

3 April 2014

The Director
Standing Committee on Law and Justice
Legislative Council
Email: lawandjustice@parliament.nsw.gov.au

Dear Sir/Madam

**RESPONSES TO SUPPLEMENTARY QUESTIONS AND QUESTIONS TAKEN ON
NOTICE AT 7 MARCH HEARING**

Thank you for the opportunity to appear before the Law and Justice Committee on 7 March 2014. At the hearing, our representatives took a number of questions on notice, which we have addressed below, along with the supplementary questions sent through after the hearing.

Q: What are your views on the MAA's new approach to insurer price filings involving 'more comprehensive requirements, an enhanced evaluation tool' and the collection of insurance Liability Valuations Reports from each insurer?

A: Insurers have willingly complied with the MAA requests to provide significantly more detail in support of rate filings over the past two years. As the scheme regulator, the MAA has the power to require insurers to provide a broad range of information and data, and our members comply with this. We are in favour of consistency in the MAA's approach to filings year on year, and transparency of process.

Q: In your supplementary submission you list a range of projects that are underway between the ICA and the MAA, some of which are aimed at minimising the need for claimants to seek legal assistance. Could you please provide some detail about these projects and the progress made so far?

A: Our members believe that a simplified claims form would greatly reduce the need for legal assistance for low-severity claims, as the existing long and complicated claims form leads many claimants to engage a solicitor in order to fill it out. Although the MAA has recently engaged with insurers regarding revising the claims forms, these discussions are at an early stage and so the question of progress is best directed at the MAA.

Early notification of injuries, claims and police and medical reports would allow CTP insurers greater ability to deal directly with claimants, enable speedier recovery from

low-severity injuries, reduce the need for claimants to seek legal assistance, and settle claims quicker. The ICA has previously prepared submissions suggesting the MAA adopt an early notification process that mirrors that in Western Australia.

advisory telephone service to the relevant insurer. Our members have provided feedback on draft guidelines to support this very important process.

We understand the MAA will be doing further consultation on early notification initiatives soon; however we do not yet have detail on these, so the question of progress is best directed at the MAA.

Q: Do you agree with the statistic that 90% of late claim disputes are lost by insurers?

A: The attached MAAS Performance Update for the eight months to February 2014 reflects in its final graph that in 86% of the late claims special assessments heard at CARS in 2013/14, the late claim was allowed to be made.

However, this figure requires context in order for its significance to be properly understood. The MAAS report reveals that the number of late claims referred to CARS has been falling since 2011. In the eight months to February 2014, there were only 43 late claims disputes.

It would likely be of benefit to both the Committee and to our members to do a qualitative analysis of those 43 disputes in order to determine the reason for the dispute, and the reason for the CARS determination.

We have engaged Finity Consulting to prepare the attached file note on late claims data. Finity does not hold industry data through to February 2014, so we have provided 2012/13 figures.

In 2012/13, 10,009 claims were reported, of which 2,018 were late claims (that is, reported more than six months after the accident). Of the 2,018 late claims, 97% were not referred to CARS; only 60 late claims went to CARS for determination, of which 50 late claims were allowed to be made and 10 were not.

Late claims can be separated into those made more than three years after an accident, and those made more than six months but less than three years after an accident. After three years, a claim is statute-barred from proceeding to court, so it is entirely appropriate for insurers to decline these claims. .

If it is the view of the Government that the time limit for making a claim should be extended from six months, our members will work within any change in the 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.

Q: We were advised by the Law Society that over the underwriting years from 2000 to 2012 insurer expenses amounted to 16 per cent, whereas the legal and investigation expenses were 12 per cent. Are those figures correct?

A: Those figures are taken from the MAA Annual Report. However, the legal and investigation figure does not give a full picture of the total legal expenses paid within the CTP scheme. Contracted-out legal costs, which are charged by the injured party to the injured person and paid out of the final payment made by an insurer to the claimant, are not reported to the MAA and not reflected in any of the MAA reporting.

expenses compared with the total cost of legal expenses, 16% vs 12% under-represents the actual legal costs.

Without any disclosure to the MAA of the total amounts paid by injured persons to service providers, it is not possible to fully measure the efficiency of the scheme. It would be of most use to the scheme if service providers were required to submit estimated cost data each year (as the average claim length is more than four years), as well as the final cost figure at the resolution of the claim.

The ICA and members believe complete transparency of service provider fees to the MAA is essential to enable a rigorous analysis of scheme efficiency, and for the Government, MAA and the public to fully understand the cost drivers in the scheme.

Q: Can insurers provide details of their advertising expenses allocated out of CTP premiums?

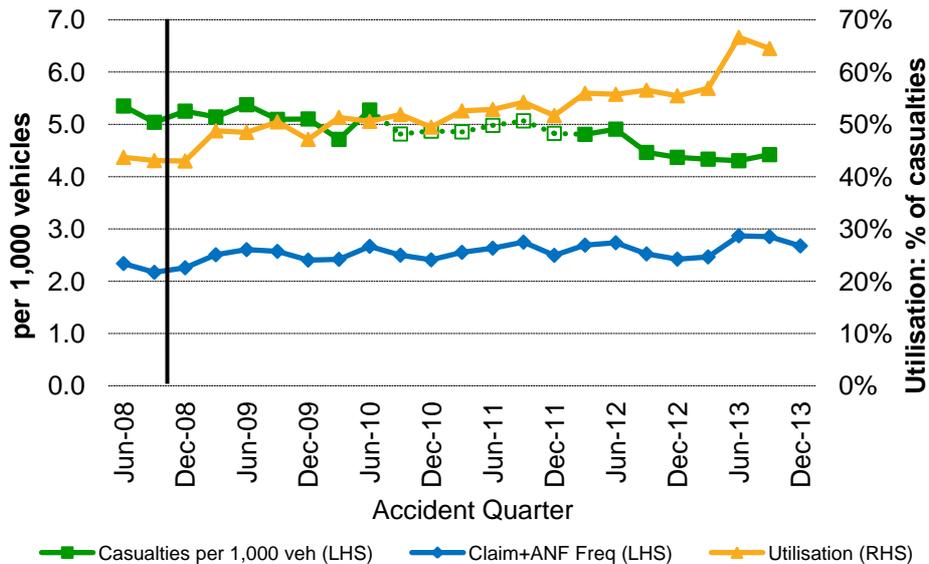
A: Our members currently provide their management accounts to the MAA as part of the premium filing process, which include details of acquisition costs, including advertising costs, commissions, staff costs, and systems.

As insurer advertising expenses are effectively controlled through the rate filing process, it would be beneficial to the scheme if a similar approach could be applied to other stakeholders such as lawyers.

Our members have also provided some further comments on scheme trends, arising out of a recent presentation on scheme performance provided by Finity Consulting. These comments are attached to this letter.

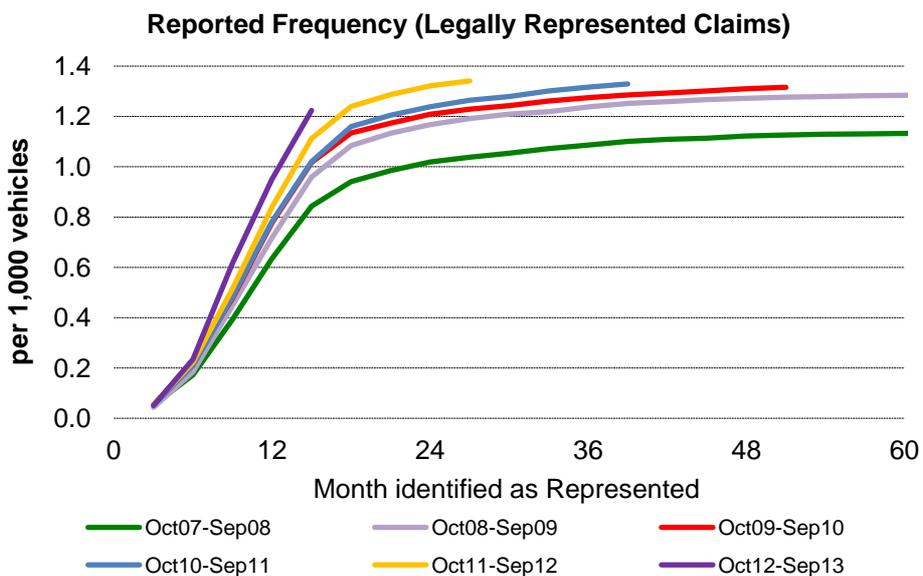
FURTHER DATA ON SCHEME TRENDS

A recent presentation on scheme performance provided to our members by Finity Consulting revealed that there is increasing utilisation of the NSW CTP scheme, with a falling casualty rate that is, the percentage of casualties making claims within the scheme has gradually increased since 2008. There are a number of factors that are likely to be causing the increase in the utilisation rate, and the relevance of this is the potential impact on premiums.



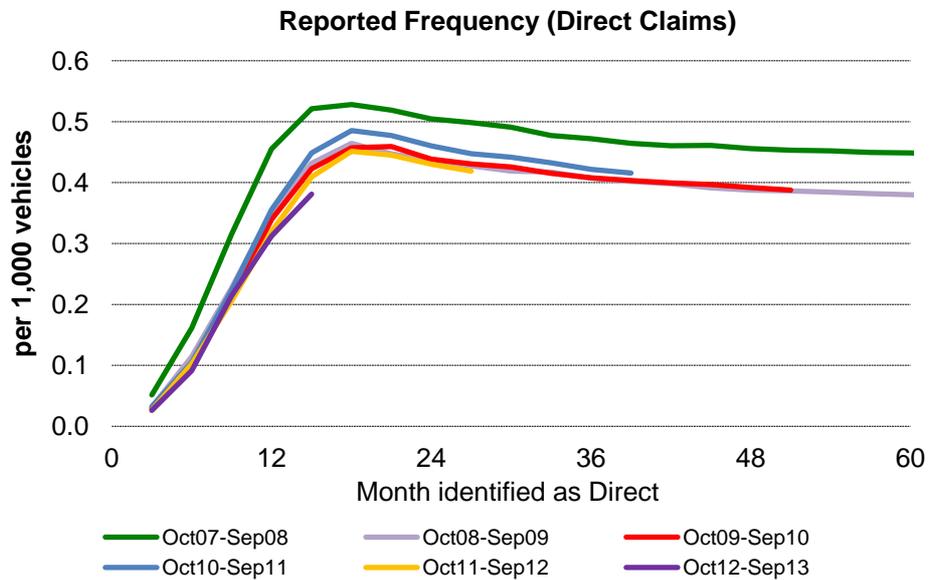
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Our members are particularly concerned about the increasing frequency of legally represented claims, and the corresponding decrease in claims that are reported directly to the insurer. Legally represented claims for the 2012/13 year are currently 10% higher than 2011/12, whereas direct claim frequency is at an all-time low.



Source: Finity Consulting

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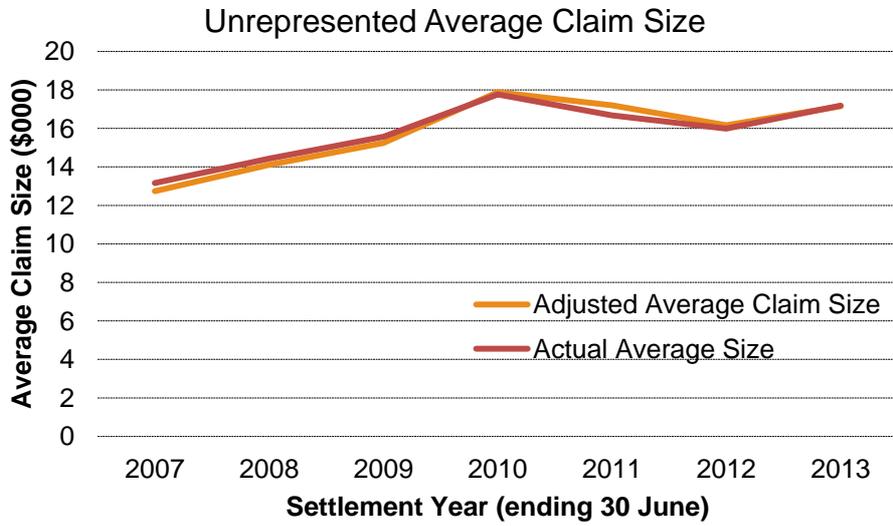


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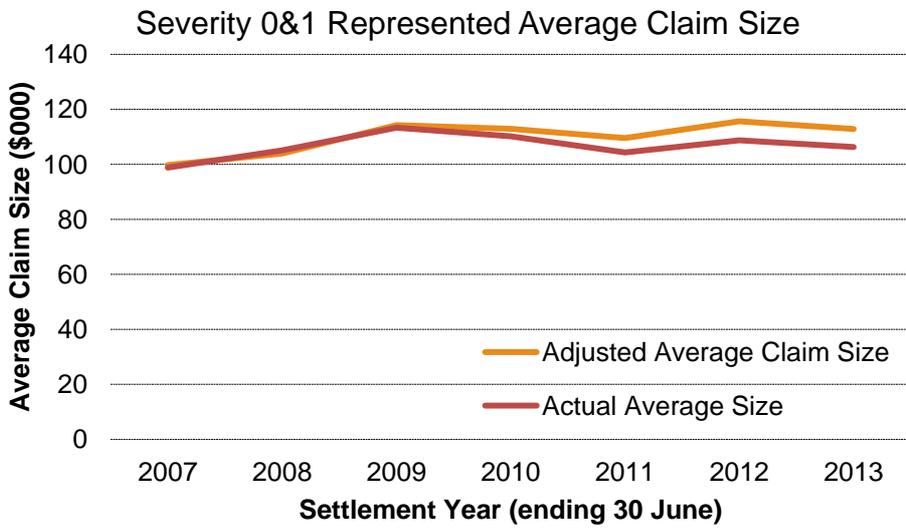
The cost impact of a claim being legally represented is significant. The graphs below show that the average size of an unrepresented claim is currently around \$17,000, while the average claim size for a low-severity legally represented claim is around \$110,000. This is likely to have an ongoing impact on premiums, if the level of legal representation for low-severity claims is not contained in some way.

The likely drivers of increasing representation rates are:

- Journey claims, which were previously unrepresented when lodged as compensation claims, but are now represented when lodged as CTP claims
- Use of unsolicited calls and referral agents
- Anticipated scheme reforms in 2013 which brought existing claims forward
- Increases in personal injury lawyer advertising, which we note with concern has more than doubled in volume over the past two years, as evidenced by the attached report by Ebiquity.



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Source: F

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