

Standing Committee on Law and Justice

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

Third Report

Ordered to be printed 18 February 2002

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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 actual basis for calculating that profit margin.
- (2) The Authority is to assess that profit margin, and the actual 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*.¹

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

The Hon John Hatzistergos MLC Australian Labor Party

The Hon Janelle Saffin MLC Australian Labor Party

¹ 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.

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Chair's Foreword

This is the Third 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 by conducting periodic public hearings with the Chair of the MAC and the General Manager of the MAA.

This report consists of selected extracts from the hearing held on 17 December 2001, together with written answers provided by the MAA to questions on notice. The focus of the hearing on 17 December was on the MAA's 2000/2001 Annual Report, the MAA's reports on CTP Insurer Profit, Cashflow and CTP Insurers' reserving of non-economic loss, as well as general issues related to the new scheme.

The MAA indicated to the Committee that the new Motor Accidents Compensation Scheme, which is now two years old, would begin to mature around the 3rd and 4th years after the original underwriting year, when the full details of the new scheme would become clear. Hence, the Committee maintains that it would still be premature to express any firm views about the operation of the new scheme at this stage. However, it is clear from the evidence provided by the MAA that the average annual cost of obtaining a green slip has been reduced markedly.

I also congratulate the MAA on acting promptly to exercise its statutory responsibilities and have the Nominal Defendant take over liability for claims under policies issued by CIC and FAI prior to January 2001. In the wake of the HIH collapse the Committee noted that two licensed insurers have dropped out of the market, and acknowledges the MAA's concerns about the impact of further losses of current insurers. The Committee shares the views of the General Manager and the Chairman in their preference that more insurers enter the market.

Prior to the hearing on 17 December 2001, 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 and these are incorporated into the report. 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 Chairman of the MAA, Mr Richard Grellman and the General Manager of the MAA, Mr David Bowen, and his staff for their cooperation and assistance with the hearing and the provision of detailed written answers to the Committee's questions. I am grateful also to my colleagues on the Committee for their participation and to the Secretariat for its assistance in organising the hearing.

Hon Ron Dyer MLC
Chair

Summary of Recommendations

Recommendation 1 *Page 4*

The Committee recommends that the Motor Accidents Authority should give further consideration as to how parents who lose children as a result of a motor vehicle accident might be compensated, particularly parents who would not qualify for non-economic loss according to current medical and psychological guidelines. The further consideration of this matter should include public consultation with interested stakeholders.

Chapter 1 Questions On Notice Arising from Previous Hearings

Audit Requirements

The MAA indicated at the previous hearing on 11 December 2000 that both claims handling and treatment guidelines would be audited during 2001. The MAA Annual Report 2000-2001 (pp.13-14) states that insurers were audited against the Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines issued in December 2000.

The Annual Report 2000-2001 also states that insurers were required to submit a self-report on the implementation of the Claims Handling Guidelines. A formal audit program, developed by the Compliance Unit, involving on-site inspections of claims files and the production of a Compliance Audit Report for each insurer was to follow in 2001-2002.

1.1 It is noted that two insurers failed to satisfy the audit requirements and were to be reaudited before December 2001. Can the MAA inform the Committee the results of the reaudits?

Answer 1.1

The CTP insurers were audited from April to June 2001 for their compliance with the Treatment, Rehabilitation and Attendant Care Guidelines. Two insurers failed to satisfy the audit requirements. These two insurers are not current underwriters and therefore are not writing new business. However, given the long term nature of these claims these insurers still need to comply with MAA Guidelines.

One of these insurers was reaudited in November 2001 and satisfied all audit requirements. This insurer has been taken over by an existing CTP insurer, who will continue to manage their claims. The auditors specifically noted the amount of work this insurer had put into ensuring its compliance.

The other insurer, prior to the reaudit, was recently taken over by another existing insurer. This audit has therefore been postponed until early 2002.

The audits of FAI and CIC were also postponed until early 2002.

1.2 What progress has been made in regard to the formal audit program and the production of Compliance Audit Reports for individual insurers?

Answer 1.2

See MAA Audit and Evaluation programme (Appendix) submitted to the Committee and the response to question 4.1 from the Bar Association (Chapter 4).

Parents of Children Killed in Motor Vehicle Accident

1.3 At the previous hearing in December 2000, compensation to grieving parents of children killed in motor vehicle accidents was raised. The General Manager indicated at that time he would look at the issue of death benefits.

Answer 1.3

Under the NSW Motor Vehicle Accident Scheme, compensation entitlements have been extended to:

A parent, spouse, brother, sister or child of the injured person or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric injury and not merely a normal emotional or cultural grief reaction.

It is understood that the Committee's concern was that parents who do not have a demonstrable psychological or psychiatric injury, but were grieving, were not being compensated or recognised by the compensation scheme.

Most jurisdictions do not provide for a death benefit. In Victoria, the TAC has a death benefit available to a surviving spouse and dependent children where it can be shown that the death was the result of a transport accident. In NSW such people can make application for compensation under the Compensation to Relatives Act. This requires the claimant to demonstrate dependency.

There are no jurisdictions which make a payment *per se*, to grieving parents or relatives of children killed in motor vehicle accidents (where those people cannot otherwise make a claim on their own behalf).

The payment of a lump sum, which assigns a dollar value to the child's life is considered problematic, and may well be offensive to most parents, and it is clear that any payment would be ineffective in relieving their grief and loss.

The MAA has moved on to assess more responsible and constructive options such as providing support services to grieving parents.

Recently the Western Australian Government launched a counselling service to assist those traumatised by motor vehicle accidents. Police and Ambulance Service Officers will carry cards listing the details of Roadwise a 24 hour State-wide telephone service to provide counselling support to people involved in motor accidents.

The MAA is presently assessing the merits of various options for support services to grieving parents with the view to possible incorporation into the NSW scheme.

Committee Comment

This advice was significantly different from advice that the MAA had been previously given the Committee on this issue. Mr Bowen advised the Committee during a hearing conducted on 8 May 2000:

Mr RYAN: Is it not reasonable to consider that both of those things should be deemed

to be more than 10 per cent?

Mr BOWEN: The loss of a foetus is included in the Victorian guides as stand-alone, although it is in the context of a statutory scheme there where they provide a statutory death benefit. If you lose a child, a born child, you get a statutory death benefit, which we do not have. So it was included in earlier versions of guides and it was then taken out and it is currently under continued review. It occupied quite a bit of discussion at the Council as well. We recognised that there was a prospect of creating an anomaly if you put in loss of a foetus as an impairment to the woman, which automatically meant the mother was compensated for non-economic loss, whereas loss of a child would not attract any automatic compensation unless it had an effect that got you over 10 per cent or a mental behavioural disorder.

Mr BOWEN: There is a strong argument that way, and it has been put to the Authority and the Council, and the discussions with the reference groups are ongoing and we will come back to that.

Mr HATZISTERGOS: It would if there was a psychological injury that brought it over 10 per cent.

Mr RYAN: The argument is that it would not necessarily do so, because the psychological injuries are assessed by means of disability rather than impairment. It is difficult for a parent who has lost a child to demonstrate a disability.

Mr BOWEN: Yes. There clearly will be occasions where a parent has lost a child and it has led to a significant disability which translates to a greater than 10 per cent impairment. There will be other cases where parents do get on with their lives, often because they have no option if there are other children and family members to look after, and on that sort of test they would not necessarily get over the 10 per cent mental and behavioural impairment. So it is an issue that needs to be looked at. It probably needs to be more broadly looked at in the context of statutory change to see whether a death benefit should be introduced rather than trying to fiddle with the impairment levels as a means of achieving that end in a roundabout sort of way.²

On the 11 December 2000 Mr Bowen advised the Committee in response to questions about the issue that further consideration had been given to this matter and that it was one of a number of matters which the Authority planned to address at a future date by way of legislative amendment. Mr Bowen said:

... where 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

² Evidence, 8 May 2000, p 17.

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.³

The Committee is concerned that the proposals for grief counselling and other support mechanisms which are outlined in their recently tabled answer to the Committee may not be adequate to meet the needs of parents whose children are killed in a motor vehicle accident. Whilst the Committee accepts that it is impossible to compensate for such a loss, many parents would prefer some form of direct and untied financial assistance to enable them to have some flexibility in how they may respond to such a tragedy. Actions parents sometimes take in response to circumstances such as these include taking an extended holiday, moving away from the area where the accident occurred or changing jobs. Some parents who experience a complete marital breakdown after such a tragedy may require financial resources to re-establish themselves after a family breakup.

Accordingly the Committee recommends that the Motor Accidents Authority should give further consideration as to how parents who lose children as a result of a motor vehicle accident might be compensated, particularly parents who would not qualify for non economic loss according to current medical and psychological guidelines. The further consideration of this matter should include public consultation with interested stakeholders.

Recommendation 1

The Committee recommends that the Motor Accidents Authority should give further consideration as to how parents who lose children as a result of a motor vehicle accident might be compensated, particularly parents who would not qualify for non-economic loss according to current medical and psychological guidelines. The further consideration of this matter should include public consultation with interested stakeholders.

1.4 During the course of the previous hearings there was discussion about deeming certain injuries as being over the 10% whole person impairment threshold. The Hon. John Ryan raised the matter in relation to parents who lose a child in an accident in which they were not involved.

Answer 1.4

³ Law and Justice Committee, *Second Report of the Review of the exercise of the functions of the MAA and the MAC*, February 2001, p 16.

At present s77(b) of the *Motor Accidents Act* and s141(b) of the *Motor Accidents Compensation Act* extend compensation to parents (as well as spouses, siblings and children) who sustain a psychological or psychiatric injury as a result of the death.

Compensation is available for past and future losses, including wages and treatment. Where a parent sustains psychiatric impairment greater than 10%, a claim can also be made for non-economic loss (with access to non-economic loss of up to \$296,000).

The Medical Assessment Service operated by the MAA has undertaken one impairment assessment of a parent claiming psychiatric injury as a result of the death of their child in a motor vehicle accident. The parent, not involved in the motor accident, was diagnosed with a complicated grief reaction.

The Assessor found the parent to have a psychiatric impairment, which was permanent, and over 10% thus entitling the parent to make a claim for non-economic loss.

Long Term Care of the Seriously Injured

In regard to long term care of the very seriously injured, the Committee asked a question on notice prior to the last hearing:

Can the MAA provide an up-date on work that has taken place since May 8 hearing in relation to consideration of options for the long term care of the very serious 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)?

The MAA responded that John Walsh had only recently completed the draft report, and that once the final report is received the MAA will convene the Long Term Care Working Party. It was envisaged that the Working Party would be reconvened around March or April 2001.

1.5 Can the MAA now provide an up-date in relation to the consideration of options for long term care of the very seriously injured? Has the 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?

Answer 1.5

The MAA has previously convened a working party looking at the issues associated with long term care for people with serious injuries such as spinal cord injury and brain injury.

The MAA's "No-fault" Long Term Care (LTC) proposal developed by that working party anticipates that there will be a total of 268 people each year requiring LTC following a motor vehicle accident, made up of:

- 220 with acquired brain injury

- 30 with spinal cord injury, and
- 18 with major orthopaedic or internal injuries.

It is estimated that the annual incurred cost of providing LTC under the existing scheme is \$140 million. There is an estimated \$168 million shortfall between the estimated amount spent on LTC in the current scheme, and that required under a no-fault scheme. This translates to an additional \$45 per insured vehicle. The total amount per vehicle is \$83.

There is no further work being undertaken on this proposal at this stage. There is however, a working party established by the Cabinet Office that is attempting to progress the issue. This working party includes representation from the NSW Department of Health and Ageing, Disability and Home Care. Both departments are currently researching what services are available and models of care that may be appropriate. Once this has been completed the MAA has agreed to contract John Walsh, actuary to cost the proposals developed. This should be completed within the next six to nine months.

In addition to this the MAA has a number of projects planned and underway that will assist in the implementation of the LTC model as well as assist in the provision of care in the current system. These include:

- Guidelines for the level of attendant care services for claimants with a spinal cord injury.
- Project to look at the skills and training requirements of attendant care workers.
- Project to develop assessment tools to measure or predict:
 - Level of disability
 - Current and future care and services needs of people with serious injury
 - Cost of care.

Brain Injury Rehabilitation

Recommendation 2 of the Second Report concerned funding to the Brain Injury Rehabilitation Program under the MAA's program of rehabilitation grants.

Under Allocation of Program Areas in the MAA Annual Report 2000-2001, \$117,000 was allocated for Brain Injury rehabilitation.

1.6 Can the MAA provide further detail as to the specific allocation of the rehabilitation grants for brain injury?

Answer 1.6

The funding allocation of \$117,000 for the Program Area for Rehabilitation Grants – Brain Injury 2000-2001 was the cashflow for approved projects within the Brain Injury Rehabilitation Program for that financial year. This program is the network within NSW Health that provides acute brain injury rehabilitation services. Details of the individual projects and total funding approved follow.

Illawarra Paediatric Service**Organisation - Illawarra Brain injury Service**

This project aims to improve the brain injury services offered to children and adolescents in the Illawarra region.

A paediatric case worker is employed to develop innovative and effective strategies for coordinating services, providing education and supporting families once brain injured children are discharged from the hospital system.

Total Funding Approved

September 1998	\$120,000
Budget 2000/2001	\$43,175

Paediatric Case Manager New England region**Organisation - Brain Injury Rehabilitation Program, Tamworth Base Hospital**

This project aims to improve the brain injury services offered to children and adolescents who live in the New England Region.

A full time case manager is employed to provide case management services to children and adolescents in all stages of their recovery and provide education and training to local service providers on traumatic brain injury

Total Funding Approved

February 2000	\$122,000
Budget 2000/2001	\$34,228

Paediatric Case Manager North Coast NSW**Organisation - North Coast Head Injury Service, Lismore NSW**

This project aims to improve the brain injury services offered to children and adolescents who live on the North coast of NSW

A full time case manager is employed to provide case management services to children and adolescents in all stages of their recovery and provide education and training to local service providers on traumatic brain injury

Total Funding Approved

February 2000	\$100,000
Budget 2000/2001	\$25,000

Brain Injury Outreach Worker, Illawarra Region**Organisation - Illawarra Brain Injury Service, Warrawong**

A full time outreach worker is employed to improve the provision of case management services for people who have sustained a brain injury and live between Gerringong and Milton/Ulladulla on the NSW South Coast.

Total Funding Approved

February 2000	\$120,000
Budget 2000/2001	\$14,500

In addition to these projects the MAA also approved funding in February 2001 of \$745,596 for projects relating to brain injury as part of the 2000-2001 Injury Management Project Funding Round

Details of these projects follow:**Information booklets for families and carers of children with acquired brain injury****Organisation - Sydney Children's Hospital and New Children's Hospital**

There is currently very little information for families about brain injury apart from a mixed array of photocopied sheets from hospital services or other copied material. This information can be misleading or based on interstate or international information.

The development of booklets will provide information about brain injury for families and carers.

Total Funding Approved

February 2001

\$13,750

Clinical trial of stretching after traumatic brain injury**Organisation - Rehabilitation Studies Unit, Department of Medicine, Sydney University**

This project involves comparing the effectiveness of two types of treatment of elbow flexion contracture in people with traumatic brain injury.

Total Funding Approved

\$29,600

Efficacy of stimulant medication in paediatric acquired brain injury**Organisation - Department and Developmental Cognitive Neuropsychology Research Unit New**

This study aims to investigate the potential efficacy of central nervous [CNS] stimulants in the treatment of chronic attentional problems in children with an acquired brain injury [ABI] through a double blind placebo controlled trial using methylphenidate [Ritalin] and dexamphetamine. Changes in attention functioning will be measured on a range of behavioural and neuropsychological measures of attention.

Total Funding Approved

\$102,246

The time frame of recovery after traumatic brain injury: an evidence based approach**Organisation - Rehabilitation Studies Unit, University of Sydney**

The study aims to determine the time frame of recovery by following up a cohort of patients 20-25 years following severe traumatic brain injury. Data were previously collected on this cohort approximately 15 years ago, between 3-9 years post trauma, examining neurophysical and neuropsychological impairments, along with physical and psychosocial disabilities and handicaps. Contrary to consensus opinion that patients stop improving well before two years post trauma, it found that outcome was better in individuals who were much longer post trauma. Ongoing clinical contact with other patients supports this observation, but empirical evidence is required for confirmation.

Total Funding Approved

\$200,000

Traineeships for people with a disability**Organisation - The NSW Office of the Director of Equal Opportunity in Public Employment [ODEOPE] and the Department of Education and Training [DET]**

The proposed program involves the establishment of a traineeship program targeted at placing people with a disability in the NSW Public Sector. The traineeships are jobs that combine work and structured training and which generally last from one to two years. Trainees are paid a training wage and enter into a training agreement or "indenture" with the employer. Trainees undertake a training program that is delivered by a registered training organisation and leads to a nationally accredited qualification and are released from work one or two days per week to complete formal off the job training.

Total Funding Approved

\$400,000

MAA 2001- 2002 grant funding round

Short -term initiatives to improve community support for people with brain injury:

Examples of areas include projects aimed at:

- assisting access to community or brain injury specific courses eg computer courses, anger management
- developing and enhancing networks for people who have a brain injury
- assisting community access for people with a brain injury in rural and remote areas
- injury

Applications closed in mid September 2001. These applications are currently being assessed and will be presented to MAA Board meeting in February 2002.

Chapter 2 Questions arising from the Reports on Insurer Profit, Cashflow, Non-Economic Loss and the MAA Audit and Evaluation Program

At the public hearing conducted on 17 December 2001, the Committee Chair referred to four reports compiled by the MAA and provided to the Committee secretariat on 11 December 2001. The four reports concerned: CTP Insurer Profit; Cashflow for the first underwriting year under the Motor Accidents Compensation Act; CTP Insurers' reserving of non-economic loss; and the MAA audit & evaluating program.

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2.1 Insurer Profit

CHAIR: Mr Grellman, the Committee received a number of brief reports on Tuesday, 11 December, including a report on the CTP insurer profit and CTP insurers reserving of non-economic loss. Could you briefly summarise for the Committee, or any other witness for that matter, the results of the work done by Taylor Fry Consulting Actuaries and the key issues contained in their report?

Mr GRELLMAN: Again Ms Rizzo is the right person to answer that.

Ms RIZZO: I will summarise the profit paper first and that falls into two areas, first of all, retrospective profit and what we refer to as prospective profit. The retrospective profit is an estimate of the profit that the insurers have made in the underwriting years that have passed, but given that the claim payments have to develop, it is still an estimate, even though it is in the past.

I would refer you to table 2 of that paper, which looks at the deregulated period before the Motor Accidents Compensation Act came into force, and I would refer you to the last column. Overall, what we are saying in that last column is that for that deregulated period between 1992-99 the insurers made four per cent of gross premiums as profit. That four per cent includes a prudential margin which is at the level that APRA is suggesting in their reforms, at 75 per cent level of sufficiency. Without that prudential margin, the average profit is eight per cent of gross premiums. That is in the second last column, but if you look at each underwriting year you can actually see that in 1994 the insurers made a 34 per cent loss. The pattern during that period of time shows that they made rather large losses down to 34 per cent, but

the highest estimate of their profit is 24 per cent, which is at the other extreme. On average it is eight per cent and if we add a prudential margin, as we ought to, it is four per cent.

CHAIR: The percentages of four per cent and eight per cent respectively at the bottom of those columns are an average for the years 1992-99 inclusive?

Ms RIZZO: That is correct. That is the previous scheme. What of course we are all interested in is what the percentage of profit is for the new scheme. I direct your attention to table 3. The information that is included in table 3 is actually from the insurers' own premium filings which are submitted to the authority, for the first underwriting year under the new legislation. The only actual figure there is under "Premiums written", that is the actual amount of premiums that were collected, \$1.3 billion.

Using their own estimates of their expenses and costs, we derive an estimated profit of five per cent of gross premiums for the first year of the scheme. As we just discussed, this is at an early stage because the claim payments have not developed yet. We would want to revise that as time goes on.

The Hon. JOHN RYAN: Would you explain what "discounted claims payments" and "acquisition expenses" mean? As a lay person they mean nothing to me.

Ms RIZZO: The discounted claim payments, that is really just present value. What the actuaries do is project what the claims are going to cost in future years dollars and then they discount that to bring you back to present value.

The Hon. JOHN RYAN: Discounted by what, for what reason?

Ms RIZZO: When you project claim payments you are projecting in future dollars. What you want to do is bring it back to today's value so you can compare with the actual amount of premiums that are collected. You want to compare like with like dollars. You discount by the risk free interest rate to get to the discounted rate, which is what you would pay in today's dollars in the future.

CHAIR: In estimating what happens in the future, are we largely talking about what is commonly called a "tail"?

Ms RIZZO: It is more than that because where this information comes from is from the insurers' own filings which they submit to the Motor Accidents Authority to derive a premium. This was for the very first year under the new legislation, so there was no experience. What they say is: This is the legislation; we have what has happened in the past under the old legislation; we have these changes; we expect that they will be effective to a certain degree and we will do the projections based on those assumptions. Then they come up with a certain amount of claim payments that will be paid based on the assumptions that are in the new legislation.

The Hon. PETER BREEN: In the answers to, I think it is the Bar Association, you have said, "The table calculates total premium written of \$1.325 billion projects, an insurer profit of \$61 million or five per cent of premiums." Is that consistent with the old scheme? It sounds like an awful lot of money.

Ms RIZZO: Five per cent of?

The Hon. PETER BREEN: Premiums.

Ms RIZZO: That is our calculation. Five per cent of our gross premium is estimate of the profit they have made on the first year of the scheme.

The Hon. PETER BREEN: Which is \$61 million?

Ms RIZZO: I have not got my calculator with me, but yes.

The Hon. PETER BREEN: How does that compare with the old scheme?

Ms RIZZO: It is similar. The old scheme is there under table 2 and our average there is four per cent which includes a prudential margin. So it is very similar to the old scheme at this stage.

2.2 Final Non-Economic Loss Performance Audit Report

CHAIR: Could I ask in regard to a document that is entitled "Final Non-Economic Loss Performance Audit Report", are you able to summarise the four main observations noted in the executive summary, and can you inform the Committee whether the MAA will be monitoring the industry's response to the four recommendations made by the auditors? If so, would that be reported to the Committee on the implementation of those recommendations once they are met?

Dr CLOUGH: I should preface my response by saying that the recommendations made in the executive summary of that report were made based on further observations, made during the performance audit, which was conducted in relation to the awarding by insurers of non-economic loss. The recommendations here were made in the context of recommendations for the insurers to consider, and, if I understand your question correctly, you are wanting to know whether they will be followed up on by the Motor Accidents Authority?

CHAIR: Yes, that is the effect of the question.

Dr CLOUGH: I would anticipate that they will be. My preliminary findings and recommendations to the Motor Accidents Authority at this stage, with regards to the first recommendation, regarding the lack of documented in-house determinations of per cent whole person impairment, would probably run along the lines that I think there is merit in the insurers documenting it. It was largely a question of the lack of documentation on the claim files. That is not to suggest that the insurers were not necessarily accurate. The insurers were giving the impression that they were accurately making per cent WPI determinations, but it was the recording, their lack of documentation on the files. That is certainly a recommendation I would be making as a part of the final wrap up of these NEL performance audit reports to the MAA, and I have a draft report for the MAA executive to consider such recommendations. As I will be making recommendations on the other further observations that were made during the NEL performance audit.

These were side issues. These were extras; they were bonuses that we obtained from the audit which was focused principally on non-economic loss. As we went through and reviewed the files, any other issues that arose that I thought, and other auditors thought, were significant issues that could possibly be addressed by the insurers were raised as further observations, and I have prepared a draft internal report for the MAA executive to address those further observations.

Mr BOWEN: If I could add a little bit to that, Mr Chairman?

CHAIR: Yes.

Mr BOWEN: We have been concentrating, in terms of our education and information activities about the whole person impairment guidelines, on getting a body of assessors available to do this. A lot of our activities have been focused on the assessor training. Over the last three or four months we have

increasingly been focusing on detailed information on how to interpret the guides and use the guides to the insurers and to the legal profession. We had a successful seminar for the legal profession in Sydney only two weeks ago. We had an attendance in excess of 100 practitioners. As we start seeing the bigger cases that are getting potential involvement of non-economic loss, we are starting to see the practitioners and insurers who should properly be interested in it being interested in more than just "Somebody else tell us what the answer is", but being able to make their own reasonable approximation of how the guides will apply, which clearly assists in settlement discussions and negotiations.

Chapter 3 Questions Without Notice Arising from the MAA's Annual Report 2000/2001

3.1 Structured Settlements

CHAIR: Could I start where I started 12 months ago at the previous annual hearing and that is by raising the matter of structured settlements. I think 12 months ago we might have been somewhat pessimistic, having regard to past experience, as to whether the law would be changed to facilitate structured settlements. However, I believe that a few months ago there was a very positive development. Could I invite you to tell the Committee what you wish to regarding that and how you see the future regarding structured settlements?

Mr BOWEN: Thank you, Mr Chairman. I anticipated this question because I know of your personal interest and the interest this Committee has in structured settlements. I believe there was a recommendation that it be pursued in one of the earlier committees in the 1996-97 review of the scheme.

In September this year the Federal Government announced that it accepted the principle of structured settlements and set out the parameters under which it would introduce legislation to amend the tax laws. Those parameters were negotiated through the Structured Settlements Group, which I chair, which comprises representatives of a wide range of interests and perhaps worth putting on the record, includes the Law Council, Australian Plaintiff Lawyers Association, the Insurance Council, the NRMA, Medical Defence Union in New South Wales, and over the last 12 months an increasing number of the medical professional colleges and the AMA were sending representatives, and representatives of a number of injured persons groups, including Injuries Australia, have been very active in it, and Judy Stevens in her personal capacity.

The process was one of getting acceptance of the principles and then negotiating on the details and we are at the point now where, with the Federal Government's announcement, it is clear it is going ahead. The imperative is to ensure that the potential users of structured settlements, that is the plaintiff lawyers and the insurance companies as defendants, are aware of the benefits, aware of how it might work and aware of what sort of products might be available. Through Jane Ferguson, who has been a driving force, and in fairly strong negotiations with the life insurance industry about what sort of annuities and other types of financial products that meet the parameters that may be involved, we have been given an undertaking by the Federal Government that the Structured Settlements Group would be consulted in the course of drafting. I would hope that by the time we appear here next year that legislation will be in place.

There will need to be amendments to State legislation and to State court rules to facilitate structured settlements. I have recently written to Laurie Glanfield, the Director General of the New South Wales Attorney General's Department and he has undertaken to put the issue on the agenda of the Standing Committee of Attorneys General, so each State can look at individually what amendments they may need to make to facilitate the introduction, but that is very positive news indeed.

CHAIR: I suppose we can assume that some time in the ensuing 12 months, some time next year, the Federal Government would be in a position to legislate to facilitate structured settlements?

Mr BOWEN: The announcement was made not that far in advance of the Federal election being called. That put a halt to all further discussions with the Treasury officers who we need to consult with. I think we have entered that pre-Christmas period now; we are anticipating that we will go back into dialogue with them in early February and ideally they would introduce the legislation perhaps as part of the budget package next year, or, if on a stand-alone basis, introduce it in the first session of next year to be legislated in the second or later session.

CHAIR: The complementary State legislation to which you refer, would that be largely to facilitate appropriate court procedures?

Mr BOWEN: In New South Wales we have it under the Motor Accidents Compensation Act, and it was recently put into the Worker's Compensation Act and indeed in the recent medical liability legislation provisions were included that specifically empower the courts to award damages by way of a structured settlement. I believe for matters outside of those statutory schemes it would need amendment to court rules and we have written to the heads of jurisdictions. That might not be absolutely necessary in the case of the Supreme Court, which probably has an inherent jurisdiction to award damages in that form. Certainly in the case of the District Court, it will need an amendment to the District Court rules.

CHAIR: That process will be advanced by the Standing Committee of the Attorneys General?

Mr BOWEN: Yes, who are in dialogue with the Council of Chief Justices. It flows down through the system in that form.

3.2 Non-Economic Loss

The Hon. JOHN RYAN: Just referring to your response to the Law Society's questions at 1.2 and 1.3 regarding non-economic loss and appropriate compensation, the Motor Accidents Authority pointed to something that they called a "fairness indicator", which is addressed on pages 29 to 30 of the annual report. Can you explain further to the Committee what are the components and the formula of the fairness indicator?

Ms RIZZO: The intention of the fairness indicator is that the scheme provides a fair and equitable system for claimants, all claimants, but ensuring that the most seriously injured receive maximum compensation. So when the new Act was introduced there was a reduction in benefits for minor claims but we wanted to ensure that those people with very serious injuries continued to get maximum compensation. That is how we define it. What we have done in order to test it this year, and what we have reported in our annual report, is a comparison of those claimants who have serious brain injuries. What we found, in summary, was that the number of claimants with serious brain injury in the two comparable years that we are looking at is about 200 each, but on all indicators, on all timing indicators, the system has improved, and on all compensation indicators, in other words money that is passed to the claimants, they have continued to improve. They have not suffered under the new legislation. In fact their situation has improved.

The Hon. JOHN HATZISTERGOS: That partly reflects the choice that you have made in looking at those particular categories of injured persons, has it not?

Ms RIZZO: Certainly.

The Hon. JOHN HATZISTERGOS: If you take someone with a less serious injury but still serious, a serious back injury, you might get a different outcome?

Ms RIZZO: Yes, you might.

The Hon. JOHN HATZISTERGOS: Might it not be better to look at that situation in terms of working out fairness?

Ms RIZZO: I take your point. I think it is a good idea to look at different categories of injuries and we do intend to do that.

The Hon. JOHN HATZISTERGOS: When do you intend to do that?

Ms RIZZO: Early next year.

The Hon. JOHN HATZISTERGOS: Why did you choose brain injuries?

Ms RIZZO: They are very serious injuries. They cover a range of injury as far as being extremely serious to moderate. They are claims of which we have had a substantial number.

The Hon. JOHN HATZISTERGOS: You would not have expected a different outcome in terms of your fairness examination from the one you actually obtained looking at that category, whereas you would have for something else?

Ms RIZZO: I did not have expectations, but the result was that there was an improvement for them. We will look at the other categories as well.

The Hon. PETER BREEN: Can I ask about that? The expression "fairness indicator" suggests some kind of benchmark, but the words are not even used in the report. Is it intended that it only apply to brain injuries?

Ms RIZZO: No. The words actually used are "most seriously injured".

The Hon. PETER BREEN: If you use the words "fairness indicator", is it appropriate to describe your benchmark that way? The words do not appear in the report.

Ms RIZZO: When we talk about benchmark the way we have done, the analysis is that we have compared brain injury claims notified to the insurers in the first year after the introduction of the legislation with brain injury claims notified in the last year of the previous legislation. The benchmark is really the last year of the previous legislation.

The Hon. PETER BREEN: Is that what you are calling the "fairness indicator", is it?

Ms RIZZO: The fairness indicator is something the committee agreed with some time ago and that refers to the most seriously injured. We took brain injury as one example of the most seriously injured, because it is an important group.

The Hon. PETER BREEN: You will not be applying that same fairness indicator across the board to other lesser injuries?

Ms RIZZO: We will.

The Hon. PETER BREEN: You are not going to get the same outcome, you are not going to get an improvement in all categories of injuries in the new scheme as opposed to the old scheme?

Ms RIZZO: I will wait and see the analysis. I do not know.

Mr BOWEN: We would hope we get an improvement for those with very serious and catastrophic injuries, and the reason for choosing brain injury is it is by far overwhelmingly the largest category of the most serious injured in our scheme. Of 260 per year on average catastrophic injuries, 220 of those 260 are brain injury.

The Hon. PETER BREEN: At some point you are going to have to pay less money to people for less serious injuries?

Mr BOWEN: For the less serious injuries we would expect that there is a reduction in compensation and all of the transaction costs, but the fairness indicator was about how those with the most serious injury fared under the new scheme compared to the old, and the position is that the indicator shows that on timeliness and on quickness of payments it has all improved.

The Hon. JOHN RYAN: Can I ask what happened to the 1,770 claims that were predicted in the speeches by the two Ministers' leading debate? One presumes that they have not invented those. They have probably used those figures as a result of advice from the MAA.

Mr BOWEN: We have in our report to you the results of our audit of non-economic loss. Because of the limited number on which payments are made, because non-economic loss is on the more serious claims, we undertook an audit of the insurers to see their reserving practices. That is reported in here. The way it averaged over the whole industry is that the insurers are reserving on 12 per cent of claims, which will bring a figure of around 1,560, and I think that is a reasonable figure.

The Hon. PETER BREEN: That figure of 1,560 is to be compared with the old figure of 1,770?

Mr BOWEN: The 1,770 was just applying a rule of thumb that we estimated that about 10 per cent of claimants would get over the 10 per cent threshold and have access to non-economic loss. There were 17,000 claims in 1998, so you divide it by 10 and you can say that will be a rough indicator of what you would expect to get NEL. We are still without enough matters through. I make the point that I made to Mr Ryan before that if you compare it to a similar period of the same point of development in the old scheme, it is not no different. You cannot say under the old scheme people got all these non-economic loss matters settled within two years. The proportion was at that same sort of low point at that point in development.

To provide the Committee with some information and to reality check to see whether the costing assumptions under the new scheme are correct, we undertook this non-economic loss audit. It is based on the reserving practices of insurers. Dr Clough has indicated there are some issues as to how the insurers identify and reserve, and we will take that up with them, but it is the best indicator we have at this stage of how many we anticipate will finally get non-economic loss.

The Hon. JOHN RYAN: As a Member of Parliament I have difficulty explaining to my constituents that a group of people who are likely to make a profit from this exercise have reserved an amount of money, which is yet still an estimate, and so far 36 claims have been finalised, 1,500 at least to go, and I am yet unable to explain to people at some stage or other when am I going to be able to say to them that you will start to see the other 1,500 or 1,700 odd claims show up in claims as finalised to justify to them that they are paying an appropriate amount of premium. At the moment if those claims are not realised for the money for which it has been reserved, then it might be reasonably said the insurers will make that much profit, plus its interest, at well above what they had estimated.

Mr BOWEN: Ms Rizzo answered the question earlier in which she referred to the cash flow document in here which shows the payment trend. I would point out again that that sort of payment profile is very similar to the old scheme, and the experience, in terms of when payments come through, which is the bulk of them will come through in years three, four and five, is true of the new scheme as it was of the old scheme. As the more serious get to the point where the injuries have stabilised and you can start to make reasonable assessments of what the person's full compensation will be, given that it is a lump sum once and for all payment system.

The Hon. PETER BREEN: After five years we will be able to look back and say there were 1,700 non-economic loss claims in that first year?

Mr BOWEN: Our estimate now is around 1,560, that is because the claim numbers are down, partially because more matters than we anticipated are being resolved at an ANF stage.

The Hon. PETER BREEN: It will be roughly 10 per cent of claims that will get non-economic loss. If it drops below that, my understanding of your answer to one of the questions to the Law Society is that you will recommend to the Minister that the figure should be increased so the figure gets back up to 10 per cent.

Mr BOWEN: We would make an appropriate policy recommendation to the Minister. I would not want to tie myself to saying that the threshold be varied is the only way you could respond to that.

The Hon. JOHN RYAN: Can I make reference to the MAA claims assessment guidelines and the basis for which claims can be considered sufficiently complex to be exempted. The MAA has stated that each case is assessed and checked on its facts. Can you explain the criteria for assessing these facts? Is there a check list of sorts to check the claim's complexity?

Mr BOWEN: Ms Cassidy is the principal claims assessor and that is her role, so I will hand that question to her.

Ms CASSIDY: There are two ways of getting an exemption from the claims assessment and resolution service. The first way is almost an automatic kind of exemption. You have to satisfy me as the principal claims assessor that your claim involves either a denial of liability, a contributory negligence alleged of greater than 25 per cent, there is a fraudulent or misleading claim alleged or the claimant lacks legal capacity, they are an infant or so severely brain injured that they cannot act on their own. Once you have satisfied me, that is almost an automatic exemption, a certificate of exemption is issued with a brief statement of reasons supporting it.

The other way section 92(1)(b) of the Act says you can be exempted from the assessment process is to have a finding that your matter is not suitable for the assessment process. The claims assessment guidelines

list a number of matters to be taken into account in exercising a discretion to exempt a matter under that section and they basically revolve around issues of complexity. If the matter involves the complex assessment of damages, there are complex issues of fact, complex issues of law, the claimant for example may reside outside the jurisdiction, they are matters that are taken into account when determining whether a matter is not suitable for assessment.

What is complex is not necessarily the amount of money involved and the issue that I see as important in determining whether a matter is so complex that it should be sent to the courts for the courts to determine it is the disputation or the level of disputation involved in the claim. A big claim is not necessarily a complex claim. A big claim may have five issues in it, four of which settle, one of which is in dispute. If that issue is not complex, then I think that can be determined by CARS.

The Hon. JOHN HATZISTERGOS: In answer to the questions from the Law Society I think you stated that you anticipated that you would be on target in terms of 10 per cent of claims making the non-economic loss threshold and in the first year of operation of the scheme you would pay out, I think it was \$150 million, which was PricewaterhouseCoopers, is that right?

Mr BOWEN: That was the overall savings. That was not the first year payout.

The Hon. JOHN HATZISTERGOS: That was the overall savings? How much did you pay in the first year of the operation of the scheme?

Mr BOWEN: That is shown in the cash flow document. Is that actuals for year one and two?

Ms RIZZO: No, it is not.

The Hon. JOHN HATZISTERGOS: You may not have it in the last year. How much have you paid?

Ms RIZZO: ...our response to the Bar's question, the response 8.3, compares the estimates which are in that cash flow with the actuals.

...It is the last paragraph of our response to the Bar where we say that the actuarial projection for claim payments in the first two years is \$47 million discounted, which is on the cash flow chart. That is the projection. What was actually paid for claims arising from the first accident year in the new scheme is \$54.8 million.

The Hon. JOHN HATZISTERGOS: I am puzzled by the graphs that you have on pages 28 and 29 of your annual report which show that 21 months non-economic loss, you are comparing the old and the new Act, non-economic loss appears - I might be reading this wrongly - to have gone from \$16.5 million, is that right?

Ms RIZZO: Yes.

The Hon. JOHN HATZISTERGOS: To something like about \$2 million, is that right?

Ms RIZZO: That is correct.

The Hon. JOHN HATZISTERGOS: Where do those figures come from?

Ms RIZZO: They are actual figures that the insurers report to us; they are actual payments. That is correct.

The Hon. JOHN HATZISTERGOS: They have gone from \$16 million to \$2 million?

Ms RIZZO: That is correct.

The Hon. JOHN HATZISTERGOS: In non-economic loss payments?

Ms RIZZO: Correct.

The Hon. JOHN HATZISTERGOS: How do you get the other figures?

Ms RIZZO: The other figures are the total payments for every head of damage, including non-economic loss, but also including everything else.

The Hon. JOHN HATZISTERGOS: I see. So non-economic loss payments as a component of the scheme have gone down from 20 per cent to --

Ms RIZZO: 3.2.

The Hon. JOHN HATZISTERGOS: 3.2. Is that where the major savings have come from?

Ms RIZZO: That would be correct.

The Hon. JOHN HATZISTERGOS: The major savings in the scheme, from the old scheme to the new scheme, have been in non-economic loss?

Ms RIZZO: Yes.

The Hon. JOHN HATZISTERGOS: And also economic loss?

Ms RIZZO: Correct, and legal costs.

The Hon. PETER BREEN: Can I ask about the drop in the non-economic loss payments from \$16.3 million to \$1.6 million? You have said earlier that the early part of this scheme will not show up non-economic loss, particularly for catastrophic injuries, and it will gradually increase over the next four or five years until we can then look back and review it as about 10 per cent of the payments.

What I am concerned about is if it has dropped so radically in the first two years of operation and you say that there is only a 30 per cent reduction in the amount of non-economic loss payments that have been made, is it not the fact that that figure is going to jump back up over the next three years? At the moment it has gone down to \$1.6 million, but could it not go up to something in the order of \$15 million?

Mr BOWEN: I have been thinking of how we could present this to the Committee in a way that would be useful for you and I think what we will try and produce is a profile of non-economic payments, old scheme and new scheme. What that will show is that under the old scheme about 40 per cent of claimants were

getting non-economic loss. What we can show then is the break down in terms of the dollar amounts, how many got zero to \$10,000 in each range right through to the cap, and we will then be able to compare to that a profile of the 10 per cent of claimants who we expect to get non-economic in the new scheme and the breakdown of payments there.

What it will show, for example, is that under the old scheme there was a fair concentration of non-economic loss payments. There were a lot more people getting it but at lowish amounts. We anticipate that those people who get over the threshold in the new scheme will get payments commencing around \$35-40,000 and above. The payment profile will be quite a bit different because of the different numbers of claimants (see Chapter 5 of this report).

The Hon. PETER BREEN: Is my point a valid one though, that the payment, although it is low now, may actually be quite high over the next three or four years?

Mr BOWEN: In total.

The Hon. PETER BREEN: In total?

Mr BOWEN: There will still be a sizeable amount of non-economic loss paid because -

The Hon. PETER BREEN: Because you will be picking up through the years when there is no economic loss being paid virtually in comparative terms?

Mr BOWEN: Yes, but it still will be the area where there is the most significant saving old scheme to new scheme.

The Hon. PETER BREEN: When these figures turn up next year, that three per cent is likely to be much higher, is it not?

Mr BOWEN: Yes.

The Hon. PETER BREEN: In fact, it could get right up to in excess of 20 per cent theoretically, if it is including all the lag in the first book.

Mr BOWEN: The total payments.

The Hon. PETER BREEN: If it includes the lag from the first couple of years where there are no figures or a much reduced figure of three per cent?

Mr BOWEN: But also the others will all be going up as well. For example, as you get further on in the development, your rehab costs will go up considerably as the people with long-term care need to start to come in. For example, once you get all the people with catastrophic injuries, the biggest component of their settlement will be for future care, so these all of these figures will adjust as years of development go on.

The Hon. PETER BREEN: Is it fair to say that this might be as good as the new scheme will ever look?

Mr BOWEN: It may be fair to say that. In fact, it is true, some of the timing indicators will flatten out, and that is because you expect the timing to impact mostly upon the smaller claims. It is a very valid point. Most of the impact of this new scheme was focused upon small claims. You would expect the small

claims to come in quicker and be dealt with quicker and get out of the system quicker, and as time goes on and you are getting more and more matters finalised where there is no change old scheme to new scheme, your indicators will flatten. Hopefully, they will remain positive.

The Hon. JOHN HATZISTERGOS: It is not just small claims that you have taken out. You have taken out some moderate claims.

Mr BOWEN: We have taken out non-economic loss on moderate claims but no other hits.

The Hon. JOHN HATZISTERGOS: I notice here - I know that these do not get precedent, unless Ms Cassidy provides them for us and whatever value they have - you have got de-gloving injuries to the lower leg did not make it above the 10 per cent. I think that is a not insignificant injury. A number of fractures to different parts of the bodies, including a torn meniscus and a fracture to the tibial talus, did not make it over the 10 per cent. So you would not regard that as a permanent injury?

Ms CASSIDY: The ten per cent threshold is entitled to non-economic loss only. It will not affect their entitlements to domestic assistance, either paid or unpaid. It will not affect their entitlement to economic loss past and future, past or future treatment. It only affects their entitlement to non-economic loss.

The Hon. JOHN HATZISTERGOS: I know that. I am only responding to Mr Breen's suggestion that the non-economic loss component might increase with time. You are not just saying that the rate that you are finding under 10 per cent in level of disability required to get over 10 per cent, you have got more room for optimism to contain it rather than the other way around?

Ms CASSIDY: We only see the cases that come to us. There are, I hope, and Dr Clough may be able to answer the question, but there are a number of cases that we do not see where there is no dispute as to the entitlement to non-economic loss. We really only see claims where the insurer and the claimant cannot agree to entitlement to non-economic loss. They come to us and they get their PI assessment. The more serious injuries we suspect we will never see, because we hope that there will be an agreement between the insurer and the claimant and/or the claimant's lawyer if they are greater than 10 per cent and have an entitlement. So these figures and the cases that are under or over are really the borderline cases coming to us.

The Hon. PETER BREEN: Just in response to the observation that Mr Hatzistergos made, you have said that the total reduction in non-economic loss will be about 30 per cent old scheme/new scheme.

Mr BOWEN: Yes.

The Hon. PETER BREEN: And the point that I think you need to make is that this reduction here from 21 per cent down to 3 per cent is far in excess of 30 per cent.

Mr BOWEN: It is a reduction in 30 per cent of claimants who are anticipated to have an entitlement, but it would be less than 30 per cent in claim payments because you are taking out the 30 per cent of claimant's who would have the lower level of entitlement to non-economic loss under the old scheme. Ms Rizzo, do you know in dollar terms what the anticipated reduction in non-economic loss is?

Ms RIZZO: We can find that out.

Mr BOWEN: We can find that out for you and provide that (see Chapter 5 of this report).

The Hon. PETER BREEN: That is relevant to those figures in the report?

Mr BOWEN: Yes, it is.

3.3 Accident Notification Forms (ANF)- Scheme Comparison

The Hon. PETER BREEN: Can I ask also, at page 29 of the report it says in the new scheme of 26 brain injury claimants, 14 per cent initially lodged their claim as an accident notification form before completing a full claim form. I do not understand the significance of that. The Law Society and the Bar Association in their questions keep raising that as an issue. I must say I am obviously missing something. Can you explain the significance of that statement in the report, that 26 per cent were initially accident notification forms?

Mr BOWEN: We have dealt with this issue raised by the Law Society and the Bar Association. The Law Society and the Bar Association would like us in analysing these statistics to take out the effect of the accident notification form. We refused to do that because it was one of the key reforms of the new scheme to get payments through quicker. You cannot say we will take out the system that allows you to get payments through quicker to people and then compare how quickly claimants get their full claims compared to all of those who made claims under the old scheme. We put in there just an indicator of the fact that people will commence some matters through accident notification forms. We expect that it will be, as that figure shows, at a much lower rate when you have a more serious injury. People with more serious injuries are inclined to go straight to a full claim. There is no particular benefit from the accident notification form because often they have been in a period of acute care in hospital during the time when the accident notification form would have effect.

CHAIR: Am I correct in thinking the accident notification form is a condition precedent to the payment of the \$500 initial medical expenses?

Mr BOWEN: That is correct. We therefore anticipate that it will be used by those people who have a fairly minor to moderate injury and they go and see a doctor, they fill in the accident notification form with the then general practitioner, they get immediate access to up to \$500 medical treatment.

CHAIR: You are saying the experience regarding lodgment of the ANFs is a legitimate indicator of scheme performance?

Mr BOWEN: What it is showing is that the existence of the accident notification form has speeded up considerably the time within which people get their first compensation payment.

The Hon. JOHN HATZISTERGOS: Is not the point being made that this was an avenue that did not exist under the old scheme; therefore, people were catapulted, if they wanted to pursue the matter, into litigation, and that therefore had a time factor. You have introduced this reform but you are not actually comparing like with like because this was not in existence under the old scheme. If you focused on disputed claims and resolution of disputed claims, what would the finalisation figures be?

Mr BOWEN: Do you have an answer to that? [to Ms Rizzo]

Ms RIZZO: I do not have an answer. My comments would be that the introduction of the form is integral to the new scheme.

The Hon. JOHN HATZISTERGOS: You keep saying that but I really want to focus on not non-disputed claims but disputed claims. One of the arguments that was raised was that we have them all finalised quicker.

Mr BOWEN: I am not sure how you identify what constitutes a disputed claim.

The Hon. JOHN RYAN: It was claimed in debate that there were about 1,770 odd claimants a year who suffered the injuries necessary to get a claim. So far you have been able to tell us that 36 claims have been finalised in the course of the year. We are either measuring two things that are so substantially different that it is not possible to compare the two, and I think this Committee, at least I feel, as a member of the Committee, that I have some duty to be able to compare the old scheme with the new scheme and make reasonable comparisons. I would be stunned if you people have not asked yourselves the same question, as to how the old scheme compares with the new scheme. It is impossible for us to make anything meaningful when we are talking about 36 as compared with 1,700. I understand your respect for the new bureaucratic arrangements which might make things faster. We still have to make a reasonable comparison between scheme 1 and scheme 2 and work out whether one scheme is fairer. You seem to be avoiding the question by using two different ways of measuring which cannot in any way be compared to each other. I cannot believe that you have not done, at some stage or other, some research as to how the two schemes compare with each other in terms of the number of people likely to make a claim?

Mr BOWEN: I think your criticism is unfair because the report here shows our estimates or our count of the number of people who are claiming compensation. We do that on a comparative basis; we compare it to a similar period of the old scheme at an identical point of development; we measure the time within which it is taken to have the claim processed, the time taken to the first payment; we measure the average payment made. When it comes to non-economic loss and the entitlement to that, which is the 36 number, we have given an identical comparator for the number under the old scheme who had benefits at that level at that same point in development. Even on that measure the new scheme is performing better.

The Hon. JOHN HATZISTERGOS: Let me ask you this question: You say it is not fair to take the ANFs out for your calculations. Assuming for the purpose of the exercise we ask you to do that, irrespective of the debate whether you say it is appropriate or not, what outcomes do you get?

Mr BOWEN: I would not be prepared to even do that analysis unless there was some mechanism to take out of the old scheme those claims that are equivalent to the matters being done under the ANF, otherwise you are not producing a like to like comparison and we would be misinforming the Committee, and anyone else who read the report, were we to do that.

You would be comparing to the full body of claims, from the tiniest little thing up to the most serious, under the old scheme with a much reduced number of only the more serious matters commenced directly by a claim form under the new scheme. Of course you will not get results that are the same as when you include the ANFs, but it is not a legitimate exercise as far as I am concerned.

CHAIR: You are saying to the Committee, I take it, that it is necessary for us to consider the new scheme as it stands in all its components and that it is not necessarily legitimate to take out something that might be a feature of the present scheme for the purpose of comparison with the previous one?

Mr BOWEN: What we have tried to do is look at it from the point of view of an injured person and answer the questions: How quickly will I get my claim processed? How quickly will it be until I get my first payment? How quickly will it be until the matter is settled altogether? To do that you have to include the whole body of claims and notifications, like the two different ways now in which people will have a matter dealt with.

CHAIR: Can I go back to the matter of ANFs for a moment? There are statistics given at pages 27 and 28 of the MAA's annual report and it is indicated there that in the first 21 months in the new scheme a total of 10,343 ANFs were lodged. That is 44 per cent of all claimants used the ANF to notify the insurer of their claim for compensation. It goes on to state that by the end of the 21 month period with which you are dealing, 4,631 or 45 per cent of ANFs had converted to full claims. If you expect that 45 to 65 per cent of ANFs will ultimately convert to claims, could you tell the Committee what in the MAA's view are the benefits of the ANF notification system as opposed to how a claim traditionally would have been made in the past, and can still be made for that matter?

Mr BOWEN: The ANF is working as anticipated, in that it is providing a simple means of lodging notification of your injury and getting quick payment for that. It is having a number of other additional, and what we might call ancillary, benefits of finding that when the insurers get notified of the matters earlier, even more serious claims, what they can do is start to stream them in to whether it will be finalised at an ANF form level or whether the person is going to need ongoing medical treatment and rehabilitation, and in that case they can have their injury management, their rehabilitation people, contact the person earlier and they can start courses of treatment that lead to, if not full recovery, at least maximum recovery for the person.

One of the problems in the old scheme was that there were considerable inbuilt delays in getting treatment and rehabilitation when it was unclear as to whether the insurer would pick up and admit liability for it. We have seen that this process of the ANF and getting it in to the insurer earlier has changed the culture within the insurer, where they put a greater focus on earlier rehabilitation and treatment, I have to say based I am sure on their analysis that if you help a person get better earlier it reduces the overall cost of the claim. There is an economic benefit in doing that, but there is a personal benefit to the injured person.

The Hon. JOHN HATZISTERGOS: Look at the next section of the annual report, "Timing and Service Delivery". You talk there about an analysis of 21 months for the new scheme dealing with ANFs and what you term as full claims and comparing the performance in terms of settlement or finalisation of those matters, in some cases separating out the ANFs from the full claims and talking about the speed and the improvements in the finalisation of those claims.

Why could you take the ANFs out for the purpose of that analysis and you could not for the Bar Association's questions? Is that not really the information that was being sought in another way over another time period?

Mr BOWEN: My understanding of it is that perhaps more the Law Society was seeking information upon what is the average time to finalisation comparing claims under the old scheme with claims, minus ANFs, under the new scheme. We have put into this report indicators relating to ANFs to show how it has sped it up but at all times we focused on total time taken for the whole body of claims and not trying to say we will discount or leave aside the effect of the ANF and therefore we will be able to say, well, things are not happening quite as well as the MAA says.

I still have trouble with the intent of that analysis. I think the intent is to suggest that things are not working well under the new scheme, but then what you are no longer doing is comparing like with like.

The Hon. JOHN HATZISTERGOS: The second last paragraph, taking ANFs out, says:

Considering full claims alone, average times to notification, to a liability decision and to finalisation all decreased, the main improvement was the reduction in the time taken for insurers to make a decision in liability. The average time decreased by 15 per cent to 85.

That is taking the ANFs out, is it not?

Mr BOWEN: Yes, it is.

The Hon. JOHN HATZISTERGOS: Is that an answer?

CHAIR: That is being said to be a benefit of the new scheme, is not it? The main improvement is said to be the reduction in the time taken for insurers to make a decision on liability.

The Hon. JOHN HATZISTERGOS: Is that comparing the old scheme to the new scheme, 15 per cent reduction?

Ms RIZZO: The major point at issue there is that the timing of the liability decision relates only to full claims. So the reduction in the average time to a liability decision only relates to full claims, so it could only be compared with full claims and that is a valid comparison.

When we are talking about overall claims, it is a slightly different issue. Mr Bowen has already said with the ANFs the decision on liability is completely different. In fact it is deemed that liability is provisionally accepted if notice is not given within ten days. There was a timing constraint introduced that insurers should make their liability decisions within three months of receiving the full claim form. That is what the point of that last sentence is.

The Hon. JOHN RYAN: How many of those claims made under the ANF have just been paid \$230, that nominal amount? You have said the present average payment on ANF, one that has not been converted to a claim, is \$230?

Ms RIZZO: That is the average.

The Hon. JOHN RYAN: How many claims have only got \$230?

Ms RIZZO: I cannot tell you today. I am happy to take that on notice and provide the exact number (see Chapter 5 of this Report). My comment today is that that is the average and there are numbers of claims that receive up to \$500, which is the maximum, but in addition to that the insurers are not limiting their payments to \$500 at the maximum. There are ANFs that receive more than that where the insurers judge that it is appropriate and they do not then require the claimant to lodge a full claim. That is the average and I do not know how many exactly there are.

The Hon. JOHN HATZISTERGOS: Is it the situation that those ANFs are basically supplied by doctors?

Mr BOWEN: That is correct.

The Hon. JOHN HATZISTERGOS: So they can get their fees paid?

Mr BOWEN: The GP usually only has the consultation fee. Most of those payments are for some form of therapy, usually physiotherapy.

The Hon. JOHN HATZISTERGOS: Previously the situation would be if the doctor wanted to be paid, he would have to put it through the Health Insurance Scheme or he would have to send the patient off to a solicitor to litigate a claim.

Mr BOWEN: That is correct.

The Hon. JOHN HATZISTERGOS: He is able to deal with it himself and get himself paid?

Mr BOWEN: A consultation fee and a fairly nominal fee to fill the form in.

CHAIR: Ms Rizzo has said that insurers are in some instances paying beyond \$500. In doing that I assume they are acting beyond their statutory obligation?

Ms RIZZO: That is correct.

The Hon. JOHN HATZISTERGOS: That is done in some cases in their own interest, is it not, to prevent the claim being litigated?

Mr BOWEN: Absolutely.

Ms RIZZO: Not so much to prevent the claim being litigated.

The Hon. JOHN HATZISTERGOS: Or develop into a full claim.

Ms RIZZO: That is correct, yes.

The Hon. JOHN HATZISTERGOS: With the extra costs that that may involve?

Ms RIZZO: That is correct, and at the same time it is providing the claimant with access to those funds without the added complication of bureaucratic claim forms.

The Hon. JOHN HATZISTERGOS: What advice is given to claimants have who put in ANFs as to what other entitlements they may have that they are not pursuing because they are getting their medical treatments only paid?

Mr BOWEN: The ANF form itself has the Claims Advisory Service phone number on it for the MAA Claims Advisory Service and that service is available to provide advice to people, or say to them, if they have lost work in excess of five days, if they look like they are going to have continuing problems, continuing medical treatment, or they are going to be off work for a period in the future, they have a right anyway, but in those circumstances they clearly have a right to put in a full claim form. The service also will refer people to the Law Society if they need legal advice on that.

The Hon. JOHN RYAN: Going back to the comparisons you have made between the old scheme and new scheme, is it not reasonable to say that there are a large number of people under the new scheme that are only going to receive a nominal payment in the order of \$230 to \$500 by comparison to people in the old scheme who clearly can receive a lot more than that? To some extent comparing the old scheme and the new scheme, in the way in which you have done, in order to get fairness indicators and so on is perhaps a little misleading and it is necessary to point out, to at least people reading the annual report, that there is a significant difference between the batch of figures describing one scheme and a batch of figures describing the other.

Mr BOWEN: I believe the fairness indicator is a reasonable comparison. I take the point of your question in that it is clearly the case that people getting the \$230, or thereabouts, are getting less under the new scheme than they were under the old scheme. They are no longer getting the first five days off work. That in particular would be the reduction in damages for people with fairly minor injuries. Those who get a bump, they go and see their doctor within a week or so, they have a short course of physiotherapy. The major reduction in compensation for them will be from the reduction in the withdrawal of the first five days loss of work as being compensable. It may also be a reduction in the time or the period of therapy and that is really more as a consequence of the fact that the treatment now is happening earlier, so it can be more intense. Previously quite often people kept going for courses of physiotherapy for month after month after month without little addition to their prognosis. That is clearly the case.

In what we might call the more moderate claims where it has involved something more serious but to the point where they are not going to get non-economic loss, then certainly for that class of claimant there will be a significant reduction in the amount of damages that they get overall. There is a group, in our estimate, of around about 30 per cent of claimants who under the old scheme received a non-economic loss payment who will not receive a non-economic loss payment under the new scheme and they will have a reduction in the benefits they get.

3.4 New Scheme Savings

The Hon. JOHN HATZISTERGOS: Legals and investigations have gone down but not by anywhere near the same as the amounts for economic loss and non-economic loss, is that right?

Ms RIZZO: I agree with your comparison with non-economic loss.

Mr BOWEN: It is worth thinking about what sort of claims are finalised or paid out at the 21 month point. It will not include the most serious claims in both old scheme and new scheme. I believe that the reduction in the economic loss will be reflecting that the bulk of these claims are on smaller claims. There is no longer an entitlement to the first five days of loss of wages, and over a period of time, as the larger claims, both old and new scheme, are finalised, that will flatten out because economic loss can be a sizeable component of it.

The non-economic loss also will be compounded by the fact that the payments at this point of time will be on the old scheme on smaller claims that attracted non-economic loss and those sorts of claims would not get an entitlement under the new scheme. We expect that it will be clearly the case that non-economic loss is a source of the major saving but in percentage terms that percentage will reduce over time as more matters come through and are finalised.

The Hon. JOHN HATZISTERGOS: You actually summarise on page 29 that you are meeting the objectives of the scheme, one of which was to limit non-economic loss to claimants with greater than 10 per cent permanent impairment and not to pay people for the first five days and to ensure that those people who have relatively more serious injuries get compensation, and by reducing transaction and legal investigation costs, you have actually compared the old and the new. Now, you are trying to say, as I understand it, that that comparison is not totally appropriate.

Mr BOWEN: It is a valid comparison but it needs to be understood at a point of time, and I am giving you my thoughts as to how I think that will look in years to come, which is that there will continue to be a reduction in both of those but it will not be as pronounced, but over a period of time we expect legals to drop even further.

The Hon. JOHN HATZISTERGOS: The legals have gone from 8 per cent to 6 per cent, that is out of a small pie. From \$6 million to \$2.9 million?

Mr BOWEN: Yes.

The Hon. JOHN HATZISTERGOS: That is a relatively modest saving.

Mr BOWEN: Yes.

The Hon. JOHN HATZISTERGOS: The savings are in economic and non-economic loss. It is benefits, is it not?

Mr BOWEN: Yes, at this point in time.

The Hon. JOHN HATZISTERGOS: To keep the scheme within the parameters that you expect it to be, the saving is going to have to be in those areas. You cannot go much further in legal terms.

Mr BOWEN: Particularly in non-economic loss there would be big savings.

The Hon. JOHN HATZISTERGOS: Even if you drop the legals down further, the fact of the matter is to keep the scheme within the parameters that you anticipated it is going to have to get the benefits that are contained, is it not?

Mr BOWEN: That is correct.

The Hon. JOHN RYAN: Why have medical benefits reduced, given that one imagines that the people who are injured in accidents have been relatively stable? Why have you been able to save \$3-4 million in payment for medical expenses?

Ms RIZZO: It is a difference of \$1.9 million.

The Hon. JOHN RYAN: In any event, why would you be saving on medical expenses? Doctors are hardly any cheaper.

The Hon. JOHN HATZISTERGOS: If you treat them earlier you need less; if you treat people earlier, then they will not become chronic.

The Hon. JOHN RYAN: At the earlier stage of the scheme you would expect to see medical expenses increasing then. Why would it be coming down?

CHAIR: Would it in some way relate to the five day front end deductible?

Mr BOWEN: No, that is showing up in the economic loss.

The Hon. JOHN RYAN: Do I understand where the graph says "medical expenses" we are talking about payments for treatment, not payments for reports?

Mr BOWEN: That is correct.

The Hon. JOHN RYAN: Treatment costs have come down. Have you investigated why? Given you expected to be spending more on treatment as a means of long term savings, why has the cost of treatment of people injured in accidents come down? Given that there has been little evidence, in my view, to

explain that doctors have reduced their charges for treatment, it seems a bit of an unusual outcome, does it not, and would you expect that trend to continue?

Ms RIZZO: I would see that the difference is actually between \$27.9 million and \$26 million. If we look at rehabilitation also, which is the second category, which has gone up -

The Hon. JOHN RYAN: Not by much.

Ms RIZZO: The difference is between \$1.7 million and \$2.2 million.

The Hon. JOHN RYAN: Half a million?

Ms RIZZO: If you add those two together, you get \$29.6 million compared to \$28.2 million.

The Hon. JOHN RYAN: If you properly categorised rehabilitation in the previous year, why would you add those two figures together?

Ms RIZZO: I am only adding those two together because they both relate to treatment. My point is that the difference might be explained merely by the fact that there are statistical fluctuations in any group of numbers.

The Hon. JOHN RYAN: One of the things that I do not think the scheme was ever meant to do was to minimise the amount of treatment that people receive from injuries arising from motor accidents. Given that you have had a difference in a differential between the two, is it not worth investigating in a little more detail as to why treatment costs have come down, just to be sure that people are not foregoing treatment or not claiming for treatment they are receiving which might be another reason? I would hate to think that one of the outcomes of the new scheme was that people who should be being treated were not.

CHAIR: Is it possible that some people are not troubling about relatively smaller claims and that reflects in medical costs as well?

Mr BOWEN: The fact that we have more people making claims under this scheme than we do under the old probably means that because of the ease of coming in through an ANF more people are claiming small amounts of treatment and so in that respect the differential is not huge, but I take the point and it is worthy of some investigation.

The Hon. JOHN RYAN: It is a substantial proportion when compared to non-economic loss. It is a fifth of what you are saving in that regard. It is not an insignificant saving.

Mr BOWEN: We are prepared to have a look at that further and report back to the Committee.

The Hon. JOHN RYAN: Is it possible there was a level of fraud in the old scheme with regard to medical costs?

The Hon. JOHN HATZISTERGOS: Over servicing.

Mr BOWEN: I think it is possible there was over servicing.

CHAIR: You have undertaken to investigate the issue?

Mr BOWEN: Yes. I do not have an explanation for why that has gone down. In the longer term we expect that there will be more appropriate therapies as a result of some of the guidelines we are issuing such as the guideline on whiplash, which is out there. I hardly believe we can claim credit for that at this early point.

Mr BOWEN: Just very quickly in answer to Mr Ryan's earlier question, I am reminded that the other factor that is different under the new scheme is that we have schedule treatment fees and for that purpose under the scheme we have adopted the AMA rates. To the extent that there are a lot of practitioners out there charging above AMA rates, there could be a flow-on effect from that.

The Hon. JOHN RYAN: Are people able to charge over and above those rates and from the patient, as opposed to patients paying gaps?

Mr BOWEN: Yes.

The Hon. JOHN RYAN: Have you any idea what the level of the gaps are?

Mr BOWEN: No, we are having a look at the potential gaps in legal costs at the moment and with the Justice Research Centre. It has not been an area where there has been complaint to us but it is worthy of some further investigation.

CHAIR: Are you saying that a possible explanation for the lower total quantum of medical fees is that they are now fixed according to an AMA schedule and that differs from what the position was hitherto; are you saying that?

Mr BOWEN: I am saying that schedule is in existence. It is a possible explanation. I cannot say it absolutely is. It is worthy of some further investigation as to the impact it is having.

3.5 Cost of Green Slips

CHAIR: On my part at least I note in your General Manager's message in the annual report you refer to the cost of green slips. That was an important driver for the Government's reforms or amendments to the law, as you would realise.

Could you say something for the record about what the impact of the new scheme has been from the authority's perspective and according to its experience on the cost of green slips?

Mr BOWEN: This is a report to the end of June, so it is based upon the premiums as filed in October last year, which is why in information terms it has not varied significantly from what you have seen before. At the end of June the position was that on the average metropolitan premium there had been a reduction from \$441 to \$342, on average which is \$99. The target was of course \$100.

One of the problems with averages is that it means there are outliers. Some people, particularly the over 55s, have got significantly higher decreases because we extended what previously had been a 10 per cent discount, previously available only to pensioners, to all over 55s, because of the lower risk at that level. It means that some people have not got a 10 per cent reduction at all. With the young drivers, it was a deliberate strategy that while there was a reduction there, that it would not be passed on in full because

they were already heavily subsidised and it was allowing a reduction of about \$30 off the maximum price at the time.

Over the course of the two years we changed the geographic zones to better reflect some risk rating. That led to some variations of premium for people based upon whether they were no longer in a country zone but in the outer metropolitan or expanded Newcastle/Central Coast zone. Those changes were about fairly reflecting the risk in the area. We have some ongoing problems with that where we have postcode rating to identify the areas within zones and some postcodes can span fairly large areas that are from semi-urban right through to rural and that is a problem and we recognise it. Unfortunately we do not have a solution to it at the moment.

The experience since June is the insurers refiled again for further premiums commencing on 5 October. The refiled amounts were increases of around about \$3-6 over all of the insurers on the best price, which was considerably lower than any of the inflators you might use. In real terms the premiums continue to decrease.

3.6 Level of Competition

CHAIR: We are dealing with the issue of the licensed insurers, and the first question we want to ask you arising out of the HIH collapse is if you are able to advise the Committee whether six licensed insurers would be considered to be a minimum number, and, if not, what that number would be and on what basis you would determine the desirable minimum number of licensed insurers? You appreciate that two licensed insurers have dropped out in the wake of the HIH collapse.

Mr BOWEN: There has been a rationalisation of the industry over the last few years. Some of the insurers that we have surrendered a licence, such as GIO is now wholly owned by NRMA, others are a smaller market, and RSA, once they became a hundred per cent owner of AAMI they dropped out of a licence in their own name. I think that we are comfortable now with six insurers, given their level of market share and the fact that they file with us an intent to write premiums that suggest about 110 per cent of the market would be written.

The chairman might like to comment on this as well. I really do not think that we could stand the loss of one of our current insurers, given that they have over five per cent of the market share. I do not know whether there is capacity there amongst the other insurers to pick that up. Ideally it would be our preference to have more insurers competing in this businesses, although what we probably know about the withdrawal with small market share is that you need to aim for a minimum of three and probably minimum five per cent of market share to remain viable in the longer term.

Mr GRELLMAN: I think what we are seeing in New South Wales reflects what is occurring nationally and internationally. There is a significant consolidation occurring in the non-life sector globally and there is a movement towards greater size so as to capture economies of scale and best practice most efficiently. My view is that the scheme is functional with six operators, but, like the General Manager, I would not like to see any less and I have a very clear preference to see a couple more come in. At the moment that is relatively unlikely.

The Hon. JOHN HATZISTERGOS: They are not competing very aggressively, are they? The sort of advertisements we saw when the previous legislation came in, the difference in products being offered, the different rates, now you hear nothing.

Mr GRELLMAN: The way the scheme is designed now provides very little opportunity for pricing difference because they are all writing effectively an identical product. Their actuaries price the risk that

they are accepting and that turns out a number. I am just saying that around the margins you will get an opportunity for the underwriting community to offer a point of difference on pricing by using the bonus /MALUS. If the actuaries are doing their sums correctly, they ought to come up with a real risk rating which is pretty well the same from one insurer to another.

Mr BOWEN: We are in the middle of market research at the moment just to see what consumers think about CTP as a product. It is clearly a price driven product, being compulsory. One has to have it, no-one particularly wants to pay for it, and so the main differentiator is price. It leads to something of a paradox in our role in that product and we get criticisms to us because the insurers have quite disparate prices for the same product. At the same time we are trying to say it is worth shopping around and we will provide web sites and we will provide a phone service and lots of other information on price.

Most people will consider moving insurers now. I think one of the things the insurance industry has to address is that over the last five years they have lost a huge amount of customer loyalty and the number of customers who are prepared to change insurers each year or at least are prepared to shop around each year seems to me to be increasing.

The Hon. JOHN HATZISTERGOS: There is virtually no advertising at the moment in the market by the insurers for CTP.

Mr BOWEN: Apart from a little bit of marketing that GIO did last year, I do not think there has been any for probably five or six years or more.

The Hon. JOHN HATZISTERGOS: No, but if they want a bigger share of the market you would think they would be out there touting for business, but they do not seem to be.

Mr GRELLMAN: It is probably the dynamics at the moment. Two of the underwriters would write about 70 per cent in total and the other four are picking up five to ten per cent each, so the four smaller writers have got a long way to go to write a significant share. I think it is fair to say that at the moment the non-life sector is struggling with a variety of challenges and my view is that this is a reasonable product for them to be writing, and if our analysis of the profit that they are generating is accurate, then it is providing a reasonable return on capital, but it is not providing a tremendously profitable line of business for them. It is really just a stock standard product that they are providing. I think the way the market percentages are set at the moment, with two big providers writing a very large part of the book, is again probably a natural out-working of the consolidation that we have seen take place.

CHAIR: Regarding the possibility of further rationalisation in the market, Mr Grellman, you referred to that a short time ago, there has been a recent acquisition by Suncorp-Metway of GIO's general insurance business as I understand it. On my advice Suncorp-Metway is the largest CTP insurer in Queensland with some 56 per cent of the market. Is there a concern about the potential for further rationalisation of the market and what can be done about that if it should happen?

Mr GRELLMAN: If I could comment on that, I am not sure that we could say that we have a concern about further rationalisation. I think that one has to be realistic about it. It is likely that there is going to be some further rationalisation, probably by way of merger or takeover, but I am not sure that there is a huge appetite for that and I am not confident that very much more will occur, but it is a global trend and Australia cannot be isolated from that global imperative to acquire the most effective economies of scale possible. So yes, there is a possibility of further rationalisation through takeover or merger, but I do not think if there is we will see very much of it in this country. It may well be in fact driven more by what the big overseas conglomerates do and whether or not a local player, being part or a branch of a larger player, gets caught up in some transaction that ultimately impacts on this product in this market.

CHAIR: I am really asking my question against the background of the MAA's view that six insurers managing eight licences is sufficient to keep the market competitive, and I am really suggesting, I suppose, if the number of licensed insurers drops, would you maintain your view that the market is still competitive?

Mr BOWEN: Let me put that point I made earlier. If one of our underwriters was to withdraw at this stage, it would be of considerable concern to us.

The Hon. PETER BREEN: In fact, you used much stronger words before. You said, "We could not stand the loss of one of our CTP insurers".

Mr BOWEN: That is right. I would have some serious questions as to whether the other underwriters would be prepared to pick up that further share of the market.

Mr GRELLMAN: I think you have to look at that issue in the context of the underwriters we are talking about. If for some reason, and I could not contemplate what may precipitate this, NRMA decided they did not want to write CTP, there would be no doubt that the rest of the underwriting industry would fail to pick up 38 per cent, or something in that vicinity, but if a five per cent writer dropped out, with Suncorp-Metway now in the New South Wales market with quite a good book, the GIO book was quite a good book, then they might be prepared to take another five per cent, but it is quite a big ask.

3.7 Sponsorship of South Sydney Rugby League Team

See also Answers to *questions 7.3-7.8* from the NSW Bar Association in Chapter 4 of this report.

CHAIR: Could I ask you regarding the MAA's sleeve sponsorship of South Sydney Rugby League team? The MAA clearly has a role in supporting injury prevention and rehabilitation. I am probably correct in saying, I think, that as part of that sleeve sponsorship there would be some hospitality benefits as part of the arrangement or package. Is there any intention or is it possible to provide those hospitality benefits on occasion to these injury rehabilitation organisations to assist them with possible fund raising events?

Mr BOWEN: The short answer is yes. The longer answer is, if I could make a comment on the concept of sleeve sponsorship, we have been very careful to talk about being a partnership. For the MAA the benefit of having a sign "Arrive alive" written onto the sleeve is just to give a name to the campaign. The primary benefit that we purchased in the sponsorship is the players' availability to become advocates to young people at a fairly unprecedented level. It fitted in quite nicely with South Sydney taking the view that they wanted their players to be involved in community events and community activities and not be getting in trouble, as football players sometimes do.

The level of that is that we have each player in the first grade and in whatever is the next division down team, 25 appearances from each player each year. We are training them in public presentation; we are training them in road safety issues. We will use a number of those players in appearances of the whole team and then we will pick some others, who are perhaps more articulate or more attuned to delivering messages, to go out and speak to young people about it in fact, given our target audience is young men 17 to 24-year-olds, and that is pretty much the profile of the players receiving this huge advantage as long as they also behave themselves and abide by the message they are delivering, and we have penalty clauses built in in case they do not.

We have not quite finalised the contract. We have got all the matters of intent but there will be some hospitality facilities available. It is uncatered. It is essentially I think 13 seats in a box and the other 10 somewhere in a grandstand or tickets to each game. When we had a corporate box as part of the Paralympics, it was the decision of the board that there was a limited amount of hospitality that the

MAA can do in any event, although, Mr Chairman, we might get your advice on whether there is any conflict of interest in inviting members of the Committee along to a game next year, but we made it available to Paraquad, the Injuries Association, to Wheelchair Sports and the Illawarra Disability Trust. I am sure there were some others involved in that and in fact for some of them we also catered so that they could use it as a more formal fund raising event. It is not our intention, other than perhaps once or twice a year, to use that facility in a catered way. We would either provide it to somebody else or make use of the tickets.

Chapter 4 Questions On Notice to MAA

Prior to the 17 December hearing, the Committee sought questions on-notice from stakeholders to be put to the MAA. These questions and the MAA's answers are published in full below.

4.1 Law Society of New South Wales

4.1.1 Non-economic loss

Question 1

Question 1.1

If the payments made under the ANF scheme are taken out of this equation, does the statement still hold true that “a greater number of people have accessed compensation and that claims have been resolved more quickly”?

Answer 1.1

It is not appropriate to exclude the ANFs from a comparison of the old scheme with the new scheme. The aim of reforming the legislation was to improve the access to compensation and the resolution rate for people injured in motor accidents. The introduction of the ANF was to improve the process of making a claim for compensation by making it quicker and easier.

Comparing the old scheme with the new scheme requires that notifications from all injured people be included so that the effect of the schemes on injured people can be compared on a like with like basis.

Question 1.2

Through the above comments, the Government sketched in outline a picture of a scheme in which around 1,700 people per year would receive non-economic loss damages. Based on the Minister's comments, it would seem fair to assume that, during the first year of such a scheme's operation, a reasonable proportion of such people would receive payment for this head of damage. How is the statement, contained in the MAA Report on the First Year of the New Scheme, that there were only “36 finalised claims with non-economic loss payments” during the first 18 months of the scheme consistent with

Answer 1.2

The statement says that there were 36 finalised claims under the new scheme with non economic loss payments. This compares favourably with the 25 claims finalised at the same period of development under the previous scheme with non-economic loss payments equivalent to new scheme benefits.

Question 1.3*Considering:*

- a) *the Government's above statement as to the appropriateness of "1,770 people per year" receiving "compensation for non-economic loss" on the basis of their "serious but not catastrophic injuries",*
- b) *the statement contained in the MAA Report on the First Year of the New Scheme, that there were only '36 finalised claims with non-economic loss payments" during the first 18 months of the scheme, and*
- c) *the statement on page 27 of the 2000-2001 MAA Annual Report that an 'important objective of the legislation is that seriously injured claimants continue to receive appropriate compensation", how can it be said that the scheme's important objective has been fulfilled?*

Answer 1.3

See the Fairness indicator addressed on pp 29-30 of the MAA's Annual Report 2000-2001.

Question 1.4

Considering the statement, contained in the MAA Report on the First Year of the New Scheme, that there were only "36 finalised claims with non-economic loss payments" during the first 18 months of the scheme, has the MAA recommended to the Government that the 10% threshold contained in section 131 be lowered? If not, why not?

Answer 1.4

See Answer to Question 1.2.

In addition, according to the MAA's non economic loss performance audit report (provided to the Law & Justice Committee), 12% of claims have non economic loss reserve estimates. This compares favourably with the actuarial forecast made prior to the commencement of the Act that the 10% most seriously injured claimants would be eligible for non economic loss payments.

4.1.2 Claims Assessment and Resolution Service ("CARS")**Question 2****Question 2.1**

What is the yearly operating cost of the CARS system, and how does this compare with the cost that was previously incurred by the judicial system in processing such claims?

Answer 2.1

The operational cost of the MAAS Division, including both the Medical Assessment Service and the Claims Assessment Resolution Service, in 2000/2001 was \$1,165,036.

The MAA has no jurisdiction over the Courts or access to any of its data. The MAA is not aware of whether there is data, financial or otherwise produced by the Courts on the cost of processing CTP claims.

The cost of these services is significantly less than the savings to the Scheme from reduced legal and medico-legal costs.

Question 2.2

On the basis of these guidelines, would claims involving paraplegia be considered sufficiently complex to be exempted?

Answer 2.2

Every case will be assessed and determined on its own facts. What is important is the level of dispute between the parties. For example a claim made by a paraplegic where there is an agreement on all aspects of the claim except the amount of future care expenses may not have the required level of complexity for exemption.

4.1.3 Claims Advisory Service

Question 3

Question 3.1

What professional indemnity insurance arrangements exist to protect the authority from those claimants who may claim that they have suffered financial damage as a result of negligent misstatements by CAS staff in relation to their claims/potential claims?

Answer 3.1

CAS staff, as with all MAA staff, are covered by the Treasury Managed Fund.

4.1.4 Insurer Compliance

Question 4

Question 4.1

What is the annual cost to the MAA of retaining a Compliance Officer to ensure that insurers are complying with the obligations imposed on them under the new scheme?

Answer 4.1

The Principal Compliance Officer heads a team of 4 staff: Principal Financial Analyst, Senior Compliance Officer, Senior Compliance Officer (Nominal Defendant), Senior Premiums Analyst. The staff costs of the Principal Compliance Officer and the equivalent of 1.5 Senior Compliance Officers are approximately \$177,000 p.a., being the net increase in compliance staff.

4.1.5 Costs regulations

Question 5

Question 5.1

Have the medico-legal rates contained in the Motor Accidents Compensation Regulation (No. 2) 1999 been set below market rates in order to prevent claimants from recovering adequate compensation under the Scheme?

Answer 5.1

No. The medico-legal rates contained in the Motor Accidents Compensation Regulation (No. 2) 1999 were set after a process of consultation with representatives of the legal and medical professions and the insurance industry to establish indicative market rates.

The rates are based on agreed Law Society and AMA recommended rates. Medico-legal reports as defined by the Motor Accidents Compensation Act 1999 are confined to reports prepared specifically for CARS, MAS and court.

The MAA has not been made aware of any prejudice to claimants or their entitlement to compensation arising from the fixing of medico-legal charge rates. The MAA is confident that claims remain capable of proper investigation and quantification.

It should also be noted that the Medical Assessment Service provides additional opportunities for the proper investigation and quantification of claims.

Question 5.2

Does the Government intend to amend the Motor Accidents Compensation Regulation (No. 2) 1999 in the manner described above?

Answer 5.2

It is not proposed at this time to amend the regulation to allow claimants to pay above the regulated fee as proposed by the Law Society.

Question 5.3

In the event that no such amendment is planned, why has the Government chosen not to amend these problematic provisions?

Answer 5.3

To date, the provisions have not been proved to be problematic.

4.1.6 Viability of the market

Question 6

Question 6.1

Does the MAA have a view of the minimum number of insurers in the NSW CTP market that are required to maintain a reasonable level of competition within the CTP scheme?

Answer 6.1 (see also Chapter 3, 3.6. Level of Competition)

At 30 June 2001, eight companies were licensed to sell NSW CTP insurance. There are six insurers managing the eight active licences. Allianz Australia is responsible for three licences as the result of the joint venture between itself and HHH during the year.

NRMA Insurance is the market leader with 40% market share followed by Allianz with 27% market share. The remaining insurers' shares range from 7% to 10%.

Recently, Suncorp Metway acquired the AMP's GIO general insurance business. GIO currently has 7% market share in the NSW CTP market. Suncorp Metway has not been represented in the NSW CTP market before. However, it is the largest CTP insurer in Queensland with 56% of the market.

The MAA considers that at present there are sufficient insurers in the market to keep premiums competitive.

Insurer	Market share (%)
AAMI	9.1
Allianz (including CIC and FAI Allianz)	27.3
GIO	7.2
NRMA	39.5
QBE	10.1
Zurich	6.8

4.1.7 MAA Advertising/Sponsorship/Other Expenditures

Question 7

Question 7.1

While the MAA is the regulator in charge of the operation of the scheme, and oversees the activities of the licensed insurers, many of the compensation processes under the new scheme are actually located within the MAA itself. Considering the pivotal role that the MAA now has with regards to the management of the scheme, and the processing of many stages of most claims progressed under the scheme, what independent oversight or "auditing" bodies/processes exist,

besides the Law and Justice Committee, to ensure that the MAA is performing well against its agreed key performance indicators in fulfilling this role?

Answer 7.1

The MAA's Corporate Governance Statement as published in the 2000-2001 Annual Report (pp34-37) includes reference to the public sector accountabilities of the Authority. Including:-

Audit:

Whilst it is the Board's responsibility to ensure compliance with all laws and audit requirements, the Audit Office of NSW assists the Board in this responsibility by undertaking an annual audit of the financial statements in accordance with Australian Auditing Standards.

The Authority has an Internal Audit function. In addition there is a Risk Management and Fraud Control strategy in place as required by the Public Finance and Audit Act 1983.

Occupational Health and Safety:

Compliance with the Occupational Health and Safety Act 2001.

Annual Report:

The Authority is required to produce an Annual Report in accordance with the Annual Reports (Statutory Bodies) Act 1984.

Freedom of Information:

The Authority is subject to the provisions of the Freedom of Information Act 1989.

Independent Commission Against Corruption:

Under the Independent Commission Against Corruption Act 1988, the General Manager is required to report to the Commission any matters, which on reasonable grounds may concern corrupt conduct.

Ombudsman:

Under the Ombudsman's Act 1974, the Ombudsman may require the Authority to provide information in relation to the Authority's conduct for the purposes of any investigation.

Equal Employment Opportunity:

The Authority is required to comply with equal employment opportunity requirements in the public sector.

Other significant legislation with which the Motor Accidents Authority must comply includes:-

- Public Finance and Audit Act 1983
- Anti Discrimination Act 1977
- Public Sector Management Act 1988
- Protected Disclosures Act 1994

External Review

The MAA recognises that it is appropriate to externally and independently review regulatory and assessment functions. Recently Ernst and Young as the MAA Internal Auditors finalised a review of the prudential and financial responsibility of the MAA.

In relation to the MAAS, the MAA has engaged the Justice Policy Research Centre to review the operation and user satisfaction with the service as part of a wider review of scheme reforms.

4.1.8 Insurer Profits

Question 8

Question 8.1

The new motor accidents scheme, established under the Motor Accidents Compensation Act 1999, was brought in to address a perceived costs crisis in the scheme, a crisis which the Act attempted to address in part by reducing access to benefits. It does appear that the current motor accidents scheme is proving profitable for the licensed insurers involved in it, and there does not seem to currently be any significant upward pressure on premiums within the scheme. Considering this situation, has the MAA, or will the MAA in the near future, be recommending to the Government a reduction in the new scheme's threshold for receipt of pain and suffering compensation from greater than 10% to greater than 5% permanent whole bodily impairment? If not, why not, and at what point would the MAA believe that it would be appropriate to recommend to the Government a reduction in the threshold?

Answer 8.1

According to the MAA's non economic loss performance audit report (provided to the Law & Justice Committee), 12% of claims have non economic loss reserve estimates. This compares favourably with the actuarial forecast made prior to the commencement of the Act that the 10% most seriously injured claimants would be eligible for non economic loss payments. Given this result, the MAA considers it is not necessary to review the threshold for non-economic loss.

Question 8.2

How is it that the insurer's acquisition costs could have increased from 13% to 15% following the reforms, considering that the product that it is being acquired is compulsory, and that the number of insurers in the field has dropped?

Answer 8.2

For the twelve months ended 30 September 1999, that is, the year before the reforms, the total premium income was \$1.556 billion, of which the acquisition costs of 13% equals \$202.3 million.

For the twelve months ended 30 September 2000, the total premium income was \$1.338 billion, of which 15% equals \$200.7 million.

Although insurers' estimated acquisition costs increased in percentage terms, there was a decrease in dollar terms because of the lower premium income. Acquisition costs are in the main fixed costs per policy issued.

Question 8.3

Does the MAA believe that the new motor accidents scheme has reached a point of maturity, and if not, how long does the Authority believe it will take before this point is reached?

Answer 8.3

The new motor accidents scheme has not reached a stage of maturity. As the Cashflow Document provided to the Committee shows, claim payments increase gradually and reach a peak around the 3rd and 4th years after the original underwriting year. The first underwriting year of the scheme will reach this stage in 2003/2004.

Question 8.4

With regards to the document entitled "simple pie chart approach estimate of NSW CTP cash flow based on premiums written during the year ended 30 September 2000, according to August 1999 premium rate filings" (which it is understood the Motor Accidents Authority has provided to the Committee):-

- a) *Does the MAA acknowledge that this document fails to provide any information on the final return that the insurers delivered with regards to the capital invested in the scheme?*
- b) *As such, does the MAA therefore concede that the document does not provide a true indication of the profit levels which the insurers made on the scheme during the periods in question, including with regards to the functioning of the new motor accidents scheme?*
- c) *As such, when will the MAA be able to produce a document which shows the true position of the scheme with regards to the return on capital that the insurers are delivering?*

Answer 8.4

- a) The aim of the Cashflow Document is to demonstrate the timing of income and outgoings as identified by insurers in their first lodged premium filings under the Motor Accidents Compensation Act. It is not intended to show return on capital.
- b) As for (a).
- c) The MAA will report on Return on Capital under the new scheme as the scheme matures.

4.1.9 Accident Notification Form

Question 9

Question 9.1

Considering the 10.7% CPI increase that has occurred since the Accident Notification Form amount of \$500 was first determined in 1999, has the MAA:

- a) reviewed this amount annually?*
- b) by order published in the Gazette, varied that amount to take account of inflation or other matters? If not, why not?*

Answer 9.1

- a) The MAA is required (under section 51) to review the amount payable by insurers on an ANF each year. The MAA reviewed the amount at the end of the first year of the scheme and it was determined that the amount did not need to be amended at that stage. The amount is currently being reviewed by the MAA at the end of the second year of the scheme.
- b) The MAA has not gazetted a new figure for the ANF to date. Payment on an ANF is not capped and insurers are in many cases paying more than \$500 on an ANF. However, at present the average payment on an ANF, one that has not converted to a claim, is \$230. This would indicate that the \$500 figure remains appropriate.

It should be noted that no claimant is disadvantaged with the present amount in that any injured person seeking more than \$500 medical expenses can make a full claim.

The purpose of the ANF is to enable injured persons to access treatment early to assist in the rehabilitation process, particularly of those with more minor injuries. It is not thought that a CPI increase would assist in delivering treatment to injured persons more effectively. When it is demonstrated that the amount is insufficient to meet treatment and rehabilitation objectives, the amount will be increased in accordance with these objectives.

4.1.10 General Scheme Performance Indicators

Question 10

Question 10.1

How is it meaningful to be comparing the numbers of persons receiving "compensation" under the new scheme with the numbers receiving compensation under the old scheme, when:

- a) many of those claimants who "approached an insurer about compensation" under the new scheme would have done so in order just to obtain an Accident Notification Form payment,*
- b) the only compensation available under an Accident Notification Form is partial compensation, (\$500), and*
- c) many matters in which Accident Notification Form payments are made do not translate into full claims (Page 28 of the MAA Annual Report for the 2000-2001 financial year states that it "is expected that [only] 55-60 per cent of Accident Notification Forms will ultimately convert to claims").*

Answer 10.1

One aim of the revised legislation was to provide injured people with a quicker and easier method to obtain compensation and in particular to receive payment for treatment expenses and hence speed their recovery. In addressing the Effectiveness indicator, the MAA has compared the present scheme with the previous scheme as it impacts on the injured person. In order to make this comparison valid, it is necessary to include all injured people and their notifications for compensation.

Question 10.2

How is it meaningful to be comparing the “average time to the first payment” under the new scheme with the old scheme when:

- a) many of those claimants who receive a first payment under the new scheme are in fact only receiving an Accident Notification Form payment,*
- b) the only compensation available under an Accident Notification Form is partial compensation, (\$500), and*
- c) only 55-60 per cent of Accident Notification Forms will ultimately convert to claims (Page 28 of the MAA Annual Report for the 2000-2001 financial year)*

Answer 10.2

See Answer to previous question, and to question in section 9.1.

Question 10.3

Does the above quote take adequate account of the possibility that many more complex matters may not yet have been brought or finalised, on the basis of the developing maturity of the new scheme?

Answer 10.3

Yes. The comparisons are made at equivalent claims development times.

Question 10.4

Is it not misleading for the report to state that “all measures of timeliness in the new claims process have improved for the brain injury claimants since the introduction of the new scheme”, considering that the figures for the new scheme include take into account the payment of the \$500 for the Accident Notification Form, which is a comparatively small amount when considering the total compensation that would probably be payable in the average brain injury case?

Answer 10.4

The inclusion of ANF payments is correct. Any improvement in timeliness made possible by the ANF is a worthwhile improvement for injured people.

Question 10.5

What would be the quoted figures under the heading “Timing and Service Delivery” on Page 29 of the MAA Annual Report for the 2000-2001 financial year be if the figures relating to Accident Notification Form payments were taken out of the equation?

Answer 10.5

Only 26 of the 161 brain injury claimants lodged ANFs, and all converted into full claims.

Question 10.6

On the basis of the above questions, how can the MAA sustain the comment made on page 28 of the MAA Annual Report for the 2000-2001 financial year, that “these trends indicate that injured people now lodge notifications more quickly, assess funds for the treatment of their injuries more quickly, and settle their claims more quickly”?

Answer 10.6

The analysis presented in the MAA’s Annual Report on the Effectiveness indicator shows injured people now lodge notifications more quickly, access funds for the treatment of their injuries more quickly, and settle their claims more quickly.

Question 10.7

What is the MAA doing to address the above problem?

Answer 10.7

The MAA has provided impairment training seminars to both insurers and lawyers. The most recent seminar organised specifically for lawyers in late November 2001 was attended by more than 100 solicitors.

4.2 New South Wales Bar Association**4.2.1 Non-Economic Loss**

It is the understanding of the Bar Association that the current scheme was designed to reduce annual payments for non-economic loss from \$250 million to \$150 million. This was to be done by eliminating the entitlement to non-economic loss for the less seriously injured, whilst preserving the entitlement to non-economic loss for the more seriously injured. The Bar Association understood that the scheme was costed on the basis that the most seriously injured 10% of claimants would receive an award of non-economic loss.

On 31 May 2001 the Special Minister for State with responsibility for the Motor Accidents Authority, the Honourable John Della Bosca, advised the Legislative Council that he had been informed by the Motor Accidents Authority that there had been 15,000 full claims in the first 18 months of operation of the scheme and on that basis, it could be anticipated that 1,500 accident victims will receive non-economic loss payments for pain and suffering from that period.

Question 1

Question 1.1

Is it correct to say that the scheme is costed on the basis of payments for non-economic loss amounting to \$150 million per year?

Answer 1.1

In 1999 PricewaterhouseCoopers actuaries estimated that changes to the legislation would result in an estimated \$150 million reduction in the total cost (not just payments for non economic loss) of minor injuries.

Question 1.2

How much money has to date been paid for non-economic loss for accidents occurring during the first year of operation of the scheme?

Answer 1.2

Excluding interstate claims and unconverted ANFs, non economic loss payments of \$1.3 million have been made on 26 finalised claims, arising from accidents that occurred in the first year of the scheme.

Question 1.3

What number of claimants from accidents arising during the first year of the operation of the scheme have to date received payments for non-economic loss?

Answer 1.3

See 1.2.

Question 1.4

What percentage of claimants from accidents arising during the first year of the operation of the scheme have to date received payments for non-economic loss?

Answer 1.4

Twenty six finalised claims represent 0.7% of 3,765 finalised claims (excluding interstate claims and unconverted ANFs).

Question 1.5

Does the MAA remain confident that the scheme, as currently structured, will see accident victims from the first year of operation of the scheme receive \$150 million for non-economic loss?

Answer 1.5

As a result of the non economic loss audit conducted by the MAA of insurer files, the MAA is confident that insurers have reserved non economic loss on 12% of claim files. This compares favourably with the actuarial forecast made prior to the commencement of the Act that the 10% most seriously injured claimants would be eligible for non economic loss payments.

Question 1.6

Does the MAA remain confident that, on the Minister's figures, 1,500 accident victims from the first year of operation of the scheme will receive payments for non-economic loss?

Answer 1.6

See 1.5

Question 1.7

If the answer to any of the preceding questions is "It's too early to tell", by what date does the MAA anticipate that it will be able to give an answer?

Answer 1.7

Not applicable.

Question 1.8

If the MAA comes to view that non-economic loss payments for the first year of operation of the scheme are likely to be significantly less than \$150 million, or to reach significantly less than 10% of accident victims, what will the Authority do?

Answer 1.8

If the MAA comes to the view that the Act is not working as intended, the MAA will make policy recommendations to the Minister.

4.2.2 The Claims Assessment and Resolution Service (CARS)**4.2.2 (i) Exemptions**

Section 92 of the Act allows the Principal Claims Assessor (PCA) to exempt claims from being processed through CARS, entitling the accident victims to have their case determined by a Court. Mandatory grounds of exemption include cases involving infants, where liability is contested and where there are allegations of fraud. Discretionary grounds of exemption include cases involving non-CTP Defendants, interstate or overseas claimants and witnesses, and complex matters.

Question 2*Question 2.1*

In costing the scheme, has the MAA made any assumptions as to the number of cases that would be granted exemption from CARS?

Answer 2.1

Infant claims and claims where liability is denied, are automatically exempted under the 1999 Act. On this basis, it is estimated that approximately 17 % of claims will be exempted from CARS.

Question 2.2

To date, how many applications for exemption have been made?

Answer 2.2

As at 30 November 2001, 727 applications for exemption had been made.

Question 2.3

To date, how many exemptions have been granted?

Answer 2.3

As at 30 November 2001:

- 461 had been exempted
- 200 had not been exempted
- 66 were pending determination

Question 2.4

Can the MAA provide a breakdown of the grounds of exemption in those cases where an exemption has been granted?

Answer 2.4

Yes. As at 30 November:

- 351 exempted – liability denied
- 76 exempted – liability deemed denied
- 29 exempted – lack of legal capacity
- 1 exempted – contributory negligence greater than 25%

- 4 exempted – other

Question 2.5

Does the MAA agree that in the course of formulation of the scheme, it was represented by the MAA that generally cases with a potential value in excess of \$100,000.00 would be exempted on the basis of complexity?

Answer 2.5

No. In fact the MAA specifically rejected a proposal to put a monetary value on claims as a threshold for exemption.

Question 2.6

Does the MAA now resile from that position? If so, when did the change of policy occur and why?

Answer 2.6

Not applicable.

Question 2.7

Does the MAA now contend that cases involving multi-million dollar awards of damages to quadriplegics, paraplegics and the grossly brain injured, are capable of and suitable for assessment by CARS?

Answer 2.7

It is not the size of the claim that matters, but the complexity of the dispute. A 'multi million dollar' claim may have many components to the assessment of damages but if only one of those heads of damage is in dispute then the matter may not be considered complex. Alternatively there may be agreement on all the heads of damage but one issue about say the amount of contributory negligence or causation in dispute.

If a claim involved a 'grossly brain injured' claimant then it would be reasonable to assume the claimant would have no legal capacity and the injured person therefore had a guardian or appropriate person acting on his or her behalf. As CARS has no 'protective' jurisdiction over infants or other persons without legal capacity that claim would be exempted.

Question 2.8

Just what does it take for a case to be so complex or unusual that it is not suitable for assessment by CARS, i.e. what are the criteria for exemption for complexity?

Answer 2.8

Every case is determined on its own facts however the Principal Claims Assessor has held that complexity requires more than just an assertion on the part of a party that the claim is worth significant

sums of money and the PCA has also found that substantial damages does not necessarily imply complexity.

Question 2.9

Given that the exemption from CARS also entails an exemption from the costs regulations under the scheme, does the MAA concede that in some cases the failure to grant an exemption will result in innocent accident victims losing part of their proper entitlement to damages to pay the full cost of the legal services incurred in securing those damages? Is that fair?

Answer 2.9

Clause 10 of the Regulation excludes matters from the scheduled fees that are exempt under section 92 of the Motor Accidents Compensation Act from assessment. Where no exemption is granted, regulated fees will apply.

Ultimately whether the legal fee amount is 'fair' to claimants is only an issue where the legal service provider charges a claimant in excess of the regulated amount. When an injured person has engaged a legal practitioner to assist in the making of a claim, and the claim is one to which the legal costs regulation applies, the client is only liable for legal fees in excess of the scheduled rate if the client has entered a fee agreement with the lawyer. Such an agreement is only valid if the legal practitioner has advised the client in writing that a schedule of fair and reasonable fees exists and that the practitioner is charging in excess of that rate.

Question 2.10

Take the following real life example. The claimant was a twenty year old shop fitter who was rendered paraplegic following a motor vehicle accident near Dubbo. As a consequence of his injuries, he requires specialist equipment, vehicle modifications, domestic care, assistance with travel and has a significant if not complete reduction in his earning capacity. Damages could be anticipated to exceed \$1.5 million.

A claim for exemption was made both on the basis of deemed denial of liability and the complexity of the case. The Principal Claims Assessor (PCA) exempted the matter on the basis of the deemed denial of liability (despite the claimant being a passenger). The PCA went on to find as follows:

I note the claimant suffered spinal injuries resulting in paraplegia and that the claimant lives in Queensland. That alone would not be enough ordinarily to exempt a matter. CARS have a number of very experienced assessors could quite easily assess a claim of this nature.

Does the MAA seriously contend that a paraplegic's case involving numerous experts' reports and multiple heads of damage can be properly assessed in a two-hour assessment?

Does the MAA contend that the paraplegic's case, if not exempt, can be properly presented before a CARS assessor by a single legal practitioner recovering \$400 for appearing at the assessment? Is it fair to ask the paraplegic to subsidise the costs of his CARS assessment from the damages he receives?

Answer 2.10

A cornerstone of the 1999 Scheme review and the Motor Accidents Compensation Act was the reduction in legal costs to the Scheme, to be achieved by reducing the involvement of the legal profession in smaller, more simple claims. The structure of the regulation ensures that legal services are focused where they are needed and remunerated accordingly.

The legal costs regulation is limited in application to those claims that have not been exempted from assessment under section 92 of the Motor Accidents Compensation Act. The exemption criteria focus upon the complexity of claims on a number of bases.

Legal fees have been regulated by reference to stages in the claim's process. For a number of stages, the fee is a straight fee for service, however, additional fees, referable to settlement amounts in excess of \$20,000, have been provided for on an ad valorem basis.

Take for example, the assessment of the claim worth \$1,500,000. The legal practitioner representing the claimant would be entitled under the costs regulations to the sum of:

- \$200 – for preparation of the claim form plus
- \$300 – for the work done up to the Answer to the insurer's offer plus
- \$37,100 - for the work done in preparing the matter for CARS plus
- 2% of the assessment or \$30,000.00 for the work done at CARS plus
- All unregulated disbursements plus
- Costs of up to \$1,200 in respect of all MAS medical disputes.

Question 2.11

A further case study. The victim of an accident in New South Wales now resides in Melbourne. Sydney solicitors have been retained. The claim is not large as there is no entitlement to non-economic loss/general damages. There are, however, some complexities to the claim for voluntary domestic assistance and economic loss arising from losses in the Plaintiff's small business. The case is not suitable for being dealt with "on the papers". Nor is it an easy claim for the claimant to handle without legal advice. The case may only be worth \$25,000.00 which would entitle the solicitor to recover \$2,100.00 for legal costs at the conclusion of a CARS assessment.

2.11(i) Does the MAA believe that the costs recoverable accurately reflect the costs that will be incurred in preparing and conducting the case through a CARS assessment?

Answer 2.11(i)

Yes

Question 2.11(ii)

Does the MAA concede that additional costs will be incurred above and beyond the usual claim (STD telephone calls and travel costs for the claimant to attend in Sydney to give instructions)?

Answer 2.11(ii)

The MAA is aware that the injured person and their chosen legal services provider will need to make decisions about how efficiently the matter is run, such as whether instructions are provided in writing, over the telephone or in person.

Question 2.11(iii)

Is the MAA aware that it is inevitable practice of insurers in relation to these types of claims to not only request tax returns, but also source documents in relation to the small business?

Answer 2.11(iii)

Such information would be necessary to determine economic loss claims.

Question 2.11(iv)

Does the MAA concede considerable time can be taken assembling and photocopying the necessary information to supply to the insurer?

Answer 2.11(iv)

No, see answers above.

Question 2.11(v)

Does the MAA agree that the fact that the recoverable costs will go nowhere near covering the actual costs of preparing a more complex case can justify an exemption? If not, why not?

Answer 2.11(v)

No, see answers above.

4.2.2 (ii) Assessment

The MAA initially appointed 16 assessors. Of those, three were designated key assessors for the purpose of accumulating early experience with the assessment process. To date only three key assessors have been called upon to make any assessments.

Question 2.12

The scheme has now been in operation for two years. In dollar terms, what amount of damages has been awarded to accident victims as a consequence of CARS assessments? (i.e. how many cases have been determined by CARS and what is the collective sum awarded as a consequence of those determination?)

Answer 2.12

There have been 72 applications for General Assessment filed. Most of them are still awaiting allocation or are pending assessment. 15 matters have settled. There have been 5 general assessments determined and the collective damages in dollar terms awarded to those who have been assessed is \$83,267.99.

Question 2.13

By way of comparison, can the MAA determine as at 31 December 2000 amounts awarded by Courts under the old scheme for accidents between 1 January 1998 and 5 October 1999 during that same two-year period?

Answer 2.13

At 31 December 2000, 31 claims arising from accidents between 1 January 1998 and 5 October 1999 had been finalised by verdict, for a total of \$3.4 million.

Question 2.14

In short, is CARS really succeeding in its intended roll of providing a faster system for recovery of damages than the Courts?

Answer 2.14

Of the small number of cases that have been to CARS for assessment the average resolution time for general assessment matters is three and a half months from commencement to finalisation. The shortest time between application date and finalisation was two weeks and the greatest time was nine months. The average resolution time for special assessment matters is two and three quarter months from commencement to finalisation. The shortest time between application date and finalisation was one month and the greatest time was four and a half months. This compares very favourably to the Sydney District Court's median time from commencement to finalisation of 11.4 months in 1999/2000.

Question 2.15

Does the MAA believe there is consumer resistance to the use of the CARS assessment scheme? If so, why, and what is the MAA doing about it?

Answer 2.15

Yes – The MAA believes that there is an amount of lawyer resistance due to ignorance of the provisions of the Act and the Guidelines. Whilst the vast majority of applications for exemption (to get out of CARS) are made by lawyers, the majority (43:29) of applications for general assessment are made by insurers. In order to address this lack of understanding the MAA has produced a quarterly bulletin (MAAS Bulletin) the first issues of which were sent to all specialist accredited solicitors and to which

subscriptions were invited from all lawyers practising in NSW. MAAS division staff have spoken at over 100 seminars, conferences and workshops. The MAA plans a further road-show in major state centres in 2002 to refresh the knowledge of those practitioners who may find it difficult to travel to Sydney for continuing legal education.

Question 2.16

CARS have widely asserted that they will travel to regional centres to conduct assessments. Are CARS assessors to be paid for their time in attending at regional centres to conduct assessments? If not, why not? Is it "fair" to ask an assessor to spend a day travelling to and from a regional centre for the purposes of an assessment, without providing proper remuneration for travel time?

Answer 2.16

CARS assessors are paid to attend at regional centres to conduct assessments. CARS assessors are paid a fee for the assessment as well as their travelling and accommodation costs. Only one General Assessment has been undertaken outside Sydney (and it settled on the morning of the assessment). In that matter the assessor held two preliminary conferences, flew to the mid north coast and returned later in the day. The assessor was paid the assessment fee, an additional two hours conference fee and all verified travelling expenses.

Question 2.17

How many cases have so far been referred to the Senior Assessment Service? In the MAA annual report for 1999-2000, the General Manager asserted that the agreement of the professions to nominate senior practitioners to serve on the Senior Assessment Service constituted acceptance of the goodwill towards the new scheme. If, in the last two years no or few cases have been referred to the Senior Assessment Service, will the MAA agree that there has been less than complete acceptance of the goodwill towards the new scheme?

Answer 2.17

No cases have yet been referred to the Senior Assessor's service. It is the MAA's understanding that the earliest of the 'big' cases are not yet ready for assessment.

4.2.3 Claims Advisory Service

Questions 3

Question 3.1

Has the MAA yet undertaken any audit of the performance of the Claims Advisory Service?

Answer 3.1

The MAA monitors the performance of CAS and maintains statistics on the source and subject matter of all calls received.

Individual officer's calls are monitored by the team manager and senior staff within the unit. With new staff, 100% of calls are audited. As staff gain in confidence and knowledge this is reduced. All staff are monitored from time to time.

In addition, CAS staff engage in regular training and information sessions.

Question 3.2

Does the MAA maintain that the Claims Advisory Service does not provide any 'legal advice'?

Answer 3.2

Yes – CAS provides only procedural advice.

Question 3.3

Do staff employed by the Claims Advisory Service report back to the MAA when they receive calls from claimants who are in need of legal advice? What number and percentage of calls from unrepresented claims does the MAA have to decline to provide advice on the basis that the information sought is 'legal advice'?

Answer 3.3

No

Most callers are seeking information about how to make a claim and what may be covered under the scheme. Where a caller seeks legal advice they are informed that CAS staff are not legally trained and if they wish to speak to a lawyer, they are referred to the Law Society for referral to a lawyer.

Where a represented caller seeks assistance from CAS they are advised to speak to their solicitor if they have a specific issue rather than CAS, although CAS will give anyone general information about the scheme.

Statistics do not distinguish between represented and unrepresented claimants. Whilst the broad subject matter is recorded, it is not recorded as to whether a person is referred on for legal advice or not.

It is unusual for an inquiry to relate to a legal issue. Generally speaking the inquirer will have a number of queries which may be answered by CAS but may include a particular question of a legal nature, and they will be referred on for legal advice.

4.2.4 Insurer Compliance

The MAA is charged with ensuring that the insurers under the Scheme comply with various obligations imposed on them by the Act, Regulations and Guidelines. To this end the MAA has appointed a Compliance Officer.

4.2.4(i) Compliance Officer

Question 4

Question 4.1

What audits has the Compliance Officer conducted to date? Please provide details of audit work undertaken by the Compliance Officer.

Answer 4.1

The Principal Compliance Officer (together with two Senior Compliance Officers) has completed the non-economic loss performance audit. The MAA has provided the Committee with the report on this audit. The MAA has also provided the Committee with the MAA's audit and evaluation program. The Claims Handling Guideline (CHG) audits commenced on Monday 3 December 2001, based on the CHG audit methodology developed by the Compliance section.

4.2.4(ii) Late Claims

Under Section 73 of the Act, an insurer is entitled to challenge a claim that is made more than six months after the date of accident. The insurer can require the claimant to provide a "full and satisfactory" explanation for the delay. If the insurer is dissatisfied with the explanation, then CARS assessor is required to determine whether a proper explanation has been given.

Question 4.2

How many applications involving "full and satisfactory" explanations for late claims have to date been determined by CARS assessors?

Answer 4.2

By the end of September 2001, there has been a 10% (2,050) increase in the number of claims lodged more than six months after the date of the accident.

As at 30/11/01 there had been 24 applications for a special assessment where the issue in dispute concerned a late claim. Of those:

- 14 have been finalised [2 were settled; 1 was rejected because CARS had no jurisdiction in the matter; and 1 the right to challenge was lost pursuant to s73(3)(a)]

Of the remaining 10 matters, a full and satisfactory explanation was found to have been provided in 9 matters and a full and satisfactory explanation was NOT found to have been provided in one matter.

Question 4.3

In what percentage of cases was the explanation challenged by the insurer found by the assessor to be “full and

Answer 4.3

Excluding the 2 settled matters and the one where it was determined that CARS had no jurisdiction (which are not decisions in favour of the claimant or the insurer) there are 11 determined matters - 10 (91%) of which were determined in favour of the claimant and 1 (9%) of which were determined in favour of the insurer.

Question 4.4

If the situation is that more than 80% of the challenged explanations are accepted to be full and satisfactory by CARS assessors; does the MAA have any concerns that insurers are needlessly rejecting explanations for delay in completing a claim form?

Answer 4.4

No. At this stage of the development of the Scheme, the small number of matters involved do not raise any issues of concern.

Question 4.5

What effort is the MAA making to audit the performance of insurers when it comes to rejecting late claims?

Answer 4.5

This issue is one of many issues included in the Claims Handling Guideline (CHG) compliance audits. The CHG audits will not represent a performance audit of insurers on this particular issue.

Question 4.6

Does the MAA believe it is “fair” that a claimant be disentitled to receive any compensation for a claim made six months and one day after the date of an accident if they do not have a “full and satisfactory” explanation for the delay?

Answer 4.6

This is a requirement of the Act as approved by Parliament.

4.2.4(iii) Insurer's First Offer

Section 82 of the Act confers on the insurer the duty to make a reasonable offer of settlement within one month of the injury having stabilised, or within two months of all particulars having been provided, whichever is the latter. It is a condition of an insurer's licence that the insurer complies with this section.

Question 4.7

Has the MAA conducted any audit as to whether insurers are making reasonable offers of settlement within the specified time frame?

Answer 4.7

No, but this will be considered in the audit of the Claims Handling Guidelines.

Question 4.8

Has the MAA conducted any qualitative auditing as to whether the offers are in fact "reasonable"?

Answer 4.8

No, but see Answer 4.7.

Question 4.9

In relation to claims for amounts greater than \$500, what percentage of claims are settling for the insurer's first

Answer 4.9

Not known, but see Answer to 4.7

Question 4.10

If a very small percentage of claims are resolving from the insurer's "reasonable" offer, does the MAA believe this is because either:

- *Claimants misunderstand their entitlements under the Scheme?*
- *Claimants have unrealistic expectations of their entitlements under the Scheme*
- *Claimants fail to properly consider the insurer's offer*

- *Insurers are not making reasonable first offers*
- *Some other reason.*

Answer 4.10

Not known, but see Answer 4.7.

4.2.4(iv) 25% Contributory Negligence

A denial of liability entitles a claimant to an exemption from CARS and the costs regulations. However, an insurer is entitled to allege up to 25% contributory negligence and still have the matter remain within the CARS assessment regime.

Alleging contributory negligence of up to 25% confers a significant benefit upon insurers. Normally the determination of a CARS assessor is binding on an insurer. However, where contributory negligence has been alleged, (less than 25%) the insurer does not have to accept the CARS assessment and can force an accident victim who would otherwise accept the assessment, to proceed to a Court re-hearing.

At the time of the implementation of the Scheme, the Bar Association raised with officers of the MAA the prospect that unscrupulous insurers might be tempted to raise spurious grounds of contributory negligence in order to escape binding CARS assessment. The MAA advised that audits would be conducted to ensure that such conduct did not take place.

Question 4.11

Has the MAA received any complaints regarding insurers raising specious grounds of contributory negligence?

Answer 4.11

No.

Question 4.12

With the Scheme having been in operation for two years, has the MAA conducted any audit activity to discern whether insurers have been raising specious grounds of contributory negligence?

Answer 4.12

No.

Question 4.13

Is the MAA in a position to analyse the number of claims in which contributory negligence is raised and subsequently the percentage of those claims in which the insurer succeeds in demonstrating contributory negligence to an Assessor or Court?

Answer 4.13

The MAA is prepared to undertake a sample survey of claims involving contributory negligence. This will be undertaken in 2002 and reported in the next Annual Report.

Question 4.4.4

Would the MAA agree that an insurer claiming contributory negligence, when there was little realistic prospect of any deduction for contributory negligence being made by an Assessor, would be conduct contrary to the spirit of the Act?

Answer 4.14

Yes.

Question 4.15

Does the MAA accept that an insurer raising contributory negligence for the purposes of removing the binding effect of a CARS assessment to be conduct contrary to the spirit of the Act?

Answer 4.4.5

Yes.

4.2.5 Cost Regulations

The 1999 Act regulates the recoverable party/party legal costs in cases that are not otherwise exempt from CARS. Recoverable costs are linked to the quantum of the agreed or assessed value of the claim.

Whilst the maximum amount to be awarded for non- economic loss is annually indexed, the amounts recoverable for legal costs is not.

Consistent with its statutory duty at the time of introduction of the scheme and the associated Costs Regulation, the MAA consulted with the legal profession. The MAA advised that the amounts fixed by regulation recoverable for legal costs would be the subject of indexation.

Question 5*Question 5.1*

Has any indexation taken place in the two years of operation of the Scheme to increase the amount recoverable for legal costs?

Answer 5.1

Legal costs have not been indexed since the commencement of the *Motor Accidents Compensation Regulation (No.2)* 1999 on 17 December 1999.

Question 5.2

If not, why not?

Answer 5.2

Indexation of regulated legal fees has not been considered necessary at this stage. Indexation would primarily impact upon the legal fees associated with smaller claims, those below \$20,000, where legal fees are set on a straight fee for service basis.

The MAA has engaged the Justice Policy Research Centre to review the impact of the legal costs regulation and will consider the level of fixed fees in conjunction with the Report of that review.

It should be noted that the MAA is of the view that any indexation would not only apply to fixed fees but to the \$20,000 threshold above which ad valorem fees apply.

Question 5.3

Does the MAA agree that it originally conceded the fairness of indexing amounts recoverable for legal costs?

Answer 5.3

See Answer to 5.2.

Question 5.4

For example, the Regulations currently fix the costs of a solicitor or barrister attending at an assessment conference under section 104 of the Act at \$400.00. Will the amount be the subject of annual indexation as originally promised? Does the MAA believe it is 'fair' that claimants can only recover legal costs in 2002 and 2003 at a rate fixed in 1999? Would it be fair to claimants if they could only recover the same amount in 2010?

Answer 5.4

Legal fees have been regulated by reference to stages in the claim's process. For a number of stages, the fee is a straight fee for service however additional fees, referable to settlement amounts in excess of \$20,000, have been provided for. In so providing, fees for larger matters correlate more closely to market rates.

Additionally, a section 104 assessment conference may take a number of forms including video and telephone conferencing and the fee structure anticipates that such a conference is likely to last no more than two hours. Provisions have been made for an Assessor to exercise discretion and allow an additional amount where the conference exceeds two hours.

Clause 10 of the Regulation excludes matters from the scheduled fees that are exempt under section 92 of the Motor Accidents Compensation Act from assessment. Where no exemption is granted, regulated fees will apply.

Ultimately whether the legal fee amount is 'fair' to claimants is only an issue where the legal service provider charges a claimant in excess of the regulated amount. When an injured person has engaged a legal practitioner to assist in the making of a claim, and the claim is one to which the legal costs regulation applies, the client is only liable for legal fees in excess of the scheduled rate, if the client has entered a fee agreement with the lawyer. Such an agreement is only valid if the legal practitioner has advised the client in writing that a schedule of fair and reasonable fees exists and that the practitioner is charging in excess of that rate.

4.2.6 HIH-CIC

On 16 March 2001 the HIH Group was placed in provisional liquidation. As a consequence, two of the CTP insurers under the scheme owned by HIH were also placed in liquidation – CIC and FAI.

The Bar Association congratulates the MAA on acting promptly to exercise its statutory responsibilities and have the Nominal Defendant take over liability for claims under policies issued by CIC and FAI prior to 1 January 2001. Policies issued after the date become the responsibility of Allianz who had been in the process of entering into a joint venture arrangement with CIC and FAI.

The Nominal Defendant has appointed Allianz and its manager for the tail of CIC/FAI Nominal Defendant claims. Allianz has re-employed many of the CIC/FAI claims staff to continue the handling of those claims.

Immediately following the HIH collapse, the Nominal Defendant undertook to meet the fees of service providers performing work on behalf of the Nominal Defendant after 16 March 2001. Recent negotiations between the Liquidator, the MAA and representatives of service providers, including the Bar Association and the Law Society, are addressing the issue of outstanding accounts from service providers for costs incurred prior to 16 March 2001.

4.2.6(i) Prudential Supervision of CIC/FAI

Question 6

Question 6.1

Does the MAA accept that it has a responsibility for the prudential supervision of CTP insurers under the scheme?

Answer 6.1.1

The national prudential regulator of the insurance industry is the Australian Prudential Regulation Authority ("APRA"). State regulators like the Motor Accidents Authority of New South Wales rely on APRA to undertake, as part of its statutory function, the prudential and solvency regulation of insurers.

One of the roles of the Motor Accidents Authority is to monitor the financial position of licensed compulsory third party insurers (“CTP”). Licensed CTP insurers are required to submit to the MAA copies of the returns that they are obliged to submit to APRA.

The supervisory role of the Motor Accidents Authority includes monitoring claims performance by means of the Claims Register; maintaining a statistical data base; monitoring the insurers’ provision of rehabilitation services; premium filings; dealing with complaints against the insurers; the financial press and the verification of rumours.

Question 6.2

If so, what steps did the MAA take to exercise its prudential supervision over CIC and FAI prior to the collapse of the HIH Group?

Answer 6.2

See answer to 6.4 and 6.5 below.

Question 6.3

Has any independent audit been conducted as the effectiveness and efficiency of the MAA’s regulatory supervision of CIC and FAI prior to the HIH collapse?

Answer 6.3

On the recommendation of the Audit Committee, Ernst & Young were engaged by the MAA (in July 2001) to perform a review of its prudential responsibilities and practices.

In particular, the review focused on identifying the MAA’s prudential responsibilities and assessing the process currently established by the Authority to discharge these responsibilities.

Ernst & Young divided the review into 3 stages:

1 Confirmation of the MAA’s prudential responsibilities by reference to

- Appropriate legislation
- Discussions with MAA Board Members/Executives; and
- Reviewing MAA publications such as recent annual reports.

2 Reviewing the way in which the MAA discharges these responsibilities; including how it uses information provided by APRA. In addition Ernst & Young provided feedback on whether it believed MAA does or can “add value” to the prudential control environment taking into account the role of APRA.

3 Providing advice in relation to other potential mechanisms to allow the MAA to discharge its prudential responsibilities.

Questions 6.4 and 6.5

(6.4) As at the time of the HIH collapse, did the MAA have any concerns about the financial viability of FAI or CIC? If so, when did those concerns first arise and what was the MAA doing about them at the time of collapse?

(6.5) As at the time of the HIH collapse, was the MAA of the view that CIC and FAI were capable of meeting their financial obligations? If not, when did the MAA first come to the view that they were not?

Answer 6.4 and 6.5

The history of this matter for the MAA is as follows

On September 15, 2000 the General Manager of the Motor Accident Authority, met with Mr Terry Towell, CEO of Allianz and Mr Ray Williams the then CEO of HIH at which they advised him that HIH were considering a joint venture with Allianz in relation to HIH personal lines of business, written by FAI and CIC and including CTP.

This meeting did not address the reason why such a joint venture was being contemplated but in the light of public concerns at the performance of HIH it was not altogether surprising. For example in General Manager's report to the MAA Board meeting on September 5, he noted:

"There have been recent articles in the financial press highlighting HIH Insurance as a potential takeover target. The company's share price has significantly dropped since its takeover of the FAI group of companies, making it a prime target.

It is now openly known that HIH is seeking a joint-venture partner for its personal lines business (which could include the group's CTP business in NSW and Queensland). Market analysts believe that the company could also consider a sale of the personal lines business.

HIH controls two licensed CTP insurers: CIC Insurance Limited and FAI General Insurance Company Limited. The two insurers had 18% of the NSW CTP market at 30 June 2000.

No information has as yet been provided by HIH."

The joint venture did not require the approval of the MAA as both FAI and CIC would continue to write the CTP policies although there would be 51% re-insurance to Allianz, which did require approval, and all claims would be managed by a single Allianz company, which required revised business plans to be lodged with the MAA.

The MAA was particularly concerned as to whether FAI and CIC would have sufficient assets and cash flow to continue to meet these liabilities. Towards the end of September the General Manager discussed with Mr Richard Grellman, Chairman of the Board of the MAA, whether the MAA should

use a provision under the Motor Accidents Compensation Act to appoint an inspector to examine these issues for the MAA.

During September/October there were ongoing discussions between MAA and APRA and between the MAA and HIH regarding the joint venture application. During the course of the discussions with APRA, the possibility of the appointment of an inspector was canvassed. This issue will be one of many considered during the Royal Commission into the HIH collapse.

During the course of September and October the full details of the joint venture became clearer and on October 19 the MAA engaged Phillips Fox, solicitors, to advise on the position of policyholders and claimants under the joint venture and as to arrangements for the liabilities on expired policies, which remained with FAI and CIC.

Mr Bowen provided a detailed report to the November 2000 MAA Board meeting which noted:

AIL, FAI and CIC have all made application to the MAA for approval of new re-insurance arrangements and submitted revised business plans for management for the CTP business under the joint venture from 1 January 2001. Allianz Advantage Australia (AAA), an Allianz company, will manage the business of the three licencees.

The outstanding issue for the MAA is to assess the ability of HIH to continue to meet liabilities for claims against policies issued prior to the new arrangement. This has been the subject of a number of discussions with APRA that will continue on a regular basis over the next few months.

In addition the Chairman and I are meeting with Mr Terry Cassidy of HIH later this week to discuss the companies' proposals to meet run-off liabilities.

At all the meetings with HIH officers, the MAA was repeatedly re-assured that the company would be able to manage cash flow for the run-off and had sufficient assets. APRA was also being told the same information. At the December meeting of the Board of the MAA, Mr Bowen provided a copy of revised licence conditions for FAI and CIC. Mr Bowen's report noted:

The particular concerns sought to be addressed in the licence conditions are to have the companies give regular reports to the MAA on progress of the runoff of old claims and to provide that the companies are to give an irrevocable authority to AAA requiring AAA to notify the MAA of any failure by FAI or CIC to make payments to meet old claims being managed by AAA.

In addition to the conditions on the licence the MAA has now received the recent HIH financial returns to APRA and a copy of the liquidity analysis that the company has undertaken for APRA. At this stage APRA seems confident that the company will have sufficient assets and access to sufficient funds to meet on-going obligations.

APRA is planning to require the company to undertake an independent actuarial valuation of liabilities early in the New Year that will give a clearer indication of the outstanding liabilities and expected timeframe for payments.

In late February the MAA became aware of a Report by Ernst and Young commissioned by the Board of HIH in December 2000. In the light of this report and increasing concern over the company's capacity to meet claims, on the 6th March 2001, the MAA appointed Mr Peter Hedge as an inspector pursuant to Section 177 (1) of the MAC Act to examine and report on FAI and CIC. The company went into provisional liquidation on the 15th March 2001.

4.2.6(ii) Funding

Question 6.6

What does the MAA estimate its liability to be for the CIC/FAI tail?

Answer 6.6

The MAA engaged Trowbridge Consulting and Taylor Fry Consulting Actuaries to calculate the liabilities for which the MAA as Nominal Defendant is responsible .

The most recent calculations are:-

- \$575.5M net
- \$499.8M on a discounted basis (ie present value).

Question 6.7

How is the MAA funding the payment of tail claims?

Answer 6.7

Through Nominal Defendant Fund with funding provided by NSW Treasury under the Insurance Policy Protection Fund.

Question 6.8

What impact does the MAA anticipate the requirement to fund the CIC/FAI tail will have on premiums and profits?

Answer 6.8

Under the Insurance Protection Act 2001 all NSW general insurers are required to pay a tax to fund the payment of HIH claims. Under the legislation insurers are not permitted to recover the tax by means of increasing premiums. Accordingly, the tax may have a negative impact on their profits.

The Treasurer has offered to consider a proposal being developed by the Insurance Council of Australia. The proposal involves the creation of a "Special Purpose Vehicle" for the raising of funds by the insurance industry. To date the MAA does not have sufficient details of the SPV to form a view on its impact on profits and premiums.

4.2.6(iii) Viability of the Market*Question 6.9*

What is the current market share of each remaining insurers under the scheme?

&

Question 6.10

Does the MAA have any concerns about the viability of the market scheme, given the reducing numbers of the insurers in the market?

Answer 6.9 and 6.10 (see also Chapter 3, 3.5. Level of Competition)

At 30 June 2001, eight companies were licensed to sell NSW CTP insurance. There are six insurers managing the eight active licences. Allianz Australia is responsible for three licences as the result of the joint venture between itself and HIH during the year.

NRMA Insurance is the market leader with 40% market share followed by Allianz with 27% market share. The remaining insurers' shares range from 7% to 10%.

Recently, Suncorp Metway acquired the AMP's GIO general insurance business. GIO currently has 7% market share in the NSW CTP market. Suncorp Metway has not been represented in the NSW CTP market before. However, it is the largest CTP insurer in Queensland with 56% of the market.

The MAA considers that at present there is enough competition in the market to keep premiums down.

Insurer	Market share (%)
AAMI	9.1
Allianz (including CIC and FAI Allianz)	27.3
GIO	7.2
NRMA	39.5
QBE	10.1
Zurich	6.8

Question 6.11

What, if any, steps is the MAA taking to encourage other insurers to enter the market?

Answer 6.11

The MAA had detailed negotiations with Suncorp Metway who subsequently entered the NSW market with its acquisition of the AMP's GIO general insurance business.

4.2.6(iv) Claims Handling for the CIC/FAI Tail

Question 6.12

Has the MAA signed a management agreement with Allianz to handle the tail claims? If so, is it publicly available?

Answer 6.12

Yes. Letters have been exchanged putting in place a preliminary agreement, pending finalisation of a final formal agreement. If the agreement was sought, the MAA would consult with Allianz on its release, in accordance with the provisions of the FOI Act.

Question 6.13

Are there any performance standards imposed by the management agreement with Allianz? If so, what has been the performance of Allianz as against those performance standards to date? If there are no performance standards, why not? Does the MAA accept that the Nominal Defendant is liable for payment to service providers for work performed on its behalf on CIC/FAI tail claims after 16 March 2001?

Answer 6.13

As the settling and defending of claims is a matter of judgment in a case by case basis no general performance standards have been devised. Instead a number of performance obligations and safeguards are included in the agreement. They are:

- Regular audits and monitoring by the MAA
- Persistent unnecessary incurring of costs are grounds for termination by MAA
- A comprehensive regime for reporting to and interaction with the MAA
- Performance incentive scheme to be discussed before March 2002
- Allianz to apply all statutory claims management standards applicable to normal CTP claims

The Authority has invited expressions of interest for the provision of performance audit services on the management of CTP claims on behalf on the MAA by Allianz. “The services of a suitably experienced and qualified person(s) sought to:

- Develop a risk management framework and performance audit plan
- Conduct regular audits
- Provide advice to MAA management and the Audit Committee
- Liaise with Allianz, NSW Audit Office, Ernst & Young (MAA internal auditors) and the MAA finance staff

- Prepare audit reports and make recommendations in respect of continuous improvement

to ensure the effective performance of claims management services by Allianz on behalf of MAA. This is in addition to ongoing financial compliance auditing being conducted by MAA.

Question 6.14

Has the MAA been placing Allianz in sufficient funds to meet all current liabilities for payment for CIC/FAI tail claims which are now the responsibility of the Nominal Defendant?

Answer 6.14

The MAA as Nominal Defendant will meet the reasonable costs of all service providers engaged by Allianz as claims manager.

Question 6.15

Has the MAA been placing Allianz in sufficient funds to meet all current liabilities for payment for CIC/FAI tail claims which are now the responsibility of the Nominal Defendant?

Answer 6.15

Yes.

Question 6.16

As a general principle, does the MAA accept that creditors of the New South Wales Government and its statutory agencies should not expect to wait six months for payment for work performed on behalf of the Government or its statutory agencies?

Answer 6.16

Yes, however it must be made clear that the service providers are engaged by Allianz and not the MAA.

Question 6.17

Assuming the answer to the preceding question is yes, then why has the MAA failed to ensure that payment has been made for accounts rendered by legal service providers between 16 March and 30 April 2001?

Answer 6.17

Non-payment of accounts should be raised with Allianz. The MAA will investigate any complaints to it regarding non-payment.

Question 6.18

Just how many outstanding accounts from service providers does the MAA/Nominal Defendant/Allianz have from the period 16 March to 30 April 2001, (i.e. more that six months overdue)?

Answer 6.18

As above.

Question 6.19

Can the MAA give any assurance as to when (if ever) legal service providers which submitted accounts for work performed on behalf of the Nominal Defendant between 16 March and 30 April 2001 can be expected to be paid?

Answer 6.19

As above.

Question 6.20

Does the MAA really maintain that it takes over six months to set up adequate facilities to process payments of accounts? Is this fair? Is this satisfactory? What is the MAA doing about it?

Answer 6.20

Allianz has advised that all accounts are up to date. However there are claims where work was also performed prior to 16 March. These require a release to enable the MAA to prove the payments in the liquidation.

Question 6.21

Has Allianz been receiving regular payments from the MAA for its work performed as agent for the Nominal Defendant? If so, why are Allianz being paid for their work when service providers to Allianz and the Nominal Defendant are not being properly paid?

Answer 6.21

Allianz claims management fees have been paid for the period to 30 June 2001. This payment was made in October 2001

4.2.7 MAA Advertising/Sponsorship

Question 7

Question 7.1

How much has the MAA spent on advertising/sponsorship in each of the past five financial years?

Answer 7.1

\$1.283M was spent in 1999/2000 on the “works better costs less” campaign.

Over the last five years a total of \$13,148,226 was expended by the MAA in advertising/ sponsorships in the area of road safety.

From 1997- 2000 the MAA provided funding of \$5 million sponsorship funding through the Paralympian Program and \$350,000 for an advertising campaign on speed associated with the Paralympian Torch Relay

Details of individual advertising/sponsorships in addition to the Paralympian Program sponsorship follow:

Financial Year	Expenditure	Program
1996/97	4,068,398	Joint advertising with RTA (speed, drink driving)- \$4,000,000 Spinal Awareness Week \$20,000 Local Govt Road Safety Conference \$18,898 Brain Injury Awareness Week \$9,500 OZ Day 10k race \$20,000
1997/98	2,132,626	Joint Advertising with RTA \$2,088,785 Brain Injury Awareness Week \$9,500 Local Govt Road Safety Conference \$15,000 Spinal awareness Week \$19,341
1998/99	\$110,000	Wheelchair Tennis \$20,000 Summer Down Under \$52,500 University Games \$20,000 Local Govt Road safety Conference \$17,500
1999/2000	\$225,000	Byron Bay Community Safety \$50,000 Wheelchair Tennis \$50,000 Summer Down Under \$100,000 East Coast Classic Rally \$25,000
2001/2001	1,262,202	MAA/NRMA Youth Driver advertising- \$784,989 Walk Safely to School day \$57,213 Cinema Advertising with RTA \$250,000 Local Govt Road Safety Conference \$20,000 Byron Bay New Years Eve \$10,000

		Newcastle Variety Bash \$10,000 Wheelchair Tennis \$20,000 Summer Down Under \$40,000 East Coast Classic \$50,000 Eastern University games \$20,000
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Question 7.2

The MAA was a sponsor of the Paralympic Torch Relay and a group of athletes competing in the Paralympics conducted safety lectures for the MAA. What, if any, research has been done as to the effectiveness of this form of road safety message?

Answer 7.2

During the period July 1997 to December 2000 surveys of the target audience (high school and tertiary students across the State), program users (NSW Police, RTA, metropolitan and regional road safety officers, and schools) and the Paralympian athletes were conducted after each presentation by a Team MAA Paralympian. The results of the surveys were incorporated into a research project undertaken by Woolcott Research entitled "A Review of the MAA's Paralympian Sponsorship", May 2001. The overall finding was that this is a very useful way of delivering a road safety message.

Question 7.3

It was recently announced that the MAA would become a sleeve sponsor for the South Sydney Rugby League team at an annual cost of \$500,000. Is the MAA contract with South Sydney publicly available?

Answer 7.3

The MAA has entered a Partnership with South Sydney District Rugby League Club primarily aimed at using the players in road safety education and marketing. The Partnership also provided a branding opportunity which includes the placement of an MAA road safety message on the official team apparel. The MAA Rabbitoh partnership will be promoted under the road safety campaign title of Arrive alive.

The cost of the MAA South Sydney District Rugby League Club partnership provides the MAA with access to the team players to deliver the MAA's road safety messages to its key target audience, young males between the ages of 17 and 25.

The player availability is primarily made up of 45 players in the A Grade and First Division, including coaches and team managers. Players will attend 25 MAA appearances per year (either as a team, part of a team or as specifically selected team members).

Players will undertake celebrity presentations across the State, media interview appearances and participate in state-wide road safety social marketing initiatives.

Unlike limited media purchase advertising, sponsorship provides an opportunity to use a product for an extended period of time both within a determined marketing strategy as well as taking advantage of unexpected promotion opportunities.

Question 7.4

Where did the idea of the MAA becoming a sleeve sponsor for South Sydney arise?

Answer 7.4

The MAA partnership with South Sydney District Rugby League Club came about as a result of an informal MAA review of available and suitable 'sport properties' with established popularity and access to the target audience.

MAA research into South Sydney District Rugby League Club suggested a high level public endorsement of the Club and its community values, a player profile of young men between the ages of 18 and 30 and the highest level of aboriginal player participation in the NRL. The Club also had significant media and celebrity support beyond the sporting environment.

Question 7.5

Does the MAA believe that a sleeve sponsorship of a rugby league team is the most effective way to expend \$500,000 a year out of its advertising budget?

Answer 7.5

As noted at 7.3, the expenditure is primarily for use of the players to deliver a road safety message and not just branding.

Question 7.6

Does the sponsorship arrangement provide for the MAA to be supplied with hospitality facilities and grandstand seats at South Sydney games? If so, how much will any such hospitality facilities or free seats be applied to the benefit of accident victims or New South Wales motorists?

Answer 7.6

As part of any South Sydney District Rugby League Club sponsorship a hospitality package is included. Primarily this involves corporate seating and the MAA would be required to pay for any catering, which will be taken up on very limited occasions.

When the MAA had hospitality facilities as part of the Paralympic Games, the MAA made these facilities available to a range of injury and disability groups. The MAA proposes to adopt the same practice in relation to the South Sydney football games.

Question 7.7

If the sponsorship package with South Sydney includes the provision of hospitality facilities or seats at football games, were any efforts made to exclude such items from the sponsorship package and to reduce the financial commitment of the MAA accordingly?

Answer 7.7

The MAA negotiated increased field advertising and road safety message promotion opportunities in lieu of a number of hospitality benefits thereby reducing the original package.

Question 7.8

Prior to undertaking the South Sydney sponsorship, did the MAA make any inquiries as to the effectiveness of the Victorian Transport Accident Commission sponsoring an AFL team in Melbourne? Is there any research that shows such advertising is effective? Is there any comparison between the effectiveness of this type of road safety message as against television and print advertising?

Answer 7.8

The MAA consulted with the Victorian Transport Accident Commission (TAC) on a number of occasions between 1997 and 2000 ending with a meeting with the TAC CEO, Marketing Manager and Road Safety Manager in November 2000 to discuss the benefits of sports sponsorship.

The TAC has provided the following information in relation to market research undertaken in 2001 gauging the ongoing effectiveness of sports sponsorship related to their 'drink-driving' campaign. The TAC has conducted this form of research annually.

The objective of the present research is to determine whether the target audience associates the correct road safety message with the sponsorship. The results (sample group 300) reflect the Victorian investment and experience:

- 67% of those surveyed were aware of the TAC sponsorship of Richmond Football Club (the TAC's only major football sponsorship in 2001)
- of those aware of the sponsorship, a total of 81% correctly associated it with the drink-drive/.05 message
- 90% of respondents believe it is important for the TAC to sponsor football because of the significance of the road safety messages to the football audience
- 87% said that if they plan to drink at the football they will make alternative travel arrangements
- 83% agreed that sponsorship of Richmond helps keep the drink-drive message in people's minds
- 64% believe that sponsorship of Richmond reminds people not to drink too much at the football.

The TAC also undertook qualitative research early last year, which stated that sponsorships (particularly football) are a very good alternative to advertising because they are more 'user friendly' and less confronting ... they 'humanise' the road safety message.

4.2.8 Insurer Profits

Question 8

Question 8.1

In percentage terms, what does the MAA view as an acceptable level of insurer profit under the scheme?

Answer 8.1

The MAA has provided the Committee with a report on Insurer Profit. In the section on Prospective Profit (pp 5-6) the MAA reports that it "... regards the indicative range of 5%-5.6% (of gross premium) as the minimum necessary to support CTP in NSW, especially in the current climate where the insurance industry reports that there has been a contraction in the capital available."

Question 8.2

What are the MAA's best current estimates with regard to the likely percentage profit to be made by the CTP licensed insurers on the first year of operation of the scheme?

Answer 8.2

5% of gross premiums

Question 8.3

The MAA has provided a table setting out an estimate of the CTP scheme cash flow for premiums written during the year ended 30 September 2000, (the first year of premium collection). The table calculates total premium written at \$1,325 billion and projects an insurer profit of \$61 million or 5% of premiums.

The MAA has calculated that claim payments up to 30 September 2000 would amount to \$1 million, to 30 September 2001 \$49 million and so on, peaking with payments of \$266 million in the year ending 30 September 2003.

- *What was the dollar amount of payment for the year ended 30 September 2001, noting that on projection the scheme should have paid out \$49 million?*
- *If claim payments for the year ended 30 September 2001 were significantly less than \$49 million does the MAA attribute any significance to the gap between projection and actual payment?*
- *Taking the percentage difference between projected claim payments and actual claim payments for the year ended 30 September 2001 and assuming the same percentage gap on projected claims in future years, what is the increased dollar amount and percentage insurer profit?*

Answer 8.3

A total of \$54.8 million (not adjusted for inflation) has been paid to the end of September 2001 on claims arising from accidents during the first year of the scheme (5/10/99-30/9/00). The breakdown according to payment year is:

- \$13.6 million was paid during the year 5/10/99-30/9/00, and
- \$50 million was paid during the year 1/10/00-30/9/01.

These actual payments are based on accidents that occurred between 5 October 1999 and 30 September 2000. The information set out in the Cashflow is based on underwriting year and relates to the policies that incepted between 5 October 1999 and 30 September 2000. Although the bases are not the same, the payments made according to accident year are of the same order as the likely amounts that would be recorded on an underwriting year basis – this would require an actuarial estimation.

According to the Cashflow, the actuarial projection for claim payments in the first two years is \$47 million discounted, compared with \$54.8 million actually paid for claims arising from the first accident year.

Question 8.4

By what date does the MAA anticipate that it will be able to give an accurate report on the profit performance of the scheme?

Answer 8.4

The MAA will provide progressive reports on profit as the scheme develops. As the Cashflow provided to the Committee shows, claim payments increase gradually and reach a peak around the 3rd and 4th years after the original underwriting year. The first underwriting year of the scheme will reach this stage of development in 2003/2004.

Question 8.5

What rate of return on funds on funds invested did the CTP insurers obtain for the first year of operation of the scheme? If the MAA is unable to give a percentage rate of return as the industry average, then when does the MAA anticipate it will be able to answer this question?

Answer 8.5

In premium filings the insurers return on investment of premiums is calculated at a risk free rate, ascertainable by reference to the current Commonwealth Government Bond rate. Any investment at above the risk free rate is undertaken by the company putting shareholder capital at risk.

Question 8.6

In dollar terms, what were the administration costs of the insurers for the first year of operation of the scheme?

Answer 8.6

In the year 1 October 1999 – 30 September 2000, the total premium income was \$1.338 billion. In their premium filings relating to the first year of the scheme, the insurers estimated that acquisition costs would equate to 15% of gross premium. Applying the insurers' estimate to the premium collected gives an estimated acquisition cost of \$200.7 million.

Question 8.7

Does the MAA permit insurers to include in their administration costs any allowance for advertising, either generic or CTP related? If so, why?

- a) In light of the compulsory nature of the CTP scheme, does the MAA agree that insurers ought to be able to include advertising in their administration costs?*
- b) Given the compulsory nature of the scheme, does the MAA agree that it is inappropriate to allow generic brand advertising by insurers to be partially attributed to administration cost for the CTP scheme? Should part of the sponsorship costs of the QBE Swans, AAMI Waratahs, or NRMA Careflight Helicopter be attributable to administration costs for the CTP scheme? If the MAA agrees it is inappropriate, has any directive been issued to the CTP insurers to that effect?*

Answer 8.7

The MAA does not distinguish advertising costs from other acquisition costs.

- a) Yes, NSW CTP is underwritten in a competitive marketplace.
- b) The MAA has not issued any directive about advertising costs.

Question 8.8

The Motor Accidents Act 1988 was significantly amended as at 1 January 1996. The principal amendment significantly reduced the amount of compensation available for non-economic loss by substituting Section 79A of the Act. On the basis of its retrospective analysis of profits, does the MAA accept that the changes introduced effective January 1996 were working in reducing total payments on claims and increasing insurer profits?

Answer 8.8

The 1995 amendments successfully stopped the continued escalation in costs.

One of the key objectives of the Motor Accidents Scheme changes in 1999 was to establish an independent medical disputes resolution service. Should a dispute arise concerning the reasonableness and necessity of attendant care services, this can be referred, by either party, to the Medical Assessment Service for an independent expert medical assessment.

4.5 NSW Farmers Association

Question 1

- *The MAA to justify the effective increase in premiums in light of the decreases in the base premium.*
- *What is the method of determining the relativities and the depth of scrutiny the MAA bring to bear on filed premiums.*
- *What is the justification of the significant change in relativity for farm plant, the loading of the premium and the huge increases in total cost between 1994 and 1998.*

Answer 1:

CTP insurance for unregistered vehicle permits (UVPs) is provided by one NSW CTP insurer. The sole insurer is selected by a tender process in which all NSW CTP insurers are invited to participate.

This is necessary as the CTP insurance is paid directly to the RTA when the permit is obtained, and simplifies the process. The MAA has required the insurers when tendering to charge differential premiums according to a risk assessment for the type of vehicles insured. In the past this has been done by reference to the MAA relativities for registered vehicles.

The MAA recently invited tenders for NSW CTP insurers to act as the sole insurer for UVPs and conditionally registered vehicles to coincide with the RTA's proposed introduction of conditional registration in April 2002. Under the revised tender document the insurer is now required to propose premiums based on risk assessment for the UVP vehicles without reference to relativities for registered vehicles.

The tender selection is currently underway and the MAA expects that the premiums for farmers' vehicles will reduce as a result.

4.6 Insurance Council of Australia

Question 1

What are the prospects of the existing Transitional Arrangements under the GST legislation for CTP insurance, being extended once the 3 year transitional concession period expires in June 2003? What impact will that have on Green Slip premiums in NSW if the extension is not granted? Is there anything the NSW Government can do to help extend the transitional period if it helps contain costs?

Answer 1

The ICA, individual insurers and representatives of interstate CTP schemes have made representations to the Federal Government to continue the transitional arrangements. The NSW CTP insurers, the ICA, the MAA and interstate CTP representatives met with the Australian Taxation Offices on 22 November at the ICA's Offices.

The ICA will again host a meeting of these participants on December 12. Representatives of Federal Treasury will also attend this meeting.

Question 2

What impact has the GST legislation on CTP claims that are shared among insurers in a multi-vehicle accident or claims involving the nominal defendant?

Answer 2

The ICA has taken on the issue. The MAA was present at a meeting called by the ICA at the ICA's Offices on 3 December at which the insurers put forward a proposal which would be used as the basis for a meeting between the ICA, the ICA's legal representative John Morgan, NSW CTP insurers, the ATO and Federal Treasury. The meeting was to be arranged during the week of 3 December.

Question 3

As from 1 January 2002, reinsurers are not providing cover on claims rising out of terrorist activities. What impact will that have on Green slips.

Answer 3

The MAA has been advised that some reinsurers will not provide reinsurance cover on claims rising out of terrorist activities.

The issue is broader than just CTP insurance and applies to all general insurance. Accordingly, there have been discussions between State and Federal Treasury officers on this matter. It is acknowledged that the issue is a national one which needs to be addressed on a national basis. I understand that the NSW Government is currently looking at whether there is a need for the State Government to take any necessary interim action.

It should be noted that APRA prudential requirements do not specify that all risks must be reinsured, rather it is a matter for insurers to demonstrate that they can cover the risk.

Question 4

What effect has the Federal Privacy Health legislation had on CTP insurers collecting and exchanging information to investigators or assessors to investigate the claim, or to legal advisers to prepare a defence?

Answer 4

The Federal Government has passed privacy legislation which applies to the private sector including the Insurance industry. Under this legislation, insurers are obliged to apply the privacy principles outlined in the legislation and to develop appropriate protocols to protect the personal information they hold on individuals. Insurers will have to develop suitable protocols for the sharing of any personal information. The Federal Privacy Commissioner will be monitoring the compliance of the industry

The NSW State Government privacy legislation already imposes obligations and restrictions on access to health information of individuals and the Motor Accident Authority is currently examining the consent provisions of the NSW Claims Form with the view to meeting the requirements of the NSW Department of Health privacy protocols.

Chapter 5 Evidence Arising from the Hearing

This Chapter contains responses from Motor Accidents Authority to questions on notice from 17 December 2001 hearing.

5.1 The Hon John Ryan requested more information on the amount of ANFs payments.

Total payments on finalised ANFs (at 30 September 2001)

Payment	Number of ANFs	%	Cumulative %
Less than \$100	943	26.8	26.8
\$100 - \$199	682	19.4	46.2
\$200 - \$299	548	15.6	61.7
\$300 - \$399	407	11.6	73.3
\$400 - \$499	350	9.9	83.2
\$500 - \$599	231	6.6	89.8
\$600 - \$999	292	8.3	98.1
\$1,000 & over	68	1.9	100.0
Total	3521	100.0	

5.2 Mr Bowen undertook to provide a profile of NEL payments under new and old schemes.

NEL payments on finalised claims (at 30 June 2001)
Excluding interstate claims and ANFs

NEL payment	Old scheme	New scheme
Zero	3,383	3,450
Less than \$10,000	892	11
\$10,000 - \$19,999	255	6
\$20,000 - \$29,999	66	4
\$30,000 - \$39,999	22	2
\$40,000 & over	44	3
Total	4,662	3,476
% finalised	21.4%	20.0%

5.3 In the first 21 months of the new scheme:

- 3,476 claims (excluding interstate claims and ANFs) were finalised, representing
- 20% of claims notified during that period arising from accidents during the 21 month period.
- Non-economic loss payments were recorded in 26 of these claims (0.7%).

5.4 In the comparable time period in the old scheme, that is, the last 21 months:

- 4,662 claims (excluding interstate claims) were finalised, representing
- 21% of claims notified during that period arising from accidents during the 21 month period.
- Non-economic loss payments of more than \$40,000 were recorded in 44 of these claims (0.9%). In their projections leading up to the legislative reforms, PricewaterhouseCoopers actuaries estimated that the 10% impairment threshold would equate to an NEL payment of about \$40,000.

5.5 It should be noted that these numbers exclude interstate claims whereas previous figures from the MAA have included interstate claims. Interstate claims have been excluded because NEL is not determined according to NSW guidelines.

5.6 The NEL performance audit conducted by the MAA (and provided to the Committee), found that insurers had reserved for NEL on 12% of full claims. This corresponds with the actuarial assumption that approximately 10% of claimants would receive NEL.

According to the NEL performance audit report (p. 12)

The minimum dollar amount being reserved for NEL by five of the six insurers was generally about \$25,000 to \$30,000. This range was slightly lower than the actuarial forecasts of \$40,000 to \$60,000 that were made prior to the commencement of the new Act. Based on the data provided to the MAA by four of the six insurers audited, for all their claims under the new Act more than 80% of all NEL reserve estimates were in excess of \$40,000.

5.7 Ms Rizzo undertook to report anticipated savings due to NEL (page 22 of Report)

PricewaterhouseCoopers estimated a reduction of 41% in the amount of non-economic loss payments, equivalent to a reduction of \$127.1 billion based on a total of 17,170 claims.

Appendix 1

MAA Reports presented to the Committee

1 CTP Insurer Profit

Report to the Legislative Council Standing Committee on Law and Justice from the Motor Accidents Authority

Insurer profit

In the MAA's last report to the Standing Committee, it was noted that work had commenced on the development of a methodology to allow the MAA to better report on insurer profit, a matter on which the MAA has specific statutory charter to report to the Committee.

Under s28 of the Motor Accidents Compensation Act

- (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.

The profit margins referred to in s28 are called prospective profit in this report as they are profit margins estimated prospectively, that is, prior to the business being undertaken, before CTP policies are sold and well before claims are lodged.

The MAA will also report on retrospective profit which relates to past underwriting years for which policies have been sold and premiums collected, and at least some claims experience has occurred. According to s5(2)(d) of the Act, it is acknowledged that

... insurers, as receivers of public money that is compulsorily levied, should account for their profit margins.

The MAA commissioned Taylor Fry Consulting Actuaries to develop methodologies for reporting on both the prospective and retrospective profit of NSW CTP insurers. The methodologies have been developed in consultation with the insurance industry and their actuarial advisors. Taylor Fry have applied the methodologies and the results are set out below.

Retrospective profit

The MAA presents two measures of retrospective profit. The first measure is an estimate of the percentage that insurer profit represents of the total premium written, without reference to the capital required by insurers to support the business. It is on this same basis that the MAA reports on scheme efficiency, showing how the premium collected is divided between transaction costs and compensation payments to the claimants.

The second measure of retrospective profit is an estimate of the insurers' after tax return on capital (ROC). This measure involves a more complex modelling process which takes into account insurers' allocation of capital to support CTP business and the investment returns earned on that capital.

Retrospective profit - % of premium

Retrospective profit is presented according to three time periods. The first is the regulated period from 1 July 1989 to 30 June 1991. During this period, when premiums were set by the government, the profit margin is estimated to be 55% of premiums. Fixed premiums were set for the first two years based on the adverse experience of previous schemes. The actual experience for the first two years was better than expected.

Table 1: Retrospective Profit

Regulated period 1 July 1989 – 30 June 1991

Underwriting year ended 30 June	Premiums written	Acquisition expenses and net cost of reinsurance	Bulk-billed ambulance and hospital costs	Discounted claim payments and claim handling expenses	Estimated profit/(loss) for insurers:	
					Amount	% of premiums
	\$m	\$m	\$m	\$m	\$m	%
1990	1484	151	23	472	837	56
1991	1072	152	30	332	558	52
Total	2556	303	53	804	1395	55

The profit margin dropped dramatically in the second – deregulated – period, from 1 July 1991 to 30 June 1999. During this period the Motor Accidents Act 1988 was in operation, being replaced by the Motor Accidents Compensation Act 1999 from 5 October 1999.

Insurers' profit varied during this period from an estimated 34% loss in 1994 to an estimated 24% profit in 1996. The average profit for this period is estimated to be 8% of premiums. However, ultimate claim payments for the more recent years are still highly uncertain. When a risk margin at a 75% level of sufficiency (a prudential standard proposed by the Australian Prudential and Regulatory Authority (APRA)) is included in the estimate of future claim payments, the estimated average profit for the 1991-1999 period drops to 4%. See Table 2.

Table 2: Retrospective Profit**De-regulated period 1 July 1991 – 30 June 1999 (Motor Accidents Act)**

Underwriting year ended 30 June	Premiums written	Acquisition expenses and net cost of reinsurance	Bulk billed ambulance and hospital costs	Discounted claim payments and claim handling expenses:			Estimated profit / (loss) as % of premiums	Estimated profit / (loss) with future claims liability at 75% level of sufficiency
				Actual + projected future claim payments	Actual past payments to 30/6/01	% paid to 30/6/01		
	\$m	\$m	\$m	\$m	\$m	%	%	%
1992	709	162	27	431	419	97	13	12
1993	654	159	20	555	530	95	(12)	(13)
1994	689	160	26	739	685	93	(34)	(35)
1995	801	168	28	715	655	92	(14)	(15)
1996	1233	211	32	698	569	82	24	22
1997	1346	225	32	809	527	76	21	18
1998	1437	221	35	985	388	39	14	7
1999	1551	214	34	1068	176	16	15	7
Total 92-99	8420	1520	234	6000	3949	66	8	4

The third period relates to the experience under the Motor Accidents Compensation Act, which is very undeveloped. Table 3 shows the expected profit margins as reported by the insurers themselves in their premium filings. Based on the actual amount of premiums written for the underwriting year, the estimated industry average profit margin is 5%. The actual profit margin cannot be accurately estimated at this time.

Table 3: Retrospective Profit**Motor Accidents Compensation Act**

Underwriting year ended 30 September	Premiums written	Acquisition expenses and net cost of reinsurance	Bulk-billed ambulance and hospital costs	Discounted claim payments and claim handling expenses	Estimated profit / (loss) as % of premiums
2000	\$m 1325	\$m 173	\$m 36	\$m 1054	% 5

Retrospective profit - ROC

Estimates for the insurers' after tax return on capital (ROC) take into account both:

- profits or losses arising from premiums, and
- investment returns on insurers' capital assumed to be supporting NSW CTP business.

During the deregulated period from July 1991 to June 1999, annual ROC ranged from an estimated 5% in 1994 to 19% in 1996. The overall average ROC during this period is estimated at 11%.

In their premium filings individual insurers nominated target ROCs after tax for CTP in the range 9% - 17.5%.

In three of the eight years between July 1991 and June 1999, the estimated retrospective ROCs have fallen short of the insurers' target range. In four years, the ROCs fell within the range. For 1996, the estimated retrospective ROC is 19%, slightly above the target range.

The insurers' ROC is compared with investment in Australian equity in Table 4. The like with like comparison is the insurers' before tax ROC in column 3 with the estimated average investment return in column 5. There are three underwriting years, 1993 – 1995, where the performance is worse than the average. For the other five years, the insurers' estimated before tax ROC is greater than the estimated average before tax investment return from Australian equity investments.

Table 4: Retrospective Profit – Return on Capital
De-regulated period 1 July 1991 – 30 June 1999 (Motor Accidents Act)

Underwriting year ended 30 June	Estimated after tax ROC	Estimated before tax ROC	Before tax investment return from investment in Australian equity	
			During year	Estimated average from mid u/w year to 30/6/01
	% p.a.	% p.a.	% p.a.	% p.a.
1992	15	24	10	13
1993	7	10	14	13
1994	5	7	17	12
1995	7	10	6	12
1996	19	29	12	13
1997	17	26	29	12
1998	12	17	2	11
1999	14	21	16	12

Prospective Profit

Background

At least once a year, each insurer must provide the MAA with a premium filing that sets out the insurer's derivation of the premium they wish to charge and includes the insurer's assumptions on all components of the premium. One component of the filed premium is the level of profit that the insurer estimates will ultimately result from the business.

Taylor Fry Consulting Actuaries have developed a methodology for the determination of a prospective profit margin which can be used to evaluate premium filings.

The determination of the prospective profit margin was based on a 'representative' insurer and involved three components:

- The determination of a suitable quantum of total capital (net assets) for a representative insurer.
- The determination of a suitable allocation of insurer capital to NSW CTP.
- Calculation of a profit loading that would service the allocated capital at a fair rate of return.

The representative insurer is based on the average of insurers writing CTP business in NSW. Taylor Fry calculations are based on a representative insurer holding capital equal to 58% of CTP technical provisions, which is approximately equal to 66% of outstanding claims provision (OCP) for NSW CTP. The insurer also holds additional (implicit) capital as a prudential margin within the provision for outstanding claims. The Taylor Fry methodology for allocating capital to the CTP line of business is consistent with APRA's new prudential regime.

There are wide variations between individual insurers with respect to capitalisation. In their three most recent premium filings CTP insurers have reported notional capital allocation to CTP equivalent to 20%-60% of OCP. The allocation of capital by the representative insurer used in the derivation of the profit margin is slightly higher than the highest notional capital allocation reported by an individual CTP insurer to date.

Prospective Profit

Results

The indicative range resulting from Taylor Fry's calculations is 4.5%-6% of gross premium for the representative insurer. This range accounts for two levels of the correlations between claims costs and stock market returns, being 0% and 10%. A value of 0% reflects the situation where there is no such correlation. In this case, the range of profit margins is 5-5.6%.

As the range of profit margins relates to a representative insurer, they are illustrative only. It is fully expected that profit margins filed by individual insurers may vary from them, reflecting the insurers' own business structures.

The range derived by Taylor Fry is at the lower end of profit margins included by insurers in their filings to date. Over the last four years profit margins have ranged from 6% to 10%, with a current weighted average of 8%.

The MAA regards the indicative range of 5%-5.6% of gross premium as the minimum necessary to support CTP in NSW, especially in the current climate where the insurance industry reports that there has been a contraction in the capital available. This contraction is exacerbated by the terrorist events of September 2001 and their subsequent impact on insurers and reinsurers.

Appendix 2

MAA Reports presented to the Committee

2 Cashflow

Attachment to Profit Paper - Cashflow

In addition to their work on profit, the MAA also requested Taylor Fry Consulting Actuaries to produce a cashflow for the first underwriting year under the Motor Accidents Compensation Act. The aim of the cashflow table is to demonstrate the timing of income and outgoings as identified by the insurers in their first lodged premium filings under the Motor Accidents Compensation Act.

The cashflow identifies the actual total amount of premiums written in the first year. The table then shows estimates of the likely outgoings from the premium pool and the likely timing of those outgoings.

The only actual outgoing figure is the bulk billed ambulance and hospital cost. All other figures are estimates and projections based on insurers' first premium rate filings under the Act, supplemented by the PricewaterhouseCoopers and Trowbridge Consulting actuarial projections, produce in August 1999 at the time that the Act was being drafted. The majority of insurers' first premium rate filings under the Act were based on these actuarial projections.

Insurers make payments for the bulk billed hospital and ambulance costs in the same year that premiums are received. In addition, it has been assumed that insurers outlay funds for business acquisition expenses during the same year as the premiums are received.

In relation to reinsurance costs, the table includes an estimate of the discounted net cost of reinsurance notionally assumed to be paid by insurers at the same time as premiums are received. The actual situation is more complex with insurers paying reinsurance premiums during the year, but not receiving recoveries from reinsurers until claims are settled.

The projected claims payments are based on actuarial projections produced by PwC and Trowbridge Consulting in August 1999 at the time that the Act was being drafted. The timing and amount of claim payments are indicative, and may not be the same as the actual payment pattern. However, the cashflow table does show clearly that claim payments relating to an underwriting year increase gradually and reach a peak around the 3rd and 4th years after the original underwriting year. It is estimated that the flow of claim payments relating to an underwriting year will take as long as sixteen years to complete.

“Simple pie chart” approach estimate of NSW CTP cashflow based on premiums written during the year ended 30 September 2000, according to August 1999 premium rate filings

Year ending 30 September	Total premiums written by insurers (a)	Estimate of insurers' acquisition expenses (b)	Estimate of net cost to insurers of reinsurance (c)	Bulk-billed ambulance and hospital costs (d)	Projected claim payments during year:		Projected claims handling expenses during year:		"Simple pie chart" approach estimate of discounted value of profit for insurers:	
					Amount (e)	Discounted value (f)	Amount (g)	Discounted value (h)	Amount (i)	Percentage of premiums (j)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
2000	1325	160	13	36	1	1	0	0		
2001					49	46	3	3		
2002					159	140	9	8		
2003					266	220	15	13		
2004					246	191	14	11		
2005					167	122	10	7		
2006					117	80	7	5		
2007					94	60	5	3		
2008					67	40	4	2		
2009					50	28	3	2		
2010					36	19	2	1		
2011					33	16	2	1		
2012					25	12	1	1		
2013					18	8	1	0		
2014					13	5	1	0		
2015					13	5	1	0		
2016					7	3	0	0		
Total	1325	160	13	36	1359	997	78	57	61	5%

Notes: (a) From insurers' premium returns to the MAA for the period 1/10/99 to 30/9/00. Excludes GST on premiums. This amount differs slightly from the amount of premium written during the first year governed by the Act which commenced on 5/10/99 (rather than on 1/10/99).

(b) Based on weighted average of insurers' rate filings. Acquisition expenses include:

- MAA levy;
- RTA commission;
- other commission paid by insurers, and
- other business acquisition costs.

Business acquisition expenses have been assumed to be paid by insurers at the same time as the corresponding premiums were received.

(c) The actual net cost to insurers of reinsurance for an underwriting year consists of:

- reinsurance premium, less

- exchange commission paid by reinsurers, less
- past and future recoveries from reinsurers

all expressed on a discounted present value basis.

Past and future recoveries from reinsurers cannot be estimated for all NSW CTP insurers combined from the data which is readily available.

Therefore an estimate of the discounted net cost of reinsurance based on the weighted average of insurers' premium filings has been adopted and notionally assumed to be paid by insurers at the same time as the corresponding premiums were received.

- (d) Data supplied by the MAA.
- (e) Derived from PricewaterhouseCoopers' and Trowbridge Consulting's actuarial projections in August 1999 of Scheme claim payments in respect of insurance policies to be written during the underwriting year commencing 5/10/99. Includes adjustments for the estimated net effect of the new Tax System on claims costs.
- (f) Projected claim payments have been discounted from the year of payment back to 31/3/00, ie back to the approximate average date when insurers received premiums written during the year ended 30/9/00, at an interest rate of 6.5% p.a., which was the average redemption yield available during that year on 5 year Commonwealth Government bonds.
- (g) Assumed to be 5.75% of claim payments, which was the weighted average allowance for claims handling expenses in insurers' rate filings for the underwriting year commencing 5/10/99.
- (h) Claims handling expenses have also been discounted from the year of payment back to 31/3/00 at an interest rate of 6.5% p.a.
- (i) Calculated as $\{(a) - (b) - (c) - (d) - (f) - (h)\}$.

Expressed as an estimated discounted value as at 31/3/00, to facilitate comparison on a like with like basis with the amount of premiums written.

- (j) Calculated as (i) (a).

Appendix 3

MAA Reports presented to the Committee

3 CTP's insurer's reserving of non-economic loss

MOTOR ACCIDENTS AUTHORITY

NON - ECONOMIC LOSS

PERFORMANCE AUDIT REPORT

STANDING COMMITTEE ON LAW & JUSTICE

December 2001

EXECUTIVE SUMMARY

The Compliance Branch of the MAA conducted a Performance Audit of the reserving practices for Non-Economic Loss (NEL) for claims lodged under the Motor Accidents Compensation Act 1999 (the new Act). The main objectives of the NEL Performance Audit were to determine the percentage of claims with reserve estimates for NEL, to determine the methods used for assessing eligibility and the amounts being reserved for NEL, and to assess whether this was consistent with the objects of the new Act.

CTP insurers audited were AAMI, Allianz, GIO, NRMA, QBE and Zurich.

Because of the large number of new Act claim files managed by the above insurers (>19,000), it was impractical for the MAA to audit all files. The Statistics Branch of the MAA extracted data from the MAA Claims Register to provide the audit team with a random sample of files for each insurer. Officers of the MAA carried out the on-site inspection of claim files in August/September 2001.

This report presents the objectives, scope, methodology and findings of the NEL performance audit of the industry in general. The market-weighted average of all new Act claims with NEL reserve estimates, based on the MAA random audit samples of six insurers, was **12%**. This compared favourably with an actuarial forecast made prior to the commencement of the Act that the 10% most severely injured claimants would be eligible for NEL.

The methodology used by insurers to determine the dollar amount or quantum for NEL was generally based on the severity and type of injuries, comparative common law awards, CARS determinations and the age of the claimant. The minimum dollar amount being reserved for NEL by insurers was generally about \$25,000 to \$30,000. Based on the data provided to the MAA, more than 80% of NEL reserve estimates were in excess of \$40,000.

The methodology used by insurers to determine whether a claim is eligible for NEL was based on a combination of factors. Claims managers and supervisors generally appeared to largely rely on experience and correlations based on impairment tables from the previous Act, whilst they are developing a working knowledge of the new Act's WPI guidelines.

The MAA auditors were of the opinion that the insurers, in line with the objects of the new Act, appeared to be reserving NEL for the most severe physical injuries involving ongoing impairment. The number of claim files examined with psychiatric injuries was too small to draw any conclusions about these types of injuries.

A number of recommendations have also been made, based on further observations from all six insurers, in relation to the:

- lack of documented in-house determinations of %Whole Person Impairment (%WPI);
- development of in-house knowledge for determining %WPI;

- inappropriate advancement of payments earmarked against NEL;
- irrelevance of questions in standard letters of request for further information.

INTRODUCTION

Purpose of the Report

This report has been prepared to present the objectives, scope, methodology and findings of a performance audit for the awarding of Non-Economic Loss (NEL) compensation by Compulsory Third Party (CTP) personal injury insurers under the Motor Accidents Compensation Act 1999 (the new Act).

NEL is defined in the new Act as compensation for pain and suffering; loss of expectation of life; loss of amenities of life and disfigurement.

The findings presented in this report are based on information obtained from the MAA's files, correspondence and documents supplied to the MAA by the insurers, interviews with the insurers' personnel responsible for managing and handling claims and observations made during on-site examinations of claim files. Matters of performance beyond the scope of this audit are not addressed in this report.

This report has been prepared for the purpose described and no responsibility is accepted for its use in any other context or for any other purpose.

Objectives of the Audit

The objectives of the audit were to:

1. Determine and verify the percentage of claims lodged under the new Act, for which the insurers have made reserve estimates for NEL and to assess whether this was consistent with the objects of the Act.
2. Examine the methodologies used by insurers to:
 - establish whether or not claimants' injuries are likely to exceed the threshold for NEL which is a Whole Person Impairment (WPI) greater than 10%, and to,
 - estimate the dollar amount reserved for claims likely to receive NEL compensation.
3. Determine the minimum, mean and maximum dollar amounts being reserved for NEL by each insurer.

Scope of the Audit

The scope of the audit was limited to CTP personal injury claims for accidents on or after 5 October 1999, the date the new Act commenced, lodged with insurers who were licensed and authorised by the MAA in underwriting CTP business in NSW. The licensed CTP insurers audited were AAMI, Allianz, GIO, NRMA, QBE and Zurich.

The types of claim notifications in the audit sample included Accident Notification Forms, Personal Injury Claim Forms, Compensation to Relatives Claim Forms and Workers Compensation Recovery claims. Both closed and open claims were included in the audit samples.

Because of the long-tail nature of CTP claims, particularly those with severe injuries that are likely to attract a payment for NEL, less than 30 claims with NEL payments had been finalised under the new Act at the time of the audits. Therefore, the findings of this report are based largely on an analysis of the NEL reserve estimates made by insurers as at August/September 2001 and not of actual payments made for NEL.

Most claim files examined during the audit were selected from those recorded on the MAA Claims Register from the commencement of the new Act on 5 October 1999 up to 30 June 2001. Some claim files were selected from lists supplied by the insurer of files that may have included claims with NEL reserves up to the date of the on-site audit (see Methodology for dates of on-site audits and a detailed description of the audit samples).

Because one insurer had notified the MAA that their reserve estimating procedure had changed significantly in May 2001, the audit sample for that insurer was limited to all notifications between 15 May and 30 June 2001 in order to examine their current estimating practices.

A small number of claims made against licensed CTP insurers for accidents in the ACT were included in the original audit samples. These ACT claims were subsequently excluded from the audit sample, as the law applying to these claims was not the Motor Accidents Compensation Act 1999.

The HIH insurance group (including CIC Insurance and FAI General Insurance) went into provisional liquidation on 15 March 2001. As a result the majority of CIC Insurance and FAI General Insurance claims became Nominal Defendant Fund claims. Allianz on behalf of the MAA is managing these claims. Since these claims are proposed to be the subject of a future MAA audit, all CIC Insurance and FAI General Insurance run-off claims were excluded from this audit.

CIC Allianz and FAI Allianz, two companies controlled by Allianz, now undertake renewal of CTP insurance previously written by CIC Insurance and FAI General Insurance. Because of the immaturity of these claims portfolios, CIC Allianz and FAI Allianz were not included in the audit.

The following insurers were excluded from the audit, as they do not manage claims for accidents on or after 5 October 1999 although they continue to manage run off claims made prior to that date. These insurers are CGU, Mercantile Mutual, Royal & Sun Alliance & SGIO.

A review of rehabilitation documents and accounts relating to insurers' performance and compliance with the Treatment Rehabilitation Attendant Care (TRAC) Guidelines was beyond the scope of this

audit. Similarly an assessment of compliance with the Claims Handling Guidelines was beyond the scope of this audit.

Audit Criteria

The following audit criteria have been used as the performance indicators for the three audit objectives.

Audit Criteria for Objective 1

To determine the percentage of licensed insurers' CTP claims portfolios with NEL reserve estimates:

- It was anticipated that this percentage would be close to the actuarial estimates, derived before the new Act commenced, that 10% most severely injured claimants would be eligible for NEL.

To assess whether the types of claimant injuries with NEL reserve estimates was consistent with the objects of the new Act:

- It was also anticipated that the types of injuries for which insurers make NEL reserve estimates would be consistent with the objects of the Motor Accidents Compensation Scheme, as stated in **Section 5(1) (b)** in the **Objects of Act**:
- 'to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities'.

Audit Criteria for Objective 2

To determine the insurers' methodology for determining %WPI:

- The %WPI should be based on the 4th edition AMA/MAA Permanent Impairment Guidelines.

To determine the insurers' methodology for determining the NEL quantum:

- There are no formal criteria for determining the NEL quantum.
- The maximum amount reserved for NEL was expected to be less than or equal to the maximum amount a court may award for NEL, which at the time of the audits was \$284,000.

Audit Criterion for Objective 3

To determine the CTP insurance industry's quantum reserved for NEL:

- Based on actuarial estimates, derived before the new Act commenced, the minimum quantum for NEL was expected to be in the range of \$40,000 - \$60,000.

METHODOLOGY

The MAA audit team consisted of:

- Principal Compliance Officer (PCO).
- Senior Compliance Officer (SCO).
- Senior Compliance Officer - Nominal Defendant (SCOND).

The audit team presented to the insurer premises on the dates listed in the table below:

INSURER	AUDIT DATES	AUDIT TEAM
GIO	2, 3 & 7 August 2001	PCO,SCO and SCOND
NRMA	9, 10, 14 & 24 August 2001	PCO and SCO
QBE	15-17 August 2001	PCO and SCO
ALLIANZ	20-22 August 2001	PCO,SCO and SCOND
ZURICH	28-30 August 2001	PCO,SCO and SCOND
AAMI	4,6 & 7 September 2001	PCO,SCO and SCOND

- Prior to the on-site examination of claim files the insurers were requested to provide the MAA with the following information for all new Act claims:
 - heads of damage for which reserve estimates were made;
 - method, including timing, used to estimate a reserve for NEL;
 - how settlement amounts were allocated to various heads of damage;
 - number and percentage of all claims received for which NEL payments were reserved;
 - number of finalised claims with NEL payments, the number of open claims with a part payment for NEL and the number of open claims with no NEL payment but a provision for future NEL payment;
 - list of claims with NEL reserve estimates or payments and the NEL amounts.

Four of the six insurers audited were able to provide the MAA with the above information prior to the audits. Two insurers were not able to provide all of the above information because their central computer databases did not contain data on individual NEL reserve estimates. During their on-site examination of files one of these two insurers was able to provide the auditors with a manual count of new Act claims for which there had been NEL reserve estimates.

Prior to the on-site file examinations, all insurers supplied the auditors upon request with a summary computer printout for each claim file that was to be audited. The information contained on these computer printouts varied depending on what information was being captured on the insurers' computer databases. These computer printouts expedited the audits because they reduced the amount of transcription by the auditors.

The auditors verified relevant information on these computer printouts by cross-matching the data with information sighted in the claim files.

The on-site examinations of claim files commenced with discussions between the MAA auditors and the Claims Manager and/or Supervisor(s) about their claims management and handling practices, and the structure of their claim files. Following these discussions, the MAA auditors then examined two samples of claim files for each insurer described below.

The first audit sample was a focused sample for which the insurer was given prior notice. The second sample was a random sample of claims for which the insurer was given minimal notice.

Focused Audit Sample

Approximately one week prior to the on-site audits, a focused audit sample of 10 to 30 claim files was selected by the MAA for each of the four insurers who had provided the MAA with a list of all their new Act claims with NEL reserve estimates.

The focused audit sample claim files were examined first by the auditors upon arrival at the insurer's premises to provide the insurer with time to retrieve the random audit sample. The focused sample was biased to include a higher proportion of claims with low NEL reserve estimates (<\$40,000) in order to verify the minimum amounts being reserved for NEL.

These focused audits were also used by the auditors to gain a better understanding of the insurers' NEL estimating procedures and claims management practices.

The following information was either included on the insurer's computer printouts or recorded by the auditors on these printouts for each of the claim files examined in the focused sample:

Claims Specific Information:

- claimant's name, date of birth and occupation;
- the name of the claimant's legal representative, if applicable;
- details of claimant's injuries from medical certificate and injury codes;
- date of liability decision;
- percentage WPI assessment and injury stabilisation determinations, particularly from medico-legals, including those for the claimant ;
- date of offer of settlement;
- amount of offer of settlement, including the amount allowed for NEL (where applicable) and comparing that with the total reserve estimate for all heads of damage on file.

General Claims Information:

- layout of files used by each insurer for example file divided into identified sections or file arranged in chronological order;
- further observations relating to the Claims Handling Guidelines.

Each insurer was also asked during the audit to identify the insurer's personnel with the responsibility and authority in making the decisions relating to determining whether or not injuries are likely to exceed 10% WPI and to reserving the amount for NEL.

In lieu of the focused audit sample for two of the six insurers that did not provide a list of claims with NEL reserve estimates, the auditors selected approximately 6 to 10 claim files from the random audit sample that had a NEL reserve estimate. The two insurers' Claims Managers were requested to describe in detail the methodology used to determine the initial reserve estimate for NEL for each of these files. Some of the above information recorded for the focused samples was also recorded for these claim files.

The following is a description of the random audit sample of claim files that was selected by the MAA for each of the six insurers audited.

Random audit sample

Because of the large number of new Act claim files (>19,000), it was impractical for the MAA to audit all claim files. The Statistics Branch at the MAA extracted data from the Claims Register to provide the audit team with a random sample of files for each insurer.

The random audit samples were used by the MAA to independently determine the proportion of files with an NEL estimate for each insurer's claims portfolio. The random audit samples were also used to verify the total claim portfolio data that had been reported by the insurer to the MAA.

The MAA provided the insurers with the random audit sample of claims with minimal notice, usually upon arrival at the insurer's premises, for the on-site examination of files. Most insurers were able to produce the majority of open claim files from their random audit sample within 24 hours of the MAA request. Finalised files generally took the insurers approximately two to three working days to produce, since these generally had to be retrieved from off-site storage areas.

Random samples of 80 to 210 claims files per insurer were selected to ensure that the audit results were statistically credible and comparable across the different sizes of the insurer's claims portfolios.

Each file in the random sample was examined to:

- determine whether it had a NEL reserve estimate;
- determine whether it was a notice under section 49 of the new Act (ANF) or a full under section 74 of the new Act (full claim);

- verify the injury description on insurer computer printouts by cross-checking with the medical certificate on file;
- examine the latest medicals and medico-legals, if present, for percentage WPI assessment and injury stabilisation determinations;
- check for any correlation between injury descriptions and claims with NEL reserve estimates.

Following the on-site inspections of claim files, the lists of claims reserved with NEL supplied by four of the six insurers were analysed by the auditors. The NEL data from the lists was entered into MS-Excel spreadsheets in order to estimate the distribution and mean of the NEL reserve estimates being made by the industry.

RESULTS

Table 1 below provides a summary of new Act ANF's and full claims up to the time of the audits for the six insurers audited. The cut-off date for this data ranged from 30/6/01 to 30/8/01. Four of the six insurers provided the MAA with a list of all claims reserved for NEL and the individual NEL estimates.

The total number of notifications (ANF's + full claims) with NEL reserve estimates reported to the MAA are summarised in Table 1. Table 1 also shows the number of claim files in the MAA random and focused audit samples.

TABLE 1: CTP PORTFOLIO SIZE AND AUDIT SAMPLE SIZE

	Industry
<i>Number of new Act notifications reported to MAA by insurers Including ANFs</i>	19,114
<i>Number of new Act notifications reported to MAA by insurers Excluding ANFs</i>	14,674
<i>Number of new Act full claims with NEL reserve reported to MAA by insurers</i>	Not available *
<i>Number of files in random audit sample</i>	756
<i>Number of files with NEL reserve examined in focused audit sample</i>	Approx. 90

* denotes an insurer was unable to generate the requested information

Table 2 provides a summary of data extracted from an examination of the random audit samples for each insurer. The percentage of full claims with an NEL reserve estimate has been calculated for each of the random audit samples.

TABLE 2: SUMMARY DATA FROM RANDOM AUDIT SAMPLE

	Industry
<i>Number of ANFs + full claims in random audit sample</i>	756
<i>Number of full claims in random audit sample</i>	593
<i>Number of files in random audit sample with NEL reserved</i>	87
<i>Range of % of full claims with NEL reserve in random audit sample</i>	7.2% to 22%
<i>Market-weighted mean% of all full claims with NEL reserve</i>	12%

The percentage of new Act claims with NEL reserve estimates ranged from **7.2% to 22%** for each of the six insurers audited.

The market-weighted average of all new Act claims with NEL reserve estimates, based on all the MAA random audit samples, **was 12%**. The market-weighted average of full claims with NEL reserve estimates was calculated by assuming that the six insurers audited represented 100% of all full claims lodged under the new Act.

Industry practices for determining whether a claim is eligible for NEL

In general, insurers were not documenting their determination of %WPI or their justification for these determinations for claims in dispute, or likely to be disputed where the %WPI was close to the threshold level (e.g. 5% to 10% WPI).

The methodology used by insurers to determine whether a claim is eligible for NEL was based on a combination of factors. Claims managers and supervisors generally appeared to largely rely on experience and correlations based on impairment tables from the previous Act whilst they are developing a working knowledge of the new Act's WPI guidelines. Some insurers placed a greater reliance on medico-legal assessments for %WPI determinations.

Insurers advised that indicators of injury severity commonly drawn upon to initially estimate NEL eligibility, as declared in the Personal Injury Claim Form were:

- description of the accident;
- description of injuries and how they affect the claimant;
- whether an ambulance was required;
- whether the claimant was admitted to hospital and the length of stay in hospital;
- what treatment had the claimant received since the accident;
- whether a rehabilitation or treatment plan was developed for the claimant;
- whether there were any previous injuries to the same parts of the body and
- if applicable, time claimant had off work.

Insurers advised that indicators of injury severity commonly drawn upon to initially estimate NEL eligibility, as declared in the Medical Certificate were:

- medical diagnosis or description of injuries; (generally given more credence than the claim form injury description as the medical certificate is completed by a medical practitioner);

- clinical findings;
- proposed treatment plan (short term/medium term/long term);
- referral to a specialist and
- if applicable, patient's fitness for work.

Based on a preliminary analysis of injury descriptions for those claims with and without an NEL estimate, the MAA auditors observed that soft tissue injuries alone, such as whiplash, were generally not being reserved for NEL.

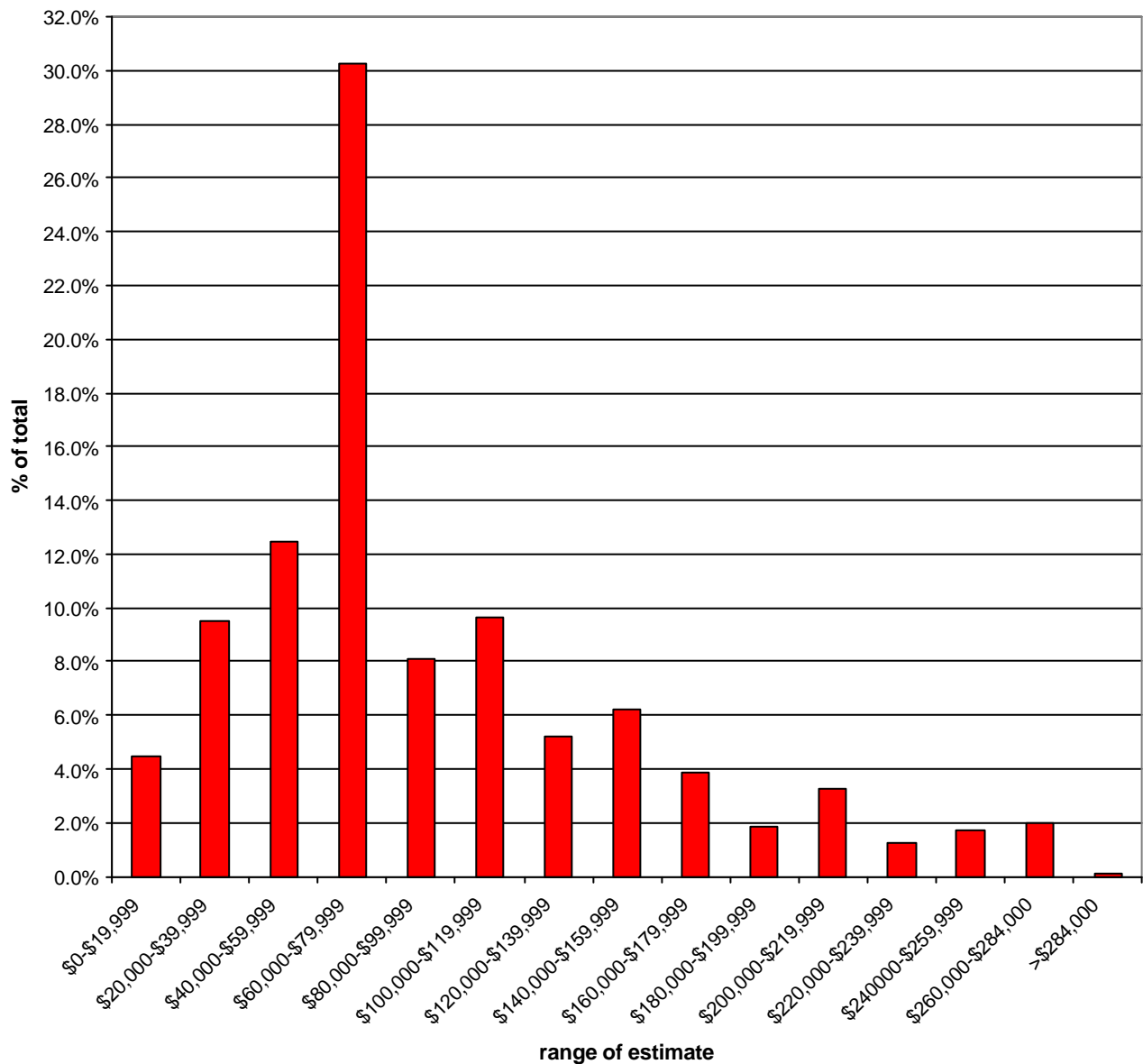
The following combinations of relatively severe physical injuries were also observed by the MAA auditors to account for a large proportion of claims reserved for NEL:

- two or more fractures (eg fractured tibia and fibula);
- a whiplash plus a fracture;
- a whiplash plus radiculopathy;
- multi-level spinal fractures.

TABLE 3: INSURER METHODOLOGY FOR ESTIMATING NEL QUANTUM

The graph below illustrates the range of NEL estimates, for the industry, based on data reported by four of the six insurers audited.

**NEL estimates as a percentage of total industry claims reserved for NEL
(Allianz, GIO, NRMA, QBE)**



Industry practices for determining NEL quantum

Insurers generally advised that NEL quantum estimating is based on severity and type of injuries, age of the claimant, likely District Court verdict, other comparable common law precedents and any future CARS decisions.

The minimum dollar amount being reserved for NEL by five of the six insurers was generally about \$25,000 to \$30,000. This range was slightly lower than the actuarial forecasts of \$40,000 to \$60,000 that were made prior to the commencement of the new Act. Based on the data provided to the MAA by four of the six insurers audited for all their claims under the new Act, more than 80% of all NEL reserve estimates were in excess of \$40,000.

Based on the data provided to the MAA by four of the six insurers audited, the industry reported approximately 8% of all claims with an estimate of less than \$25,000.

Insurers advised reasons for smaller NEL estimates less than \$25,000 included the claimants' age, comparative awards under other common law schemes or estimates being discounted where contributory negligence was alleged at greater than 25%.

The maximum reported NEL estimate was \$329,440. The insurer advised this estimate was over the maximum amount of \$284,000 as prescribed by the new Act, as the estimate included an inflation component. Based on the data provided by four of the insurers the indicative mean industry NEL estimate was calculated as being approximately \$92,000.

TABLE 4: NEL PAYMENTS MADE UNDER THE NEW ACT

The table below provides a summary of open and finalised new Act claims, as at August 2001, with NEL payments and a summary description of injuries for the finalised claims.

Only a relatively small number of new Act claims with NEL have been finalised (<30). This was expected because of the long-tail nature of claims with the most severe injuries that are likely to be eligible for NEL.

	INDUSTRY
Total no. open claims with part payment against NEL	10
Total no. finalised claims with NEL payment	14
\$NEL payment for finalised claims	\$926,197*
Finalised claims with NEL payment – summary of injuries	<ul style="list-style-type: none"> • fracture base skull, eye avulsion, head orbit fracture, nasal fracture, amnesia, eye sclera laceration • cervical spine lateral cord contusion • ulna fracture, shoulder no further specifics, elbow no further specifics • lumbar spine fracture, tibia fracture, cervical spine strain • femur fracture, radius fracture, soft tissue injury (STI) chest wall • upper limb fracture, finger fracture • de-gloving to external skin • unconscious-inappropriate movement on painful stimuli, lumbar spine fracture, thorax sternum fracture, thorax rib cage fracture 2-3 ribs • thorax spine fracture, vertebral body, minor compression • below knee amputation, amnesia, extensive leg abrasions. • fracture skull compound, frontal contusion, fracture orbit roof, STI shoulder/neck, laceration face • brain injury • facial fractures, pelvic fracture, fracture clavical, multiple rib fractures • achilles tendon laceration

* denotes figures based on information provided by five of the six insurers audited.

A total of 14 files (reported by five of the six insurers) were finalised with a total of \$926,197 paid for NEL. NEL payments for these finalised files ranged from a minimum of \$5,000 to a maximum of \$200,000 with a mean of \$66,157.

Given the small number of claims finalised since the beginning of the new Act, this mean is not likely to be reflective of the average NEL quantum reserved for all new Act claims. As reported earlier the indicative mean industry NEL estimate based on finalised and open claims, reported by four of the six insurers, up to the time of the audits, was calculated as being approximately \$92,000.

Some insurers reported a number of files where an advance on settlement monies had been earmarked against the NEL estimate. The audit team examined some of these files where a part payment was earmarked against NEL and advances were being made in cases where the claimant was experiencing financial hardship:

- to meet some mortgage payments (approx \$3,000);
- to meet rental commitments and car loan repayments (approx \$16,000);
- to meet home and vehicle modifications.

The auditors were concerned that NEL may not be the appropriate head of damage against which these payments should be earmarked. The insurers making such payments indicated to the auditors that they would be amenable to making advance payments relating to another head of damage, such as future economic loss or out of pocket expenses, if so directed by the MAA.

PERFORMANCE AUDIT CONCLUSIONS - INDUSTRY

The market-weighted average of all new Act claims with NEL reserve estimates, based on the MAA random audit samples, **was 12%**. This is in line with actuarial estimates, before the commencement of the new Act, that the 10% most severely injured claimants would be eligible for NEL.

The percentage of new Act claims with NEL reserve estimates, as determined from the random audit samples, **ranged from 7.2 % to 22%**. The percentage of new Act claims with an NEL estimate that were reported by each insurer to the MAA were all within the 95% confidence limits of the figures obtained from the random audit samples.

Initial reserve estimates for NEL (and all other heads of damage) were generally made within one to three days after the receipt of a claim. There was generally little documentation on insurers' claim files of %WPI calculations, justifications and determinations when the %WPI was close to the 10% threshold. In addition to the AMA/MAA permanent impairment guidelines, insurers advised that they drew upon indicators of injury severity from the Personal Injury Claim Form and Medical Certificate to supplement their determination whether a claimant's injuries were likely to exceed the 10% WPI threshold.

The auditors noted that most insurers appeared to be still developing in-house knowledge and expertise on determining %WPI. Most insurers also indicated that their staff making %WPI determinations had undertaken or were proposing to undertake impairment training. In spite of the lack of documented %WPI calculations, justifications and determinations by insurers, a preliminary analysis by the auditors of the types of injuries for which NEL was reserved indicated that there was a good correlation between injury type and the claims being reserved for NEL.

The following combinations of physical injuries accounted for a large proportion of NEL claims:

- two or more fractures;
- a whiplash plus a fracture;
- a whiplash plus radiculopathy; and
- multi-level spinal fractures.

Soft tissue injuries alone, such as whiplash, were generally not being reserved for NEL. The MAA auditors were of the opinion that the insurers, in line with the objects of the new Act, were reserving the most severe physical injuries for NEL. The number of claim files examined with psychiatric injuries was too small to draw any conclusions about these types of injuries.

In the absence of formal criteria for assessing the NEL quantum, insurers advised that NEL quantum estimating is generally based on the severity and type of injuries, age of the claimant, likely District Court verdict, other comparable common law precedents and any future CARS decisions.

The minimum dollar amount being reserved for NEL by the insurers was generally about \$25,000 to \$30,000. This was slightly lower than actuarial forecasts for a minimum range of NEL awards from \$40,000 to \$60,000. Based on the data provided to the MAA by four of the six insurers audited, more than 80% of all NEL reserve estimates were in excess of \$40,000.

The maximum reported NEL estimate was \$329,440. The insurer advised this estimate was over the maximum amount of \$284,00 as prescribed by the new Act, as the estimate included an inflation component. Based on the data provided by four of the insurers the indicative mean industry NEL estimate was calculated as being approximately \$92,000.

FURTHER INDUSTRY OBSERVATIONS AND RECOMMENDATIONS

The MAA auditors identified the following significant issues during the NEL audits that were beyond the scope of this NEL performance audit. Recommendations have been made for each issue that require follow-up action by the insurers.

It should be noted that whilst some of the issues below may not have been applicable or determined by the auditors for some insurers at the time of the audits, the recommendations made are applicable to all insurers.

It appeared that several insurers were placing an over reliance on MAS to assess %WPI. Matters were often referred to MAS without the insurer (or claimant solicitor) having in their claim file a **documented determination of %WPI** and documented justification for these determinations.

Such documentation would be useful for monitoring an insurer's performance in regard to its accuracy of %WPI determinations. Some insurers were also obtaining medico-legal reports without requesting a determination on %WPI and stabilisation of injuries.

Recommendation for Insurers: It is recommended that insurers provide documentation in their claim files of the %WPI for a claimant, if there is a dispute about WPI. It is also recommended that when requesting medico-legal reports or when there is a dispute about %WPI, the insurer should document the justification and calculations of the %WPI determination. It is also recommended that such documentation should be included by the insurer in all MAS applications seeking %WPI determinations.

Some insurers appeared to have inadequate *in-house knowledge for determining %WPI*. It was noted that most insurers were proposing to send some staff to attend MAA impairment training.

Recommendation for Insurers: It is recommended that insurers' staff assessing %WPI have appropriate training for determining %WPI.

Advance NEL payments have been made to claimants by some insurers and have been earmarked against future NEL payments. The MAA auditors were of the opinion that, whilst it is appropriate for insurers to be making cash advances when claimants could demonstrate financial hardship, NEL was not the appropriate head of damage against which these advance payments should be earmarked.

Recommendation for Insurers: It is recommended that the insurers and the MAA address this issue.

The *relevance and length of standard letters* from some insurers requesting further information regarding a claim were variable. For some insurers the length, complexity and relevance of questions in these letters appeared dependant upon whether the request was directed to the claimant directly or a solicitor representing a claimant. Requests to direct claimants were generally shorter in length and relevant. The MAA auditors observed several complaints from claimant solicitors indicating that some requests for information, from insurers, were unnecessary.

Recommendation for Insurers: It is recommended that the insurers' letters of request for further information regarding the claim should be as concise, simple and relevant as possible. Requests for further information must comply with section 3.7 of the MAA Claims Handling Guidelines. It is also recommended that the insurers' letters of request for further information regarding the claim should not discriminate between direct and represented claimant.

REFERENCES

Institute of Chartered Accountants – Planning Performance Audits (AUS 808: 10/1995)

Institute of Chartered Accountants – Performance Auditing (AUS 806: 02/1999)

Australian/New Zealand Standard (AS/NZS ISO 14010:1996) - Guidelines for environmental auditing – General principles (page 3)

American Medical Association Guides to the Evaluation of Permanent Impairment (4th edition)

NSW Motor Accidents Authority Guidelines for the Assessment of Permanent Impairment.

Appendix 4

MAA Reports presented to the Committee

4 MAA Audit and evaluation program

MAA AUDIT AND EVALUATION PROGRAMME

PROJECT	On-site audit / data collection	Final report
TRAC Audits (Treatment Rehabilitation and Attendant Care)	June 2001	August 2001
Non Economic Loss Reserving – Audit of Insurer Practices	August – September 2001	December 2001
Claims Handling Guideline Audits	December 2001 – April 2002 8 current underwriters	June 2002 Final report on all insurers; draft report for individual insurer produced after each audit
TRAC Audits	April – June 2003 All insurers including both current underwriters and run-off insurers	August 2003
JUSTICE POLICY RESEARCH CENTRE		
Study 1	Claims handling practices	December 2000 March 2001
Study 1A	Solicitors' perceptions of new Act	June 2001 November 2001
Study 2 Part 1	Claims resolution profile	December 2001 – January 2002 Insurer file survey: current underwriters – finalised claims April 2002 Report based on analysis of MAA claims data and insurer file survey
Study 3	Legal costs	March – June 2002 Survey of solicitors' files & survey of claimants July 2002 Report results of claimant survey and solicitor file survey
Studies 4 and 5	Perceptions of MAS & CARS	September – December 2002
Repeat study 1	Claims handling practices	October 2002
Studies 2 and 3 Part 2	November 2002 – March 2003 Insurer file survey; survey of solicitors' files and survey of claimants	July 2003 Final complete project report

Appendix 5

Minutes of Proceedings

Proceedings of the Committee

Meeting No 56

3:05 pm Wednesday, 13 February 2002

Room 1153, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Hatzistergos
Mr Ryan

Also in attendance: Director, Ms Tanya Bosch

2. APOLOGIES

Ms Saffin

3. MINUTES

...

4. CONSIDERATION OF CHAIRMAN'S DRAFT REPORT FOR REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND THE MOTOR ACCIDENTS COUNCIL.

The Chair submitted his draft Third Report on the *Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council*, which having been circulated to Members of the Committee, was accepted as being read.

The Committee considered the draft report.

Chapter One read.

Resolved, on the motion of Mr Ryan, that the subheading "Committee Comment" be inserted after the answer to 1.3, and that the following be inserted under the subheading:

This advice was significantly different from advice that the MAA had been previously given the Committee on this issue. Mr Bowen advised the Committee during a hearing conducted on 8 May 2000

Mr BOWEN: *The loss of a foetus is included in the Victorian guides as stand-alone, although it is in the context of a statutory scheme there where they provide a statutory death benefit. If you lose a child, a born child, you get a statutory death benefit, which we do not have. So it was included in earlier versions of guides and it was then taken out and it is currently under continued review. It occupied quite a bit of discussion at the Council as well. We recognised that there was a prospect of creating an anomaly if you put in loss of a foetus as an impairment to the woman, which automatically meant the mother was compensated for non-economic loss, whereas loss of a child would not attract any automatic compensation unless it had an effect that got you over 10 per cent or a mental behavioural disorder.*

Mr RYAN: *Is it not reasonable to consider that both of those things should be deemed to be more than 10 per cent?*

Mr BOWEN: *There is a strong argument that way, and it has been put to the Authority and the Council, and the discussions with the reference groups are ongoing and we will come back to that.*

Mr HATZISTERGOS: *It would if there was a psychological injury that brought it over 10 per cent.*

Mr RYAN: *The argument is that it would not necessarily do so, because the psychological injuries are assessed by means of disability rather than impairment. It is difficult for a parent who has lost a child to demonstrate a disability.*

Mr BOWEN: *Yes. There clearly will be occasions where a parent has lost a child and it has led to a significant disability which translates to a greater than 10 per cent impairment. There will be other cases where parents do get on with their lives, often because they have no option if there are other children and family members to look after, and on that sort of test they would not necessarily get over the 10 per cent mental and behavioural impairment. So it is an issue that needs to be looked at. It probably needs to be more broadly looked at in the context of statutory change to see whether a death benefit should be introduced rather than trying to fiddle with the impairment levels as a means of achieving that end in a roundabout sort of way.*

(Transcript 8 May 2000)

On the 16 February 2001 Mr Bowen advised the Committee in response to questions about the issue that further consideration had been given to this matter and that it was one of a number of matters which the Authority planned to address at a future date by way of legislative amendment. Mr Bowen said:

“where 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.

(Transcript 16 - February 2001)

The Committee is concerned that the proposals for grief counselling and other support mechanisms which are outlined in their recently tabled answer to the Committee may not be adequate to meet the needs of parents whose children are killed in a motor vehicle accident. Whilst the Committee accepts that it is impossible to compensate for such a loss, many parents would prefer some form of direct and untied financial assistance to enable them to have some flexibility in how they may respond to such a tragedy. Actions parents sometimes take in response to circumstances such as these include taking an extended holiday, moving away from the area where the accident occurred or changing jobs. Some parents experience a complete marital breakdown after such a tragedy may require financial resources to re-establish themselves after a family breakup.

Accordingly the Committee recommends that the Motor Accidents Authority should give further consideration as to how parents who lose children as a result of a motor vehicle accident might be compensated particularly parents who would not qualify for non economic loss according to current medical and psychological guidelines. The further consideration of this matter should include public consultation with interested stakeholders.

Chapter One as amended agreed to.

Chapter Two read and agreed to.

Chapter Three read and agreed to.

Chapter Four read and agreed to.

Chapter Five read and agreed to.

Resolved, on the motion of Mr Breen, that the Draft Report, as amended, be the Report of the Committee and that the Chairman and Director be permitted to correct stylistic, typographical and grammatical errors.

Resolved, on the motion of Mr Ryan, that the Report, together with the transcripts of evidence, submissions, documents and correspondence in relation to the inquiry, be tabled and made public.

...

5. ADJOURNMENT

The Committee adjourned at 3.50pm, *sine die*.