealt with by the insurer without legal representation is how they are dealt with by the insurer. Something I have been at pains to stress to our CTP insurers is that if they deal with claimants in the way they dealt with them under the old scheme, they will drive them back into the hands of lawyers in no time because that approach is very adversarial, it was tactical and it required people to have a lawyer to protect their interest.

The Hon. P. J. BREEN: But is it not true that under the old scheme there was no organisation like the Claims Advisory Service [CAS] to facilitate the process? Claimants were really on their own; previously they were in the lion's den?

Mr BOWEN: That is true.

The Hon. P. J. BREEN: But now with your assistance it could be argued that claimants do not have to be concerned at all; they can simply be guided by what you tell them, is that right?

Mr BOWEN: We are not going to give them advice on whether an offer they have received from an insurer is reasonable; we do not give them advice if the insurer challenges liability for the claim. That type of legal advice is a matter that if the person is unhappy with the response they have from the insurer, they would continue to access.

The Hon. P. J. BREEN: I understand that on the question of liability, but on the question of whether the compensation offer is reasonable, if there is no lawyer in the equation there is really nobody else for them to go to except to the Claims Advisory Service?

Mr BOWEN: Or if they feel they have been properly dealt with by the insurer. Your opening comments indicated that the type of claims we are dealing with here are ones where there will be no entitlement to non-economic loss. So the claim is for provision of medical services, lost income, and any claim that does not involve that in terms of the past really is quite easy to settle. It is only a matter of adding up the amounts. Where it starts to draw in potential future medical costs and loss of future earning capacity, it becomes a little more complex, and when it gets into non-economic loss it is more complex again. However, if insurers take the trouble to sit down with claimants and explain all of their entitlements and work their way through it, and the claimant is happy with the outcome of that process, it may well be able to be done without a lawyer.

The Hon. P. J. BREEN: Is it your policy generally through this CAS to encourage people who are unrepresented to come directly to you?

Mr BOWEN: No. our policy is to have a service available that can fill what was a massive information gap in terms of what information claimants were given about their entitlements and the procedure by which they would be dealt with. I believe at the last hearing of this Committee I recall referring to some market research that the Motor Accidents Authority had undertaken in 1998 and saying that most claimants, even when they were legally represented, had no idea of what was happening with their claim or how it was being processed. They were given no information at all. This was to fill that sort of gap. It does recognise that there are likely to be more unrepresented claimants go through, but it is not only to fill that demand.

Interestingly, if you look at the profile of where the questions are coming from, the Claims Advisory Service is answering nearly as many questions from legal practitioners as it is from claimants. A number of the claimants who ring the service in fact have a lawyer but the lawyer has not told them what to expect and they have rung the Claims Advisory Service to get advice on the procedure. I think that is fulfilling a very important role in making sure that people know what is going to happen to them when they have suffered an injury and need to make a claim.

### **5.3 Maximum amount of NEL**

The Hon. P. J. BREEN: On that subject, there is a cap of \$260,000 for non-economic loss, I believe. Do you have any observation to make about that? Again, I am interested from the point of view of the Glenbrook rail disaster. A number of people suffered injuries that would indicate—certainly prior to this legislation being in place—that their non-economic loss was worth considerably more than \$260,000. In addition to that, the figure is also being applied in other jurisdictions where personal injuries or damages are involved.

Mr BOWEN: The threshold under this Act is the same as under the previous Act and it is indexed each year. In fact, because of a timing problem it was not the same, but that has been corrected in a statute law bill. It is now the same and, in regard to its application to matters, there have not been any matters settled so that no-one has been disadvantaged by that. My understanding of this, without having looked at it, is that the amount of that cap is pretty close to the maximum amount of non-economic loss that the Supreme Court might award in personal injury cases. You might get slightly more, but given that people who would reach the cap for non-economic loss under this scheme are those with really quite catastrophic injuries, non-economic loss represents only a very small proportion of their compensation payments.

The Hon. P. J. BREEN: Do you regard the cap as it stands as adequate?

Mr BOWEN: Yes. It is certainly higher than any other non-economic loss cap in any other jurisdiction. Most of them are significantly lower. In South Australia it is \$95,000 and the Comcare system is quite a bit under \$100,000 and in fact may be as low as \$60,000.

The Hon. P. J. BREEN: Do you have any observation or comment to make about its application to a situation such as the Glenbrook rail disaster?

Mr BOWEN: I really think I should not make any further comment about that. The application to Glenbrook is by the reference to the Motor Accidents Act from another Act, which is under another Minister's portfolio.

### **5.4 Cost penalties concerning CARS assessments**

The Hon. P. J. BREEN: The other cap that we put on the legislation, as I recall, was in relation to legal costs of insurance companies of \$25,000. That was applied as a result of negotiations with the Government at the time. Has any situation arisen, do your knowledge, that would call for that provision to come into play?

Mr BOWEN: This relates to a cost penalty on matters in respect of which there has been a Claims Assessment and Resolution Service [CARS] assessment and it has gone on to court. To my knowledge there have not been any finalised CARS assessments that have been taken to court. In fact, there have only been very limited number of finalised CARS assessments.

The Hon. P. J. BREEN: So that it is too early to make an assessment of that?

Mr BOWEN: It is too early to tell on that, yes.

## **5.5 Contracting out of legal costs regulation**

The Hon. J. F. RYAN: With regard to caps on legal costs, one of the questions asked by the Law Society in regard to legal costs related to a schedule that basically sets legal costs at a particular rate. I have been informed that there is also an opportunity for solicitors to contract out. I think it is referred to in question 8.1. There is a schedule of costs but there is apparently a wide practice by lawyers of opting out of that system of fee regulation. Have you any idea how many legal practices are actually charging those costs and how many are going outside the range? One imagines that ultimately if the case is successful the insurer will wind up meeting those increased costs, and that will be a factor that will increase the costs of the scheme. If the schedule is being so extensively bypassed, is there anything that the MAA proposes to do about either making the schedule more realistic or making more people comply with it?

Mr BOWEN: The schedule of fees operates so that it applies to set the maximum amount of both party-party and solicitor-client costs—the amount recoverable from the insurer and the amount that the client has to pay the solicitor. There are circumstances where that whole regulated fee regime does not apply and those are the matters that are exempted from CARS. There are some specific statutory exemptions and a whole range of discretionary exemptions. It is intended to take the very difficult or complex matters—either factually or legally complex—out of the fee regulation. For those matters that are subject to fee regulation, it allows the solicitor to contract out of the fee which their client has to pay them. If there is contracting out, the maximum amount that the claimant will recover from the insurer to have their fees paid will be the regulated amount, but they may have to pay more; they will have to pay the contracted out amount to their solicitor.

The Hon. J. F. RYAN: As I understand it, it works a bit like gap insurance from the medical levy.

Mr BOWEN: It does apply the requirements of the Legal Profession Act that the only basis upon which that contracting out can be successful is if the solicitor has a written agreement and has given full disclosure to the client. In these circumstances, in my view, that would require a solicitor to say: "There is a regulated schedule of fees but I am going to charge more than that. If you want to use me you will have to pay this additional amount." We have it on our audit agenda. It had not been raised with me that this was a burgeoning practice previously. We had intended to look at that as per our evaluation in the beginning of 2002. As I mentioned upfront, we have started to adjust that in the light of issues that

come up. Given that that issue has come up, I will have a discussion with Professor Ryde about putting forward the evaluation of the legal costs regulation at some time in 2001.

The Hon. J. F. RYAN: Can I read you something that might encourage you to look at this issue. I am advised that your statement that there is not much bypassing is at odds with anecdotal evidence that has been given to the Law Society. Evidence indicates that the legal costs allowed by current costs regulating provisions for matters relating to CARS are so low that virtually no solicitors are performing work under them. Rather, it appears that most solicitors are contracting out of the regulations with their clients. The unfortunate result is that the client must pay the solicitor the difference in legal fees between the amount the solicitor charges and the amount allowed under the regulation, which will ultimately have to be paid by the insurer if the claimant is successful. It appears to be a matter worthy of further inquiry.

Mr BOWEN: In the discussions leading up to the cost regulation with the legal profession, I accepted that the costs regulation imposed is a significant restriction upon the amount of legal costs for matters below \$20,000 because it is a straight fee for the service that is provided and it is a low fee. By comparison, in Queensland you do not get any fee at all. There is no legal cost payable for matters under \$30,000, so we are in fact more generous than some other jurisdictions in this area.

The Hon. J. F. RYAN: Regardless of what happens elsewhere, I think it needs to be looked at.

Mr BOWEN: Yes, but for matters above \$20,000 the event-based costing schedule was intended to replicate the amount of fees that were being previously charged. It seems to me that if we do an evaluation that proves what you suggest is correct, then we should remove the provision allowing contracting out.

## **5.6 Medico-legal costs**

The Hon. P. J. BREEN: In relation to that, in answer 4.1 on page 13 in response to a regulation question from the Law Society on you state in part: "The Minister has sought further consultation on a particular amendment relating to the regulation of medico-legal costs." Is that what you had in mind when you were referring to something being under consideration with regard to costs?

Mr BOWEN: It was not.

The Hon. P. J. BREEN: Is it something that is likely to be on the Minister's agenda in relation to regulation? If there is a regulation to deal with a perceived problem regarding costs, it seems to me that there ought to be something in the legislation rather than dealt with by regulation.

Mr BOWEN: It was not until we received the submissions and questions in this process that anyone had suggested to me—or, as far as I am aware, any officer of the authority—that there was a common

practice of contracting out. It has not been mentioned to me in any of the meetings I have had with the legal profession previously. I agree that it is something that we will now have to consider and provide some advice to the Minister on it.

The Hon. P. J. BREEN: It states that the Minister has sought further consultation. Was that at the Minister's initiative or on the initiative of the authority?

Mr BOWEN: This regulation was intended to do a few things to tidy up the existing regulation. It was proposing to deregulate the medico-legal fees. The Minister was unhappy to do that on what was presented to him without some further consultation. That is in hand and we will give him advice on that. I am happy to touch upon the reasons we were proposing deregulation of medico-legal costs, if you like.

The Hon. P. J. BREEN: I would certainly be interested in that.

The Hon. J. F. RYAN: Is that what this proposed unknown regulation would have done?

Mr BOWEN: Yes.

CHAIR: It deals with medico-legal costs?

Mr BOWEN: It deals with some other issues: what is caught by the regulated amount of the legal fee and what is billable over and above that as a disbursement. It also deals with that issue and puts a bit more clarity into it. One of the main components was the deregulation of medico-legal costs. The regulation picked up what I thought was a reasonable scale of fees for medico-legal reports, because it was a scale negotiated between the Law Society and the Australian Medical Association. One would think that ostensibly this would represent a reasonable level of fee. However, it has been the basis of submissions to us by both the insurers and plaintiff lawyers that the amounts under that scale were insufficient to allow them to get the very best experts in some particular field.

We grappled with this to see whether we could create a more detailed schedule that had different sorts of fees for different types of medico-legal reports. We have not been able to successfully set that out. It was with some reluctance that we were in fact recommending to the Minister that he deregulate these fees while we went through a process of determining what the market rates are for a variety of different specialist reports with a view to reregulating at around about that market rate. The reason we felt it inappropriate to do a recommendation was simply that both sides were telling us they could not get experts to do it at the regulated fees, notwithstanding it is an AMA-Law Society settled schedule. So I am at a bit of a loss on that myself.

The Hon. J. F. RYAN: On the subject of medico-legal fees, the Law Society raised with the Committee a practice among some medical practitioners of charging a client who is being examined a substantial

fee for a duplicate of a report that has already been sent to the insurer. I note that in your answer to that you have said that apparently there are some guidelines which state that when a medical report from a treating doctor is provided to the insurer a copy of the report is to be provided to the claimant within 10 days of the receipt of the report. Does that mean that it is now a standard, and basically a required, practice that a medical practitioner cannot charge a customer for a second copy of a report that has already been provided to the insurer?

Mr BOWEN: A claimant who goes back and seeks a second report will be charged for that report. But the suggestion is that claimants will not need to do that because they will have access to the report via the insurer.

The Hon. J. F. RYAN: I am sorry?

Mr BOWEN: They will get the report from the insurer, so they will not need to go back to the treating doctor.

The Hon. J. F. RYAN: They may wish to go back because they have a lawyer who wants a copy of the report. Why is it not reasonable, as when you go to any other specialist, that patients walk out with copies of reports for their own records, for whatever reason they propose to use those, and free of charge, given that it only requires that a report be photocopied?

Mr BOWEN: That probably is an issue that you should take up with the AMA.

CHAIR: Mr Bowen, in referring to a second report, you do not mean a new report. I take it you mean a duplicate or other copy of a report that has already been provided.

Mr BOWEN: That is right.

The Hon. J. F. RYAN: I understand that it is not an uncommon practice that medical practitioners charge the regulated fee to the insurer and a very high fee to the customer, sometimes in excess of the cost to the insurer to get it.

Mr BOWEN: Or vice versa.

The Hon. J. F. RYAN: Should we not close that loophole by regulation? As we are in the business of regulating people, why not close off that loophole altogether and provide that a copy of the same report be provided free to the customer?

The Hon. JANELLE SAFFIN: Could you not refer that to your council as a matter it should look at?

Mr BOWEN: It is a relevant issue, but could I say to you what has happened with current regulations may well happen here: the treating doctor simply could refuse to provide the report.

The Hon. J. F. RYAN: But what if it is a requirement of the regulations that they have to provide it for the client, as they do with any other report?

Mr BOWEN: I would think it may be stretching the regulation-making powers considerably to make a regulation imposing an obligation on another party to require a report. I really think that would require a legislative change. But it is certainly a proposition that warrants some thought.

The Hon. Dr A. CHESTERFIELD-EVANS: All this discussion about fees, however, relates only to plaintiffs' fees, does it not, because the defendants can have in-house lawyers who charge whatever they like and do things whichever way they like?

Mr BOWEN: The insurers are bound by the fee regulation in terms of external legal advisers that they contract. Yes, they can have in-house lawyers, but the overall amount of claims handling costs is an issue that we monitor. It will be limited by other practices. For example, while there is a right to legal representation at a claims assessment resolution service hearing, it is the intention specifically provided for in the guidelines that if the claimant is unrepresented then the lawyer cannot turn up with either an in-house or external legal adviser. There has to be some equality in representation and an expectation that in the vast majority of cases, even where the claimant may be legally represented, the insurer will be represented at those types of assessment hearings by the claims officer who is actually handling the matter.

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## **5.7 Assessment of insurer profit levels**

The Hon. J. F. RYAN: If I may go to another matter raised by the Law Society. The Committee has had today a presentation that refers to profit loadings for insurers of 10 per cent and 8 per cent. The Law Society asks, in short terms, since the scheme is largely estimating profit in any event, how can you confidently make presumptions about 10 per cent and 8 per cent? On what basis do you make such presumptions when you report to the Committee that you intend to find a mechanism whereby you can assess profit into the future? I guess what the Law Society wants to know is: How blind is the MAA in regard to profit?

Mr BOWEN: I might ask Mr Gould to comment further on this, but the process of reviewing a premium filing is one whereby the filing includes the insurer's estimate of the risk premium; that is, the amount that is required to meet the claim costs. It then has added to it all of the other components to the premium—the acquisition costs and the profit being the main two, with the acquisition costs being

broken down into the other components that have previously been mentioned. So, in undertaking our assessment we have available to us an independent actuarial assessment of the risk premium.

The risk premium is the major component of the premium. So we can make an assessment as to whether the insurer's risk premium is within the sort of range that is relevant. We also, on things like acquisition costs and profit, can make comparisons with what previously have been included in premium filings. They all do have to add up to a final figure. So, when we say that the insurer's profits have increased, we are saying that in their premium filings, as from last year to this year, the amount that is put aside as representing the insurer's profit has decreased, and that our assessment of that decrease is that it fits in with our overall assessment of the premium filing.

Mr GOULD: There is very little I can add, other than to reiterate that the pie charts in the report concerning insurers' profits are based on estimates. They can only be based on estimates. Frustrating though it may be for members of the Committee, it will be several years before it becomes apparent as to whether those are under or over estimates.

The Hon. P. J. BREEN: But they are the insurance companies' estimates, not your estimates, are they not?

Mr GOULD: They are the insurance companies' estimates, but the major components of them are reviewed independently, and for reasonableness, by the Motor Accidents Authority, with assistance from ourselves as consultants to the Motor Accidents Authority, in relation to the main area of estimated future claims costs.

The Hon. P. J. BREEN: If I could just say that our concern about estimates is that we need to have some understanding about whether they are yours or whether they are from the insurance companies. For example, the slide on premium filings shows that the insurers have included lower percentage legal fees. In your information and in your evidence today you have said that the legal fees being paid out are exactly the same, that they are not lower at all.

Mr BOWEN: We can offer a possible explanation for that. I might deal with that issue and then return to the question of premium filing. The amount of legal costs paid out this year, compared to last year, has been the same. But it is an extremely low amount. It really is recognising that the types of claims that are settled in this first year are ones which, even under the old scheme, had very little legal representation. It does take into account that there has been a speeding up of matters moving to settlement. So it is the total amount of legal costs, not the legal costs per settled claim. If we were looking at it in terms of legal costs per settled claim, then there would be a reduction. It is just a comparison of the total amounts paid.

The other component to Mr Breen's question is whose estimates these are. The system we operate under is file and right. So the insurers file their premium estimates, and the MAA has to consider those within the terms of the legislation, which empowers us not to approve of a premium if we believe it is excessive. One of the factors that is taken into account as to whether or not the premium is excessive is

whether or not it provides for, the words are, an adequate return on capital. So, what we are grappling with through those issues papers and the methodology set out at attachment 7 to the report is: How do we go about verifying that the amount of capital that the insurer indicates in the premium filing is allocated to this line of business is reasonable? Secondly, how do we go about verify that the return on that capital, which is the profit, is reasonable? And what constitutes reasonable or, in our statutory terms, adequate? So that as where we are coming at this from, to really make sure we comply with our statutory requirements.

## **5.8 Accident notification form**

CHAIR: I would like to ask a question about the accident notification form. The Law Society asked you a question which was perhaps couched in fairly aggressive language. It asked: Was the Motor Accidents Authority campaign carried out with the same intensity and resources as the WorkCover campaign? If not, why not? That is a reference to the publicity campaign. In responding to that question, you say that seminars were organised across the State. You go on though to say, "In May and June 2000 the MAA conducted a random telephone survey of 200 medical practices to establish the level of awareness of the ANF." You say that the survey results show that 40 per cent of practices were aware of the form. Presumably that means that 60 per cent of practices were not aware of it. Could you indicate to the Committee what the authority intends to do in that regard? Can we assume that a fresh publicity campaign, or some measure, needs to be taken to acquaint general practitioners of the existence of the accident notification form and what their obligations are?

Mr BOWEN: Yes. In fact, following that first survey, and indeed another survey that we conducted of claimants, we have done a further mail-out. This time, instead of sending out according to the mail list that we had for the general practitioner, we sent it to the practice, and particularly tried to bring it to the attention of the practice manager. We then brought half a dozen people in-house, and we phoned every one of those practices, to try to make sure, number one, they had received it, and, number two, they were aware of it.

I suppose our problem, by way of comparison with workers compensation, is that the number of claims in motor accidents is significantly less than the number of claims in workers compensation. It is between a quarter and a third of the number. So that a general practitioner, perhaps in sole practice, may expect to see each year no more than between two and four people who have been injured in a motor vehicle accident. It is not a high number. So it is not something that necessarily jumps straight to their minds that, "Ah, there's a separate form that's required" when someone walks through their door.

In the phone back to the practices we were trying to suggest and verify that they keep their forms with the workers compensation ones so that it becomes a matter of habit. However, it is fair to say that the workers compensation one went through much the same sort of teething problems. It takes a while for this to get known. You can run a huge number of seminars. You can write articles and reports and you can send them out. You can send out posters and no-one really thinks about it until they get the person through the door. If it suddenly clicks it clicks, and if it does not they fill in the form and send them away. I would like to think that we have been fairly aggressive in our response to this issue,

notwithstanding that it is not at a level that is satisfactory as yet. And we will continue to do that. We will do another survey of that in the first six months of next year.

CHAIR: Can the AMA perhaps be asked for any particular form of assistance?

Mr BOWEN: The AMA and its local practice directories—I am not sure that I have got the name right—have been of assistance. I suspect from discussions I have had with them that they often have similar sorts of problems in getting information that they want out to their members picked up and acted upon.

The Hon. Dr A. CHESTERFIELD-EVANS: Have you asked the drug companies?

Mr BOWEN: Not even the Motor Accidents Authority can afford to engage the drug companies to sell our wares.

The Hon. Dr A. CHESTERFIELD-EVANS: They might use them to get their foot in the door as a marketing ploy.

Mr BOWEN: We had thought about whether we would follow it up with door-to-door attendance. It is a very resource-intensive process and we would like to give a little longer for this further mail-out and the follow-up survey to have effect. If we still have less than 60 per cent knowledge in the next survey of all the practices then I suspect we will have to do the door-to-door attendance.

The Hon. J. F. RYAN: When do you expect to have done the next survey?

Mr BOWEN: In the first six months of next year so I probably think March, April, some time like then would be reasonable. Getting in a large number of people to phone up 4,000-odd practices is a fairly intensive task.

The Hon. P. J. BREEN: Can I make an observation about the form? It does have a separate section for the doctor to fill out and I think a separate section again for somebody else to fill out, perhaps the lawyer or the claimants themselves. Certainly on the face of it, it would be a daunting task for a doctor suddenly confronted with a new form that appears to involve questions other than medical questions. It may be that the doctor simply puts the form in the patient's file and that is where it stays.

Mr BOWEN: The medical certificate component of the form is very similar to the workers compensation one and we did that for the deliberate reason of trying to ensure that it was something they were already comfortable with and already used to using. We wanted to build upon the fact that the workers compensation certificate was already out there and in use, and that this was something along the same lines to assist in getting acceptance. It is also not that much different, although in fact

less detailed, than the medical certificate that is required to be filled in attached to the claim form. So we are trying to get a consistency in approach to all of this to make it acceptable. I would have thought the form is reasonably clear on the face of it, that it is only the last page of the medical certificate that is required to be completed by the doctor.

The Hon. J. F. RYAN: On page 19 of the responses you have given to questions you make reference to the fact that a mail-out was sent out using medical practitioners supplied by the AMP company. Is there any reason why the MAA does not have its own database of medical practitioners?

Mr BOWEN: I think that AMP company is the company owned by the AMA. Creating our own database of every medical practice in the State is a daunting task. We simply purchased this one, which is not an uncommon thing to do. In fact, we have done a fairly significant tidy up of it. We have taken out of our list all the ones that relate to specialist health clinics and the like. We also have a lot of return addresses—not a lot but a significant number to suggest that their database needed some updating anyway.

The Hon. J. F. RYAN: Hopefully you can charge them for cleaning up their database.

Mr BOWEN: Yes. I have suggested that we charge them for the updates.

The Hon. J. F. RYAN: On page 21 in response to whether or not potential claimants are properly advised and aware of their rights, I note that it states:

In addition to information services such as the insurer operated Claims Information Service (CIS and the MAA's Claims Advisory Service (CAS), treatment providers have a greater awareness of the scheme.

I hope that was not a significant part of the extra. It is true that treatment providers have a greater awareness of it but one would not have thought that 3 per cent was a hugely greater awareness.

Mr BOWEN: You can distinguish between the GPs and the other types of health professionals. For example, in addition to what is reported there, we have had quite significant involvement with the Australian Physiotherapists Society. We have had a loss of contact with them and publications in their journals and the like, and making sure that physiotherapists, who are often the first point of contact with people shortly after the doctor, are also aware of the claiming procedures. In fact, we are probably more confident that that statement is true of other health professionals than it is of GPs.

## 5.9 Insurance industry initiatives

The Hon. JANELLE SAFFIN: In your opening statement you said that some of the initiatives that the insurance industry had taken were commendable. Can you outline a couple of those initiatives that you said were commendable?

Mr BOWEN: I will give you one very good example which I became aware of this week. I had a discussion with an insurer who now has mobile claims officers, who hop in a car, drive to the claimants' homes, help them fill in the forms and process their applications. That type of assistance is something that was unheard of in this scheme 12 months ago. There is much improved customer focus. Some of the insurers have adopted new nomenclature so that they call claimants their customers or clients. That may sound a little corny but in fact if that is reflective of a different attitude amongst their claims staff as to who that claimant is, then it can be quite powerful.

It can establish that sort of personal relationship. Often the insurers pass on to me letters that they have received from claimants thanking individual claims officers for assisting them through the process and helping them. I imagine they probably got one or two under the old scheme but I think they would have been fairly rare. A number of insurers are taking pride in the fact that they are making those sorts of changes, that they have changed the way in which they will deal with claimants. I wanted to reflect on that because I think that is a very important component to this.

## 5.10 Section 81 of the *Motor Accidents Compensation Act 1999*

The Hon. JANELLE SAFFIN: My next question relates to section 81 (3), section 81 (5), the principal assessor and the three-month period. Does that ring a bell with you?

Mr BOWEN: Yes, this is one of the Bar Association's questions.

The Hon. JANELLE SAFFIN: I have heard it raised a fair bit in legal circles. As you know, I have not had an opportunity to look at all your replies. How did you address that? What is your view?

Mr BOWEN: I have not. I referred to that in the opening statement. The principle claims assessor has dealt with certain applications for exemptions on the basis of an interpretation of those sections of the act. In my view—

The Hon. JANELLE SAFFIN: So there is something in the Act that actually states that one can apply for an exemption. What section is that?

Mr BOWEN: The exception provisions will be at 81 and the reference is, from recollection, that there is an entitlement to an exemption when the liability is denied. There is then a provision that provides for a deemed denial of liability where the insurer has not responded within a second time. The issue is whether that denial of liability satisfies the test for an automatic exemption or whether it is still a matter for consideration by the principle claims assessor. I will not offer an opinion on that. Quite properly, I cannot direct a claims assessor, including the principle claims assessor, in a determination or an interpretation. It would be wrong for me to offer a view as to what a legal position is on that decision, given that there are appropriate avenues by which that decision could be challenged.

### **5.11 Claim numbers**

The Hon. J. F. RYAN: I would like to ask a fairly fundamental question which relates to page 21 of the annual report, the presentation which we were given which stated claim numbers before and after the change, and statements that there had been a 15 per cent increase in notifications. There appears to be, at least according to the Law Society's questioning, a fundamental difference in the meaning of the word "compensation", as it is used in figures such as the 15 per cent and what has previously been the case. The Law Society is wondering—and I must say that I am, too—whether this is a fundamental difficulty in making a comparison between the old and the new schemes.

To relay the concern of the Law Society, is there a question of semantic interpretation of the word "compensation"? The original MAA report compared the number of claims lodged in the old scheme with the number of claims and accident notification schemes lodged under the new scheme. It is arguable that a bona fide claim lodged under the old scheme, when it is finalised, would lead to a final payment of compensation or claim that would close the matter. This would be described as a final compensation for the injury.

Under the new scheme an injured person may lodge an accident notification form [ANF] and receive \$500 or thereabouts as an interim payment but may then lodge a claim very similar to that under the old scheme for further compensation and possibly receive more. In this sense the Law Society believes that it is not meaningful to compare the time between an accident and the lodgment of the claim for final compensation under the old scheme and the new scheme because the new scheme introduces something altogether different—the ANF and the interim payment, which did not exist under the old scheme. People used to spend some time researching a claim before they actually presented it. To what extent can we meaningfully make a comparison and draw the conclusion that there has been a 15 per cent increase in notifications when a whole new type of notification has arisen under the new scheme?

Mr BOWEN: I think it is a valid comparison because the whole intention of introducing the accident notification form was to allow earlier access to payments and increased access.

The Hon. J. F. RYAN: I do not disagree with you that what we have done is beneficial, but I guess it is fair to say that it is not exactly a like-with-like comparison, is it?

Mr BOWEN: It is not exactly like with like, but it is a meaningful comparison of how many claims there are and at what time people start to get access to compensation payments. There is no suggestion by making that comparison that these are final payments on either the claims or the ANF. They are payments made to date, so it is comparing two points in time with identical data in that respect.

### **5.12 Transaction costs**

The Hon. J. F. RYAN: On page 23 of your notes, you state that in view of the changes introduced by the 1999 Act an emphasis was placed on reducing transaction costs. Is the MAA concerned that the efficiency figure of 62 per cent is still too low? Why is the efficiency figure still less than the 67 per cent efficiency figure for the Queensland scheme? How does the 62 per cent figure compare with CTP schemes in other countries or in States other than Queensland? Has the MAA set an objective goal for the efficiency of the New South Wales scheme in 2001? I might add that a recent report by the Auditor-General on annual reports makes a strong suggestion that in future all annual reports from all government agencies, and I imagine that that applies to agencies like yours, should include comparative data and objective setting as part of the annual reporting process.

Mr BOWEN: One can only make comparisons when data is available. The reason we compared the scheme to Queensland is that Queensland has adopted that as a measurement of its scheme and that allows us to have an identical comparator, and it allows an identical comparison to be made. Is it too low? Yes. Our objective is to increase that as much as is possible. The view of the Motor Accidents Authority is that this scheme should ensure that the maximum possible amount of premium collected is returned by way of compensation payments. Nevertheless, I think it is a very significant improvement.

I also make the point that a comparison from 58 per cent to 62 per cent is a comparison of the 58 per cent figure which was an average over that 1993 to 1998 period. Our view is that the amount going to claimants in the 1998 year was lower than 58 per cent and probably was as low as 52 per cent or within the 52 per cent to 55 per cent range. So in fact you have an increase that is more significant than it would be by comparison with a previously aggregated period. We would hope that this would be a figure that would continue to trend upwards.

### **5.13 Scheme evaluations**

The Hon. J. F. RYAN: Can the MAA elaborate on the interrelationship between various evaluations of the Act and the scheme, including the Justice Research Centre [JRC] study? Who was the client for each of those evaluations? Where does the MAA see this Committee fitting into the structure of these evaluations?

Mr BOWEN: The evaluation of the scheme is, in my view, the responsibility of the Motor Accidents Authority and it is something that we would report, as we have been reporting, on a meeting-to-meeting basis to the Motor Accidents Council and on a six-monthly or annual basis to this Committee. The evaluation of the scheme comprises a number of different components which we have covered

although perhaps I have not collated them in this report. They are audits of various scheme guidelines, including claims handling guidelines, treatment rehabilitation and attendant care guidelines and market practice guidelines, which have either commenced or are under way or which are, in the case of the market practice guidelines, programmed to occur.

There is ongoing analysis of information held by the MAA to allow us to evaluate and report as against the scheme performance indicators. That will continue to be done by the MAA by the use of consulting actuaries and others who are of assistance. However, there are also components of the scheme evaluation that require us to contract independent advice, in some cases because we do not have the expertise in-house and in other cases because it involves an evaluation of how well the service is provided by the MAA, or the operation of services such as the assessment services.

## **Appendix 1**

**Slides used by Motor  
Accidents Authority in  
relation to the opening  
statement**