



Minister for Commerce  
Minister for Finance  
Minister for Industrial Relations  
Minister for Ageing  
Minister for Disability Services  
Leader of the Government in the Legislative Council

Ref: 05/694

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

9 MAY 2006

Dear Ms Robertson

I refer to your letter of 4 April 2006 regarding the seventh review of the Motor Accidents Authority (MAA) and Motor Accidents Council by the Standing Committee on Law and Justice, forwarding the Committee's further questions on notice.

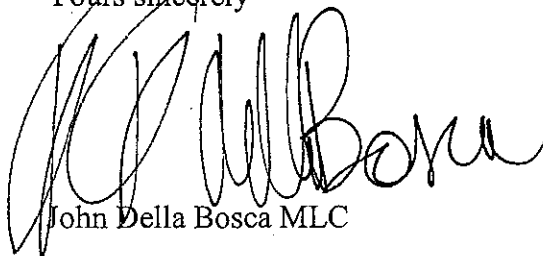
I am pleased to enclose the MAA's responses to the Committee's further questions on notice.

I would also like to clarify an issue raised in the evidence presented to the Committee by the New South Wales Bar Association concerning the review of medical assessments (at page 38 of the Report of Proceedings).

I am advised that analysis of data included in the 2004-2005 MAA Annual Report indicates that of the 17,892 medical assessment certificates issued in the period from the commencement of the new scheme until 30 June 2005, only 124 certificate outcomes have been reversed by a medical assessment Review Panel. This represents significantly less than one percent of all matters assessed by the Medical Assessment Service during this period.

Any enquiries about this matter may be directed to Ms Jodie Young, Senior Policy Officer, MAA on (02) 8267 1934 or by e-mail: [jyoung@maa.nsw.gov.au](mailto:jyoung@maa.nsw.gov.au).

Yours sincerely



John Della Bosca MLC

## SEVENTH REVIEW OF THE MAA AND MOTOR ACCIDENTS COUNCIL

### MAA RESPONSES TO ADDITIONAL QUESTIONS ON NOTICE

#### Fall in risk premium

- 1.1 *The Committee notes the MAA's evidence in respect of falls in the risk premium.*

*Question: Have the 1999 reforms been more effective than was originally anticipated in cutting the average cost of a CTP claim in NSW?*

The average cost of a claim has increased since the 1999 reforms and is now greater than the average cost in the last year before the reforms in real terms.

As is noted at page 82 of the MAA's Annual Report 2004/2005, the total estimated incurred claims cost is lower than expected in insurer filings as a result of the reduction in claim frequency and the effectiveness of the non-economic loss (NEL) threshold. The reduction in claim frequency is mainly attributable to a reduction in claims for less serious injuries. This means that the remaining claims relate to serious injuries and hence the average cost is higher.

The intent of the reforms was to limit the payment of non-economic loss damages to the top 10% of claims in terms of injury severity and this has been achieved. The number of claims with either NEL payments or NEL reserves is approximately 10% of full claims.

- 1.2 *The MAA states in the Annual Report that excess profits are 'primarily as a result of the CTP insurers being slow to pass on reductions in risk premiums.'<sup>1</sup> The MAA has previously advised the Committee that when the new scheme was introduced insurers did not immediately file for 100% scheme effectiveness.*

*Question: Can you expand on these comments?*

The actual claim frequency experienced has been lower than the claim frequency included in insurers' original filings. In response to the drop in claim frequency in each underwriting year, insurers based their subsequent filings on a lower projected claim frequency. However, claim frequency continued to drop more than projected and this happened in successive underwriting years. Projected claim frequency, while reasonable at the time of filing, was overtaken by continued reductions for several underwriting years in succession.

*Question: What view did the MAA take in 1999-2000 as to the likely effectiveness of the scheme reforms? Did the MAA agree with the insurers that the reforms were not likely to be 100 per cent effective?*

It was not possible to predict with certainty the full effect of the legislative changes, especially the introduction of untested initiatives such as the permanent impairment

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<sup>1</sup> MAA, Annual Report, 2004-2005, p6

threshold, the application of AMA Guidelines and the establishment of assessment services. The MAA considered it was reasonable on the insurers' part to incorporate effectiveness at less than 100% because of the need to ensure a fully funded premium.

*Question: From what date did insurers begin to factor in 100 per cent scheme effectiveness?*

The inclusion of 100% effectiveness happened as a result of the insurers' acceptance of the lowered claim frequency and the effectiveness of the NEL gateway. Filings rejected by the MAA in mid 2003 had not incorporated the full effectiveness of the reforms and the comparatively high average claim size was one reason for the rejection of the filing. This date can be viewed as the point at which 100% effectiveness was included in filings.

*Question: What role does the MAA consider it has to play in ensuring that insurers pass on falls in the risk premium promptly?*

The MAA's role is to review the filings submitted by insurers. The MAA may reject a filed premium if the premium is not fully funded, is excessive or does not conform to the MAA Premium Determination Guidelines.

### **Fall in accident frequency**

1.3 *The Insurance Council of Australia has submitted that claims experience suggest that the scheme has now stabilised. This suggests that the accident frequency has bottomed out.*

*Question: Does the MAA have steps in place to produce its own independent assessment of likely movements in the accident frequency and other aspects of the risk premium, or is it reliant on the insurance companies assessment of those factors?*

The MAA obtains its own actuarial advice.

### **Insurer profitability: calculation of an adequate return on capital**

1.4 *When determining whether to accept a CTP premium the MAA is required to consider, amongst other things, whether the premium will produce an 'adequate return on capital invested and compensation for the risk taken.' The MAA commissioned Taylor Fry to produce a model by which to assess profit margins in CTP premiums in NSW. In the Annual Report the MAA states that the Taylor Fry methodology comprises three elements:*

- *The determination of a suitable quantum of total capital (net assets) for a representative insurer*
- *The determination of a suitable allocation of insurer capital to NSW CTP*
- *The calculation of a profit loading to service the allocated capital at a fair rate of return.<sup>2</sup>*

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<sup>2</sup> MAA, Annual Report, 2004-2005, p79

*Question: What is meant by 'fair rate of return' in the Taylor Fry methodology?*

A fair rate of return is defined as a return which would emerge in a freely competitive market.

*Question: What factors does the Taylor Fry methodology use to determine a fair rate of return?*

See sections 2 and 3 of Dr Greg Taylor's report of 21 December 2004 (refer Appendix 4 of the MAA's *Review of Insurer Profit*, previously provided to the Standing Committee).

*Question: Can you explain, in broad terms, the actual process that the MAA employs to assess a premium filed by an insurer?*

The filings are first reviewed by the Senior Premiums Analyst and Deputy General Manager and any major changes in direction or strategy are identified. The Senior Premiums Analyst checks the calculations and extracts and summarises the key assumptions. The key assumptions are then compared with the insurer's previous filing, other insurers' filings and with actuarial reports from the MAA's independent actuaries, Taylor Fry Consulting Actuaries. The assumptions are also compared with industry actuarial reports from Finity Consulting Pty Ltd (formerly Trowbridge Consulting Ltd) when they are available.

The MAA ensures that the insurers' filings are in line with the MAA *Premium Determination Guidelines* and Schedule of Premium Relativities.

If no significant issues are identified, a letter of no objection is prepared for the General Manager's signature, together with a summary of the key assumptions in the current and previous filing.

If there are significant differences in the key assumptions or changes from previous filings without adequate substantiation, the filing is discussed with the General Manager. At this stage of the process:

- The General Manager may request a meeting with the insurer to discuss particular issues of the filing. As a result of negotiation at this meeting, the MAA would expect the insurer to make amendments to the original filing and/ or provide further supporting documentation.
- The filing may be referred to Taylor Fry for a review of particular assumptions or a full review of the filing.

Following Taylor Fry's review of the filing and depending on the number and level of issues identified, the MAA:

- may discuss the results with the insurer and seek clarification;
- may outline the issues in a letter and request further information / substantiation;
- may meet with the insurer to discuss the insurer's assumptions and negotiate changes.

The process is then an iterative one with negotiation between the insurer and the MAA to reach a conclusion that is supported by the evidence.

- 1.5 *In its submission to the inquiry the Insurance Council of Australia points out that insurance companies compete for capital on international capital markets.*

*Question: Does the MAA agree that one way to determine an 'adequate return' on capital is to consider the rate of return required to attract sufficient capital to the NSW CTP scheme?*

The rate of return required to attract sufficient capital is one consideration in the determination of an adequate return. The way in which it is included, however, depends on how an adequate return can be determined. See section 2.8 and section 7 of Dr Taylor's report dated 21 December 2004.

*Question: Does the MAA consider that an 'adequate return on capital' varies over time according to international changes in the cost of capital? For example, if the cost of capital falls, does the 'adequate return on capital' invested in the NSW CTP market also fall? If so, does the Taylor Fry methodology take account of these changes?*

Premiums are affected by the economic climate including investment returns and inflation. For example, a 1% decrease in projected investment return can add \$12 to an average premium.

#### **Insurer capitalisation levels**

- 1.6 *The Australian Prudential Regulation Authority requires that:  
...insurers' estimates of their claim liabilities include a prudential margin that will provide at least a 75% probability that the insurer's provisions are sufficient to cover their liabilities. This represents a margin of approximately 15%.<sup>3</sup>*
- 1.7 *MAA profit estimates contained in the Annual Report appear to factor in this 15% margin.*

*Question: Can you explain to the Committee the purpose of the 15% prudential margin and the impact of the margin on the profit estimates? Would the profit estimates be higher or lower without the margin?*

According to APRA requirements, insurers are obliged to ensure at all times that they have more than sufficient provisions for their outstanding claims. The 15% margin is added to ensure that the full liability of the outstanding claims is accounted for at the minimum 75% probability of sufficiency that APRA requires. It should be noted that insurers can, and do, maintain higher than the minimum margins on their provisions.

*Question: Would the profit estimates be higher or lower without the margin?*

Arithmetically, the profit estimate would be higher if the prudential margin was reduced or excluded from the calculation.

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<sup>3</sup> MAA, *Annual Report, 2004-2005*, p82

## Market intervention by MAA

- 1.8 *The Committee has the following additional questions on notice regarding market intervention by the MAA.*

*Question: Does the Act provide the MAA with sufficient powers to successfully intervene in the CTP market, should the MAA decide to do so? What steps can the MAA put in place now to ensure that realised profits remain within a reasonable range in respect of future accident years?*

The *Motor Accidents Compensation Act 1999* provides the MAA with limited powers to intervene in the market. The MAA has the power to formally reject a premium if the premium is not fully funded, is excessive or does not conform to the MAA *Premium Determination Guidelines*. Once a premium has been filed, the MAA cannot determine prices charged to individuals other than to ensure that insurers' rating factors are objective.

## Proposed life time care and support scheme

- 1.9 *The Committee has the following additional questions regarding the proposed Life Time Care and Support Scheme.*

*Question: How will the new scheme effect the way the MAA performs its functions? For example, will the MAA contemplate scaling back its work in respect of the treatment and care of persons who have suffered catastrophic injury?*

The MAA sets its priorities for its injury prevention and management programs with regard to injuries having the greatest cost impact to the CTP scheme, in particular, high cost claims and high frequency injuries. In due course the establishment of the Lifetime Care and Support (LTCS) scheme may impact on this assessment and the MAA will vary its priorities accordingly.

## No fault scheme for children

- 1.10 *The Committee notes that a bill is currently before the Parliament to introduce a special no-fault benefit for children injured in motor accidents in NSW.<sup>4</sup>*

*Question: How many children are currently being refused access to accident compensation in the NSW CTP scheme because the driver of the vehicle involved in the accident was not 'at fault'? How many of these children are catastrophically injured?*

It is estimated that there will be very few new claims for the children's special benefit from child passengers. It is expected that most of the new claims will come from children injured as pedestrians or pedal cyclists.

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<sup>4</sup> Motor Accidents Compensation Amendment Bill 2006, Part 1.2, Division 2

Children injured as pedestrians or pedal cyclists more generally have liability disputed in their claims. The MAA estimates that the claims of child pedestrians are rejected in 30% of cases and contributory negligence is alleged in 12% of cases. It has been further estimated that the claims of children injured as pedal cyclists are rejected in 36% of cases and contributory negligence is alleged in 17% of cases.

It is estimated that approximately 10-11 children a year will be eligible for entry to the Lifetime Care and Support (LTCS) scheme having suffered catastrophic injuries in a motor vehicle accident in which the driver of the vehicle was not at fault. Previously these children would not have any entitlement to compensation for their injuries.

*Question: Can you briefly outline how the proposed no-fault for children benefit will operate, including the level of damages available under the benefit?*

A claim for the children's special entitlement will be made in the same manner as other fault based claims under the *Motor Accidents Compensation Act 1999*. The special entitlement provides for recovery of the child's hospital, medical and pharmaceutical expenses, rehabilitation, respite care, attendant care service expenses and in the case of the death of the child, funeral or cremation expenses.

*Question: What role will the MAA have in administering the children's no-fault benefit?*

Given that a claim made for the children's special entitlement will be progressed in the same manner as a fault based claim, the MAA's regulatory role will extend to include such matters as the monitoring of insurer compliance with statutory obligations and the *MAA Claims Handling Guidelines*.

Like other claimants, children who make a claim for the special entitlement will have access to the MAA's dispute resolution services, the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS).

*Question: How many children are likely to benefit from the scheme per year?*

It is estimated that up to 400 claims made by children will now proceed to have treatment, rehabilitation and care expenses met in full without either deduction for the child's contributory fault in causing the accident or full denial of liability by the insurer.

*Question: What is the likely cost of the proposed benefit to the NSW CTP scheme? What will be the effect of the benefit on CTP premiums?*

The provisions of the no-fault benefit for children receiving less serious injuries in motor vehicle accidents can be accommodated at a minimal cost to the scheme and within the \$20 average increase in green slip premium prices resulting from the introduction of the Lifetime Care and Support (LTCS) scheme.

#### **No fault scheme for 'inevitable' or 'blameless' accidents**

1.11 *The Committee notes the proposal currently before the Parliament to allow a right of recovery for persons injured in 'inevitable' or 'blameless' accidents.<sup>5</sup>*

*Question: What is a 'blameless' accident? How many blameless motor vehicle accidents are there in NSW each year?*

A 'blameless' or 'inevitable' accident is characterised as one in which no party is at fault in the accident. Examples of such accidents include those where the driver's loss of control is caused by a sudden and unforeseen onset of an illness or a sudden and unavoidable obstacle on the roadway (such as an animal).

Research commissioned by the MAA indicates that there may be an additional 50 claims per year resulting from the extension of the scheme to cover accidents in which no one is at fault.

*Question: Can you briefly outline to the Committee how this proposal will work, and to whom it will apply?*

A claim for motor accidents scheme compensation entitlements made under the blameless accident provisions will be made in the same manner as other fault based claims under the *Motor Accidents Compensation Act 1999*. Any person injured in a motor vehicle accident in which no one was at fault, with the exception of the driver of the vehicle causing the accident, will be entitled to make a claim for compensation.

*Question: What will be the likely cost of the proposed reform to the NSW CTP scheme, and how will this impact on CTP premiums?*

Given the introduction of the other new no-fault benefits for catastrophic injuries and children, the MAA considers that the inevitable/ blameless accident benefit is likely to have a net additional impact on CTP premiums in the vicinity of \$2 - \$3 per policy.

### **Motor Accidents Assessment Service**

1.12 *The MAA and WorkCover currently share a registry and some support services at Whitlam Square.*

*Question: Is there further scope for the integration of the dispute resolution services of the MAA and WorkCover? For example, could the MAA and WorkCover develop shared protocols for the accreditation of claims assessors? What are the limits on such integration?*

Whilst the Motor Accidents Assessment Service and Workers Compensation Commission share a floor of office space at 1 Oxford Street, Darlinghurst, the services do not share a registry or support services.

The MAA does not consider that there is scope for integration of accreditation protocols for Claims Assessment and Resolution Service (CARS) claims assessors and Workers Compensation Commission arbitrators. The MAA does not 'accredit' claims assessors. Claims assessors who are recruited to CARS must be legally qualified, personal injury

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<sup>5</sup> Motor Accidents Compensation Amendment Bill 2006, Part 1.2, Division 1



experts and experienced in assessing motor accidents claims. Arbitrators involved in the workers compensation scheme, on the other hand, are selected according to a very different set of criteria.

- 1.13 *The Committee notes the observation in the latest MAAS Bulletin that 2003-2004 CARS finalisation rate was 'much slower than the rate prescribed in the Claims Assessment Guidelines' (February 2006, p3).*

*Question: Can you provide the Committee with an update on the finalisation rate for 2004-2005? How is the MAAS reform package expected to impact on the CARS finalisation rate?*

Updated figures are not available.

As is noted in the MAA's response to Question 20.4 of the Standing Committee's Questions on Notice prior to the public hearing, it is anticipated that the CARS general assessment lifecycle will decline by 31 December 2006 as a result of the revised MAA *Claims Assessment Guidelines*.

- 1.14 *The Committee notes the observation in the latest edition of the MAAS Bulletin that 'the largest single impact on the time taken to complete [the allocation phase] is when a general assessment application is lodged before all medical disputes have been resolved by the Medical Assessment Service'.*

*Question: What are the reasons for this? Is there a problem with claimants and their solicitors not understanding the roles of the Medical Assessment Service and Claim Assessment and Resolution Service?*

CARS is not able to assess a matter until a claimant's entitlement to non-economic loss has been established by MAS. The problem referred to above relates to the late lodgement of disputes rather than a lack of understanding on the part of claimants and solicitors about the roles of MAS and CARS.

- 1.15 *The Committee notes the proposed amendment to the Act to make medical assessments of future treatment and care needs binding on claims assessors and courts.<sup>6</sup>*

*Question: Under the present system, what difficulties arise, for claimants, insurers and the MAA, from the fact that assessments of future care needs are not binding on assessors and courts?*

### **Claimants**

As certificates in relation to future treatment are not binding, claimants are unable to obtain an enforceable decision in relation to recommended treatment. For example, if a claimant's treating orthopaedic surgeon recommends knee replacement surgery and the insurer resists this recommendation, the claimant currently must wait until a decision is made by a CARS assessor at a general assessment or a court hears the substantive matter before they proceed with the treatment.

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<sup>6</sup> Motor Accidents (Life Time Care and Support) Bill 2006, Schedule 3, clause 2

Claimants (often in pain and distress) may wait for many months or years before they receive approval or payment for necessary treatment unless they can gain access under the public health system, have private health insurance that will cover them or are financially able to pay for the treatment themselves.

### **Insurers**

Two main problems exist for insurers:

- (i) It is often difficult for the insurer to decide whether to pay for treatment when there is insufficient evidence provided by the claimant, for example, as to:
  - the accident being the cause of the problem;
  - the prudence of proceeding with this particular treatment (especially with expensive or risky interventions);
  - alternative (often cheaper and safer) treatments having been considered; or
  - the claimant's commitment to complying with the treatment that is being recommended.
  
- (ii) It is difficult to plan management and estimate the cost of an ongoing claim when future care, especially in relation to serious injuries, remains uncertain.

### **Motor accidents scheme (including MAA)**

Anecdotal evidence suggests that parties are not bringing their future treatment disputes to MAS because the certificates issued by MAS assessors are not binding. For example, it is possible for a dispute in relation to future treatment to currently be assessed three times – once by MAS (non-binding certificate), once by CARS (determination binding on the insurer but not the claimant if the CARS determination is rejected) and finally by a court (binding on both parties). The same evidence may be put before each assessor and the judge and the same decision may be reached but only one decision is binding on all parties.

Obtaining a final answer on treatment is especially important in the early stages of a claim. Early intervention can often determine the severity of disability in relation to injuries caused by motor accidents. If such intervention is compromised because of difficulties in obtaining firm answers on future treatment, the eventual health and attitudinal outcomes for injured people are likely to be worse than if treatment were to be provided in a timely fashion.

*Question: Under the present system, how often are assessments of future care and treatment needs reviewed because of either changes to the claimant or changes to the kinds of technology available to treat an injury?*

As the number of disputes for future treatment brought to MAS is quite low, the number of further assessments on the basis of deterioration or additional relevant information about the injury are also relatively few. Further assessments on the basis of changes to technology are quite rare.

Anecdotally, parties advise that they are much more likely to reserve any attempt to get a different outcome to the dispute until the decision is binding (that is, either at CARS or court).

### **Claimants' experience of the NSW CTP scheme**

**1.16** *The Committee notes the MAA's assessment of the performance of the CTP scheme is that 'the motor accidents scheme continues to work well, providing benefits to both consumers and claimants.' In previous years the MAA has commissioned research by the Justice Policy Research Centre to examine claimants' experience of the scheme.*

*Question: Can the MAA update the Committee on the level of satisfaction of claimants with the scheme? What are the particular issues the MAA has identified as diminishing claimants' satisfaction with the scheme?*

As is noted in the MAA's response to Question 23.1 of the Standing Committee's Questions on Notice prior to the public hearing, the Justice Policy Research Centre (JPRC) completed a report on *Claimant perceptions of MAS* in May 2005. A copy of the report has been provided to the Committee.

Key findings of the report include (pp 65-66):

- There was no dominant view amongst claimants regarding overall satisfaction with the medical assessment process.
- There was no strong view amongst claimants as to which system for resolving medical disputes (the previous court-based system or the MAS system) was preferable.
- Claimant perceptions of MAS assessors were generally favourable. The majority of claimants were happy with the way the MAS assessor conducted the assessment, believed the assessment to be thorough, understood the explanations given to them by the MAS assessor and believed that the MAS assessor was objective and fair.
- To the extent that claimants were asked about the performance of MAS in undertaking its administrative functions (clarity of correspondence, helpfulness in rescheduling assessment appointments, arrangement of interpreters for non-English speaking-background claimants) they rated MAS positively.
- The majority of claimants rated the timeframe between referral of the dispute to MAS and attendance at the medical assessment appointment as slow.
- Claimants who did recall having contact with the Claims Advisory Service (CAS) tended to rate the service positively.

A survey of claimant perceptions of CARS commenced in 2005 and is expected to be finalised in mid 2006.

### **Young people and road safety**

**1.17** *The Committee is concerned about issues regarding road safety and young people.*

*Question: Can you update the Committee on the rate of road injuries amongst young people? Is there any evidence to suggest that the rate of injury of young people in motor accidents is improving?*

While young people continue to be over-represented in road crashes, there has been an improvement in their injury rates in the period 2001 – 2004.

For 17 – 25 year olds, the injury rate has reduced from 970 per 100,000 of the population

in 2001 (7,941 injured) to 819 per 100,000 of the population in 2004 (6,741 injured).

For under 16 year olds, the injury rate has reduced from 181 per 100,000 of the population in 2001 (2,708 injured) to 137 per 100,000 of the population in 2004 (2,065 injured).

### **Proposed changes to the Nominal Defendant Scheme**

1.18 *The Committee notes proposed amendments to the Motor Accidents Compensation Act 1999 to prevent trespassers from making claims against the Nominal Defendant.<sup>7</sup>*

*Question: In 2004-2005, how many claimants against the Nominal Defendant were trespassing at the time of their accident? Is this an increase on previous years?*

The Nominal Defendant scheme provides compensation for injuries caused by the fault of an owner or driver of a vehicle that is unregistered (and therefore uninsured) or unidentified. To be able to make a claim against the Nominal Defendant, the accident must have occurred on a road or a road related area, which includes areas that are open to and used by the public for driving, riding or parking of vehicles.

In the 2005 case of *Ryan v Nominal Defendant*, the NSW Supreme Court of Appeal found that an injured person could recover compensation under the motor accidents scheme through Nominal Defendant provisions even though the person was injured whilst trespassing on private property. The decision essentially reset the boundaries of the scope of cover under the Nominal Defendant scheme and created inconsistency in its operation.

*Question: What will be the likely cost saving for the NSW CTP scheme if the amendment is passed, and what effect will this have on CTP premiums?*

The amendment to exclude trespassers from cover under the Nominal Defendant scheme will remove the inconsistency created by the finding in the case of *Ryan v Nominal Defendant*. The amendment clarifies the intended coverage of the Nominal Defendant scheme and will have minimal impact on CTP premiums. The clarification removes the potential for increased litigation.

1.19 *The Committee notes the proposed change to the Nominal Defendant Scheme to include vehicles which are no longer capable of registration because they have fallen into disrepair. In his second reading speech to the Bill Mr Watkins stated that the proposed amendment is necessary because the Courts have interpreted the Motor Accidents Compensation Act in a manner inconsistent with the purpose of the legislature.*

*Question: In summary, what view have the Courts taken of claims against the Nominal Defendant in respect of vehicles which have fallen into disrepair? How many claimants have been affected by this issue?*

As is noted in the response to Question 1.18, the Nominal Defendant scheme enables a person injured in a motor vehicle accident involving an unregistered/ uninsured motor

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<sup>7</sup> Motor Accidents Compensation Amendment Bill 2006, clauses 14 and 16

vehicle to claim compensation for their injuries. This currently includes a vehicle that is not exempt from registration and requires registration for lawful use or operation on a road in NSW and immediately before the motor accident occurred, was capable, or would following the repair of minor defects have been capable, of being so registered.

In the 2004 decision of *Nominal Defendant v Lane*, the NSW Supreme Court of Appeal noted that the word "minor" calls for an assessment of degree without indication of the scale according to which the degree is to be assessed beyond the word "repair". The court has taken the approach that the test is largely an economic test of ease and cost of repair of defects. Whilst on this occasion the court found in favour of the claimant, it is not intended that a person be excluded from recovery by virtue of the cost of repairs.

The amendment clarifies the intended coverage of the Nominal Defendant scheme.

### **Analysis of damages awarded in Court proceedings**

1.20 *As part of the Sixth Review the Committee recommended that the MAA conduct an analysis of damages awarded by the Courts in motor accident claims: The Government Response to the Sixth Review indicates that that review is underway.*

*Question: Can you provide the Committee with an update on the analysis? Do you have any preliminary findings?*

Preliminary findings are not available. The results of the analysis will be included in the MAA's 2005-2006 Annual Report.

### **MAA funding**

1.21 *Under the current Act the MAA is funded by a levy paid by insurers and calculated as a percentage of premiums.*

*Question: What criteria does the MAA use to determine the amount of revenue it requires in any one year? What disciplines does the MAA utilise to keep increases in its own budget within reasonable bounds?*

The MAA Board sets the levy on an annual basis. The levy is set at the level to meet the operational budget and funding commitments of the Authority after taking into account the level of reserves. The Board sets the levy at the same meeting at which it considers the draft Budget of the Authority. All operational expenses must be justified to the Board and the MAA adjusts its budget to ensure compliance with whole of public sector productivity targets.

The operational budget of the MAA has increased over the last 4 years as a result of the increased workload of the Motor Accident Assessment Service (MAAS). The Board has reviewed this area of expenditure both through internal audit and through engagement of external performance auditing consultants to review processes to ensure that the allocation of resources is in line with needs and is being efficiently used.

The Board of the MAA is satisfied that the growth of MAAS has been necessary to ensure that the dispute resolution services remain accessible and to that end has maintained this Service at no cost to the users. The cost of MAAS is more than off-set by

the significant savings from scheme reforms.

1.22 *Under proposed amendments to the scheme the MAA will be funded by a levy on policy holders calculated either as a percentage of premium or as a dollar amount or both.<sup>8</sup> Insurers will be responsible for collecting the levy on the MAA's behalf.*

*Question: What will be the practical difference for CTP premium holders if these changes come into force? Will we see an increase in CTP premiums as a result of these changes?*

The change should be seamless and premiums are not expected to increase.

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<sup>8</sup>

Motor Accidents Compensation Amendment Bill 2006, clauses 214-214C

**SCHEME OVERVIEW**

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
<b>a) Scheme Name/Regulator:</b>	Transport Accident Commission (TAC)	Motor Accidents Authority (MAA)	Motor Accident Insurance Commission (MAIC)	Insurance Commission of Western Australia (ICWA)	Motor Accident Commission (MAC)	Motor Accidents Insurance Board (MAIB)	Dept of Urban Services	Motor Accidents Compensation	Accident Compensation Corporation (ACC)
<b>b) Current Legislation:</b>	Transport Accident Act 1986	Motor Accidents Compensation Act 1999	Motor Accident Insurance Act 1994	Motor Vehicle (Third Party Insurance) Act 1943	Motor Vehicles Act 1959	Motor Accidents (Liabilities and Compensation) Act 1973	Road Transport General Act 1999	Motor Accidents (Compensation) Act 1979	Injury Prevention, Rehabilitation, & Compensation Act 2001
<b>c) Underwriter:</b>	TAC	7 insurers	6 insurers	ICWA	MAC <sup>1</sup>	MAIB	NRMA	TIO	ACC
<b>d) Scheme Description:</b>	No Fault with limited common law rights	Common law with statutory limits	Common law	Common law with statutory limits	Common law with statutory limits	No Fault with common law rights	Common law	No fault only: resident C/Law only non-residents	Crown corporation providing 24-hour no fault personal accident insurance cover for all NZ
<b>e) Accidents</b>	Motor Vehicles trams & trains	Motor Vehicles, light rail	Motor Vehicles	Motor Vehicles	Motor Vehicles	Motor Vehicles	Motor Vehicles	Motor Vehicles	Motor Vehicles
<b>f) Journey to Work Claims Covered by CTP Scheme:</b>	Yes	Yes where fault can be proven <sup>2</sup>	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>g) Number of Motor Vehicles ('000)<sup>3</sup> as at 1/07/05</b>	3,758	4,140	2,894	1,568,789	1,157	404.8	210	111 <sup>4</sup>	2,864 <sup>5</sup>
<b>h) Number of Fatalities<sup>6</sup></b>									
2000/01	409	553	309	199	159	60	20	53	448
2001/02	451	569	319	171	144	50	13	45	402
2002/03	366	520	339	184	170	34	13	61	392
2003/04	334	558	298	167	149	48	9	44	415
2004/05	338	516	312	175	145	50		33	392

<sup>1</sup> claims management outsourced to Allianz Australia Insurance Ltd

<sup>2</sup> claims made through the workers' compensation system can be later recovered from CTP insurer

<sup>3</sup> as reported by schemes

<sup>4</sup> excludes trailers

<sup>5</sup> licensed motor vehicles excluding trailers, as at July 2005

<sup>6</sup> as reported by schemes

# PRODUCT - NO FAULT

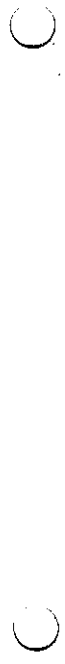
		VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
<b>i) No Fault Applicable</b>		Yes	No	No	No	No	No	No	NT residents only	
<b>ii) Definition of Accident</b>		incident directly caused by the driving					"Where personal injury results directly from the driving of, or collision with a motor vehicle"		caused by or arising out of the use of a motor vehicle.	"a personal injury suffered because of the movement of a motor vehicle; or a personal injury suffered because of a stationary motor vehicle being struck by another motor vehicle or some other means of conveyance"
<b>iii) Benefits &amp; Compensation</b>										
<b>Medical &amp; Rehabilitation</b>	Reasonable costs. Family Excess: \$564						400,000 <i>Unlimited if &gt;2 hours care a day required</i>		Reasonable costs	Cost of acute treatment in public hospitals; partial or full payments for a range of medical and specialist providers and treatments including surgeries. Wide range of social, vocational rehabilitation assistance including home modifications, limbs, equipment, etc. Based on level of need.
<b>Income Benefits</b>										
<b>Excess</b>	first 5 days						first 7 days		Accident day	1 <sup>st</sup> week is not covered unless work related motor vehicle injury - then 1 <sup>st</sup> week costs are met by employer. 80% of pre-injury earnings up to \$1,486.45 pw
<b>Maximum</b>	80% earnings up to \$918 pw LOE \$775 pw LOEC						80% earnings, up to 4.25 AW		85% of avg earnings of wage earners net of tax.	80% of pre-injury earnings up to \$1,486.45 pw
<b>Time Limit</b>	18 months LOE <sup>9</sup> 3 years LOEC <sup>10</sup>						2 yrs usual work 5 yrs any work		None - entitlement ceases at age 65	Superannuation age or until person is assessed as no longer incapacitated.

<sup>7</sup> agreement with Health Department (not a legislative requirement) to cover the cost of emergency public hospital treatment and transport

<sup>8</sup> ambulance costs include a component over and above at fault costs pursuant to a direction by the Treasurer dated 6.2.04

<sup>9</sup> loss of earnings, payable for up to 18 months (taxable)

<sup>10</sup> LOEC (non taxable) payable up to 3 years if impairment less than 50% (to retirement age if impairment 50% or more) not payable after settlement of pecuniary loss damages





**PRODUCT-NO FAULT cont'd**

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
<b>Impairment Lump Sum Payment</b>	\$902* for each % point imp't. > 10% or max 250,000 for accidents on or after 16 December 2004							AWE 208 x % Imp. >5%, current maximum \$201,011.20	Lump sum option for permanent impairment of 10% or more (since 1 April 2002) - could range from \$2,500 to \$100,000.
<b>Impairment Annuity</b>	Yes varies considerably depending on each % imp. > 10% and age <sup>11</sup> * Not payable for accidents on or after 16 December 2004					None			

<sup>11</sup> payable after 18 months only if no LOEC payments are being received; not payable after settlement of pecuniary loss damages; payments cease at 3 years unless more than 50% impaired in which case payments can continue to age 75 \*for accidents prior to 16 December 2004 (there is no annuity post 16 December)

N.B. Shaded areas throughout this document mean that information is not available or not applicable to that respective State.

# PRODUCT - COMMON LAW

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
<b>i) States Applicable</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
<b>ii) Definition of Accident</b>	Indemnity - arising out of the use	Caused by fault in use or operation injury to arise from driving collision or out of control	Driving, running out of control, collision, action to avoid a collision, or defect causing loss of control	Directly caused by the driving of a motor vehicle	...caused by or as arising out of the use of a motor vehicle only if it is a consequence of-- (a) the driving of the vehicle; or (b) the vehicle running out of control; or (c) a person.	Where personal injury results directly from the driving of, or collision with a motor vehicle	caused by or arising out of the use of a motor vehicle in any part of the Commonwealth	caused by or arising out of the use of a motor vehicle.	
<b>iii) Benefits &amp; Compensation</b>									
• <b>Access</b>	Serious Injury	Pain & Suffering - >10%	Restrictions on legal costs and loss of consortium on smaller claims, and G V K payments)	Threshold for Pain and Suffering	Threshold for eco loss (see below). All reasonable treatment expenses paid. 1st week of eco loss not paid	Pain and Suffering	No Restrictions	Non-NT residents only or NT residents injured interstate by an NT vehicle	
• <b>Pecuniary Loss Threshold Maximum</b>	\$40,020 \$900,720	None 3,296 net per week	None* 3 times AWE	None Unlimited	See above (subject to CPI)	None 4.25 AW	None \$516.95 net per week	None \$188,406.40	
• <b>Pain &amp; Suffering Threshold Maximum</b>	\$40,020 \$400,310	None \$359,000	None \$250,000	\$13,500 \$268,000	See footnote <sup>12</sup> \$241,500*	\$4,000 Unlimited	None \$201,011.20	None \$170,060.80	
• <b>Excess</b>	Nil	\$500 excess on insured if ≥25% at fault	Nil	No	\$300 excess on insured if > 25% at fault	No	No	No	
<b>iv) Discount Rate</b>	6%	5%	5.5%	6%	5.4%	7%	3%	6%	
<b>iv) Limitation of Actions</b>	6 years	3 years, unless leave of court given <sup>13</sup>	3 years (For adults)	6 years (For adults)	3 years (For adults)	3 years 6 years on applic to court	3 years (For adults)	3 years	

<sup>12</sup> significant impairment for ≥7 days or ≥\$3,030 medical expenses, subject to CPI (Note: Effective 1 January 2003, under a revised scheme, the max for P&S will be \$241,500 subject to CPI)

\*For accidents occurring in CY2005 - indexed each January 1

<sup>13</sup> leave must not be granted unless full and satisfactory explanation is given and the total damages are likely to be over 25% of maximum for non-economic loss.

If a matter is going through assessment at Claim Assessment & Resolution Services (CARS), limitation period does not run until 2 months after a certificate of assessment or exemption is issued.

\*Injury Scale Value applied to GD's on incidents post 2 December 2003

N.B. Shaded areas throughout this document mean that information is not available or not applicable to that respective State.

# DEFINITIONS OF TRANSPORT ACCIDENTS

## VICTORIA

### *Transport Accident Act 1986*

Section 3: "transport accident" means an incident directly caused by the driving of a motor car or motor vehicle, a railway train or tram,

For the purposes of the definition of "transport accident" in section 3(1) an incident includes an incident -

- a) involving a motor vehicle, a railway train or a tram which is out of control
- b) involving a collision between a pedal cycle and an open or opening door of a motor vehicle
- c) involving a collision between a pedal cycle and a motor vehicle while the cyclist is travelling to or from his or her place of employment

## NSW

### *Motor Accident Compensation Act 1999 (for accidents after 5 October 1999)*

"Death and "Injury" are limited to where the death or injury is a result of and is caused during:

- i) the driving of the vehicle, or
- ii) a collision or action taken to avoid a collision with the vehicle, or
- iii) the vehicle's running out of control, or
- iv) the use or operation of the vehicle by a defect in the vehicle.

## QUEENSLAND

### *Motor Accident Insurance Act 1994*

Section 4: "motor vehicle accident" means an incident from which a liability for personal injury arises that is covered by insurance under the statutory insurance scheme.

"motor vehicle" means a vehicle for which registration is required under the Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999 and includes a trailer

## WESTERN AUSTRALIA

### *Motor Vehicle (Third Party Insurance) Act 1943*

"Accident" is not defined in the Act

Section 7: Liability of the Commission

- 1) Any person who has obtained a judgement against an insured person in respect of negligence causing death or bodily injury, being death or bodily injury directly caused by, or by the driving of a motor vehicle specified in a policy of insurance under this Act may recover by action from the Commission such amount of the money (including costs or a proportionate part thereof) payable pursuant to the judgement as relates to the death or bodily injury and is unsatisfied.

# DEFINITIONS OF TRANSPORT ACCIDENTS cont'd

## SOUTH AUSTRALIA

### *Motor Vehicles Act 1959* *Policy of Insurance Schedule 4*

The insurer insures the owner of the motor vehicle and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death, or bodily injury to, any person caused by, or arising out of the use of, the vehicle in any part of the Commonwealth.

#### Sec 99 (3)

For the purposes of this Part and Schedule 4, death or bodily injury will be regarded as being caused by or arising out of the use of a motor vehicle only if it is a consequence of:

- a) the driving of the vehicle; or
- b) the vehicle running out of control; or
- c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision

## ACT

### *Road Transport General Act 1999* *(The Motor Traffic Act 1936 was repealed on 1 March 2000)*

#### 163 Third Party Policies

A third-party policy is a policy that:

- a) insures the owner of the motor vehicle to which the policy relates, and anyone else who drives the vehicle (whether or not with the owner's authority), against liability in relation to the death of, or bodily injury to, a person caused by, or arising out of the use of, the vehicle anywhere in Australia (whether or not on a road or a road-related area); and
- b) is in the terms prescribed under the regulations.

#### 160 Application of Pt 10 to Motor Vehicles with Trader's Plate

In the application of this Part to a motor vehicle with a trader's plate attached (whether or not the plate was attached with the authority of the person to whom the plate was issued (the trader)):

- a) a reference to the owner is a reference to the trader; and
- b) a reference to the third-party policy for the vehicle is a reference to the third-party policy for motor vehicles to which the trader's plate (whether or not with the trader's authority).

## Definitions

### *Road Transport General Act 1999*

**motor accident (or accident):** means an accident or other incident in which the death of, or bodily injury to, a person is caused by, or arises out of the use of, a motor vehicle.

**Injury:** injury is not defined in the Act.

**TASMANIA**

*Motor Accidents (Liabilities and Compensation) Act 1973*

The *Motor Accidents (Liabilities and Compensation) Amendment Act 2002* came into effect as of 1 August 2002. The amendments included a change in the definition of a motor accident which now provides:

A person suffers personal injury from a motor accident if the injury results directly from:

- a) a collision, or action taken to avoid a collision, with a motor vehicle, whether the motor vehicle is stationary or moving; or
- b) a motor vehicle moving out of control; or
- c) the driving of a motor vehicle.

**NEW ZEALAND**

*Injury Prevention, Rehabilitation, and Compensation Act 2001*

35. Motor vehicle injury:

- (1) Motor vehicle injury means—
  - (a) a personal injury suffered because of the movement of a motor vehicle; or
  - (b) a personal injury suffered because of a stationary motor vehicle being struck by another motor vehicle or some other means of conveyance.
- (2) However, motor vehicle injury does not include a personal injury suffered—
  - (a) in the course of loading, unloading, repairing, or servicing a motor vehicle; or
  - (b) in the course of any use of a motor vehicle other than as a means of conveyance; or
  - (c) in the course of off-road use of a motor vehicle.

**NORTHERN TERRITORY**

*Motor Accidents (Compensation) Act*

Part 1, Section 4: In this Act, unless the contrary intention appears - "accident" means:

- a) In relation to the Territory - an occurrence:
  - i) on a public street, as defined in the Motor Vehicles Act, caused by or arising out of the motor vehicle
  - ii) in any place in the Territory other than a public street, caused by or arising out of the use of a Territory motor vehicle in respect of which a compensation contribution under Part V or section 137 of the Motor Vehicles Act has been paid or a motor vehicle currently registered in a State or another Territory in accordance with the law relating to the registration of motor vehicles applicable in that State or Territory.
- b) In relation to a place outside the Territory - an occurrence caused by or arising out of the use of a motor vehicle, occurring on or after 1 July 1979, and which results in the death of or injury to a person.

- (3) In subsection (2)(c), off-road use does not include use that is off-road as a direct result of the motor vehicle being out of control or having been involved in an accident.
- (4) This section is subject to section 29 (personal injuries that are both work-related and motor vehicle injuries).

## SEVENTH REVIEW OF THE MAA AND MOTOR ACCIDENTS COUNCIL

### MAA RESPONSES TO QUESTIONS ON NOTICE ARISING FROM THE PUBLIC HEARING

#### Question 1

*Mr Bowen: I will answer then in terms of providing a description of the process when dealing with medical assessment applications and what are the expected timeframes and how often we do and do not meet those timeframes.*

The MAA *Medical Assessment Guidelines* provide a range of timeframes in relation to disputes referred for assessment by the Medical Assessment Service (MAS). The revised MAA *Medical Assessment Guidelines*, gazetted on 3 March 2006 to commence on 1 May 2006, tighten many of the timeframes in which officers of MAS are required to complete certain actions such as registering applications, providing copies of documents and advising parties of outcomes.

The minimum lifecycle for a matter at MAS is 105 working days (assuming all parties and MAS take the allowable time to complete actions). The current average lifecycle has reduced from 145 days in late 2005 to 122 days as at March 2006.

As is noted in the MAA's response to Question 19.5 of the Standing Committee's Questions on Notice prior to the public hearing, the MAS lifecycle timeframe is affected by a number of issues that arise during the medical assessment process including:

- late lodgement of replies to applications;
- further information needed from parties to clarify injuries/ issues before deciding on appropriate referral;
- availability of assessors and assessor utility;
- rescheduling of appointments at the request of claimants (up to 10%);
- failure to attend appointments by claimants.

As a result of the revised MAA *Medical Assessment Guidelines* and new Quality Assurance measures, it is expected that the average MAS matter lifecycle will reduce even further.

#### Question 2

*The Hon. Rick Colless: That is fine. I am just wondering if we might also ask Mr Bowen to comment on the series of questions that that same submission asks on page 2, again from the process perspective rather than individual case perspective?*

*Mr Bowen: Yes, I would be happy to give you a comprehensive answer on this on notice.*

- 2(a) *Whose role is it to ultimately ensure that the requirements of the legislation regarding optimum and timely rehabilitation of the injured person are being met? As the MAA do not feel it is necessary to have legal representation, how is this done?*

The *Motor Accidents Compensation Act 1999* provides that the Motor Accidents Authority (MAA) is responsible for monitoring the operation of the motor accidents

scheme. As part of this role, the MAA regularly undertakes research and reviews on the health outcomes of people injured in motor vehicle accidents in NSW.

Most recently, for example, the MAA engaged an expert team including the University of Sydney and PricewaterhouseCoopers to undertake comparative research on the health outcomes of people with whiplash as a result of a motor vehicle accident (refer also to the MAA's response to Question 44.1 of the Standing Committee's Questions on Notice prior to the public hearing). Whiplash is the most prevalent injury from motor vehicle accidents and is the basis of nearly 40% of all claims.

The research demonstrates that the amendments to the motor accidents scheme in 1999 are having a positive effect in improving health outcomes. While the study is ongoing, the results to date indicate that health outcomes have improved following the 1999 legislation with a greater number of claimants injured in 2003 recovered within three months and six months post injury compared with those injured in 2001.

As the General Manager reported to the Standing Committee on 31 March 2006, the MAA intends to expand its reporting criteria to also report on health outcomes for victims of motor vehicle accidents (refer p 5, *Report of Proceedings*).

2(b) *What is the General Manager's role if the MAS process fails? Is it his or any ones role to monitor if MAS is working and intervene if necessary?*

The General Manager of the MAA has ultimate administrative responsibility for ensuring that MAS performs its functions in accordance with the *Motor Accidents Compensation Act 1999* and Guidelines. MAS regularly reports to the General Manager of the MAA and the Motor Accidents Council on a range of performance indicators including finalisation rates, applications and replies, MAS lifecycle and MAS review applications.

2(c) *Why doesn't MAS have any grievance handling procedures – for both internal and external complaints?*

With regard to complaints concerning a MAS assessment, the *Motor Accidents Compensation Act 1999* sets out a process for the re-examination of medical assessments or reports, either through review or by further medical assessment. For a review to occur, the Proper Officer must be satisfied that there is reasonable cause to suspect that the assessment was incorrect in a material respect. A party to a medical dispute who has additional relevant information or information that the injury has deteriorated can also submit an application for a further assessment.

With regard to other complaints concerning MAS, it should be noted that MAS is an administrative unit of the Motor Accidents Assessment Service (MAAS) which has its own complaints handling process. Complaints are registered, acknowledged and then investigated by an appropriate administrative manager. Following investigation, the Assistant General Manager (MAAS) decides on the appropriate remedial action to be taken, if any, and responds to the complainant accordingly.

2(d) *Why is there no provision in either the legislation or MAS guidelines for interim payments (to enable the injured person to pay for their own rehabilitation) in either the legislation or MAS guidelines?*

The *Motor Accidents Compensation Act 1999* already provides for the payment of an injured person's medical, treatment and rehabilitation expenses on an 'as incurred basis'. This means that an insurer who has admitted liability for a claim is obliged to make payments for all medical, hospital, pharmaceutical and rehabilitation expenses that are reasonable and necessary, properly verifiable and causally related to the injury arising from the motor vehicle accident.

The Government's response to the *Sixth Report* of the Standing Committee noted that, in relation to recommendation 11, it is anticipated that legislation to provide for interim payments in motor accident matters will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

2(e) *How do Medical Assessors apply economic priorities when assessing an injured person?*

There is no requirement for medical assessors to apply economic priorities when assessing an injured person.

2(f) *How can people in MAS who do not have qualifications in the Medical Assessor's field be capable of reviewing a Medical Assessor's draft report for factual errors or decide whether a report has material errors that have affected the Assessor's decision?*

From 1 January 2006, MAS assessors have been required to submit final decisions only and therefore no quality assurance checks or requests for amendment have been undertaken prior to publication of the decision to the parties. This requirement has been formalised in the revised MAA *Medical Assessment Guidelines*.

Prior to 1 January 2006, an officer of MAS or the Proper Officer could request amendment of an error in a draft decision. As is noted in the Government's response to the *Sixth Report* in relation to recommendation 8:

Whether or not a medical assessor decides to amend a draft medical report is a matter for their own discretion pursuant to clause 10.11 of the MAA *Medical Assessment Guidelines*.

2(g) *How many people who have been injured in green slip motor vehicle accidents are represented on committees and boards of the MAA?*

Section 208(1)(g) of the *Motor Accidents Compensation Act 1999* provides that the Motor Accidents Council is to include one person appointed by the Minister after consultation with such associations concerned with injured persons as the Minister considers appropriate.

2(h) *The psychiatric and physical assessments both impact on my functioning in combination – why are they separated for the percentage of whole person permanent impairment?*

The decision to restrict the threshold for eligibility for non-economic loss compensation in relation to physical injuries alone or psychological injuries alone but not both was



made by Parliament and is in line with the objects of the *Motor Accidents Compensation Act 1999*, particularly section 5(1)(e):

To keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities.

### **Question 3**

*The Hon. David Clarke: That would involve when the requests went out in the first place to those organisations to submit a representative for the council, would it not?*

*Mr Grellman: Yes, but the requests went out before the expiration of the now expired term.*

*The Hon. David Clarke: How far before the expiration?*

*Mr Grellman: I cannot remember, I am afraid. We can take that on notice.*

The MAA sought nominations for appointment to the Motor Accidents Council from various representative groups and organisations by letter on 1 September 2005.

### **Question 4**

*The Hon. David Clarke: Could you advise us to what extent you considered the premiums excessive on those four occasions?*

*Ms Rizzo: Not today.*

*The Hon. David Clarke: Could you take that on notice?*

*Ms Rizzo: Yes.*

*Mr Bowen: If I could add to that, the process of receipt of premium involves some internal review by the MAA. It invariably involves some questions back to the insurers and perhaps in those questions an indication of areas of concern which often lead to the amendment of filings, so in addition to rejection there is a process that would lead to, on occasions, amendments of filings before it got to a rejection stage, if you like.*

*Chair: The question in relation to which insurers is certainly outside our terms of reference. Maybe the question could actually detail the process utilised to make the decision that the issue was excessive, so that we understand about the negotiation process. We will change it to that.*

With regard to the first of the four cases, a filing was rejected because the profit margin was excessive. The MAA met with the insurer and the profit margin was revised downwards to the MAA's acceptable range.

In relation to the second case, the MAA requested that the insurer review a number of specific assumptions included in the filing:

- cost / policy (average claim size comparatively high);
- claims handling and acquisition expenses (further substantiation required);
- net cost of reinsurance (further substantiation required);

- loading for GST Input Tax Credit (ITC) entitled customers (not in line with the MAA *Premium Determination Guidelines*).

In the third case, the MAA requested that the insurer review a number of specific filing assumptions included in the filing:

- cost / policy (average claim size comparatively high);
- superimposed inflation (high compared to industry);
- claims handling and acquisition expenses (further substantiation required);
- net cost of reinsurance (further substantiation required);
- loading for GST Input Tax Credit (ITC) entitled customers (not in line with the MAA *Premium Determination Guidelines*).

With regard to the fourth case, the MAA requested that the insurer review a number of specific filing assumptions included in the filing:

- claims handling and acquisition expenses (further substantiation required);
- reinsurance costs (further information required);
- revised business plan;
- revision of summarised assumption to reflect the insurer's proposed portfolio composition;
- review of profit margin and further substantiation of underlying assumptions in calculation of profit margin.

#### **Question 5**

*Mr Bowen: The most comparable jurisdiction to New South Wales is Queensland which has a privately underwritten fault-based scheme. They have benefit restrictions somewhat akin to New South Wales. They have limitations on non-economic loss through a tariff-based system rather than an impairment threshold. They have very significant restrictions on legal costs which lead to fairly big reductions in claims and claims costs and they have caps on future economic loss for earning capacity.*

*There may be others and we can provide that by taking the question on notice to give you a fulsome answer. The ACT has a privately underwritten fault-based scheme. They have very few restrictions. It is essentially a common law scheme and I suppose the level of premium there reflects that. It is privately underwritten but it is, in effect, a monopoly insurer. It is not mandated but there is only one insurer participating in that scheme. South Australia and Western Australia also have fault based schemes but I would have to take the question on notice to give you an indication of benefit levels.*

*The Hon. David Clarke: Can you take that question on notice?*

See Attachment 1.

#### **Question 6**

*Chair: Thank you very much for sending us copies of the guidelines when they were produced. The Committee received them. Can you tell me how the implementation of those new guidelines is going?*

*Mr Bowen: We have a few new guidelines.*

*Chair: That was the guidelines for the assessment of the permanent impairment.*

*Mr Bowen: We may not be able to tell you how it is going. I am not sure I would be in a position to answer that. We would need to probably take that on notice. I am sure that there are ongoing discussions with the medical assessors who apply those guidelines and if there is any feedback we can pass that on to the Committee, or specifically seek it, but I do not have an answer to that question.*

The revised MAA *Guidelines for the Assessment of the Degree of Permanent Impairment* commenced on 1 September 2005, following extensive consultation with medical groups, MAS medical assessors, insurers and the legal profession. MAS permanent impairment assessors were trained in the new Guidelines as part of the implementation process. No difficulties or specific problems with the Guidelines have been identified to date.

**Question 7**

*The Hon. David Clarke: That is in dispute.*

*Chair: End of October.*

*The Hon. David Clarke: I think there was a question whether it was the beginning of October or the end. We are not certain.*

*The Hon. Greg Donnelly: This is an as a matter of fact.*

*Mr Bowen: We can find that out.*

*Mr Grellman: We will certainly let you know that.*

The terms of appointment of the members of the previous Motor Accidents Council expired on 5 October 2005.