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Minister for Police
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MAA ref: 10/325

Hon Christine Robertson MLC
Chair
Legislative Council
Standing Committee on Law and Justice
Parliament House
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SYDNEY NSW 2000

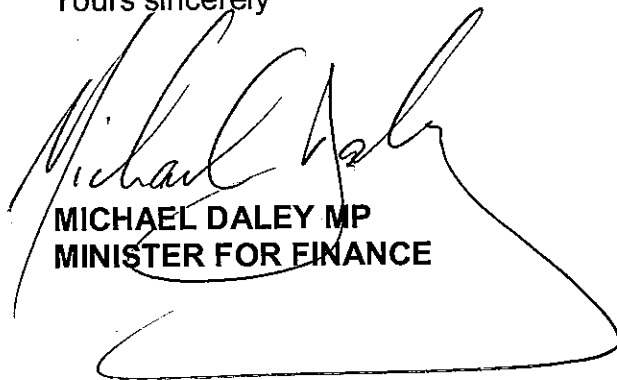
Dear Ms Robertson

I refer to your correspondence regarding the Tenth Review of the Motor Accidents Authority and the Motor Accidents Council by the Standing Committee on Law and Justice, and attaching the Standing Committee's Questions on Notice.

I am pleased to enclose the responses to the Committee's questions prepared by the Motor Accidents Authority (MAA).

Any enquiries about this matter may be directed to Mr Christian Fanker, Acting Manager, Ministerial and Community Assistance, MAA on 8267 1990 or by e-mail: cfanker@maa.nsw.gov.au.

Yours sincerely



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STANDING COMMITTEE ON LAW AND JUSTICE

TENTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MAA AND MAC

PRE-HEARING QUESTIONS ON NOTICE

Performance reporting and measurement

1. During the ninth review of the MAA in 2008 the MAA indicated it would adopt a 'results logic' approach to performance reporting as part of its Results and Services Plan, with elements of this approach expected to be in the 07/08 Annual Report.
 - Can you outline the Authority's Results and Services Plan?
 - Can you explain any new approach to performance reporting that has been incorporated into the MAA's 07/08 and 08/09 Annual Reports?

Response:

The Motor Accidents Authority's 'results logic' was published in its last annual report. The Authority's Results and Services Plan is consistent with the NSW Government's approach set out in Treasury's Guidelines. The Authority is currently reviewing its Results and Services Plan and finalising various supporting strategic and corporate planning components of the Plan.

2. During the ninth review the MAA reported on its efforts to develop health outcomes measures as a measure of the Scheme's performance.
 - Have health outcome measure been developed? Is so, what are they?
 - Can you report on the Scheme's performance in relation to these measures?

Response:

The MAA is currently undertaking several research projects to enable the development of a suite of consistent health outcome measures, in partnership with other agencies. Collection of consistent measures will enable benchmarking of scheme performance over time and against other jurisdictions. Research activities include:

- The MAA has provided funds to the Rehabilitation Studies Unit of the University of Sydney to undertake a 2 year follow-up study of claimants under the NSW Compulsory Third Party (CTP) scheme, collecting a range of physical and psychological measures of health and well-being through telephone interview at baseline (as soon as possible after injury) and at 12 and 24 months post-injury.
- The MAA has provided funds to enable four metropolitan hospitals to provide specialist rehabilitation assessment and, where necessary, multi-

disciplinary rehabilitation services post-hospital. The intervention will be evaluated by analysing the health and psychological outcomes reported at 3 and 6 months post-injury.

- The MAA has committed funds to support an application, led by the Rehabilitation Studies Unit of the University of Sydney, for a National Health and Medical Research Council (NHMRC) Partnership Grant to further explore differences in health outcomes, evaluate methods of identifying those at high risk of poorer health outcomes and of alerting treating health providers of risk indicators.
- The MAA, in partnership with WorkCover NSW and the Lifetime Care and Support Authority, has committed funds to establish a specific research centre as a longer term strategy to enhance both research and educational capacity relevant to compensable injury within New South Wales. Four major themes have been identified for the new research centre, one of which is health outcomes measurement.

These various research activities are contributing to a growing consensus about the importance of a holistic approach to injury management, the types of measures that best describe outcomes following trauma and the methodologies that can be used to benchmark and improve health outcomes.

Affordability

- 3. The MAA's 2008/2009 Annual Report reported an increase in the average price of a green slip of 13% in 08/09, compared to an increase of 1.5% in 07/08. This was attributed to the global financial crisis.**
- **What has been the trend in green slip prices thus far in the 09/10 financial year?**
 - **Can you explain the particular aspects of the global financial crisis that have affected green slip prices?**
 - **Can you identify other factors affecting green slip prices?**
 - **Have green slip prices for some categories of motorists been affected more than others?**

Response:

It should be noted that the quoted figure from the 2008/09 annual report relates to average best price increases across the State, whereas the figure quoted from the 2007/08 Annual Report relates to the movements in best price in metropolitan Sydney. Accordingly, it is misleading to compare these figures to each other, and they are based on insurer's filing submissions not actual premium paid. The extent of any increase or decrease varies by risk classification (e.g., location of garaging, age of driver, type of vehicle) and between insurers.

Green Slip insurance is unique in that claims can be paid many years after the accident. This makes it very different to home and contents insurance where claims are generally made and paid in the same year that premiums are collected. Green

Slip insurers invest the premiums they collect to ensure they have sufficient funds to meet future claim payments. The global financial crisis saw a large drop in investment returns (based on risk free Commonwealth bond rates) and insurers had to increase premiums to ensure they have adequate funds to meet claim payments.

Other important influences on Green Slip prices include:

- the number of traffic accident injuries and deaths;
- the number of compulsory third party claims (frequency per registered vehicle);
- Inflation; and
- changes in average costs of claims

Effectiveness

4. The MAA's 2007/2008 and 2008/2009 Annual Reports report that the average time taken for insurers to make the first compensation payment has remained steady after a drop in 2006/2007 of 12%. In its response to pre-hearing questions on notice during the ninth review of the MAA, the MAA anticipated that recent amendment legislation would lead to further improvements in this area.

- **Can you explain the factors that currently impact on the time taken for insurers to make the first compensation payment?**
- **In your view, why has the amendment legislation not reduced this time as anticipated?**

Response:

The factors that can impact on the time taken by insurers to make the first compensation payment include:

- whether an Accident Notification Form (ANF) or a Personal Injury Claim has been submitted;
- delays in submitting accounts for treatment/ rehabilitation;
- complex liability determinations (liability determinations are likely to take longer for a full claim as opposed to an ANF however insurers may pay on a *without prejudice* basis before liability is admitted on a claim);
- delays in approving payments by insurers;
- whether notification of the ANF or claim was made late or is actually a workers compensation or interstate claim.

As noted in the MAA's response to pre-hearing questions on notice during the ninth review, the 1 October 2008 amendments were intended to "further facilitate the just and expeditious resolution of motor accident claims". These changes promote efficiency in the claims resolution process by encouraging the early settlement of motor accident claims and by facilitating early access to medical treatment and rehabilitation.

Fairness

5. The MAA's 2007/2008 Annual Report notes that '[d]uring the coming year a number of reforms will commence that further increase fairness...'

- **Can you describe the reforms implemented in 2008/2009 intended to increase fairness?**
- **Have these reforms had the desired effect?**
- **Can you explain the effect of these reforms on 'vertical' and 'horizontal' fairness?**

Response:

On 1 October 2008 the Government amended the *Motor Accidents Compensation Act 1999* to increase the maximum amount payable under the Green Slip scheme early accident notification process from \$500 to \$5,000. The early payment scheme was also changed to allow injured people to claim for lost wages through the Accident Notification Form.

The reforms also saw the removal of the prohibition for recovery of economic loss for the first five days following the accident.

While it is premature to draw any conclusions about the effect of the expanded early accident notification process, the preliminary results are very encouraging. Recent figures indicate that the number of ANFs being lodged by injured people under the early accident notification process has risen by over 57% since 1 October 2008. The average payment made on finalised ANFs has more than doubled, from \$400 to \$1,000. 213 people have received past economic loss payments under the expanded early accident notification process, with an average payment of \$1,450.

From April 2010 the early accident notification benefit was further extended to cover all persons injured as a result of a motor vehicle accident, regardless of fault, for up to \$5,000 in medical costs and lost wages. This means that 'at-fault' drivers are now entitled to be reimbursed to a maximum of \$5,000 for the cost of early medical treatment and rehabilitation and any lost earnings related to the accident injury.

The broadening of the base in this manner increases fairness by ensuring that a greater number of people can access the early payment scheme and obtain greater access to early medical treatment.

Efficiency

6. What has been the efficiency of the scheme during the 07/08 and 08/09 financial years, in terms of the proportion of each dollar paid in premiums returned to injured persons as compensation?

- **Is the MAA satisfied with the current efficiency level of the Scheme?**
- **Is there scope to return a greater proportion of each dollar paid in premiums to injured persons?**

Response:

As noted in the Motor Accidents Authority 2008/2009 Annual Report (p 73):

“The scheme is considered efficient if as much as possible of each dollar paid in premiums is returned to injured people as compensation payments. This can be achieved by reducing the transaction costs of administering the Scheme such as acquisition expenses incurred by insurers issuing Green Slips and collecting premiums, and the payment of statutory levies. These represent a per policy cost independent of claims costs. Other transaction costs relate to claims management and include the cost of employing investigators, the cost of claims departments and payments to insurers and claimants legal representatives”.

In the filing period commencing 1 July 2008, the projected return to claimants was 62% of total premiums. In the filing period commencing 1 July 2009, the projected return to claimants was 64% of total premiums.

The Authority is currently reviewing the *Motor Accidents Compensation Regulation 2005* with a view to reducing the transaction costs associated with motor accident claims and increasing the costs recoverable by injured people.

Eligibility

- 7. The NSW Farmers' Association has noted there is uncertainty in the interaction of the *Motor Accidents Compensation Act 1999 (MAC Act)* and the *Workers' Compensation Scheme Act 1987 (WC Act)* particularly in relation to accidents involving 'an unregistered motor vehicle, including agricultural plant, used exclusively on private property.' The Association proposes that the MAC Act be amended to preclude claims involving an unregistered vehicle not being driven on public roads, leaving coverage of such situations to the WC Act.**

- What is your response to this proposal?**

Response:

The situation described could relate to a number of schemes including Workers Compensation, Motor Accidents and Lifetime Care and accordingly any response would require consideration at a Whole of Government level.

Claims frequency and propensity to claim

- 8. In its ninth review of the MAA the Committee undertook to continue to monitor claim frequency and propensity to claim, particularly in light of suggestions that there were disincentives to claiming within the Scheme. The MAA's 2008/2009 Annual Report reports that the downward trend in claim frequency and propensity to claim has continued in the 07/08 and 08/09 financial years.**

- What is the MAA's view on the continued decline in these measures?**

Response:

The MAA's 2008/2009 Annual Report notes that there has been a consistent reduction in claims frequency and propensity to claim between 2003/2004 to

2007/2008 (by accident year). For the purposes of measuring claims frequency an accident year runs from 1 October until 30 September of the following year.

This reduction in claims frequency and propensity to claim was partly due to:

- a reduction in the rate of casualties; and
- a reduction in the rate at which people injured in road crashes were lodging claims.

More recent MAA data indicates that as at the end of September 2009, the trend in claims frequency and propensity to claim has reversed. The MAA has observed an increase in estimated ultimate claims from 10,205 in 2007/2008 to 11,948 in 2008/2009.

Insurer profits

9. Since the 06/07 financial year prospective insurer profits as reported by the MAA have risen from an average of 6.0% to an average of 8.1% in 08/09.

- **What factors have contributed to this rise?**

Response:

The reported prospective industry average of 8.1% in 08/09 is not regarded as unusual; the average for the five years 2000 to 2005 was at a similar level. The range was 7.9% in 00/01 to 8.7% in 04/05 and above 8% for the intervening years.

The main factors influencing the calculation of prospective insurer profit margins are a matter for the individual insurers. Factors reported to the MAA by insurers include the need to maintain minimum capital requirements set by APRA as well as additional capital reserves in order to maintain a prudential margin and the confidence of stakeholders; targeted returns on capital; long term interest rates; and claim frequency and size.

Competition in the market place means there is variation in the prospective profit levels and targeted returns between individual insurers and this competition is strengthened if purchasers of Green Slips shop around (for example by using the Green Slip calculator) and do not pay more than the best available price for their particular circumstances.

10. The Australian Lawyers Alliance have provided a report from Cumpston Sarjeant Consulting Actuaries which estimates 'ultimate profit' for insurers from 2004 to 2009 ranging from 27% to 11%, significantly in excess of the 'prospective profit' for insurers reported in the MAA's 2008/2009 Annual Report, ranging from 8.7% to 6.0% over the same period.

- **Can you explain the difference in how these figures are calculated?**
- **What is your response to the Australian Lawyers Alliance view that the level of insurer profits over the lifetime of the Scheme indicates a**

capacity to pay higher benefits to injured persons than have been paid thus far?

Response:

The MAA is not aware of the report by Cumpston Sarjeant Consulting Actuaries, and as such is not able to comment on its findings.

11. The Bar Association notes that the MAA's Annual Reports from 2005/2006 to 2008/2009 show the estimated profit for insurers in terms of the percentage of the premium retained by insurers as profit has been increased each financial year in each Annual Report and is typically above the 8% figure the MAA considers reasonable.

- **Does the MAA consider that insurers have been realising actual profits from the Scheme in excess of 8%?**
- **Does the MAA still hold 8% to be the reasonable profit margin for insurers to make?**
- **Is the MAA concerned that the 1% insurer profit it estimates for 2008 will cause some insurers to withdraw from the Scheme?**
- **To what does the MAA attribute the consistent upwards revision of estimated insurer profits each financial year since 2005/2006?**
- **Does the consistent upwards revision of estimated profits for insurers since 2005/2006 indicate that insurers are incorporating unrealistic assumptions regarding compensation payouts into their premiums?**
- **What action is available to the MAA if it wanted to address insurer profits escalating beyond what the MAA considers to be a reasonable level?**
- **At what point would the MAA take this action?**

Response:

As stated in the Motor Accidents Authority 2008/2009 Annual Report (p 75):

"Over the past six years, estimated profit margins have ranged from 4% to 11% for individual insurers, with an industry average between 6% and 8.7%. Since the introduction of the Lifetime Care and Support Scheme, lower profit margins have been experienced by the insurers. These have averaged at 8.1% for the current reporting year. The Authority considers the reported range of profit margins to be reasonable".

As competition is important to the continuing success of the Motor Accidents Scheme it is a matter for each insurer to set the return on capital that it considers sufficient to allow them to sustainably participate in the scheme and deliver an adequate return to shareholders.

As reported previously, the MAA's Annual Reports provide data on the estimates of profit, calculated by the MAA's independent actuaries. Because most claims from 2008 are not yet finalised, the reported 1% profit for 2008 is based on incomplete

recent claims experience. As more claims are finalised estimated profit margins become more robust and this is monitored by the Authority over a longer period of time.

The Authority does monitor insurer profit margins and will query any profits that are considered excessive. However, independent actuarial advice is that the projected margins from insurers are currently regarded as reasonable given current market conditions.

Discount rate

12. In the sixth review of the MAA in 2005, the MAA comment stated that it did not believe there was any evidence it should advise the Government to alter the discount rate applied to lump sum payments for future economic loss which is set at 5% in section 127 of the *Motor Accidents Compensation Act 1999*:

- **Can you update the Committee on your view on the discount rate?**
- **Since 2005 have the actual earnings, taxation and inflation rates supported the retention of the 5% rate?**
- **What has been the rate of return after tax and inflation on the MAA's own investments since 1999?**
- **What rate of return after tax and inflation does the MAA currently assume on its own investments?**

Response:

Provision for the discounting of the future economic loss component of a compensation award is not unique to the motor accidents scheme. Section 14 of the *Civil Liability Act 2002* and section 151J of the *Workers Compensation Act 1987* make provision for the application of a discount rate of 5%, where another rate has not been prescribed by regulation. The discount rate is consistent with other States and Territories (except the ACT) which all use discount rates in the range of 5-6%.

The purpose of a set discount rate in a compensation scheme is to protect injured people from short term fluctuations in interest rates impacting on the damages they are awarded to support them in the longer term. This is quite a different context to the management of the MAA Fund.

It should also be noted that since the establishment of the Lifetime Care and Support scheme, severely injured people have their treatment, rehabilitation and attendant care fully funded by the Scheme for the rest of their lives. Prior to the Lifetime Care and Support Scheme allowances for future care and medical expenses were a major component of the award in larger claims for very severely injured people.

However, since the establishment of the Lifetime Care and Support scheme any participants in the Lifetime Care and Support Scheme who are also entitled to claim from the CTP scheme may only seek a lump sum payment for economic loss and Non Economic Loss and these claims are expected to settle more quickly than before. The effect of the discount rate has therefore been reduced for the most severely injured people since 2007.

Costs recoverable by the injured person

13. Can you comment on the Australian Lawyers Alliance view that insurers can make it uneconomic for injured persons to sue, particularly in light of the fact that for compensation claims up to \$100,000 the injured person can recover only 20% (a maximum of \$20,000) of the damages, which must potentially cover mediation, arbitration, District Court hearing, application for leave to appeal, appeal in the Court of Appeal and rehearing in the District Court?

Response:

The information relied on appears to apply to section 338 of the *Legal Profession Act 2004*. Although the provisions of that legislation are outside the scope of this inquiry it is noted that the provision referred to does not apply to claims under the *Motor Accidents Compensation Act 1999*.

14. Can you comment on the Australian Lawyers Alliance observation that in contrast to the injured person, insurers can recover up to 65% of their costs, and that an injured person may be liable for \$300,000 for the insurer's costs whereas the insurer only risks being liable for \$20,000 or less.

Response:

It should be noted that insurers cannot recover costs in matters that come before the Claims and Resolution Service (CARS). In some circumstances where the Court reviews a CARS award a costs order in favour of the insurer is possible. In those circumstances however costs the injured person must pay are limited to a maximum of \$25,000.

Legal costs Regulation

15. The Government response to the ninth review of the MAA noted that the MAA had received the final report on its Study of Impact of the Costs Regulation.

- **Can you outline the findings and recommendations in that report?**
- **Is the Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2010 a revised costs Regulation based on that review?**
- **Have provisions for insurer-initiated court proceedings been incorporated into the Costs Regulation?**
- **What is your response to the Law Society's claim that the current gap between costs recoverable and real costs means in effect that claimants are subsidising the Scheme?**

Response:

The study by FMRC Legal on the impact of the *Motor Accidents Compensation Regulation 2005* and legal costs on compulsory third party (CTP) insurance claimants was limited to a small number of matters (56 files). The file sample examined for the study indicates that there is a gap between the fees charged to clients and the amount payable under the Regulation. The report does not contain recommendations. The *Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2010* is not based on the FMRC Legal review.

By operation of the *Subordinate Legislation Amendment Act 1989*, the *Motor Accidents Compensation Regulation 2005* is due for automatic repeal on 1 September 2010, unless remade or extended. A working party comprising representatives from the Law Society of New South Wales, the Insurance Council of Australia and the MAA has considered the issue of insurer-initiated court proceedings in the context of the statutory review of the regulation.

The Motor Accidents Council

16. The Bar Association has attributed a breakdown in communication between the MAA and stakeholders in large part to the fact the Motor Accident Council has not met for over 16 months.

- **Is it the case that the Council has not met for over 16 months and if so do you think this has had a negative impact on stakeholder relationships?**
- **Why has there been a delay in appointing a new MAC after the term for the previous council expired?**

Response:

The appointments to the new Motor Accidents Council were approved by the Government on 10 May 2010 and taking effect from 1 June 2010. In the meantime, the Authority has continued to regularly consult with stakeholders through various informal discussions and meetings.

Claims Handling Guidelines

17. During the ninth review of the MAA, the MAA anticipated making further changes to the Claims Handling Guidelines in accordance with the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*.

- **Can you outline to the Committee any changes made in accordance with the above Act and the effect of those changes?**
- **What impact have any changes had on the steps insurers must take to comply with guidelines and the cost of compliance?**

Response:

The Claims Handling Guidelines were amended for the purposes of compliance with a number of reforms introduced by the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007* on 1 October 2008.

Principally those amendments deal with:

- The increase in the amount payable under the early notification scheme from \$500 to \$5000;
- The new provisions in Division 1A of the Act to encourage early settlement of claims; and
- Provisions setting time frames for payment of settlement amounts.

The Authority's review of compliance with the new guidelines during 2009 indicated high levels of compliance with no increase in the costs of compliance.

The MAAS Reference Group

18. What is your response to the Bar Association's suggestion that a representative from the MAA's policy unit be added to the MAAS Reference Group to enhance the connection between the MAA's operational and policy functions?

Response:

The Motor Accidents Assessment Service (MAAS) Reference Group comprises representatives from the insurance industry, legal profession, medical assessors, claims assessors and the MAA. It provides a consultation forum between MAAS and its key stakeholders on issues relating to the operation of the two assessment services. Officers from other areas of the MAA may attend meetings of the MAAS Reference Group as appropriate.

Medical Assessment Service (MAS)

19. The Government response to the eighth review of the MAA noted that a medical assessment quality assurance program and assessor training and development program had been implemented to improve the consistency of 'whole person impairment' (WPI) assessments.

- **Can you update the Committee on the implementation of these two programs and their effect on the consistency of WPI assessments?**

Response:

As noted in the Government response to the ninth review, the Medical Assessment Service has introduced a number of quality control mechanisms for assessors. This includes:

- Bi-monthly forums which provide an opportunity for assessors to discuss dispute assessment, contentious areas of assessment and participate in developing and refining internal policies. The Medical Assessment

Service arranges for guest speakers to address assessors on specific topics of interest, usually with a focus on the assessment of permanent impairment.

- An annual conference designed to update assessors on the assessment of medical disputes.
- A regular electronic newsletter for assessors which contains procedural and policy updates and as needed may highlight any areas of concern that may have arisen including via further assessments, reviews, complaints, judicial review or any other means.
- An enquiries e-mail address for permanent impairment questions and queries. The online service is available to all stakeholders and provides guidance on specific questions relating to permanent impairment. A sample of the questions asked and the answers provided is included in the quarterly Motor Accidents Assessment Service bulletin. The enquiries e-mail seeks to ensure easy, quick and convenient access to expert advice on issues relating to the assessment of permanent impairment by providing a response to stakeholders within 5 days.
- Over 100 de-identified permanent impairment case studies are now available on the MAA website. The case studies include decisions from initial and further medical assessments as well as review panel findings. The case studies are reviewed and updated each quarter. These decisions assist assessors and stakeholders to better understand the assessment of permanent impairment, thereby fostering a more consistent approach to the understanding and assessment of permanent impairment.
- Articles are contributed to the MAAS Bulletin regarding the assessment of medical disputes to promote understanding and consistency amongst all assessors and scheme users.
- The Permanent Impairment Guidelines Interpretation Group (PIG-IG) has been formed to consider issues related to the Permanent Impairment Guidelines and aims to provide expert and considered advice on any anomalies in the MAA Impairment Guidelines and AMA 4 Guides, or areas which are open to interpretation and may result in inconsistent application of the guidelines.
- Review applications lodged are provided to original assessors, along with any reply, the Proper Officer's decision and a copy of any Review Panel Certificate upon finalisation of the review. This mechanism provides feedback to an Assessor of those views and decisions. The Assessor who has had their Certificate reviewed may also seek further post-review feedback from the panel, which has provided a valuable source of peer review for the assessors.
- Review panel determinations are provided to all assessors via the Assessors extranet, giving access to all certificates of determination and

reasons of review panels, to better inform all Assessors about any issues that have arisen in decisions by other Assessors.

20. Can you update the Committee on the review undertaken by MAA in 2008 intended to address potential conflict of interest issues for MAS medical assessors who also undertake private medical assessments for claimants and/or insurers?

Response:

The MAA has completed the review of MAS medical assessors' practice workloads and potential perceptions of conflicts of interest. In the light of the review, the MAA intends to implement a number of changes to future MAS assessor recruitment practices. This includes:

- If an Assessor undertakes 10% or more of their non-MAS work for a party (in terms of either referrals, workload, income, or time spent) they will be precluded from assessing disputes involving that party.
- All MAS treatment assessors must be in current clinical practice.
- MAS assessors should not derive more than 80% of their private medico-legal workload (in terms of either workload, income, or time spent) from either claimant or insurer work.
- Applicants who work for both claimants and insurers, or for neither claimants nor insurers, should be preferred as MAS assessors.
- Applicants who can receive work for a majority of insurers should be preferred as MAS assessors.

21. The Government response to the Eighth Review of the MAA included an undertaking to examine MAS matters that have taken ten months or more to finalise and to report back to the Committee.

- **Can you update the Committee on progress in this area?**

Response:

The MAA will continue to monitor the timeliness of the finalisation of medical disputes at MAS on a regular and ongoing basis.

The MAA published data on the timeliness of the finalisation of medical disputes at MAS in the MAA Annual report 2008-09 (MAA Annual Report 2008-09, p 16) which showed that;

- The proportion of medical disputes finalised within 6 months of lodgement rose from 89% to 90% of all disputes finalised in the 2008/09 financial year, up from a low of 31% in 2002/03.
- The proportion of medical disputes finalised within 8 months of lodgement rose from 92% to 97% of all disputes finalised in the 2008/09 financial year, up from a low of 42% in 2002/03.

The Motor Accidents Assessment service has undertaken an examination of those matters that have taken 10 months or more to be finalised and has ascertained that those medical disputes tend to take a longer of period of time as they tend to feature one or more of the following attributes:

- Physical assessments requiring multiple assessments - An increasing proportion of medical disputes are now of more complex whole person impairment assessments which involve multiple injuries and multiple assessments.
- Care Disputes requiring multiple assessments - An increasing number of treatment and care disputes require multiple assessments to assess clinical need and then the extent of the need.
- Acquired Brain Injury claims requiring multiple assessments - Acquired Brain Injury (ABI) assessments now require multiple assessment appointments (psychiatric and neurological) which cannot be scheduled concurrently.
- Medical disputes that are not yet able to be assessed - Medical disputes that cannot be assessed yet may now be deferred for six months or more under section 132(3) of the *Motor Accidents Compensation Act 1999* instead of having to be dismissed and forced to apply again for a fresh assessment at a later stage.
- Claimants failing to attend medical assessment examinations - A small number of claimants fail to attend scheduled MAS appointments, often with good reason, which can extend the time for the completion of the assessment significant.

22. Can you comment on the Insurance Council of Australia's view that 'the current system does not adequately provide a mechanism for [treatment reports and records from treatment providers] and as a result these relevant records are often not available for consideration by MAS and CARS'?

Response:

This issue was addressed as part of the 1 October 2008 reforms to the motor accidents scheme. Section 100(1A) of the *Motor Accidents Compensation Act 1999* enables a claims assessor to give a direction in writing to a person who is not a party to an assessment requiring that person to produce documents or furnish specified information.

23. Can you comment on the Australian Lawyers Alliance statement that there has been a dramatic increase in the need for judicial review of the MAS assessments?

Response:

In the last five financial years (MAA Annual Report 2008-09, p 83) a total of 27,436 medical disputes were finalised by MAS.

In the same period, the MAA is aware of only 36 matters that have been the subject of a challenge by one of the parties to either an administrative decision by MAS, or to the final medical assessment by a Medical Assessor or Review Panel.

To date only seven matters have been referred back to MAS for a fresh decision to be issued, four matters relating to administrative decisions by the MAS Proper Officer about whether or not to accept an application for further assessment, and three matters relating to medical assessments by a Medical Assessor or Review Panel.

The MAA does not believe that these figures support the assertion made.

24. The Law Society of NSW, referring to the Supreme Court judgement in *Ackling v QBE Insurance (Australia) Limited* delivered on 28 August 2009, has expressed concern that ‘a doctor, or possibly an occupational therapist, will be providing a binding assessment not only as to the reasonableness of any proposed care regime but also as to whether or not the injury itself was one that was caused by the motor accident’, and that such an assessment should instead be carried out by a legally trained person. Similarly, the Australian Lawyers Alliance has stated that ‘MAS assessors (doctors) have shown themselves so incapable of applying legal ideas of causation that the 2008 amendment making their views binding should be rescinded and the old position in which they could express an opinion but not bind a subsequent assessor be restored.’?

- **To what extent is the assessment of the medical assessor appointed by the MAS binding?**
- **Is the MAA satisfied that medical assessors have the necessary training to make binding assessments?**
- **What is your response to the suggestion that such an assessment should be provided by a legally trained person?**
- **What is your response to the Law Society’s view that ‘leaving the determination of care disputes in the hands of medical assessors represents a denial of natural justice for the injured person.’?**

Response:

In accordance with sections 58 and 61 of the *Motor Accidents Compensation Act 1999*, certificates issued by a medical assessor in relation to:

- whether the treatment provided or to be provided to the injured person was or is reasonable and necessary in the circumstances;
- whether any such treatment relates to the injury caused by the motor accident; and
- whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%,

are conclusive evidence and are, therefore, binding on the parties, CARS and the courts.

Medical assessors receive regular and appropriate training in connection with their role in providing conclusive certificates in relation to medical assessment matters. Medical assessors are appointed on the basis of their acknowledged expertise, independence and credibility within their area of specialty. They are each accredited to assess one or more different type of dispute.

Questions 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. It would be inappropriate for someone other than a medical assessor to make a binding determination on these matters.

If either party to a matter is of the opinion that a medical assessor has made a material error in the course of their assessment, they may seek a review under section 63 of the *Motor Accidents Compensation Act 1999*. If either party has additional relevant information about the injury, or if the injury has deteriorated, they may seek a further assessment under section 62 of the Act. Furthermore, a claims assessor or a court may refer a matter back to MAS for further assessment under section 62(1).

Claims Assessment Service (CARS)

25. Between 06/07 and 08/09 the proportion of all notifications with a referral to CARS has declined from 12% to 2%.

- **Can you explain what factors have contributed to this decline?**

Response:

This data is contained in the MAA's 2008-09 Annual Report at Table 16 on page 89. As indicated in the footnote to that chart, the data for the most recent three years referred to in the question is underdeveloped. Some claims arising during those years are still very recent and it is too early in the development of those claims, and those lodgements at CARS to draw any conclusions regarding the number of referrals that will result.

26. Table 23 in the MAA's 2008/2009 Annual Report, 'Special Assessment Dispute Lodgements' shows that since 06/07:

- Late claims fell from 72% of the total to 65% in 07/08, then rose to 85% in 08/09.**
 - Claims not lodged with police rose from 10% in 06/07 to 26% in 07/08 then fell to 1% in 08/09.**
- **Can you explain what factors have led to the changes in these categories of special assessment dispute lodgements?**

Response:

Although when expressed as a percentage there appears to be a certain degree of volatility, the number of actual Special Assessment Disputes has remained

consistent and small over that time, ranging between 156 and 235 applications per annum.

As a percentage of disputes lodged, special assessment applications have remained consistent, at between 5% and 6%, of all applications lodged over the past 5 years. (Table 18, page 90, MAA 2008/2009 Annual Report)

The proportion of claim notifications with special assessment applications lodged at CARS have also been decreasing in volume from 220 claims in 2001/02 to 127 claims in 2005/06 down from 2% of claims to 1% of claims. (Table 17, page 89, MAA 2008/2009 Annual Report).

27. The Government response to the ninth review of the MAA noted that the MAA was developing a *Guide to CARS* information brochure for claimants and was conducting a survey of CARS users.

- Can you update the Committee on both these projects?

Response:

The MAAS Reference Group and CARS Assessors Practice Group have provided feedback on a series of three draft *Guide to CARS* brochures. The brochures cover claims assessment and exemptions, assessment conference hearings and special assessments of disputes that arise in connection with claims. The MAA is currently revising the brochures in the light of the comments received.

The MAA has consulted with the MAAS Reference Group on the proposal to undertake a CARS user survey to assess claimants' perceptions of the service. Since then, the MAA General Manager has indicated that the MAA will undertake a review of CARS. The proposed user survey will be developed in conjunction with this review.

28. The Government response to the ninth review of the MAA stated that the MAA would refer to the Motor Accidents Assessment Service Reference Group the issue of possible changes to the CARS assessment process to assist assessors to determine whether a matter should be exempt from CARS assessment due to its complexity.

- Can you update the Committee on this issue?

Response:

The MAA has consulted with the MAAS Reference Group and the CARS Assessors Practice Group on the issue of complex cases. The matter will be considered further as part of the review of CARS.

29. The Government response to the ninth review of the MAA anticipated that the final report from the PricewaterhouseCoopers study of possible

'superimposed inflation' relating to CARS assessments and the CTP Scheme as a whole would be available by 30 June 2009.

- **Can you update the Committee on the outcome of that study?**
- **Can you comment on the Insurance Council of Australia's view that superimposed inflation is driven by individual CARS assessors making determinations without providing sufficient reasons for some assessments?**

Response:

The MAA has received the final report by PricewaterhouseCoopers on superimposed inflation in relation to the compulsory third party scheme. The Authority has consulted extensively with insurers to identify potential causes of superimposed inflation, including aspects of the operation of CARS. The potential causes identified have been reflected in the proposed terms of reference for the review of CARS.

30. In the Government response to recommendations from the ninth review of the MAA related to transparency of CARS processes it:

- a. noted that the MAA had commenced preparations for the inclusion of de-identified decisions on its website**
 - b. supported the publication of quarterly data relating to CARS performance**
 - c. undertook to refer the proposal to provide external stakeholders access to the CARS practice manual to the Motor Accidents Assessment Service Reference Group.**
- **Can you update the Committee on each of these issues?**

Response:

a. Publication of decisions - The MAA tabled an initial discussion paper on the publication of CARS decisions at the MAAS Reference Group (MRG) meeting in June 2009. Preliminary responses were received from stakeholders responding to this discussion paper and the development of an implementation plan is underway.

b. Performance data - The MAA currently prepares claims assessor performance data on a six-monthly basis as quarterly data is unreliable due to the small sample size involved. The MAA is continuing to provide the MRG with a detailed briefing on medical and claims assessor performance data every six months.

c. Practice manual - Following consultation with the MRG and claims assessors, the practice manual for CARS claims assessors has been publicly released and is available from the MAA website.

31. Can you report to the Committee the trend in insurer claims of contributory negligence since 06/07 and comment on whether legislative action is required to address any inappropriate incentives to have CARS assessments reheard in court?

Response:

The MAA continues to monitor this issue. No significant movement has been observed in insurer allegations of contributory negligence. The issue is also being considered by a working party comprising representatives from the Law Society of New South Wales, Insurance Council and the MAA in the context of the statutory review of the *Motor Accidents Compensation Regulation 2005*.

32. The Government response to the ninth review of the MAA noted that consideration was being given to the proposal that in matters where liability had been declined, only the matter of liability be determined by the District Court.

- **Can you update the Committee on this issue?**

Response:

The MAA has consulted with the NSW Attorney General and court administrators and the judiciary in relation to this proposal. The Attorney General has advised that the recommendation is not supported as there is insufficient evidence of problems arising in practice and the proposal could lead to further duplication and delays in proceedings. The Director General of the Department of Justice and Attorney-General has also advised that court administrators and the Chief Judge of the District Court do not support the recommendation.

33. The Insurance Council of Australia notes a forthcoming review by the MAA of the CARS process generally.

- **Can you outline the scope, purpose and timeframe of this review?**

Response:

The MAA is currently consulting with the licensed insurers and members of both the Bar Association and the Law Society on draft terms of reference for the review. Once the terms of reference have been settled a timetable for the review will be prepared.

Late claims

34. The NSW Bar Association has described the process through which late claims are dealt with as a 'mess' due to late claim disputes being protracted and expensive for both parties.

- **Can you outline the requirements placed on those making late claims?**
- **Can you outline the rationale for these requirements?**
- **Is there scope to simplify the late claim dispute process?**

Response:

A claim must be made within six months of the date of the accident. A claim may be made more than six months after the date of the accident in which case it is called a late claim. In accordance with section 73 of the *Motor Accidents Compensation Act 1999*, a late claim can be made if the claimant provides a full and satisfactory explanation for the delay in making the claim. This means that a claimant must provide a "full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay" (refer section 66(2)).

These provisions seek to encourage the early notification of claims and in turn, the early rehabilitation of claimant's injuries and the early resolution of claims.

The late claims process will be considered as part of the review of CARS.

Consultation with stakeholders

35. The Bar Association notes that the MAA was to receive a report from an outside consultant on the quality of its consultation meetings with stakeholders.

- **Has the MAA received this report?**
- **If so, can you outline the conclusions and recommendations in this report?**

Response:

The Internal Audit Bureau (IAB) has undertaken a review of stakeholder engagement activities and ongoing relationship management. The review concluded that:

- MAAS stakeholders are provided with a wide range of information and support and the opportunity to comment on important strategies and policies.
- The MAAS Reference Group is effective, representing a diverse range of stakeholders.
- The MAS and CARS Assessor Practice Groups are effective forums for assessors to share and communicate information with MAAS.
- There are a wide range of publications for stakeholders and comprehensive information is available on the web-site and assessor extranets. These provide opportunities for ongoing stakeholder engagement.

Issues arising from Zotti v Australian Associated Motor Insurers Limited (2009) NSWCA 323

36. Can you outline the facts and judgement from the Zotti case and its ramifications for the Scheme?

Response:

Zotti v Australian Associated Motor Insurers Limited [2009] NSWCA 323 concerned a person (Mr Zotti) who was injured when he lost control of a bicycle he was riding. Mr Zotti claimed that an oil slick that remained on the road following an earlier motor accident caused his accident. The court held that the insurer of the CTP insurer of the vehicle that caused the earlier accident did not have to indemnify the owner of that vehicle since the accident did not come within the definition of motor accident in the *Motor Accidents Compensation Act 1999*.

37. The Bar Association notes that the MAA has indicated there is to be a legislative solution to the issues arising from the Zotti case.

- **Does the MAA consider a legislative amendment is required to address the issues arising from the Zotti case?**
- **If so, what is the nature of the proposed amendment, the time frame for its implementation, and progress thus far?**

Response:

In its judgment, the Court of Appeal considered that the matter was “deserving of consideration by the legislature”. The Government is currently giving consideration to an appropriate solution.

Issues arising from Doumit v Jabbs Excavations Pty Ltd (2009) NSWCA 360

38. Can you outline the facts and judgement from the Doumit case and its ramifications for the Scheme?

Response:

Mr Doumit was injured on a work site when a vehicle that ran on tracks rather than wheels ran over his foot. The definition of motor vehicle in the *Motor Accidents Compensation Act 1999* is “a motor vehicle or trailer within the meaning of the *Road Transport (General) Act 2005*”. The *Road Transport (General) Act 2005* defines a motor vehicle to mean a vehicle (within the meaning of the Act) that is built to be propelled by a motor that forms part of the vehicle. The same Act defines vehicle to mean any description of vehicle on wheels (including a light rail vehicle) but not including other vehicles used on railways or tramways.

The Court of Appeal determined that the vehicle that caused Mr Doumit’s injury was not a “motor vehicle” within the definition of the *Motor Accidents Compensation Act 1999* as the vehicle ran on tracks not wheels. As a result, it was determined that Mr Doumit could not recover damages under the motor accidents scheme.

If a vehicle that runs on tracks is not a motor vehicle, it is not required to be registered and is therefore not required to carry CTP insurance.

39. The Bar Association notes that the MAA is considering issues arising from the Doumit case jointly with the RTA.

- **What response does the MAA consider necessary to address issues arising from the Doumit case?**
- **What is the timeframe for implementing that response?**
- **What is the current situation for drivers of treaded vehicles who have paid their CTP Green Slip premiums?**

Response:

The Roads and Traffic Authority are the lead agency for the matter. The MAA will continue to work cooperatively with the RTA on this issue.

Injury prevention strategies

40. In its ninth review of the MAA in 2008 the MAA stated that it was developing a new evidence-based strategy aimed at promoting road safety to young people, and would also be developing an evaluation plan to measure outcomes from the strategy.

- **Can you update the Committee on the strategy, the evaluation plan and the outcomes?**
- **Can you outline to the Committee the evidence the strategy is based on?**

Response:

The NSW Government strategy on 'Safer Roads' is led by the Centre for Road Safety (CRS) within the Roads and Traffic Authority. The MAA's role in road safety has been refocussed to support this initiative, and the MAA undertakes a range of projects, in partnership with the RTA and others, in support of their strategies.

The MAA continues to host the 'Arrive Alive' website, which is aimed at young people, and supports KidSafe in a range of activities. Future activities in the road safety area will be undertaken in consultation with the CRS, in support of the CRS's evidence-based strategy for promoting road safety to young people. This will ensure that there is no duplication of effort while maximising road safety education and awareness for motorists and other road users.

41. Youthsafe have expressed concern that the 'Year Ahead' section of the MAA's 2008/2009 Annual Report does not mention any major works related to road safety or prevention strategies and that current MAA road safety programs for young people focussing on one-off events and the use of sports people to present to school children are not sufficient.

- **Can you comment on these concerns?**
- **What projects in the coming year comprise the Injury Prevention Strategy?**
- **Which of these projects target young people?**

Response:

See the response to question 40 above.

42. The Motorcycle Council of NSW notes that while 12 to 15 million dollars is provided each year for bicycle and pedestrian safety, the total amount provided since 2002 for motorcycle safety is less than three million dollars.

- **Can you comment on these figures?**
- **Can you outline the aspects of the MAA road safety strategy that address the safety of motorcycle riders?**

Response:

As it is unclear what funding sources this refers to, the MAA is unable to comment on these figures.

The overarching road safety strategies relevant to motorcyclists in NSW are developed and implemented by the Centre for Road Safety.

However, the MAA has committed specific funding for relevant road safety research in conjunction with the Centre for Road Safety. In addition, the MAA has partnered with the Motorcycle Council to support targeted activities such as safety education campaigns and the production of a video highlighting safety issues.

Private bus and coach classifications

43. The Bus and Coach Association NSW has proposed changes to premium classifications that acknowledge the different operating environments and accreditation systems for bus and coach drivers.

- **Can you comment on their proposal that routes services, school services under government contracts and tourist, long distance and charter services - which require NSWTI driver accreditation and adherence to OH&S, Safety Management Systems and Vehicle Preventative Maintenance Programs leading to better safety records – should attract different premiums than community transport, private use and U-Drive operators?**
- **Can you comment on their proposal that buses and coaches should be further categorised by size as Class 6a – under 14 passengers, Class 6b – between 14 and 24 passengers, and Class 6c – over 25 passengers?**

Response:

The MAA *Premiums Determination Guidelines* enable insurers to utilise any objective risk-rating factor except race, input tax credit entitlement or policy duration.

The MAA regularly reviews risk relativities for the various vehicle classes in the Green Slip scheme. The Bus and Coach Association's proposal will be considered as part of the next review.

The MAA welcomes the Bus and Coach Association's input on this matter.

Medical Care and Injury Service Levy (MCIS)

44. The Government response to the ninth review of the MAA noted that an MAA/Insurer working party had been established to consider the advantages and feasibility of further itemisation of the Medical Care and Injury Services Levy on CTP Green Slips and a report to the MAC was expected by 30 June 2009.

- **Can you report to the Committee the outcomes of the working party's considerations?**

Response:

The MAA has received advice from all CTP insurers on the technical and administrative changes that would be required to further itemise the MCIS levy on Green Slips. The Authority is currently considering the feasibility of the proposal in the light of this advice.

Motorcycle safety issues

45. What is your response to the Motorcycle Council of NSW statement that roadside furniture 'has in many cases become even more motorcycle unfriendly' since 2008, and the particular example they give of wire rope barriers, which pose 'special and additional risks to motorcyclists'?

Response:

This is a question for the Centre for Road Safety. However the MAA has provided funding, in partnership with the RTA and other agencies, to fund a study conducted by the Injury Risk Management Research Centre at the University of NSW to examine the crash characteristics and causal factors relating to motorcycle crashes into roadside barriers, including wire rope barriers, across Australia and New Zealand over a five-year period. When completed, this study will provide recommendations for engineering solutions to mitigate injuries.

Access for vision impaired people

46. Vision Australia has submitted that there are barriers to vision impaired people accessing services such as the online Green Slip calculator, completing paper forms, needing a drivers license to comply with selection criteria and reading printed material provided at interviews or in assessment centres.

- **What provisions does the MAA make for vision impaired people to access services?**

Response:

The Motor Accidents Authority is conscious of ensuring its services are accessible to all people, including those with disabilities such as vision impairment. General content on the Authority's website is compliant with current accessibility guidelines and as part of an upgrade of the online calculator the issue of accessibility is being considered. To assist people who have trouble filling in forms or using the online calculator, the Authority operates a Claims Advisory Service that can provide information over the phone, including Green Slip price comparisons, and an outreach service that can walk people through any questions about the scheme and assist them fill in claim forms if required.

The MAA would welcome the assistance of Vision Australia in providing advice on ensuring that the needs of vision impaired people are best met in these areas.

Other issues arising from the ninth review of the MAA

47. The Government response to the ninth review of the MAA noted that the MAA expected to report to the MAC the outcomes of its review of insurer's communication with self-represented claimants by 30 June 2009.

- **Can you report to the Committee the outcomes from that review?**

Response:

The MAA has completed its review of insurers' communication with self-represented claimants. While most of the information provided to self-represented claimants by insurers was found to be accurate and appropriate, the review identified a number of minor issues which CTP insurers were asked to address. The MAA will be conducting another review of the generic claim information provided by insurers to self-represented claimants in the second half of 2010.

Other issues arising from the second review of the LTCSA

48. In the Government's response to the second review of the LTCSA it noted that the MAA had been requested to conduct research into the issue of people hit by a projectile whilst driving a motor vehicle.

- **Can you report to the Committee on the outcome of that research?**

Response:

As noted in the Government response to the second review of the LTCSA, the MAA expects to finalise this research later this year.