

Standing Committee on Law and Justice

**Twelfth review of the
exercise of the functions of
the Motor Accidents
Authority**

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Terms of reference

1. That, in accordance with section 11 of the Safety, Return to Work and Support Board Act 2012, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the following authorities:
 - (a) Lifetime Care and Support Authority under the Motor Accidents (Lifetime Care and Support) Act 2006,
 - (b) Motor Accidents Authority under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988,
 - (c) WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998, and
 - (d) (d) Workers' Compensation (Dust Diseases) Board under the Workers Compensation (Dust Diseases) Act 1942.
2. That the terms of reference of the committee in relation to these functions be:
 - (a) to monitor and review the exercise by the authorities of their functions,
 - (b) to monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 2012, of their functions,
 - (c) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed,
 - (d) to examine each annual or other report of the authorities and report to the House on any matter appearing in, or arising out of, any such report, and
 - (e) to examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.
3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once every two years in relation to each authority.
4. That nothing in this resolution authorises the committee to investigate a particular compensation claim under the legislation referred to in paragraph 1.¹

¹ *Minutes*, Legislative Council, 14 November 2012, pp 1368-1369.

Committee membership

| | | |
|--|------------------------|---------------------|
| The Hon David Clarke MLC | Liberal Party | <i>Chair</i> |
| The Hon Peter Primrose MLC | Australian Labor Party | <i>Deputy Chair</i> |
| Mr Scot MacDonald MLC | Liberal Party | |
| The Hon Sarah Mitchell MLC | The Nationals | |
| The Hon Shaoquett Moselmane MLC | Australian Labor Party | |
| Mr David Shoebridge MLC | The Greens | |

Table of contents

| | | |
|------------------|--|------------|
| | Chair's foreword | ix |
| | Summary of recommendations | x |
| | Glossary | xii |
| Chapter 1 | Introduction | 1 |
| | The committee's role | 1 |
| | Conduct of the 12th review | 1 |
| | Submissions | 2 |
| | Hearings | 2 |
| | Questions on notice | 2 |
| | Overview of the NSW Motor Accidents Scheme | 3 |
| | The Motor Accidents Authority | 4 |
| | Structure of report | 4 |
| Chapter 2 | Developments since the previous review | 7 |
| | <i>Safety, Return to Work and Support Board Act 2012</i> | 7 |
| | Abolishment of the Motor Accidents Council | 7 |
| | Advisory committees | 8 |
| | Stakeholder consultation | 8 |
| | Transparency of information | 10 |
| | Motor Accident Injuries Amendment Bill 2013 – proposed reform of the scheme | 12 |
| | Impact of <i>Smalley v Motor Accidents Authority of New South Wales</i> | 15 |
| Chapter 3 | Scheme performance | 19 |
| | Key performance measures | 19 |
| | Affordability | 19 |
| | Efficiency | 23 |
| | Insurer profitability | 25 |
| | Claims experience | 33 |
| | Medical Care and Insurance Service Levy | 35 |
| | Scheme awareness and customer service | 36 |
| | Injury prevention | 36 |

| | | |
|-------------------|---|-----------|
| Chapter 4 | Recommendations from the previous review and late claims | 39 |
| | Recommendations from the Eleventh Review of the exercise of the functions of the MAA and the Motor Accidents Council | 39 |
| | Recommendation 1: Health outcomes performance measures | 39 |
| | Recommendation 2: Vehicle crash reporting scheme | 41 |
| | Recommendation 3: Reporting road safety grants and sponsorships | 43 |
| | Recommendation 4: Insurer profit margins | 44 |
| | Recommendation 5: CTP pricing review | 46 |
| | Recommendation 6: Motor Accidents Compensation Regulation 2005 | 47 |
| | Recommendation 7: Data on amount of compensation received once legal costs have been deducted | 49 |
| | Recommendation 8: Physiotherapy review forms | 51 |
| | Recommendation 9: Online information for carers | 52 |
| | Recommendation 10: Damages for non-economic loss | 54 |
| | Recommendation 11: Legal causation | 57 |
| | Recommendation 12: Settlement conferences | 60 |
| | Late claims | 61 |
| Chapter 5 | Future of the scheme | 65 |
| | Proposal to expand the Accident Notification Form system | 65 |
| | Future changes to the scheme | 67 |
| Appendix 1 | Submissions | 71 |
| Appendix 2 | Witnesses at hearings | 72 |
| Appendix 3 | Tabled documents | 73 |
| Appendix 4 | Answers to questions on notice | 74 |
| Appendix 5 | Minutes | 75 |

Figures

| | | |
|----------|--|----|
| Figure 1 | Premiums as a proportion of New South Wales average weekly earnings | 20 |
| Figure 2 | Distribution of scheme funds averaged over underwriting years 2000 to 2012 | 23 |

Tables

| | | |
|---------|---|----|
| Table 1 | Comparison of premiums since previous review* | 20 |
| Table 2 | Premium increases by each scheme insurer | 21 |
| Table 3 | Combined CTP scheme and LTCS scheme efficiency | 25 |
| Table 4 | Prospective profit margins in insurer filings | 26 |
| Table 5 | Current estimate of industry profitability by underwriting year | 27 |
| Table 6 | Customer service statistics for 2012/13 | 36 |

Chair's foreword

The NSW Motor Accidents Scheme is now in its sixteenth year, and the Standing Committee on Law and Justice has undertaken its 12th review of the exercise of the functions of the Motor Accidents Authority (MAA). Although this is the 12th review, it is the first time the committee has performed its oversight role under the *Safety, Return to Work and Support Board Act 2012* and the first review since the Motor Accidents Council was abolished following a reform of the governance of the MAA under that Act.

The period since the committee's previous review in 2011 has been uncertain for the scheme and the MAA, as the NSW Government's proposed scheme reform in 2013 did not eventuate following the discharge of the Motor Accident Injuries Amendment Bill from parliament. The intention of the bill was to introduce a 'no-fault' or 'universal cover' scheme that would have made more than 7,000 additional people injured in motor vehicle accidents eligible for benefits.

Although the bill was discharged, there remains a desire by many stakeholders for the scheme to be amended to make it more affordable and efficient. For this reason, this report recommends that the NSW Government implement some of the proposed changes from the discharged bill that were supported by many stakeholders.

Despite the reform not taking place, the committee has found that the MAA continues to perform its functions in an effective manner. However, as raised in this report, stakeholders still have a number of concerns with the scheme including the high level of insurer profits, the whole person impairment threshold and the late claims process.

This report is structured differently to past review reports. It is more succinct, building on the content of previous reports, and has a greater focus on following up on the implementation of recommendations made by the committee in the previous review.

The committee continues to work collaboratively with the MAA in the performance of our oversight function, and we acknowledge the assistance and information provided by the MAA. In addition, the committee's work has benefited from the valuable contributions of stakeholders who have participated in our reviews. Their involvement allows the committee to explore the issues at hand and to identify appropriate recommendations for improvements. On behalf of the committee I thank all of our review participants for their important contributions.

I also express my thanks to my colleagues for their thoughtful contributions to this year's review. Our monitoring role has benefited greatly from both our individual perspectives and our cooperative approach. Finally, I thank the staff of the committee secretariat for their ongoing professional support, in particular Teresa McMichael, Director, Samuel Griffith, Principal Council Officer, Chris Angus, Assistant Council Officer and Lynn Race, Assistant Council Officer.



Hon David Clarke MLC
Committee Chair

Summary of recommendations

- Recommendation 1** **10**
That the Minister for Finance and Services establish a Motor Accidents Advisory Committee under section 10 of the *Safety, Return to Work and Support Board Act 2012* that is comprised of members from the legal, insurance, health and community sectors.
- Recommendation 2** **12**
That the Motor Accidents Authority publish the Ernst & Young report into motorcycle CTP premiums as soon as it has been completed and provide it to the committee.
- Recommendation 3** **18**
That the Motor Accidents Authority, in consultation with stakeholders, address the issue of insurers denying liability under section 95 of *Motor Accidents Compensation Act 1999* to exempt cases from the Claims Assessment Resolution Service.
- Recommendation 4** **38**
That the Motor Accidents Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.
- Recommendation 5** **38**
That the Minister for Finance and Services ensure there is a prompt review of the high level of insurer profits, and that all relevant stakeholders are consulted.
- Recommendation 6** **38**
That in its review of the *Motor Accidents Compensation Act 1999*, the NSW Government consult with stakeholders to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.
- Recommendation 7** **45**
That the Motor Accidents Authority provide a report annually to the committee by 30 April that includes a comprehensive review of scheme performance in the most recent accident year, including an analysis of the drivers of high levels of insurer profits.
- Recommendation 8** **46**
That the Motor Accidents Authority proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report (see recommendation 7)) on superimposed inflation risks and strategies to address them.
- Recommendation 9** **49**
That the Minister for Finance and Services ensure the Motor Accidents Compensation Regulation 2005 is remade by no later than 1 September 2014, and that it provide for realistic and fair levels of legal costs in motor accident matters.

- Recommendation 10** 52
That the Motor Accidents Authority finalise the review of the Physiotherapy Notice of Commencement and Physiotherapy Review Forms in consultation with stakeholders, and in doing so, include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.
- Recommendation 11** 54
That the Motor Accidents Authority work with Carers NSW to produce and publish an online fact sheet containing information to assist carers, including links to other appropriate services and support.
- Recommendation 12** 57
That the Motor Accidents Authority conduct a review and publish a discussion paper on the issues relating to access to non-economic loss damages, and that these be considered in any legislative review. The discussion paper should include an actuarial analysis of the ramifications to the scheme, claimants, CTP pricing and insurers of:
- changing the threshold to access non-economic damages to that of section 16 of the *Civil Liability Act 2002*
 - lowering the ten per cent whole person impairment threshold
 - allowing both physical and psychological injuries to be aggregated to determine the whole person impairment threshold.
- Recommendation 13** 59
That the Minister for Finance and Services ensure that a review of causation is undertaken, and that the report and recommendations be published.
- Recommendation 14** 61
That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.
- Recommendation 15** 64
That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a claim can be made without explanation from six to 12 months.
- Recommendation 16** 67
That the NSW Government ensure that the review of the operation of the Accident Notification Form is conducted by the Motor Accidents Advisory Committee (see recommendation 1), or, if that committee is not established, that stakeholders are widely consulted in the review.

Glossary

| | |
|-------------------|--|
| CARS | Claims Assessment and Resolution Service |
| CTP | Compulsory Third Party |
| LTSCA | Lifetime Care and Support Authority |
| MAA | Motor Accidents Authority |
| MAAS | Motor Accidents Assessment Service |
| MAS | Medical Assessment Service |
| The Scheme | Motor Accidents Compensation Scheme |

Chapter 1 Introduction

This chapter provides an overview of the review process, outlining the committee's approach to the 12th Review of the Motor Accidents Authority. The chapter briefly describes the Motor Accidents Compensation Scheme and concludes with an overview of the structure of the report.

The committee's role

- 1.1 A committee of the Legislative Council is required under s 11 of the *Safety, Return to Work and Support Board Act 2012* to supervise the exercise of the functions of the Motor Accidents Authority (MAA).
- 1.2 Since 1999, a resolution of the Legislative Council has designated the Standing Committee on Law and Justice to undertake this role, and has set out the terms of reference for the committee's reviews. The current resolution appointing the committee was resolved on 14 November 2012 and stated the committee must report at least once every two years.²
- 1.3 The terms of reference are reproduced in full on page iv.
- 1.4 Before 2012, the committee performed this role according to s 210 of the *Motor Accidents Compensation Act 1999*. New legislation was introduced in 2012 which expanded the committee's oversight role. These changes are discussed in detail in chapter 2.
- 1.5 The current resolution designates the committee to supervise the exercise of the functions of the:
 - MAA
 - Lifetime Care and Support Authority
 - WorkCover Authority
 - Workers' Compensation (Dust Diseases) Board.
- 1.6 This 12th review was conducted concurrently with the committee's Fifth Review of the Lifetime Care and Support Authority. That review will be the subject of its own report, also to be published in July 2014. The review process for the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board are part of a separate review process by the committee.
- 1.7 Information on the committee's previous reviews, including reports, can be found on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Conduct of the 12th review

- 1.8 The committee resolved to commence this review on 10 September 2013. The committee evaluated the way in which the MAA exercised its functions since the committee tabled its last

² *Minutes*, Legislative Council, 14 November 2012, pp 1368-69.

report in December 2011 and examined the MAA's 2010/11, 2011/12 and 2012/13 Annual Reports.

- 1.9 The committee would like to thank all participants to this review. The considered contributions of stakeholders have greatly assisted the committee to successfully undertake its reviewing role.

Submissions

- 1.10 The committee invited submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph*, and through a press release distributed via *Media Monitors*. As with previous reviews, the committee also wrote directly to a number of stakeholders to invite them to make a submission.
- 1.11 The committee received 12 submissions and seven supplementary submissions from a range of stakeholders, including a number of special interest advocacy groups and the legal and insurance sectors. A list of submission authors is shown in Appendix 1.

Hearings

- 1.12 The committee held two public hearings on 7 and 17 March 2014. The committee heard from representatives from several organisations, including the MAA, legal associations, the Insurance Council of Australia and special interest advocacy groups. A full list of witnesses is provided in Appendix 2.

Questions on notice

- 1.13 Following the practice developed during previous reviews, the committee forwarded written questions on notice to the MAA prior to the public hearing. These questions were based on the MAA's 2010/11, 2011/12 and 2012/13 Annual Reports, issues raised in submissions, recommendations made in the *11th Review Report* and the government's response to those recommendations. This allowed for in-depth consideration of the issues by the committee and other review stakeholders.
- 1.14 Following the hearing, the committee wrote to the MAA requesting an update on the government's response to the *11th Review Report*.

Overview of the NSW Motor Accidents Scheme

- 1.15** The NSW Motor Accidents Scheme (the scheme) provides compensation for people injured in motor vehicle accidents in New South Wales that are the fault of another vehicle owner or driver. Compensation payments through the scheme are financed from compulsory third party (CTP) insurance policies that must be taken out when registering a motor vehicle in New South Wales.³ These insurance policies are known as green slips.
- 1.16** For those injured in a motor accident, there are two ways to access benefits under the scheme. The first is by submitting an Accident Notification Form. Anyone injured in a motor vehicle accident in New South Wales can submit an Accident Notification Form regardless of whether or not they were at fault. The Accident Notification Form provides for reimbursement for reasonable and necessary medical treatment expenses and payment for past loss of earnings up to a maximum total of \$5,000 in the first six months after the accident. To access these benefits the Accident Notification Form must be submitted within 28 days of the motor vehicle accident.
- 1.17** The second way to access benefits is through the Personal Injury Claim Form. In addition to the benefits available under the Accident Notification Form, an injured person may also be able to make a claim for personal injury compensation if:
- the accident was caused, or mainly caused, by another driver or vehicle owner, or
 - the accident was a blameless accident, for example, an accident resulting from the sudden illness of the driver, such as heart attack or stroke, or vehicle failure such as a tyre blow-out, or
 - the person was less than 16 years old at the time of the accident, regardless of who was at fault.
- 1.18** A driver completely at fault may not be eligible to make a Personal Injury Claim.
- 1.19** Depending on the circumstances of the accident, an injured person submitting a Personal Injury Claim form may be entitled to compensation that includes:
- reasonable and necessary medical, pharmaceutical, rehabilitation, respite care and attendant care expenses
 - other expenses and economic losses, for example, loss of income and out of pocket expenses
 - non-economic loss, such as payment for pain and suffering, if there is a serious, permanent injury.⁴

³ MAA, *What is a Green Slip*, last updated 20 January 2013, www.maa.nsw.gov.au/default.aspx?MenuID=264.

⁴ MAA, *Claims*, last updated 20 May 2010, www.maa.nsw.gov.au/default.aspx?MenuID=89.

- 1.20 To access these benefits, the Personal Injury Claim Form must be submitted within six months of the motor vehicle accident, although the period can be extended indefinitely if there is an adequate explanation given for the delay. The scheme does not cover damage to property or vehicles.⁵

The Motor Accidents Authority

- 1.21 The MAA is a statutory corporation that regulates the scheme and its participants to ‘ensure a fair, efficient, affordable and effective motor accidents insurance scheme in NSW’.⁶ Its purpose is to ensure eligible people injured in motor accidents receive appropriate treatment and benefits from a sustainable insurance scheme.
- 1.22 The MAA also operates an independent assessment and dispute resolution service for medical and claims disputes between injured people and insurers. The Motor Accidents Assessment Service Division administers this process and is divided into two independent services:
- the Medical Assessment Service (MAS)
 - the Claims Assessment and Resolution Service (CARS).
- 1.23 The MAS determines disputes about medical treatment, including whether treatment is reasonable and necessary or related to an injury, and determines the degree of permanent impairment of an injury. Assessment is by referral to health experts appointed under the *Motor Accidents Compensation Act 1999* as medical assessors.⁷
- 1.24 CARS provides an independent service to resolve disputes about claims, including procedural disputes and eligibility for exemptions from assessments. Applications are assessed by independent claims assessors who are legal practitioners with experience in the area of personal injury law and assessment of damages. All disputed claims must first go to CARS. CARS will either assess the claim or find the matter exempt from, or unsuitable for, assessment and issue a certificate allowing the matter to proceed to court.⁸
- 1.25 The MAA also provides information and education to stakeholders and service providers and funds research and education projects to increase road safety awareness to prevent and reduce injuries.

Structure of report

- 1.26 This report is structured differently to the committee’s previous review reports. The focus of this report is to provide an analysis of recent changes to the scheme, the progress of the MAA regarding actioning recommendations from the previous review and any new issues that arose during the current review.

⁵ MAA, *What is a Green Slip*, Last updated 20 January 2013, www.maa.nsw.gov.au/default.aspx?MenuID=264.

⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 4.

⁷ Motor Accidents Authority, *Annual Report 2012/13*, p 19.

⁸ Motor Accidents Authority, *Annual Report 2012/13*, p 22.

- 1.27** This report is comprised of five chapters. Chapter 2 outlines legislative changes to the administration of the scheme and proposed legislative changes to the scheme since the previous review. The chapter also reviews the impact of the recent decision in *Smalley v Motor Accidents Authority of New South Wales*.
- 1.28** Chapter 3 examines the performance of the scheme with reference to the four key indicators used by the MAA in its 2012/13 Annual Report: affordability, efficiency, insurer profitability and claims experience. The chapter also addresses other issues such as the Medical Care and Insurance Service Levy, scheme awareness and injury prevention.
- 1.29** Chapter 4 notes the government response to recommendations made in the committee's 11th review and assesses action taken in response to those recommendations. The chapter also discusses ongoing issues with the late claims process.
- 1.30** Finally, chapter 5 considers the future of the scheme and proposals for reform.

Chapter 2 Developments since the previous review

This chapter outlines key developments since the previous review regarding the new governance structure introduced in the *Safety, Return to Work and Support Board Act 2012*, and the changes proposed to the Motor Accidents Compensation Scheme in the Motor Accident Injuries Amendment Bill 2013. It examines concerns regarding stakeholder consultation, and considers the impact of the recent Court of Appeal case, *Smalley v Motor Accident Authority of New South Wales*.

Safety, Return to Work and Support Board Act 2012

- 2.1** The *Safety, Return to Work and Support Board Act 2012* was assented to on 27 June 2012 and established the Safety, Return to Work and Support Board (the board) to oversee the functions of the Motor Accidents Authority (MAA), the WorkCover Authority, the Workers' Compensation (Dust Diseases) Board and the Lifetime Care and Support Authority. The Act abolished the individual boards of directors of the MAA, LTCSA and WorkCover and brought them under the auspices of the board.⁹
- 2.2** The Act passed through Parliament as a cognate to the *Workers Compensation Legislation Amendment Act 2012* which sought to reform the workers compensation scheme in New South Wales.
- 2.3** The board has been in operation since 1 August 2012 and consists of seven members including the Chief Executive Officer and six members appointed by the Governor on the recommendation of the Minister for Finance and Services. In order to be recommended for appointment to the board, a person must have skills and experience in either insurance, finance, investment, law, health, marketing, communications, work health and safety, injury prevention or management, return to work programs and/or disability services.¹⁰
- 2.4** As part of its functions, the board is to determine the general policies and strategic direction of each authority, oversee their performance, ensure their activities are carried out properly and advise the Minister on any relevant matter.¹¹
- 2.5** The board is also responsible for determining the investment policies of seven funds, including the Nominal Defendant's Fund established under s 40 of the *Motor Accidents Compensation Act 1999*.¹² This is a significant extension of the responsibilities held by the previous board.

Abolishment of the Motor Accidents Council

- 2.6** In addition to the individual MAA, LTCSA and WorkCover boards being abolished, the MAA's Motor Accidents Council was also abolished under the new Act.¹³

⁹ *Safety, Return to Work and Support Board Act 2012* (NSW) sch 2.

¹⁰ *Safety, Return to Work and Support Board Act 2012* (NSW) s 4.

¹¹ *Safety, Return to Work and Support Board Act 2012* (NSW) s 5.

¹² *Safety, Return to Work and Support Board Act 2012* (NSW) s 7.

¹³ *Safety, Return to Work and Support Board Act 2012* (NSW) sch 2.

- 2.7** The Motor Accidents Council had been a permanently appointed statutory body. Its role was to facilitate input from relevant stakeholders on the Motor Accidents Compensation Scheme (the scheme) and consider issues referred by the MAA with a view to providing advice and recommendations.
- 2.8** This committee had a statutory role to review the exercise and functions of both the MAA and Motor Accidents Council from 1999 until 2012. In past reviews, the committee often recommended that points of contention in the scheme be referred to the council for consultation and analysis.

Advisory committees

- 2.9** The *Safety, Return to Work and Support Board Act* makes provision for the Minister for Finance and Services to establish advisory committees at his or her discretion. The functions of these advisory committees are also at the discretion of the Minister, but may include investigating and reporting on matters relating to the exercise of an authority's functions.¹⁴
- 2.10** Currently no advisory committees have been appointed by the Minister. Under the resolution of the Legislative Council, any advisory committees appointed would be monitored and reviewed by the committee.

Stakeholder consultation

- 2.11** This section examines stakeholder consultation conducted by the MAA, particularly in light of concerns raised by the New South Wales Bar Association that the Minister has not established an advisory committee to the MAA.
- 2.12** Currently, the MAA engages with stakeholders via a number of forums such as a quarterly forum with the legal professions, bi-monthly meetings with the Motor Accidents Insurance Standing Committee, quarterly meetings with the Motorcycle Council of New South Wales and meetings with the Motor Accidents Assessment Service Reference Group (the reference group). The MAA has also conducted additional consultation on specific issues as required.¹⁵
- 2.13** Mr Andrew Stone, Barrister and Bar Councillor, Bar Association supported the work conducted by the reference group and congratulated the MAA on its stakeholder interaction:

To give them credit the Motor Accidents Authority are good at having stakeholder interaction at a variety of levels. They have a user group meeting which is tinkers such as forms and process guidelines. We go to that and there are robust discussions at that meeting. When we asked them they agreed to have a specific meeting with the legal groups... They agreed to have that meeting and again that is a useful and robust meeting.¹⁶

¹⁴ *Safety, Return to Work and Support Board Act 2012* (NSW) s 10.

¹⁵ Answers to pre-hearing questions on notice, Motor Accidents Authority, 14 February 2014, pp 18-19.

¹⁶ Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 9.

- 2.14** However, Mr Stone expressed concern that this level of stakeholder interaction alone was unlikely to bring about change compared to the previous Motor Accidents Council which ‘had the capacity to be a forum for policy generation and ideas’¹⁷ and could review the scheme at a high level:

I query whether any changes occur because of [the reference group] but at least we have the discussion... The Motor Accidents Council had a statutory role ... on which it could inquire and it was all the stakeholders in the one room looking at policy at a more macro level ... I was on the Motor Accidents Council for a decade and ... I can think of things that came out of that at a macro level where we all reached agreement and it was a driver for policy change.¹⁸

- 2.15** The Bar Association advocated for the establishment of an MAA advisory committee and said it had written to the Minister expressing this view. It was particularly concerned it had not had any recent formal interaction with the government regarding the future of the scheme and argued that a formal advisory committee could facilitate such interaction:

It is disappointing that the Association has had no communication with government about the operation of the CTP or WorkCover schemes in the second half of 2013. Whilst there are occasional lower level consultations with the MAA, these meetings are not minuted and have no statutory recognition. If advisory committees had been established then an ongoing dialogue would be formalised.¹⁹

- 2.16** In response to this issue, Mr Andrew Nicholls, General Manager, MAA stated this was a matter for the Minister, but insisted that the lack of advisory committees has not curbed interaction with key stakeholders:

The question of whether a formal ministerial council ought to be established is obviously a matter for the Minister to respond to.... From my point of view, we continue to meet with stakeholders. It is not that the absence of that advisory council is resulting in us not having the key interactions with the people that we need to. I would point to, for example, the very constructive approach that we have taken with the response to the Smalley matter ... If you look at how it operates, that has been very much a hallmark for how I certainly think the approach to stakeholder consultation should work.²⁰

- 2.17** The ‘Smalley matter’ referred to above is discussed later in this chapter.

- 2.18** Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support agreed that the absence of advisory committees has not hindered stakeholder consultations, but said she believed work could be done to streamline stakeholder engagement as many stakeholders are common across all of the authorities managed by the board:

We need to engage, we need to consult. We also need to have an eye to how much are we expecting of them to be giving up their time across four different agencies where

¹⁷ Evidence, Mr Stone, 7 March 2014, p 9.

¹⁸ Evidence, Mr Stone, 7 March 2014, p 9.

¹⁹ Submission 11, New South Wales Bar Association, p 12.

²⁰ Evidence, Mr Andrew Nicholls, General Manager, Motor Accidents Authority of New South Wales, 17 March 2014, p 23.

in fact there are some of the same faces. We would say yes, as a group of agencies I am happy to look at what we can do to improve.²¹

- 2.19** Mr Cameron Player, Director, Assessment Services, MAA, asserted that the MAA had a ‘fantastic working relationship with the stakeholders’ regarding assessment services. He also mentioned that the reference group had been very useful for the MAA to find out what is happening at the ‘coalface of the scheme’.²²

Committee comment

- 2.20** The committee is pleased with the positive comments from the Bar Association regarding the amount of stakeholder interaction by the MAA. However, the committee acknowledges the association’s concern that there is currently a lack of formal interaction at a macro level for the purposes of policy generation. This type of stakeholder interaction is particularly important now, given that work to reform the scheme is currently taking place (to be discussed in chapter 5). Accordingly, the committee recommends that the Minister for Finance and Services establish a Motor Accidents Advisory Committee under s 10 of the *Safety, Return to Work and Support Board Act* that is comprised of members from the legal, insurance, health and community sectors.

Recommendation 1

That the Minister for Finance and Services establish a Motor Accidents Advisory Committee under section 10 of the *Safety, Return to Work and Support Board Act 2012* that is comprised of members from the legal, insurance, health and community sectors.

- 2.21** The committee is also supportive of Ms Donnelly’s comments regarding streamlining stakeholder engagement between the authorities that are managed by the board. The committee encourages the board to liaise with key stakeholders across the authorities to establish a suitable approach for such engagement.

Transparency of information

- 2.22** During the review, The Motorcycle Council of New South Wales complained the MAA had failed to provide it with requested information on repeat occasions and indicated it believed there was a lack of transparency in the MAA’s dealings with the council.
- 2.23** The Motorcycle Council detailed that the following requested information had not been provided by the MAA:
- total premiums paid for motorcycles in 2010/11, 2011/12 and 2012/13
 - total claims paid in 2010/11, 2011/12 and 2012/13

²¹ Evidence, Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support, 17 March 2014, p 23.

²² Evidence, Mr Cameron Player, Director, Assessment Services, Motor Accidents Authority of New South Wales, 17 March 2014, p 24.

- the Ernst & Young report into motorcycle CTP premiums commissioned in 2010.²³

2.24 In regard to the Ernst & Young audit, Mr Christopher Burns, Spokesman, Motorcycle Council stated the MAA had commissioned the audit in late 2010, however, the council has not seen the report, despite putting in a government information public access request. Instead, the Motorcycle Council was only shown a 10-page PowerPoint presentation.²⁴

2.25 In addition, the council argued that when data has been provided, it has been ‘supplied in a format which makes it difficult or impossible to make meaningful comparisons’.²⁵

2.26 Mr Burns said that the MAA had previously provided information on average premium payouts from 2000 to 2009 and the Motorcycle Council wanted to compare this with easily interpretable data from more recent years in order to analyse if super-profits relating to motorcycles are even higher than for the general public:

We have been provided data from 2000 to 2009, which covered average premiums payouts, which was approximately \$116 million, including estimated liabilities. That was handed to us some time ago. We have made requests for similar information for the financial years 2010, 2011, 2012. To date, the information we have received is in different formats, and it is rather difficult to interpret. What we do know from the Roads and Maritime Services data is that the crash rate per 10,000 registrations has dropped by 38 per cent in the past 10 years. There is anecdotal evidence where, at a cursory glance, it shows that super-profits in the area of motorcycle riders are even higher than they are for the general public. We wish to get that information and get to the bottom of it.²⁶

2.27 In response to these comments, Mr Nicholls insisted the MAA has a good working relationship with the Motorcycle Council and met regularly:

Some of the evidence this morning implied that the MAA does not have a constructive relationship with motorcyclists. I just want to put on the record that that is not my experience. We have been meeting with the Motorcycle Council of NSW now for quite a number of years in a working party. We continue to meet in a working party and we continue to share information.²⁷

2.28 Regarding data sharing, Mr Nicholls advised the MAA had given data to the Motorcycle Council in November 2010, March 2011, March 2012 and August 2012.²⁸

2.29 As for the Ernst & Young report, Mr Nicholls stated that at the time of the council’s request, the PowerPoint presentation was the only piece of information available, but that Ernst & Young will be finalising a report and providing it to the government:

²³ Submission 5, Motorcycle Council of New South Wales, p 3.

²⁴ Evidence, Mr Christopher Burns, Spokesman, Motorcycle Council of New South Wales, 17 March 2014, p 3.

²⁵ Submission 5, Motorcycle Council of New South Wales, p 3.

²⁶ Evidence, Mr Burns, 17 March 2014, p 2.

²⁷ Evidence, Mr Nicholls, 17 March 2014, p 21.

²⁸ Evidence, Mr Nicholls, 17 March 2014, p 21.

At that time we had a presentation from Ernst & Young that was provided to them. That was the only information that we had to hand. Subsequent to that presentation I have indicated that now that we have gone through a stakeholder consultation process around that information, Ernst & Young should move to finalise that report and make a submission to government. But obviously, as a government commission, it is a matter for government as to what it does next.²⁹

- 2.30** Finally, Mr Nicholls reiterated the ‘MAA has been trying to deal with the information requests adequately’ and would be happy to continue dialogue with the Motorcycle Council if this was not the case.³⁰

Committee comment

- 2.31** The committee notes the concerns raised by the Motorcycle Council that the MAA has not been providing it with requested information or has provided it in forms that is difficult to interpret. These concerns are legitimate. The Motorcycle Council’s requests have been clear and targeted and they should have been met with greater cooperation by the MAA.
- 2.32** The committee acknowledges that the MAA has committed to adequately dealing with the Motorcycle Council’s information requests. In the next review, we will be interested to see whether these requests have been addressed.
- 2.33** The committee believes the Ernst & Young report into motorcycle CTP premiums should be published, and recommends that this occur and that the report be provided to the committee.

Recommendation 2

That the Motor Accidents Authority publish the Ernst & Young report into motorcycle CTP premiums as soon as it has been completed and provide it to the committee.

Motor Accident Injuries Amendment Bill 2013 – proposed reform of the scheme

- 2.34** In 2012 the NSW Government directed the MAA to undertake a review of the scheme and prepare a CTP pricing strategy³¹ that outlined potential reform to the scheme to ensure it remained affordable and sustainable into the future.³²
- 2.35** In February 2013 the MAA published a report entitled *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*. The report argued that the current scheme needed to change as:
- green slip prices are too high, with prices rising around 70 per cent since 2008
 - the scheme is highly inefficient, with only 50 per cent of money collected being returned to injured people

²⁹ Evidence, Mr Nicholls, 17 March 2014, p 22.

³⁰ Evidence, Mr Nicholls, 17 March 2014, p 22.

³¹ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 1.

³² MAA, *CTP Reform* (18 March 2014), <http://www.maa.nsw.gov.au/default.aspx?MenuID=515>.

- there are significant delays in the payment of benefits, with the majority of payments made three to five years after an injury.³³

2.36 In order to remedy these issues, the report proposed that the scheme be changed to a ‘no-fault’ or ‘universal cover’ scheme. This would be a fundamental shift away from the current ‘adversarial system to one focused more on recovery outcomes’ for injured people.³⁴ Under universal cover, more than 7,000 additional people injured in motor vehicle accidents would be eligible for benefits. It was believed that the costs of the additional coverage would be offset by the considerable reduction in technical legal disputes that currently exist in the ‘at-fault’ scheme.³⁵

2.37 In April 2013 the MAA received submissions from a range of stakeholders expressing their opinions on the proposed reforms. At the time of writing, a number of these submissions were available on the MAA’s website.³⁶ In a joint submission, legal associations contended that reform would be better achieved by modifying the existing scheme rather than redesigning it. They opposed the move to a no-fault scheme for a range of reasons, including:

- proposed premium savings may not be delivered due to the 7,000 extra claims for at fault drivers
- the proposition that accident victims should ‘surrender’ benefits to provide payments to the drivers who caused their injuries raises issues of fairness
- removing lawyers from the scheme will see insurers ‘ride roughshod’ over the rights of accident victims.³⁷

2.38 On 9 May 2013, the Motor Accidents Injuries Amendment Bill 2013 was introduced in the Legislative Assembly.³⁸ The bill sought to legislate the reforms proposed in the MAA’s report, primarily, that a new scheme be established for the payment by insurers of no-fault statutory benefits, including weekly payments during incapacity for work, payment of treatment and care expenses and payment of lump sum benefits for persons suffering permanent impairment of greater than 10 per cent.³⁹

2.39 The bill passed the Assembly on 22 May 2013⁴⁰ and was read a first time in the Legislative Council, but not debated.

2.40 In order to better understand stakeholder perspectives and address their concerns with the bill, the government announced a CTP Scheme Roundtable would be held on 24 July 2013.⁴¹

³³ MAA, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013, pp 3-8.

³⁴ MAA, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013, p 9.

³⁵ MAA, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013, p 9.

³⁶ MAA, *CTP Reform* (18 March 2014), <http://www.maa.nsw.gov.au/default.aspx?MenuID=515>.

³⁷ The New South Wales Bar Association, The Law Society of New South Wales and The Australian Lawyers Alliance, Joint Submission, *An Alternative Proposal to Reform the NSW CTP Scheme*.

³⁸ *Votes and Proceedings*, Legislative Assembly, 9 May 2013, p 1602.

³⁹ Motor Accident Injuries Amendment Bill 2013, Explanatory notes, p 1.

⁴⁰ *Votes and Proceedings*, Legislative Assembly, 22 May 2013, pp 1618-1623.

⁴¹ MAA, *CTP Reform* (18 March 2014), <http://www.maa.nsw.gov.au/default.aspx?MenuID=515>.

2.41 On the day of the roundtable, the NSW Government published a report entitled *CTP Issues Paper: NSW Government CTP Roundtable* which reiterated the position of the initial report by the MAA and stated:

The NSW Government believes too much of the CTP premium is going to administrative overheads, insurer profit and legal and investigative costs, and that the uncertainty of the current ‘common law approach’ creates the opportunity for larger than expected profits. That needs to change, and there needs to be tougher regulation of insurers.⁴²

2.42 On 19 August 2013, Mr Paul McClintock AO, Chair, Roundtable Steering Committee published a report summarising the roundtable. He noted that while reform appeared to be necessary there were ‘differing perspectives on the nature and degree’ of reform required.⁴³ The main points of contention with the proposed reforms included concerns that:

- the Insurance Council of Australia could not guarantee that premiums would drop
- children and adults that do not meet the 10 per cent whole person impairment threshold would cease to receive payment for care and treatment after five years
- there exists a high level of ‘mistrust’ of insurer behaviour and scepticism of whether insurance companies can become effective injury managers.⁴⁴

2.43 Finally, Mr McClintock stated a strong theme from the roundtable was that more consultation was required.⁴⁵

2.44 Following the roundtable, the Minister issued a media release advising that the bill would be withdrawn, as Labor and the Greens were set to block the legislation in the upper house.⁴⁶ The next day, the bill was discharged from the Legislative Council.⁴⁷

2.45 To date, there has not been another legislative attempt to reform the scheme, although according to the MAA website, the ‘government remains committed to finding a way to improve the CTP scheme so that it is efficient, affordable and provides prompt, high quality support to all those injured in motor vehicle accidents’.⁴⁸

2.46 The future of the scheme will be discussed in chapter 5.

⁴² NSW Government, *CTP Issues Paper: NSW Government CTP Roundtable*, 24 July 2013, p 3.

⁴³ Mr Paul McClintock AO, Chair, Roundtable Steering Committee, *NSW Government CTP Roundtable*, 19 August 2013.

⁴⁴ Mr Paul McClintock AO, Chair, Roundtable Steering Committee, *NSW Government CTP Roundtable*, 19 August 2013, pp 10-12.

⁴⁵ Mr Paul McClintock AO, Chair, Roundtable Steering Committee, *NSW Government CTP Roundtable*, 19 August 2013, p 11.

⁴⁶ Minister for Finance and Services, ‘CTP Legislation withdrawn as Labor and the Greens back higher Green Slip prices’ (Media Release, 19 August 2013).

⁴⁷ *Minutes*, Legislative Council, 20 August 2013, p 1900.

⁴⁸ MAA, *CTP Reform* (18 March 2014), <http://www.maa.nsw.gov.au/default.aspx?MenuID=515>.

Impact of *Smalley v Motor Accidents Authority of New South Wales*

- 2.47** In the recent case of *Smalley v Motor Accident Authority of New South Wales* [2013] NSWCA 318, the Court of Appeal considered the effect of ss 81 and 92 of the *Motor Accidents Compensation Act 1999* and the relevant sections of the Claims Assessment Guidelines that deal with exemptions from the Claims Assessment Resolution Service (CARS).⁴⁹ See chapter 1 at 1.22 to 1.24 for an overview of CARS.
- 2.48** Section 81 states it is the duty of an insurer to give written notice to the claimant as expeditiously as possible regardless of whether the insurer admits or denies liability for the claim.⁵⁰
- 2.49** Section 92 states that a claim is exempt from assessment if it is exempt under the Claims Assessment Guidelines, the regulations, or an assessor has made a preliminary assessment of the claim and has determined it is not suitable for assessment.⁵¹ At the time of *Smalley*, claims were exempt under the guidelines if fault was denied by the insurer in its written notice under s 81, or if fault was not denied by the insurer, but the insurer alleged that the claimant was at fault or partly at fault and claimed a reduction of damages of more than 25 per cent.⁵²
- 2.50** In *Smalley*, the insurer had admitted ‘fault’ for a claim but had denied liability on the grounds that the claim had been lodged late. The claimant had applied for an exemption under s 92 but was rejected by CARS. The Principal Claims Assessor found that the matter was not exempt because even though the insurer had denied liability, it had admitted ‘fault’. However, the Court of Appeal determined that admitting only ‘fault’ or ‘breach of duty of care’ was not an admission of liability. The court determined that only a written notice denying liability constituted a denial of liability.⁵³
- 2.51** Until *Smalley*, it had been the common practice of insurers to issue s 81 notices admitting only ‘breach of duty of care’ or ‘fault’ rather than admitting ‘liability’. It had been the understanding of the industry that these admissions were effectively the same as an admission of liability.⁵⁴
- 2.52** Regarding the ramifications of this determination, the Law Society of New South Wales argued there was a real concern most claims would be exempted from CARS:

Following the *Smalley* decision the [Law Society’s Injury Compensation] Committee contends there is a real danger that many, or most, motor accident claims will be exempted from CARS if the present practices of insurers concerning the issuing of section 81 notices continue. The experience of Committee members is that many insurers delay making a decision for more than three months after the claim form has been served.⁵⁵

⁴⁹ Submission 10, Australian Lawyers Alliance, p 21.

⁵⁰ *Motor Accidents Compensation Act 1999* (NSW) s 81(1).

⁵¹ *Motor Accidents Compensation Act 1999*(NSW) s 92(1).

⁵² Motor Accidents Authority, *Claims Assessment Guidelines*, 1 October 2008 (amended 1 October 2009), p 18.

⁵³ Submission 10, Australian Lawyers Alliance, p 23.

⁵⁴ Submission 10, Australian Lawyers Alliance, p 23.

⁵⁵ Submission 8, Law Society of New South Wales, p 2.

- 2.53** The MAA advised that in response to the decision of *Smalley*, it proposed to make amendments to the Claims Assessment Guidelines to reduce the scope of claims exempted from CARS. It also proposed to amend the Claims Handling Guidelines to clarify insurer responsibilities in issuing liability decisions and is working with insurers to develop agreed templates to help improve consistency and transparency.⁵⁶
- 2.54** Mr Nicholls told the committee that the proposed changes were well supported by stakeholders who have been consulted on the matter:
- ... a recent court decision, known as *Smalley*, would have resulted in an even greater number of disputes avoiding alternative-to-court dispute resolution. ... we are pleased that, following a constructive consultation process, we have addressed the key stakeholder issues and achieved a high level of consensus. The proposed amendments will improve the quality and consistency of insurer decisions on liability and ensure that suitable claims have the opportunity of assessment at the CARS.⁵⁷
- 2.55** However, while the Bar Association supported the MAA's proposed amendments to the Claims Handling Guidelines, the association opposed the amendments to the Claims Assessment Guidelines, arguing that they 'represent a radical restructuring of the scheme that will create greater uncertainty and run up unnecessary costs'.⁵⁸
- 2.56** The Bar Association contended these amendments would be time consuming and costly as every case where liability is denied or contributory negligence (when claimants have, through their own negligence, contributed to the harm they have suffered) alleged would need to be fully prepared for a CARS assessment, only for some to then be exempted and sent to court.⁵⁹ In light of this, the Bar Association proposed its own amendments to the guidelines to allow the insurer extra time to consider liability while maintaining pressure on the insurer to reach a decision expeditiously.⁶⁰
- 2.57** On 1 May 2014 the MAA published updates to the Claims Assessment Guidelines and the Claims Handling Guidelines.

Liability under section 95

- 2.58** Section 95(1) of the *Motor Accidents Compensation Act* states that an assessment of 'the issue of liability for a claim is not binding on any party to the assessment'.⁶¹
- 2.59** Legal associations contended that the *Smalley* matter has exacerbated problems with the operation of s 95 that an assessment by CARS is not binding on the insurer where there is a dispute about liability. The Bar Association argued that insurers have been 'effectively encouraged by the MAC Act to allege contributory negligence and maintain liability disputes in order to create a right of re-hearing post-CARS assessment'.⁶²

⁵⁶ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 9.

⁵⁷ Evidence, Mr Nicholls, 17 March 2014, p 11.

⁵⁸ Supplementary submission 11a, New South Wales Bar Association, p 1.

⁵⁹ Supplementary submission 11a, New South Wales Bar Association, p 10.

⁶⁰ Supplementary submission 11a, New South Wales Bar Association, p 10.

⁶¹ *Motor Accidents Compensation Act 1999* (NSW) s 95(1).

⁶² Supplementary submission 11a, New South Wales Bar Association, p 4.

- 2.60** The Bar Association alleged that ‘these cracks within the scheme have, until recently, been papered over’ by CARS Principal Claims Assessors who have adopted a practice of keeping cases within the CARS system where breach of duty of care is admitted, but liability denied.⁶³ However, because of *Smalley*, any case where there is a ‘deemed denial of liability or a general denial of liability (because of a late claim or argument about causation of injury), the case must be exempted by the [Principal Claims Assessors] without delay’.⁶⁴
- 2.61** The association is concerned this will lead to a significant number of cases being exempted from CARS, and will in turn increase costs to the scheme.⁶⁵
- 2.62** The association recommended that the best solution is to amend s 95.⁶⁶
- 2.63** Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance agreed that s 95 requires attention as it indicates that a decision of CARS is not binding on an insurer regarding liability decisions:

... section 95 is still an issue to some extent. That section still indicates that a decision of the CARS is not binding on an insurer in relation to a decision on liability. It would be a good idea to have a look at that section and try to amend the problem there because at the moment we will have many cases going to the CARS for assessment of contributory negligence, for instance. None of those are binding in relation to the insurer. It is something just to look at and give further consideration to since that case of *Smalley*.⁶⁷

Committee comment

- 2.64** The committee notes the MAA adopted a proactive approach to resolving the issues created by the determination in the *Smalley* case. However, the committee also notes the concerns raised by the Bar Association regarding uncertainty and costs as a result of the amended Claims Assessment Guidelines, and notes the association’s alternate proposal to these guidelines.
- 2.65** Further, we acknowledge the concerns raised by legal associations regarding the consequences of the *Smalley* decision on s 95 of the *Motor Accidents Compensation Act 1999* regarding insurers denying liability to exempt cases from CARS. Because of this, the committee recommends the MAA liaise with stakeholders to find the most suitable method to address this issue, whether that be through legislative change or amendments to the Claims Assessment Guidelines.

⁶³ Supplementary submission 11a, New South Wales Bar Association, p 4.

⁶⁴ Supplementary submission 11a, New South Wales Bar Association, p 4.

⁶⁵ Supplementary submission 11a, New South Wales Bar Association, p 5.

⁶⁶ Supplementary submission 11a, New South Wales Bar Association, p 5.

⁶⁷ Evidence, Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, 7 March 2014, p 26.

Recommendation 3

That the Motor Accidents Authority, in consultation with stakeholders, address the issue of insurers denying liability under section 95 of *Motor Accidents Compensation Act 1999* to exempt cases from the Claims Assessment Resolution Service.

Chapter 3 Scheme performance

This chapter considers the performance of the NSW Motor Accidents Compensation Scheme (the scheme) since the committee's *11th Review Report*. The scheme's performance is discussed using four key indicators: affordability, efficiency, insurer profitability and claims experience. The chapter then examines the Medical Care and Insurance Levy, scheme awareness and injury prevention programs.

Key performance measures

3.1 This section considers the performance of the scheme in the period since the committee's *11th Review Report*, tabled in December 2011.⁶⁸ A key consideration for the committee is how the MAA reports on the performance of the scheme. As of 2012/13, the MAA reports on scheme performance with reference to the following four key indicators:

- affordability
- efficiency
- insurer profitability
- claims experience.⁶⁹

3.2 These four indicators are reviewed in the following sections.

Affordability

3.3 Affordable premiums are a primary objective of the scheme. The MAA measures the affordability of green slips relative to the average New South Wales weekly earnings. The lower the premium as a proportion of average weekly earnings, the more affordable the premium is considered.⁷⁰

3.4 A number of stakeholders noted that it is important when considering this data to recognise that the benefits payable in each state or territory are not comparable.⁷¹ Indeed, New South Wales has a suite of benefits for those injured in motor accidents ranging from the Lifetime Care and Support (LTCS) Scheme, Accident Notification Form and significant common law entitlements that provide some of the best protection in the country.

3.5 As at 30 June 2013, the average green slip premium represented 36 per cent of average weekly earnings in New South Wales.⁷² The MAA noted that as a proportion of weekly pay, New South Wales green slips are among the least affordable in Australia and stated that this raised

⁶⁸ Legislative Council, Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*. Report 48, December 2011.

⁶⁹ Motor Accidents Authority, *Annual Report 2012/13*, p 33.

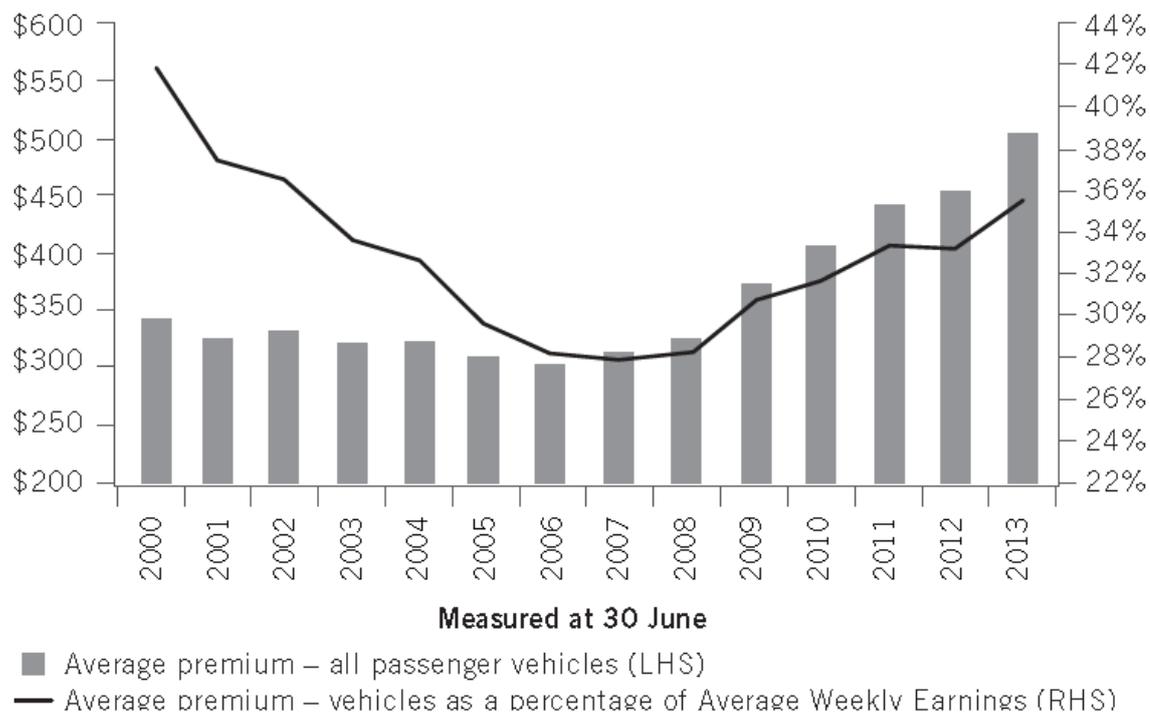
⁷⁰ Motor Accidents Authority, *Annual Report 2012/13*, p 33.

⁷¹ Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 8.

⁷² Answers to pre-hearing questions on notice, Motor Accidents Authority, 14 February 2014, p 1.

concerns the scheme is not providing fair and affordable pricing for customers.⁷³ Figure 1 shows the increase of the premium in the past five years in comparison to average weekly earnings.

Figure 1 Premiums as a proportion of New South Wales average weekly earnings⁷⁴



3.6 There has also been a steady increase in the average premium price since the *11th Review Report*. Table 1 shows that the best price for a Sydney metropolitan passenger vehicle for motorists aged between 30 and 54 years has increased from \$421 in June 2010 to \$505 in June 2013.

Table 1 Comparison of premiums since previous review*

| | June 2010 | June 2011 ⁷⁵ | June 2012 | June 2013 ⁷⁶ |
|---|-----------|-------------------------|-----------|-------------------------|
| Best price for a Sydney metropolitan passenger vehicle (for motorists aged between 30 and 54 years) | \$421 | \$441 | \$464 | \$505 |

*Prices include GST

3.7 The MAA contended that green slip increases over the past five years have resulted from ‘a range of factors including increased claims frequency, extension of some benefits to at-fault

⁷³ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 1.

⁷⁴ Motor Accidents Authority, *Annual Report 2012/13*, p 33.

⁷⁵ Standing Committee on Law and Justice, NSW Legislative Council, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*. Report 48, December 2011, p 6.

⁷⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 32.

drivers, inflation, the impact of the global financial crisis on long term bond yields and an increasing number of claims involving legal representation'.⁷⁷

3.8 In Ernst & Young's most recent review of scheme performance, it noted that the average premium reduced slightly for the December 2013 quarter to 35 per cent. This was due to a reduction in the Medical Care and Insurance Service Levy in July 2013. However, since December 2013, the green slip premium for some insurers has increased by up to \$10, again reducing the affordability of the scheme.⁷⁸

3.9 The price of a green slip varies depending on the type of vehicle, geographic location, and specific risk characteristics of the vehicle, owner and driver. The price also varies between insurance companies.⁷⁹ The MAA stated that as insurers 'compete in different sectors of the market ... [and] have varying capital allocations and target rates of return ... the market does not generally move in unison'.⁸⁰ Table 2 provides examples of the varying levels of increases by each scheme insurer since the *11th Review Report*.

Table 2 Premium increases by each scheme insurer⁸¹

| Insurer | 30 June 2010 | 30 June 2011 | | | 30 June 2012 | | | 30 June 2013 | | |
|-------------|--------------|--------------|-------------|-------|--------------|-------------|------|--------------|-------------|-------|
| | \$ | \$ | \$ increase | % | \$ | \$ increase | % | \$ | \$ increase | % |
| AAMI | 290.87 | 334.25 | 43.38 | 14.91 | 339.72 | 5.47 | 1.64 | 387.23 | 47.51 | 13.99 |
| Allianz | 301.41 | 326.95 | 25.54 | 8.47 | 353.19 | 26.24 | 8.03 | 389.36 | 36.17 | 10.24 |
| CIC Allianz | 318.31 | 363.83 | 45.52 | 14.30 | 378.00 | 14.17 | 3.89 | 381.56 | 3.56 | 0.94 |
| GIO | 284.78 | 326.20 | 41.42 | 14.54 | 329.05 | 2.85 | 0.87 | 378.01 | 48.96 | 14.88 |
| NRMA | 293.27 | 332.39 | 39.12 | 13.34 | 341.37 | 8.98 | 2.70 | 387.48 | 46.11 | 13.51 |
| QBE | 296.49 | 326.24 | 29.75 | 10.03 | 338.30 | 12.06 | 3.70 | 358.16 | 19.86 | 5.87 |
| Zurich | 309.83 | 344.68 | 34.85 | 11.25 | 359.57 | 14.89 | 4.32 | 395.74 | 36.17 | 10.06 |

*Prices exclude Medical Care and Injury Services levy and GST

⁷⁷ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 1.

⁷⁸ Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 2.

⁷⁹ Motor Accidents Authority, *Annual Report 2012/13*, p 32.

⁸⁰ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 2.

⁸¹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 3.

3.10 The deviation in prices shown between tables 1 and 2 demonstrates the importance of consistent reporting on scheme costs to include both the CTP scheme and LTCS scheme components. This is particularly important when NSW green slip costs are reported by the MAA in order to compare green slip costs with those in other states and territories. This matter will be discussed further in this chapter at paragraph 3.19.

Enhanced insurer price filing evaluation tool

3.11 In order to better assess the cost and affordability of premiums, the MAA noted in its 2012/13 Annual Report that it had consolidated a ‘rigorous approach to insurer price filings, involving more comprehensive requirements and an enhanced evaluation tool’.⁸² This involved evaluating:

- the insurer’s internal method of allocating capital between lines of business
- the insurer’s actual or notional internal capital allocation, including the amount and treatment of risk margins included in provisions for outstanding claims liabilities
- the insurer’s target rate of return on capital and how it was determined
- the insurer’s investment policy
- details of the method and calculations used to derive the proposed profit margin from the capital allocation.⁸³

3.12 The MAA has used the information to derive the projected rate of return for each filing. In addition, the MAA has commenced collecting the current insurance liability valuation report for each insurer to compare with the filing assumptions. The MAA now requires insurers to compare and justify differences between these assumptions in filings lodged for:

- claim frequency
- average claim size
- claims handling expense
- policy and administration expense
- superimposed inflation
- economic assumptions.⁸⁴

3.13 The MAA has also commenced actuarial presentations and individual interviews with insurers on an annual basis.⁸⁵

⁸² Motor Accidents Authority, *Annual Report 2012/13*, p 13.

⁸³ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 4-5.

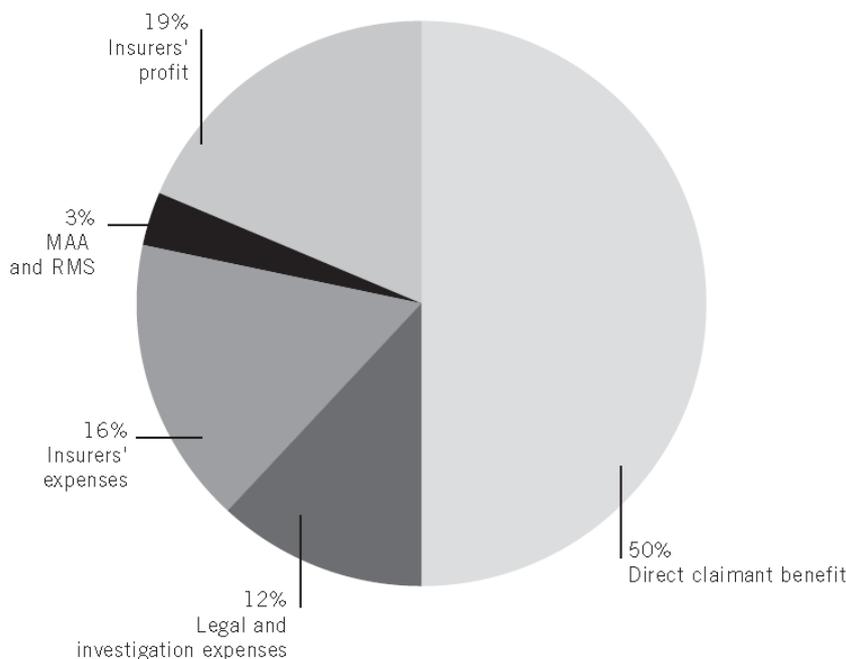
⁸⁴ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 5.

⁸⁵ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 5.

Efficiency

- 3.14** Scheme efficiency measures the proportion of each dollar paid in premiums that is directly returned to injured persons as benefits. The higher the proportion of premiums paid as claim benefits, rather than as service delivery costs, the greater the efficiency of the scheme.⁸⁶ This measurement excludes the LTCS scheme, as it is not managed or priced by insurers and is not subject to regulation by the MAA.⁸⁷
- 3.15** The MAA reported in its 2012/13 Annual Report that scheme efficiency has averaged 50 per cent across the life of the scheme, from 2000 to 2012 (see Figure 2).⁸⁸

Figure 2 Distribution of scheme funds averaged over underwriting years 2000 to 2012⁸⁹



- 3.16** In Ernst & Young's most recent review of scheme performance, it noted that for the year 2012, scheme efficiency had increased to 63 per cent compared to 55 per cent in 2010 and 2011.⁹⁰ This is a notable and significant improvement in the scheme's performance.
- 3.17** However, the MAA stated these figure could end up varying as CTP insurance is known as a 'long tail' insurance product, because the final costs may not be known for more than five years from the date of underwriting a premium. These figures are based on estimates of direct claimant benefits and legal and investigation expenses. Estimates of future claim payments are inherently uncertain because they depend on the outcome of future events.⁹¹

⁸⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 33.

⁸⁷ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

⁸⁸ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

⁸⁹ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

⁹⁰ Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 4.

⁹¹ Motor Accidents Authority, *Annual Report 2012/13*, p 33.

- 3.18** The data shown in Figure 2 was used by the MAA in its pricing strategy report as evidence that the scheme is highly inefficient and should be reformed. The report noted that ‘scheme efficiency is still low compared to other accident compensation schemes which typically return at least 65 cents in the dollar to injured people’.⁹²
- 3.19** In contrast, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association contended that the scheme only appears inefficient, particularly when compared to other states, because the MAA does not compare ‘apples with apples’⁹³ as it does not include the most efficient part of the scheme, the LTCS Scheme, in its data reporting:
- The way in which you present our scheme as being the most inefficient is that you do not compare apples with apples: You ... strip out all of the lifetime care claims, as they are the most efficient because of the large sums of money involved and the relatively modest amount of legal fees and investigative costs compared to the size of the claims... Other States include those efficient ones in their system; our State does not include those efficient ones in the comparison.⁹⁴
- 3.20** Mr Stone further noted that Ernst & Young include the early, least efficient years of the scheme in its analysis of efficiency:
- [The MAA] have Ernst & Young look at it as a full 10-year comparison over the life of this scheme... By looking at efficiency as a 10-year average you include all those very inefficient early years. If you just looked at it after the last five years, where the average profit comes down closer to 20 per cent, the scheme becomes more efficient. In other words, it has become more efficient over time. A 10-year comparison, rather than a five-year comparison, of a mature and stabilised scheme, and excluding the lifetime care, skews the efficiency.⁹⁵
- 3.21** The MAA acknowledged the suggestion that LTCS data should be included, but stated ‘it is not meaningful to provide a combined efficiency measure for historical years because although the CTP scheme is in a mature state, the LTCS scheme is still developing and therefore it would not be a like with like comparison’.⁹⁶ Further, the MAA advised that scheme actuaries caution against using data from both schemes to draw meaningful conclusions due to differences in the schemes and funding, and because it masks the inefficiencies of the CTP Scheme.⁹⁷
- 3.22** Nonetheless, the MAA noted it did provide a combined scheme efficiency in the 2011/12 Annual Report by including Lifetime Care and Support Authority (LTCSA) participants entitled to CTP claims payments and excluding non-compensation payments such as legal and investigation payments (see Table 3). The figures showed efficiency is approximately 14 per cent higher when including the LTCS scheme.

⁹² MAA, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013, p 6.

⁹³ Evidence, Mr Stone, 7 March 2014, p 8.

⁹⁴ Evidence, Mr Stone, 7 March 2014, p 8.

⁹⁵ Evidence, Mr Stone, 7 March 2014, pp 8-9.

⁹⁶ Answers to questions on notice, Motor Accidents Authority, 16 April 2014, p 8.

⁹⁷ Answers to questions on notice, Motor Accidents Authority, pp 8-9.

Table 3 Combined CTP scheme and LTCS scheme efficiency⁹⁸

| Premium filing period | Claimant benefit (% of premiums) |
|-----------------------|-------------------------------------|
| 2007/08 | 63.0 |
| 2008/09 | 64.0 |
| 2009/10 | 66.5 |
| 2010/11 | 64.6 |
| 2011/12 | 64.0 |

- 3.23** The MAA did not provide combined scheme efficiency data in its 2012/13 Annual Report. The committee did not receive evidence to explain why different approaches were taken.

Insurer profitability

- 3.24** Ongoing concerns have been raised about the level of insurer profits under the Motor Accidents Scheme during each of the committee's 12 reviews, including the current review.
- 3.25** Section 5(2)(d) of the *Motor Accidents Compensation Act 1999* stipulates that insurers, as receivers of public money that is compulsorily levied, should account for their actual profit margins. Section 28(1) of the Act requires licensed insurers to disclose to the MAA 'the profit margin on which premiums are based and the actuarial basis for calculating their profit margin'.⁹⁹
- 3.26** It is important to note that since the *Seventh Review Report* in 2006, this committee has stated its responsibility is to oversee the performance of the MAA in the exercise of its functions under the *Motor Accidents Compensation Act 1999*, and that the committee does not have a role to act as an actuary in examining the issue of insurer profits.¹⁰⁰
- 3.27** There are seven insurers in the Motor Accidents Scheme, which are owned by five insurance groups. These insurers report to the MAA on two types of profits: prospective and realised.
- 3.28** Prospective profit refers to the amount the insurer expects to receive at the time of filing a premium, given assumptions about the number of claims it expects to pay out, investment returns and premium income. Realised profit is what the insurer actually makes in profit in a given year once all costs and income have been accounted for.

Prospective profit

- 3.29** The MAA receives a premium filing from each insurer at least annually, and considers all of the factors that go into calculating the proposed premiums. The MAA may reject a premium if

⁹⁸ Motor Accidents Authority, *Annual Report 2011/12*, p 73.

⁹⁹ *Motor Accidents Compensation Act 1999* (NSW) s 28(1).

¹⁰⁰ 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, pp 10-39, specifically p 12 and p 30.

it will not fully fund the insurer's liabilities or if it is considered to be excessive.¹⁰¹ The MAA does not set a specific rate that insurers must target.¹⁰²

3.30 The 2012/13 Annual Report sets out the prospective profit margins since the inception of the scheme (see Table 4). It shows the prospective profit margin weighted average has been dropping for the last few years and is currently at its lowest level since 2007/08. In terms of the range of prospective profit margin for 2012/13, both the lowest percentage (1.8 per cent) and the highest percentage (9 per cent) are the lowest respective figures in the schemes history.

Table 4 Prospective profit margins in insurer filings¹⁰³

| Filing period | Range (%) | Weighted average (%) * |
|---------------|------------|------------------------|
| 1999-00 | 7.5 – 9.5 | 7.7 |
| 2000-01 | 7.5 – 9.5 | 7.9 |
| 2001-02 | 7.5 – 9.5 | 8.2 |
| 2002-03 | 7.5 – 9.5 | 8.2 |
| 2003-04 | 7.5 – 9.7 | 8.5 |
| 2004-05 | 7.5 – 10.0 | 8.7 |
| 2005-06 | 7.5 – 10.0 | 8.7 |
| 2006-07 | 4.0 – 11.0 | 6.0 |
| 2007-08 | 5.0 – 9.3 | 7.7 |
| 2008-09 | 4.7 - 9.3 | 8.1 |
| 2009-10 | 5.0 - 9.3 | 8.6 |
| 2010-11 | 6.8 - 9.0 | 8.6 |
| 2011-12 | 1.9 – 9.3 | 8.1 |
| 2012-13 | 1.8 – 9.0 | 7.7 |

Realised profit

3.31 Due to the 'long tail' nature of the scheme it takes years before the realised profit on a policy can be known. Assessment of expected profit, particularly for recent years, is largely based on models and assumptions on expected claims experience. Actual claim outcomes have the potential to be different to these estimates.¹⁰⁴

¹⁰¹ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

¹⁰² Evidence, Mr Andrew Nicholls, General Manager, Motor Accidents Authority of New South Wales, 17 March 2014, p 12.

¹⁰³ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

¹⁰⁴ Motor Accidents Authority, *Annual Report 2012/13*, p 34.

3.32 In its 2012/13 Annual Report, the MAA provided a table outlining the current estimate of insurer profitability by year. This table is reproduced in part below. In providing this information, the MAA stated it ‘made every effort to ensure that the estimated profit component of the premium is assessed against objective criteria and has adopted a methodology prepared by the scheme actuaries’.¹⁰⁵

Table 5 Current estimate of industry profitability by underwriting year¹⁰⁶

| Underwriting year ended 30 September | Premiums written during the year (\$millions) | Estimate of discounted value of profit or loss for the insurer (using central estimate of claims liabilities) | |
|--------------------------------------|---|---|---------------|
| | | Amount (\$million) | % of premiums |
| 2000 | 1,325 | 394 | 30% |
| 2001 | 1,321 | 376 | 29% |
| 2002 | 1,342 | 411 | 31% |
| 2003 | 1,395 | 346 | 25% |
| 2004 | 1,476 | 409 | 28% |
| 2005 | 1,451 | 343 | 24% |
| 2006 | 1,426 | 319 | 22% |
| 2007 | 1,221 | 214 | 18% |
| 2008 | 1,178 | 109 | 9% |
| 2009 | 1,328 | 87 | 7% |
| 2010 | 1,529 | 232 | 15% |
| 2011 | 1,698 | 268 | 16% |
| 2012 | 1,796 | 92 | 5% |
| Totals¹⁰⁷ | 18,468 | 3,600 | |

Criticism of the level of insurer profits

3.33 As stated earlier, the level of insurer profits has been examined extensively in many previous committee reviews, and remains a key concern of many stakeholders.

3.34 The weighted average prospective profit over the life of the scheme averages around 8 per cent (see Table 4). However, as Figure 2 (page 23) shows, insurer profits have actually averaged closer to 19 per cent over the same period.

¹⁰⁵ Motor Accidents Authority, *Annual Report 2012/13*, p 35.

¹⁰⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 35.

¹⁰⁷ Tabled document, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, *Summary of insurer profitability projections MAA Scheme performance reports 2003/4 to 2012/13*, 7 March 2014.

3.35 The Bar Association stated that this difference has led to insurers receiving \$2,123 million in ‘super-profit’, above the prospective profit, bringing their estimated profit total to \$3,600 million over the course of the scheme.¹⁰⁸

3.36 Mr Stone discussed the realised profit table in the 2012/13 Annual Report and noted that currently only two years have projections within the prospective profit range. He contended that both figures would increase over time:

The profits have come good, as they always do, when you follow this table across. At the moment there are only two years out of 12 that on current projections will come in, and I am willing to bet anybody in the room lunch somewhere that, in due course, those years will tick comfortably over that 8 per cent. This scheme has been extraordinarily profitable for New South Wales insurers.¹⁰⁹

3.37 Further, Mr Stone argued insurers have been able to convince the MAA to factor in generous prudential margins since the start of the current scheme:

What I think they have consistently managed to do... is to persuade the MAA to put in large prudential margins that have been unduly generous to them. In the early years that was based on fears that the scheme may not work as predicted. It worked as predicted and they just pocketed the difference.¹¹⁰

3.38 Prudential margins are the amount of capital insurers are required to hold to ensure there is enough money to pay claims, irrespective of future uncertainties.¹¹¹

3.39 Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales agreed with the views of Mr Stone:

Regrettably, the reality is that over the history of the scheme those estimates, which have traditionally been around 8 per cent, have been affected by the far less than anticipated claims costs of the scheme. That has happened in almost every year of the system thus far, to the extent that there are variations of up to 18 per cent on an annual basis.¹¹²

3.40 Mr Stone suggested that the MAA should have increased legislative powers in order to effectively regulate insurer profits.¹¹³

¹⁰⁸ Tabled document, *Summary of insurer profitability projections MAA Scheme performance reports 2003/4 to 2012/13*, 7 March 2014.

¹⁰⁹ Evidence, Mr Stone, 7 March 2014, p 4.

¹¹⁰ Evidence, Mr Stone, 7 March 2014, p 5.

¹¹¹ Evidence, Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia, 7 March 2014, p 46.

¹¹² Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 12.

¹¹³ Evidence, Mr Stone, 7 March 2014, p 6.

Insurers' perspective

- 3.41** In response to the criticism that insurers have been receiving excessive profits over the course of the scheme, Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia commented that while insurers have been receiving profits over the prospective figures, it has been due to a range of unforeseen factors:

You are correct in saying that insurers have derived profits in excess of expectations but I am certain that insurers are setting their premium based on the central estimates of each of the assumptions that we make...

There is a range of factors going on... From 2000 to 2008 the claims frequency reduced from approximately four per thousand to two per thousand. At the same time when superimposed inflation was emerging we had concurrently a reduction in frequency. That halving of frequency was also unanticipated. You cannot say that these two things would absolutely occur in unison in the future. The reduction in claims frequency was unanticipated and unexpected. To this day nobody can really explain why it occurred and that is the reason for some of those profits.¹¹⁴

- 3.42** Mr Mobbs expanded on the issue of superimposed inflation as a large factor that has affected profits and which even resulted in heavy losses for insurers in the 1990s, before the introduction of the *Motor Accidents Compensation Act 1999*:

I would say that if you look at CTP insurance over the longer term—I am talking specifically about superimposed inflation here—the average over the last 25 years has been 3 per cent and I would expect it to be 3 per cent in the future. In any one year it is likely to be close to nil, in which case insurers will derive more profits than expected—than the 8 per cent—and then there will be years in which it will significantly exceed 3 per cent in which case insurers will make big losses, as they did in the 1990s.¹¹⁵

- 3.43** Responding to the concern about generous prudential margins, Mr Mobbs noted that the margins are set by the Australian Prudential Regulation Authority (APRA) and, contrary to claims by the Bar Association, argued that CTP insurers have taken on an adequate level of risk:

It was suggested that there is currently no risk taken on by insurers in the New South Wales CTP scheme and that risk needs to be built in. This is certainly not the view taken by the APRA, which prescribes the level of prudential capital insurers are required to hold. Mention was made this morning that current prudential margins are too high and this has an impact on profits. Prudential [margins]...are set by APRA at a level that ensures there is ample capital to pay claims irrespective of future uncertainties. The level of prudential capital we hold has a limited impact on the profits or the premiums we require. It is also not the view of insurers that they do not take on any risk. In setting premiums insurers run the risk that claims frequency will be higher than expected or that superimposed inflation will emerge, and there are many other assumptions which could not be borne out as per our rate filing. In those situations we have to bear the additional costs.¹¹⁶

¹¹⁴ Evidence, Mr Mobbs, 7 March 2014, pp 48-49.

¹¹⁵ Evidence, Mr Mobbs, 7 March 2014, p 48.

¹¹⁶ Evidence, Mr Mobbs, 7 March 2014, p 46.

- 3.44** Allianz Insurance expressed deep unease regarding suggestions made during the inquiry to ‘claw back’ profits from insurers in certain circumstances, insisting that without a mechanism to fund below target profits or losses the proposal could have ‘adverse unintended consequences’, including potentially making the scheme ‘commercially unviable for insurers, precipitating the withdrawal of some or all insurers and the collapse of the scheme as a privately underwritten insurance arrangement’.¹¹⁷
- 3.45** Allianz proposed that instead of clawing back profits, the MAA should be required to ‘twice annually estimate and identify sources of superimposed inflation and recommend reforms that would limit or offset the impact of superimposed inflation’.¹¹⁸ It also suggested that the NSW Government amend the *Motor Accidents Compensation Act* if necessary to ‘provide a power through which administrative instruments or regulations can be quickly made to suppress any identified causes of superimposed inflation’.¹¹⁹ Allianz expressed the view that these changes would suppress premium increases, reduce the volatility of insurer profits and the amount of superimposed inflation that insurers assume in their rate filings, reduce the need for periodic structural reforms, create stability and reduce risk for scheme participants.¹²⁰

MAA’s perspective

- 3.46** The issue of insurer profits continues to be of concern to the MAA, as illustrated by Mr Nicholls, who stated to the committee:

Am I concerned about that? Absolutely. We want this scheme to be operating efficiently. It is one of the overhead costs of this scheme that is contributing to the inefficiency of the scheme.¹²¹

- 3.47** Mr Nicholls observed that one factor leading to insurer super-profits in the scheme is the lack of competition, as there are only five insurers currently operating in the market. He suggested the MAA could look to increase competition as a method of addressing the issue of insurer super-profits:

We have only five insurers operating in this market at the moment. The other factor that in my opinion is influencing super profit taking is the relative lack of competition between five insurers in the marketplace... I think the other thing for us to look at is opportunities to promote competition in the marketplace. That is not only looking at other entrants to the market but it might also look at how we have the rules of engagement of the market practice rules that would allow us to drive greater levels of price competition and price sensitivity in the marketplace, how we can encourage vehicle owners to shop around and keep the insurers honest basically by going for the

¹¹⁷ Correspondence from Mr Nicholas Scofield, General Manager, Corporate Affairs, Allianz Australia Insurance Ltd, to Chair, 19 June 2014.

¹¹⁸ Correspondence from Mr Nicholas Scofield, General Manager, Corporate Affairs, Allianz Australia Insurance Ltd, to Chair, 19 June 2014.

¹¹⁹ Correspondence from Mr Nicholas Scofield, General Manager, Corporate Affairs, Allianz Australia Insurance Ltd, to Chair, 19 June 2014.

¹²⁰ Correspondence from Mr Nicholas Scofield, General Manager, Corporate Affairs, Allianz Australia Insurance Ltd, to Chair, 19 June 2014.

¹²¹ Evidence, Mr Nicholls, 17 March 2014, p 12.

best price insurance. I think those three strategies together are ways that we could help address super-profit taking.¹²²

3.48 The MAA observed that ‘there appears to be little interest in entry into the market which is characterised by complex regulations and where insurers are required as part of the business to take on, and subsidise, bad risks.’¹²³ The authority highlighted a number of barriers to entry for new insurers, including:

- the likelihood of new entrants picking up a higher proportion of bad risks and making losses in the early years
- the likely need for sufficient scale to enter the market, and the need to make a long term commitment to the market
- the need to write policies for ‘all-comers’, as opposed to being able specialist or niche insurance
- the significant capital needed to comply with APRA requirements and the length of time capital must be reserved
- the need for specialist teams to distribute policies and manage claims (such as personal injury specialists).¹²⁴

3.49 Mr Nicholls advised that in the second half of 2014 the MAA intends to look at the premium model in order to make the scheme less risky and more attractive for new insurers. He also stated the MAA could do more to allow for creative entry points, such as the opportunity for insurers to partner or to form consortia with other insurance companies.¹²⁵

3.50 Another possible option could be to incorporate risk pooling to remove the incentive for insurers to avoid bad risks in the compulsory scheme. The committee was informed that risk pooling ‘is a way of removing higher risks from the general market and placing them in a pool so the risk is shared or underwritten by all insurers on an agreed basis’.¹²⁶ This ensures that the pool is equally subsidised by the market as a whole.

3.51 The MAA advised that it will consider the efficacy of risk pooling as part of its review of the premium framework in New South Wales.¹²⁷

3.52 Mr Nicholls also commented on the levels of prudential margins and noted the scheme allows insurers to receive a return for the risk that is taken:

[The legislation] requires insurers to be fully funded. It requires them to have a high prudential margin applied to their premiums. We have prudential obligations on us as a regulator, as does the APRA...When you look at the legislation that governs the MAA it makes it very clear that the expectation is that there is a high degree of

¹²² Evidence, Mr Nicholls, 17 March 2014, p 13.

¹²³ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 2.

¹²⁴ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 3.

¹²⁵ Evidence, Mr Nicholls, 17 March 2014, p 19.

¹²⁶ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 1.

¹²⁷ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 1.

stability in the scheme, and that that stability will then allow insurers to have adequate returns for the risk that is taken¹²⁸

3.53 In response to questioning from the committee regarding whether a levy should be imposed on super-profits, the MAA advised that it is a matter for the government and would require a legislative change.¹²⁹

3.54 The MAA suggested that super-profits could be reduced by removing risks from the scheme and pursuing legislative change to introduce a defined benefits scheme:

So-called super-profits can be addressed by reducing risks and uncertainty in the Scheme. This can be achieved by removing the uncertainties of negotiated settlements, and replacing it with a system in which benefits are clearly prescribed by legislation – a so-called statutory or defined benefits scheme. Such schemes around Australia tend to be more efficient – and in private markets, much of this efficiency would come in the form of lower realised profit margins. Regulating prices and profits in such a scheme is also more straightforward.¹³⁰

3.55 However, the MAA cautioned against adopting such an approach as it may only be a short term solution that could have unintended consequences:

... regulation of premium pricing is not a panacea. While regulation that drives less conservative premiums may have a short term effect on affordability and profit margins, it may also have the long term effect of increasing risks to insurers, the Government and the community by leading to possible losses, an inability to pay benefits to claimants... and/or reducing the insurer's tolerance to stay in a voluntary market like CTP... Regulatory controls in price setting can have unintended consequences. For example, Queensland has recently seen the exit of a major insurer from its CTP market due ostensibly to price capping.¹³¹

3.56 Speaking on the option of legislative change, Mr Nicholls was not confident a tougher regime would result in the removal of uncertainties in the scheme:

I am not confident that applying a tougher regulatory regime would ultimately result in those uncertainties being removed. As a result, I do not expect that we would suddenly see insurers in a better position to be able to address those future risks simply because of the prospect of a penalty being there.¹³²

3.57 The MAA stated that as some measures to reduce insurer profits require a legislative solution, which is outside its remit, it has instead concentrated on improving practices within the scope of the current legislation. These measures include:

- amending claims handling guidelines and associated processes to: remove unnecessary processes and disputes; provide better guidance to insurers on how to handle key decisions, including model forms and letters...

¹²⁸ Evidence, Mr Nicholls, 17 March 2014, p 18.

¹²⁹ Answers to questions on notice, Motor Accidents Authority, p 2.

¹³⁰ Answers to questions on notice, Motor Accidents Authority, p 3.

¹³¹ Answers to questions on notice, Motor Accidents Authority, p 3.

¹³² Evidence, Mr Nicholls, 17 March 2014, p 18.

- best practice templates and forms for claims and disputes, including a new simpler claim form.
- charters to promote best practice between scheme participants – insurers, lawyers and claimants.
- improving market practice guidelines to promote innovation – such as allowing electronic renewals... and technology solutions to streamline the online purchasing process.
- tightening premium guidelines to: have the regulator compel consistent assumptions and standardised industry benchmarks; and controlling expenses including acceptable acquisition expenses such as commissions or advertising/policy add-ons.
- reviewing premium structures to: set a benchmark for affordability and transparent cross subsidisation model including consideration of risk pooling; and
- a more risk based, outcome focussed approach to regulation and insurer supervision to target high priority actions that ensure claimants are getting their statutory due and insurers are operating in the legal bounds and intent of the legislation and rules.¹³³

3.58 In regard to Premium Determination Guidelines, the MAA advised that it has developed a new approach to the guidelines to create a more robust and transparent process for filings, and to communicate the authority's expectations in relation to insurers' rate filings submissions. The committee was informed that insurers have been consulted on the proposed changes, which will be submitted to the Safety, Return to Work and Support Board in June for approval, before being implemented in the second half of 2014.¹³⁴

3.59 The MAA acknowledged that while these factors may not avoid super-profits they may help to mitigate them to some degree by introducing efficiencies and allowing for more certainty and guidance for insurers.¹³⁵

Claims experience

3.60 Claims experience reflects the usage of the scheme including the number of claims and notifications.

3.61 At the end of June 2013, a total of 171,885 notifications had been received by the MAA in relation to accidents since 5 October 1999. This represents an increase of nine per cent since the end of June 2012. Of these notifications, 80 per cent were full claims and 20 per cent were Accident Notification Forms.¹³⁶ An explanation of the different claims is in chapter 1 at 1.16 to 1.20.

3.62 The estimated ultimate number of notifications per accident year (which includes claims incurred but not yet reported) declined over the period 1999/00 to 2007/08, but started to rise again from an estimated 11,717 notifications for 2008/09 to 13,920 notifications for

¹³³ Answers to questions on notice, Motor Accidents Authority, p 3.

¹³⁴ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 2.

¹³⁵ Answers to questions on notice, Motor Accidents Authority, p 2.

¹³⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 36.

2011/12.¹³⁷ The estimated ultimate notifications for the 2012/13 reporting period was 14,100, comprising 3,500 Accident Notification Forms and 10,600 full claims.¹³⁸

- 3.63** The increase in Accident Notification Forms reflects, in part, the expansion of the benefits available under the scheme, including entitlements being expanded to a maximum of \$5,000 from October 2008 and then further extended to anyone injured in an accident, regardless of who was at fault, from April 2010.¹³⁹
- 3.64** Full claims notifications have also increased slightly since 2007/08, due in particular to an increase in claims with minor severity injuries with legal representation.¹⁴⁰
- 3.65** However, Ernst & Young's most recent review of scheme performance showed a decrease in the ultimate number of full claims and Accident Notification Forms for the 2013 reporting year.¹⁴¹ This reduction was primarily in relation to workers compensation claims which reduced by about 70 per cent in the 18 months ending December 2013.¹⁴²
- 3.66** The MAA stated that during this time Ernst & Young had estimated that overall claims would increase by approximately 3 per cent.¹⁴³ The disparity between an expected rise in claims and the actual reduction, could likely lead to increased insurer profits for the period. However based on actuarial advice, Mr Nicholls stated that this was a short term impact and still expected the workers compensation claims to flow through into the system.¹⁴⁴
- 3.67** The Insurance Council of Australia stated that since 2007 the duration of the average claim has decreased from five years to 4.3 years. It said this was achieved 'through the competitive tension between insurers as they strive to improve efficiency and reduce capital consumption'.¹⁴⁵

Workers compensation claims

- 3.68** In June 2012, Parliament passed the *Workers Compensation Legislation Amendment Act 2012* which, among other things, amended the process for journey claims. People injured in a journey to or from work can no longer make a claim under workers compensation but can still claim under the CTP scheme directly if injured in a motor vehicle accident.¹⁴⁶
- 3.69** Ernst & Young reported that due to these legislative reforms there had been a significant decline in the ultimate number of claims relating to workers compensation recoveries in the 2012/2013 accident year (ending 30 September 2013).¹⁴⁷

¹³⁷ Motor Accidents Authority, *Annual Report 2012/13*, p 36.

¹³⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 16.

¹³⁹ Motor Accidents Authority, *Annual Report 2012/13*, p 36.

¹⁴⁰ Motor Accidents Authority, *Annual Report 2012/13*, p 36.

¹⁴¹ Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 6.

¹⁴² Answers to questions on notice, Motor Accidents Authority, pp 6-7.

¹⁴³ Answers to questions on notice, Motor Accidents Authority, p 6.

¹⁴⁴ Evidence, Mr Nicholls, 17 March 2014, p 19.

¹⁴⁵ Evidence, Mr Mobbs, 7 March 2014, p 47.

¹⁴⁶ Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 7.

¹⁴⁷ Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 7.

- 3.70** The MAA stated there is a likely cost impact caused by the legislative amendments regarding the gap between what is currently recovered by workers compensation insurers and the likely cost arising to the CTP scheme from claimants directly pursuing a common law lump sum payment. The MAA stated the impact of the workers compensation reforms to the scheme is being closely monitored.¹⁴⁸
- 3.71** The MAA noted that ‘while it is possible that some workers compensation recovery claims are being made in the CTP scheme, it is not possible to identify them from the available data’.¹⁴⁹

Medical Care and Insurance Service Levy

- 3.72** The Medical Care and Insurance Service Levy is a levy on green slips that funds the cover provided by the Lifetime Care and Support Scheme and funds bulk billing arrangements for ambulance and hospital services as well as the administration costs of the scheme.¹⁵⁰ The lifetime care component is set by the LTCSA while the other components are set by the MAA.
- 3.73** In 2012/13, the MAA and LTCSA conducted a review of the levy, which led to an overall average levy reduction of two per cent. The MAA component of the levy was revised in 2013 to incorporate an increase to the amount paid to the Ministry for Health for public hospital and ambulance services. The MAA stated that this increase ‘was more than offset by an average decrease to the LTCS component of the levy following a re-evaluation of its liabilities’.¹⁵¹ The new levy rates came into effect on 1 July 2013.
- 3.74** Previous review reports commented it was unclear what proportion of the levy was used for the LTCS Scheme and what proportion was used for ambulance and hospital services and administration costs of the Motor Accidents Scheme. In the *11th Review Report*, the MAA advised it had introduced a trial on the online green slip calculator to obtain a breakdown of the levy when comparing green slip prices. The MAA also stated that the trial would be reviewed after one year to consider the level of interest in displaying this information on the actual green slip.¹⁵²
- 3.75** In the current review, the MAA advised that data collected following the introduction of this service shows that 29 per cent of motorists using the green slip calculator accessed information about the itemisation of the levy. The MAA further advised that the ‘service continues to be available for motorists shopping around for their Green Slip’.¹⁵³ The MAA did not comment on whether the trial was deemed successful enough to display the information on green slips.

¹⁴⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 18.

¹⁴⁹ Answers to questions on notice, Motor Accidents Authority, p 6.

¹⁵⁰ Motor Accidents Authority, *Annual Report 2012/13*, p 42.

¹⁵¹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 10.

¹⁵² Legislative Council, Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*. Report 48, December 2011, p 13.

¹⁵³ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 10.

Scheme awareness and customer service

- 3.76 One important service provided by the MAA is the provision of information about the scheme to stakeholders and the general public.
- 3.77 In addition to the highly popular green slip calculator, the MAA updates its website with information about the scheme, including about the CTP reform process, and provides information for injured people about making a claim. Further, the Claims Advisory Service answers general enquiries about green slips. During 2012/13, the service dealt with 24,218 enquiries and provided an outreach service to claimants who are not legally represented and who have a dispute being assessed by the MAA's medical and claims assessment services.¹⁵⁴ See Table 6 for key customer service statistics for 2012/13.

Table 6 Customer service statistics for 2012/13¹⁵⁵

| | |
|--|--------------|
| Number of hits recorded for the green slip calculator | 2,159,634 |
| Number of enquiries received – green slip calculator | 21,217 |
| Number of hits on MAA website | 450,000 |
| Number of enquiries received from general public | 19,412 |
| Number of enquiries received from scheme service providers | 14,477 |
| Number of complaints received | 128 |
| Percentage of identified outreach clients contacted by Claims Advisory Service | 100 per cent |
| Percentage of surveyed users who would use the green slip calculator again | 97 per cent |

- 3.78 The MAA has also continued with a number of multicultural services:
- providing information about the MAA's activities to the ethnic media.
 - utilising interpreters and translators language services where required to assist in assessments with participants.
 - producing and making available appropriate publications in major community languages.
 - providing participants with access to surveys in their identified preferred language and where required, with the use of telephone interpreters.¹⁵⁶

Injury prevention

- 3.79 The MAA is responsible for injury prevention initiatives according to s 206 of the *Motor Accidents Compensation Act 1999*. Under the Act, the MAA is required to provide funding for measures to prevent or minimise injuries from motor accidents and safety education.¹⁵⁷

¹⁵⁴ Motor Accidents Authority, *Annual Report 2012/13*, p 26.

¹⁵⁵ Motor Accidents Authority, *Annual Report 2012/13*, p 80.

¹⁵⁶ Motor Accidents Authority, *Annual Report 2012/13*, p 30.

- 3.80** A road safety partnership, under a Memorandum of Understanding with the NSW Centre for Road Safety (part of Transport for NSW), has been in place since 2011. The MAA advised it has progressively withdrawn from providing direct sponsorships and grants in the road safety area and replaced them with direct funding of the centre.¹⁵⁸
- 3.81** The centre is delivering a whole-of-government and whole-of-community approach to road safety, primarily through the *NSW Road Safety Strategy, 2012–21*. The MAA assisted in finalising the strategy in 2012/13, which included initiatives to target vulnerable road users such as youths, motorcyclists, pedestrians and learner drivers.¹⁵⁹ The MAA advised that in 2013/14 it committed over \$2 million in funding to support the delivery of the strategy.¹⁶⁰
- 3.82** Youthsafe expressed support for the MAA/NSW Centre for Road Safety funding partnership to ensure funds for injury prevent programs and initiatives are used in a strategic and efficient way.¹⁶¹

Committee comment

- 3.83** The committee notes the concerns raised by the MAA that the current scheme is not as affordable or as efficient as it should be and acknowledges wider stakeholder concerns regarding the high level of insurer profits.
- 3.84** The MAA has delivered new methods to improve affordability and address insurer profits, such as the newly enhanced insurer price filing evaluation tool and amendments to various guidelines, including the claims handling guidelines. The committee encourages the MAA to expedite its review of the premium framework and consider the efficacy of risk pooling this year with a view to making the scheme less risky and more attractive for new insurers.
- 3.85** The committee also believes that the MAA should report on the outcome of its monitoring of any impact of the workers compensation changes on the CTP scheme in its Annual Report.
- 3.86** In regard to efficiency, the committee believes that the exclusion of the LTCS figures from the MAA's reporting on scheme efficiency negatively impacts on the scheme's perceived efficiency as it skews the data produced towards smaller claims where the relative cost of handling the claim compared with the sums involved can be significantly greater than in the catastrophic injury matters considered under the LTCS scheme.
- 3.87** Clearly consumers and parliament can only properly assess the efficiency of the scheme if the whole of the scheme including CTP and LTCS are included in analysis of its efficiency and outcomes. This is a minimum required of the MAA for adequate accountability and scrutiny of the scheme. We therefore recommend that the MAA include data for CTP scheme efficiency and data for combined CTP and LTCS scheme efficiency in its annual reports.

¹⁵⁷ *Motor Accidents Compensation Act 1999* (NSW) s 206(2)(f).

¹⁵⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 13.

¹⁵⁹ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 13-14; Motor Accidents Authority, *Annual Report 2012/13*, p 17.

¹⁶⁰ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 13.

¹⁶¹ Submission 7, Youthsafe, p 5.

Recommendation 4

That the Motor Accidents Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.

- 3.88** In regard to profits, it is inarguable that there is a disparity between prospective and realised profits. On each occasion the disparity has been in favour of insurers. This is an issue which must be addressed. As such, the committee recommends that there be a prompt review into the high level of insurer profits. The review should ideally be conducted by the newly established advisory committee (see recommendation 1), however, if that committee is not established, stakeholders should be widely consulted in the review.
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Recommendation 5

That the Minister for Finance and Services ensure there is a prompt review of the high level of insurer profits, and that all relevant stakeholders are consulted.

- 3.89** The issue of insurer profits will be addressed further in the next chapter.
- 3.90** The committee notes the declining number of insurers and possible barriers to entry. These factors can impact on long term sustainability of a private CTP market. We recommend that stakeholders be consulted during the review of the *Motor Accidents Compensation Act* to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.
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Recommendation 6

That in its review of the *Motor Accidents Compensation Act 1999*, the NSW Government consult with stakeholders to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.

- 3.91** Finally, the committee is pleased the MAA has a section on its website on 'CTP Reform' that contains many useful documents about the initial reform process. However, few updates have been made to this section since the discharge of the bill.
- 3.92** As such, the committee encourages the MAA to update the 'CTP Reform' section on its website to provide information about the ongoing process to reform the scheme when appropriate.
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Chapter 4 Recommendations from the previous review and late claims

This chapter examines the response to each of the recommendations made by the committee in the previous review of the Motor Accidents Authority (MAA). The chapter also examines the issue of late claims which the committee previously undertook to assess.

Recommendations from the Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council

- 4.1 This section examines in turn the response by the government¹⁶² to each of the recommendations made in the committee's *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, and assesses any further action since that response was tabled.¹⁶³
- 4.2 In considering these recommendations it is important to note the government intended to reform the scheme with the introduction of the Motor Accidents Injuries Amendment Bill 2013. Some committee recommendations have not been implemented due to the bill being discharged, while other recommendations were put on hold in expectation of the scheme being reformed.

Recommendation 1: Health outcomes performance measures

MAA 11th review recommendation 1: That the Motor Accidents Authority identify the development of health outcomes performance measures as a priority work area.

- 4.3 The development of health outcome measures of scheme performance has been a recurring issue in each of the committee's reports since the *Sixth Review Report*, which was tabled in 2005.¹⁶⁴ In that report, the MAA stated developing these measures was an important method of improving health outcomes for people involved in the scheme. In the *11th Review Report*, the committee recommended the development of health outcomes performance measures as a priority, but acknowledged that doing so was a challenge.¹⁶⁵
- 4.4 The government supported this recommendation and noted that the MAA was committed to improving the health and social outcomes of injured people in the scheme. In particular, the

¹⁶² Correspondence from the NSW Government to the Clerk of the Parliaments, providing government response to the eleventh review of the exercise of the functions of the Motor Accidents Authority [MAA] and the Motor Accidents Council [MAC], 20 June 2012.

¹⁶³ Legislative Council, Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011.

¹⁶⁴ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, *Sixth Report*. Report 27, May 2005.

¹⁶⁵ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 9.

response stated the MAA was piloting a project with insurers to trial the collection of health outcome measures by their claims staff. The purpose of the pilot was to collect information about injured people at claim inception and 12 months post-injury, then use this information to inform claims management practices at insurers. This information could also potentially be used by the MAA 'to measure claimant outcomes, provide a platform for informed policy change and steer research funding'.¹⁶⁶

- 4.5** The 2011/12 Annual Report noted another pilot program with four insurers to implement a health and return to work measurement tool to identify injured people at high risk of poor recovery. The Annual Report stated that for the first time it will measure a range of outcomes following a motor vehicle trauma.¹⁶⁷ The 2012/13 Annual Report noted that baseline data collection for the pilot has been completed with follow up data and recommendations due in 2014.¹⁶⁸
- 4.6** The MAA advised that the collection of health outcomes information was only successfully implemented by one of the four CTP insurers, with the majority experiencing difficulties in collecting the data, such as contacting claimants and dedicating resources to the project. In response to the low level of implementation, the MAA is reviewing its Claims Handling Guidelines to reinforce that insurers must act proactively to optimise the recovery of injured people.¹⁶⁹
- 4.7** Another health outcome measure, highlighted in the 2012/13 Annual Report, is a research study of over 2,000 people which was initiated to assist the MAA better understand the health and social outcomes of people injured in road traffic crashes and identify interventions to improve people's recovery. The study is being conducted by Professor Ian Cameron, Chair of Rehabilitation Medicine, University of Sydney Rehabilitation Studies Unit, who is leading a multidisciplinary team of academics and expert clinicians from Australia and New Zealand.¹⁷⁰ Participation in the study involves completing a 30 minute telephone interview in the 28 day period following the injury, followed by a 10 minute interview at six, 12 and 24 months after the injury. The details of this study are available on the MAA's website.¹⁷¹
- 4.8** The MAA advised that it remains committed to developing health outcomes measures.¹⁷²

¹⁶⁶ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, pp 1-2.

¹⁶⁷ Motor Accidents Authority, *Annual Report 2011/12*, p 19.

¹⁶⁸ Motor Accidents Authority, *Annual Report 2012/13*, p 18.

¹⁶⁹ Further answers to questions on notice, Motor Accidents Authority, 26 May 2014, p 1.

¹⁷⁰ Motor Accidents Authority, *Annual Report 2012/13*, p 18.

¹⁷¹ Motor Accidents Authority, *Would you like to take part in research?* (7 May 2014) <http://www.maa.nsw.gov.au/default.aspx?MenuID=613>.

¹⁷² Further answers to questions on notice, Motor Accidents Authority, p 1.

Committee comment

- 4.9 As acknowledged by the committee in the *11th Review Report*, the development of health outcome measures of scheme performance is challenging.¹⁷³ The committee commends the MAA on its recent initiatives and encourages it to continue its work in this area. We urge the MAA to finalise its work on developing and reporting on health outcomes performance measures.

Recommendation 2: Vehicle crash reporting scheme

MAA 11th review recommendation 2: That the Motor Accidents Authority publish the results of the scoping study that it commissioned into New South Wales adopting a similar crash reporting scheme as that in operation in West Australia. The Motor Accidents Authority should also publish the recommendations it made to government as a result of the scoping study in order to inform stakeholders and provide a mechanism for stakeholder comment.

- 4.10 During the *11th Review Report* the Motorcycle Council of New South Wales stated that the MAA needed tools at its disposal to obtain better vehicle crash data as with no reliable data:
- there is little useful information for informing road safety programs to target injury prevention
 - it is difficult for the MAA to determine the risk of CTP claims resulting in premiums being set to satisfy individual insurers, rather than an even distribution of risk across the community
 - there is a manipulation of vehicle crash data.¹⁷⁴
- 4.11 The Motorcycle Council suggested that New South Wales should adopt a similar crash reporting system to Western Australia. The Western Australian system has been streamlined to increase efficiency, which has resulted in ‘faster injury management’ and ‘police spending less time filling out forms’.¹⁷⁵ The MAA advised it had met with the Western Australian Insurance Commission about its scheme and had commissioned a scoping study on implementing a similar scheme in New South Wales. The committee recommended that the results of the scoping study be published.¹⁷⁶
- 4.12 The government’s response stated that it supported the work of the MAA in investigating the Western Australian system in consultation with stakeholders. The government noted the MAA

¹⁷³ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011 p 11.

¹⁷⁴ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 19-20.

¹⁷⁵ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 20.

¹⁷⁶ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 20-22.

is continuing to work with key stakeholders and potential partners, including Transport for NSW, NSW Police and insurers to assess the feasibility and proof of concept of such a system. Subject to this work, full stakeholder consultation will be undertaken.¹⁷⁷

4.13 Neither the government response, nor subsequent information from the MAA, mentioned publication of either the scoping study or its recommendations.

4.14 In the current review, Mr Andrew Nicholls, General Manager, MAA expressed support for the Western Australian model, but acknowledged the difficulties in implementing the system as New South Wales has a more complicated scheme structure than Western Australia:

The Western Australian model works very effectively. It is a system that we have been looking at with Transport for NSW as the host of the Centre for Road Safety. We have had some discussions with a number of other key agencies, such as the police and the insurers themselves. The particular challenge in our scheme that is different to the Western Australian model is that in Western Australia with a single insurance company it is easier for them to build an interface whereas we have five different insurance companies where there would be a need for an interface.¹⁷⁸

4.15 Mr Nicholls advised that currently the MAA is working to complete a data linkage project between agencies as there is important data that sits with insurers, the MAA, the Lifetime Care and Support Authority, the NSW Centre for Road Safety and the health system. The MAA has committed several hundreds of thousands of dollars to the project.¹⁷⁹

4.16 As such, Mr Nicholls argued that the first step to adopting a similar approach to Western Australia is completing the data linkage project:

So what we are doing is a very staged approach... Once those data linkages are in place there will be more effective opportunities to share data, and introducing something like a crash link reporting system similar to Western Australia's is something we can certainly look at. We have a high degree of stakeholder support for that. They believe that is an objective worth working towards.¹⁸⁰

4.17 The 2012/13 Annual Report stated the MAA had signed a Memorandum of Understanding with the NSW Centre for Road Safety regarding road safety research and injury prevention that 'will offer future opportunities for data sharing to improve the evidence base for MAA investment in injury prevention initiatives'.¹⁸¹

4.18 During the current review, the Motorcycle Council of New South Wales reiterated its desire to obtain vehicle crash data so it can better 'identify where the risks are for the ordinary rider and what can be done about that'.¹⁸²

¹⁷⁷ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 2.

¹⁷⁸ Evidence, Mr Andrew Nicholls, General Manager, Motor Accidents Authority of New South Wales, 17 March 2014, pp 32-33.

¹⁷⁹ Evidence, Mr Nicholls, 17 March 2014, p 33.

¹⁸⁰ Evidence, Mr Nicholls, 17 March 2014, p 33.

¹⁸¹ Motor Accidents Authority, *Annual Report 2012/13*, p 3.

¹⁸² Evidence, Mr Guy Stanford, Member, Motorcycle Council of New South Wales, 17 March 2014, p 5.

- 4.19 Mr Guy Stanford, Member, Motorcycle Council of New South Wales stated that ‘Western Australia is one of the few states which actually complies with a Council of Australian Governments agreement on the collection of data’ whereas in New South Wales there is ‘a complete mishmash’ with ‘two completely isolated silos that do not seem to talk to each other’.¹⁸³

Committee comment

- 4.20 The committee notes that neither the government nor the MAA have addressed the recommendation of publically releasing the scoping study or its recommendations to the government for adopting a similar crash reporting scheme to that of Western Australia. The committee continues to believe that the recommendation made in our previous report has merit and urge the government and MAA to implement it.
- 4.21 The committee commends the MAA on the progress it has made to establish a similar crash reporting model to Western Australia through its work on the agency data linking project. We acknowledge the implementation of a similar model in New South Wales is complicated due to the different scheme structures between the states. The committee urges the MAA to continue to work on the project, and in doing so, ensure it updates stakeholders on its progress.

Recommendation 3: Reporting road safety grants and sponsorships

MAA 11th review recommendation 3: That the Motor Accidents Authority include in its Annual Report a separate line item[s] for reporting ‘Road safety grants and sponsorships’.

- 4.22 The committee commented in the *11th Review Report* that it had been difficult to determine from the MAA’s annual reports the actual amount spent on road safety and motor vehicle injury intervention programs and recommended a separate line item[s] for reporting ‘Road safety grants and sponsorships’.¹⁸⁴
- 4.23 The government supported the recommendation and stated the MAA would include this information as separate line item[s] in Annual Report financial statements from 2011/12 onwards.¹⁸⁵ Subsequently, the MAA fulfilled this promise and published the information in its 2011/12 and 2012/13 Annual Reports.¹⁸⁶

¹⁸³ Evidence, Mr Stanford, 17 March 2014, p 5.

¹⁸⁴ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 24.

¹⁸⁵ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 2.

¹⁸⁶ Motor Accidents Authority, *Annual Report 2011/12*, p 43; Motor Accidents Authority, *Annual Report 2012/13*, p 58.

Committee comment

- 4.24 The committee commends the MAA for including financial details of road safety grants and sponsorships in its annual reports.

Recommendation 4: Insurer profit margins

MAA 11th review recommendation 4: That the Motor Accidents Authority present a report on its assessment of insurer profit margins and the actuarial basis for its calculation to the committee, including an explanation for any material deviation on forecasted profit, on an annual basis in order to fulfil its statutory obligation under section 28 of the *Motor Accidents Compensation Act 1999*.

- 4.25 As noted in chapter 3, insurer profits has been an issue of ongoing concern for many stakeholders over all 12 committee reviews.
- 4.26 In the *11th Review Report*, the committee considered the MAA was not fulfilling its statutory obligation under s 28 of the *Motor Accidents Compensation Act 1999* to present a report annually to the committee on profit margins and the actuarial basis for calculating those margins. Currently, the MAA includes a section on insurer profits in its Annual Report. However, this section contains limited information and does not satisfy the requirement under the Act to present a specific report to the committee.¹⁸⁷
- 4.27 This had previously been recommended in various forms in the committee's *Fourth*¹⁸⁸, *Fifth*¹⁸⁹, *Sixth*¹⁹⁰ and *Seventh*¹⁹¹ review reports.
- 4.28 The government supported this recommendation in the *11th Review Report*¹⁹² and the MAA sought to consult with the committee on the best way to provide the information. The committee deferred this meeting during the period of uncertainty in the scheme when there was an agenda for reform and the subsequent introduction of the Motor Accidents Injuries Amendment Bill 2013 in Parliament.

¹⁸⁷ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 40-41.

¹⁸⁸ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Fourth Report*. Report 24, December 2002, p xi.

¹⁸⁹ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Fifth Report*. Report 25, April 2004, p xii.

¹⁹⁰ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Sixth Report*. Report 27, May 2005, p xiv.

¹⁹¹ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Seventh Report*. Report 31, September 2006, p xvii.

¹⁹² Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 2.

- 4.29 On 2 June 2014 the committee met with Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support and Mr Andrew Nicholls, General Manager, MAA, to discuss the MAA's reporting requirements under s 28.
- 4.30 During the meeting the MAA representatives advised that the MAA has difficulty providing more detailed, up-to-date information on scheme performance in its annual report as the report must be presented to the Minister for Finance and Services by the end of October, only one month following the end of an accident reporting year. It also suggested the annual report may not be the most appropriate vehicle for providing detailed analysis of scheme performance.

Committee comment

- 4.31 The committee thanks the MAA for meeting to discuss the authority's reporting regarding insurer profit margins under s 28 of the *Motor Accidents Compensation Act*, as per recommendation 4 of our *11th Review Report*.
- 4.32 The committee notes that the current annual report contains some figures on affordability, efficiency, insurer profitability and claims experience, as reviewed in chapter 3.
- 4.33 We acknowledge that it is difficult for the MAA to provide more detailed information on scheme performance in its annual reports due to the timing the report is due to the Minister.
- 4.34 For this reason, the committee recommends that the MAA produce a separate report which contains a more comprehensive analysis of scheme performance, including the drivers for insurer profits, as well as profit margin premiums and the actuarial basis for calculating those margins, as per s 28.
- 4.35 The committee is interested to view and analyse this information so it can gain a greater appreciation for the performance of the scheme, the process involved in insurer price filings and the reasons why insurer profits have been consistently high over the life of the scheme.
- 4.36 To ensure the MAA has enough time to analyse the data from the previous reporting year, we propose that the MAA report annually to the committee by the end of April. We believe this would allow sufficient time to analyse the data from the previous accident reporting year, which ends in September. We also believe it would be valuable for the MAA to present to the committee on the contents of the report once it has been provided.

Recommendation 7

That the Motor Accidents Authority provide a report annually to the committee by 30 April that includes a comprehensive review of scheme performance in the most recent accident year, including an analysis of the drivers of high levels of insurer profits.

- 4.37 Further, to ensure that the scheme is both affordable and equitable, there is real merit in considering proactively any potential sources of superimposed inflation as and when they become apparent. Both the government and the MAA need to respond in an effective and prompt manner. As such, the committee recommends that the MAA proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report

(proposed above at recommendation 7) on superimposed inflation risks and strategies to address them.

Recommendation 8

That the Motor Accidents Authority proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report (see recommendation 7)) on superimposed inflation risks and strategies to address them.

Recommendation 5: CTP pricing review

MAA 11th review recommendation 5: That the Motor Accidents Authority promptly publish information about the CTP pricing review, including its terms of reference and timeframe. In addition, the Motor Accidents Authority should publish a discussion paper on the issues covered in the review, consult widely including with stakeholders and the public, and publish its findings.

- 4.38** Following the committee's recommendation, the CTP pricing review was completed and the related report, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, was made public.¹⁹³ The discharged Motor Accidents Injuries Amendment Bill 2013 that stemmed from the review was also made public.¹⁹⁴
- 4.39** In relation to consultation about the proposed reforms, before the bill was introduced, the MAA received submissions from a range of stakeholders expressing their opinions. Following the introduction of the bill, the government held a CTP scheme roundtable to debate the proposed reform, as discussed in chapter 2.¹⁹⁵
- 4.40** Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association praised the Minister for conducting the roundtable, however, he contended that it should have taken place before the bill had been introduced:

[I]t was very good of the Minister to get all the stakeholders in a room and have the roundtable; from a policy development perspective you might next time prefer to do that at the start of the process rather than the end of the process as it was falling apart, but it was to the considerable credit of the new Minister that he took such a consultative approach¹⁹⁶

¹⁹³ Motor Accident Authority, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013.

¹⁹⁴ Motor Accidents Injuries Amendment Bill 2013.

¹⁹⁵ Motor Accident Authority, *CTP Reform* (18 March 2014) <http://www.maa.nsw.gov.au/default.aspx?MenuID=515>

¹⁹⁶ Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 5.

- 4.41 In addition to the pricing strategy, the MAA has released a number of other documents regarding CTP reform on its website.¹⁹⁷

Committee comment

- 4.42 The committee is pleased that the government agreed to publish its CTP reform paper prior to introducing the Motor Accidents Injuries Amendment Bill 2013 in parliament.
- 4.43 The committee notes that the Minister for Finance and Services and the MAA consulted with stakeholders on the proposed reforms through a submission process before the bill was introduced and then through a roundtable discussion shortly before the bill was discharged.
- 4.44 Although consultation took place, the committee acknowledges the point raised by the New South Wales Bar Association that the roundtable would have been more effective had it been held at the start of the reform process, before the bill was introduced.

Recommendation 6: Motor Accidents Compensation Regulation 2005

MAA 11th review recommendation 6: That the Minister expedite the remaking of the Motor Accidents Compensation Regulation 2005, rather than waiting until its expiry on 1 September 2012.

- 4.45 Legal costs under the scheme are regulated by the Motor Accidents Compensation Regulation 2005. This has been a significant area of concern for legal association stakeholders since the *Sixth Review Report*.¹⁹⁸
- 4.46 The regulation governs the maximum costs recoverable by legal practitioners for services provided to a claimant or an insurer in any motor accident matter. The committee expressed concern in its *11th Review Report* that the regulation has not kept up-to-date with contemporary legal fees. The Australian Lawyers Alliance observed that as a result, injured people are ‘subsidising the scheme by having to pay a far greater proportion of their legal costs than they should have to pay – more than 50 per cent of their total legal costs in most cases’.¹⁹⁹
- 4.47 The committee noted the MAA had studied the impact of cost regulation over many years and recognised its limitations, but had not fixed it in a timely manner.²⁰⁰
- 4.48 Both the *10th* and *11th Review Reports* contained recommendations about remaking the regulation. In the *10th Review Report* the committee recommended a working party be

¹⁹⁷ Further answers to questions on notice, Motor Accidents Authority, p 3.

¹⁹⁸ 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, May 2005.

¹⁹⁹ Submission 10, Australian Lawyers Alliance, p 19.

²⁰⁰ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 48.

established to review the regulation.²⁰¹ In the *11th Review Report* the committee was critical that the regulation had not been revised on 1 September 2011 and recommended it be revised as early as possible before September 2012.²⁰²

- 4.49** The government responded that the MAA would continue its work remaking the regulation in consultation with stakeholders and noted that the extent the regulation would require amendment was dependent on the outcome of the pricing strategy.²⁰³
- 4.50** During this review, the MAA advised the remaking of the regulation was initially delayed due to the outcome of the pricing strategy, and then the introduction of the Motor Accident Injuries Amendment Bill 2013, which would have had significant impacts on provisions in the regulation. The MAA stated work had commenced in 2013 to align the regulation with the bill.²⁰⁴
- 4.51** The MAA further advised that, as the bill has now been withdrawn, work has recommenced on remaking the regulation under the current Act. The MAA anticipated the regulation will be remade before September 2014 when it expires.²⁰⁵ In May 2014, the MAA advised that consultation with key stakeholders will commence in the near future.²⁰⁶
- 4.52** In the current review, the Law Society of New South Wales, the Australian Lawyers Alliance and the Bar Association all remained significantly concerned that the regulation has not been remade and requested that it be remade urgently.²⁰⁷

Committee comment

- 4.53** The committee also remains concerned that the Motor Accidents Compensation Regulation 2005 has not been revised, and instead, has been extended on a number of occasions in a form that adversely impacts on injured people and the efficiency of the scheme.
- 4.54** The committee accepts that recent delays have been caused by the development and introduction of the Motor Accident Injuries Amendment Bill 2013 which would have had a significant impact on the regulation. However, it is now almost a year since that bill was discharged and the regulation has still not been remade.

²⁰¹ Standing Committee on Law and Justice, NSW Legislative Council, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Tenth Report*. Report 43, October 2010, p xviii.

²⁰² Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 48.

²⁰³ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 3.

²⁰⁴ Answers to pre-hearing questions on notice, Motor Accidents Authority, 14 February 2014, pp 12-13.

²⁰⁵ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 12-13.

²⁰⁶ Further answers to questions on notice, Motor Accidents Authority, p 3.

²⁰⁷ Submission 8, Law Society of New South Wales, p 7; Submission 10, Australian Lawyers Alliance, p 19; Submission 11, Bar Association of New South Wales, p 14.

- 4.55 The committee notes the MAA anticipates the regulation will be remade before it expires in September 2014 and accordingly recommends that the Minister for Finance and Services ensure this occurs.

Recommendation 9

That the Minister for Finance and Services ensure the Motor Accidents Compensation Regulation 2005 is remade by no later than 1 September 2014, and that it provide for realistic and fair levels of legal costs in motor accident matters.

Recommendation 7: Data on amount of compensation received once legal costs have been deducted

MAA 11th review recommendation 7: That the NSW Government pursue amendments to the *Motor Accidents Compensation Act 1999* to provide the Motor Accidents Authority with the authority to collect and disclose data on the amount of compensation a claimant receives once legal costs have been deducted.

- 4.56 The committee's *11th Review Report* noted the working party to review the Motor Accidents Compensation Regulation 2005, established following a recommendation in the *10th Review Report*, recommended transparency about the amount of compensation a claimant received 'in hand'. The MAA stated amendments to the *Motor Accidents Compensation Act* would be required in order to provide the authority with the power to collect and disclose data on the amount of compensation a claimant receives once legal costs have been deducted. The committee recommended the Act be amended to provide this.²⁰⁸
- 4.57 The government's response did not specifically express support for this recommendation. However, it stated the government was committed to ensuring greater transparency regarding the amount of compensation claimants receive when legal costs and other deductions were made and that the MAA would take the committee's concerns into consideration in the development of the CTP pricing strategy.²⁰⁹
- 4.58 These amendments have not been made to the *Motor Accidents Compensation Act*, nor did the Motor Accidents Injuries Amendment Bill 2013 contain the committee's recommended amendments.
- 4.59 In the current review, the MAA advised it anticipated the 'review of the Motor Accidents Compensation Regulation 2005 will consider an assessment of possible options for monitoring legal costs in motor accident matters'.²¹⁰

²⁰⁸ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 47-48.

²⁰⁹ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, pp 3-4.

²¹⁰ Further answers to questions on notice, Motor Accidents Authority, p 4.

Contracted out legal costs

- 4.60** The Insurance Council of Australia expressed concern that contracted out legal costs under the scheme are not reported on anywhere.²¹¹
- 4.61** Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia informed the committee that the contracted out legal costs are between claimants and their lawyers and that the extent of these costs are not publically known:
- There is another component, the unregulated legal costs. These costs are between the claimant and their own lawyers. These costs are not currently reported or collected by the scheme. Insurers have no awareness of these costs. I am led to understand that under our current legal arrangements we cannot know those costs at this time.²¹²
- 4.62** These costs are different to the publically reported legal costs which have shown to be 12 per cent of average scheme costs from 2000 to 2012 (see Figure 2 in chapter 3).²¹³
- 4.63** The Insurance Council of Australia asserted that if these additional contracted out legal costs were reported on, the scheme would be even more inefficient.²¹⁴ This view was shared by the MAA in its paper on CTP reforms to the scheme.²¹⁵
- 4.64** The Insurance Council of Australia called for transparency of all legal costs in the scheme and advocated for mandatory disclosures of solicitor-client costs to be made to the MAA and for these costs be reported in a manner similar to all other costs in the scheme.²¹⁶

Committee comment

- 4.65** Following the discharge of the Motor Accidents Injuries Amendment Bill 2013, the committee continues to urge the NSW Government to implement recommendation 7 from the 11th review to provide the MAA with the power to collect and disclose data on the amount of compensation a claimant receives once legal costs have been deducted.
- 4.66** As part of this process, the committee encourages the MAA to consider the suggestion by the Insurance Council of Australia to report on contracted out legal costs when it reports on scheme efficiency.
- 4.67** The committee also urges the MAA to review the trend of the frequency, cost and efficacy of legal representation for claimants and make recommendations for ensuring claimants are not disadvantaged by unwarranted legal representation.

²¹¹ Evidence, Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia, 7 March 2014, p 57.

²¹² Evidence, Mr Mobbs, 7 March 2014, p 57.

²¹³ Evidence, Mr Mobbs, 7 March 2014, p 57.

²¹⁴ Submission 6, Insurance Council of Australia, p 6.

²¹⁵ MAA, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, February 2013, p 6.

²¹⁶ Submission 6, Insurance Council of Australia, pp 6-7.

Recommendation 8: Physiotherapy review forms

MAA 11th review recommendation 8: That the Motor Accidents Authority, in consultation with appropriate stakeholders, review the Physiotherapy Notice of Commencement and Physiotherapy Review Forms.

- 4.68** In the *11th Review Report*, the committee recommended the MAA review the documents required to be submitted to insurers by physiotherapists: the Physiotherapy Notice of Commencement and Physiotherapy Review Forms. This was due to concerns by the Australian Physiotherapy Association that reimbursement of fees varies between insurers, and in a majority of cases, physiotherapists are paid at a lower rate than their normal fees, despite the additional time and expertise required to treat motor vehicle accident patients. The association argued that the forms should be amended to include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.²¹⁷
- 4.69** In its response, the government advised the MAA was considering a review of its communication guidelines between allied health practitioners and insurers. It envisaged there would be discussions with WorkCover NSW to develop a consistent approach, including consideration of the forms. The government stated the MAA planned to ‘commence discussions with relevant stakeholders in the near future to progress this work’ and the Australian Physiotherapy Association would be consulted as part of the process.²¹⁸
- 4.70** In the current review, the MAA informed the committee that it had met with the Australian Physiotherapy Association and had formed a Service Provider Guides working group, which included a nominee from the association. The working group is currently ‘streamlining communications between providers and insurers so as to facilitate faster access to approved treatment by injured people’ and will undertake a review of the forms.²¹⁹ The working group has met regularly and is working towards developing revised forms by the end of 2014.²²⁰
- 4.71** The Australian Physiotherapy Association reiterated its position that physiotherapists feel their training and expertise are devalued and the failure to recognise their services is a significant disincentive for them to treat patients in the scheme. The association stated that if highly trained physiotherapists opt not to treat patients injured in motor vehicle accidents it might impede patient recovery.²²¹
- 4.72** The association also felt that higher rebates for physiotherapists are unlikely to lead to increased costs for the MAA, as patients treated by a physiotherapist require fewer treatments overall to achieve recovery.²²²

²¹⁷ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 50-51.

²¹⁸ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 4.

²¹⁹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 15.

²²⁰ Further answers to questions on notice, Motor Accidents Authority, p 4.

²²¹ Submission 9, Australian Physiotherapy Association, pp 1-2.

²²² Submission 9, Australian Physiotherapy Association, pp 1-2.

- 4.73** In response to this, the MAA pointed out it does not prescribe a fee schedule for physiotherapy services; it is a matter for insurers. Further, the MAA noted the Act ‘requires insurers to make “reasonable and necessary” payments in respect of treatment and rehabilitation expenses for motor accidents claims on an “as incurred basis” once liability for the claim has been admitted’.²²³ The Act and the Claims Handling Guidelines do not prevent insurers from developing their own payment scales in respect of treatment.²²⁴

Committee comment

- 4.74** The committee commends the work the MAA has done in consulting with stakeholders in setting up the Service Provider Guides working group to streamline communications between providers and insurers, and its undertaking to review the Physiotherapy Notice of Commencement and physiotherapy review forms.
- 4.75** However, the committee notes the ongoing concerns by the Australian Physiotherapy Association that physiotherapists are paid at a lower rate than their normal fees, despite the additional time and expertise required to treat motor accident patients. The committee acknowledges that neither the Act nor the Claims Handling Guidelines preclude insurers from developing their own payment scale, but urges the MAA to consider this matter in its consultation process with service providers and insurers.
- 4.76** As such, the committee recommends that the MAA finalise its review of the forms in consultation with stakeholders and address the concerns raised by the Australian Physiotherapy Association to include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.
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Recommendation 10

That the Motor Accidents Authority finalise the review of the Physiotherapy Notice of Commencement and Physiotherapy Review Forms in consultation with stakeholders, and in doing so, include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.

Recommendation 9: Online information for carers

MAA 11th review recommendation 9: That the Motor Accidents Authority produce and publish on its website information specifically directed to assist carers.

- 4.77** The committee’s *11th Review Report* noted concerns from Carers NSW that the MAA website contains few references to carers and there is confusion in terminology between paid care workers and carers. During that review, the MAA indicated it was updating references to

²²³ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 15.

²²⁴ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 15.

carers on its website and publications. Further to this action, the committee recommended the MAA produce and publish more information on its website to assist carers.²²⁵

4.78 The government response stated the MAA had sought a meeting with Carers NSW to identify appropriate information and links that are available to use on its website and that it would also liaise with the LTCSA to ensure there is consistency in published information.²²⁶

4.79 In the current review, Carers NSW congratulated the MAA on its efforts to recognise carers through the language on its website. However, Carers NSW expressed disappointment there is still limited reference to (and information for) carers, and the references and information that do exist are difficult to find.²²⁷

4.80 Further to these comments, Carers NSW proposed the MAA produce and publish information on its website linking carers to appropriate services and support through an online fact sheet:

Carers NSW also recommends... that the MAA and LTCSA produce and publish information on their websites linking carers to appropriate services and support. Carers NSW, other non-government organisations and the Commonwealth Respite and Carelink Centres provide a range of services and supports for carers, including counselling and respite. The Department of Human Services also provides the Carer Payment and/or Carer Allowance to eligible applicants, but not all carers are aware of these opportunities for income support.

A simple web page or downloadable fact sheet with information about who carers are and the services and supports that exist could be extremely helpful for carers...In addition to publishing this resource on the LTCSA and MAA websites, it could be distributed to prospective, new and existing families to provide better referral channels to existing services and supports.²²⁸

4.81 In response to these concerns, the MAA confirmed it had 'placed information about Care and Support Services on its website, but notes the concerns of Carers NSW about its prominence and limitations'.²²⁹ The MAA stated that it is 'reviewing its website content as part of an upgrade and will ensure that information specifically designed to assist carers is reviewed and easily accessible'.²³⁰ As part of this process, the MAA has undertaken to meet with Carers NSW and liaise with the LTCSA to ensure there is consistency in the information provided by the authorities.²³¹

²²⁵ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 52-53.

²²⁶ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 4.

²²⁷ Submission 3, Carers NSW, pp 5-6.

²²⁸ Submission 3, Carers NSW, p 6.

²²⁹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 12.

²³⁰ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 12.

²³¹ Further answers to questions on notice, Motor Accidents Authority, p 5.

Committee comment

- 4.82** The committee notes that the recommendation made in the previous review for the MAA to produce and publish information on its website specifically directed to assist carers does not appear to have been acted upon effectively.
- 4.83** We are encouraged that some progress has been made, but note the disappointment by Carers NSW that the website still contains limited reference to carers, and that this information is difficult to find. The committee supports the suggestion by Carers NSW for the MAA to include a fact sheet about carers on its website.
- 4.84** The committee acknowledges the MAA is currently reviewing its website content and as part of this process we recommend that it work with Carers NSW to produce and publish information specifically designed to assist carers, including links to other appropriate services and the production of an online fact sheet.

Recommendation 11

That the Motor Accidents Authority work with Carers NSW to produce and publish an online fact sheet containing information to assist carers, including links to other appropriate services and support.

Recommendation 10: Damages for non-economic loss

MAA 11th review recommendation 10: That the NSW Government review the threshold for access to damages for non-economic loss under the Motor Accidents Scheme in order to achieve a better balance between scheme efficiency and compensation.

That the Motor Accidents Authority publish a discussion paper outlining the issues relating to access to non-economic loss damages. This discussion paper should include an actuarial analysis of the ramifications to the scheme, claimants, CTP pricing and insurers of:

- changing the threshold to access non-economic damages to that of s 16 of the *Civil Liability Act 2002*
- lowering the ten per cent whole person impairment threshold; and
- allowing both physical and psychological injuries to be aggregated to determine the whole person impairment threshold.

The Authority should make this review a priority, and publish the discussion paper, invite comment and pursue any subsequent legislative amendment during 2012.

- 4.85** Under s 131 of the *Motor Accidents Compensation Act*, a person injured in a motor vehicle accident is not entitled to claim for damages for non-economic loss unless the degree of their permanent impairment as a result of the injury is greater than ten per cent.²³² This test is

²³² *Motor Accidents Compensation Act 1999* (NSW) s 131.

referred to as the ten per cent whole person impairment threshold. The Medical Assessment Service (MAS) determines disputes about the degree of permanent impairment of injuries.

- 4.86** Stakeholder dissatisfaction with the threshold was examined in detail in the *Eighth, Ninth, 10th and 11th Review Reports*. For a detailed look at this issue please see the *11th Review Report*.²³³
- 4.87** In the *11th Review Report*, the committee noted the threshold was introduced to maintain premium affordability. However, the committee was concerned it did not strike the right balance between scheme efficiency and affordability on the one hand, and adequate compensation for pain and suffering on the other.²³⁴
- 4.88** Legal associations proposed the threshold test should be made the same as s 16 of the *Civil Liability Act 2002*, which provides the threshold for entitlement to compensation for pain and suffering is when the severity of the non-economic loss is at least 15 per cent of a ‘most extreme case’ which considers the most extreme result possible given the plaintiff’s injuries. In many cases quadriplegia or gross traumatic brain injury constitute the ‘most extreme case’.²³⁵
- 4.89** The *11th Review Report* noted opposition to this proposal from medical professionals and the MAA. Medical professionals argued the “most extreme case” threshold has no objectivity while the MAA referred to a 2005 study that estimated the CTP premium would rise by \$116 if the different threshold was implemented.²³⁶
- 4.90** While the committee acknowledged it is unclear what the ramifications would be of introducing such a change to the scheme, it recommended the MAA review the threshold and publish a discussion paper outlining the issues relating to access to non-economic loss damages.
- 4.91** The government responded that the MAA would take the committee’s recommendation into consideration in the development of the CTP pricing strategy and include these matters in the public consultation process. It noted the Motor Accidents Council had formed a sub-committee, comprising members from the legal, insurance, allied health and medical industries, which planned to review issues and options regarding permanent impairment and provide advice to the Council and the MAA.²³⁷
- 4.92** In the current review, the MAA advised the sub-committee had commenced its review but did not complete it because the Motor Accidents Council was abolished. The sub-committee had liaised with the MAA and planned to seek input from a group of expert medical assessors to help identify issues in the current impairment guidelines.²³⁸

²³³ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 59-69.

²³⁴ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 68-69.

²³⁵ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 65-66.

²³⁶ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 67.

²³⁷ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 5.

²³⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 14.

- 4.93** Evidence was also received during this review regarding the Motor Accident Injuries Amendment Bill 2013. The Bar Association noted that the ‘heart’ of the proposed no fault scheme in the bill was the use of whole person impairment to determine ongoing access to benefits. The association challenged the view in the CTP Issues Paper published for the roundtable that an injured person, under the 10 per cent threshold, was generally able to return to a normal and productive life.²³⁹
- 4.94** The Bar Association argued that this was not the reality as 90 per cent of people injured in motor accidents do not get over the threshold. This included ‘some with very serious injuries that change their lives forever’.²⁴⁰ In its concluding remarks the association stated:
- The talismanic faith of the MAA that those under 10 per cent whole person impairment are not seriously injured is in no way justified or justifiable.²⁴¹
- 4.95** Dr Andrew Morrison SC, Member, Australian Lawyers Alliance argued against the use of a whole person impairment threshold, stating that it is luck whether a person will be assessed as being over or under the threshold:
- Whole person impairment is assessed under tables which were expressly never intended for this purpose which create great injustice and which are ultimately quite capricious. The fact of the matter is that two different competent practitioners can come up with results that are widely different depending upon their point of view, their background and their degree of emphasis. That means that ultimately, and particularly in the area at around about the 10 per cent, it is a matter of pure luck whether a person will get over or under the 10 per cent and yet very important consequences flow from that. If the amending legislation had gone through even greater consequences would have flowed. That is of great concern.²⁴²
- 4.96** The Australian Lawyers Alliance noted that the review of the threshold for access to damages for non-economic loss recommended by this committee was not carried out, and submitted ‘it should be carried out as a matter of priority’.²⁴³
- 4.97** Following the discharge of the Motor Accident Injuries Amendment Bill 2013, the MAA indicated it would conduct a review of the Permanent Impairment Guidelines in 2015 to address anomalies, provide greater clarity and improve consistency of impairment assessments within the current legislation.²⁴⁴
- 4.98** Another issue, raised by legal associations, is that the MAS is costly and causes delays. Legal associations argued that it be abolished. The Law Society suggested that Claims Assessment Resolution Services (CARS) assessors could replace MAS assessors as they have the experience and expertise to make assessments of non-economic loss (as per s 16 of the *Civil Liability Act*, which the association, as mentioned earlier, sought to have replace the whole

²³⁹ Submission 11, Bar Association of New South Wales, p 9; NSW Government, *CTP Issues Paper: NSW Government CTP Roundtable*, 24 July 2013, p 21.

²⁴⁰ Submission 11, Bar Association of New South Wales, pp 9-10.

²⁴¹ Submission 11, Bar Association of New South Wales, p 10.

²⁴² Evidence, Dr Andrew Morrison SC, Member, Australian Lawyers Alliance, 7 March 2014, p 21.

²⁴³ Submission 10, Australian Lawyers Alliance, p 10.

²⁴⁴ Further answers to questions on notice, Motor Accidents Authority, p 6.

person impairment threshold).²⁴⁵ Further dissatisfaction with the MAS is discussed below in the section on legal causation.

Committee comment

- 4.99** The committee acknowledges that the threshold for access to damages for non-economic loss under s 131 of the *Motor Accidents Compensation Act* is a matter of ongoing concern for legal associations.
- 4.100** The committee commends the MAA for establishing a sub-committee to the Motor Accidents Council to review issues and options regarding permanent impairment. It is unfortunate that the Motor Accidents Council was abolished before it reported.
- 4.101** Considering there is still stakeholder dissatisfaction with the current system for claiming damages for non-economic loss, the committee recommends, similar to the *11th Review Report*, that the MAA publish a discussion paper outlining the issues and an actuarial analysis of the ramifications of changing the threshold, as suggested by legal associations.

Recommendation 12

That the Motor Accidents Authority conduct a review and publish a discussion paper on the issues relating to access to non-economic loss damages, and that these be considered in any legislative review. The discussion paper should include an actuarial analysis of the ramifications to the scheme, claimants, CTP pricing and insurers of:

- changing the threshold to access non-economic damages to that of section 16 of the *Civil Liability Act 2002*
 - lowering the ten per cent whole person impairment threshold
 - allowing both physical and psychological injuries to be aggregated to determine the whole person impairment threshold.
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Recommendation 11: Legal causation

MAA 11th review recommendation 11: That the Motor Accidents Council form a sub-committee to review, analyse and recommend a course of action to the Motor Accidents Authority on the issue of legal causation.

- 4.102** In the *11th Review Report*, the committee received evidence from legal associations regarding the ability of MAS Assessors to make assessments about causation. Causation refers to whether the treatment provided to an injured person relates to the injury caused by the motor vehicle accident. As the committee did not receive a great deal of evidence on the matter it recommended the Motor Accidents Council form a sub-committee to review causation.²⁴⁶

²⁴⁵ Submission 8, Law Society of New South Wales, p 5.

²⁴⁶ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 70-72.

- 4.103** The government responded that the issue of causation would be considered in the development of the CTP pricing strategy, and the Motor Accidents Council had been encouraged to participate and provide feedback. As that process was occurring it did not see it necessary to form a sub-committee. However, the government did support the establishment of a sub-committee if required when the strategy was finalised.²⁴⁷
- 4.104** During this review, the MAA advised that a sub-committee explored the issue of causation, however, it did not have the opportunity to make any recommendations prior to the abolishment of the Motor Accidents Council. As in the 11th review, the MAA maintains that '[q]uestions of reasonable and necessary treatment, causation and the degree of permanent impairment of injuries are matters of specialist medical opinion, which should be addressed by appropriately qualified medical and allied health specialists'.²⁴⁸
- 4.105** The MAA commented that it supports the role of assessors and that the authority is required to appoint suitably qualified persons and consider their expertise, independence and credibility within their area of specialty. Each person is accredited to assess different types of disputes and receive regular training in connection with their role.²⁴⁹
- 4.106** The government did not seek to change the principle that causation is solely a matter of specialist medical opinion when it introduced the Motor Accident Injuries Amendment Bill 2013.²⁵⁰
- 4.107** The MAA asserted that although it meets with legal associations at a quarterly forum, the issue of causation has not been raised as a matter of concern.²⁵¹
- 4.108** Legal associations remained unhappy during this review with the issue of causation. For instance, the Australian Lawyers Alliance argued MAS assessors do not apply the test for causation correctly:

MAS assessors consistently fail to apply legal tests of causation when making their determinations. The issue of causation involves both medical and legal questions. The law requires that an act of negligence be a cause of the injury, not the cause. MAS assessors repeatedly apply the incorrect test of causation and this has resulted in a dramatic increase in the need for judicial review of MAS assessments.²⁵²

- 4.109** Dr Andrew Morrison SC, Member, Australian Lawyers Alliance expanded on this point and argued medical practitioners tend to look for pre-existing causes:

It is a real problem. The law says that the test of liability is whether or not the motor accident is a cause of the injury. The tendency is for medical practitioners, because of their training and background, to look for the cause. A person who has a pre-existing back problem which is exacerbated in the accident will find the medical practitioner

²⁴⁷ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, p 5.

²⁴⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 10.

²⁴⁹ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 10-11.

²⁵⁰ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 10-11.

²⁵¹ Further answers to questions on notice, Motor Accidents Authority, p 6.

²⁵² Submission 10, Australian Lawyers Alliance, p 11.

weighing up which is the greater cause. That is not the test. If the person was functioning before and is not functioning after the motor vehicle accident then the accident is both a cause and in that case the immediate cause of the disability.²⁵³

- 4.110** Legal associations argued this contributed to the overall ineffectiveness of MAS, and that ‘part of the reason that scheme inefficiency blows out to lengthy periods is that some cases go to MAS over and over again, as either the claimant or insurer keep fighting to reverse an initial MAS assessment’.²⁵⁴

Committee comment

- 4.111** The committee commends the MAA for establishing a sub-committee to the Motor Accidents Council to review, analyse and recommend a course of action on the issue of causation.
- 4.112** The committee accepts that once the Motor Accidents Council was abolished, the avenue of reviewing causation recommended by the committee was no longer available.
- 4.113** The committee notes the MAA maintains that causation is a matter of specialist medical opinion, however, we have not seen any evidence to support this view. Therefore, the committee recommends that the Minister for Finance and Services ensure that a review of causation is undertaken, and the report and recommendations be published. We recommend that the review be undertaken by the newly established advisory committee (see recommendation 1), however, if that committee is not established, stakeholders should be widely consulted.

Recommendation 13

That the Minister for Finance and Services ensure that a review of causation is undertaken, and that the report and recommendations be published.

²⁵³ Evidence, Dr Morrison SC, 7 March 2014, p 21.

²⁵⁴ Submission 11, Bar Association of New South Wales, pp 14-15.

Recommendation 12: Settlement conferences

MAA 11th review recommendation 12: That the Motor Accidents Authority meet with the New South Wales Bar Association and other stakeholders as soon as practicable with a view to finding a solution to the issue of pre-settlement conferences under section 89A of the *Motor Accidents Compensation Act 1999*.

- 4.114** Section 89A of the *Motor Accidents Compensation Act* was introduced in 2008 and provides for a compulsory settlement conference between parties before proceedings to the Claims Assessment Resolution Service. The amendments were designed to improve opportunities for early resolution of a claim.
- 4.115** However, in the *11th Review Report* the committee heard evidence from legal association stakeholders that complying with s 89A had caused considerable expense for the parties as the requirements of the Act are difficult to comply with at reasonable cost. Parties had resorted to conducting pre-settlement conferences to avoid the onerous burden of the formal “informal settlement” conference.²⁵⁵
- 4.116** The government’s response noted the MAA held regular meetings with the Law Society and Bar Association and the topic had been discussed with an agreement to meet further. Input had also been invited from the MAAS so all aspects could be canvassed. The Minister instructed the MAA to take the committee’s concerns on this issue into consideration in the development of the pricing strategy.²⁵⁶
- 4.117** During the current review, the MAA noted the Motor Accident Injuries Amendment Bill 2013 had proposed significant reforms to the current requirements under Division 1A of the Act, including the removal of s 89A. Following the discharge of the bill, the MAA stated it would ‘conduct further consultation with stakeholders in 2014 with a view to streamlining the process within the constraints of the current legislation’.²⁵⁷
- 4.118** When asked during evidence to name the key amendments he would propose to the scheme, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society stated it would be to remove the pre-filing requirements in ss 89A to 89E:

If there is one on behalf of all lawyers in New South Wales it would be to remove the pre-filing requirements in sections 89A to 89E. It gets mentioned every year, or at least for the last couple of standing committees, and I appreciate that it is a legislative fix but it is a huge issue.²⁵⁸

²⁵⁵ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 75-77.

²⁵⁶ Government response to the eleventh review of the exercise of the functions of the MAA and the MAC, 20 June 2012, pp 5-6.

²⁵⁷ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 9.

²⁵⁸ Evidence, Mr Tim Concannon, Solicitor, Injury Compensation Committee, Law Society of New South Wales, 7 March 2014, p 17.

- 4.119 Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance agreed that removing these sections would be a quick and easy fix and should be a priority:

The first quick and easy fix is to remove section 89A to 89E...Those sections were inserted into the Act and can be removed just as easily. They do not serve any constructive purpose. They only create extra work, extra costs and delay. That would be something that could be done quickly and easily and would certainly be a priority.²⁵⁹

Committee comment

- 4.120 The committee notes that the discharged Motor Accident Injuries Amendment Bill 2013 had proposed significant legislative changes regarding settlement conferences, including the removal of s 89A.
- 4.121 The committee acknowledges that this is one of the key amendments to the scheme that legal associations have repeatedly advocated for, as compulsory settlement conferences have not worked as intended. Instead of increasing efficiency, settlement conferences have been costly and time-consuming.
- 4.122 As such, the committee recommends that the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.

Recommendation 14

That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.

Late claims

- 4.123 The final matter for consideration in this chapter is the issue of late claims. While the committee did not make a recommendation about late claims in the *11th Review Report*, it did undertake to assess late claims in this review, following the completion of the MAA's CARS review. The CARS review was to develop an appropriate response to concerns with the late claims process.²⁶⁰
- 4.124 The *Motor Accidents Compensation Act* provides that a claim must be made within six months after the date of a motor accident. However, under s 73, a late claim may be made after more than six months if the injured person is able to provide a full and satisfactory explanation for the delay in submitting the claim to the insurer. An insurer can challenge the validity of the explanation and this is reviewed by a CARS assessor. The MAA stated the rationale behind

²⁵⁹ Evidence, Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, 7 March 2014, p 25.

²⁶⁰ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, p 75.

the provision was ‘to encourage the early and appropriate treatment and rehabilitation of people injured in motor vehicle accidents, consistent with the objects of the Act’.²⁶¹

- 4.125** The *10th Review Report* noted evidence from the New South Wales Bar Association that the late claims process had become a ‘mess’ and what constituted a full and satisfactory explanation was open to interpretation.²⁶² In the *11th Review Report*, Mr Nicholls agreed that reform of the late claims process was required.²⁶³
- 4.126** There have been a number of developments in relation to late claims since the *11th Review Report*.
- 4.127** Firstly, the CARS review was completed in 2011, but was never made publically available. The MAA advised that the recommendations from the 2011 CARS review were considered as part of the pricing strategy, which led to recommendations for significant scheme reform.²⁶⁴
- 4.128** The Motor Accident Injuries Amendment Bill 2013 sought to amend the late claims process to extend the period in which a claim could be made without explanation from six months to 12 months. The bill also proposed to reduce the insurer’s obligations to make initial back-payments to persons making late claims, thereby encouraging early lodgement.²⁶⁵
- 4.129** In the current review, Mr Concannon expressed his support for the proposed amendment in the now lapsed bill²⁶⁶ and submitted that such an amendment would significantly reduce the number of late claims made.²⁶⁷
- 4.130** In January 2014, the MAA informed this committee that it was updating the 2011 CARS review and considering aspects that could be acted upon without legislative change.²⁶⁸
- 4.131** Mr Cameron Player, Director, Assessment Services, MAA said that changing the timeframe may not necessarily solve the late claims problem and outlined methods the MAA were considering implementing, including encouraging use of the Accident Notification Form and simplifying the basic claims form:

I think there could be better ways. I think the question is how you provide a holistic approach to that issue, because if you are simply moving the timeframe then I am not sure that is going to solve your problem... The Accident Notification Form ... has actually been very good at encouraging earlier lodgement of notifications... The second is potential changes around the claim form. We have a long, complicated claim form at the moment and the MAA is talking about doing some work to reduce the complexity of that form and make it simpler. That in itself will get the claims in

²⁶¹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 8.

²⁶² Standing Committee on Law and Justice, *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council, Tenth Report*. Report 43, October 2010.

²⁶³ Standing Committee on Law and Justice, *Eleventh Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, Report 48, December 2011, pp 74-75.

²⁶⁴ Answers to pre-hearing questions on notice, Motor Accidents Authority, pp 7-8.

²⁶⁵ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 8.

²⁶⁶ Evidence, Mr Concannon, Solicitor, 7 March 2014, p 18

²⁶⁷ Submission 8, Law Society of New South Wales, p 6.

²⁶⁸ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 8.

quicker and earlier as well, which again will help to reduce the potential for late claim disputes.²⁶⁹

4.132 The updated CARS review, provided to this committee in March 2014, recommended that the basic MAA claims form be shortened and simplified and the periods and obligations regarding making claims be changed as follows:

- First, section 72 should be amended to read: “A claim must be made as soon as possible after the relevant date for the claim but in any event within 4 months after the relevant date”.
- Second, fresh measures should be adopted to facilitate the early notification of claims via hospitals and doctors rooms, accident reporting to the police and other information channels.
- Third, any late notifications should be visited by a modest diminution in the amount of any compensation that may be assessed or awarded, plus a modest reduction of the regulated or agreed legal costs if it is found that a legal representative was responsible for the delay.
- Fourth, any claim brought later than 12 months after the relevant date should require a full and satisfactory explanation for the delay before being allowed.²⁷⁰

4.133 One point raised by the MAA is that only a small amount of late claims are being denied by insurers. The MAA reported the following figures from 2012/13:

Of the 14,376 claims made in 2012/13, 14.4 per cent (2,075 claims) were made late. 46.4 per cent of these late claims (964 claims) were more than six months late. Of all late claims made, 10.4 per cent (217 claims) were rejected by insurers.

60 late claims disputes were determined at MAAS in 2012/13 by way of special assessment, down from 113 such disputes in 2010/2011. Of these 60 disputes, 50 were resolved in favour of the claimant (i.e. the late claim may be made).

The above figures suggest that only a small proportion of late claims are denied by insurers on the grounds that the claimant has lodged the claim late and cannot provide a full and satisfactory explanation for the delay.²⁷¹

4.134 Ms Gumbert acknowledged these figures and questioned if the lengthy process of disputing late claims was therefore worth it for only 10 cases:

If that is the case and there were so many late claims made obviously in the first place that it then had to go through this process of providing explanations and at the end of the day only 10 were disallowed to be made, is that really worth it? I mean, is that worth the vast cost, time and resources that go into this to knock out 10 claims from the scheme?²⁷²

²⁶⁹ Evidence, Mr Cameron Player, Director, Assessment Services, Motor Accidents Authority of New South Wales, 17 March 2014, p 34.

²⁷⁰ Transformation Management Services, *Claims Assessment & Resolution Service Strategic (CARS) Review 2011, update February 2014*, pp xii-xiii.

²⁷¹ Answers to pre-hearing questions on notice, Motor Accidents Authority, p 8.

²⁷² Evidence, Ms Gumbert, 7 March 2014, p 23.

- 4.135** In reference to this process, Australian Lawyers Alliance outlined the large amount of work involved in preparing a ‘full and satisfactory explanation’:

There is a huge amount of work that goes into preparing a full and satisfactory explanation for a delay in lodging a claim. The explanations are required to go into minute detail regarding all time periods between the date of the accident and the date that the claim was lodged. Documents need to be obtained to support the explanation. The preparation of the explanation is time consuming and costly. Most claimants would be unable to provide the requisite explanation to the standard required without legal assistance.²⁷³

- 4.136** In response to this issue, Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia stated that insurers are merely following the law by disputing late claims:

It is the insurers’ duty to apply the law. If the law says that we need to decline the claim after a period of time then we decline it. The law then provides a mechanism for the person who has had a claim declined to seek leave to bring the claim late. The fact is that we are applying the law as it stands and the claimant is then entitled to an appeal mechanism; I do not think there is anything scary about that.²⁷⁴

- 4.137** The Insurance Council of Australia commented insurers will work within any regulatory framework, however, ‘any extension to the time limit for lodging claims has potential to place upward pressure on claims duration, superimposed inflation and premiums’.²⁷⁵

Committee comment

- 4.138** The committee is pleased the MAA is pursuing the issue of late claims after the discharge of the Motor Accidents Injuries Amendment Bill 2013 by pinpointing measures within the current legislative framework to help improve the process. The committee encourages the MAA to consult with stakeholders on these proposals.

- 4.139** However, the committee notes there is stakeholder support for the proposal in the discharged Motor Accidents Injuries Amendment Bill 2013 to amend the late claims process by extending the period in which a claim could be made without explanation from six to 12 months. Therefore the committee recommends that the NSW Government amend the late claims process under s 73 of the *Motor Accidents Compensation Act 1999* to give effect to this proposal.

Recommendation 15

That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a claim can be made without explanation from six to 12 months.

²⁷³ Answers to questions on notice, Australian Lawyers Alliance, 9 April 2014, p 2.

²⁷⁴ Evidence, Mr Mobbs, 7 March 2014, p 52.

²⁷⁵ Answers to questions on notice, Insurance Council of Australia, 3 April 2014, pp 2-3.

Chapter 5 Future of the scheme

This chapter discusses the future of the scheme, which was an ongoing theme throughout the review. As part of this, the chapter examines an alternate scheme proposal from legal associations to expand the Accident Notification Form system.

Proposal to expand the Accident Notification Form system

5.1 Before the government introduced the Motor Accident Injuries Amendment Bill 2013, the New South Wales Bar Association, the Law Society of New South Wales and the Australian Lawyers Alliance made a joint alternate scheme proposal that included expanding the coverage of the Accident Notification Form system from \$5,000 to \$20,000 to improve efficiency, particularly in relation to smaller claims. This proposal was costed by Deloitte.

5.2 Currently, the Accident Notification Form provides for reimbursement for reasonable and necessary medical treatment expenses and payment for past loss of earnings up to a maximum total of \$5,000 in the first six months after an accident.²⁷⁶

5.3 Mr Andrew Stone, Barrister and Bar Councillor, Bar Association recommended the proposal as a way to lower legal costs in the scheme for relatively small claims:

One of the complaints that the Authority rightly makes is that with small claims in the \$20,000, \$30,000 or \$40,000 range a disproportionate benefit from them is chewed up by legal fees and they are arguing over not very much. One way in which we could move a little towards a more no-fault scheme whilst still not having to slash benefits, is in relation to expanding the Accident Notification Form.²⁷⁷

5.4 Dr Andrew Morrison SC, Member, Australian Lawyers Alliance called this proposal a ‘no-brainer’ and argued that no-one, including the legal profession, wanted a situation where legal costs are disproportionate to the compensation received:

The fact of the matter is that no-one wants to see a situation where legal costs are a disproportionate amount in relation to the ultimate benefit to the claimant. It does not reflect well on the scheme or on lawyers. Our view in the Australian Lawyers Alliance is that it is much better that that money goes directly to the claimants and that you avoid both the bureaucracy and the involvement of lawyers on both sides and the unnecessary delay and costs it imposes. It is a no-brainer.²⁷⁸

5.5 Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance argued the \$20,000 limit was appropriate as those claims are still small enough to be processed quickly and easily:

I think the \$20,000 limit would be an appropriate level because that will ensure that the claims that are quite small can just be processed quickly and easily. But once you

²⁷⁶ MAA, *Claims* (20 May 2010) <http://www.maa.nsw.gov.au/default.aspx?MenuID=89>.

²⁷⁷ Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 7.

²⁷⁸ Evidence, Dr Andrew Morrison SC, Member, Australian Lawyers Alliance, 7 March 2014, p 27.

start getting into a greater level of injury and complexity you can still ensure that people have access to legal advice.²⁷⁹

5.6 In response to this, the MAA commissioned Ernst & Young to conduct a high level review of the proposal. Ernst & Young formed the opinion there was a lack of detail as to how the proposal would operate and determined it would not result in any material savings, primarily because only five per cent of claims fall within the \$5,000 to \$20,000 range. Ernst & Young concluded that the proposal would increase scheme costs by around \$10 per green slip.²⁸⁰

5.7 As such, Mr Nicholls did not support the proposal, based on the view that few claims fall within the range suggested by the legal associations and that it would likely result in green slip prices increasing, not decreasing:

The simple reality is that there are not many claims in the current system that fall between the \$5,000 threshold and the \$20,000 mark that is being proposed. It is therefore difficult to see where the savings are going to come from and to be fair to the Bar Association and Deloitte they did not have access to the same internal data within our scheme, but our actuaries assessment is that that proposal is not going to result in a net saving; it will end up costing slightly more on the green slip.²⁸¹

5.8 The MAA informed the committee it is commencing a review of the operation of the Accident Notification Form and will welcome the input of stakeholders about how it might operate more effectively.²⁸²

Committee comment

5.9 The committee acknowledges the work conducted by legal associations regarding the proposal to expand the Accident Notification Form system to improve scheme efficiency. However, we note the finding of Ernst & Young that the proposal would not benefit the scheme.

5.10 Any change to the Accident Notification Form threshold would need to ensure there is a careful balance so that legal costs are sufficient to assist claimants to enforce their rights without unduly diminishing the amount usually provided to claimants from the scheme.

5.11 The committee commends the MAA for commencing a review of the operation of the Accident Notification Form. However, we believe the review should be conducted by the newly established advisory committee (see recommendation 1). Alternatively, if the advisory committee is not established, it is important that stakeholders be widely consulted. We will be interested to see the results of this review and encourage the MAA to publish the review's findings upon completion.

²⁷⁹ Evidence, Ms Jnana Gumbert, New South Wales State President, Australian Lawyers Alliance, 7 March 2014, p 27.

²⁸⁰ Tabled Document, Ernst & Young, *High level review of the New South Wales Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal*, 17 March 2014.

²⁸¹ Evidence, Mr Andrew Nicholls, General Manager, Motor Accidents Authority of New South Wales, 17 March 2014, p 29.

²⁸² Answers to questions on notice, Motor Accidents Authority, received 16 April 2014, p 10.

Recommendation 16

That the NSW Government ensure that the review of the operation of the Accident Notification Form is conducted by the Motor Accidents Advisory Committee (see recommendation 1), or, if that committee is not established, that stakeholders are widely consulted in the review.

Future changes to the scheme

It is perhaps unfortunate that with the bill not having gone forward the positive suggestions that everybody was behind and in favour of have been dropped, along with the more controversial ones that enjoyed little public support.²⁸³

5.12 As Mr Stone stated above, there was a level of consensus about some of the reforms proposed in the Motor Accidents Injuries Amendment Bill 2013 that have not been implemented due to the bill being discharged.

5.13 Legal associations were of the view that a number of changes could still be implemented within the current scheme, without the need for a large legislative reform process. Some of these changes were discussed in chapter 4, such as amendments to the late claims process and settlement conferences.

5.14 Mr Stone further told the committee that he had ascertained at the CTP roundtable that the proposed amendments regarding insurer profits in the lapsed bill could be implemented within the current scheme.²⁸⁴ The discharged bill proposed the following amendments regarding insurer profits, as outlined in the explanatory note:

Provisions for insurers to file their third-party premiums for consideration by the MAA will be amended to provide greater flexibility in the arrangements for the filing and commencement of premiums.

The factors to be used in the calculation of a fully funded premium for a third-party policy will be modified to ensure that insurer costs and expenses and estimates of claims costs and expenses are reasonable. The relevant MAA guidelines will have an enhanced role in the determination of whether a premium will fully fund liabilities.²⁸⁵

5.15 In general, a number of stakeholders, including Mr Stone, cautioned against wholesale reforms, arguing that the uncertainty of a new scheme would likely cause costs to rise:

... that is one of the very good arguments against changing to a new scheme because the moment you introduce a new scheme, private underwriters say, "We have got no idea how this is going to work. We have no idea how many at-fault drivers there will be. We need much bigger prudential margins because of all the uncertainty". They will tell you that for five or six years into the new scheme. Any belief that a new scheme

²⁸³ Mr Stone, 7 March 2014, p 7.

²⁸⁴ Mr Stone, 7 March 2014, p 6.

²⁸⁵ Motor Accident Injuries Amendment Bill 2013, explanatory note, pp 2-3.

will help rein in profits is fallacious because all it does is invite a larger prudential margin for years to come.²⁸⁶

5.16 This point was echoed by Ms Gumbert, who stated that as the effects of a new scheme on the claims process can only be estimated, costs could rise considerably:

I think that there is certainly no guarantee that a new scheme would be cheaper. In fact, there is a lot of concern that the new scheme would end up being more expensive than the current scheme ... There was an estimate that there would be 7,000 more claims per year in a no-fault scheme but it could of course be more than that. These are just estimates, and the scheme could blow out considerably. It would be untested. What we are dealing with at the moment is a scheme that has been tested for many years that we know with fairly good accuracy where the savings would be if we made changes...²⁸⁷

5.17 Ms Gumbert asserted that for the most part, the current scheme was effective:

In relation to the review of the motor accidents scheme, the Australian Lawyers Alliance submits that the scheme in most respects is extremely good and well-functioning. Obviously, some aspects of it can be improved.²⁸⁸

5.18 The MAA advised that following the withdrawal of the bill, the authority is continuing to progress elements of the CTP pricing review which did not require legislation through a program which seeks to improve the scheme within the current framework. Most of these have been discussed throughout the report, and include:

- giving effect to the overarching objectives of the motor accidents compensation scheme, including to provide just and fair compensation to claimants and to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents;
- simplifying the claims processes and forms to encourage early resolution and reduce Scheme costs, particularly the need for legal expenses;
- enhanced dispute resolution processes so that claims can be finalised more quickly which will lead to improved health outcomes;
- a more robust premium framework to increase transparency in price setting, reduce costs and examine options for risk management and equalisation;
- strengthening scheme guidelines to provide improved guidance for insurers, and modernise and streamline market practices; and
- remaking the Motor Accidents Compensation Regulation 2005 to provide incentives for fair and early resolution of claims and disputes.²⁸⁹

5.19 Mr Nicholls further advised that a steering committee has been put in place to review the process for any future reform to the scheme:

Obviously the Government is looking at its options following the withdrawal of the legislative package it put forward last year. It has put in place a steering committee to review that process. I do not think it is appropriate for me to comment on a process

²⁸⁶ Mr Stone, 7 March 2014, p 5.

²⁸⁷ Evidence, Ms Gumbert, 7 March 2014, p 22.

²⁸⁸ Evidence, Ms Gumbert, 7 March 2014, p 20.

²⁸⁹ Answers to questions on notice, Motor Accidents Authority, 18 June 2014, p 1.

that is running through the normal processes of government around those broader reform issues.²⁹⁰

Committee comment

- 5.20** The committee, like most inquiry stakeholders, is of the view that changes to the scheme are necessary in order to improve scheme performance. However, as Mr Paul McClintock AO, Chair, Roundtable Steering Committee noted in his report, the problem isn't whether there should be changes, the difficulty is that there are differing perspectives on the nature and degree of the changes required to reform the scheme.
- 5.21** The committee acknowledges there is currently a steering committee in place to consider reform to the scheme. We encourage the NSW Government to inform the public about this process and, when appropriate, consult with stakeholders regarding any proposed reform.
- 5.22** Finally, the committee received evidence that there are sections of the Motor Accident Injuries Amendment Bill 2013 that the majority of stakeholders agree with, including amendments to the late claims process and settlement conferences. For this reason, the committee encourages the government, as a matter of urgency, to pursue these amendments, as recommended in chapter 4.

²⁹⁰ Evidence, Mr Nicholls, 17 March 2014, p 20.

Appendix 1 Submissions

| No | Author |
|-----|--------------------------------------|
| 1 | NSW Taxi Council |
| 2 | Suncorp Group |
| 2a | Suncorp Group |
| 3 | Carers NSW |
| 3a | Carers NSW |
| 4 | Injury Management IQ |
| 5 | Motorcycle Council of NSW |
| 6 | Insurance Council of Australia |
| 6a | Insurance Council of Australia |
| 7 | Youthsafe |
| 8 | The Law Society of New South Wales |
| 8a | The Law Society of New South Wales |
| 9 | Australian Physiotherapy Association |
| 10 | Australian Lawyers Alliance |
| 10a | Australian Lawyers Alliance |
| 11 | The New South Wales Bar Association |
| 11a | The New South Wales Bar Association |
| 11b | The New South Wales Bar Association |
| 12 | Physical Disability Council of NSW |

Appendix 2 Witnesses at hearings

| Date | Name | Position and Organisation |
|---|-------------------------|---|
| 7 March 2014 Macquarie Room, State Library of New South Wales | Mr Alastair McConnachie | Deputy Executive Director, The New South Wales Bar Association |
| | Mr Andrew Stone | Barrister and Bar Councillor The New South Wales Bar Association |
| | Mr Tim Concannon | Member, Injury Compensation Committee, The Law Society of New South Wales |
| | Ms Jnana Gumbert | NSW State President, Australian Lawyers Alliance |
| | Dr Andrew Morrison SC | Member, Australian Lawyers Alliance |
| | Ms Ruth Robinson | Executive Officer, Physical Disability Council of NSW |
| | Ms Mary Maini | General Manager, CTP, Insurance Australia Group, Insurance Council of Australia |
| | Mr Tony Mobbs | General Manager, CTP, Allianz, Insurance Council of Australia |
| 17 March 2014 Hamilton Room, Level 47, NSW Trade and Investment Centre, MLC Centre, Sydney | Mr Christopher Burns | Member, Motorcycle Council of NSW |
| | Mr Guy Stanford | Member, Motorcycle Council of NSW |
| | Ms Carmel Donnelly | General Manager, Strategy and Performance, Safety, Return to Work and Support |
| | Mr Cameron Player | Director, Assessment Services, Safety, Return to Work and Support |
| | Mr Andrew Nicholls | General Manager, Motor Accidents Authority of NSW |

Appendix 3 Tabled documents

7 March 2014

Macquarie Room,

State Library of New South Wales, Sydney

1. Summary of insurer profitability projections from MAA Scheme performance reports 2003/04 to 2012/13, tendered by Mr Andrew Stone.
2. The New South Wales Bar Association, The Law Society of New South Wales and The Australian Lawyers Alliance, Joint Submission, *An Alternative Proposal to Reform the NSW CTP Scheme*, tendered by Mr Andrew Stone.
3. Deloitte, NSW CTP Costing Summary, dated 4 April 2013, tendered by Ms Jnana Gumbert.

17 March 2014

Hamilton Room,

Level 47, NSW Trade and Investment Centre, MLC Centre, Sydney

1. Claims Assessment and Resolution Service Strategic (CARS) Review 2011, update February 2014, tendered by Mr Andrew Nicholls.
2. Selected indicators of the performance of the NSW CTP Scheme to 2013, tendered by Mr Andrew Nicholls.
3. Motorcycle Experience and Premium Setting, Motor Accident Authority, Estelle Pearson March 2014, tendered by Mr Andrew Nicholls.
4. High Level review of the NSW Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal, tendered by Mr Andrew Nicholls.

Appendix 4 Answers to questions on notice

The committee received answers to questions on notice from:

- Motor Accidents Authority
- Australian Lawyers Alliance
- Insurance Council of Australia
- Motorcycle Council of NSW
- New South Wales Bar Association
- Physical Disability Council of NSW.

Appendix 5 Minutes

Minutes No. 23

Tuesday 10 September 2013

Members' Lounge, Parliament House, at 1:03 pm

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mr Moselmane (1:10 pm)

Mr Shoebridge

2. Apologies

Mrs Mitchell

3. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft Minutes No. 22 be confirmed.

4. ***

5. ***

6. 12th Review of the MAA and Fifth Review of the LTCSA

Resolved, on the motion of Mr Shoebridge: That:

- The Committee commence its twelfth review of the exercise and functions of the MAA and its fifth review of the exercise and functions of the LTCSA and that the reviews be held concurrently.
- The reviews and the call for submissions be advertised in the Sydney Morning Herald and Daily Telegraph on Wednesday 18 September 2013.
- The Committee consider the proposed stakeholder list provided by the Secretariat, and that, after input from the Committee is received by 11 September 2013, the stakeholders be invited to make submissions to the reviews.
- The Committee hold at least one day of hearings on dates to be confirmed by the Secretariat in consultation with the Chair and subject to the availability of members and witnesses.
- Representatives of the MAA and the LTCSA be invited to appear as witnesses along with any other witnesses determined by the Secretariat in consultation with the Chair and the Committee.
- The questions on notice process be conducted prior to the hearings as has occurred in previous reviews, with questions submitted to the MAA and LTCSA following the tabling of the Authorities' 2012-13 Annual Reports in the House.

Mr Moselmane joined the meeting.

7. ***

8. Adjournment

The Committee adjourned at 1.17 pm, until Monday 14 October 2013 at 2:30 pm.

Teresa McMichael
Committee Clerk

Minutes No. 26

Friday 15 November 2013

Room 1153, Parliament House, 10.00 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. ***

3. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 25 be confirmed.

4. ***

5. ***

6. 12th Review of the MAA and Fifth Review of the LTCSA

6.1 Submissions

The Committee noted that the following submissions were published by the Committee Clerk under the authorisation of an earlier resolution:

- MAA12: Submission Nos 1-9
- LTCSA5: Submission Nos 1-7.

6.2 Hearings

Resolved, on the motion of Mr Moselmane: That the Committee hold public hearings on 7 March and 17 March 2014 (reserve date).

6.3 Call for supplementary submissions

Resolved, on the motion of Mr MacDonald: That, following the tabling of the MAA and LTCSA 2012-13 Annual Reports in the House, submission authors to the reviews be invited to make a supplementary submission by Friday 31 January 2014 to address any issues arising from the Annual Reports.

7. ***

8. Adjournment

The Committee adjourned at 2.49 pm *sine die*.

Teresa McMichael
Clerk to the Committee

Minutes No. 27

Wednesday 27 November 2013

Members' Lounge, Parliament House, 1.11 pm

1. Members present

Mr Clarke, *Chair*
Mr Primrose, *Deputy Chair*
Mr MacDonald
Mrs Mitchell
Mr Moselmane
Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That draft Minutes No. 26 be confirmed.

3. 12th Review of the MAA and Fifth Review of the LTCSA

3.1 Submissions

The Committee noted that the following submissions were published by the Committee Clerk under the authorisation of an earlier resolution:

- MAA12: Submission Nos 10-11
- LTCSA5: Submission Nos 8-11.

4. ***

5. ***

6. Adjournment

The Committee adjourned at 1.47 pm until 7 March 2014 (public hearing into MAA12 and LTCSA5)

Teresa McMichael
Clerk to the Committee

Minutes No. 29

Friday 7 March 2014

Macquarie Room, State Library of New South Wales, 9.20 am

1. Members present

Mr Clarke, *Chair*
Mr Primrose, *Deputy Chair*
Mr MacDonald
Mrs Mitchell
Mr Moselmane
Mr Shoebridge (9.35 am)

2. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 28 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 28 November 2013 – From Mr Roy Wakelin-King AM, Chief Executive Officer, NSW Taxi Council to Chair, advising that they have no further information to the MAA and LTCSA reviews provide and expressing appreciation for the invitation to lodge a supplementary submission
- 19 December 2013 – From Dr Mary Foley, Director General, NSW Department of Health to Chair, in response to lodge a supplementary submission to the MAA and LTCSA reviews and advising that they have no further information to provide
- ***
- 14 February 2014 – From Ms Carmel Donnelly, General Manager, Strategy & Performance, Safety, Return to Work and Support Division, providing pre-hearing answers to questions on notice to the MAA and LTCSA.

Sent

- 13 December 2013 – From Chair to the Hon Andrew Constance MP, Minister for Finance and Services, with a list of pre-hearing questions on notice to the MAA and LTCSA
- 5 February 2014 – From Chair to the Hon Andrew Constance MP, Minister for Finance and Services, inviting representatives from the MAA and LTCSA to give evidence at the hearing on 17 March 2014
- ***

4. ***

5. ***

6. 12th Review of the MAA and Fifth Review of the LTCSA**6.1 Public hearing**

Witnesses, the public and media were admitted.

The following witnesses were sworn and examined:

- Mr Alastair McConnachie, Deputy Executive Director, The New South Wales Bar Association
- Mr Andrew Stone, Barrister and Member, The New South Wales Bar Association.

Mr Andrew Stone tendered the following documents:

- Summary of insurer profitability projections from MAA Scheme performance reports 2003/04 to 2012/13
- The New South Wales Bar Association, The Law Society of New South Wales and The Australian Lawyers Alliance, Joint Submission to the Motor Accidents Authority entitled ‘An alternative proposal to reform the NSW CTP scheme’.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Tim Concannon, Member, Injury Compensation Committee, The Law Society of New South Wales.

Mr Tim Concannon tendered the following document:

- Deloitte, NSW CTP Costing Summary, dated 4 April 2013.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Jnana Gumbert, NSW State President, Australian Lawyers Alliance
- Dr Andrew Morrison SC, Member, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Ruth Robinson, Executive Officer, Physical Disability Council of NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Adeline Hodgkinson, Director, Liverpool Brain Injury Rehabilitation Unit and Chair, Brain Injury Rehabilitation Directorate
- Mr Christopher Catchpole, A/Manager, Hunter Brain Injury Service
- Ms Frances Monypenny, Manager, State Spinal Cord Injury Service
- Dr Stella Engel, Director, Spinal Medicine, The Prince of Wales Hospital.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rashmi Kumar, Senior Policy Officer, Council of Social Services of NSW (NCOSS)
- Mr Michael Hampton, Community Voice Manager, Brain Injury Association of NSW
- Mr Greg Killeen, Senior Policy and Advocacy Officer, Spinal Cord Injury Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tony Mobbs, General Manager, CTP, Allianz, Insurance Council of Australia
- Ms Mary Maini, General Manager, CTP, Insurance Australia Group, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.17 pm.

7. ***

8. 12th Review of the MAA and Fifth Review of the LTCSA

8.1 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Primrose: That:

- supplementary questions may be lodged with the secretariat up to two days following the receipt of the hearing transcript, and
- witnesses be requested to provide answers to questions on notice and supplementary questions within 21 days of the date on which the questions are forwarded to the witness.

8.2 Submission and supplementary submissions

The Committee noted that the following submissions were published under the authorisation of an earlier resolution:

- MAA12: Submission No. 12 and supplementary submission Nos. 2a, 3a, 6a, 8a, 10a and 11b
- LTCSA5: Supplementary submission Nos. 2a, 3a, 7a, 8a, 10a and 11a.

8.3 Report deliberative date

Resolved, on the motion of Mr Primrose: That the Committee hold a report deliberative for the 12th Review of the Motor Accidents Authority and the Fifth Review of the Lifetime Care and Support Authority on Monday 2 June 2014.

8.4 Tendered documents

Resolved, on the motion of Mrs Mitchell: That the Committee accept and publish the following documents tendered during the hearing held on Friday 7 March 2014:

- Summary of insurer profitability projections from MAA Scheme performance reports 2003/04 to 2012/13
- Deloitte, NSW CTP Costing Summary, dated 4 April 2013.

9. Adjournment

The Committee adjourned at 4:45 pm until Monday 17 March 2014, at 8:45 am in the Hamilton Room, Level 47, MLC Centre, for the public hearing into MAA12 and LTCSA5.

Teresa McMichael
Clerk to the Committee

Minutes No. 30

Monday 17 March 2014

Hamilton Room, Level 47, NSW Trade and Investment Centre, MLC Centre, Sydney, 8.50 am

1. Members present

Mr Clarke, *Chair*
Mr Primrose, *Deputy Chair*
Mr MacDonald
Mrs Mitchell
Mr Moselmane
Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 29 be confirmed.

3. ***

4. 12th Review of the MAA and Fifth Review of the LTCSA

4.1 Partially confidential submission

Resolved, on the motion of Mr Shoebridge: That the Committee authorise the publication of Submission No. 12 to the Fifth Review of the Lifetime Care and Support Authority with the exception of the name and other personal details of the author which are to remain confidential.

4.2 Public hearing

Witnesses, the public and media were admitted.

The following witnesses were sworn and examined:

- Mr Christopher Burns, Spokesman, Motorcycle Council of NSW
- Mr Guy Stanford, Member, Motorcycle Council of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support
- Mr Cameron Player, Director, Assessment Services, Safety, Return to Work and Support
- Mr Andrew Nicholls, General Manager, Motor Accidents Authority of NSW.

Mr Andrew Nicholls tendered the following documents:

- Ernst & Young, Selected indicators of the performance of the NSW CTP Scheme to 2013

- Ernst & Young, High level review of the New South Wales Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal
- Estelle Pearson, Motorcycle Experience and Premium Setting: Motor Accidents Authority, March 2014
- Transformation Management Services, Claims Assessment & Resolution Service Strategic (CARS) Review 2011, update February 2014.

The evidence concluded and Mr Cameron Player and Mr Andrew Nicholls withdrew.

The following witnesses were sworn and examined:

- Mr Don Ferguson, General Manager, Lifetime Care and Support Authority
- Ms Suzanne Lulham, Director, Service Delivery, Lifetime Care and Support Authority.

The Chair noted that Ms Carmel Donnelly did not need to be sworn, as she had been sworn earlier during the hearing.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.00 pm.

4.3 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the Committee accept and publish the following documents tendered during the hearing held on Friday 17 March 2014:

- Ernst & Young, Selected indicators of the performance of the NSW CTP Scheme to 2013
- Ernst & Young, High level review of the New South Wales Bar Association, Law Society of NSW and Australian Lawyers Alliance submission, to the NSW CTP Scheme Review, of an alternative benefit design proposal
- Estelle Pearson, Motorcycle Experience and Premium Setting: Motor Accidents Authority, March 2014
- Transformation Management Services, Claims Assessment & Resolution Service Strategic (CARS) Review 2011, update February 2014.

5. ***

6. Adjournment

The Committee adjourned at 4.30 pm until Friday 21 March 2014, at 8:45 am in the Hobart Room, Sofitel Hotel.

Teresa McMichael
Clerk to the Committee

Minutes No. 33

28 March 2014

Standing Committee on Law and Justice

Macquarie Room, State Library, Sydney, 8.47 am

1. Members present

Mr Clarke, *Chair*
 Mr Primrose, *Deputy Chair*
 Mr MacDonald
 Mrs Mitchell
 Mr Moselmane (from 8.55 am)
 Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mrs Mitchell: That Draft Minutes No. 32 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 14 March 2014 – From Ms Ruth Robinson, Physical Disability Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12th Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014
- 18 March 2014 – From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12th Review of the MAA and Fifth Review of the LTCSA hearing on 17 March 2014
- ***
- 24 March 2014 - From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing answers to questions on notice from the 12th Review of the MAA and Fifth Review of the LTCSA hearing on 17 March 2014
- ***
- 26 March 2014 – From Ms Ruth Robinson, Physical Disability Council of NSW, to Principal Council Officer, providing answers to supplementary questions on notice from the 12th Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014
- 26 March 2014 – From Mr Greg Killeen, Spinal Cord Injury Australia, to the Secretariat, providing answers to questions on notice from the 12th Review of the MAA and Fifth Review of the LTCSA hearing on 7 March 2014.

Sent:

- ***

4. ***

5. ***

6. ***

7. Adjournment

The Committee adjourned at 5.15 pm until Monday 31 March 2014, at 9.30 am in the Pioneer Community Hall, Bowraville

Teresa McMichael

Clerk to the Committee

Minutes No. 35

Thursday 1 May 2014

Nambucca Shire Council Chambers, Macksville, 1.50 pm.

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Participating members

Ms Cusack

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 31 March 2014 – From Mr Christopher Burns, Motorcycle Council of NSW, to Principal Council Officer, providing additional information to answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 3 April 2014 – From Ms Sarah Phillips, Insurance Council of Australia, to Director, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 4 April 2014 – From Ms Adeline Hodgkinson, Brain Injury Rehabilitation Directorate, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 4 April 2014 – From Ms Frances Monypenny, State Spinal Cord Injury Service, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- ***
- 8 April 2014 – From Mr Alastair McConnachie, New South Wales Bar Association, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- 9 April 2014 – From Ms Jnana Gumbert, Australian Lawyers Alliance, to Principal Council Officer, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- ***
- 16 April 2014 – Ms Carmel Donnelly, Safety, Return to Work and Support, providing answers to questions on notice to the MAA12 AND LTCSA5 reviews
- ***

Sent:

- ***

4. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft minutes nos. 33 and 34 be confirmed.

5. *****6. 12th Review of the MAA and Fifth Review of the LTCSA****6.1 Meeting with MAA representatives to discuss reporting insurer profits**

Resolved, on the motion of Mr Moselmann: That the committee meet with representatives from the MAA on Monday 2 June 2014 to discuss how the committee would like the MAA to report annually on its assessment of insurer profit margins and the actuarial basis for its calculation, as recommended in its 11th Review of the MAA.

6.2 Update on implementation of recommendations

Resolved, on the motion of Mr Shoebridge: That the committee request the MAA and LTCSA to provide an update on any implementation of recommendations from the 11th Review of the MAA and Fourth Review of the LTCSA.

7. *****8. Committee meeting dates**

Resolved, on the motion of Mr Shoebridge: That the committee secretariat circulate an updated timetable for all of the Law and Justice Committee meeting and report deliberative dates.

9. Adjournment

The committee adjourned at 5.40pm until Friday 2 May 2014 at 9.00am (closed roundtable hearing for inquiry into the family response to the murders in Bowraville).

Teresa McMichael
Clerk to the Committee

Minutes No. 37

Monday 12 May 2014
Standing Committee on Law and Justice
Macquarie Room, Parliament House, 8.55 am

1. Members present

Mr Clarke, *Chair*
Mr Primrose, *Deputy Chair*
Mr MacDonald
Mrs Mitchell
Mr Shoebridge

2. Apologies

Mr Moselmane

3. Participating members

Ms Cusack

4. ***

5. ***

6. ***

7. Correspondence

Received:

- ***

Sent:

- 5 May 2014 – From the Chair to the Hon Dominic Perrottet MP, Minister for Finance and Services, requesting an update to the government responses for the previous MAA and LTCSA reviews.

8. ***

9. ***

10. Adjournment

The committee adjourned at 2.15 pm until Monday 2 June 2014.

Teresa McMichael
Clerk to the Committee

Minutes No. 38

Monday 2 June 2014

Standing Committee on Law and Justice

Room 1254, Parliament House, 8.55 am

1. Members presentMr Clarke, *Chair*Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell (*via teleconference*)

Mr Shoebridge

2. Apologies

Mr Moselmane

3. *****4. 12th review of the exercise of the functions of the Motor Accidents Authority****4.1 Insurer profits meeting**

The committee met with Mr Andrew Nicholls, General Manager, MAA and Ms Carmel Donnelly, General Manager, Strategy and Performance, Safety, Return to Work and Support, to discuss the MAA reporting to the committee on its assessment of insurer profit margin, and the actuarial basis for the calculation as per s 28(2) of the *Motor Accidents Compensation Act 1999* and recommendation 4 of the committee's 11th review of the MAA.

5. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 37 be confirmed.

6. Correspondence***Received:***

- ***
- 26 May 2014 – From the MAA providing an update to the government's response to the 11th Review Report of the MAA
- ***
- 29 May 2014 – From the Hon Dominic Perrottet MP, Minister for Finance and Services, to Director, confirming attendance of representatives from Safety, Return to Work and Support at 2 June 2014 meeting.

Sent:

- 13 May 2014 – From the Chair to the Minister for Finance and Services, organising a meeting with the MAA to discuss insurer profits
- ***

7. *****8. *****

9. Adjournment

The committee adjourned at 12.10 pm until Friday 27 June 2014.

Teresa McMichael
Clerk to the Committee

Draft Minutes No. 39

Friday 27 June 2014

Standing Committee on Law and Justice

Room 1153, Parliament House, Sydney, 9.11 am

1. Members present

Mr Clarke, *Chair*

Mr Primrose, *Deputy Chair*

Mr MacDonald

Mrs Mitchell

Mr Moselmane

Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft minutes no. 38 be confirmed.

3. ***

4. ***

5. ***

6. ***

7. 12th review of the exercise of the functions of the Motor Accidents Authority

7.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.17 be amended by inserting 'less than' before '16 years old'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.20 be amended by inserting 'although the period can be extended indefinitely if there is an adequate explanation given for the delay' after 'motor vehicle accident'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.24 be amended by omitting 'resulting in no direct access to court' after 'disputed claims must first go to CARS'.

Chapter 2

Resolved, on the motion of Mr Shoebridge: That paragraph 2.5 be amended by inserting at the end: 'This is a significant extension of the responsibilities held by the previous board'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.31 be amended by inserting at the end ‘These concerns are legitimate. The Motorcycle Council’s requests have been clear and targeted and they should have been met with greater cooperation by the MAA.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.33 be amended by:

- a) omitting ‘The committee would also like to see the Ernst & Young report into motorcycle CTP premiums and encourage the government to publish the report once it has been completed’, and
- b) inserting instead ‘The committee believes the Ernst & Young report into motorcycle CTP premiums should be published, and recommends that this occur and that the report be provided to the committee.’

Resolved, on the motion of Mr Primrose: That the following new recommendation be inserted after paragraph 2.33:

Recommendation X

That the Motor Accidents Authority publish the Ernst & Young report into motorcycle CTP premiums as soon as it has been completed and provide it to the committee.’

Resolved, on the motion of Mr Primrose: That paragraph 2.57 be amended by omitting ‘giving effect to its initial proposed changes’ after ‘Claims Handling Guidelines’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.64 be amended by omitting ‘The committee congratulates the MAA on its proactive approach to fixing the issues’ and inserting instead ‘The committee notes the MAA adopted a proactive approach to resolving the issues’.

Chapter 3

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.3:

‘A number of stakeholders noted that it is important when considering this data to recognise that the benefits payable in each state or territory are not comparable. Indeed NSW has a suite of benefits for those injured in motor accidents ranging from LTCS scheme, the Accident Notification Form and significant common law entitlements that provide some of the best protection in the country.’
[FOOTNOTE: Evidence, Mr Andrew Stone, Barrister and Bar Councillor, New South Wales Bar Association, 7 March 2014, p 8.]

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after table 2 and before paragraph 3.9:

‘The deviation in prices shown between tables 1 and 2 demonstrates the importance of consistent reporting on scheme costs to include both the CTP scheme and LTCS scheme components. This is particularly important when NSW green slip costs are reported by the MAA in order to compare green slip costs with those in other states and territories. This matter will be discussed further in this chapter at paragraph 3.XX.’

Resolved, on the motion of Mr Shoebridge: That paragraph 3.14 be amended by inserting at the end ‘This is a notable and significant improvement in the scheme’s performance’.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.15 be amended by:

- a) omitting ‘varying greatly’ and insert instead ‘varying’
- b) omitting ‘known for up to ten years’ and inserting instead ‘known for more than five years’.

Resolved, on the motion of Mr MacDonald: That paragraph 3.22 be amended by omitting ‘Serious concerns’ and inserting instead ‘Ongoing concerns’.

Resolved, on the motion of Mr MacDonald: That paragraph 3.29 be amended by omitting ‘the scheme it can take years’ and inserting instead ‘the scheme takes years’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraphs be inserted after paragraph 3.62:

‘However, Ernst & Young’s most recent review of scheme performance showed a decrease in the ultimate number of full claims and Accident Notification Forms for the 2013 reporting year. [FOOTNOTE: Ernst & Young, *Selected indicators of the performance of the NSW CTP Scheme to 2013*, p 6.] This reduction was primarily in relation to workers compensation claims which reduced by about 70 per cent in the 18 months ending December 2013. [FOOTNOTE: Answers to questions on notice, Motor Accidents Authority, pp 6-7.]

The MAA stated that during this time Ernst & Young had estimated that overall claims would increase by approximately 3 per cent. [FOOTNOTE: Answers to questions on notice, Motor Accidents Authority, p 6.] The disparity between an expected rise in claims and the actual reduction, could likely lead to increased insurer profits for the period. However based on actuarial advice, Mr Nicholls stated that this was a short term impact and still expected the workers compensation claims to flow through into the system. [FOOTNOTE: Evidence, Mr Nicholls, 17 March 2014, p 19.]

Resolved, on the motion of Mr MacDonald: That the following paragraph 3.79 be omitted: ‘The committee is generally satisfied with the MAA’s performance in exercising its functions according to the *Motor Accidents Compensation Act 1999*.’

Resolved, on the motion of Mr MacDonald: That paragraph 3.80 be amended by:

- a) omitting ‘However, the committee’ and inserting instead ‘The committee’
- b) omitting ‘the continuing high level of insurer profits’ and inserting instead ‘the high level of insurer profits’.

Resolved, on the motion of Mr MacDonald: That paragraph 3.81 be amended by:

- a) omitting ‘To its credit’ before ‘the MAA has delivered new methods’
- b) omitting ‘reign in’ and inserting instead ‘address’
- c) omitting ‘also commends the MAA for undertaking to review’ and inserting instead ‘encourages the MAA to expedite its review of’.

Resolved, on the motion of Mr MacDonald: That paragraph 3.81 be amended by omitting ‘risk pooling later this year’ and inserting instead ‘risk pooling this year’.

Mr Primrose moved: That the following new paragraph be inserted after paragraph 3.81: ‘The committee also believes that the MAA should report on the outcome of its monitoring of any impact of the workers compensation changes on the CTP scheme in its Annual Report.’

Question put.

The committee divided.

Ayes: Mr Clarke, Mrs Mitchell, Mr Moselmane, Mr Primrose, Mr Shoebridge.

Noes: Mr MacDonald.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraphs and recommendation be inserted after paragraph 3.81:

‘The committee believes that the exclusion of the LTCS figures from the MAA’s reporting on scheme efficiency negatively impacts on the scheme’s perceived efficiency as it skews the data produced towards smaller claims where the relative cost of handling the claim compared with the sums involved can be significantly greater than in the catastrophic injury matters considered under the LTCS scheme.’

Clearly consumers and parliament can only properly assess the efficiency of the scheme if the whole of the scheme including CTP and LTCS are included in analysis of its efficiency and outcomes. This is a minimum required of the MAA for adequate accountability and scrutiny of the scheme.

Recommendation X

That the Motor Accidents Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted after paragraph 3.81:

‘It is inarguable that there is a disparity between prospective and realised profits. On each occasion the disparity has been in favour of insurers. This is an issue which must be addressed.

Recommendation X

That the Minister for Finance and Services ensure there is a prompt review of the high level of insurer profits, and that all relevant stakeholders are consulted.’

Resolved, on the motion of Mr MacDonald: That paragraph 3.82 be amended by omitting: ‘This proactive work has been conducted within the current legislative framework following the discharge of the Motor Accidents Injuries Amendment Bill 2013. Although this is a positive step, the committee is not convinced that these measures will have the effect of significantly improving the performance of the scheme without the assistance of at least some legislative changes’ before ‘The issue of insurer profits will be addressed further in the next chapter.’

Resolved, on the motion of Mr MacDonald: That the following new paragraph and recommendation be inserted after paragraph 3.82:

‘The committee notes the declining number of insurers and possible barriers to entry. These factors can impact on long term sustainability of a private CTP market.

Recommendation X

That in its review of the *Motor Accidents Compensation Act 1999*, the NSW Government consult with stakeholders to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.’

Chapter 4

Resolved, on the motion of Mr Shoebridge: That paragraph 4.20 be amended by:

- a) omitting ‘We encourage the government to publish this information.’, and
- b) inserting ‘The committee continues to believe that the recommendation made in our previous report has merit and urge the government and MAA to implement it.’

Resolved, on the motion of Mr Shoebridge: That the following new committee comment be inserted after recommendation 3:

‘To ensure that the scheme is both affordable and equitable, there is real merit in considering proactively any potential sources of superimposed inflation as and when they become apparent. Both the government and the MAA need to respond in an effective and prompt manner. As such, the committee recommends that the MAA proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report (proposed above at recommendation X) on superimposed inflation risks and strategies to address them.’

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after recommendation 3 to read:

Recommendation X

That the Motor Accidents Authority proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report (see recommendation X)) on superimposed inflation risks and strategies to address them.

Resolved, on the motion of Mr Shoebridge: That Recommendation 4 be amended by inserting at the end 'and that it provide for realistic and fair levels of legal costs in motor accident matters'.

Resolved, on the motion of Mr MacDonald: That the following new paragraph be inserted after paragraph 4.65: 'The committee also urges the MAA to review the trend of the frequency, cost and efficacy of legal representation for claimants and make recommendations for ensuring claimants are not disadvantaged by unwarranted legal representation.'

Resolved, on the motion of Mr MacDonald: That paragraph 4.99 be amended by omitting 'strong stakeholder dissatisfaction' and inserting instead 'stakeholder dissatisfaction'.

Resolved, on the motion of Mr MacDonald: That Recommendation 7 be amended by inserting 'and that these be considered as part of any legislative review' after 'issues relating to access to non-economic loss damages'.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.111 be amended by inserting at the end 'We recommend that the review be undertaken by the newly established advisory committee (see recommendation 1), however, if that committee is not established, stakeholders should be widely consulted.'

Chapter 5

Resolved, on the motion of Mr MacDonald: That paragraph 5.6 be amended by inserting 'per green slip' after 'scheme costs by around \$10'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 5.10: 'Any change to the Accident Notification Form threshold would need to ensure there is a careful balance so that legal costs are sufficient to assist claimants to enforce their rights without unduly diminishing the amount usually provided to claimants from the scheme.'

Resolved, on the motion of Mr Primrose: That the following new recommendation be inserted after paragraph 5.10:

Recommendation X

That the NSW Government ensure that the review of the operation of the Accident Notification Form is conducted by the Motor Accidents Advisory Committee (see recommendation 1), or, if that committee is not established, that stakeholders are widely consulted in the review.

Resolved, on the motion of Mrs Mitchell: That:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the review be tabled in the House with the report
- upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting
- the report be tabled by no later than Thursday 3 July 2014.

8. Adjournment

1.17pm until Monday 11 August 2014, 10.00 am

Teresa McMichael

Clerk to the Committee