

Standing Committee on Law and Justice

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

Eighth Report

Ordered to be printed 8 November 2007

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Terms of reference

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

¹ LC Minutes No 5, 30 May 2007, Item 4

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

Section 28 Insurers to disclose profit margins

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

Section 97 Regulations

- (2) The Motor Accidents Council may refer to the Parliamentary Committee any inconsistency between the regulations and the MAA Claims Assessment Guidelines and the Parliamentary Committee may review and make recommendations about the resolution of any such inconsistency.

Section 177 Audit of accounting records and of compliance with guidelines

- (7) The Authority may from time to time carry out an audit to determine the profitability of a licensed insurer and for that purpose may exercise the functions of a person appointed under subsection (1). The Authority is to report on any such audit to the Parliamentary Committee, on a confidential basis.

Section 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.

Committee membership

| | | |
|---------------------------------|------------------------|---------------------|
| The Hon Christine Robertson MLC | Australian Labor Party | <i>Chair</i> |
| The Hon David Clarke MLC | Liberal Party | <i>Deputy Chair</i> |
| The Hon John Ajaka MLC | Liberal Party | |
| The Hon Greg Donnelly MLC | Australian Labor Party | |
| The Hon Amanda Fazio MLC | Australian Labor Party | |
| Ms Sylvia Hale MLC | The Greens | |

Secretariat

Ms Rachel Callinan, Director
Mr John Young, Principal Council Officer
Ms Annie Marshall, Council Officer
Mr Samuel Griffith, Council Assistant

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Chair's foreword

This is the report of the Committee's Eighth Review of the exercise of the functions of the Motor Accidents Authority (MAA) and Motor Accidents Council (MAC). In its *Seventh Report* the Committee gave notice of its intention to focus on particular aspects of the MAA's functions in future reviews. This year the Committee focused on the Medical Assessment Service (MAS) and issues related to the medical dispute resolution process for motor accident claims. The Committee again engaged in a detailed question on notice process with the MAA in advance of the public hearing. The Committee also increased the range of stakeholders from which it heard evidence at the public hearing, including three Medical Assessors from the MAS.

The MAA and MAC are performing their functions under the *Motor Accidents Compensation Act 1999* in an appropriate and competent manner. Notably, the downward trend in the price of CTP premiums, both in dollar terms and as a percentage of weekly earnings, continued through 2005-2006 and decreased even further during the course of this Review. The MAA is continually seeking to improve the way the Scheme performs within its current legislative framework. The aim of many of the recommendations made by the Committee in this report is to support or enhance initiatives being considered or implemented by the MAA.

The efficient performance of the MAS is critical to the successful operation of the Scheme. The Committee has found that the performance of the MAS continues to improve, including in relation to the quality and timeliness of the assessments carried out by the MAS. A number of issues relating to specific aspects of the MAS were, however, raised by stakeholders and the Committee has made a number of recommendations aimed at further enhancing the efficiency and effectiveness of the MAS.

While the focus of this year's review was the MAS, several issues relating to other aspects of the Scheme were also drawn to the Committee attention and have been examined in this report. These include issues relating to insurers and CTP premiums, legal costs, Accident Notification Forms and appeals of CARS assessments to the courts. Where appropriate the Committee has made recommendation to address these concerns.

I would like to express my appreciation to all those who participated in this year's review, particularly those participants who appeared before the Committee at its public hearing and all the organisations and individuals who made submissions. Once again the Review entailed a significant amount of work for the MAA and I thank the officers of the MAA for their efforts and their positive approach to assisting the Committee with its Review.

Thanks also to my fellow Committee members for their co-operation and their keen interest in the issues examined during the review, and to the Committee Secretariat for their professional support.



Hon Christine Robertson MLC

Committee Chair

Executive summary

Introduction (Chapter 1)

This is the Committee's Eighth Review of the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC). In its *Seventh Report* the Committee foreshadowed its intention to focus on particular aspects of the MAA's functions in future reviews, commencing with the administration of the Motor Accidents Assessment Service (MAAS). The Committee subsequently determined that the focus of this Eighth Review would be the Medical Assessment Service (MAS) within the MAAS. In addition to focusing on the MAS, the Committee examines a number of other matters that were raised during the review. Many of these matters have arisen in previous years, such as insurer profits, and several issues are followed up from the *Seventh Report*.

The Committee received submissions from interested stakeholders and, as in previous years, heard oral evidence from the MAA, MAC, the Insurance Council of Australia and the NSW Bar Association. This year the Committee also heard oral evidence from the Law Society of NSW and from three medical assessors with the MAS. The Committee thanks all those who participated in this year's Review

Overview of performance of CTP scheme, MAA and MAC (Chapter 2)

As in previous reviews the Committee examines the MAA's overall assessment of the Scheme performance for 2005-2006 against the four indicators of affordability, effectiveness, fairness and efficiency. With the introduction of the Lifetime Care and Support the MAA will be reporting on a new basis in future annual reports. The Committee finds that the Scheme, in the last year of its current reporting structure, continued to function in an appropriate manner when assessed against its performance indicators. The Committee reiterates its support for the introduction of health outcomes as a future Scheme performance indicator.

The Committee was interested to assess the nature of the relationship between Scheme stakeholders and the MAA and the MAC. The Committee commends the MAA for the level of consultation it undertakes, its willingness to discuss and explain issues and the professional relationship it has fostered with various stakeholder groups. The Committee also found there was a generally positive view of the value of the MAC as a representative forum in which information can be shared and differing views expressed. The issue of the role of the MAC to provide advice or make recommendation through the Board to the Minister, with respect to matters relating to the Scheme was raised with the Committee. The Committee has invited the Chair of the MAC to provide a response to the Committee on the effectiveness of the MAC, particularly in relation to its role to provide advice to the Minister.

Performance of the Medical Assessments Service (Chapter 3)

Under the Scheme disputes between claimants and insurers with respect to injuries suffered in a motor accident are resolved through the Medical Assessment Service (MAS), by medical practitioners (assessors) who are independent of both the claimant and the insurer. The quality and timeliness of the assessments carried out by the MAS is critical to the successful operation of the Motor Accidents Scheme.

Much of the evidence presented to the Committee in relation to the MAS focused on the 10% whole person impairment (WPI) threshold for non-economic loss compensation. Issues raised included the

fairness of the threshold, inconsistencies in assessments and errors in assessments. While noting the quality control measures implemented within the MAS with respect to WPI assessments, the Committee is of the view on the basis of the evidence presented to it that the MAA should undertake a review of WPI assessments to establish the extent of inconsistencies in assessments and to identify, if necessary, additional quality control mechanisms to improve consistency.

The Committee commends the MAA for the robust appointment process for selecting medical assessors and for the level of initial and on-going training provided to them. All Review participants expressed support for the practical rationale for allowing assessors to undertake private medical assessments for claimants or insurers or both. The Committee considered the issue of the potential for conflicts of interest to arise if an assessor did a significant percentage of their private work for any one party in the Scheme. The Committee notes the MAA has measures in place to monitor and prevent such conflicts arising and recommends that these measures be reviewed to ensure the most appropriate monitoring systems and rules are in place.

Participants in the Review all acknowledged the improvements in the general MAS process over recent times. The average overall lifecycle of dispute assessments reduced by 17% from the last reporting period. While the lifecycle of an average MAS assessment is at an almost optimum level, concern was expressed to the Committee that some medical dispute assessments, particularly when subject to further assessments and reviews, can remain within the MAS system for years rather than months. The Committee is mindful that this is a complicated issue with many related issues that require consideration. From the evidence presented to it, the Committee was unable to conclude whether there are any common feature or features to those assessments and matters that take a long time to finalise within the MAS process. To that end the Committee recommends that the MAA conduct a study of MAS assessments and matters that have taken ten months or more to finalise with a view to identifying any potential initiatives that might be able to address this issue.

CTP premiums and insurer profitability (Chapter 4)

In its capacity as CTP market regulator, the MAA reviews and approves CTP premiums proposed by licensed insurers including the proposed profit margin estimated to be realised on those premiums. The MAA also oversees the market behaviour of the licensed insurers. This function of the MAA was examined in detail in the Committee's *Seventh Report*. The significant issue of the relationship between insurer profitability and the continued fall in claim frequency and propensity to claim was again raised and examined during this Review. The Committee is of the view that the recommendations it made in its *Seventh Report* in relation to this issue are still current. The Committee found that the MAA continued to be active in implementing strategies to achieve continuous improvement of insurer compliance with the various guidelines issued by the MAA. The Committee heard evidence from the MAA of a number of proposed Scheme changes aimed at earlier resolution of medical disputes, some of which included cost penalties for insurers who clearly breach these responsibilities. The Committee supports the implementation of these Scheme changes as outlined by the MAA.

Other issues (Chapter 5)

While the focus of this Review was on the operation of the MAS, a number of other issues were raised with the Committee, some of which have been raised in previous reviews. The Committee examined the issue of the costs regulation under the Scheme, particularly the fixed amount of legal costs recoverable by claimants. There is a strong perception on the part of some stakeholders that the current costs regulation clearly disadvantages claimants. In its previous Review the Committee foreshadowed the need for an examination of the costs regulation. During this Review the Committee heard that,

after some initial delay, a joint study involving the MAA and the Law Society of NSW has been established. The Committee strongly endorses the need for such a study and recommends that it be made a priority by the MAA.

The MAA is required to review each year the maximum amount of treatment expenses that insurers are required to pay for a claim notified by way of an Accident Notification Form (ANF). The maximum amount of \$500 has remained the same since the Scheme's inception. The ANF is promoted as one of the key reforms by which the Scheme aims of streamlining the claims process and improving claimant's access to earlier payments was achieved. The Committee heard that a proposal, which received unanimous support of the Motor Accidents Council, to expand the ANF scheme is being developed for the consideration of the Minister. The Committee supports the proposed expansion and recommends that the necessary steps for its implementation be taken as soon as possible.

The Committee also examined the issue of the respective right of claimants and insurers to appeal CARS assessments on the amount of damages to either the Supreme or District Court. During this examination the Committee found that the MAA has no mechanism by which to monitor the acceptance rate by claimants of CARS assessments of damages payable, which it believes would provide a useful performance indicator of the CARS process. The Committee recommends that the MAA investigate the feasibility of being able to gather this information in the future.

Summary of recommendations

- Recommendation 1** 15
That the Chair of the Motor Accidents Council provide a response to the comments of the NSW Bar Association's representative on the Council set out in this report regarding its effectiveness and, in particular, in relation to its role to provide advice to the Minister.
- Recommendation 2** 39
That the Motor Accidents Authority undertake a review of Whole Person Impairment assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.
- Recommendation 3** 42
That the Motor Accidents Authority review its procedures and rules in relation to Medical Assessors and conflicts of interest to ensure that the most appropriate monitoring systems and rules to prevent conflicts of interest are in place.
- Recommendation 4** 45
That the Motor Accidents Authority conduct a study of Medical Assessment Service assessments and matters that have taken ten months or more to finalise and report back to the Committee about the status of delays within the Medical Assessments Service and any current or future planned initiatives aimed at reducing delays.
- Recommendation 5** 50
That the Motor Accidents Authority approach the Motorcycle Council of NSW with a view to arranging a meeting to discuss issues of interest and concern relating to motorcycle premiums and report back to the Committee on the outcomes of this meeting.
- Recommendation 6** 61
That the Minister Assisting the Minister for Finance seek an amendment to the *Motor Accidents Compensation Act 1999* to include a penalty for insurers who require a medical assessment of an injured person where the person is clearly, based on the nature of their injuries, over the 10% Whole Person Impairment threshold for non-economic loss compensation.
- Recommendation 7** 64
That the Minister Assisting the Minister for Finance and the Minister for Police request the Motor Accidents Authority and the NSW Police Force to examine and report on the feasibility of implementing a system whereby accredited insurers are allowed electronic access to police reports on traffic incidents for the purposes of a CTP claim while protecting the privacy of individuals.
- Recommendation 8** 72
That the Motor Accidents Authority make the Study of the Impact of the Costs Regulation, conducted with the assistance of the Law Society of NSW a project priority and allocate resources accordingly.
- Recommendation 9** 74
That the Minister Assisting the Minister for Finance support the expansion of the Accident Notification Form scheme as proposed by the Motor Accidents Authority and that the Authority take the necessary steps to implement the expanded scheme as soon as possible.
- Recommendation 10** 84
That the Motor Accidents Authority liaise with the CTP insurers and the Insurance Council of Australia to investigate the feasibility of insurers providing the MAA with information on the number of Claims Assessment and Resolution Service certificates of assessments of the amount of damages for liability under a claim, where liability is not in issue, that are accepted and not accepted within 21 days after the certificate is issued.

Acronyms and abbreviations

| | |
|-----------------------|---|
| AMA4 Guides | American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition |
| ANF | Accident Notification Form |
| CARS | Claims Assessment and Resolution Service |
| CTP | Compulsory Third Party |
| LTCSS | Lifetime Care and Support Scheme |
| ICA | Insurance Council of Australia |
| MAA | Motor Accidents Authority |
| MAA Guidelines | MAA Guidelines for the Assessment of Permanent Impairment |
| <i>MAC Act</i> | <i>Motor Accidents Compensation Act 1999</i> (NSW) |
| MAAS | Motor Accidents Assessment Service |
| MAC | Motor Accidents Council |
| MAS | Medical Assessment Service |
| WPI | Whole Person Impairment |

Chapter 1 Introduction

In this Chapter the Committee outlines its role in reviewing the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) and sets out the process undertaken by the Committee during the Eighth Review.

Committee's role to review the MAA and the MAC

- 1.1 The Standing Committee on Law and Justice has been nominated by the Legislative Council to conduct the ongoing inquiry into the MAA and the MAC required by section 210 of the *Motor Accidents Compensation Act 1999* (NSW).² Provision for parliamentary oversight of the MAA and MAC was introduced as part of the 1999 reforms to the NSW motor accidents scheme. This is the eighth time the Committee has conducted this review.
- 1.2 Information about previous reviews can be found on the Committee's website: www.parliament.nsw.gov.au/lawandjustice.

Conduct of the inquiry

- 1.3 The Committee resolved to commence the Eighth Review at its first meeting for the 54th Parliament, on 6 June 2007.

Focus of this year's review

- 1.4 In its *Seventh Report*, the Committee foreshadowed its intention to focus on particular aspects of the MAA's functions in future reviews, commencing with the administration of the Motor Accidents Assessment Service (MAAS).³ At its first meeting for the 54th Parliament, the Committee determined that the Eighth Review would focus on the Medical Assessment Service (MAS) within the MAAS.
- 1.5 In addition to focusing on the MAS, the Committee has examined a number of other matters that were raised during the review. Many of these matters have arisen in previous years, such as insurer profits, and several issues are followed up from the *Seventh Report*. This report also examines a number of issues that previously have not been examined, particularly in relation to the MAS.

Briefing from the MAA

- 1.6 The Committee received a briefing from the MAA at its offices on 23 July 2007, at which the General Manager of the MAA, Mr David Bowen, the Chair of the MAA Board and of the

² LC Minutes No 5, 30 May 2007, Item 4, pp 81-82

³ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council: Seventh Report*, Report 31, September 2006, p6

MAC, Mr Richard Grellman and senior officers of the MAA briefed the Committee on the functions and performance of the MAA. The briefing was extremely valuable, particularly for the two new members of the Committee. The Committee thanks all those who participated in the briefing.

Submissions

- 1.7 The Committee continued the practice initiated during the Seventh Review of calling for public submissions by way of advertisements in the major metropolitan newspapers. As with all previous reviews, the Committee also wrote directly to stakeholders to invite submissions. The Committee received eight submissions, including two supplementary submissions. A list of submission makers is included in Appendix 1.

Questions on notice for the MAA

- 1.8 Following the practice of previous years, the Committee forwarded a number of questions on notice to the MAA, based on the MAA's *2005-2006 Annual Report* and the Government's response to the Committee's *Seventh Report*.

Public hearing

- 1.9 The Committee conducted a public hearing on 27 August 2007 at which the General Manager of the MAA, Mr David Bowen, the Chair of the MAA Board and of the MAC, Mr Richard Grellman and the Deputy Manager of the MAA, Ms Carmel Donnelly, gave evidence.
- 1.10 The Committee also heard from a panel of witnesses in relation to the MAS. On the panel were Mr Cameron Player, the Assistance General Manager of the MAAS and three Medical Assessors with the MAS, Dr Dwight Dowda, Dr Kathleen McCarthy and Dr George Papatheodorakis.
- 1.11 Representatives of the Law Society of NSW, the NSW Bar Association and the Insurance Council of Australia also appeared. A full list of witnesses is included at Appendix 2.

Structure of the report

- 1.12 This report is divided into five Chapters. This first chapter outlines the Committee's role in reviewing the MAA and the MAC and sets out the process undertaken by the Committee during its Review.
- 1.13 Chapter 2 examines the MAA's overall assessment of Scheme performance for 2005-2006. It also briefly examines stakeholder perceptions of both the MAA and the MAC.
- 1.14 Chapter 3 examines the Medical Assessments Service (MAS), which was the focus of this year's Review. It commences with an overview of the operation and administration of the MAS and then examines a number of issues raised during the Review in relation to the operation of the MAS. The issue most extensively canvassed by stakeholders was the 10% Whole Person Impairment threshold for non-economic loss and the role of the MAS in

relation to it. Other issues include the potential for conflicts of interest to arise in relation to Medical Assessors who also undertake private work for claimants and/or insurers and delays in the medical assessment process.

- 1.15** Chapter 4 examines issues raised during the Review that relate to the MAA's role as the CTP market regulator. As this aspect of the MAA's functions was examined in detail in the Committee's *Seventh Report*, the Committee has not gone into the same level of detail this year. However, some ongoing issues are again examined (albeit briefly) in this chapter, such as insurer profitability, particularly its relationship to the continued fall in claim frequency and propensity to claim. This chapter also examines other issues relating to insurers and CTP insurance including motorcycle premiums, new penalties for insurer breaches and a proposal to allow insurers to access police data on traffic accidents to speed the claims process.
- 1.16** Chapter 5 examines a number of other issues that were raised with the Committee during the course of this Review. These issues include the amount of legal costs recoverable by claimants under the Scheme; the maximum amount of treatment expenses an insurer is required to pay with respect to Accident Notification Forms; the road safety functions of the MAA; and appeals of CARS assessments.

Participation by stakeholders

- 1.17** The number of submissions received by the Committee for this review was reduced from last year, from 19 to eight. It is difficult to speculate as to exactly why submission numbers decreased this year. The Committee is aware, however, that it is a significant impost on the time and resources of an organisation to prepare a submission and that many smaller organisations simply do not have the ability to do so.
- 1.18** As in previous years, the most detailed and informative submissions were received from the two leading legal groups in NSW, the Law Society of NSW and the NSW Bar Association. Many of the issues examined in this report, and indeed in previous reviews, are therefore issues of interest to the legal sector (as well as to others). These issues are deserving of the Committee's scrutiny and the participation by the legal groups in the reviews over the years has greatly assisted the Committee in its work.
- 1.19** However, the Committee also encourages participation from a broad range of stakeholders so as to enable it to scrutinise the range of the MAA's functions. This year the Committee had the benefit of a submission from the Insurance Council of Australia, which is the representative body of the general insurance industry in Australia including the seven insurers writing CTP insurance in NSW. Submissions were also received from Youthsafe,⁴ the Accident Victims Alliance,⁵ the NSW Motorcycle Council⁶ and others. The perspectives of

⁴ Youthsafe 'is a not for profit organisation and the peak body in NSW for prevention of serious injury in young people (aged 15-25 years)': Submission 4, Youthsafe, p 2

⁵ The Accident Victims Alliance 'works to ensure that the legal system, financial managers, the insurance industry and the statutory compensation schemes properly acknowledge and meet the needs of victims': Submission 2, The Accident Victims Alliance, p 1

⁶ The Motorcycle Council of NSW 'represents over 36,000 motorcycle riders in NSW through their club affiliations': Submission 6, The Motorcycle Council of NSW, p 2

these groups are also valuable to the Committee's ability to effectively scrutinise the MAA in the exercise of its functions. In its future reviews the Committee will continue to endeavour to identify ways of encouraging a broader range of stakeholders to participate.

- 1.20** The NSW Bar Association, the Law Society of NSW and the Insurance Council of Australia appeared as witnesses at the Committee's public hearing. All expressed their appreciation at being included in the process. For example, Mr Michael Slattery, the President of the Bar Association made the following comments in his opening statement to the Committee:

Could I firstly say how much we appreciate the opportunity to come and speak to you on important issues that are before this Committee. This moment, of course, is an important moment to create public accountability of the operation of the Motor Accidents Scheme. There are not many opportunities for the people of NSW or representatives of interests associated with the people to speak about the system and we are grateful for this opportunity.⁷

- 1.21** The Committee would like to thank all those who participated in this year's Review.

Future reviews

- 1.22** The Committee reiterates the comment it made in its *Seventh Report* that, in the years since the introduction of the 1999 reforms, the operation of the Motor Accidents Compensation Scheme has largely stabilised and that, while there remains scope for improvement in the administration of the Scheme by the MAA, further changes are likely to be incremental, rather than substantial.⁸
- 1.23** The Committee feels it still has an important role to play in examining the MAA and the MAC in the exercise of their functions. By identifying and airing various issues, and seeking the input of stakeholders, the Committee plays a role in the continuous improvement of the Scheme.
- 1.24** The Committee will continue its focus on the MAAS in its next review by examining the operation of the Claims Assessment Resolution Services.

⁷ Mr John Slattery, President, NSW Bar Association, Evidence, 27 August 2007, p 41. See also Mr Scott Roulstone, Chair of the Injury Compensation Committee, Law Society of NSW, Evidence, 27 August 2007, p 33 and Mr John Driscoll, General Manager – Policy Consumer Directorate, Insurance Council of Australia, Evidence, 27 August 2007, p 48

⁸ *Seventh Report*, p 5

Chapter 2 Overview of performance of CTP Scheme, MAA and MAC

In this chapter the Committee examines the MAA's overall assessment of Scheme performance for 2005-2006. The Committee also briefly examines stakeholder perceptions of both the Motor Accidents Authority and the Motor Accidents Council.

Overview of CTP Scheme performance

2.1 The MAA's *2005-2006 Annual Report* indicates that the performance of the CTP Scheme is assessed against four indicators, namely:

- affordability
- effectiveness
- fairness, and
- efficiency.⁹

2.2 As previously reported by the Committee, affordability is assessed against the price of CTP premiums; effectiveness is measured in terms of the speed and cost of the claims handling process; fairness refers to whether the most seriously injured are receiving adequate compensation; and efficiency is measured in terms of the proportion of the premium dollar paid to claimants.¹⁰

New reporting basis due to introduction of the Lifetime Care and Support Scheme

2.3 Mr David Bowen, the General Manager of the MAA, informed the Committee that, due to the introduction of the Lifetime Care and Support Scheme, the MAA will be reporting on a new basis in the next reporting period:

... with the commencement of the Lifetime Care Scheme in October last year, in this report we are really at the end of a period of the Scheme of operation, from 1 October 1999 to 30 September last year. We will be reporting on a new base from that point onwards.¹¹

2.4 In advising the Committee of the need to change the way the MAA reports on the Scheme as a whole, Mr Bowen explained that the Scheme had performed well since its inception and was well placed to move into its next phase:

⁹ MAA, *Annual Report, 2005-2006*, p 12

¹⁰ *Seventh Report*, p 6

¹¹ Mr David Bowen, General Manager, MAA, Evidence, 27 August 2007, p 3

The seven years have not been without their difficulties. I sit here feeling quite confident that we have delivered on most of the objectives from the 1999 reforms and have the Scheme well placed to move into its next phase.¹²

Affordability

- 2.5 During the public hearing, Ms Carmel Donnelly, the Deputy General Manager of the MAA, presented the most recent information available which showed that green slip affordability was at its best level in 15 years:

This data is later than our most recent Annual Report. It shows two measures – the weighted best price and the average premium for our metropolitan class 1. They are related to average weekly earnings. As a percentage when you look back over some 15 or 16 years, indeed beyond that slide, it is the best green slip affordability historically over that period of time and much better at 26 to 28%, around that range, than obviously the over 50% shown in the late 1990s.¹³

- 2.6 Issues that were raised during the review in relation to the price and composition of CTP green slip premiums are examined in more detail in Chapter 4.

Effectiveness

- 2.7 The MAA's *2005-2006 Annual Report* notes that the 1999 legislation sought to streamline the claims process to make it less adversarial and court based.¹⁴ In relation to claims the MAA has advised that:

Approximately 72 per cent of full claims are settled without being referred to the Medical Assessment Service or the Claims Assessment Service. Comparing the old and new schemes at a similar stage of development, the proportion of full claims with litigation has dropped from 20 per cent to 5 per cent.¹⁵

- 2.8 When asked whether the percentage of claims settled without dispute is a relevant indicator of Scheme effectiveness, the MAA stated that it '... is currently reviewing the measures of Scheme effectiveness and agrees to consider the value of this figure as a measure.'¹⁶

- 2.9 The MAA's *2005-2006 Annual Report* notes that, with respect to earlier access to compensation, a key reform was the introduction of the Accident Notification Form (ANF). The report states that by 30 June 2006, 36,500 ANFs had been lodged. That is, 43% of claimants used this simplified procedure to notify an insurer of their claim, and receive more immediate compensation than through the full claims process. ANFs may convert to full claims if treatment expenses exceed the ANF limit (\$500) or if claimants wish to claim for other heads of damages. Since the start of the Scheme in October 1999, 55% of ANFs have

¹² Mr Bowen, Evidence, p 5

¹³ Ms Carmel Donnelly, Deputy General Manager, MAA, Evidence, 27 August 2007, p 5

¹⁴ MAA, *Annual Report, 2005-2006*, p 92

¹⁵ MAA *Response to Questions on Notice*, 23 August 2007, p 4

¹⁶ MAA, *Response to Questions on Notice*, 23 August 2007, p 4

converted to full claims.¹⁷ Approximately 23% of claims have been finalised as ANFs. Issues relating to ANFs, including a proposal to expand the ANF scheme, are examined in more detail in Chapter 5.

- 2.10** The MAA's *2005-2006 Annual Report* contains data on the success rate in meeting the various statutory timeframes set for dispute handling by both the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS). The report notes that the average overall MAS lifecycle continued to reduce during the reporting period – achieving a 17% reduction. The average overall CARS general assessment lifecycle for assessed matters continued to rise during the reporting period – with an increase of 7%.¹⁸ Further detail about the timeliness of dispute handling by the MAS is contained in Chapter 3.
- 2.11** With respect to cost of the claim handling process the Committee makes reference to the information provided with respect to the composition of the CTP premium. A comparison of the information provided in the Committee's *Seventh Report*¹⁹ and the information presented to the Committee at the public hearing during this year's Review²⁰ shows that claim handling expenses reduced from 4.9 to 3.7% of premium price. Acquisition costs increased from 15.6 to 16.9%, and legal and investigation costs reduced from 10.8 to 9.4%.

Efficiency

- 2.12** At the time the Committee's *Seventh Report* was produced it was reported that the projected return to claimants was 60% of total premiums.²¹ The MAA's *2005-2006 Annual Report* states that the projected return to claimants was 59%. The report states that generally, the return to the claimant has been greater under the new scheme, averaging 60% compared to 58% under the old scheme.
- 2.13** During the public hearing the MAA presented updated information on the projected distribution of total premiums. In that information the projected application for compensation payments had risen to 63.2%. This amount now includes the projection for Lifetime Care and Support participant benefits.²²

Fairness

- 2.14** The MAA's *2005-2006 Annual Report* notes that the Scheme is intended to provide a fair and equitable system for claimants by ensuring that the most seriously injured receive maximum compensation. It measures this by examining the damages paid to claimants who suffer serious brain injury and comparing the first accident year of the new scheme at the end of

¹⁷ MAA, *Annual Report*, 2005-2006, p 92

¹⁸ MAA, *Annual Report*, 2005-2006, p 20

¹⁹ *Seventh Report*, p 17

²⁰ Tabled Document, Ms Donnelly, Public Hearing, Powerpoint Slides

²¹ *Seventh Report*, p 8

²² Tabled Document, Ms Donnelly, Public Hearing, Powerpoint Slides

June 2006 with the last accident year of the old scheme at the end of June 2005. In this regard the report notes:

There were 55 new scheme claims finalised with liability fully accepted (33%) compared to 44 (28%) old scheme claims. The rate of litigation was 33 per cent of finalised new scheme claims compared to 75 per cent of old scheme finalised claims. The average payment, excluding legal and investigation costs, increased by 74 per cent to \$947,200. Non-economic loss payments were made on 44 finalised new scheme claims and 41 finalised old scheme claims. The average non-economic loss payments on new scheme claims was \$176,100, 42 per cent higher than the average on old scheme claims.²³

Health outcomes

2.15 During the Committee's Sixth Review the MAA advised that it was working on incorporating health outcomes for injured road users into its assessment of Scheme performance.²⁴ The Committee expressed its support for this development and recommended that the MAA continue to work with stakeholders to develop a meaningful measure of health outcomes as a criterion of effectiveness of the Scheme.²⁵

2.16 The Government response to this recommendation noted that the MAA has contracted a firm to work on a health outcomes approach to the Scheme:

The MAA has contracted KPMG to facilitate the development of options to maximise a health outcomes approach to the CTP Scheme. The issues that will be considered include:

- **Cost of treatment and rehabilitation.** Both the quantity and quality of services will be considered. The MAA will be reviewing the delivery of health services across a range of injury types in the motor accidents scheme. This will include considering program fees and the use of outcome measures for fee arrangements and/or regulation.
- **Evidence based practice.** Particular emphasis will be placed on earlier identification of those injured people with poor prognosis, to allow for differential medical management and intervention to improve long term health outcomes.
- **Return to work.** This will involve identifying potential system barriers to return to work and to create incentives for employers and injured workers to participate.

²³ MAA, *Annual Report, 2005-2006*, p 94

²⁴ NSW Legislative Council, Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council: Sixth Report*, Report 27, 20 May 2005, p 73

²⁵ *Seventh Report*, Recommendation 18, p 100

It is anticipated that there will be consultation on possible options with motor accidents scheme insurers and health providers by October 2007.²⁶

2.17 The MAA *2005-2006 Annual Report* states that the MAA is making ‘health outcomes’ an additional performance measure:

The 1999 reforms introduced a much greater focus on improved treatment for people injured in motor vehicle accidents. The MAA is keen to extend this by making health outcomes a scheme performance measure. The MAA believes it is as important to focus on getting claimants better as it is for them to receive monetary compensation.²⁷

2.18 The MAA has identified that it will be examining a number of areas in this regard:

Some of the areas the MAA has marked for examination include the delivery of health services across a range of injury types in the motor accidents scheme and the development of evidence based practice, with a particular emphasis on earlier identification of those with poorer prognosis, to allow for differential medical management and intervention to improve long term health outcomes. The MAA also wishes to explore return-to-work programs within the scheme, identify where barriers exist to returning to work and create employment incentives for employers and injured workers.²⁸

Committee comment

2.19 The Committee notes that the Motor Accidents Compensation Scheme, in the last year of its current reporting structure, continued to function in an appropriate manner when assessed against the performance indicators of affordability, effectiveness, efficiency and fairness. The Committee reiterates its support for the introduction of health outcomes as a Scheme performance indicator.

Relationship between stakeholders and the MAA

2.20 In this section the Committee notes the views expressed to it by Review participants regarding the nature of their relationship with the MAA. Stakeholders who participated in this year’s Review generally expressed their support for the work of the MAA. For example, Youthsafe expressed its support for the MAA in relation to its road safety functions:

Youthsafe strongly supports an ongoing and active MAA role in road safety and injury prevention, including:

- Continuing to recognise the road safety and injury prevention needs of young people as a high priority.
- Supporting relevant research and the practical implementation of research findings.

²⁶ *Government Response to Seventh Report*, Recommendation 18, p 8

²⁷ MAA, *Annual Report*, 2005-2006, p 5

²⁸ MAA, *Annual Report*, 2005-2006, p 5

- Providing grants for community based initiatives that support improvements in the safety of young people on the roads.
- Working with other stakeholders towards a co-ordinated and multi-strategic approach to injury prevention in young people.²⁹

2.21 In previous reviews it has been noted that there has been on-going debate between CTP insurers and the MAA regarding the amount of insurer profit that would equate to an adequate return on capital invested and compensation for risk taken. Apart from that issue it is clear from the Insurance Council of Australia's ("Insurance Council") submission, and the oral evidence given by their representatives, that the Council is reasonably content with both the level of consultation afforded to them by the MAA and with the operation of the Scheme in general.

2.22 Mr Philip Cooper, the Chair of the Insurance Council's MAISC Executive Committee and also a member of the Motor Accidents Council, told the Committee that the Council, '... with the MAA and other stakeholders within the injury compensation area, are continually looking at ways to improve the Scheme.'³⁰ Mr Cooper also pointed out that there have been a number of incremental changes made to improve the Scheme and that further incremental changes could be made.³¹

2.23 Mr Scott Roulstone, the Chair of the Injury Compensation Committee with the Law Society of NSW told the Committee that, generally, the Law Society has a close and harmonious relationship with the MAA, notwithstanding the fact that it continues to have serious concerns with certain aspects of the Scheme:

We have particularly strong relationships with the General Manager, Mr David Bowen, Cameron Player and Belinda Cassidy. In fact, recently Mr Player attended the Injury Compensation Committee meeting to address the committee, which comprises approximately 20 personal injury lawyers, on current procedures, proposed changes to legislation and statistical matters, et cetera. In that capacity he also made himself available to take questions and provide answers. It was a very harmonious setting.³²

2.24 With respect to issues relating to the Scheme that are of concern to the Law Society, Mr Roulstone stated that, while the levels of consultation both ways are good and harmonious, the outcomes desired by the Society are not being achieved. Mr Roulstone gave his view of why this might be the case:

Accident victims are not able to argue their own cases in a political forum nor within the system they have unfortunately been forced to be in. It is entirely up to the Law Society and the Bar Association to argue the cause because there is no-one else left out there to do it, and we are more than happy to take that role, and we will jump up

²⁹ Submission 4, p 6

³⁰ Mr Philip Cooper, Chairperson MAISC, Insurance Council of Australia, Evidence, p 49. MAISC stands for the Motor Accidents Insurance Standing Committee.

³¹ Mr Cooper, Evidence, p 49

³² Mr Roulstone, Evidence, p 33

and down and bring tort law reform campaigns and we will do everything we can, but often it is falling on deaf ears within the political institutions.³³

2.25 The Bar Association was also positive about the level of consultation, however, like the Law Society they expressed dissatisfaction with the lack of outcomes achieved:

The people we deal with at the MAA treat us well, they are excellent, they are highly professional. I want to make that very clear. However, I suppose over time we often say that not a lot changes, we are not sure why.³⁴

I have been to an awful lot of meetings down there and certainly I have no complaints about the degree with which they consult. They will ask my opinion about everything. The win[s] you have in terms of changing their mind about anything is very few and far between, you certainly savour those.³⁵

2.26 The Committee also notes that, given its functions of supporting injury prevention initiatives and promoting appropriate treatment of injured people, the MAA appears to have a strong relationship with various stakeholders from the road safety and medical fraternities. The strength of these relationships is no doubt enhanced by the fact that the MAA provides funds and support to a range of initiatives, as indicated in its *Annual Report*.³⁶

Committee comment

2.27 The Committee commends the MAA for the level of consultation it undertakes, its willingness to discuss and explain issues and the professional relationship it has fostered with various stakeholder groups. The Committee is hopeful that the additional dialogue between the MAA and stakeholders that is generated by the Committee's Reviews contributes towards this healthy relationship between stakeholders and the MAA.

2.28 With respect to the many of the issues of concern to the both the Law Society and the Bar Association that are examined in this report, in order to achieve their desired outcomes the support of the Minister and ultimately the Parliament is required. The avenue available by which such representations to the Minister can be made is via the Motor Accidents Council and the Board of Directors. Garnering the support of the MAA in relation to such issues is obviously important to the process and the Committee notes in this regard that the MAA has an appropriate level of dialogue with various stakeholders about their concerns.

³³ Mr Roulstone, Evidence, p 39

³⁴ Mr Slattery, Evidence, p 43

³⁵ Mr Andrew Stone, Member of the Common Law Committee, NSW Bar Association, Evidence, 27 August 2007, p 43

³⁶ MAA, *Annual Report*, 2005-2006, pp 26-27

The Motor Accidents Council

Role of the MAC

- 2.29** During the hearing, Mr Richard Grellman, the Chair of the Motor Accidents Council (MAC) described the MAC as a advisory body which provides a forum for issues to be discussed:

The Council reports to the Minister through the Board of Directors but it is very much an advisory capacity. Because it primarily consists of service providers and people closely interested in the working of the Scheme, it is a very good forum for issues to be aired with people who understand the finer details of the scheme so that those issues can be well discussed and often debated. Although the Council has no decision-making ability, as I said before, it nevertheless is a very good forum to bring out issues that might be relevant to the board. So as a result it is not at all unusual for issues that the Board may be contemplating resolving to run past the Council first. That gives the service providers an opportunity to ensure that their views are factored into the thinking of the Board, which of course can be reported through to the Board from the three Board members who sit on the Council.³⁷

Membership and meetings

- 2.30** The Committee was advised that the MAC meets every second month and had therefore met six times in the period between August 2006 and August 2007.³⁸ The term of the current members of the MAC will lapse in March 2009.³⁹

Issues discussed

- 2.31** Mr Grellman advised the Committee of the issues recently discussed by the MAC, which included Scheme performance, superimposed inflation, learner driver road safety, monitoring of health outcomes, claims handling and the whole person impairment guidelines:

The sorts of matters that the Council has reviewed lately ... are, firstly, the Scheme data itself, how the Scheme is performing, whether there are any apparent signs of fragility in the Scheme that may need addressing, and how the assessment centres are operating and whether they are achieving their goals in a timely fashion. But, more particularly, recently there was a study by PricewaterhouseCoopers on superimposed inflation and whether or not that is becoming a factor in the Scheme again. It is quite a heavy document but it was pre-circulated and then discussed by the Council. ...

There are issues such as learner driver road safety, which has been occupying the Authority for some time. As to health outcome monitoring, obviously if there is a claimant against the Scheme the Scheme is primarily directed at ensuring that they are rehabilitated and their health is returned to a stable condition as quickly as possible. So there is monitoring in broad terms of the outcomes that we are seeing coming through the Scheme. We rely very much on the insurance sector to assist with claims

³⁷ Mr Richard Grellman, Chairman, MAA, Evidence, 27 August 2007, p 3

³⁸ MAA, *Response to Questions on Notice*, 4 September 2007, p 1

³⁹ MAA, *Response to Questions on Notice*, 4 September 2007, p 15

handling. There are claims-handling guidelines so there is an overview of how the insurers have been performing—whether there are any issues that may have required further dialogue with insurers generally or an insurer. Then of course there are the whole-person impairment guidelines, which are a very key underlying ingredient of the scheme.⁴⁰

- 2.32** Mr Grellman also described the MAC as having an ‘interesting dynamic’ which creates a ‘robust’ environment:

It is a group that has a quite interesting dynamic because you have, if you like, naturally opposing points of view—for instance, often the legal profession and the underwriters will have different views on a topic. That can be made even more interesting if the medical profession has a further point of view that might be not quite on all fours with either of the other two stakeholders. It is quite a robust environment for these different points of view to be put on the table. I think that makes for a very healthy environment. I know that David and his people get quite a lot of benefit from some of the debates that occur within the Council.⁴¹

Stakeholder views of the MAC

- 2.33** The Insurance Council of Australia informed the Committee that it has a good relationship with the MAC, describing it as an ‘effective body’ for the provision and debate of stakeholder views:

The Insurance Council and insurers have a good relationship with the MAA and the MAC and meet regularly to discuss issues and exchange opinions both formally through the MAAS Reference Group and informally. We submit that the MAC is an effective body for the provision of the views of various stakeholders. It also provides the venue for constructive debate of the views of stakeholders.⁴²

- 2.34** The Bar Association’s representative on the MAC, Mr Andrew Stone, was asked to comment on his experience as a member of the MAC. He noted that, while the MAC is effective as an information sharing mechanism it could be more ‘vigorous, robust and useful’:

As a mechanism for distributing information the Council is excellent, however the Council could be far more effective than it is in practice. The Council agenda for our hour and a half meetings every two months usually comprises two or three presentations as to different aspects of the operation of the scheme. This means that stakeholders are kept well informed as to what is happening. However, following any presentation there is usually very little discussion and debate.

From the limited discussions we have, the MAA does get some feedback from the Council. However, in my view the Council could be a more vigorous, robust and useful body if it was less tightly controlled and even occasionally engaged in some debate about policy issues.

⁴⁰ Mr Grellman, Evidence, p 3

⁴¹ Mr Grellman, Evidence, p 3

⁴² Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 3

In short, the Council is informative rather than consultative. The MAA only ever bring an issue to Council once they have determined their own position. I can't think of too many occasions where the MAA have changed their position or approach on anything as a consequence of discussions at the Motor Accident Council.⁴³

- 2.35** Mr Stone was also asked whether the MAC is effective in its role to provide advice to the Minister and the MAA on issues relating the Motor Accidents Compensation Scheme. His response noted that during the five years he has been on the MAC it has only made one recommendation to the Minister:

I would like to think that the MAA took on board some of the matters raised at Council meetings. In my five years in the Council we have made the grand total of one recommendation to the Minister. We recommended, uncontroversially, that the Government consider amending its fleet purchasing requirements to incorporate vehicles with a particular safety feature.

There is a difficulty with getting the Council to make any recommendations to the Minister. If the Council were to recommend a change then it is an implicit acknowledgement that something is broken or wrong. It's very difficult to get the MAA bureaucracy to acknowledge that there are any problems, let alone a problem that the Council (rather than the MAA) recommends be fixed. At various times I have moved at Council meetings to make a recommendation to the Minister, but only once has my motion even progressed to a vote.⁴⁴

Committee comment

- 2.36** The Committee notes the generally positive view of the value of the MAC as a representative forum in which information can be shared and differing views expressed. However, the Committee is concerned about the comments made by the Bar Association's representative on the MAC regarding the difficulty in getting the MAC to consider making recommendations to the Minister.
- 2.37** In relation to providing advice to the Minister, the *MAC Act* states that one of the functions of the MAC is to 'advise the Board of Directors of the Authority or the Minister (through the Board) on any matter relating to the Motor Accidents Scheme under this Act that the Council considers appropriate or that the Board or Minister refers to the Council for advice.'⁴⁵
- 2.38** The Committee is concerned that the MAC should be as effective as possible in relation to its role in providing advice to the Minister. The Committee has not, however, had the benefit of the views of the Chair of the MAC on this matter. The Committee therefore recommends that the Chairman of the MAC, Mr Richard Grellman, provide the Committee with a response to the comments set out in this report.

⁴³ Bar Association of NSW, *Response to Questions on Notice*, 4 September 2007, p 2

⁴⁴ Bar Association of NSW, *Response to Questions on Notice*, 4 September 2007, pp 2-3

⁴⁵ *Motor Accidents Compensation Act 1999* (NSW), s 209(1)(d)

Recommendation 1

That the Chair of the Motor Accidents Council provide a response to the comments of the NSW Bar Association's representative on the Council set out in this report regarding its effectiveness and, in particular, in relation to its role to provide advice to the Minister.

Chapter 3 Performance of the Medical Assessments Service

This chapter examines the Medical Assessments Service (MAS), which was the focus of this year's review. In examining the operation of the MAS, the Committee had the benefit of hearing from three MAS Medical Assessors during the Committee's hearing. Their evidence greatly assisted the Committee's understanding of the medical assessment process and the various issues raised during this review in relation to it.

This chapter commences with an overview of the operation and administration of the MAS and then examines a number of issues raised during the review in relation to the operation of the MAS. The issue most extensively canvassed by stakeholders was the 10% Whole Person Impairment threshold for non-economic loss and the role of the MAS in relation to it. Other issues include the potential for conflicts of interest to arise where a Medical Assessor also undertakes private medical assessments for claimants or insurers or both and delays in the MAS assessment process.

Overview of MAS

- 3.1 One of the main functions of the MAA is as a dispute resolution service. This function is executed through the MAA's Motor Accidents Assessment Service (MAAS). The MAAS is comprised of the MAS and the Claims Assessment and Resolution Service (CARS).
- 3.2 Under the old motor accidents scheme claimants and insurers engaged and paid for their own expert medical witnesses. Under the current scheme medical issues are resolved through the MAS, by a medical practitioner independent of both the claimant and the insurer. The cost of the medical assessment is born by the MAA and ultimately by CTP policy-holders through the CTP levy.
- 3.3 The *MAC Act* provides for the medical assessment of personal injuries suffered in motor accidents in NSW.⁴⁶ The purpose of medical assessment is to determine disputed questions of fact regarding medical injuries suffered in a motor accident.
- 3.4 A claimant or an insurer may refer a dispute regarding any of the following to the MAS for assessment by a Medical Assessor:
 - (a) whether the treatment provided or to be provided to the injured person was or is reasonable and necessary in the circumstances
 - (b) whether any such treatment relates to the injury caused by the motor accident
 - (c) whether an injury has stabilised
 - (d) the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident

⁴⁶ *Motor Accidents Compensation Act 1999* (NSW), Part 3.4

- (e) the degree of impairment of the earning capacity of the injured person as a result of the injury caused by the motor accident.⁴⁷

3.5 The lifecycle of a MAS assessment is set out in Appendix 4.

3.6 A finding by a Medical Assessor in respect of the following is binding on the parties, Claims Assessors and the courts:

- whether the injured person's degree of permanent impairment is greater than 10%
- whether any treatment already provided to the injured person, was reasonable and necessary in the circumstances
- whether any treatment to be provided to the injured person is reasonable and necessary in the circumstances
- whether an injury has stabilised.⁴⁸

3.7 Other findings of fact made by a Medical Assessor are evidence of the existence of those facts, but are not binding.⁴⁹

3.8 Medical Assessors are under a duty to afford procedural fairness to parties to a medical assessment and to provide reasons for their findings.⁵⁰ The issue of appeals to the Supreme Court on the ground of procedural fairness is examined in Chapter 5.

3.9 Mr Player, the Assistant General Manager of the MAAS, informed the Committee that the process of allocating claims to a particular assessor is determined on the basis of a number of factors:

Applications are ... lodged with the Authority. A whole range of factors come into the determination of what type of assessor is appointed. They are in descending order; they are all mixed together, depending on the individual circumstances of the injured claimant. These include the types of injuries involved, the degree of injury involved, the location of the claimants, the availability of the claimant to attend appointments—they may only be able to come on Tuesday afternoon after 3.00 p.m. or whatever—the availability of assessors, the workload of the current assessors and a range of other factors.⁵¹

⁴⁷ *Motor Accidents Compensation Act 1999* (NSW), s 58. A court or a CARS Claims Assessor may also refer a dispute regarding the above to the MAS for medical assessment: *Motor Accidents Compensation Act 1999* (NSW), s 60

⁴⁸ *Motor Accidents Compensation Act 1999* (NSW), s 61(2). In its *Seventh Review* the Committee recommended (Recommendation 12) that the Minister for Commerce review the operation of the *MAC Act* in respect of problems associated with the non-binding status of some MAS assessments, with a view to identifying any possible legislative changes. The Government Response advised that as a result of legislative changes that took effect in October 2006, the medical assessment of future treatment needs is now binding, as noted above.

⁴⁹ *Motor Accidents Compensation Act 1999* (NSW), s 61(3)

⁵⁰ *Motor Accidents Compensation Act 1999* (NSW), ss 61(4) and 61(9)

⁵¹ Mr Cameron Player, Assistant General Manager, MAA, Evidence, 27 August 2007, p 25

- 3.10** Mr Player confirmed that neither the insurer or applicant has any say in which assessor is initially appointed,⁵² but noted that either party has the opportunity to object to a particular assessor being appointed:

Both parties have the opportunity to object — it is in our guidelines ... — and apply and set out any reasons that they might think this assessor might not be the appropriate assessor to conduct the assessment.⁵³

- 3.11** The Committee notes that legal representatives often play a role in the medical dispute resolution process. In this regard, Mr Roulstone of the Law Society of NSW advised that solicitors represent approximately half of the claimants under the Scheme and play a crucial role, particularly in the area of non-economic loss compensation where legally represented claimants often achieve compensation far above the initial settlement amount offered to claimants by insurers.⁵⁴ The Committee was also informed that barristers play a specialist advisory role for many claimants under the Scheme.⁵⁵

Appointment and training of Medical Assessors

- 3.12** The Committee was advised that the MAS has approximately 200 Medical Assessors located across NSW as well as in other States:

... we have a very good coverage across NSW and in fact nationally. We have assessors in almost every State and most capital cities, in particular. I think our coverage will probably be improved in this recruitment round for this round of assessors. We had a few gaps in some areas such as Wollongong and Newcastle where the population has grown dramatically over the last few years but I think we have addressed those in this round of recruitments. We have around 200 assessors at present and I think we will still have around the same number of assessors, perhaps with some shift in the people on the list.⁵⁶

Appointment process

- 3.13** Mr Player informed the Committee that the appointment/reappointment process for Medical Assessors was underway at the time of the Committee's hearing:

The assessors have not been reappointed at the moment; their terms of appointment expire on 30 September. The reappointment process is happening as we speak, but we are expecting it to be completed on 1 October. All the existing assessors and people seeking to apply as new assessors were required to reapply, there was not an automatic rollover.⁵⁷

⁵² Mr Player, Evidence, p 25

⁵³ Mr Player, Evidence, p 26

⁵⁴ Mr Roulstone, Evidence, p 34

⁵⁵ Mr Slattery, Evidence, p 43

⁵⁶ Mr Player, Evidence, p 22

⁵⁷ Mr Player, Evidence, pp 20-21

- 3.14 The Committee was informed that a panel reviews the applications and makes decisions on appointments and reappointments. The panel consists of three officers of the MAAS, a representative from the Insurance Council of Australia and the Bar Association and a representative of the Assessors Practice Group.⁵⁸

Qualifications

- 3.15 Mr Player outlined the requirements for Medical Assessors with the MAS which include certain qualifications, experience and relevant training in making assessments for the purpose of the motor accidents scheme:

There were very strict selection criteria, which included that applicants had to be qualified medical practitioners registered in NSW and a member of the relevant college of their area of speciality. They had to have had at least five years experience as a practitioner in the college. They had to demonstrate that they had completed the Royal North Shore training in evaluation of permanent impairment and have completed the MAA additional training on conducting of impairment assessments under the MAA regime. ... Another criterion was that they needed to demonstrate superior ability and experience in the impartial assessment of permanent impairment and in certifying degrees of permanent impairment. Also they had to demonstrate a commitment and ability to comply with MAA medical guidelines and also their terms of engagement and code of conduct. They are quite extensive selection criteria.⁵⁹

- 3.16 Mr Player also advised the Committee that Medical Assessors who conduct treatment disputes have an additional criteria to satisfy:

For those assessors who conduct treatment disputes we added an additional layer to the process. The treatment assessors had to display superior knowledge of current evidence-based practices and experience in their particular specialty area and be a member of whatever college they were a part of. They had to display an ongoing commitment to their professional development relevant to that area of specialty, so there were very strict and very clearly defined selection criteria.⁶⁰

Training

- 3.17 The Committee was informed that the training received by Medical Assessors comprises the following:

- Initial formal training in modules relevant to the areas of speciality that each Assessor does assessments in, carried out at the University of Sydney Clinical School at the Royal North Shore Hospital.
- Updates and information through the *MAAS Bulletin* and through the MAA's extranet website for Assessors.

⁵⁸ Mr Player, Evidence, p 20

⁵⁹ Mr Player, Evidence, pp 20-21

⁶⁰ Mr Player, Evidence, pp 20-21

- Bi-monthly Assessor Forums held by the MAAS, at which time there is an opportunity for further training in procedural fairness, natural justice as well as more medically-oriented issues and case discussions.
- Annual Assessors Meeting held by the MAAS which is a formal one day event at which there are topics of medical as well as administrative significance directed at improving and maintaining standards and quality in assessment work.
- Support provided by the MAS to assessors either by direct response to queries or referral to senior assessors as a resource for further support in the assessor role.⁶¹

3.18 Dr Dowda, explained the initial formal training in further detail, noting that there is a core module which explains the legislative background and the basis of impairment assessment:

The training consists of a core module, which everyone has to do, that explains the basis of the whole program, the legislation behind it and the basis of impairment evaluation. The modules conducted subsequent to that are spinal modules, upper and lower extremity modules, nervous system modules, psychiatric, mental and behaviour modules, and neurological modules. These consist of a didactic portion, which is about an hour to an hour and a half of teaching out of the MAA Guidelines, and through them the AMA Guides. So it is done in a synchronised fashion.⁶²

3.19 The Committee was informed that Medical Assessors receive specific training in relation to the assessment of WPI for the purposes of the 10% threshold for non-economic loss compensation. In this regard, the AMA4 Guides and the MAA Guidelines are covered as part of each of the training components set out in paragraph 3.17.⁶³ Dr Dowda also described the tutorial based aspect of the training which assists assessors to understand the interrelationship between the AMA4 Guides and the MAA Guidelines:

That is followed by an intense, tutorial-based learning process of working through cases and applying the guidelines, under tutorship, so that people are able to see how to utilise the guidelines. So it works well. Many doctors have gone through it, quite a few lawyers have done it, and a lot of many non-medical people, such as insurers and claims management staff, have done it. The feedback is that it helps people to understand the somewhat intricate interrelationship of the AMA Guides and the MAA Guidelines and how they are applied in the practical setting.⁶⁴

3.20 The MAA also informed the Committee that, in relation to WPI assessments, the MAAS has developed a number of factsheets and worksheets for publication and that feedback is being sought from stakeholders on those. In addition, the development of an online WPI index is being researched which will:

... enable stakeholders to readily refer to the appropriate chapter in American Medical Association Guides to the Evaluation of Permanent Impairment (4th Edition) and

⁶¹ MAS, *Response to Questions on Notice*, 4 September 2007, p 1

⁶² Dr Dwight Dowda, Medical Assessor, MAS, Evidence, 27 August 2007, p 30

⁶³ MAS, *Response to Questions on Notice*, 4 September 2007, pp 2-3

⁶⁴ Dr Dowda, Evidence, p 30

Motor Accidents Authority Guidelines as appropriate to the body region(s) in dispute.⁶⁵

- 3.21** The three Medical Assessors who appeared before the Committee, Dr Dowda, Dr McCarthy and Dr Papatheodorakis, all expressed support for the adequacy of the training provided to Medical Assessors.⁶⁶

Performance of MAS

- 3.22** In this section the Committee has reviewed the MAA's assessment of the performance of the MAS, as set out in the MAA's *2005-2006 Annual Report*.

Number of applications

- 3.23** The MAS received 5,543 applications for medical assessment in 2005-2006, comprising:

- 369 applications in respect of treatment disputes
- 3,042 applications in respect of permanent impairment and stabilisation
- 404 applications in respect of earning capacity
- 978 applications for further medical assessment
- 750 applications for reviews.⁶⁷

- 3.24** The MAA reports that the number of applications received by MAS has decreased over the last three years, largely as a result of a decrease in disputes regarding treatment and loss of earning capacity.⁶⁸ Permanent impairment and stabilisation applications continue to be the largest category by an increasing margin, now accounting for 80% of MAS applications in 2005-2006.⁶⁹ The MAA also reports that, "as might be expected applications for further medical assessment have increased each year as the scheme continues to mature".⁷⁰

Number of assessments

- 3.25** The MAS completed 4,371 assessments in 2005-2006, down from 4,780 assessments in 2004-2005, comprising:

- 491 treatment assessments
- 3,367 permanent impairment and stabilisation assessments

⁶⁵ MAA, *Response to Questions on Notice*, 4 September 2007, p 3

⁶⁶ MAS, *Response to Questions on Notice*, 4 September 2007, p 3

⁶⁷ MAA, *Annual Report*, 2005-2006, pp 98-99, 102

⁶⁸ MAA, *Annual Report*, 2005-2006, p 98

⁶⁹ MAA, *Annual Report*, 2005-2006, p 98

⁷⁰ MAA, *Annual Report*, 2005-2006, p 98

- 513 earning capacity assessments
- 948 further medical assessments.⁷¹

Quality and timeliness of assessments

3.26 The MAA reports that the timeliness of finalising MAS matters has improved in every accident year to date.⁷² In 2004-2005, the last year for which figures are available, the MAA reported the following finalisation rates:

- 37% finalised in 5 months
- 86% finalised in 9 months
- 93% finalised in 12 months.⁷³

3.27 The MAA also reports that the average overall life cycle of an MAS assessment in 2005-2006 was 131.6 days, a 17% reduction since the last reporting date.⁷⁴ This complies with the goal set by the MAA during last year's review when it advised the Committee that it aimed to reduce the MAS life cycle to 132 days by 31 December 2006.⁷⁵

3.28 The MAA has reported on the percentage of assessments which meet statutory time frames for the progress of assessments, as follows:

- 96% of applications processed on time (ie within 10 days before 1 May 2006 – within 5 days since then)
- 95% of MAS replies processed on time (ie within 10 days before 1 May 2006 – within 5 days since then)
- 32% of allocation reviews conducted on time (ie within 10 days before 1 May 2006 – within 5 days since then)
- 84% of medical assessor reports completed on time (ie within 15 days of assessment)
- 81% of certificates/reports met QA standards
- 89% of MAS assessments had no application for review lodged.⁷⁶

⁷¹ MAA, *Annual Report*, 2005-2006, pp 98-99

⁷² MAA, *Annual Report*, 2005-2006, p 21

⁷³ MAA, *Annual Report*, 2005-2006, p 21

⁷⁴ MAA, *Annual Report*, 2005-2006, p 20

⁷⁵ *Seventh Report*, p 62

⁷⁶ MAA, *Annual Report*, 2005-2006, p 21. The MAA did not provide an explanation as to why such a low percentage of allocation reviews are completed on time. The Committee notes, however, that the MAA identified that there may be some scope for slightly reducing the lifecycle of MAS assessments including: '... reducing the period for MAAS to conduct the allocation review to within five days of any early Reply that is lodged and is processed by MAAS before it was due, instead of otherwise doing so within 5 days of the Reply Due date if the reply is lodged on its due date': MAA, *Response to Questions on Notice*, 23 August 2007, p 16.

- 3.29** The MAA reviews medical assessment determinations for compliance with the MAA's quality assurance (QA) standards. In 2005-2006:
- 81% of MAS certificates/reports met QA standards, and
 - 89% of assessment had no application for review.⁷⁷
- 3.30** The Committee notes that the MAA has taken steps to improve the quality and timeliness of MAS assessments, including:
- standardisation and reformatting of assessor decisions and review panel decisions to improve consistency, accuracy and ease of use by assessors and parties
 - ongoing communication and education through newsletters, forums and targeted training programs to promote consistent decision making
 - a new quality assurance (QA) approach to assessor determinations, and review panel determinations to improve assessor performance.⁷⁸

Outcomes of medical assessment disputes

- 3.31** The MAA's *2005-2006 Annual Report* provides statistics on the outcomes of the different types of medical disputes handled by the MAS including, 'treatment', 'permanent impairment', 'stabilisation' and 'earning capacity' disputes.⁷⁹ For many outcomes there are distinct trends with respect to whether the outcome favours the insurer or the claimant. Some of these trends are examined below.

Treatment disputes

- 3.32** The *Annual Report* notes that insurers will pay for 'most treatment' for people injured in motor vehicle accidents but that 'occasionally a dispute may arise over a specific form of treatment.' In this regard, there are two types of treatment dispute: 'related treatment' disputes and 'reasonable and necessary treatment' disputes.⁸⁰
- 3.33** Related treatment disputes concern whether or not a specified treatment relates to the injury caused by the motor accident. The Committee notes that for the year 2005-2006, the treatment in dispute was found to be 'related' to the injury caused by the motor accident in 51% of assessments.⁸¹
- 3.34** Dr Kathleen McCarthy, one of the MAS Medical Assessors who appeared before the Committee commented that, in the case of some treatments (both standard and alternative

⁷⁷ MAA, *Annual Report*, 2005-2006, p 20

⁷⁸ MAA, *Annual Report*, 2005-2006, pp 20

⁷⁹ MAA, *Annual Report*, 2005-2006, pp 99-100

⁸⁰ MAA, *Annual Report*, 2005-2006, p 99

⁸¹ MAA, *Annual Report*, 2005-2006, p 99

treatments) the relationship between the injury and the treatment is clear, but in other cases there is clearly no relationship:

An accident might cause injuries, which receive standard and accepted medical/paramedical treatments. There can also be alternative (and not scientifically supported, based on evidence-based medicine) treatments that are given. In both instances, the relationship of the treatment to the injury might be quite clear. However, there can also be circumstances where a particular treatment undertaken is clearly of no relevance or relationship to the injuries sustained in the subject accident. The medical assessor does not have specific regard to whether the insurer or the claimant requests treatment.⁸²

3.35 Dr McCarthy also expressed the view that ‘... as more “case precedents” are established, I think that insurers are less likely to dispute a treatment that had been previously determined evidence based.’⁸³

3.36 Reasonable and necessary treatment disputes turn on whether the treatment concerned is, or was, reasonable and necessary in the circumstances. For the year 2005-2006, in 22% of cases the assessment outcome is that the treatment is ‘fully reasonable and necessary’.⁸⁴

3.37 With regard to this type of dispute Dr Dwight Dowda, another Medical Assessor who appeared on the panel before the Committee noted that ‘the undertaking of therapies that have been shown to have no useful benefit in the management of an injury process, particularly if they are protracted over time, is a common problem.’⁸⁵

3.38 The MAA advised the Committee that progress had been made in reducing the number of treatment disputes:

The MAA considers good progress has been made in this area. In general treatment disputes referred to MAS in recent years reflect more experienced claims management both by claimant’s representatives and insurers and the increased experience gained by all scheme participants from assessments over time of a large number of treatment disputes by MAS. The number of treatment disputes lodged has continued to fall, reducing by 33 per cent this year from 369 in the 2005/6 year to 285 applications in 2006/7.⁸⁶

3.39 The MAA also noted that ‘... the decrease in the lodgement of treatment disputes tends to indicate that Compulsory Third Party insurers are managing these issues better, and that it is now generally only the complex or contentious treatment disputes that are coming to MAS for assessment, and in smaller numbers.’⁸⁷

⁸² MAS, *Response to Questions on Notice*, 4 September 2007, p 8

⁸³ MAS, *Response to Questions on Notice*, 4 September 2007, p 8

⁸⁴ MAA, *Annual Report, 2005-2006*, p 99

⁸⁵ MAS, *Response to Questions on Notice*, 4 September 2007, p 9

⁸⁶ MAA, *Response to Questions on Notice*, 23 August 2007, pp 7-8

⁸⁷ MAA, *Response to Questions on Notice*, 23 August 2007, pp 7-8

Whole person impairment disputes

- 3.40** ‘Whole person impairment’ (WPI) is the assessment of the degree of permanent impairment resulting from the injuries caused by the accident. A permanent impairment assessment of over 10% entitles the claimant to non-economic loss compensation. Applications for stabilisation (discussed below) and whole person impairment assessments are usually received together as the impairment must be permanent before the degree of WPI can be assessed.⁸⁸
- 3.41** The MAA’s *2005-2006 Annual Report* notes that WPI disputes make up 80% of MAS assessments. For the year 2005-2006, in 80% of WPI assessments the outcome is ‘permanent and not over 10%’, which is similar to previous years.⁸⁹
- 3.42** The Medical Assessors who gave evidence to the Committee all agreed that the reason why such a significant proportion of WPI assessments result in the person being assessed as having a *less than* 10% WPI is that ‘the large majority of injuries sustained in motor vehicle accidents resolve with minimal residual impairment.’⁹⁰ WPI assessments were the subject of much debate during this year’s review and are examined in detail later in this chapter.

Stabilisation disputes

- 3.43** ‘Stabilisation’ refers to a dispute about whether the injuries are stable and unlikely to change significantly. The MAA’s *2005-2006 Annual Report* states that in relation to stabilisation disputes, for the year 2005-2006, in 92% of assessments the outcome is that all injuries are considered stable, which is similar to previous years.⁹¹
- 3.44** In relation to this figure, the Committee queried why, if the usual pattern is that such a significant proportion of injuries are considered stable, are there so many disputes about stabilisation? Dr Dowda explained that stabilisation itself is not a large proportion of disputes but that stabilisation of injuries is required prior to assessing permanent impairment and so ‘it by de facto becomes a dispute’.⁹² Similarly, the MAA advised that stabilisation disputes are linked to WPI disputes, and also noted that it is proposing to abolish stabilisation as a ‘stand alone’ dispute:

Under our current practice, stabilisation is assessed with all permanent impairment disputes, hence the large volume of disputes. There are very few stand alone stabilisation disputes lodged with Medical Assessment Service.

The current reform agenda is proposing to abolish the stand alone dispute regarding stabilisation. Changes brought about by other initiatives in the reform agenda will remove the need for Medical Assessment Service to assess stabilisation, as this will no longer be the trigger for an insurer to make an offer.⁹³

⁸⁸ MAA, *Annual Report*, 2005-2006, p 100

⁸⁹ MAA, *Annual Report*, 2005-2006, p 100

⁹⁰ MAS, *Response to Questions on Notice*, 4 September 2007, p 6

⁹¹ MAA, *Annual Report*, 2005-2006, p 100

⁹² MAS, *Response to Questions on Notice*, 4 September 2007, p 7

⁹³ MAA, *Response to Questions on Notice*, 4 September 2007, p 35

Earning capacity disputes

- 3.45** Earning capacity assessments determine whether there has been an impairment of a claimants' capacity to earn an income, either in the past or in the future. These assessments are not binding but rather are 'indicative' for the parties, CARS assessors and the courts.⁹⁴
- 3.46** The Committee notes that for the year 2005-006, the MAA's *Annual Report* states that the outcome is 'impairment to past earning capacity' in 88% of assessments and 'impairment to future earning capacity' in 62% of assessments. These figures are similar to previous years.⁹⁵
- 3.47** Dr McCarthy commented on the trend of a higher percentage for past earning capacity and a lower percentage for future earning capacity:

Impairment of past earning capacity can include any impairment of earning capacity and since the acute injuries can result in a variable period during which a person may be totally or partially incapable of working due to those injuries, this would account for the higher percentage for "past earning capacity". Since a large number of acute injuries subsequently go on to healing with recovery of function, the lesser percentage of "future earning incapacity" probably reflects this situation. I think that the trend reflects the medical aspects of the type of injury.⁹⁶

- 3.48** The MAA advised the Committee that under the MAAS Reform Agenda there is a proposal to abolish these types of disputes because they are non-binding:

The fact that someone may have a loss of 'capacity' may not necessarily mean they have suffered any loss or are awarded any compensation for economic loss. The current reform agenda is proposing to abolish the dispute regarding earning capacity. Under current legislation these disputes are non-binding and have seen to be of little use to the parties.⁹⁷

Multiple disputes

- 3.49** The Committee notes that over the life of the Scheme on average 13% of claims have a medical dispute. Given the number of medical disputes over the life of the Scheme, it appears that on average each of these claims has a multiple dispute. For example in 2004-2005 there were 8993 full claims – 13% of which is 1169 claims. There were 4726 primary assessment applications - which equates to 4.04 disputes per claim. Over the life of the Scheme it would be safe to say that on average each claim generates between 2.5 to 3 disputes.
- 3.50** Dr McCarthy speculated as to why some claims generated multiple disputes:

This may be due to the nature of the injuries, and the claimant's or legal advocate's approach to disputing various heads of damage. However, I believe that the capacity to present additional facts, or to have an issue reviewed, is one of the strengths of MAS over the finality of Common Law court proceedings. From a medical

⁹⁴ MAA, *Annual Report*, 2005-2006, p 100

⁹⁵ MAA, *Annual Report*, 2005-2006, p 100

⁹⁶ MAS, *Response to Questions on Notice*, 4 September 2007, p 7

⁹⁷ MAA, *Response to Questions on Notice*, 4 September 2007, p 35

perspective there does not appear to me to be any consistent reason why claims might have multiple disputes.⁹⁸

- 3.51** The Committee was advised that, as the same assessor is allocated a subsequent dispute in relation to the same claim, it is a matter for the parties to decide whether a subsequent dispute is heard by the same assessor.⁹⁹ Dr McCarthy noted that the ‘... continuity offered by seeing a further dispute on a case that I have assessed already once is helpful and probably a more efficient way of dealing with the dispute.’¹⁰⁰

Further medical assessments

- 3.52** ‘Further medical assessment’ refers to a second or subsequent medical assessment to take account of deterioration in an injury in the period since the initial assessment. An application for a further assessment will only be accepted ‘... if additional relevant information or evidence of a deterioration about an injury is provided and satisfies the Proper Officer (MAS) that it may change the outcome of the matter on further assessment.’¹⁰¹ A further assessment is a de novo (fresh) assessment¹⁰² and is sometimes referred to as a ‘reassessment’.
- 3.53** The MAA’s *2005-2006 Annual Report* notes that, in the reporting period, 543 (89%) applications for further assessment were accepted. In 27% of those matters there was a material change to the outcome, in 23% of matters the outcome was the ‘same as the previous result’ and in 50% of matters the outcome was that there were changes but not material changes.¹⁰³

Reviews of medical assessments

- 3.54** Either party may apply for the review of an original MAS assessment or a further MAS assessment. A review application will only be accepted if the Proper Officer (Reviews) is satisfied that there is reasonable cause to suspect that the assessment was incorrect in a material respect.¹⁰⁴
- 3.55** The MAA’s *2005-2006 Annual Report* notes that in the reporting period, 122 Review Panel decisions were finalised and 72 (60%) of those decisions reversed the outcome of the assessment (an increase from 50% in the previous year).¹⁰⁵ The MAA advised the Committee that the reasons that outcomes were reversed were most frequently because of:

- a decision on injuries ‘caused’ by the accident being incorrect or inadequately explained (in 37 of the 72 cases),

⁹⁸ MAS, *Response to Questions on Notice*, 4 September 2007, p 4

⁹⁹ MAS, *Response to Questions on Notice*, 4 September 2007, p 5

¹⁰⁰ MAS, *Response to Questions on Notice*, 4 September 2007, p 5

¹⁰¹ MAA, *Annual Report*, 2005-2006, p 101

¹⁰² MAA, *Annual Report*, 2005-2006, p 101

¹⁰³ MAA, *Annual Report*, 2005-2006, p 101

¹⁰⁴ MAA, *Annual Report*, 2005-2006, p 101

¹⁰⁵ MAA, *Annual Report*, 2005-2006, p 102

- the incorrect application of Whole Person Impairment Guides (in 13 of the 72 cases),
- new information provided to the Panel that was not available to the original assessor (in 11 of the 72 cases).¹⁰⁶

3.56 The *Annual Report* also notes that the 10% increase in outcomes being reversed may be ‘... a little misleading as the reversal of the outcome may result from additional information provided by the parties to the review panel rather than the amendment of any error. The overall proportion of MAS assessments reversed on review remained extremely low at just 1.4%.’¹⁰⁷

Committee comment

3.57 The efficient performance of MAS is critical to the successful operation of the Motor Accidents Scheme. The Committee notes that the performance of MAS continues to improve, including in relation to the timeliness of finalising matters. The average overall lifecycle of disputes has reduced by 17% from the last reporting year and statutory timeframes for the progress of assessments are being met in a significant majority of matters.

3.58 The written and oral evidence presented by the MAA during the Review also indicates that the MAS is subject to a program of ongoing assessment and review in order to improve the efficiency and effectiveness of its processes. The Committee notes in this regard the MAAS Reform Agenda as well as MAS specific projects such as the Whole Person Impairment Project, which is discussed later in this chapter.

3.59 The Committee also notes that the MAA has put in place a robust appointment process for Medical Assessors and that they are required to undertake an appropriate amount of training. Specific training is targeted to the contentious area of Whole Person Impairment assessments, which the Committee examines in further detail in the following section.

Issues raised in relation to MAS

3.60 Inquiry participants raised a number of issues during the Committee’s Review in relation to the operation of the MAS including, the 10% WPI threshold for non-economic loss compensation, potential conflicts of interests where Medical Assessors also undertake work for claimants and insurers and delays.

10% WPI threshold for non-economic loss compensation

3.61 Much of the evidence presented to the Committee in relation to the MAS focused on the 10% WPI threshold for non-economic loss. Several issues were raised by stakeholders in relation to

¹⁰⁶ MAA, *Response to Questions on Notice*, 4 September 2007, p31. A further breakdown of the reasons that the Review panel reversed an assessment is contained in the responses to Questions on Notice, which can be viewed on the Committee’s website.

¹⁰⁷ MAA, *Annual Report*, 2005-2006, p 102

the threshold including the fairness of the threshold, inconsistencies in assessments, and mistakes in making assessments.

Background

3.62 Claimants are entitled to damages for non-economic loss in respect of personal injury under the Motor Accidents Scheme only if their degree of WPI exceeds 10% and is permanent. The degree of impairment is calculated according to the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA4 Guides). The AMA4 Guides are subject to an interpretive guide prepared by the MAA and contained in *MAA Guidelines for the Assessment of the Degree of Permanent Impairment*.

3.63 A significant proportion of the work of the MAS concerns disputes about WPI. As noted in paragraph 3.41, WPI disputes make up 80% of MAS assessments and, for the year 2005-2006, in 80% of those assessments the outcome was 'permanent and not over 10%', which is similar to previous years.¹⁰⁸

3.64 In response to a recommendation contained in the Committee's *Seventh Report*, the Committee was advised about the MAA's Whole Person Impairment Awareness Project which commenced in 2005 and is designed to reduce the number of WPI disputes:

This project, which commenced in February 2005, is designed to improve understanding of the method of assessing whole person impairment by parties to disputes and their representatives as well as Medical Assessors and Claims Assessors. It is anticipated that improved understanding and awareness of whole person impairment methodology will assist parties to better identify claims that are likely (or unlikely) to exceed the whole person impairment threshold and therefore may not need to be referred to the MAS, as well as to better identify those borderline disputes that clearly do need to be referred to the MAS for assessment.¹⁰⁹

3.65 The MAA *2005-2006 Annual Report* notes that the project '... includes a series of online educational tools, training sessions, seminar presentations and workshops, and an online WPI assistance tool.'¹¹⁰ In response to a question taken on notice at the hearing, the MAA also advised that the project 'continues in its aim to improve understanding of assessment of whole person impairment amongst Compulsory Third Party stakeholders' and that:

The Whole Person Impairment email enquiry service is active and we have had many interesting queries recently. Replies to queries are being posted within a five-day timeframe unless additional information is required, in which case the person making the enquiry has been fully apprised of events. An update of a selection of queries will be published in the next Motor Accidents Assessment Service Bulletin.¹¹¹

¹⁰⁸ MAA, *Annual Report*, 2005-2006, p 100

¹⁰⁹ *Government Response to Seventh Report*, p 4. See also MAA, *Annual Report*, 2005-2006, p 22

¹¹⁰ MAA, *Annual Report*, 2005-2006, p 22

¹¹¹ MAA, *Response to Questions on Notice*, 4 September 2007, p 4

Fairness

3.66 The NSW Bar Association and the Law Society of NSW concurred that approximately 90% of those injured in motor vehicle accidents, who prior to the 1999 amendments would have been entitled to compensation for non-economic loss, are now excluded from receiving compensation because they do not satisfy the 10% WPI threshold.¹¹² Both organisations queried the fairness of the threshold in this regard.

3.67 The Bar Association reiterated the view it has expressed in previous years that there should be a uniform approach to determining non-economic loss compensation for *all types* of personal injury in NSW, based on the approach set out in the *Civil Liability Act*:

The Bar Association remains of the view that it is preferable to have a uniform approach to the determination of non-economic loss across all injury categories. Section 16A of the *Civil Liability Act* provides an appropriate model that eliminates the delays and medical subjectivities of the MAS process.¹¹³

3.68 The Bar Association has suggested that the MAA undertake work to determine whether it is fair that such a significant number of claimants miss out on non-economic loss compensation due to the threshold:

The starting point for a review of the 10% threshold is to systematically gather case studies of those assessed at 9 or 10% to see whether it is truly fair that they miss out on any damages to compensate their pain and suffering. For two years we have been asking the MAA to collect this information. We have sought a review of the 10% cases to address whether it is just that people in this category miss out.¹¹⁴

3.69 The Law Society expressed concern about the fact that psychiatric injury cannot be added to a physical injury when determining the degree of WPI:

A further example of inequity is the fact that psychiatric injury cannot be added to physical injury in determining the degree of permanent impairment. The anomaly is that if the injured person is assessed at greater than 10% for either physical or psychiatric injury, then in assessing the level of compensation the psychiatric and physical injury disabilities can both be taken into account. There is no rationale at all behind this criterion. It is apparent that physical and psychiatric injuries need to be treated differently by different practitioners with different treatment regimes. Again, a claimant is inadequately compensated by not allowing a combination of the psychiatric and physical injuries to accumulate to give 10% impairment or greater.¹¹⁵

3.70 During the hearing Mr Bowen acknowledged that, due to the 10% WPI threshold, '[t]here will be some cases in which people have pain but do not get compensation.'¹¹⁶ In this regard it is noted that an assessment of WPI relates to the *permanent impairment* of the claimant, rather than the extent of the pain suffered by that person due to the impairment.

¹¹² Mr Roulstone, Evidence, p 36 and Mr Slattery, Evidence, p 44

¹¹³ Submission 3a, p 13

¹¹⁴ Bar Association of NSW, *Response to Questions on Notice*, 4 September 2007, p 1

¹¹⁵ Submission 5, p 2

¹¹⁶ Mr Bowen, Evidence, p 8

- 3.71** In the context of fairness, Mr Bowen reminded the Committee of the rationale for the imposition of the threshold under the new Scheme:

It was a deliberate strategy. It really was intended to put the Scheme back to the position it was when it was set up in 1988, in that the *Motor Accidents Act 1988* has provisions that introduced the concept of a verbal threshold for pain and suffering, and the intention was that that limit pain and suffering payments to only those who were most seriously injured. Over a period of time, what constituted most serious injury deteriorated; more and more people got over that threshold. So, by 1999, I believe around 60 per cent of claimants were getting a pain and suffering payment. The profile of that often was a claim of someone who had a soft tissue injury, and had a couple of weeks off work, so that that person's actual loss would have been in the \$5,000 to \$10,000 range, but they were getting an additional \$10,000 to \$15,000 for pain and suffering, and they were incurring legal costs in the \$10,000 to \$15,000 range. So, really, that was the quick fix to make the premiums more affordable.¹¹⁷

- 3.72** With regard to whether the MAA has given consideration to reducing the threshold, Mr Bowen noted that, while the MAA reviews the impact of the threshold, the threshold itself is a political decision:

We review the impact of that threshold. We started by looking at the consequences of introducing the threshold. The consequence is that only the 10% of people who are most seriously injured now get payment for pain and suffering. Necessarily, the trade-off is that if more people receive that head of damage we must either restrict how much they get and spread it a little further—that is, cut the pie differently—or increase the size of the pie, and that has an impact on affordability. At the end of the day, it is the balance between affordability to motorists and how much compensation is paid to people injured in motor vehicle accidents, and it is a political judgment for governments and parliaments to make.¹¹⁸

- 3.73** Mr Bowen also noted that, in response to the success of the Scheme in reducing premiums, there has been a focus by the Government on expanding the coverage of the Scheme rather than increasing the amount of compensation given to existing claimants:

As the premium has reduced the Government has been looking at ways of increasing benefits. Rather than saying it will give more to existing claimants, it has expanded the scheme. We now provide no-fault benefits for medical care for children and people who are catastrophically injured. The defence of inevitable accident will be abolished on 1 October, which will allow people injured in a blameless accident to get compensation. They are all expansions of the scheme. Is there scope given that the scheme is at a historically low level to look for further benefit expansion? Yes, quite probably.¹¹⁹

- 3.74** The panel of Medical Assessors who appeared before the Committee were asked their view of the 10% WPI threshold. All conceptualised the threshold itself as a legal impost rather than a medical decision. For example, Dr Dowda described the threshold as follows:

¹¹⁷ Mr Bowen, Evidence, p 8

¹¹⁸ Mr Bowen, Evidence, p 9

¹¹⁹ Mr Bowen, Evidence, p 9

It is a legal impost, not a medical decision. I would stand by that. It is an artificial construct that is placed across a rating system. For the medical practitioners doing the assessments—apart from the fact that at the end of the process they realise they are over 10 per cent or not over the threshold—it has no medical bearing whatsoever in the process that is carried out. ... I do not construct my examination to try to put a person over or to keep a person under; the threshold is irrelevant to me in the examination process.¹²⁰

Use of the AMA Guides and the new MAA Permanent Impairment Guidelines

- 3.75** Another aspect of the WPI threshold criticised by the legal organisations participating in this year's review is the requirement that assessments of WPI be determined with reference to the AMA4 Guides and the inequities this create. For example, the Bar Association stated in its submission that it '... does not believe that the AMA Guides are (as is claimed by the MAA) objective but rather inconsistent and in many respects subjective.'¹²¹ Mr Slattery of the Bar Association advised the Committee that the AMA Guides were not designed to be used to assess damages for compensation:

When the guidelines were done in the United States they came with a warning, and the warning said, "Do not use these for assessment of damages for compensation". The legislation here has basically shorn off that warning which applies and added them as a schedule to the legislation. They came with a very clear and stark warning. The fact that they might be inappropriate is hardly surprising, in our view, given that that warning was ignored when they were added to this legislation.¹²²

- 3.76** As noted in paragraph 3.62, the AMA4 Guides are supplemented by the MAA's own *Guidelines for the Assessment of Permanent Impairment* ('MAA Permanent Impairment Guidelines'). The Committee notes that these guidelines have recently been updated and the new guidelines came into effect on 1 October 2007.¹²³ In relation to the AMA4 Guides, the MAA Permanent Impairment Guidelines state:

They use the American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition, Third Printing (1995) (AMA 4 Guides) as their basis. The AMA 4 Guides are widely used as an authoritative source for the assessment of permanent impairment. However, these MAA Guidelines make significant changes to the AMA 4 Guides to align them with Australian clinical practice and to better suit them to the purposes of the Act.¹²⁴

- 3.77** Dr Dowda noted that the new edition of the MAA Permanent Impairment Guidelines do not contain dramatic changes, but rather clarify some aspects of permanent impairment evaluation:

¹²⁰ Dr Dowda, Evidence, p 31. See also Dr McCarthy, Evidence, p 31. See also Dr Papatheodorakis, Evidence, p 31

¹²¹ Submission 3, p 4

¹²² Mr Slattery, Evidence, p 4

¹²³ A copy of the Guidelines can be downloaded from the MAA website: <www.maa.nsw.gov.au/default.aspx?MenuID=95> (accessed 9 October 2007)

¹²⁴ MAA, *Permanent Impairment Guidelines*, 1 October 2007, p i

It is not as though dramatic changes are being made. Certainly, there is no tampering with values given for an impairment rating. It certainly is clarifying the process of impairment evaluation. In some areas, after a period of experience over several years, people are saying: How do we assess this particular condition? The AMA Guides do not mention it, and the MAA Guidelines do not mention it, but we are being confronted with this situation. How do we deal with this, and what is the best way of approaching it? That sort of situation might arise.¹²⁵

- 3.78** The Law Society's Mr Mockler commented that the new edition of the MAA Permanent Impairment Guidelines are a 'major improvement', while noting that work is already underway on the AMA6 Guides:

I think the modifications are a major improvement. The other way was a way of assessing impairment only. There has been a very real attempt to try to make it much more workable and much more effective. I think that has been achieved. Whether it is as good as AMA5 or the Comcare system or a combination or hybrid of all of those is a moot point. Workers' compensation is now using AMA5. I think we are modifying AMA4 and are looking at AMA5 down the line and they are already working on AMA6. I suppose the question is where does it start and where does it finish.¹²⁶

- 3.79** The Committee was advised that various stakeholders participated in the development of the new guidelines. For example, Mr Slattery of the Bar Association commented that the Association had received the draft guidelines for comment (but that they do not make any substantial change to the major concerns identified in the Association's submission).¹²⁷ Similarly, Ms Mary Maini, the Chair of the NSW CTP Claims Managers Committee with the Insurance Council of Australia, advised the Committee that the Council made submissions when the guidelines were being reviewed:

We made submissions when the guideless were last being reviewed, and we also made submissions on the TEMSI scale. We agreed that some clarity was required regarding scarring, and we supported the recommendations and the revision of the MAS guidelines to ensure a greater level of consistency in their application.¹²⁸

Inconsistencies in assessments

- 3.80** Both the Bar Association and the Law Society expressed concern in their submissions about inconsistencies in the assessment of WPI between Medical Assessors, including on review. For example, the Law Society asserted that inconsistencies were not uncommon and that this was a real concern in a system that aimed to improve consistency:

It is not uncommon for MAS assessments, including those where Reviews take place, for the assessments made of Whole Person Impairment (WPI) to vary significantly among assessors. Noting that the system adopted is intended to improve consistency these variations in assessments are of real concern. Clearly there is a need for greater

¹²⁵ Dr Dowda, Evidence, p 31

¹²⁶ Mr Denis Mockler, Member of the Injury Compensation Committee, Law Society of NSW, Evidence, 27 August 2007, p 38

¹²⁷ Mr Slattery, Evidence, p 42

¹²⁸ Ms Mary Maini, Chair, CTP Claims Committee, Insurance Council of Australia, Evidence, 27 August 2007, p 52

consistency amongst MAS Assessors as well as ongoing training and review of their performance.¹²⁹

3.81 The Law Society also asserted that some Medical Assessors appear to assess WPI at a low level compared to other Assessors:

It is also of concern that a number of MAS Assessors would appear to consistently assess WPI at either nil or at a lower level than other assessors. Whilst this may not impact on a claim exceeding the 10% WPI threshold, it can impact on assessment of other heads of damage.¹³⁰

3.82 The Bar Association asserted that doctors appointed as MAS Medical Assessors who act in a private capacity for claimants and insurers can reach different conclusions than doctors acting in their capacity as Medical Assessors for the MAS:

One of the most frustrating aspects of the MAS process is inconsistent results. Both claimants and insurers will frequently use MAS trained and appointed doctors to conduct their own medico-legal assessments. Imagine the frustration when a subsequent MAS assessment comes to a completely different conclusion. Why do MAS assessors in their medico-legal capacity reach a different conclusion to fellow MAS assessors acting for the MAA? The MAA like to explain these inconsistencies on the basis of possible variations in the claimant's presentation. However, this just cannot explain constant disparity in outcomes. The suspicion is that doctors acting in a medico-legal capacity tailor their report writing depending upon who they are paid by.¹³¹

3.83 The Bar Association also claims that Medical Assessors within the MAS can reach 'radically different conclusions':

... even assessors acting for the MAA reach radically different conclusions on identical facts. Again, this is partly explainable by the subjectivity of the MAA guides. The MAA like to create the impression that the MAS system is objective. The reality is it is not. For example, mild brain injury is assessed on a discretionary basis between 0 and 12%. Clearly different doctors will come to different views as to what constitutes a 10% and what constitutes an 11% mild brain injury.¹³²

3.84 The Bar Association stated that in, light of inconsistencies '[i]t is very difficult for the legal profession to have faith in the fairness, objectivity and impartiality of the MAS process when results like this are common'¹³³

3.85 With reference to a case study provided by the Bar Association where an initial assessment resulted in a 3% WPI and a subsequent assessment undertaken by a Medical Assessor who was a specialist resulted in a 27% WPI, Mr Player advised the Committee that there are a number of reasons why a subsequent assessment may be so different from the first:

¹²⁹ Submission 5a, Law Society of NSW, p 1

¹³⁰ Submission 5a, p 1

¹³¹ Submission 3a, p 7

¹³² Submission 3a, p 7

¹³³ Submission 3a, p 8

... there could be a multitude of reasons for the discrepancy in the figures—one could be a time delay, another could be a deterioration or an improvement in the degree of injury, and another could be a complete set of new information from the treating medical records or hospital records that has become available. A fundamental reason could be the issue of causation. If an injury—particularly a knee injury, for example—or part of the injury is found not to be causally related, that means that whatever percentage of impairment the injury might be is not considered. So if another assessor makes a different finding and finds that it is causally related that would obviously have the potential to make a significant difference in the percentage. I think that is more likely to be the situation rather than a deterioration or improvement.¹³⁴

3.86 With regard to the matter of specialists and non-specialists undertaking assessments, Dr Dowda expressed the view that ‘... if a non-specialist or a specialist saw a person but they have done the training and they were equivalent in their expertise, I do not think that would make much difference.’¹³⁵

3.87 Mr Player cited the review mechanism and a new ‘targeted quality assurance program’ as the mechanisms whereby MAS assessments are quality controlled:

There are a couple of fallbacks that feed into the development and training of assessors. Probably the primary examples are review assessments. If an assessor is thought to have made a material error in an assessment a party can apply for a review. The original assessor gets a copy of the application for review, the decision of whether or not to accept the review and the review panel's determination, and so does the MAS. The review team is obviously completely separate from the medical assessment side of it but the Assessor is absolutely clear about what is being reviewed, why it is being reviewed and what the decision is. So it is a very direct and very clear process for those errors that come through that way. Apart from that, we have a very strategically targeted quality assurance program that we are implementing once the new panel of assessors is formed in October. That will be up and running from late this year, targeting those areas of high risk for errors that make a material difference to the outcome.¹³⁶

3.88 Mr Player concurred with a Committee member during the hearing that inconsistency is a problem and noted that the MAS is currently focussing on ensuring consistency and accuracy in assessments:

Absolutely; consistency is a fundamentally important measure of the Scheme. We have done an enormous amount of work over the first seven years of the existence of MAS to focus on three things. They are, in order of importance: first, transparency and fairness to get the scheme operating in a fair and open manner; and, secondly, to get the timeliness of the dispute resolution happening in a way that means that it is delivering something to the people in the scheme who need it. We are now into the more mature phase of the assessment service where we are focusing a significant amount of development, training and resources on ensuring as much consistency and accuracy in the assessment as we can.¹³⁷

¹³⁴ Mr Player, Evidence, p 26

¹³⁵ Dr Dowda, Evidence, p 26

¹³⁶ Mr Player, Evidence, pp 27-28

¹³⁷ Mr Player, Evidence, p 27

3.89 Mr Player described the methods by which this task is being carried out:

We do that in a number of ways. We have a conference every year for assessors that focuses on a specific issue. This year's conference will be at the end of October, and we have the assessors working on specific issues, such as accuracy, consistency, gravity, report writing and those sorts of things. We have bimonthly training for assessors. The most recent one we had was on treatment disputes and we had some pre-eminent medical experts come in and talk to them about those sorts of issues to try to make sure that we can encourage a degree of consistency. But every case must be treated on its merits.¹³⁸

3.90 Dr Papatheodorakis also emphasised the work that the MAS and the Medical Assessors do to try and improve their work:

The forums that we hold basically try to address those issues. There are certainly a lot of grey areas in the AMA guides. The MAA guidelines try to address these. Every time we come together there are some issues we need to discuss and iron out, not just for our sake but basically for the assessors who do impairments to give them an idea of how we see the guides should be appropriately used for assessing impairment. The importance of that is that all the assessors want consistency. It is something we strive for. Whether we achieve it or not is another matter. We do try very hard. Recently we have identified a problem with the assessment of the knee where we feel that we combine an assessment rather than just use one or the other table. That is what we try on a regular basis to do.¹³⁹

Mistakes**3.91** The Bar Association also raised concern about mistakes made by Medical Assessors, noting that, at present, there is no publicly available information about the rate of mistakes made:

There is no published data as to the mistake rates by MAS Assessors. The review rate is not a reliable guide to the number of mistakes made by MAS Assessors. Many mistakes may be made that are not "material". The MAA will only allow a review if the mistake made was material in that it was likely to change the outcome (moving to above or below 10% WPI). ...¹⁴⁰

3.92 The Bar Association expressed particular concern about mistakes due to the confusion created by the use of different guidelines in various areas of personal injury compensation:

Of particular concern to the Bar Association is the difficulty doctors face in having to make different assessments under different guidelines across an array of different types of personal injury. The Association advocates using one consistent form of assessment (judicially based) for all forms of personal injury. The difficulty in having different systems for motor accidents, workers' compensation and other forms of injury is that confusion and mistakes occur.¹⁴¹

¹³⁸ Mr Player, Evidence, p 27

¹³⁹ Dr Papatheodorakis, Evidence, p 29

¹⁴⁰ Submission 3a, p 4

¹⁴¹ Submission 3a, p 4

3.93 The Bar Association's submission included two disturbing case studies where Medical Assessors had mistakenly referred to the wrong version of the AMA Guides in making their determination.¹⁴²

3.94 When asked about mistakes of this nature, the Medical Assessors who gave evidence to the Committee pointed to the clear instruction Assessors receive regarding the correct guidelines to use and noted that such mistakes are most commonly found in the reports of non-MAS Assessors. In this regard, Dr McCarthy stated:

The most common evidence of these types of mistakes I have seen is in medico-legal reports that I have read from non-Motor Accidents Authority assessors. The MAA's Guidelines are quite clear on their dependence on American Medical Association Guides to the Evaluation of Permanent Impairment 4th Edition and the requirement to use the 4th Edition in conjunction with the MAA's Guidelines. The training given to MAA assessors frequently emphasises the MAA Guidelines/American Medical Association Guides to the Evaluation of Permanent Impairment 4th Edition connection. While there are MAA Assessors who also have assessment roles in other jurisdictions (notably Workers' Compensation in NSW) those who are regularly involved in doing either MAA or Workers' Compensation assessments are well familiarised with the relevant guidelines and American Medical Association Guides that must be used.¹⁴³

3.95 The MAA itself also commented on the Bar Associations concerns, advising that it was aware of only three cases where such a mistake had occurred:

The MAA is only aware of three such cases that have been reviewed for this reason. One related to an assessment in 2005, one in 2006 and the other in early 2007. This is three cases that have been brought to our attention out of the many thousands of assessments conducted during the 2005 – 2007 period.

This does not suggest that there is a high level of confusion, but rather that a mistake has been made in a few isolated cases. All assessors are provided with specific training on the American Medical Association and Motor Accidents Authority Guides before conducting any assessments for Medical Assessment Service. The template issued by Medical Assessment Service for assessors' written decisions also clearly states the guides to be used and this must be signed by the assessor.

The mistakes that have been made in this respect have been brought to the attention of the assessors involved and the whole assessor body in an effort to ensure the likelihood of them occurring in future is reduced.¹⁴⁴

3.96 The outcomes of Review Panel decisions for 2005-2006 are examined in paragraph 3.55. The Committee was advised by the MAA of the feedback mechanisms in place to ensure Medical Assessors are aware of, and can learn from, the outcomes of Review Panel decisions, including outcomes that show that a mistake was made:

¹⁴² Submission 3a, pp 4-5

¹⁴³ MAS, *Response to Questions on Notice*, 4 September 2007, pp 11-12

¹⁴⁴ MAA, *Response to Questions on Notice*, 4 September 2007, p 33

In all cases that are reviewed the review panel's decision is sent to the assessor whose assessment was reviewed. If the assessor disagrees with or seeks clarification of the panel decision this opportunity is made available as a training/learning opportunity after the review panel assessment process has been completed.

A summary of the issues and outcomes of ALL review panel decisions are provided on the Medical Assessment Service Assessor extranet for all assessors to view, with cases of particular interest highlighted by a link to the full panel decision which is also made available for those cases. Review cases of interest are regularly summarised in the Medical Assessment Service assessor's e-newsletter, as well as in the quarterly Motor Accidents Assessment Service Bulletin and at assessor training forums and review panel workshops.

All assessors are provided with confidential feedback by Medical Assessment Service on their annual review statistics (i.e. no. of applications lodged, accepted, and revoked by a panel) and how this compares with the average for all assessors, and for the other assessors of the same speciality group.¹⁴⁵

Committee comment

- 3.97** The 10% WPI threshold for determining eligibility for non-economic loss was the most debated issue during this year's review. The threshold was criticised for being unfair by both the Law Society and the Bar Association, on the basis that it excludes a significant proportion of those injured in accidents that would have received non-economic loss compensation prior to the 1999 amendments, as well as the fact that psychiatric injury cannot be added to a physical injury when determining the degree of WPI.
- 3.98** The Committee notes at the outset that, as the threshold is a matter of policy for the Government, the Committee has focused on the operation of the MAS in relation to that threshold rather than the threshold itself. The Committee takes a similar view in relation to the reliance on the AMA4 Guides in the assessment of permanent impairment. As a statutory requirement, the AMA4 Guides are firmly entrenched in the current scheme.¹⁴⁶ The Committee also notes that the MAA's Permanent Impairment Guidelines supplement the AMA4 Guides and are the method by which the American guidelines are tailored for use in the NSW CTP scheme. The MAA has recently completed the task of updating its guidelines and has appeared to have consulted effectively in that process.
- 3.99** In relation to the issue of inconsistencies, the Committee is concerned that there should be as much consistency in assessments of WPI (and other assessments) as possible, particularly in light of some of the disturbing case studies provided by the Bar Association in its submission. Also troubling is the Bar Association's comment that there is a loss of faith within the legal profession about the fairness, objectivity and impartiality of the MAS process.
- 3.100** The Committee notes the advice of Mr Player about the range of factors that may be relevant to differences among assessments and that the MAS has some quality control measures in

¹⁴⁵ MAA, *Response to Questions on Notice*, 4 September 2007, p 32-33. The answers also include the results of review panel decisions and the reasons why the panel reversed decisions for the period 2005-2006. The information can be found on the Committee's website at: www.parliament.nsw.gov.au/lawandjustice.

¹⁴⁶ *Motor Accidents Compensation Act 1999* (NSW), s 133

place. Nonetheless, the Committee feels that this issue warrants further investigation and therefore recommends that the MAA undertake a review of WPI assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.

Recommendation 2

That the Motor Accidents Authority undertake a review of Whole Person Impairment assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.

- 3.101** With regard to the issue of mistakes made by Medical Assessors, the Committee shares the concerns of the Bar Association about assessors mistakenly applying the wrong set of permanent impairment guidelines. The Committee notes, however, the advice provided by the MAA that it is aware of only three instances where such a mistake has occurred.
- 3.102** While even three mistakes of this nature is problematic and no doubt had a significant adverse impact on the claimants involved, it does appear that the MAA has appropriate mechanisms in place to ensure, in so far as is possible, that Medical Assessors are informed of the correct guidelines to use. The Committee notes in particular that the template issued by the MAS for assessors' written decisions, which must be signed by the Assessor, clearly indicates the correct guides to be used. The review process itself and the feedback mechanisms put in place by the MAA to advise Assessors of the outcomes of reviews also provide an appropriate check and balance.

Potential conflicts of interest

- 3.103** One issue raised in relation to MAS Medical Assessors was the potential for conflicts of interest to arise where a Medical Assessor also undertakes private medical assessments for claimants or insurers or both. In this regard, Mr Player confirmed that medical practitioners who are appointed as Medical Assessors are still able to undertake work directly for insurers or for claimants.¹⁴⁷
- 3.104** Mr Scott Roulstone, the Chair of the Law Society of NSW's Injury Compensation Committee observed that some Medical Assessors do appear to prepare medical reports for one side of a motor accident dispute and not the other:

You have a situation also where the MAA's Medical Assessors prepare reports for either side—that is, often for one and not the other. But often in larger claims in the early preparation of evidence from both sides, it is still not unusual to see certain medical practitioners associated with certain sides.¹⁴⁸

- 3.105** Mr Roulstone also acknowledged that where one side of a legal dispute uses a particular medical practitioner on a regular basis, 'some biases' may start developing:

¹⁴⁷ Mr Player, Evidence, p 25

¹⁴⁸ Mr Roulstone, Evidence, p 38

You can sometimes find a medical practitioner who both sides think has provided a comprehensive and an excellent report. The problem that can happen then is that one side can start using the practitioner on a very regular basis, countless times. It seems to be the case that some biases start developing because I guess when you put the commercials into the equation, a particular practitioner might say, "I am getting X, Y and Z amount of work from this particular institution", whether that is a plaintiff's law firm or an insurer, and the reports may be not perhaps as independent as they otherwise may have been at the initial phase.¹⁴⁹

- 3.106** As to the rationale for allowing Medical Assessors to also undertake work directly for parties to a claim, Mr Player advised the Committee of the importance of requiring Medical Assessors to be practicing medical professionals with relevant experience:

... the underlying philosophy behind the Scheme is to ensure that we have coalface practitioners undertaking these assessments. We could have taken the alternative approach of saying that they cannot have any experience or ongoing work within the Scheme. The quality of the assessments we might receive might be very different if these people are no longer on the table to take that work. We may not be able to get any assessors willing to do that type of work; all the good practitioners would be out there doing their thing.¹⁵⁰

- 3.107** Mr Stone of the Bar Association noted that there are practical reasons why parties to a dispute obtain the opinions of medical practitioners who are also Medical Assessors with the MAS:

Somebody may walk through my door and I have to say whether we will go to a MAS assessment or there is no point because they will not get over 10%. Often I would want a medicolegal report that will give me some clue as to what the answer is. If I had to send them to someone who is not a trained MAS Assessor, acting in their private medicolegal capacity and I had to use somebody completely outside, I do not get a reliable answer because this system is so complex and the MAA have so many bits and rules, that anybody I use who is not a MAS Assessor in their private capacity does not give me a particularly reliable answer. If you say to the MAS Assessors, "You can only do our work or you can only do outside work", it means that we lose that crossover in training, so I am cautious about going down that route.¹⁵¹

- 3.108** The option of having Medical Assessors employed full-time by the MAA so as to avoid conflict of interest issues was rejected by the Mr Stone:

No, because one of the things is whether treatment is reasonable and necessary and I would like to have people who are not full time down at the Motor Accidents Authority. I would like to have people in hospitals getting treatment.¹⁵²

- 3.109** The Committee was advised by Mr Player that the MAA '... monitors the issues of conflict and potential conflict and potential perception of conflict very carefully because we think it is

¹⁴⁹ Mr Roulstone, Evidence, p 38

¹⁵⁰ Mr Player, Evidence, p 25

¹⁵¹ Mr Stone, Evidence, p 45

¹⁵² Mr Stone, Evidence, p 45

very important.’¹⁵³ Mr Player also advised that the MAA requires that Medical Assessors do no more than 20% of their work for one particular party within the Scheme:

We require assessors to disclose to us any work they do for any parties in the Scheme, law firms or insurers. If the extent of their work is—definitely not majority—anything more than a majority it would certainly be a conflict. We have set the bar at 20% ... and we monitor that closely. Anybody who is doing more than 20% of their work for any party within the Scheme is unable to do any assessments that relate to that party, absolutely.¹⁵⁴

3.110 Mr Player also informed the Committee that the MAA monitors other potential areas of conflict in relation to Medical Assessors:

There are other potential areas of conflict that might arise, and the assessors are all alive to that and we monitor that and train them on it very carefully. If they have previously treated the claimant in any way, related to this injury or not, and then they receive an assessment that we refer to them that might be for that claimant, obviously they would disclose a potential conflict and would not proceed. Similarly, after they have conducted an assessment from us, it would not be appropriate for an assessor to then go and treat the claimant or provide a medical and legal report after they have conducted and acted as an independent expert in conducting an assessment.¹⁵⁵

3.111 Mr Player noted, however, that there was scope for the MAA to further examine the issue of potential conflict of interest:

We have done it 20% per party because the disputes we receive are obviously per party. So we have been looking at it from the point of view of conflicts of interest with an individual party to a dispute. I think there is scope to look at that further. There are very difficult issues, which we talked about before, about the balance of the assessor panel that you want in this type of Scheme. If we conflicted out every assessor who conducted medico-legal work we would not have a panel. It is a question of balance, trying to draw the right line. I think that is an issue, if you look at it from an overall perspective, we can look at down the track.¹⁵⁶

Committee comment

3.112 The Committee notes the rationale for the MAA allowing Medical Assessors to undertake work directly for insurers or claimants and also the practical reasons why parties to a dispute may want to avail themselves of the opinion of a medical practitioner who is also an experience MAS assessor.

3.113 The Committee also notes that the MAA has measures in place to monitor potential conflicts of interest. There is also a requirement that Medical Assessors do no more than 20% of their work for one particular party within the Scheme. The Committee notes that this requirement still permits a Medical Assessor to undertake work for more than one insurer and that,

¹⁵³ Mr Player, Evidence, p 25

¹⁵⁴ Mr Player, Evidence, p 25

¹⁵⁵ Mr Player, Evidence, p 25

¹⁵⁶ Mr Player, Evidence, p 28

depending on the number of insurers work is undertaken for, this could mean that an Assessor could undertake a considerable amount of work for insurers as opposed to claimants.

- 3.114** As acknowledged by Mr Player, further work could be undertaken by the MAA on this issue to ensure that the best preventative measures are in place in relation to conflicts of interest. The Committee therefore recommends that the MAA review its procedures and rules in relation to Medical Assessors and conflicts of interest to ensure that the most appropriate monitoring systems and rules to prevent conflicts of interest are in place.
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Recommendation 3

That the Motor Accidents Authority review its procedures and rules in relation to Medical Assessors and conflicts of interest to ensure that the most appropriate monitoring systems and rules to prevent conflicts of interest are in place.

Delays

- 3.115** A further issue raised by stakeholders is the matter of delays within the MAS system, particularly in relation to disputes involving reviews and reassessments. For example, the Insurance Council of Australia identified the time the MAS process takes as one area in which the MAS could improve, while acknowledging that advancements had been made in this area:

... an area for further improvement is the length of time the MAS process takes, particularly where reassessments and reviews are involved. Our members have a duty to resolve claims expeditiously and delays at MAS can affect this obligation. Nevertheless there have been improvements in this area and the insurance industry and other stakeholders, through the MRG, are working collaboratively in identifying issues and developing solutions.¹⁵⁷

- 3.116** The Bar Association also acknowledged that there has been an improvement in delays within MAS, but argued that some assessments involving reviews and further assessments can remain within the MAS system for years rather than months:

The Medical Assessment Service was deservedly the subject of considerable criticism in the early years of the operation of the *Motor Accidents Compensation Act 1999*. A MAS process that should take 4-5 months ended up taking 9 months due to bottlenecks in arranging appointments, providing reports, report checking and the like. The good news is that for a combination of reasons these delays appear to have been reduced. The MAS does now operate more efficiently. A MAS assessment is usually obtained in around 5 months.

Unfortunately however, the MAS process does not always work to bring a rapid resolution to medical disputes. It is essential that within any such process of assessment there be review and further assessment rights. However, determination of those rights can result in matters remaining within the MAS system for years rather than months.¹⁵⁸

¹⁵⁷ Submission 8, Insurance Council of Australia, p 6

¹⁵⁸ Submission 3a, p 3

3.117 The Bar Association provided two case studies to illustrate that, in relation to some cases involving the assessment of WPI, the MAS process can take a very long time. The Association asserted that these cases would have been resolved faster had they been heard by the courts.¹⁵⁹ In relation to the comparison between court times and the MAS process the Association also noted that:

Whilst the standard District Court case is intended to be finalised in 9 months and the standard MAS case is designed to be finalised in 5 months, this is not a fair comparison. It is necessary to add together MAS time and CARS time to have a fair equivalent to the 9 months' average District Court turn around time.¹⁶⁰

3.118 In terms of delays, the MAA responded that the time taken to make assessments has improved significantly (and the timeliness of MAS processes in terms of finalisation rates and compliance with statutory time frames is discussed above at paragraphs 3.26-3.30). The MAA also identified that a problem related to the length of time taken for medical assessments is the time taken for parties to *lodge* applications for WPI assessments:

The time taken by the Medical Assessment Service to assess medical disputes that are lodged at the Service has reduced significantly, however, the time parties take to lodge disputes at the Service, particularly about whole person impairment disputes, is still of some concern.¹⁶¹

3.119 In relation to the timely lodgement of applications for assessments, the MAA noted that '[t]here are a number of initiatives which the MAAS is pursuing as part of the second stage of reforms proposed for 2008 that may encourage the earlier lodgement of these disputes at Medical Assessment Service by the parties'.¹⁶² Those initiatives include:

- Changing the provisions of the Act to ensure that the only reason a Medical Assessment Service assessor may decline to assess whole person impairment is that the assessor is not satisfied that the 'impairment caused by the injury has become permanent' rather than that the 'injury is not stabilised'.
- Including a requirement in the Claim Handling Guidelines for an insurer to notify the claimant in writing that they are denying entitlement to non-economic loss, providing detailed reasons sufficient to enable the claimant to make an informed decision about whether to accept the insurer's position or to seek to pursue the dispute at the MAS.
- Introducing a requirement that the initial Medical Assessment Service whole person impairment assessment be completed before lodgement of a General Assessment at the CARS.¹⁶³

3.120 Through implementation of these initiatives the Medical Assessment Service aims to see the timing of Whole Person Impairment disputes brought forward to a much earlier time in the claim lifecycle, to enable earlier opportunities for the resolution of claims.¹⁶⁴

¹⁵⁹ Submission 3a, pp 2-5

¹⁶⁰ Submission 3a, p 5

¹⁶¹ MAA, *Response to Questions on Notice*, 4 September 2007, p 27

¹⁶² MAA, *Response to Questions on Notice*, 4 September 2007, p 27-28

¹⁶³ MAA, *Response to Questions on Notice*, 4 September 2007, pp 27-30

Committee comment

- 3.121** The Committee notes the positive comments made by both the Insurance Council and the Bar Association about improvements in delays within MAS generally. These comments were reiterated by the MAA itself. The Committee notes the advice from the MAA that the *average* MAS assessment lifecycle peaked in February 2003 at approximately 190 working days and through system improvements this had been reduced to 100 working days by February 2007. The Committee also acknowledges the advice of the MAA that there may be some scope for slightly reducing the average lifecycle of MAS assessments in the future but any reductions are expected to be very modest compared to the significant reductions of previous years.¹⁶⁵
- 3.122** The Committee is concerned however about the potential for long delays to occur in relation to disputes involving reviews and reassessments, as illustrated by the case examples provided by the Bar Association. The issue of how to address assessments that incur long delays due to the involvement of further assessments and reviews is complicated as there are many factors that relate either directly or indirectly, that need to be considered, for example:
- Some matters include more than one dispute and thus more than one assessment.
 - Some disputes centre on very complex medical issues. Mr Player told the Committee that such cases were not the type that would have necessarily been resolved under the old scheme.¹⁶⁶
 - There are threshold requirements before an application for a further assessment or a review will be accepted. A further medical assessment is only accepted if additional relevant information or evidence of a deterioration about an injury is provided and satisfies the Proper Officer (MAS) that it may change the outcome of the matter on further assessment. A review is only accepted if the Proper Officer (Reviews) is satisfied that there is reasonable cause to suspect that the original assessment was incorrect in a material respect. The basis for the acceptance of applications for a further review is beyond the control of the MAA; the issue of reducing the number of reviews is currently being addressed via the targeted quality assurance program examined earlier in this Chapter.
 - Chapter Four includes a discussion proposed Scheme changes aimed at earlier resolution of medical disputes which involves penalties for insurers who clearly breach their responsibilities. The Committee was advised there was scope for penalties for insurers in circumstances where an assessment of over 10% impairment should clearly not be in dispute. If these penalties are introduced, as recommended by the Committee, this should assist in reducing delays.
 - A corollary to the issue of delays is the impact of the legal cost restriction. Both the Bar Association and the Law Society argue that the current costs regulation is inequitable. Both organisations also argued that this inequity is exacerbated when a dispute is subject to further assessments and reviews. This issue, including the establishment of a joint study involving the MAA and the Law Society on the impact of the costs regulation, is examined in Chapter 5.

¹⁶⁴ MAA, *Response to Questions on Notice*, 4 September 2007, p 30

¹⁶⁵ MAA, *Response to Questions on Notice*, 4 September 2007, p16

¹⁶⁶ Mr Player, Evidence, p14

- Related to the above is the issue raised by the Law Society that the impact of the current costs regulation with respect to lengthy dispute assessments is that many claimants would seek to appeal a decision not to grant an exemption (so that they could take the matter to court and access party-party costs) if they were not prohibited by cost from doing so. This issue is also examined in Chapter 5.

3.123 The Committee acknowledges that some of the above issues are currently being addressed or examined by the MAA in consultation with stakeholders. It is difficult for the Committee to draw any conclusions from the evidence it heard as to whether there is a common feature or features to those assessments and matters that do experience lengthy delays at the MAS. A study of those MAS assessments and matters that have experienced lengthy delays, for example ten months or more, might allow any common features that do exist to be discerned and thus provide insight into any potential further initiatives or scheme changes that could be implemented to address them.

3.124 The Committee therefore recommends that the MAA conduct a study of MAS assessments and matters that have taken ten months or more to finalise and report back to the Committee on any current or future planned initiatives aimed at reducing delays.

Recommendation 4

That the Motor Accidents Authority conduct a study of Medical Assessment Service assessments and matters that have taken ten months or more to finalise and report back to the Committee about the status of delays within the Medical Assessments Service and any current or future planned initiatives aimed at reducing delays.

Chapter 4 CTP premiums and insurer profitability

In this chapter the Committee examines issues raised during the Eighth Review that relate to the MAA's role as the CTP market regulator. As this aspect of the MAA's functions was examined in detail in the Committee's *Seventh Report*, the Committee has not gone into the same level of detail in this year's Review. However, some ongoing issues are again examined (albeit briefly) in this chapter, such as insurer profitability, particularly its relationship to the continued fall in claim frequency and propensity to claim. This chapter also examines other issues relating to insurers and insurance including motorcycle premiums, new penalties for insurer breaches of claims handling guidelines and a proposal to allow insurers to access police data on traffic accidents to speed the claims process.

CTP insurance market

- 4.1 The General Manager of the MAA, Mr David Bowen, advised the Committee that the CTP market remains competitive despite a reduction in numbers:

Certainly the market has contracted in terms of the number of players. But even after the most recent merger—the acquisition by Suncorp of Promina, which includes the AAMI brand—we are confident that there are sufficient players in the market to continue to be competitive in CTP. In fact, it has possibly created a situation where we have three very good-size market players and two others that have sufficient size to be good, aggressive competitors. Premiums have tracked very well over this period of time.¹⁶⁷

- 4.2 Mr Bowen advised that there are no immediate prospects of any additional insurers entering the NSW CTP market and that it would take an international insurer entering the broader Australian market and also writing CTP insurance in NSW for the CTP market to expand:

There are no sizeable general insurers in Australia other than those already in the marketplace. It would depend upon an international insurer deciding to create a presence in Australia. No-one is going come into Australia to write NSW CTP business; it would require an international insurer to come in and write general insurance across the board. Given the level of competition, not only in CTP but also in the rest of the general insurance industry, I do not see that as a likely prospect at the moment. The last discussions that we had with any overseas companies were as long ago as 1999-2000.¹⁶⁸

- 4.3 The Insurance Council of Australia ('Insurance Council') also emphasised the competitiveness of the market:

The Insurance Council submits that an open and competitive market is operating in NSW for the benefit of motor vehicle owners. Owners have a choice of insurers, each of which offers a range of prices depending on the insurer's assessment of the price required to fund the risk exposure provided by the CTP policies the underwrite.¹⁶⁹

¹⁶⁷ Mr Bowen, Evidence, p 4

¹⁶⁸ Mr Bowen, Evidence, p 10

¹⁶⁹ Submission 8, pp 1-2

CTP premiums

Continued fall in cost of CTP premiums

4.4 A primary aim of the 1999 reforms was to reduce the cost of CTP insurance for NSW motorists. The *Seventh Report* noted the dramatic success of the 1999 reforms in this regard: the average cost of CTP insurance had fallen from around 50% of average weekly earnings prior to the introduction of the 1999 reforms to approximately 29% in June 2005.¹⁷⁰

4.5 During the public hearing for this year's Review, the MAA presented updated information to the Committee which demonstrates that the cost of CTP insurance has continued to fall:

... we have historically good green slip affordability. This data is later than our most recent annual report. It shows two measures – the weighted best price and the average premium for our metropolitan class 1. They are related to average weekly earnings. As a percentage when you look back over some 15 or 16 years, indeed beyond that slide, it is the best green slip affordability historically over that period of time and much better at 26 to 28 per cent, around that range, than obviously the over 50 per cent shown in the late 1990s.¹⁷¹

4.6 The Committee heard that the best CTP price available had changed about five times over a recent nine-month period between the different insurers. Further, every insurer had refiled several times over the last nine-month period.¹⁷² Competition for market share has prompted insurers to refile with a reduced best CTP price.

4.7 Ms Carmel Donnelly, the Deputy General Manager of the MAA informed the Committee of the reasons why the CTP market was so competitive:

Part of that is about risk premium assumption, the insurer estimate of their risk. Part of that is about investment returns with a buoyant stock market and interest rates. Part of that is to do with average weekly earnings assumption with the actual average weekly earnings being lower than expected. There is an impact from the lifetime care and support scheme, which has enabled a deduction in the risk premium borne by insurers. Also frequency of claims has been dropping over some time and superimposed inflation is reasonably stable.¹⁷³

Composition of CTP premiums

4.8 The MAA advised that the current projected distribution of premiums is as follows:

| Element of premium | Percentage |
|-----------------------|------------|
| Compensation payments | 63.2 |

¹⁷⁰ *Seventh Report*, p 16

¹⁷¹ Ms Donnelly, Evidence, p 5

¹⁷² Ms Donnelly, Evidence, p 6

¹⁷³ Ms Donnelly, Evidence, p 6

| Element of premium | Percentage |
|--|------------|
| (including Lifetime Care Support participant benefits) | |
| Legal and investigation costs | 9.4 |
| Claim handling expenses | 3.7 |
| Acquisition expenses | 16.9 |
| Lifetime Care Support Authority administration | 0.4 |
| Profit | 6.5 |

- 4.9** The 16.9% of premium allocated to acquisition expenses are the costs incurred by an insurer in obtaining and recording policies. They include commissions and brokerage paid to agents and brokers, selling costs, advertising, underwriting costs, expenses associated with assessing risk and determining the premium rates, levies, administrative and collection costs and reinsurance.
- 4.10** The 9.4% of premium allocated to legal and investigation costs is an estimate of the proportion of the premium that would need to go to all legal and investigative costs, including medico-legal costs, for both claimants and insurers. In response to a question taken on notice at the public hearing the MAA advised that 55% of the legal costs would be paid in relation to claimants and 45% for insurers.¹⁷⁴

Comparison of premiums with other jurisdictions

- 4.11** Mr Bowen advised the Committee that despite NSW being the only Australian jurisdiction not to have a single premium, it is nonetheless still possible to compare NSW with the other jurisdictions and that NSW is placed in the 'middle':

All other States have a single premium, or with a few variations. There may be a single plus one premium with a discount for seniors or a slightly different country loading or discount. NSW is the only jurisdiction that has full-risk pricing, but we can provide an indication. Perhaps the best one is our average class 1 premium compared to what a motor vehicle driver driving a similar vehicle in each other State would pay. NSW is in the middle at the moment.¹⁷⁵

- 4.12** The MAA later provided the following information, from the last Heads of Compulsory Third Party meeting in March 2007, relating to the cost of premiums for Class 1 vehicles (passenger sedans for each jurisdiction).¹⁷⁶

| | Vic | NSW | Qld | WA | SA | Tas | ACT | NT |
|-----------------|-------|-----------------|------------------|-------|-----|-------|-------|-------|
| Class 1 Private | \$356 | \$326- \$342 | \$282 - \$294 | \$225 | N/a | \$332 | \$396 | \$426 |

¹⁷⁴ MAA, *Response to Questions on Notice*, 4 September 2007, p 38

¹⁷⁵ Mr Bowen, Evidence, pp 9-10

¹⁷⁶ MAA, *Response to Questions on Notice*, 4 September 2007, p 38

| | Vic | NSW | Qld | WA | SA | Tas | ACT | NT |
|---------------------------------------|-------|---------------|---------------|-------|-------|-------|-------|-------|
| Class 1 Business | \$356 | \$346 - \$364 | \$302 - \$315 | \$239 | N/A | \$332 | \$436 | \$426 |
| No of vehicles ('000) (as at June 06) | 3,845 | 4,140 | 3,027 | 1,620 | 1,157 | 414.5 | 225 | 111 |

Premiums for motorcycles

- 4.13** In its submission to the review, the Motorcycle Council of NSW raised several concerns and queries about the premiums paid by motorcycle riders in NSW. The Council argued that premiums for motorcyclists are too high and that there is a lack of information about the methodology for calculating motorcycle premiums.
- 4.14** During the public hearing, the MAA was alerted to the concerns of the Motorcycle Council and agreed to take a number of questions relating to these concerns on notice. The MAA subsequently provided a response to the Committee which is accessible on the Committee's website at www.parliament.nsw.gov.au/lawandjustice.¹⁷⁷
- 4.15** Mr Bowen informed the Committee that the cost of the new Lifetime Care and Support Scheme has not yet been passed on to motorcycle premiums but that it will be phased in over the next five years:

The fact is post Lifetime Care motorcycle premiums are being subsidised because we have not passed on the full cost of Lifetime Care because it is so prohibitive for large motorcycles. We will be phasing it in over the next five years and motorcycle riders, over and above whatever other premium increases occur through inflation, will be getting an additional increase each year as we slowly make up that subsidy that is in place.¹⁷⁸

- 4.16** Mr Bowen also noted that motorcycle riders are 'very big' beneficiaries of the Lifetime Care and Support Scheme:

You only have to look into a spinal or a brain injury unit and you will see where the true costs of motorcycle accidents are; they are very high contributors and they are very big beneficiaries for a Lifetime Care Scheme. There is an enormous difference though in the profile of motorcycles between the large ones and the small cycles, and that is reflected in our premiums and it will be reflected in the lifetime care levies ... large motorcycles are very dangerous; they are very dangerous to pillions; they are very dangerous to pedestrians, and with lifetime care we are now picking up the medical costs of riders themselves. They are not going to get good news; it is only going to get worse, I'm afraid, for large motorcycle riders over the next five years.¹⁷⁹

¹⁷⁷ MAA, *Response to Questions on Notice*, 4 September 2007, pp 5-8

¹⁷⁸ Mr Bowen, Evidence, p 16

¹⁷⁹ Mr Bowen, Evidence, p 17

Committee comment

- 4.17 During the hearing and in its answers to questions taken on notice the MAA stated that it was quite happy to meet with the Motorcycle Council to go over the premium setting process and to answer any questions related to the operation of the Scheme. The MAA noted that in the past it had done exactly this with other industry groups such as the Bus and Coach Association and the Road Transport Association.¹⁸⁰
- 4.18 In the interests of promoting greater understanding of the Scheme's premium setting process, the Committee recommends that the MAA approach the Motorcycle Council of NSW to arrange a meeting to discuss the concerns raised by the Motorcycle Council. Given that the General Manager of the MAA indicated in his evidence to the Committee that premiums for large motorcycles will need to increase over the next five years, the Committee believes that a meeting of the two organisations would be beneficial.
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Recommendation 5

That the Motor Accidents Authority approach the Motorcycle Council of NSW with a view to arranging a meeting to discuss issues of interest and concern relating to motorcycle premiums and report back to the Committee on the outcomes of this meeting.

Insurer profitability

- 4.19 The issue of insurer profitability was comprehensively examined in the Committee's *Seventh Report*. The Committee does not intend to examine this issue in the same detail in this report, as the basic issues and concerns of various parties essentially remain the same.
- 4.20 Put simply, the profit realised by insurers is derived from the profit margin component of a premium filing and from the difference between the amount allowed in a premium filing for the paying out of all claims and the actual amount that is ultimately paid out.

Insurer requests to increase profit margins

- 4.21 In its *Seventh Report*, the Committee recommended that the MAA 'maintain its position against insurer requests for increased profit margins on NSW CTP premiums.'¹⁸¹ The Government response to the *Seventh Report* supported the Committee's recommendation and referred to the MAA's Annual Report in this regard:

This recommendation is supported. As is stated in the 2005-2006 MAA Annual Report (p 87): 'Over the last six years, profit margins ranged from 7.5 to 10 per cent for individual insurers, with an industry average between 7.7 and 8.7 per cent. The MAA considers this range of profit margins to be reasonable although the MAA has

¹⁸⁰ MAA, *Response to Questions on Notice*, 4 September 2007, p 7

¹⁸¹ *Seventh Report*, p 25

ongoing discussions with the CTP insurers who believe that the level of profit derived from the Taylor Fry methodology is not adequate.¹⁸²

- 4.22** The *Motor Accidents Compensation Act 1999* provides that a premium will not ‘fully fund’ an insurer’s liabilities under the Act unless it includes ‘a profit margin in excess of all claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken’.¹⁸³
- 4.23** During the Committee's Seventh Review, the MAA advised the Committee that the debate between insurers and the MAA regarding an adequate return on capital has been running for the last four years.¹⁸⁴ And, as noted above, the MAA’s *2005-2006 Annual Report* notes that discussions between the MAA and insurers on this issue are on-going.¹⁸⁵
- 4.24** During this year’s review Mr Bowen also advised that, despite the MAA and insurers still being at ‘theoretical odds’ regarding profitability, current profit margins, driven by competition, are falling within the range considered appropriate by the MAA:

We are still at theoretical odds, but the practice in the market is now well within the MAA's range. Our advice was that an adequate return on capital—that is the term used in the Act—translated to a percentage of premium would be about 5 to 6.5%. Our view was that an amount above that was not excessive. We have an obligation to ensure that they get at least an adequate return on capital, but not an excessive return. That creates a range, and that is between 6 to 10%. Over the years of that debate, the insurers were filing in the 8.5 to 9.5% range and arguing that they would be getting a return on capital that would have translated to about 12 or 13% of the premium. In practice, driven by competition, they are all now filing in the 6 to 7.5% range. They have adopted in practice what we believe is the proper range, and we will be holding them to that in the future.¹⁸⁶

- 4.25** Despite insurers not being granted the profit margins they consider necessary to guarantee an adequate return on capital, some participants in the inquiry have continued to express concern at the actual level of profit that it is estimated insurers will realise for the various underwriting years of the Scheme.

Estimates of realised profits for underwriting years

- 4.26** In its *Seventh Report* the Committee noted the MAA’s then estimates for realised profits ranged from 18.9% of gross premium (2002/2003) to 24.8% (1999/2000). These figures led participants in the *Seventh Review* such as the Bar Association and the Australian Lawyers Alliance to criticise the level of insurer profit and to submit that this was evidence that

¹⁸² *Government Response to Seventh Report*, p 2

¹⁸³ *Motor Accidents Compensation Act 1999* (NSW), s 27(8)(c)

¹⁸⁴ *Seventh Report*, p 18

¹⁸⁵ *Seventh Report*, p 87

¹⁸⁶ Mr Bowen, Evidence, p 10

premium money that should be apportioned to injured people are not being awarded to them by the system.¹⁸⁷

4.27 The MAA's *2005-2006 MAA Annual Report* provides the profit estimates for the years 1999/2000 to 2003/2004.¹⁸⁸ When compared to the figures provided in the previous Annual Report, of particular note is the decrease in profit estimate figures for the year 2002/2003. The profit estimate decreased from 18.9% and \$264 million down to 9.7% and \$135 million.

4.28 This change was also noted by the NSW Bar Association in its submission to the review:

What immediately stands out upon comparing the two tables is the massive change in profit projections for 2003. The 2005 Annual Report forecasted that insurers would make \$264 million in profit (18.9% of premium written) for 2003. Only 12 months later this forecast had been lowered to \$135 million (9.7%). In the space of 12 months there has been a \$130 million blow out in anticipated claim costs from 2003. However, nowhere in the MAA Annual Report is there any explanation for this increase. The short and simple question is – where has the money gone?¹⁸⁹

4.29 The MAA provided the following explanation for the change in estimated profit:

The Motor Accidents Authority commissioned Taylor Fry Actuaries to examine the changes in the estimates of profitability. The actuaries concluded that the changes were due to increases in their estimates of ultimate claim costs, given a further year's development of 2002/2003 claims. Briefly, the actuaries noted the following changes to components of the estimate of ultimate claim costs:

- Actual claim payments during the year ending 30 June 2006 were more than those projected at 30 June 2005.
- Actual reported incurred costs (claims paid + estimates) as at 30 June 2006 were more than the projected incurred costs at 30 June 2005.
- The rate of future super-imposed inflation of average claims costs assumed for the projections was increased from 3 per cent per annum to 4 per cent per annum. This was based on claims experience up to 30 June 2006.
- The rate of future earnings-related inflation of average claims costs were increased from 4 per cent per annum to 5 per cent per annum.¹⁹⁰

4.30 During the public hearing the representatives of the MAA presented more current information on profit estimates which revealed that the profit estimate for the year 2002/2003 had now risen to \$183 million (13%). During the presentation Ms Donnelly of the MAA commented on the difficulty in estimating profit:

... we monitor what happens with actual profit and the estimates of profit as claims develop. It can be difficult to estimate this as claims come in over a period of time.

¹⁸⁷ *Seventh Report*, p 27

¹⁸⁸ MAA, *Annual Report, 2005-2006*, p 89

¹⁸⁹ Submission 3, p 1

¹⁹⁰ MAA, *Response to Questions on Notice*, 23 August 2007, p 3

You will see from the early years there were some high percentages reflecting the uncertainty in the early years of the scheme and that those percentages have followed the claims frequency down. In the later years, as there are so many claims that are not yet resolved, there is a very much lower estimate of profit because there is a prudential margin included there for, essentially, contingency.¹⁹¹

- 4.31** The information on profit estimates presented at the public hearing is reproduced below. It should be noted that the MAA advised that these figures will again be updated in its next Annual Report:

| Year end 30 September | Premiums written \$M | Acquisition costs \$M | Estimated ultimate claim costs \$M | Estimated profit \$M |
|-----------------------|----------------------|-----------------------|------------------------------------|----------------------|
| 2000 | 1,325 | 200 | 765 | 359 (27%) |
| 2001 | 1,321 | 198 | 833 | 290 (22%) |
| 2002 | 1,342 | 185 | 881 | 277 (21%) |
| 2003 | 1,395 | 197 | 1,015 | 183 (13%) |
| 2004 | 1,476 | 222 | 1,062 | 192 (13%) |
| 2005 | 1,451 | 224 | 1,214 | 13 (1%) |

Impact of the Lifetime Care and Support Scheme on insurer profits

- 4.32** In its answers to questions on notice provided to the Committee prior to the hearing, the MAA noted the impact of the Lifetime Care and Support Scheme on insurer profits as follows:

The Motor Accidents Authority expects that, with the introduction of the Lifetime Care and Support Scheme, insurers will require less capital to underwrite Compulsory Third Party, as a significant portion of the risk will be included in the Lifetime Care and Support Scheme fund and therefore insurers will require a lower amount of profit from Compulsory Third Party. As at April 2007, the projected industry weighted insurer profit was 6.7 per cent of premiums. This compares with 8.7 per cent as at June 2006.¹⁹²

- 4.33** During the hearing, Ms Donnelly reiterated that the commencement of the Lifetime Care and Support Scheme 'has enabled a deduction in the risk premium borne by insurers.'¹⁹³
- 4.34** The Insurance Council's submission noted that there has been a steady decline in premiums despite the introduction of the Lifetime Care and Support Scheme:

¹⁹¹ Ms Donnelly, Evidence, pp 5-6

¹⁹² MAA, *Response to Questions on Notice*, 23 August 2007, p 2

¹⁹³ Ms Donnelly, Evidence, p 6

The Insurance Council submits that CTP insurers have passed the benefits of recent claims experience on to motor vehicle owners, via lower premiums in 2005-2006. The affordability of CTP premiums in NSW remains at historically low levels. The graph provided in the MAA Report in fact shows a steady decline in premium pricing - particularly in the last two to three years despite the introduction of the Lifetime Care and Support Scheme.¹⁹⁴

- 4.35** The Insurance Council further stated that the MAA's expectation was that the impact of the LTCS levy would be an increase of approximately \$20 per premium, however, the cost has in fact been absorbed by insurers:

The Life Time Care Scheme (LTCS) is funded via a levy on CTP green slips. According to the MAA, the liability valuation is currently \$280 million per year. Income generated on the levy collected will need to support such a liability.

A reduced levy (to cover the cost of the scheme for children) has been collected since 1 October 2006. A full levy has applied to all policies incepted after 1 April 2007. The MAA 'expected the impact of the levy to be an average increase in the amount paid by motorists of around \$20 per policy'. Nonetheless, the MAA noted that 'in fact because of the high level of competition at present much of this has been absorbed by insurers.'¹⁹⁵

Decrease in claims frequency

- 4.36** In the Committee's *Seventh Report* it was noted that the fall in claims frequency was one of the significant contributing factors, along with propensity to claim and the average cost per claim, to the fall in 'risk premium' between 1999 and present. It was also noted that this contributed to the discrepancy between profit margins contained in CTP filings and the MAA's estimate of the profit likely to be realised on those premiums.¹⁹⁶

- 4.37** Ms Donnelly of the MAA informed the Committee at the hearing that claims frequency continues to fall:

... claims frequency has been dropping since 2000-01, and that this has been occurring in other jurisdictions as well as in NSW. The reductions most noticeable are in very-low to low severity claims. We anticipate that a number of factors would influence that around road safety, and as there is a continued commitment to road safety there is not an expectation that it would move back up.¹⁹⁷

- 4.38** The MAA's *2005-2006 Annual Report* identifies some reasons for the fall and notes that all Australian jurisdictions report a similar decrease:

Claim frequency has dropped from an estimate of 46 for the first accident year to around 30 for the most recent accident years. This is at least partly due to the increase in the number of registered vehicles over the period and the reduction in the rate of

¹⁹⁴ Submission 8, p 2

¹⁹⁵ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 4

¹⁹⁶ *Seventh Report*, p 38

¹⁹⁷ Ms Donnelly, Evidence, p 6. See also Appendix 3, p 5

casualties/registered vehicle. It is noteworthy that all Australian CTP jurisdictions report a decrease in claim frequency, which suggests that the decrease may be due to factors outside the CTP schemes, such as effective road safety campaigns and the prolonged drought, for example.¹⁹⁸

- 4.39** In evidence, Mr Bowen told the Committee that he did not foresee much scope for the claim frequency to drop further given its current low level:

It is very hard to see where there is much scope for a continuation in the frequency drop. It is a very, very low claim frequency at the moment, and I would hope that it would plateau. I think a big component of it is, as Ms Donnelly said, a road safety dividend, so I would hope that that would be ongoing. It is hard to see it dropping much further.¹⁹⁹

- 4.40** In its *Seventh Report* the Committee accepted that no reasonable participant in the CTP industry could have predicted the fall in claim frequency. During this year's public hearing Mr Bowen noted that as this trend has been acknowledged over time premiums have dropped to reflect this reduced risk to insurers:

The factors that have led to high profits when you look backwards were beyond our contemplation at the time the filings occurred. Just as importantly, as the industry has tracked forward and that information has led to refiles and further premium reviews, the premiums have dropped to reflect the position in the marketplace—the pricing of the risk.²⁰⁰

- 4.41** In its submission, the NSW Bar Association argued that while claim numbers fall and motorists have benefited from reduced CTP premiums, this must be weighed against what it believes to be reduced benefits to the injured:

It is acknowledged that part of the reason for these excessive profits is falling claim numbers. The CTP insurers are benefiting from a road safety dividend as claim numbers fall. Factors likely to have influenced this outcome include improved car safety (more airbags, seatbelts in interstate buses), some tighter regulation of the trucking industry, increases in the amount of dual carriageway highways around NSW and 50km per hour speed limits in built up areas.

However, part of the reason for these massive excess profits can also be attributed to the design and operation of the *Motor Accidents Compensation Act 1999*. The Act has proved far more effective in reducing benefits to the injured than had been anticipated. Claims payments are well down on actuarial projections at the time of the instigation of the new scheme.

Motorists have benefited from the road safety dividend. Premiums have fallen and continue to fall. NSW now has amongst the cheapest premiums in the country. The Association again has a simple question – is it fair that all the road safety dividend be returned to motorists or should part of the benefit be shared with the injured?²⁰¹

¹⁹⁸ MAA, *Annual Report*, 2005-2006, p 90

¹⁹⁹ Mr Bowen, Evidence, p 12

²⁰⁰ Mr Bowen, Evidence, p 4

²⁰¹ Submission 3, p 2

4.42 Similarly, representatives of the Law Society of NSW argued that the current Scheme discourages motorists from making claims. They focused on the issue of the amount of legal costs available to claimants under the Scheme, which they saw as a primary deterrent to the making of claims.²⁰² The issue of legal costs is examined in Chapter 5.

4.43 These concerns of the Bar Association and the Law Society were previously expressed to the Committee during its *Seventh Review*. During that Review the Committee was concerned with the need to identify the reasons for the fall in the propensity to claim. The Committee therefore recommended:

That the Motor Accidents Authority (MAA) prepare a report on the impact of the 1999 reforms, including procedural reforms initiated by the MAA in respect of legal costs, on the propensity to claim, and the impact of the fall in the propensity to claim on the profitability of licensed insurers, and that the MAA provide a copy of the report to the Committee.

4.44 The Government response to the Committee's recommendation stated that:

The Motor Accidents Authority has commissioned Taylor Fry Actuaries to examine the fall in the frequency of motor accident claims and identify the types of injuries associated with the decline in the propensity to make a motor accident claim. The Taylor Fry report is anticipated to be finalised by the end of this year. The Motor Accidents Authority will consider the Committee's recommendation further in the light of the Taylor Fry analysis, and a copy will be provided to the committee.

As the drop in the frequency of motor accident claims is an Australia-wide trend, the Motor Accidents Authority is also participating in discussions with other States and Territories through the heads of Compulsory Third Party Committee about this issue.²⁰³

4.45 During the *Seventh Review* the Committee examined the issue of the percentage amount of gross premium ultimately paid to claimants as a measure of scheme effectiveness. During the review the Chair of the Motor Accidents Council gave evidence that while the percentage paid to claimants (approximately 60%) is within an acceptable range there was a desire to see that improve.²⁰⁴

4.46 To that end, the Committee recommended that the MAA consider and report on possible Scheme changes, including possible legislative changes, to further increase the percentage of premium ultimately paid to claimants. In its response to the Committee's *Seventh Report* the Government stated:

The Motor Accidents Authority will continue to monitor the Motor Accidents Scheme with a view to reducing transaction costs associated with motor accident claims, including the possibility of legislative change, if required.²⁰⁵

²⁰² Mr Roulstone, Evidence, p 35

²⁰³ *Government Response to the Seventh Report*, p 2

²⁰⁴ *Seventh Report*, p 8

²⁰⁵ *Government Response to the Seventh Report*, p 1

- 4.47 The Government also referred to the expansion of the Scheme to include the new children's benefit which it anticipated would reduce transaction costs due to there being a reduced need for litigation with respect to entitlements to claim.

Committee comment

- 4.48 The issue of having a clear understanding of the reasons for the fall in claim frequency and propensity to claim will not likely be resolved until consideration of the Taylor Fry report. The Committee believes that if the Scheme does create barriers to people making accident claims then those barriers should be removed.
- 4.49 While lower CTP premiums are welcome – they are not the sole factor by which success of the Motor Accidents Scheme is judged. If changes to the Scheme result in an increased claim frequency and thus an increased risk premium then these changes should be accepted. Given the current affordability of greenslips it would be reasonable to accept no further decreases, or even an increase, in CTP premiums if this means an increase in valid compensation to accident victims.
- 4.50 There is no need for the Committee to make further recommendations with respect to this issue at this time given that the recommendations made in the *Seventh Report* are still current. The Committee looks forward to receiving advice from the MAA following the Authority's consideration of the Taylor Fry report.

Insurer compliance with MAA Guidelines

MAA review of guidelines

- 4.51 In its *Seventh Report*, the Committee recommended that '... the MAA continue to review and, where necessary, update, the various guidelines issued by it in respect of the market behaviour of insurers, including the *Market Practice Guidelines*, *Claims Handling Guidelines* and *Treatment, Rehabilitation and Attendant Care Guidelines*.²⁰⁶ The Government response to that recommendation indicated that the review of guidelines is a regular process on the part of the MAA:

The MAA regularly reviews the *Market Practice Guidelines*, *Claims Handling Guidelines* and *Treatment, Rehabilitation and Attendant Care Guidelines*. The *Claims Handling Guidelines* were reviewed in July 2005 and July 2006 and reviews will continue to be conducted at least every two years. The *Market Practice Guidelines* were most recently reviewed in August 2006 and will continue to be reviewed every two years. The *Treatment, Rehabilitation and Attendant Care Guidelines* have been reviewed five times since their introduction in 1998, with the most recent reviews taking place in May 2004 and September 2006. The MAA will continue to review the *Treatment, Rehabilitation and Attendant Care Guidelines* every two years.²⁰⁷

- 4.52 The Committee notes that amendments to Scheme requirements and guidelines are part of Stage 2 of the MAAS policy reform package. The MAA's *2005-2006 Annual Report* notes that

²⁰⁶ *Seventh Report*, Recommendation 5, p 52

²⁰⁷ *Government Response to the Seventh Report*, p 3

Stage 2 reforms will include earlier exchange of information, pre-CARS settlement conferences and mandatory settlement offers by both parties.²⁰⁸ During the public hearing Mr Bowen advised the Committee that the MAA had hopes that these new Scheme changes would be introduced to the Parliament in the next Parliamentary session.²⁰⁹

Insurer compliance

- 4.53** In its *Seventh Report* the Committee recommended that the MAA ‘... closely monitor insurer compliance with the *Treatment, Rehabilitation and Attendant Care Guidelines* to ensure that the medical needs of claimants are not prejudiced by commercial relationships between insurers and service providers.’²¹⁰ The Government response noted:

The MAA will continue to monitor insurer compliance with the *Treatment, Rehabilitation and Attendant Care Guidelines*. It is noted that the *Treatment, Rehabilitation and Attendant Care Guidelines* (September 2006) expressly state under ‘General principles’ that (p2): ‘The selection of a service provider should be determined by the claimant’s needs, not the relationship between the insurer and the service provider. Any commercial relationship between the insurer and the service provider is not a factor to be considered when selecting a service provider’. The MAA has not received any complaints to date alleging a conflict of interest between an insurer and their service provider.²¹¹

- 4.54** The MAA’s *2005-2006 Annual Report* noted that the MAA finalised a three-year plan for the period 2005-2008 on insurer compliance strategies to promote best outcomes for claimants. The MAA also finalised its regulatory and enforcement policy, which was approved by the MAA Board in October 2005. The policy provides criteria for determining whether a non-compliance is minor or major, and procedures for issuing breach notices or penalty notices to insurers in the case of a major non-compliance.
- 4.55** The MAA reports that the policy was applied during the reporting period and three out of 28 non-compliances by insurers were considered to be major non-compliances that resulted in breach notices being issued by the MAA. Of the three breach notices, two related to claims handling and one related to market behaviour when issuing greenslips.²¹²

Complaints against insurers

- 4.56** The basis for making a complaint against an insurer is if the insurer acts in such a way that contravenes a condition of its licence, breaches the guidelines issued by the MAA or does not meet the obligations or duties imposed upon it by the *MAC Act*.

²⁰⁸ *MAA, Annual Report, 2005-2006*, p 20

²⁰⁹ Mr Bowen, Evidence, p 14

²¹⁰ *Seventh Report*, Recommendation 6, p 53

²¹¹ *Government Response to the Seventh Report*, p 3

²¹² *MAA, Annual Report, 2005-2006*, p 13

- 4.57** The MAA's *2005-2006 Annual Report* notes that during the reporting period, the MAA's compliance branch received 116 matters for investigation, of which 109 related to the way NSW CTP insurers managed claims. Of these 109 matters:
- 59 alleged a breach of the CHGs
 - 10 alleged a breach of the TRAC guidelines
 - 27 related to improper insurer behaviour
 - 13 related to an allegation that the insurer was not just and expeditious in resolving the claim.²¹³
- 4.58** The *Annual Report* further noted that "of the 116 matters, 110 were finalised during the reporting period: 46 were resolved in favour of the applicant and 60 were resolved in favour of the insurer. Four complaints concerned issues over which the MAA had no jurisdiction".²¹⁴
- 4.59** The Committee's *Seventh Report* recommended that the MAA 'review its information strategy regarding its complaints handling procedures, and that the MAA publish on its web-site appropriate information regarding the making of complaints about NSW CTP insurers, and otherwise make the information available to members of the public'.²¹⁵ The Government response to the report noted that the MAA has commenced a review of its complaints handling procedures and that '... an information package about making complaints about CTP insurers will be available on the MAA website by the end of this year.'²¹⁶
- 4.60** During this year's Review, the MAA provided detail to the Committee on the information sources, relevant standards and external input used to inform the development of the information package on making complaints to be posted on the Authority's website. The MAA also advised that further consultation is proposed with the CTP industry, NSW Bar Association, Law Society of NSW and the Insurance Council of Australia.²¹⁷
- 4.61** In its submission to this year's Review, the Insurance Council of Australia expressed the view that the level of complaints made against insurers is low and is indicative of a sustained improvement in compliance performance by the insurance industry:

The MAA notes that during the reporting period the MAA's compliance branch received 116 matters for investigation, the majority of which related to insurers. The Insurance Council submits that compared to the number of outstanding claims that this level of complaint is low. In fact the number of complaints is less than 0.54% based on the number of total current claims. We understand that injured people are informed of their right to challenge an insurer's decision and the mechanisms for making a complaint.

Furthermore, we understand that the MAA is proposing to publish insurance industry compliance reports on their website, which will allow further transparency as to

²¹³ MAA, *Annual Report*, 2005-2006, p 13

²¹⁴ MAA, *Annual Report*, 2005-2006, p 13

²¹⁵ *Seventh Review*, Recommendation 7, p 53

²¹⁶ *Government Response to Seventh Report*, p 4

²¹⁷ MAA, *Response to Questions on Notice*, 4 September 2007, p 9

compliance activities and outcomes. The insurance industry supports this initiative as it provides the public with a clear understanding of the insurance industry's performance against compliance criteria. We also submit that this initiative will illustrate the insurance industry's improvement in compliance since the introduction of the CTP scheme.

Our members advise that the results of the 2006 Claims Handling Guidelines (CHG) audit indicated that the insurance industry showed a sustained improvement in compliance performance in 2006 in comparison with 2005. In 2006, the overall claims handling compliance performance for the Industry was rated very good.²¹⁸

- 4.62** None of the other participants in this year's Review expressed a view to the Committee on the level of complaints made against insurers. Although, in its supplementary submission to the review, the NSW Bar Association did provide a number of de-identified case studies to illustrate what it believes to be problems with the proper operation and efficiency of the Scheme. The Association did note in that context that a number of the case studies resulted in complaints to the MAA.²¹⁹

New penalties

- 4.63** During the public hearing, the General Manager of the MAA, Mr Bowen indicated that, as part of the proposed Scheme changes aimed at earlier resolution of medical disputes, consideration is being given to introducing penalties for insurers who clearly breach their responsibilities. In this regard, Mr Bowen said:

... we have discussed with the MAC and with the insurers the prospect that there will be cost penalties on insurers when we introduce the new Scheme changes that are intended to bring everything at an earlier point in time and have full disclosure so that, if the insurers are not abiding by those obligations and are not disclosing of course they should not only pay the cost but they also should incur penalties for breaches.²²⁰

- 4.64** Mr Bowen further stated that '...if insurers do not behave properly and as a result the claimant incurs additional costs, the claimant should be recompensed for that by way of a penalty against the insurer.'²²¹

- 4.65** Mr Bowen also advised there was scope for penalties for insurers in circumstances where an assessment of over 10% impairment should clearly not be in dispute:

We are also hoping, although there are not as many of them, but occasionally some get through, is that a person who is clearly graded at 10% will not have insurers sending those sort of cases for medical assessment. Anything that is clearly over 10% we want the insurer to accept and recognise their responsibility to make payment. That is another area where we think there is scope for penalties for insurers who do not accept their responsibility for a person's whole person impairment without

²¹⁸ Submission 8, pp 3-4

²¹⁹ Submission 3a, pp 3-11

²²⁰ Mr Bowen, Evidence, p 14

²²¹ Mr Bowen, Evidence, p15

sending it to medical assessment where the person is clearly over 10%, based on the nature of their injuries.²²²

- 4.66** During the public hearing both representatives of the MAA²²³ and the Insurance Council of Australia²²⁴ argued that there are strict guidelines with respect to when insurers can apply for further medical assessments. Both maintain that instances where insurers continually seek further assessments in an attempt to ‘drag out’ a dispute rather than seek resolution are atypical.

Committee comment

- 4.67** The Committee notes the ongoing work of the MAA in reviewing and monitoring its guidelines, particularly in relation to insurer compliance. It is clear that the MAA sees the guidelines as an integral part of its processes and has adequate review and compliance procedures in relation to them.
- 4.68** The Committee notes the advice that an information package on making complaints about CTP insurers will be available on the MAA website by the end of this year. The MAA has advised the Committee of the extensive process it is undertaking to develop that information, including consultation with relevant stakeholders. The Committee looks forward to reviewing that information once it is posted on the website.
- 4.69** In evidence Mr Bowen stated that occasionally insurers were sending persons who were clearly over the 10% WPI threshold for assessment, and that there is scope for introducing penalties for insurers in these circumstances. The Committee believes that penalties should exist for these circumstances to act as an incentive for insurers to resolve such disputes expeditiously. The Committee therefore recommends that the *Motor Accidents Compensation Act 1999* be amended to implement a penalty for this.

Recommendation 6

That the Minister Assisting the Minister for Finance seek an amendment to the *Motor Accidents Compensation Act 1999* to include a penalty for insurers who require a medical assessment of an injured person where the person is clearly, based on the nature of their injuries, over the 10% Whole Person Impairment threshold for non-economic loss compensation.

Other issues

- 4.70** In this section the Committee briefly examines three other issues relating to insurers that were raised during the review.

²²² Mr Bowen, Evidence, p 16

²²³ Mr Bowen, Evidence, p 13

²²⁴ Mr Cooper, Evidence, p 49

Nominal defendant claims

- 4.71 The *Seventh Report* recommended that the MAA ‘... review the *Claims Handling Guidelines* to determine whether the *Guidelines*, or any other guidelines issued by the MAA, should be amended to ensure that insurers provide appropriate information to potential Nominal Defendant claimants.’²²⁵ The Government response to the recommendation was:

The MAA proposes to amend the Claims Handling Guidelines to require an insurer to respond to a claimant’s reasonable request for information and assistance in making a claim, including a Nominal Defendant claim. It is anticipated that this amendment will be provided with other amendments under consideration and be implemented by the end of this year.²²⁶

- 4.72 The Committee will await the outcome of the implementation of the various amendments and reforms currently under consideration for enactment by the end of this year. Depending on this outcome the Committee may revisit this issue in later reviews.

Access to police data

- 4.73 In its submission, the Insurance Council of Australia put forward a proposal that insurers be permitted to access police data in order to determine liability more expeditiously, as currently occurs in Queensland:

The Insurance Council submits that the efficiency of the CTP scheme could be further improved by the ability to have online access to the Police data (similar to the system in Queensland) which would allow insurers to determine liability more rapidly. The health outcomes of injured people would also benefit from the earlier intervention of insurers.²²⁷

... one of the obligations on insurers is to determine liability as expeditiously as possible. Within the current scheme insurers have 90 days. Our members believe that they could greatly reduce the time it takes to make that determination if they had online access to police records, similar to the access that Queensland insurers have in that State to the police system.²²⁸

- 4.74 The Insurance Council described the way the Queensland system operates as follows:

We understand that in Queensland, insurers have access to online government databases through a system called CITEC Confirm. CITEC is the primary technology service provider for the Queensland Government which delivers IT services. Through CITEC Confirm, insurers can access a range of information online including:

- Company information, including bankruptcy, business names and investigative corporate reports.

²²⁵ *Seventh Report*, Recommendation 8, p 54

²²⁶ *Government Response to Seventh Report*, p 4

²²⁷ Submission 8, p 5

²²⁸ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 2

- Vehicle lodgements and searches, including Queensland motor vehicle register.
- Police searches, including Queensland traffic incidents (through QPRIME - *Queensland Police Records and Information Management Exchange*) and crime reports (through CRISP - *Crime Reporting Information System for Police*)

Through a database called QPRIME insurers are able to have access to police reports. In Queensland when a claim is lodged, an insurer will conduct an online police search. The report, in the vast majority of cases, is available instantaneously.²²⁹

4.75 The Insurance Council advised that it can take up to six weeks to obtain such a report in NSW and also addressed the issue of privacy concerns:

In New South Wales it has, in the past, taken up to six weeks to obtain such a report. This is because an insurer needs to send a physical request to the NSW Police Force. In relation to any privacy concerns with QPRIME, we understand that these are addressed through both: the strength of security measures undertaken before access is available; and restriction of access to certain groups of users including insurance agencies, legal representatives and parties involved in an incident.

In order to access the database an insurer must apply for high security access. The QPRIME system's information is confidential and must not be disclosed to unauthorized persons. Details of all transactions, including Secure IDs, are automatically recorded by the computer and can be retrieved. In addition, use of the QPRIME system constitutes consent to security monitoring.

The Insurance Council supports the use of a similar system in NSW to increase the efficiency of claims management.²³⁰

4.76 The Committee notes that Queensland law requires that a traffic incident (crash) be reported to police if:

- Any person involved is killed or injured
- A vehicle involved needs to be towed away
- The crash causes \$2500 or more damage to property (other than the driver's vehicle).²³¹

Committee comment

4.77 On the face of it, if privacy and security concerns could be addressed as they have been in Queensland, a system whereby insurers could more quickly access information that they routinely require in relation to traffic incidents has obvious merit.

4.78 Whether it is feasible to implement a similar system that would allow insurers access to the NSW Police electronic database relating to traffic incidents would require investigation on a number of levels. The Committee is of the view that in the first instance a proposal that could

²²⁹ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 2

²³⁰ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, pp 2-3

²³¹ < www.confirm.citec.com.au > (accessed 27 September 2007)

significantly reduce the amount of time it takes for insurers to determine liability is deserving of investigation. The Committee therefore recommends that the MAA should work with the NSW Police Force to investigate the feasibility of this proposal.

Recommendation 7

That the Minister Assisting the Minister for Finance and the Minister for Police request the Motor Accidents Authority and the NSW Police Force to examine and report on the feasibility of implementing a system whereby accredited insurers are allowed electronic access to police reports on traffic incidents for the purposes of a CTP claim while protecting the privacy of individuals.

Gap between CTP and public liability insurance

4.79 In its *Seventh Report*, the Committee recommended that the Minister develop an information strategy to bring the existence of the gap between CTP and public liability insurance to the attention of policy-holders and brokers.²³² The Government response noted that the MAA ‘has updated its website to provide information advising of the possibility of such a gap.’ The response also notes that the MAA has ‘previously raised the issue with the Insurance Council of Australia and the potential for gaps in public liability insurance is under consideration by the insurance industry.’²³³

4.80 The Insurance Council advised the Committee that its members have given this matter consideration and that they have asserted that, generally, there either is no gap or that their policies have been reviewed to bridge the gap:

The Insurance Council has dealt with the MAA on the issue of the gap since at least 2003. This matter has also been raised by the Insurance Council on a number of occasions with our members, and our members have given detailed consideration to the issues raised by the MAA.

Our members have carefully examined a number of scenarios put to them by the MAA and have found that their examples did not highlight a gap based on the use and operation of a motor vehicle between the public liability and CTP policies.

Our members also advise that they have reviewed their public liability policy wording with many of our members considering that the problem has been largely dealt with – and that their policies effectively bridge the gap.²³⁴

4.81 The Insurance Council acknowledged, however, that some older policies may still allow for a gap:

Nevertheless there may be some instances where an injured person may not have received compensation for bodily injury as a result of the operation of a vehicle. It

²³² *Seventh Report*, Recommendation 22, p 124

²³³ *Government Response to Seventh Report*, p 10

²³⁴ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 3

should be noted that public liability is a very long tail class of insurance where claims are able to be made many years after an incident – 20 plus years in the case of minors. This means that an old policy that did not have newer wording may still allow for the gap.²³⁵

- 4.82** The Insurance Council also expressed support for the information on the MAA's website which encouraged people to check the terms of their policies.²³⁶
- 4.83** In response to questions on notice the MAA advised that it had no further plans to further publicise the issue nor did it envisage a need to hold further consultation with the insurance industry on this matter.²³⁷

²³⁵ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 3

²³⁶ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, p 3

²³⁷ MAA, *Response to Questions on Notice*, 4 September 2007, pp 9-10

Chapter 5 Other issues

While the Committee's Eighth Review focused on the operation of the Medical Assessment Service (MAS), a number of other issues were raised with the Committee. Some of these issues have been raised consistently in previous reviews conducted by the Committee. Issues relating to insurers are examined in Chapter 4. In this Chapter the Committee examines the amount of legal costs recoverable by claimants under the Scheme; the maximum amount of treatment expenses an insurer is required to pay with respect to Accident Notification Forms (ANFs); the road safety functions of the MAA; and the right to appeal CARS assessments.

Legal costs

- 5.1** In its past two reviews the Committee examined the issue of the amount of legal costs recoverable by claimants, as allowed by the costs regulation. The NSW Bar Association and the Law Society of NSW argued during this review, as they have previously, that the current costs regulation is inadequate.
- 5.2** During the public hearing, the Chair of the Injury Compensation Committee of the Law Society of NSW, Mr Scott Roulstone, agreed with the proposition put to him that under the current system it is far more difficult for applicants to be represented by solicitors because of the cost restraints²³⁸ and that he was aware of cases in which applicants have had to discontinue proceedings in matters because of escalating costs and further reassessments.²³⁹
- 5.3** The Committee had not in its previous reviews heard evidence from representatives of the Law Society of NSW. The representatives of the Law Society were therefore invited to outline the role that solicitors play in the motor accident claims process:

Solicitors have been heavily involved in personal injury law generally since time immemorial. In this particular piece of legislation that we are discussing today solicitors currently represent around 52 per cent of claimants. It is trite to suggest that claimants who are represented by lawyers will achieve better outcomes than they would if they remain self-represented. Case studies abound on this particular issue, and I will give a general example of an injured claimant who may be entitled to non-economic loss damages, that is pain and suffering loss and damages, where particular insurers might offer \$5,000 to \$10,000 to, let us say, buy out a particular claimant who is unrepresented. That claimant ultimately goes to see a solicitor and the case is then properly prepared, albeit over 12 to 18 months, and often these cases can then settle for in excess of \$100,000 or \$200,000. In a case I am aware of it was a \$750,000 for a client who was offered \$15,000. The role of solicitors in this piece of legislation is crucial, as they play an effective role in achieving adequate compensation for injured persons.²⁴⁰

- 5.4** Mr Roulstone noted that, in cases where a claim requires significant investigation, the scheduled costs in no way properly reflect the work required in relation to the claim. Either

²³⁸ Mr Roulstone, Evidence, p 35

²³⁹ Mr Roulstone, Evidence, p 36

²⁴⁰ Mr Roulstone, Evidence, p 34

the claimant has to fund the difference, or on some occasions the solicitor might need to fund the litigation in order for the claim to proceed.²⁴¹

- 5.5** The Bar Association argued that the inadequacy of the cost regulation is even more profound in cases where a claim is subject to a number of assessments and reviews:

The motor accident cost regulations provide that the total costs recoverable for all MAS disputes in any claim are capped at \$1,540 (inclusive of GST). No matter how many further applications may be lodged, no matter how many reviews there are, no matter how many submissions need to be compiled in relation to those reviews and further assessments, the maximum costs recoverable remain fixed and cannot be increased.

Any competent solicitor experienced in personal injury law and able to understand and address the complexities of the MAS system charges more than \$220 per hour. Accordingly, if the MAS assessment process consumes more than 8 hours of legal time then the claimant ends up subsidising the MAS process and insurer profits.²⁴²

- 5.6** The Bar Association argued that the hourly rate allowed by the costs regulation bears no relation to the real cost of legal service and that the current rate of \$165 per hour inclusive of GST is significantly less than market rates. The Association compared this with the amount of \$270 per hour which it stated is the amount the MAA pays CARS assessors.²⁴³

A level playing field

- 5.7** During the public hearing, members of the Committee asked representatives from the MAA whether they considered there was a 'level playing field' for claimants and insurers with respect to legal costs. It was put to the MAA that claimants who were limited to \$1,540 in recoverable legal costs could not hope to match the resources of an insurer.²⁴⁴
- 5.8** This issue was particularly raised in the context of situations where an insurer requests multiple further medical assessments and reviews and the claimant is effectively punished because he or she cannot claim the costs of all of the additional work by his or her legal representative.²⁴⁵ Inherent in this discussion was the perception that there was no incentive for insurers to resolve matters equably and quickly and that indeed in many instances insurers were concerned with 'dragging out'²⁴⁶ claims.
- 5.9** With respect to the capping of costs for claimants but not insurers, Mr David Bowen, the General Manager of the MAA, told the Committee that the MAA monitored insurers legal costs and that, while there was no cap on insurer costs, insurers did not have the ability to

²⁴¹ Mr Roulstone, Evidence, pp 34-35

²⁴² Submission 3a, p 11

²⁴³ Submission 3, p 10

²⁴⁴ The Hon. John Ajaka MLC, Evidence, p 13

²⁴⁵ The Hon. John Ajaka MLC, Evidence, p 14

²⁴⁶ Mr Bowen and Mr Player, Evidence, p 13

appeal a CARS decision unlike claimants and that this is an attempt at equalising the positions of insurers and claimants:

On the issue of the capping of costs for claimants but not for insurers, we do keep an eye on insurers costs and we have other mechanisms through our claims handling guidelines to try to make sure they are not excessive in the level of legal representation, but we do not have strict caps in place.

The corollary to the cap on the claimant is that the insurer has no discretion as to whether or not they accept a CARS decision. They are bound by it, they have no right to go to court; it is only a claimant's right to accept or reject a CARS assessment and go on to court. So there is an attempt to, in different ways, achieve some sort of an equality and positioning for the two there.²⁴⁷

5.10 Mr Bowen did concede however that the issue warranted examination:

But I take your point: those sorts of cases where there are multiple assessments driven by the insurer are not properly compensating the injured person for the legal costs they necessarily incurred as a result of the insurer's behaviour, and that is one aspect that is being looked at by Mr Player's committee.²⁴⁸

5.11 The representatives from the MAA also told the Committee that there are strict guidelines with respect to when insurers can apply for further medical assessments. In this regard, Mr Cameron Player, Assistant General Manager, MAAS, said:

The tests that apply to a further assessment or review apply equally to both parties, and they are very tough threshold tests... They have to be able to prove that there is a material error in the original assessment that could result in a change to the outcome of the dispute.²⁴⁹

5.12 Mr Phillip Cooper, of the Insurance Council of Australia ('Insurance Council') rejected the proposition that insurers are continually seeking reassessments:

I do reject the proposition that insurance companies continually seek re-examinations or reassessments. We are under very strict guidelines as to when we can and the circumstances under which we are able to do so. It is much more an unusual case rather than what normally happens.²⁵⁰

5.13 Ms Mary Maini, also of the Insurance Council and the Chair of its NSW CTP Claims Managers Committee, noted that '[t]he cases where we would apply for reassessment are if there is a deterioration, material evidence or there was an incorrect assessment made.'²⁵¹

5.14 The Insurance Council argued that the current cost regulation was satisfactory:

²⁴⁷ Mr Bowen, Evidence, p 13

²⁴⁸ Mr Bowen, Evidence, p 13

²⁴⁹ Mr Player, Evidence, p 14

²⁵⁰ Mr Cooper, Evidence, p 49

²⁵¹ Ms Maini, Evidence, p 50

A matter was raised at the hearing relating to legal costs. There was a suggestion that the legal costs regulations, under the *Motor Accidents Compensation Act 1999*, put claimants in an unfair situation as compared to insurers and that claimants were unable to obtain adequate reimbursement for legal costs.

The Insurance Council does not consider that the injured person is put in an unfair situation by the legal cost regulations. In fact since the introduction of the regulations, a greater proportion of the settlement is going to the injured person. The legal costs regulations also allow for, in our submission, reasonable recovery of costs against an insurer.²⁵²

- 5.15** When asked whether he considered a level playing field existed, Mr John Driscoll of the Insurance Council simply pointed out that the insurance industry follows the rules that are set:

I believe that the government sets the rules and I do not believe it is my position to comment on whether or not the rules are correct, incorrect or otherwise. I believe it is the role of the insurance industry to act, as I believe it does, in a proper, efficient and effective way in administering the rules set by the Government.

- 5.16** The Committee was advised that a joint study between the MAA and the Law Society has been established to study the cost regulations. This is examined later at paragraphs 5.20-5.26.

Indexation

- 5.17** The Bar Associations submission notes that legal costs were indexed five years after the commencement of the *MAC Act* and that it is now two years since that has occurred.²⁵³ The MAA advised the Committee after its August hearing that ‘an amendment allowing for consumer price indexation adjustments (up to the June 2007 quarter) of the rates and allowances fixed by the *Motor Accidents Compensation Regulation* is currently underway.’²⁵⁴

Medical reports

- 5.18** The Law Society of NSW also raised the related issue of the cost of medical reports, which it argues generally exceed the amount that can be recovered under the regulations:

The cost of medical reports, many of which are regulated in the Costs Regulation, generally far exceed the amount that can be recovered under the Regulations (\$877.00 plus GST). It is not unusual for the cost of a report from a Qualified Specialist to exceed \$1,500.00. Even the cost of treating doctor's reports, which should not exceed \$326.00, may well cost up to that amount.

This situation is compounded by insurers who do not request reports from treating doctors as required by the Guidelines. Indeed, it is not uncommon for insurers to rely on their own doctors rather than meet the cost of obtaining reports from treating doctors who would normally provide a much fairer and better informed assessment of the claimant's ongoing disabilities and impairment.

²⁵² Submission 8a, p 4

²⁵³ Submission 3, p 8

²⁵⁴ MAA, *Response to Questions on Notice*, 4 September 2007, p 2

A combination of these factors can severely prejudice claimants. Needless to say the situation is far worse when claimants are dealing direct with insurers and do not have the benefit of legal advice.²⁵⁵

- 5.19** The concerns raised by the Law Society were relayed to the General Manager of the MAA. In turn, Mr Bowen advised the Committee that the rates prescribed for medical reports are the rates recommended by the Australian Medical Association (AMA) and agreed annually by the AMA and the Law Society.²⁵⁶

Study of the costs regulation

- 5.20** The issues of legal costs was also raised during last year's review and in its *Seventh Report* the Committee recommended '[t]hat the MAA report to the Committee on its further efforts to analyse the impact of the costs regulation on claimants with a view to determining whether the regulation significantly disadvantages claimants at the expense of insurers.'²⁵⁷

- 5.21** The Government response to the *Seventh Report* stated that the MAA has sought the co-operation of the Law Society to examine this matter further:

The Motor Accidents Authority has previously reported to the Committee on the difficulties encountered in obtaining information about lawyers billing practices in its earlier attempts to assess the impact of the costs regulation on claimants. As clear evidence could only be obtained from information held by lawyers, the General Manager of the Authority has written to the President of the Law Society of NSW requesting co-operation in accessing the necessary lawyer file information to jointly commission an independent assessment of the impact on claimants of the 'opt-out' provision of the costs regulation. This process would also assist the Authority to give further consideration to the anecdotal concerns raised in relation to the costs impact on claimants when litigation is initiated by insurers following a Claims Assessment and Resolution Service assessment.²⁵⁸

- 5.22** The Law Society advised the Committee during this year's Review that a joint study with the MAA into the impact of the costs regulation is now underway:

The Law Society's Injury Compensation Committee is currently assisting the Motor Accidents Authority in a Study of the Impact of the Costs Regulation on Claimants. It is anticipated that this review may well demonstrate that insurers are being unfairly subsidised by injured claimants.²⁵⁹

- 5.23** Mr Scott Roulstone of the Law Society provided further information about the study which aims to develop methodology by which a better cost regime may be promulgated:

²⁵⁵ Submission 5a, p 2

²⁵⁶ Mr Bowen, Evidence, p 16

²⁵⁷ *Seventh Report*, Recommendation 13, p 84

²⁵⁸ *Government response to Seventh Report*, p 6

²⁵⁹ Submission 5a, p 2

A subcommittee has been formed as part of the injury compensation committee. It comprises a group of four members who have specific expertise in motor accident claims, who have already liaised with Mr Cameron Player of the Motor Accidents Authority with a view to advancing and agreeing upon a methodology by which a better cost regime may be promulgated. It is in its reasonably early phase at this stage. However, there is an agreement in place, and we have jointly agreed upon a commercial organisation, who provide external consultancy advice—the group is known as FMRC and they are well known within the industry—to conduct such a study, which might require face-to-face interviews with solicitors, and also perhaps with claimants, with a view to compiling sufficient data so as to look at the cost regulations as a whole.²⁶⁰

5.24 When asked during the hearing whether he was hopeful about this process, Mr Roulstone responded that, while it was still in its early stages, there was a good degree of cooperation between the parties.²⁶¹

5.25 Mr Player also indicated to the Committee the type of issues that the joint study will be investigating:

We are looking at the cost regulations with a view to recognising earlier preparation of disputes and any discrepancies there might be in the cost regulations that provide either adverse incentives or disincentives at different stages of the scheme.²⁶²

5.26 The General Manager of the MAA stressed the necessity of engaging with the legal profession before being able to proceed with respect to this issue:

The cost regulations are done by regulation changes. We have not put that up because we formed the committee before we put a recommendation to the Minister. Really, that is a matter for engagement with the legal profession. Our position is that lawyers have a role to play in this scheme. We want that role to be value adding to the claimant and, when they do that, they should be properly recompensed for it. Similarly, if insurers do not behave properly and as a result the claimant incurs additional costs, the claimant should be recompensed for that by way of a penalty against the insurer. We agree to both those propositions.²⁶³

Committee comment

5.27 The Committee foreshadowed the need for an examination of the costs regulation in its previous Review. The Committee notes the length of time it has taken to get the relevant parties together. If the opinion, expressed to the Committee over a number of its Reviews, that claimants are unfairly disadvantaged by the current costs regulations is correct, then this should be remedied as soon as possible. However, this issue requires full and proper examination. The Committee therefore recommends that the MAA make the Study of the Impact of the Costs Regulations on Claimants a priority and allocate resources accordingly.

²⁶⁰ Mr Roulstone, Evidence, p 35

²⁶¹ Mr Roulstone, Evidence, p 35

²⁶² Mr Player, Evidence, p 13

²⁶³ Mr Bowen, Evidence, p 15

Recommendation 8

That the Motor Accidents Authority make the Study of the Impact of the Costs Regulation, conducted with the assistance of the Law Society of NSW a project priority and allocate resources accordingly.

Accident Notification Forms

- 5.28** The *Motor Accidents Compensation Act 1999* requires the MAA to review each year the maximum amount of treatment expenses for injured persons that insurers are required to pay for a claim notified by way of an Accident Notification Form (ANF).²⁶⁴ The maximum amount of \$500 has remained the same since the Scheme's inception.
- 5.29** During its *Fifth Review* the Committee examined this issue and sought information about the conclusions drawn from that year's review of the ANF maximum amount. The Committee was advised that the \$500 amount was considered adequate for two reasons. The first reason was that the actual amount paid out on ANFs on average was less than \$500 and so was not pushing towards the threshold. The second reason was that insurers were, as a matter of practice, paying above the \$500 amount if that would complete the matter on the ANF without requiring a full claim to be lodged.²⁶⁵
- 5.30** During the briefing provided to the Committee by representatives of the MAA in July this year, the Committee was advised that from the period October 1999 to June 2006, 36,500 ANFs had been lodged with 45% finalising at the ANF stage. 55% of the ANFs lodged were converted to full claims.
- 5.31** Following a later request from the Committee, the MAA provided the additional information on the reasons leading to ANFs being converted to full claims:

Where an Accident Notification Form is lodged, the claimant's entitlement to recover treatment expenses is limited to a \$500 cap and a six-month time limit. Where the claimant's treatment goes beyond six months of the accident or exceeds \$500, he or she must lodge a full claim in order to be compensated. The claimant will also have to convert his or her Accident Notification Form into a full claim where, in addition to treatment expenses, there is also a potential claim for other heads of damages such as non-economic loss, loss of earning capacity or gratuitous care.

In some cases an Accident Notification Form may be converted into a full claim when the insurer notifies the claimant that either the six-month time limit or the \$500 cap is approaching. In other cases, the claimant may decide to lodge a full claim.

Of the Accident Notification Forms that were converted to full claims, 81 per cent of those claims (including both open and closed claims) have received treatment payments in excess of \$500. Of the remaining 19 per cent which received treatment

²⁶⁴ *Motor Accidents Compensation Act 1999* (NSW), s 51

²⁶⁵ Legislative Council, Standing Committee on Law and Justice, *Review of the exercise and the functions of the Motor Accidents Authority and the Motor Accidents Council: Fifth Report*, Report 25, April 2004, p 51

payments under \$500, 85 per cent received payment for heads of damage other than treatment, which requires conversion to a full claim.²⁶⁶

- 5.32** The Committee also sought information from the MAA on the most recent annual review and the basis for the MAA's conclusion with respect to the adequacy of the maximum amount. The advice from the MAA was similar to the advice it provided at the time of the Committee's *Fifth Review*. The MAA noted that the average payment remains well below \$500 and that coupled with the discretion available to insurer's to pay beyond the cap, the MAA was therefore of the view that the \$500 limit was appropriate for existing arrangements for early payment of treatment expenses. However the MAA also advised that it had recently provided information to the Motor Accidents Council (MAC) on the potential to expand the ANF process.²⁶⁷
- 5.33** During this year's public hearing Mr Bowen advised the Committee that the proposal to expand the ANF scheme received unanimous support from the MAC. Following on from that a proposal is being developed for the consideration of the Minister:

We have provided a paper to the recent Motor Accidents Council meeting looking at the profile of small claims, claims up to about \$5,000, to see whether the types of damages lent themselves to being dealt with in an expanded ANF scheme. We got a very positive, in fact, a unanimous response from the Motor Accidents Council—which, as the Chairman has alluded to, is quite rare. We got unanimous support for an expansion of the ANF scheme. We are developing a proposal to put to the Minister on that at the moment.²⁶⁸

- 5.34** Mr Bowen elaborated on the proposal as follows:

... we looked at what were the heads of damage in small claims, claims of up to \$5,000. The great bulk of those claims are medical expenses-type claims and a little bit of past income loss. So we are looking at mixtures of damages that would allow an expanded ANF to include past payments up to a particular dollar amount, so that those types of matters could come in and out of the system very quickly.²⁶⁹

Committee comment

- 5.35** The Committee notes that the 1999 legislation sought to streamline the claims process to make it less adversarial and court-based, and so reduce transaction costs and provide a more claimant-friendly environment. One aim of the legislation was to improve claimant's access to earlier payments for treatment thus assisting in improved health outcomes for claimants. A key reform of the 1999 legislation was the introduction of the ANF. The Committee also notes that the MAA is developing a proposal to put to the Minister on expanding the ANF scheme.

²⁶⁶ MAA, *Response to Questions on Notice*, 23 August 2007, pp 5-6

²⁶⁷ MAA, *Response to Questions on Notice*, 23 August 2007, p 1

²⁶⁸ Mr Bowen, Evidence, p 4

²⁶⁹ Mr Bowen, Evidence, p 12

- 5.36** The Committee supports the introduction of an expanded ANF scheme as a means of facilitating the early resolution of claims and faster payments for medical treatment and other types of damages. The Committee therefore recommends that the Minister support the expansion of the ANF scheme as proposed by the MAA and that the MAA take the necessary steps to implement the expanded scheme as soon as possible.
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Recommendation 9

That the Minister Assisting the Minister for Finance support the expansion of the Accident Notification Form scheme as proposed by the Motor Accidents Authority and that the Authority take the necessary steps to implement the expanded scheme as soon as possible.

MAA and road safety

- 5.37** The MAA's road safety functions are derived from the *MAC Act*, which states that the MAA is to provide funding for measures to prevent or minimise injuries from motor accidents and for safety education.²⁷⁰ The Committee notes that in 2005-2006 the MAA spent \$3.940 million on road safety grants and sponsorships, down from \$4.409 million in 2004-2005 and \$5.707 million in 2003-2004.²⁷¹
- 5.38** Mr Bowen advised the Committee that, in terms of road safety priorities, the MAA continues to focus on young people and vulnerable road users:

... we have continued to focus on the priority areas of young people, both as drivers and injured people, because young people are highly disproportionately represented both as at fault drivers and their level of injury accidents. We continue to be very active with a variety of mechanisms to try to deliver road safety messages to young people. The other area is vulnerable road users, in particular children, pushbike riders and motorcycle riders.²⁷²

Road safety research funding

- 5.39** In its *Seventh Report*, the Committee noted that the MAA had decided not to continue funding general road safety research through the Grants Program. As the reasons for this decision was not clear to the Committee, the *Seventh Report* recommended that the MAA advise the Committee of the reasons for this decision.²⁷³
- 5.40** The Government response to this recommendation advised that the decision was made on the basis of a review of injury prevention programs, which identified problems with funding for general research:

²⁷⁰ *Motor Accidents Compensation Act 1999* (NSW), s 206(2)(f)

²⁷¹ MAA, *Annual Report*, 2005-2006, p 73 and MAA, *Annual Report*, 2004-2005, p 42

²⁷² Mr Bowen, Evidence, p 10. See also MAA, *Annual Report*, 2005-2006, p 15

²⁷³ *Seventh Report*, p 97

A review of injury prevention programs in 2005 by McGrath Nicol & Partners recommended that the Motor Accidents Authority minimise funding for general research. The rationale behind this recommendation was that such projects often did not yield sufficient results for the development of countermeasures. It was also found that research required a long term commitment and that this may be a more appropriate function for agencies other than the Motor Accidents Authority.²⁷⁴

- 5.41** The response did stress, however, that the MAA would continue to fund research in specific areas:

This Motor Accidents Authority will continue to fund and commission research on priorities specific to the compulsory third party scheme. This could include research into program development for areas such as children, young people and vulnerable road users such as pedestrians and motorcyclists.²⁷⁵

- 5.42** During this year's hearing, Mr Bowen explained the rationale for discontinuing general research funding in more detail, also emphasising that funding for specific, targeted research would continue:

We discontinued with annual research funding for road safety, not to withdraw from the area of road safety research, but really to target a little bit more. It was an issue that was discussed extensively at the Board. What we found was that through that Grants Program we were getting a lot of research reports, and the unfortunate conclusion of the great bulk of them was that more research was then warranted and it was not leading to any interventions or activities to reduce the risk that we had. At the same time we had a fairly large commitment to ongoing research through the Injury Risk Management Research Centre at the University of New South Wales and we felt we could use that to be a little bit more targeted in our approach. It was a deliberate decision of the Board. Through the Injury Risk Management Research Centre we provide both core funding for unspecified research in the area and then we provide a lot of targeted research looking at specific areas of interest.²⁷⁶

Targeted road safety initiatives

- 5.43** The MAA's *2005-2006 Annual Report* states that the MAA's Injury Prevention and Management (IP&M) programs were reviewed over the last year, and that this review recommended that the MAA continue to focus on reducing serious injuries in areas with the greatest cost impact to the CTP scheme, and to promote positive health and social outcomes for people injured in motor vehicle accidents.²⁷⁷
- 5.44** The *Annual Report* also notes that the focus areas for road safety are young people, children, pedestrians and motorcyclists. In the following sections the Committee briefly reports on some of the road safety initiatives funded by the MAA.

²⁷⁴ *Government response to Seventh Report*, Recommendation 16, p 7

²⁷⁵ *Government response to Seventh Report*, Recommendation 16, p 7

²⁷⁶ Mr Bowen, Evidence, pp 11-12

²⁷⁷ MAA, *Annual Report*, 2005-2006, p 15

Child passengers

- 5.45** The *Seventh Report* noted that the MAA had funded research on child restraints and had subsequently funded the Choose Right, Fit Right campaign conducted by Kidsafe NSW to promote the proper use of child restraints.²⁷⁸ The campaign continued in the 2005-2006 financial year and was described in further detail in the MAA's *Annual Report*:

The MAA launched the *Choose Right Fit Right* child passenger safety campaign in late 2005. This campaign was developed in response to research funded by the MAA that showed children are being moved from child restraints to adult seatbelts before they are ready.

The community based campaign was funded by the MAA and coordinated by Kidsafe NSW, and designed to help parents and carers of children aged between 2-6 years, to choose, correctly fit and always use a restraint appropriate to a child's size. The campaign involved the distribution of brochures and posters (which were also available in English, Arabic, Chinese and Vietnamese), through early childhood centres, councils and health networks.

The campaign was supported by an interactive display for community events and a video with key messages for parent meetings and doctor's surgeries. Messages were also featured on the Kidsafe NSW website. To support the campaign, MAA funding of \$45,000 was provided for 20 projects across NSW. These grants of up to \$3,000 were made available to councils, health centres and community agencies to further raise awareness of correctly fitting and using restraints appropriate to a child's size. Throughout the campaign period, visits to the Kidsafe NSW road safety web page doubled and some 50,000 brochures and 6,000 posters were distributed.²⁷⁹

Young drivers

- 5.46** Mr Bowen also informed the Committee that the MAA has focused on young drivers and described work undertaken in relation to P-plate drivers:

The young driver issue, obviously, has had a very big focus over the past 12 months. I was on the Younger Driver Working Party that led to recommendations for the changes to vehicle occupancy and night-time curfew for red P-plate drivers. We are now looking at strategies that will augment that. One of the ones that I volunteered to the working party is that, with the extended hours that a learner driver now has to do, there is really a need for a mentor and support system to provide an opportunity for those young people who, because of their social economic background, may not have the opportunity to get into a car and get trained. Over the next 12 months we will work with committee organisations, Lions clubs and Rotary clubs to see if we can put some mentoring system in place. We have done that on two occasions in specific indigenous communities and on one other occasion with a local council.²⁸⁰

²⁷⁸ *Seventh Report*, p 95

²⁷⁹ MAA, *Annual Report*, 2005-2006, p 28

²⁸⁰ Mr Bowen, Evidence, pp 10-11

Pedestrian safety

- 5.47 The MAA has continued to support work in the area of pedestrian safety. For example, the MAA ‘continued to support the annual Walk Safely to School Day Project, which is coordinated by the Pedestrian Council of Australia.’²⁸¹

Motorcycle safety

- 5.48 The MAA has supported a number of initiatives in the area of motorcycle safety:
- The MAA and RTA continued to jointly fund motorcycle awareness advertising campaigns in mid 2006. The campaign targeted both motorcycle riders and drivers, and highlighted issues of drink riding, speeding, helmet wearing, braking safely and driver awareness of motor cycles.
 - The MAA provided \$21,350 in funding for the Motorcycle Council of NSW to develop a road safety strategic plan to 2009.²⁸²

Funding for capital development

- 5.49 The MAA’s *2005-2006 Annual Report* notes that intermittently the MAA provides funding for capital development that will improve services, particularly for people with a brain or spinal cord injury. The report notes that a number of capital projects initially approved in 2003 were completed during the last period. Funding to the total of \$1.75M was provided for new or extended facilities at Port Macquarie, Sydney, Newcastle and Westmead.²⁸³
- 5.50 In its *Seventh Report*, the Committee recommended that the MAA review its role in respect of the provision of trauma care services for persons injured in motor accidents in NSW, to determine whether the MAA can contribute to placing trauma care services on a more sustainable basis.²⁸⁴ While it is not clear from the Government response to this recommendation whether the MAA carried out the review recommended by the Committee, it does appear that some additional initiatives are being undertaken in relation to trauma care:

The Government has committed to providing \$7 million in MAA funding for Careflight to expand its Head Injury Retrieval Trial to the Central Coast. Further consideration is being given by the MAA to assist in partnerships with other stakeholders in the field of trauma care.²⁸⁵

Road Safety Strategic Plan

- 5.51 During its Seventh Review the Committee examined the Road Safety and Rehabilitation Strategic Plan. The Committee’s *Seventh Report* recommended that the MAA ‘consult with all interested stakeholders, including the NSW Parliament Joint Standing Committee on Road

²⁸¹ MAA, *Annual Report*, 2005-2006, p 27

²⁸² MAA, *Annual Report*, 2005-2006, p 27

²⁸³ MAA, *Annual Report*, 2005-2006, p 17

²⁸⁴ *Seventh Report*, Recommendation 20, p 107

²⁸⁵ *Government response to Seventh Report*, Recommendation 20, p 10

Safety, prior to finalising the Road Safety and Rehabilitation Strategic Plan.²⁸⁶ The Government response stated:

This recommendation is supported. On 25 September the Manager, Injury Prevention and Management, MAA and Principal Advisor, Road Safety, MAA appeared before the Joint Standing Committee on Road Safety in its inquiry into the road safety situation in NSW over the periods 2000-2006. During the public hearing the MAA representatives outlined the current strategic directions and priorities of the MAA in the area of road safety.²⁸⁷

5.52 At the hearings as part of the current review the MAA advised the Committee that the MAA has separated the two areas of road safety and rehabilitation within the MAA from 1 July 2007. Rehabilitation is now handled is a shared capacity with the new Lifetime Care and Support Authority.²⁸⁸

5.53 Mr Bowen outlined to the Committee the broad spectrum of stakeholders with which the MAA consults and engages:

Clearly, we speak to NRMA motoring services. Obviously, we speak to officers of the RTA. We speak to Government road safety officers. We have had a long-term relationship with local government road safety officers. We fund a number of positions and initiatives. We fund their award every year. That is a very big forum for us.

... We have, I suppose, a talking relationship with the Pedestrian Council. A lot of our work with motorcycle riders has been through the Motorcycle Council, I think it is called. I will check that. We work closely with them. For example, last year or later the year before we funded, through the Motorcycle Council, some advertising in its magazines based on drivers wearing protective gear and helmets. We fund, with the RTA, other advertising aimed at drivers to make them aware of the need to look around and be alert to the dangers of motorcycles being nearby.²⁸⁹

5.54 In particular, Mr Bowen commented on the value and outcomes from its consultation and engagement with young people:

We have our own Young People's Advisory Group because each year we advertise what we call Arrive Alive grants that are aimed at providing any group of young people in a community area with some financial assistance to identify a particular problem in the area and come up with something. We do not put any particular boundaries on that. We think that encouraging creativity and a little bit of natural thinking in that area is good. It is amazing the response we get to that, and quite amazing the product we get out of it. We quite often showcase that in our annual report. On really very small dollars they do some very creative work, and that has been targeted geographically so that a lot of it has gone out into rural areas and particular ethnic groups. Sometimes it is video production. Sometimes it is a play. Sometimes it

²⁸⁶ *Seventh Report*, Recommendation 15, p 97

²⁸⁷ *Government response to Seventh Report*, Recommendation 15, p 7

²⁸⁸ Mr Bowen, Evidence, p 10

²⁸⁹ Mr Bowen, Evidence, p 11

is a film that is shown in and around all the local high schools in the area. Other times it is posters. Sometimes it is just an activity. It is fairly diverse.²⁹⁰

- 5.55** The Deputy General Manager of the MAA, Ms Carmel Donnelly indicated to the Committee that the restructure brought about by the creation of the Lifetime Care and Support Authority has, in her view, created an opportunity for the MAA to further target research so as to realise effective outcomes:

Given this restructure that has come into the division for which I am responsible, there are opportunities going into the future for us to ensure that the work the MAA is doing with injury prevention fits fruitfully within what other agencies, government and non-government, are undertaking. There is an opportunity at the moment, given that the RTA is a lead agency for the State Plan priority of reducing the road toll and improving road safety. We are working with them. I think the other area of opportunity is to work with experts in research to identify which interventions are really most effective. There are some players, including the Injury Risk Management Research Centre and the George Institute, and looking at what is happening in other jurisdictions and internationally in road safety that you would work with into the future to look at not just what is working and the ideas in NSW, but where there is evidence that a current program will reduce injuries.²⁹¹

Involvement of insurers in road safety

- 5.56** In its submission the Insurance Council noted that an integral part of its strategic blueprint was to facilitate the insurance industry's partnership in supporting communities and in identifying, assessing and helping to manage community risks:

In particular the Insurance Council and its members are pleased to contribute to government and community programs particularly those concerning road safety. We submit that effective risk management requires mutual responsibility by individuals, communities, insurers and Government.

- 5.57** The Insurance Council representatives at the hearing expanded on the role played by the Council and by individual member companies in road safety:

There is a lot of work done on road safety issues by individual member companies of the Insurance Council. I also participate in road safety fora in a number of jurisdictions to work with government and other stakeholders to try to achieve positive outcomes. In fact, as recently as last Wednesday I attended a meeting of the Queensland Motor Cycle Road Safety Forum, where we and all stakeholders looked at a number of initiatives, advertising campaigns, et cetera, which could be used to increase the level of awareness by drivers of vehicles other than motor cycles of the issue of road safety when it comes to motor cycles on the road. We achieved consensus with a variety of stakeholders sitting round the room—insurers, smash repairers, suppliers of vehicles, regulators, government and other stakeholders. That is an example that comes to mind because it is quite recent, but there are a number of initiatives that a number of insurers are themselves undertaking, and some of them are

²⁹⁰ Mr Bowen, Evidence, p 11

²⁹¹ Ms Donnelly, Evidence, p 11

very well publicised. The Insurance Council itself is keeping abreast of developments in road safety right across Australia.²⁹²

Committee comment

- 5.58** The Committee commends the MAA for its continued important work in the area of funding injury prevention and road safety initiatives. The Committee accepts the rationale put forward by the Government and the MAA for the decision to discontinue funding for general road safety research. The Committee can find no fault with the argument that funding for research, provided by the MAA, should focus on targeted research framed to identify interventions or activities that will reduce injury risk. The Committee also commends the participation of the insurance industry in road safety initiatives and encourages them to extend their involvement.

The right to appeal CARS assessments

- 5.59** In its submission to the Review, the Bar Association raised the issue of the number of appeals from CARS assessments made to the Supreme Court by insurers on the basis of procedural fairness.²⁹³ The Committee notes that there are two avenues for appeals of CARS decisions:

- If a claimant is dissatisfied with the substance of a CARS assessment of the injured person's damages the claimant can make an appeal to the District Court. The insurers are not afforded the same right of appeal – they are bound by CARS assessments.²⁹⁴
- If either party believes that the correct processes were not followed they can make an appeal to the Supreme Court for judicial review on the common law ground of lack of procedural fairness.

- 5.60** The Bar Association's concern relates to the ability of claimants to afford appeals to the Supreme Court in comparison to the insurers and the unfairness this creates. In this regard, Mr Michael Slattery, the President of the Bar Association stated:

Most of these are filed by insurers, not by claimants, for the simple reason that claimants cannot afford it in the process. It is an extra cost burden. The other comment is that administrative law procedural arguments are usually quite remote from the merits of the case and not something that claimants really want to take on, although the system may be unfair. The fact that this has to be done shows that the system is not operating fairly to both sides. This is really the tip of the iceberg for what we think claimants would want to take on.²⁹⁵

- 5.61** Mr Andrew Stone of the Bar Association gave an example of the kind of issue that a claimant might want to take on appeal but is prohibited by the cost:

... I can illustrate it with a clear example. ... In his case he is in the CARS system. Liability is admitted and he will be assessed at CARS, but because he has had a rule of

²⁹² Mr Driscoll, Evidence, pp 52-53

²⁹³ Submission 3, pp 6-7

²⁹⁴ *Motor Accidents Compensation Act 1999* (NSW), s 95

²⁹⁵ Mr Slattery, Evidence, p 46

this MAS process he is going rapidly backwards on costs because of the cap. We asked the CARS assessor for an exemption: can we take this case to court because if we go to court we will get party-party costs and at least he will not be so badly off? The CARS assessor said, "No, I'm keeping it in the CARS system." I did not get to rehear that decision in court because I did not get to court at all. That is the sort of decision that we think is unfair and would like to run an administrative appeal against but the insurer in our position would be able to afford to run an administrative appeal and I cannot ask him to stump up the \$20,000 that is necessary if we want to take it to the Supreme Court to object to the decision not to let us go to court.²⁹⁶

- 5.62** As for the number of appeals to the Supreme Court, in evidence, Mr Bowen advised that they are 'overwhelmingly from insurers'.²⁹⁷ On request from the Committee the MAA later provided the following information on the number of Supreme Court appeals:

Since 1999 there have been only 15 summonses issued in the Supreme Court, of which all were issued by insurers. In respect of the results, of those challenges, nine resulted in the settlement or discontinuance of the Supreme Court proceedings, one resulted in the Assessor's decision being set aside and five have resulted in the assessor's decision being upheld (although two are on appeal).

In respect of the nature of the challenge, of the 15 summonses issued seven relate to the quantum of an assessment, five (including the two on appeal) relate to the exemption (or not) of the claim from assessment, one related to a procedural decision, one related to a procedural error and only one (*Allianz Australia Insurance Ltd v Crazzji*) has raised an issue of procedural fairness, and the Claims Assessment Service Assessor's decision in that case was upheld.²⁹⁸

- 5.63** The Insurance Council also provided advice to the Committee following the hearing on this matter, noting the low number of matters taken to the Supreme Court. The Insurance Council suggested that the discrepancy in the number of cases brought to the Supreme Court by insurers is explained by the fact that claimants, unlike insurers, have a right of appeal to the District Court which means they can have a 'fresh hearing':

On the other hand if an injured person is not satisfied with the assessment made at CARS they have the right to go to the District Court and commence legal proceedings – a right not afforded to insurers. Should the injured person be successful in improving the assessment of damages, they will be entitled to costs in the District Court. They can also apply to the Supreme Court on administrative law grounds although this is not usually necessary as they have the right to a fresh hearing in the District Court. This, in our submission, explains the apparent discrepancy in the number of cases being brought in the Supreme Court by insurers.²⁹⁹

- 5.64** During the public hearing, the suggestion that the ability of insurers to afford an appeal to the Supreme Court means that there is not a level playing field, was put to representatives of the Insurance Council. Mr Philip Cooper also pointed to the inability of insurers to appeal CARS decision:

²⁹⁶ Mr Stone, Evidence, pp 46-47

²⁹⁷ Mr Bowen, Evidence, p 17

²⁹⁸ MAA, *Response to Questions on Notice*, 4 September 2007, p 38

²⁹⁹ Insurance Council of Australia, *Response to Questions on Notice*, 14 September 2007, pp 1-2

In fact, it is not a level playing field, I do agree. Claimants are able to appeal either CARS [claims assessment and resolution service] or MAA decisions if they feel they are incorrect or not to their satisfaction. Insurance companies are not able to appeal at all CARS decisions. We can only appeal if we think the hearing was incorrectly held and there is an administrative problem. We are not able to appeal the outcome at all. So, in fact, it is not a level playing field.³⁰⁰

- 5.65** In an effort to get a clear picture regarding appeals of CARS decisions the Committee requested the MAA to provide any available data on appeals taken to the District Court. In response the MAA provided the following information:

When a claim is assessed at CARS a certificate of assessment is issued. Under section 95 of the *Motor Accidents Compensation Act 1999* if liability and quantum have been assessed, either party can reject the certificate of assessment. If liability is not in issue and has not been assessed then only the claimant can reject the assessment. If an assessment is rejected the claimant may (if the claim does not resolve in the interim) commence legal proceedings and this is usually done in the District Court although it is possible that some proceedings could be commenced in the Local Court.

As the acceptance or rejection of an assessment is a matter between the parties, there is no easy mechanism with CARS to record the acceptance/rejection rate. It is not possible to monitor the rejection rate through for example monitoring the commencement of proceedings in the District Court, as the District Court no longer maintains a specialised Motor Accidents List and in any event that would not necessarily distinguish between proceedings commenced by way of a rehearing from CARS (as opposed to a 'first time' hearing courtesy of an exemption) and it would not include those assessments that were rejected but which settled before proceedings were commenced or those proceedings commenced in the Local Court.

In November 2004 an exercise was conducted with the assistance of the six licensed CTP insurers. A list of assessments conducted from 1999 – October 2004 was provided to them and they were asked to indicate whether the assessment was rejected or accepted. This did not include of course assessments involving interstate insurers.

The results suggested that of 556 assessments, for which data was provided by the insurers, 87 per cent were accepted and only 75 assessments were rejected.³⁰¹

- 5.66** The Committee notes that all disputed claims must go to CARS: there is no access to court unless the matter has been to CARS. CARS will either assess the claim or find the matter exempt or unsuitable for assessment and issue an exemption certificate allowing the matter to proceed to court.
- 5.67** The Committee notes that in the example given in evidence by Mr Stone of the Bar Association the issue was the rejection by the CARS assessor of a request for an exemption from the CARS process. In the example the claimant had undergone nine MAS assessments over a three-year period, and it was the issue of the legal cost cap that prompted the request for an exemption. It was the decision not to grant an exemption that Mr Stone argued was unfair and could have been appealed against in the Supreme Court if the cost of such an appeal was not so prohibitive.

³⁰⁰ Mr Cooper, Evidence, p 50

³⁰¹ MAA, *Response to Questions on Notice*, 4 September 2007, p 39

5.68 The Committee notes the MAA's *Annual Report 2005-2006* contains data on the number of applications for exemptions lodged and the number granted for each of the scheme years. In 2005-2006 1,661 applications for exemptions were lodged representing 37% of the assessment applications lodged at CARS. The number of exemptions granted in 2005-2006 was 1,526. The *Annual Report* also provides a breakdown of the various reasons for the exemption of matters.³⁰²

Committee comment

5.69 The Committee notes the advice of the MAA that only a very small number of appeals are made to the Supreme Court, particularly when viewed in the context of the large number of claims handled by the MAA.

5.70 From the evidence available, the Committee is unable determine whether there is in fact a large proportion of claimants who would seek to make an appeal to the Supreme Court, if the cost of doing so was not so prohibitive. In the example given in evidence to the Committee by the Bar Association, it would be fair to say that the dissatisfaction stems primarily from the issue of the limited amount of recoverable legal costs available to claimants under the Scheme and the exacerbation of this issue when claimants are subjected to multiple reassessments. The issue of the impact of the costs regulations was canvassed earlier in this Chapter, and the issue of introducing new penalties for insurers who unnecessarily required claimants to undergo medical assessments was examined in Chapter 4.

5.71 During the course of examining this issue the fact that the MAA has no means by which to gather information and monitor District Court matters relating to motor accident compensation matters came to the attention of the Committee. The Committee is of the view that such information would provide a useful indicator of the effectiveness of the CARS assessment process. The Committee notes that Mr Bowen indicated that access to the District Court database was an issue that was being looked at by the MAA.³⁰³ The Committee also notes the difficulties, as explained by the MAA, that stand in the way of obtaining this information easily.

5.72 The Committee is aware that, under section 95 of the *MAC Act*, when a certificate of assessment has been issued where quantum has been assessed and liability is not an issue, the claimant has 21 days to accept the amount of damages in settlement of the claim.

5.73 In the absence of being able to access meaningful District Court data, the Committee is of the view that, if it could be arranged, being able to determine the acceptance/rejection rate by claimants of CARS assessments would provide a useful indicator of the performance of the CARS assessment process. The Committee therefore recommends that the MAA liaise with the Insurance Council and the CTP insurers to investigate the feasibility of obtaining information on the number of CARS assessments with respect to damages accepted and not accepted by claimants, and that, if possible, the MAA report this information in the future in its Annual Report.

³⁰² MAA, *Annual Report*, 2005-2006, p 104

³⁰³ Mr Bowen, Evidence, p 17

Recommendation 10

That the Motor Accidents Authority liaise with the CTP insurers and the Insurance Council of Australia to investigate the feasibility of insurers providing the MAA with information on the number of Claims Assessment and Resolution Service certificates of assessments of the amount of damages for liability under a claim, where liability is not in issue, that are accepted and not accepted within 21 days after the certificate is issued.

Appendix 1 Submissions

| No | Author |
|----|---|
| 1 | Mr Shashat MANSOUR |
| 2 | Ms Judie STEPHENS OAM (Accident Victims Alliance) |
| 3 | Mr Alistair McCONNACHIE (The New South Wales Bar Association) |
| 4 | Ms Anne DEANS (Youthsafe) |
| 5 | Mr Geoff DUNLEVY (Law Society of NSW) |
| 6 | Mr Guy STANFORD (NSW Motorcycle Council) |
| 7 | Mr Ian FAULKS (Safety and Policy Analysis International) |
| 8 | Mr John DRISCOLL (Insurance Council of Australia Ltd) |

Appendix 2 Witnesses at hearings

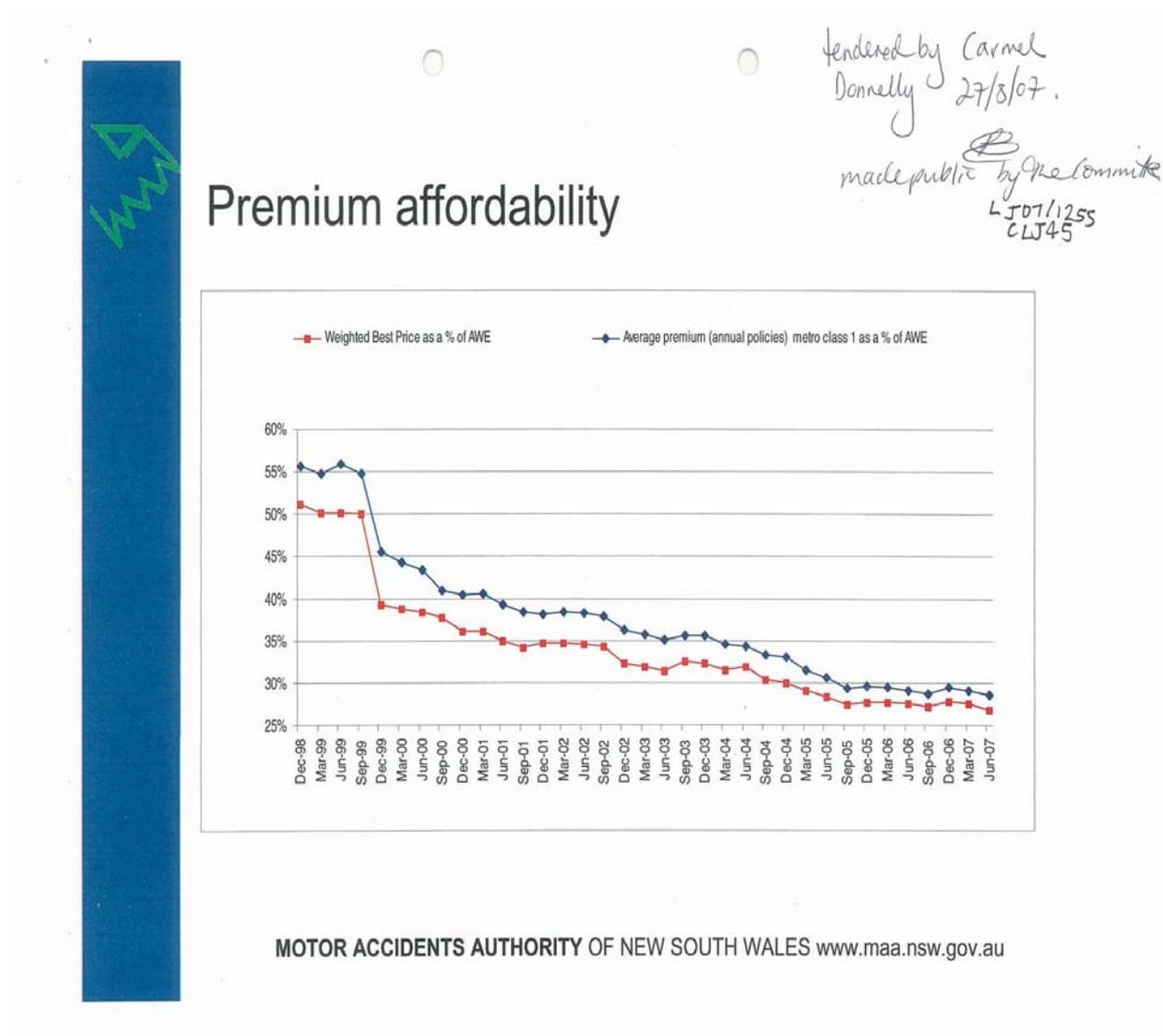
| Date | Name | Position and Organisation |
|-------------|------------------------|--|
| 27 Aug 2007 | Mr David BOWEN | General Manager, Motor Accidents Authority |
| | Ms Carmel DONNELLY | Deputy General Manager, Motor Accidents Authority |
| | Mr Richard GRELLMAN AO | Chair, Motor Accidents Authority Board and Motor Accidents Council; Chair, Lifetime Care and Support Scheme Board |
| | Dr Dwight DOWDA | Occupational Physician; Medical Assessor and Review Panellist, Motor Accidents Authority |
| | Dr Kathleen McCARTHY | Rehabilitation Physician; Medical Assessor and Review Panellist, Motor Accidents Authority |
| | Dr George PAPTODORAKIS | Musculoskeletal Medicine; Medical Assessor, Motor Accidents Authority |
| | Mr Cameron PLAYER | Assistant General Manager, Motor Accidents Assessment Services, Motor Accidents Authority |
| | Mr Denis MOCKLER | Member, Injury Compensation Committee, Law Society of NSW |
| | Mr Scott ROULSTONE | Councillor and Chair of the Injury Compensation Committee, Law Society of NSW |
| | Mr Michael SLATTERY QC | President, NSW Bar Association |
| | Mr Andrew STONE | Member, Common Law Committee, NSW Bar Association; Bar Association representative, Motor Accidents Authority |
| | Mr Philip COOPER | Chair, MAISC Executive Committee, Insurance Council of Australia |
| | Mr John DRISCOLL | General Manager Police, Consumer Directorate, Insurance Council of Australia |
| | Ms Mary MAINI | Chair, NSW CTP Claims Managers Committee, Insurance Council of Australia |

Appendix 3 Tabled documents

Monday 27 September 2007

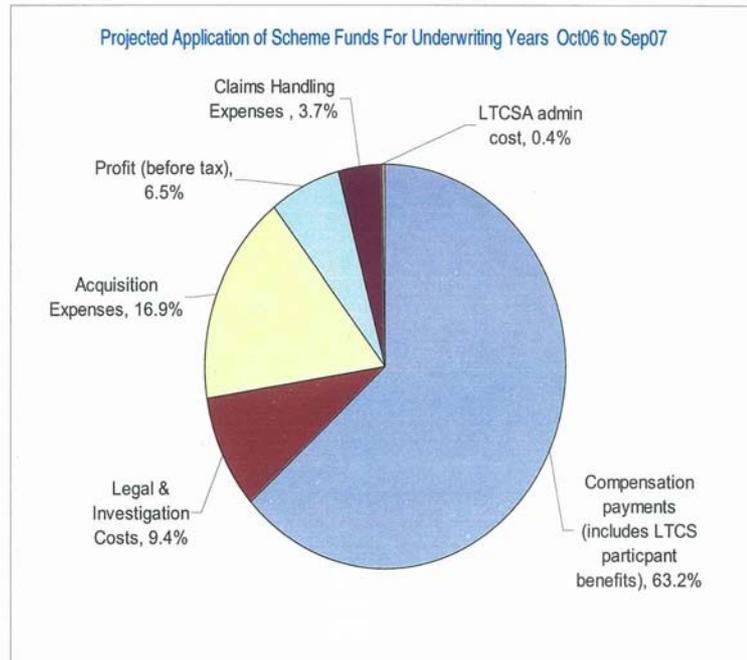
Public hearing, Parliament House, Sydney

1. PowerPoint slides – tabled by Ms Carmel Donnelly, Motor Accidents Authority of New South Wales





Projected Application of Scheme Funds



MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au



Insurer profit

| Year end 30 Sep | Premiums written \$M | Acquisition costs \$M | Estimated ultimate claim costs \$M | Estimated profit \$M |
|-----------------------|----------------------------|--------------------------|---|-------------------------|
| 2000 | 1,325 | 200 | 765 | 359 (27%) |
| 2001 | 1,321 | 198 | 833 | 290 (22%) |
| 2002 | 1,342 | 185 | 881 | 277 (21%) |
| 2003 | 1,395 | 197 | 1,015 | 183 (13%) |
| 2004 | 1,476 | 222 | 1,062 | 192 (13%) |
| 2005 | 1,451 | 224 | 1,214 | 13 (1%) |

MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au



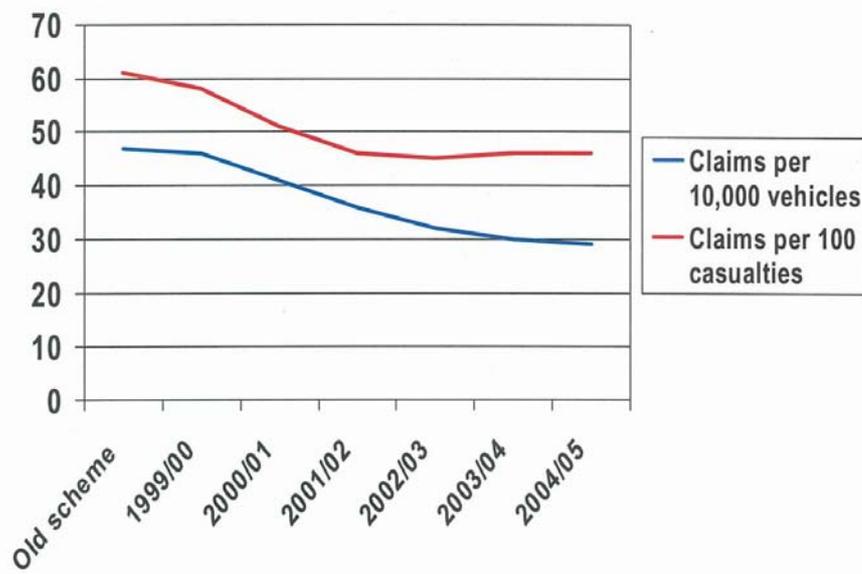
Why is the market so competitive ?

- Risk premium assumption
- Investment returns
- AWE assumption
- Impact of LTCS scheme
- Claim frequency
- Superimposed inflation assumption

MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au



Claim frequency



MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au



Superimposed inflation

PWC study found:

- Average claim cost has increased 6 - 7% per year over recent years.
- This is primarily the result of a more severe injury mix due to decreases in minor claims and has occurred in the context of reduced claim frequency.
- Overall, superimposed inflation is low. Claims with similar injuries are receiving similar benefits over time.

MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au



Superimposed inflation cont'd

In addition:

- Some evidence of superimposed inflation in some low to moderate severity claims.
- Some evidence of greater access to future economic loss – although amounts received are low.
- No evidence of superimposed inflation for large claims.

MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES www.maa.nsw.gov.au

Appendix 4 Lifecycle of a MAS dispute

The lifecycle of a Medical Assessment Service dispute can be broken down into three distinct stages:

- Stage 1: date application received to first allocation review (to decide if the matter is ready to be allocated to an assessor and if so to whom),
- Stage 2: first allocation review to first assessors appointment
- Stage 3: first assessors appointment to last certificate sent to the parties

The statutory and guidelines timeframes, counted in working days, which apply within each of those three distinct stages, are as follows;

- Stage 1 – Approximately 30 working days;
 - Application processed by Motor Accidents Assessment Service within five days,
 - Application acceptance is ‘deemed received’ by respondent in five days,
 - Reply due from respondent within 20 days after receiving Application,
 - Reply processed by Motor Accidents Assessment Service within five days,
 - File Review for Allocation completed by Motor Accidents Assessment Service within five days of Reply Due date.
- Stage 2 – No set timeframe but averaging approximately 40 working days;
 - No statutory timeframe set for first Appointment. Motor Accidents Assessment Service endeavours to arrange appointments within approximately 4 weeks time (20 days). Special cases that require rare specialties of assessors, where the claimant has special needs, or in more remote locations, overseas or in gaol may take significantly longer.
- Stage 3 – Approximately 40 working days;
 - Multiple appointments have no set timeframe, but in cases of multiple injuries requiring multiple assessments, or special cases such as where the brain injury protocol is applied, the second or subsequent assessment may need to await completion of the first assessment.
 - Re-scheduled appointments and Non-Attendances requiring cancellation and re-booking of appointments.
 - Certificate and Reasons issued by assessors to Motor Accidents Service within 15 days.
 - Certificates sent to parties by Motor Accidents Assessment Service within five days of receipt.
 - Combination certificate (in multiple assessment cases) prepared and sent to parties by Motor Accidents Assessment Service within five days of receipt of final assessors certificate.
 - Total approx. 95 days.
- Total Lifecycle – Approximately 110 working days.

Appendix 5 Minutes

Minutes No 1

Wednesday 6 June 2007

Room 1043, Parliament House, Sydney at 10.00 am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Ajaka

Mr Donnelly

Ms Fazio

Ms Hale

2. Clerk to the Committee opened meeting

According to Standing Order 213(1), the Clerk to the Committee declared the meeting open at 10.00 am.

The Clerk to the Committee tabled the resolution of the House of 10 May 2007 establishing the Committee, and the Minutes of the House of 10 May 2007 and 29 May 2007 reporting the nominations for membership of the Committee.

Ms Robertson took the Chair.

3. Opening remarks from Chair

The Chair welcomed the other members to the Committee and remarked upon the role of the Committee and the development of its approach to the inquiry process during the 53rd Parliament.

4. Initial resolutions of the Committee

Resolved, on the motion of Ms Hale: That, unless the Committee decides otherwise, the following procedures apply for the duration of the 54th Parliament:

Sound and television broadcasting of public proceedings

That the Committee authorise the sound and television broadcasting of its public proceedings, in accordance with the resolution of the Legislative Council of 11 October 1994.

Publishing transcripts of evidence

That the Secretariat be empowered to publish transcripts of evidence taken at public hearings, in accordance with section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of standing orders 223 and 224.

Media statements

That media statements on behalf of the Committee be made only by the Chair.

Inviting witnesses

That arrangements for inviting witnesses be left in the hands of the Chair and the Secretariat after consultation with the Committee.

5. Eighth review of the Motor Accidents Authority and Motor Accidents Council

The Chair tabled the resolution of the House of 30 May 2007 appointing the Law and Justice Committee as the Committee to supervise the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC)

Resolved, on the motion of Ms Fazio: That the Committee commence arrangements for the conduct of its eighth review of the exercise of the functions of the MAA and MAC.

Resolved, on the motion of Mr Donnelly: That the Committee seek a briefing, from officers of the MAA and the MAC, on a date to be confirmed by the Secretariat after consultation with the Committee and the MAA.

Resolved, on the motion of Ms Fazio: That the eighth review and a call for public submissions be advertised in The Sydney Morning Herald and The Daily Telegraph, on a date to be confirmed by the Secretariat after consultation with the Chair.

Resolved, on the motion of Ms Fazio: That the Secretariat distribute to the Committee for their consideration a list of stakeholders to be invited to participate in the eighth review of the MAA and MAC, and that, after input from the Committee, the stakeholders be invited to make submissions to the review

Resolved, on the motion of Ms Fazio: That the Committee hold a public hearing, on a date to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses and that the following be invited to appear as witnesses: representatives of the MAA and the MAC, the Law Society of NSW, the NSW Bar Association and the Insurance Council of Australia and any other witnesses determined by the Chair.

Resolved, on the motion of Ms Fazio: That a questions on notice process be conducted prior to the hearing as has occurred in previous MAA reviews.

6. xxx

7. xxx

8. Adjournment

The Committee adjourned at 10.32 *sine die*.

Rachel Callinan

Clerk to the Committee

Minutes No 2

Monday 23 July 2007

Level 25, 580 George Street, Sydney at 10.35 am

1. Members presentMs Robertson (*Chair*)Mr Clarke (*Deputy Chair*)

Mr Ajaka

Ms Fazio

Ms Hale

2. Apologies

Mr Donnelly

3. Briefing from officers of the Motor Accidents Authority, Motor Accidents Council and Lifetime Care and Support Scheme

The Committee attended the MAA Board Room, Level 25, 580 George Street, Sydney and was met by the following officers:

- Mr Richard Grellman, Chair, MAA Board & MAC; Chair, Lifetime Care and Support Scheme Board
- Mr David Bowen, General Manager, MAA
- Ms Carmel Donnelly, Deputy General Manager, MAA
- Mr Cameron Player, Deputy General Manager, Motor Accidents Assessment Services, MAA
- Ms Suzanne Lulham, Director, Service Development, LTCSS.

Mr Grellman welcomed the Committee and provided an overview of the MAA Board, MAC and LTCSS Board.

Mr Bowen, Ms Donnelly and Mr Player provided a briefing on the Motor Accidents Scheme.

Mr Bowen and Ms Lulham provided a briefing on the Lifetime Care and Support Scheme.

4. Adjournment

The Committee adjourned at 12:45pm *sine die*.

Rachel Callinan

Clerk to the Committee

Minutes No 3

Monday 27 August 2007

Jubilee Room, Parliament House, Sydney at 9.45am

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

Mr Ajaka

Ms Fazio

Ms Hale

2. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No 1 & 2 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence received and sent:

Received

- 1 August 2007 from David Bowen to Chair listing MAA witnesses to appear at the hearing.
- 16 August 2007 from Hon John Della Bosca MLC forwarding the Government response to the Committee's report on its Seventh Review of the MAA and the MAC.

Sent

- 26 June 2007 to Hon John Della Bosca MLC re the commencement of the MAA 8th Review.
- 13 July 2007 to Hon John Della Bosca MLC forwarding questions on notice for MAA Review.

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 223(1), the Committee authorise the publication of the answers to questions on notice provided by the MAA as part of the Eighth Review of the MAA and the MAC.

4. Eighth Review of the MAA and the MAC

Publication of submissions

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 223(1), the Committee authorise the publication of submissions no 1-7 received as part of the Eighth Review of the MAA and the MAC.

Public hearing

Witnesses, the public and media were admitted

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr David Bowen, General Manager, MAA
- Mr Richard Grellman, Chair MAA Board and MAC
- Ms Carmel Donnelly, Deputy General Manager, MAA

Ms Donnelly tendered a document containing various slides relating to the Motor Accidents Scheme.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Dwight Dowda: Occupational Physician; MAA Medical Assessor and Review panellist
- Dr Kathleen McCarthy: Rehabilitation Physician; MAA Medical Assessor and Review panellist
- Dr George Papatheodorakis: Musculoskeletal Medicine; MAA Medical Assessor.
- Mr Cameron Player, Assistant General Manager, Motor Accidents Assessment Service, MAA

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Scott Roulstone, Councillor and Chair of the Injury Compensation Committee, Law Society of NSW
- Mr Denis Mockler, Member of the Injury Compensation Committee, Law Society of NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Slattery QC, President, NSW Bar Association
- Mr Andrew Stone, Member of the Common Law Committee, NSW Bar Association and Bar Association representative on the MAC

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Driscoll, General Manager Policy – Consumer Directorate
- Philip Cooper, Chair of the MAISC Executive Committee
- Mary Maini, Chair of the NSW CTP Claims Managers Committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.40pm. The public and the media withdrew.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 233(1) the Committee authorises the publication of the transcript of evidence of today's hearing.

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to

the Committee to publish the document tendered at today's hearing by Ms Carmel Donnelly of the MAA.

5. Adjournment

The Committee adjourned at 3.45pm *sine die*.

Rachel Callinan

Clerk to the Committee

Minutes No 4

Tuesday 16 October 2007

Room 1102, Parliament House, Sydney at 1.00pm

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

Mr Ajaka

Ms Fazio

Ms Hale

2. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No 3 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence received and sent:

Received

1. 18 August 2007 from Damien Finniss, Branch President of APA NSW declining invitation to make a submission to the MAA8 Review.
2. 23 August 2007 from Hon John Della Bosca forwarding answers to QON sent prior to the hearing
3. 14 September 2007 from Insurance Council of Australia forwarding answers to QON and a supplementary submission re MAA8 Review.
4. 4 September 2007 from Bar Association of NSW forwarding answers to QON re MAA8 Review.
5. 5 October 2007, from AG referring terms of reference for an inquiry into the publication of names of children involved in criminal prosecutions.
6. 10 October from Hon John Della Bosca forwarding MAA's answers to questions on notice taken at the hearing.

Sent

1. 28 August 2007 to Hon Della Bosca MLC forwarding questions on notice for the MAA.

4. Eighth Review of the MAA and the MAC**Publication of submissions**

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 223(1), the Committee authorise the publication of submissions no 8 and 8a received as part of the Eighth Review of the MAA and the MAC.

Publication of answers to questions on notice

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 223(1), the Committee authorise the publication of the answers to questions on notice provided by the MAA, the NSW Bar

Association (except the attachments) and the Insurance Council of Australia as part of the Eighth Review of the MAA and the MAC.

5. **xxx**

6. **Adjournment**

The Committee adjourned at 1.15pm until Monday 5 November 2007, 2.00-4.00pm, Room 1102.

Rachel Callinan
Clerk to the Committee

Minutes No5

Monday 5 November 2007

Room 1102, Parliament House, Sydney at 2.00pm

1. Members present

Ms Robertson (*Chair*)

Mr Clarke (*Deputy Chair*)

Mr Donnelly

Mr Ajaka

Ms Fazio

Ms Hale

2. Minutes

Resolved, on the motion of Ms Fazio: That draft Minutes No 4 be confirmed.

3. Eighth Review of the MAA and the MAC

The Chair submitted her draft report titled *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council – Eighth Report, Report 34*, which, having been circulated, was taken as being read.

The Committee proceeded to consider the draft report in detail.

Chapter 1 read.

Resolved, on the motion of Ms Hale: That paragraph 1.17 be amended by removing the words: 'It may also be the case that the small number of submissions reflects the level of satisfaction within the community and among stakeholders with the manner in which the MAA and the MAC are exercising their functions'.

Resolved, on the motion of Ms Fazio: That chapter 1, as amended, be adopted.

Chapter 2 read.

Resolved, on the motion of Ms Fazio: That recommendation 1 be adopted.

Resolved, on the motion of Mr Donnelly: That chapter 2 be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Donnelly: That paragraph 3.62 be amended by removing the words 'interpretive gloss' and inserting 'interpretive guide'.

Resolved, on the motion of Mr Ajaka: That Chapter 3 be amended to include a reference to the fact that psychiatric injury cannot be added to physical injury in determining the degree of permanent impairment, both in the analysis of issues raised in relation to the 10% WPI threshold and in the corresponding Committee comment section. The amendment is to be drafted by the Secretariat and circulated for the information and concurrence of the Committee members.

Resolved, on the motion of Mr Ajaka: That recommendation 2 be adopted.

Resolved, on the motion of Mr Donnelly: That recommendation 3 be adopted.

Resolved, on the motion of Mr Donnelly: That recommendation 4 be adopted.

Resolved, on the motion of Mr Donnelly: That chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved, on the motion of Mr Ajaka: That recommendation 5 be adopted.

Resolved, on the motion of Mr Donnelly: That recommendation 6 be adopted.

Resolved, on the motion of Ms Hale. That recommendation 7 be adopted.

Resolved, on the motion of Ms Hale. That chapter 4 be adopted.

Chapter 5 read.

Resolved, on the motion of Mr Donnelly. That recommendation 8 be adopted.

Resolved, on the motion of Ms Fazio. That recommendation 9 be adopted.

Resolved, on the motion of Mr Ajaka. That recommendation 10 be adopted.

Resolved, on the motion of Mr Ajaka. That chapter 5 be adopted.

Resolved, on the motion of Mr Clarke. That the appendices be adopted.

Resolved, on the motion of Ms Fazio: That the executive summary be adopted.

Resolved, on the motion of Ms Fazio. That the report, as amended, be the report of the Committee and presented to the House in accordance with Standing Order 226(1).

Resolved, on the motion of Mr Ajaka, that the Secretariat be permitted to correct any typographical and grammatical errors in the report prior to tabling.

4. Adjournment

The Committee adjourned at 2.25pm *sine die*.

Rachel Callinan
Clerk to the Committee

