

**STANDING COMMITTEE ON LAW AND JUSTICE**  
**NINTH REVIEW OF THE EXERCISE OF THE FUNCTIONS**  
**OF THE MAA AND MAC**

**PRE-HEARING QUESTIONS ON NOTICE**

**Performance reporting**

1. In evidence during the Eighth Review, Mr Bowen indicated that as a result of the introduction of the LTCS Scheme, the MAA will use a new basis for reporting on its performance, commencing in the current period. How has the MAA's performance reporting changed?

**RESPONSE:**

**The Motor Accidents Authority has been working with New South Wales Treasury to adopt a “results logic” approach to performance reporting as part of the development of the Authority’s Results and Services Plan. Elements of this new approach are expected to be incorporated into the Motor Accidents Authority’s 2007-2008 Annual Report.**

2. Overall, what impact has the advent of the LTCS Scheme had on the Motor Accidents Compensation Scheme to date?

**RESPONSE:**

**The introduction of the Lifetime Care and Support Scheme has resulted in considerable interest from other jurisdictions and other compensation and insurance providers. It is clear to senior officers of the Motor Accidents Authority and the Lifetime Care and Support Authority that the Lifetime Care and Support Scheme is perceived as an innovative model for dealing with catastrophic injury and that a range of parties outside the New South Wales Compulsory Third Party scheme are monitoring it closely to assess feasibility of the model.**

**Within the Compulsory Third Party Scheme, the coordination processes of the Lifetime Care and Support Scheme appear to be assisting in the early identification of catastrophically injured**

**people who may be also eligible for Compulsory Third Party compensation.**

**The Motor Accidents Authority has recently coordinated a workshop involving claims managers from all the licensed Compulsory Third Party insurers and representatives of both the Authority and Lifetime Care and Support Authority, in order to identify any coordination issues. This resulted in identification of a small number of areas where processes can continue to be clarified, but overall the impact appears to have been minimal in relation to Compulsory Third Party insurance operations.**

**In terms of Greenslip prices, the introduction of the Lifetime Care and Support Scheme, has reduced the potential claims liability of Compulsory Third Party insurers and hence also the capital requirements. The introduction of the Lifetime Care and Support Scheme has, however, required an increase in the Medical Care and Injury Services levy.**

3. The Committee has expressed its support for the development of health outcomes measures to assess scheme performance, and the MAA has been progressing this for some time. How was this progressed during 2006-2007 and when do you expect such measures to be in place? Are there examples of the use of health outcomes measures to assess compensation schemes from other jurisdictions?

#### **RESPONSE:**

**The Motor Accidents Authority has found that other compensation schemes from other jurisdictions have not made significant progress with health outcome measures and, as a result, there are no health outcome measures which could be readily adopted by the Authority and used for comparative assessment between compensation schemes.**

**However, the Motor Accidents Authority does support development of New South Wales Compulsory Third Party measures in concert with other schemes so that comparative performance measurement will be possible in future.**

**To that end, during 2006-2007, the Motor Accidents Authority worked with the Australian and New Zealand Heads of Compulsory Third Party to establish a joint working party to progress health outcomes initiatives including measures. A report on strategic direction was presented to the Heads of Compulsory Third Party late in 2007 and plans are underway for an Australian and New Zealand Compulsory Third Party health outcomes conference.**

**Over the same time period, the Motor Accidents Authority has conducted in depth, bilateral discussion on health outcomes initiatives, capability and priorities with each of the New South Wales licensed Compulsory Third Party insurers and hosted a collaborative workshop with all insurers to identify barriers to improving health outcomes for Compulsory Third Party compensable injured people.**

**The Motor Accidents Authority is currently developing a strategy to build further capability for health outcomes evaluation within New South Wales Compulsory Third Party insurers and the Authority. To assist with development of New South Wales' capability, the Authority has received advice from Professor Jan Sansoni in relation to selection of health outcome measures and has participated in a number of health outcomes conferences over the last year.**

### **Competition**

4. The 2006-2007 Annual Report (p 75) states that competition between insurers in the CTP market has increased with the introduction of the LTCS Scheme. Can you give the Committee more detail on this outcome, and explain how it has occurred?

### **RESPONSE:**

**The introduction of the Lifetime Care and Support Scheme coincided with a period of strong competition on price between the Compulsory Third Party insurers. Between September 2006 and March 2008, the Motor Accidents Authority observed a period of frequent partial refiling by insurers to change prices. This meant that, although it was expected that the average**

**impact of the introduction of the Lifetime Care and Support Scheme was an average increase of \$20 in the total Greenslip price, the competitive environment meant that it took until March 2008 for the average premium to increase by \$9 dollars compared to September 2006.**

## **Premiums**

5. The Annual Report (p 76) states that the average premium for a Sydney metropolitan passenger vehicle rose from \$314 in June 2006 to \$322 in June 2007, while the average premium for all vehicles in NSW rose from \$309 to \$318 over the same period. How does this compare with your predictions for the first year of the LTCS scheme?

## **RESPONSE:**

**See response to question 4.**

6. Have premiums increased more markedly for certain groups of motorists? If so, which ones, and by how much?

## **RESPONSE:**

**Comparing average premiums between September 2006 and March 2008, the types of vehicles experiencing the largest increases were goods vehicles, primary producer vehicles, buses, rental cars and larger motorcycles.**

**These increases reflected a combination of increases in the Medical Care and Injury Services levy, changes in the Compulsory Third Party scheme relativities (which vary between vehicle types and parts of New South Wales) and insurer application of loadings or bonuses based on other risk factors such as the age of the driver, age of vehicle and safe driving, claims or insurance history.**

### **Scheme effectiveness (speed and cost of claims process)**

7. The Annual Report (p 83) states that trends in relation to timing and service delivery indicate that injured people are lodging claims and accessing funds for treatment sooner, and that insurers make liability decisions and settle claims more quickly. To what do you attribute these improvements?

#### **RESPONSE:**

**The 1999 Compulsory Third Party scheme changes have now been in place for sufficient time for insurers, legal practitioners, clinicians and the Motor Accidents Authority to have established solid expertise in the system, effective networks for consultation, clarification and education in the claims handling and capability for high quality advice to claimants. The Motor Accidents Authority has also continued to audit insurer performance and refine guidelines.**

**The most recent amendment legislation passed by the New South Wales Parliament will further build on the lessons from the early years of the scheme to further facilitate just and expeditious resolution of claims.**

8. What impact is the LTCS scheme having on litigation?

#### **RESPONSE:**

**It is too soon to assess any impact the Lifetime Care and Support Scheme may have on litigation.**

### **Scheme efficiency (proportion of premiums paid out in compensation)**

9. The Annual Report (p 78) notes that the proportion of premiums paid to claimants has increased markedly from 78 per cent to 83 per cent, largely as a result of the introduction of the LTCS scheme. How does this compare with what was anticipated?

## **RESPONSE:**

**The figures of 78 per cent and 83 per cent referred to in the question are from the table on page 78 of the Motor Accidents Authority's Annual Report 2006-2007 which compares the pre-1999 Compulsory Third Party Scheme to the post-1999 Compulsory Third Party Scheme. It is not valid to draw any conclusions about the Lifetime Care and Support Scheme from this table. As well, these figures are the proportion of actual payments which were paid to claimants.**

**However, as noted in the text above the table on page 78, insurers projected that for the period from 1 July 2007 63.2 per cent of total premiums would be returned to claimants. The actual percentage will not be known for some years until claims are lodged and resolved so it is too early to assess the impact of the Lifetime Care and Support Scheme.**

### **Insurer profitability**

10. In respect of prospective profit, the Annual Report (p 79) indicates that in 2006-07 most insurers' projected profit margins dropped to an average of 6% as a result of the introduction of the LTCS scheme. It also states that the MAA considers the range of profit margins to be reasonable, and that it will consult with CTP insurers about the methodology for assessing what constitutes adequate profit from CTP in the new environment. What consultation has taken place, and what views were put forward? Has the MAA reached a position on such a methodology?

## **RESPONSE:**

**The Motor Accidents Authority has begun investigating potential refinements to the methodology but has not yet commenced formal consultation with insurers or other stakeholders.**

11. In the Committee's report on the eight review of the MAA (pp 55-56), there is a reference to a review being conducted in 2007 by Taylor Fry Actuaries to examine the fall in the frequency of motor accident claims and identify the types of injuries associated with the decline in propensity to make claims.
- (a) What were the findings of this review?
  - (b) The Law Society and NSW Bar Association contended that the number of claims have decreased partly as a result of the MAA scheme itself. What

did the Taylor Fry review reveal about the reasons behind the fall in claims frequency, and what action, if any, does the MAA consider appropriate in light of these?

- (c) Is there any evidence that the scheme entails barriers to people making accident claims?

## **RESPONSE:**

- (a) What were the findings of this review?

**The Taylor Fry review of recent trends in claim frequency found that:**

***“From 2001 to 2007 claim frequency continued to decrease, to about 0.25% p.a. and 0.21% p.a. of registered vehicles for all claims and full claims only respectively. However:***

- Much of the decrease in claim frequency appears to be a consequence of (or at least simultaneous with) a decreasing traffic casualty frequency over the same period, and***
- The rate of decrease in claim frequency has reduced over time...***

***...The decrease in full claim frequency since 1999 has been predominantly in the lower severity claims, with average size up to around \$100,000. Depending on the definition of severity used, more severe claims have remained reasonably constant over the same period although there is evidence of an increasing trend for severe claims up to late 2005. We noted in our previous draft report concerning claim frequency that this trend appears to have levelled off since 2005. With the addition of two quarters of data to December 2007 since our previous draft report was prepared, the frequency of severe claims remains at a similar level to that of 2006 and early 2007.”***

(Source: Taylor Fry 2008 *Motor Accidents Authority: recent trends in claim frequency* unpublished report, page 2)

(b) The Law Society and NSW Bar Association contended that the number of claims have decreased partly as a result of the MAA scheme itself. What did the Taylor Fry review reveal about the reasons behind the fall in claims frequency, and what action, if any, does the MAA consider appropriate in light of these?

**The Taylor Fry report does confirm that claim frequency**

***“was reasonably constant between 1996 and 1999, until the commencement of the MACA .... but started to decrease about a year after its commencement.”***

**However, as noted above, the report concludes that**

***“Much of the decrease in claim frequency appears to be a consequence of (or at least simultaneous with) a decreasing traffic casualty frequency over the same period,”***

(Source: Taylor Fry 2008 *Motor Accidents Authority: recent trends in claim frequency* unpublished report, page 2)

**The Motor Accidents Authority considers the reduction in traffic casualty frequency in New South Wales to be a welcome result of road safety initiatives by New South Wales Government, including the Authority, the community and business sectors in New South Wales and safe road use behaviour by the people of New South Wales. The reduced social costs, including reduced claims costs are welcome.**

(c) Is there any evidence that the scheme entails barriers to people making accident claims?

**The Motor Accidents Authority acknowledges the need to ensure equitable and easy access to the Compulsory Third Party scheme for potential claimants and to this end, provides a community assistance service to assist people injured in road crashes and their families to make a claim. The Authority also monitors insurer compliance with claims handling guidelines and provides a dispute resolution service.**



**In October 2008, reforms to the Accident Notification Form process will be implemented to make it easier for people with Compulsory Third Party claims requiring up to \$5000 compensation for medical treatment and lost income, to have these resolved claims quickly. As part of the implementation, a communication strategy to ensure awareness of the importance of lodging an Accident Notification Form as soon as possible will be delivered to hospitals, general practitioners and other clinicians and legal practitioners as well as the general public.**

### **Motor Accidents Assessment Service (both MAS and CARS)**

12. The Annual Report attributes the significant reduction in applications lodged with the MAS and/or CARS primarily to the introduction of new Medical and Claims Assessment Guidelines in May 2006, as well as the revised CARS application forms. The NSW Bar Association (Submission 8 to the MAA) claims that the reduction in CARS matters is due to the increased complexity of the CARS system. What specifically has helped to reduce applications, and what is your response to the Bar Association's claim? What other outcomes are you observing as a result of the new Guidelines?

### **RESPONSE:**

**The first stage of the implementation of the Motor Accidents Assessment Service Reform Agenda commenced in May 2006 with the introduction of new Medical Assessment and Claims Assessment Guidelines, which were intended to deliver immediate benefits to the parties to disputes, to the Motor Accidents Assessment Service and to all Motor Accidents Assessment Service stakeholders including:**

- **Forms more precise, and where possible shorter, easier to complete and use;**
- **Significantly reduced timeframes (for Motor Accidents Assessment Service) in the registration, file review and assessment phases;**
- **Earlier exchange of all information by parties before coming to the Motor Accidents Assessment Service;**
- **Earlier lodgement by parties of Medical Assessment Service whole person impairment disputes required before Claims Assessment and Resolution Service General Assessments;**

- More thorough preparation of claims required before seeking a Claims Assessment and Resolution Service General Assessment;
- Improved timeliness of Medical Assessment Service assessments;
- Establishing the foundations for the legislative and other changes in the proposed second stage of the Motor Accidents Assessment Service Reform Agenda.

The Motor Accidents Authority believes that the reduction in Claims Assessment and Resolution Service matters is due to an increase in the number of claims that now have the opportunity of settling before they are lodged at the Claims Assessment and Resolution Service, as a direct result of the Guideline changes requiring earlier information exchange and better preparation of disputes before lodging a claim for assessment. The specific Guideline changes that have helped in this regard include:

- Exchange of Documents and Information Before Lodgement,
- No Additional Documents After Lodgement,
- Mandatory Exemption Grounds & Forms clarified,
- Medical Assessment Service Whole Person Impairment Disputes lodged before a Claims Assessment and Resolution Service General Assessment, and
- All documentation must be exchanged.

13. What is the Government's plan for implementation of the 2007 reforms to improve efficiencies in claims handling and dispute resolution processes and how has this progressed to date?

## **RESPONSE:**

**It is proposed the reforms will commence on 1 October this year.**

**The Motor Accidents Authority has set up project groups to develop revised guidelines for medical and claims assessment, a new Accident Notification Form and the revised regulatory framework to accompany implementation of the legislative reforms.**

**Preliminary consultation on revised assessment guidelines has been undertaken. Further consultation on the assessment guidelines, approved forms and other regulatory changes will occur in July or August this year.**

**A working party to review regulated legal costs, which includes representatives of the Law Society and licensed Compulsory Third Party insurers has also been established.**

14. What changes are expected in relation to the forthcoming revised Claims Handling Guidelines for insurers? What is the timeframe for implementing the Guidelines?

**RESPONSE:**

**The changes to the Claims Handling Guidelines being proposed for implementation on 1 July 2008 are:**

- **an insurer will be required to provide information and assistance regarding Nominal Defendant claims,**
- **clarification by an insurer of a claimant's entitlement to non economic loss, and**
- **application of Motor Accidents Authority Regulatory and Enforcement Policy for insurer breaches of the Guidelines.**

**In addition, the Motor Accidents Authority will consider further changes to the Claims Handling Guidelines to commence on 1 October 2008 in line with the commencement of the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007* legislative amendments in the following areas:**

- **revised Accident Notification Form scheme,**
- **compulsory document exchange and settlement conference, and**
- **time limit for payment of Claims Assessment and Resolution Service awards.**

15. What are MAAS's recent Quality Assurance initiatives indicating about efficiency and effectiveness?

**RESPONSE:**

**Medical Assessment Service**

The Medical Assessment Service continues to develop and refine its Quality Assurance plan to improve the effectiveness and efficiency of both the Service and appointed Medical Assessors. The Medical Assessment Service incorporates ongoing education, feedback and professional development within its Quality Assurance plan.

The effectiveness and efficiency of the Medical Assessment Service is measured by, timeliness of decisions, lifecycle, and review application rate are provided to the assessor body on a regular basis. This has certainly contributed to the improved efficiency and effectiveness of the service, as the Medical Assessment Service lifecycle is currently 93 days, on average. Timeliness is a key measure in the efficiency of Medical Assessment Service and has continued to improve over the past year.

The recruitment of the medical assessor panel in 2007 and the resulting increasing utility of assessors, in assessing a variety of disputes, have contributed to both improved effectiveness and efficiency of the Medical Assessment Service which is reflected in the lifecycle figure.

**Claims Assessment and Resolution Service**

The Claims Assessment and Resolution Service Quality Assurance initiatives include the *Claims Assessment and Resolution Service Assessors' Practice Manual*, published in February 2008, which provides information about the scheme, the Motor Accidents Assessment Service and detailed information about pre-assessment procedures within the Claims

**Assessment and Resolution Service and comprehensive guides to assessment procedure, decision writing and exemptions.**

**The Claims Assessment and Resolution Service also regularly provides updated information of relevance to assessment practice and procedure through an assessor extranet, electronic newsletters, regular assessor briefing sessions and an annual conference for assessors.**

**The earlier preparation of claims being lodged and the timeliness of claims assessors' decisions are improving and the accuracy of decisions is consistently high. The number of complaints in relation to claims assessments has remained consistently low, as have been challenges to assessor decisions, with 13 matters since 2005 being the subject of an administrative law challenge.**

16. What were the key findings and recommendations of the study of MAS and CARS user satisfaction carried out by the Justice Policy Research Centre and what action is the MAA taking in response?

**RESPONSE:**

**The Justice Policy Research Centre conducted a series of six separate studies of different Motor Accidents Assessment Service stakeholder and user groups:**

- **Study 1 – Medical Assessors perceptions of the Medical Assessment Service,**
- **Study 2 – Claims Assessor perceptions of the Claims Assessment and Resolution Service,**
- **Study 3 – Compulsory Third Party Insurer perceptions of the Medical Assessment Service and the Claims Assessment and Resolution Service,**
- **Study 4 – Solicitors (Claimant/Insurer) perceptions of the Medical Assessment Service and the Claims Assessment and Resolution Service,**
- **Study 5 – Claimant perceptions of the Medical Assessment Service, and**

- **Study 6 – Claimant perceptions of the Claims Assessment and Resolution Service.**

**The studies were designed to elicit qualitative and quantitative data from each participant group. The studies were not conducted simultaneously and were undertaken sequentially from June 2004 to May 2006. The studies did not result in specific recommendations.**

**A wide range of operational issues were canvassed by the various participants in the studies and many of these have been considered in the development and implementation of the Motor Accidents Assessment Service reform agenda.**

17. In its submission (Submission 4 to the MAA), the Law Society has expressed concern that there has been no revision to the Cost Regulation to adequately compensate solicitors for the extra work arising from the 2007 reforms to claims and dispute resolution procedures. The Law Society suggests that this is despite the fact that legal costs were last indexed in 2005, and that a review of the impact of Cost Regulation currently underway. What is the Government's response to this concern?

## **RESPONSE:**

**An indexation of the regulated legal costs was gazetted on 16 May 2008.**

**The Motor Accidents Authority has established a Working Party to review the regulation of legal costs in the light of the changes to claims and dispute resolution processes which will commence in the second half of 2008. The Law Society has nominated two representatives to participate on the Working Party.**

18. In its submission (Submission 6 to the MAA) the Insurance Council of Australia notes its support for the independent MAS system, but suggests that it would be beneficial to have a mechanism whereby both MAS and CARS assessors could access the treatment reports and records of claimants' treatment providers. What is your view of this suggestion?

**RESPONSE:**

**The Motor Accidents Authority believes that in the majority of claims sufficient mechanisms already exist for this material to be obtained and provided.**

**In most claims the claimant signs an Authority included in their Compulsory Third Party claim form that enables an insurer to request access to the claimant's treatment provider's records and to obtain reports from the claimant's treatment providers. In some cases separate additional forms of Authorities are required for specific types of treatment providers which are requested by Insurers from claimants as needed. Insurers are required by the provisions to address them.**

**In most cases the regime above is sufficient to enable all relevant records to be obtained. In some circumstances however, that regime is not sufficient to obtain access to all of the relevant materials. The second stage of the Motor Accidents Assessment Service reforms includes a number of new provisions that will provide additional mechanisms to help improve access to such information.**

**The *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007* includes specific amendments to the *Motor Accidents Compensation Act 1999* in this area. Section 100 of the *Motor Accidents Compensation Act 1999* has always included a power for a Claims Assessment and Resolution Service Assessor to direct a party to produce to the Assessor documents in their possession or to furnish information that the Assessor has determined is relevant to the assessment.**

**The new section 100(c) of the *Motor Accidents Compensation Act 1999* will add a new power enabling a Claims Assessment and Resolution Service Assessor to direct a party to give any authority or consent required to a third party (a person who is not a party to the assessment), who may then be required to produce documents or furnish information to the Assessor. The new section 100(1A) of the *Motor Accidents Compensation Act 1999* will provide that a Claims Assessment and Resolution Service Assessor may direct a person who is not a party to the assessment to produce documents or furnish information to the Assessor, and a failure by the third party to comply will also be an offence, subject to the potential maximum penalty of 50 penalty units.**

**The Motor Accidents Authority considers these changes will significantly assist in addressing the concerns raised by the Insurance Council.**

### **Medical Assessments Service (MAS)**

19. Please provide the Committee with an update on the actions taken by MAA in response to the recommendations of the Committee in the report on the eighth review of the MAA, in particular:

- (a) The recommendation to review Whole Person Impairment assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.
- (b) The recommendation to review procedures and rules in relation to Medical Assessors to ensure that the most appropriate monitoring systems and rules to prevent conflicts of interest are in place.
- (c) The recommendation to conduct a study of MAS assessments and matters that have taken ten months or more to finalise and report back to the Committee about the status of delays and any current or future initiatives to reduce them.

### **RESPONSE:**

**These matters are addressed in the Government response to the recommendations of the Standing Committee on Law and Justice Review of the Motor Accidents Authority and the Motor Accidents Council - Eighth Review.**

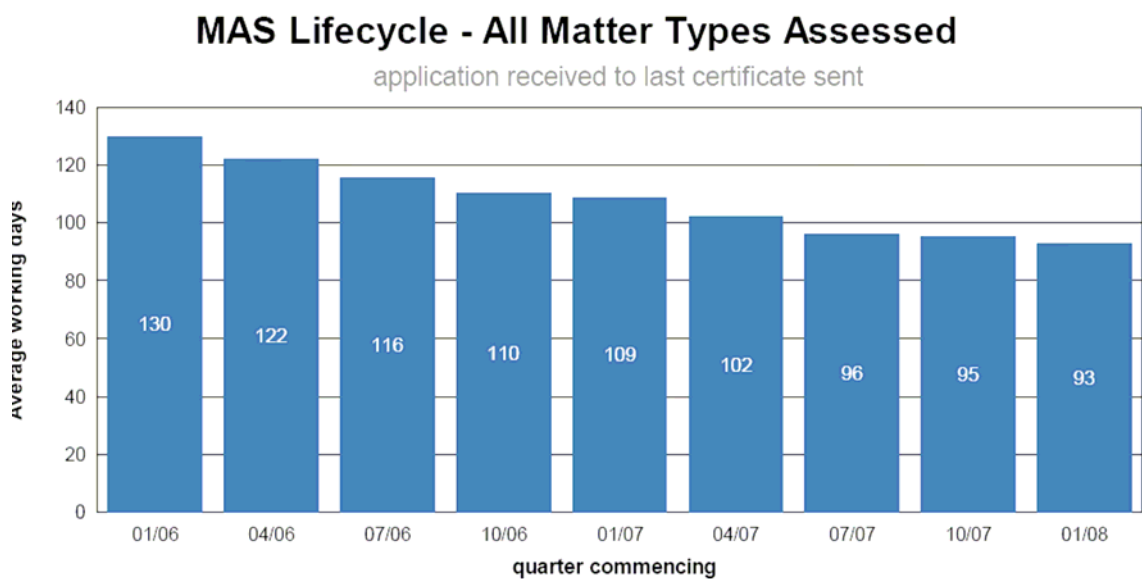


20. In our previous report the Committee documented stakeholder concerns about some delays within MAS. The Annual Report indicates that the average overall MAS lifecycle decreased by five weeks in 2006-2007, well above the target reduction of two weeks. To what do you attribute this improvement, and is any more specific information about the length of MAS lifecycles in 2006-07 available?

## RESPONSE:

**The Medical Assessment Service lifecycle has continued to reduce in 2006-2007. As per the graph above, the lifecycle for the first quarter of 2008 for all Medical Assessment Service matters is now 93 days on average. This is the lowest figure to date achieved by Medical Assessment Service as shown in Figure 1.**

Figure 1



**Many factors have contributed to the improvement in the overall lifecycle.**

**The first stage of the implementation of the Motor Accidents Assessment Service reform agenda in May 2006, and the introduction of revised Medical Assessment Guidelines and associated forms, has resulted in improved timeliness of Medical Assessment Service assessments.**

**Reduced timeframes for Motor Accidents Assessment Service administrative procedures have also contributed to the improved lifecycle.**

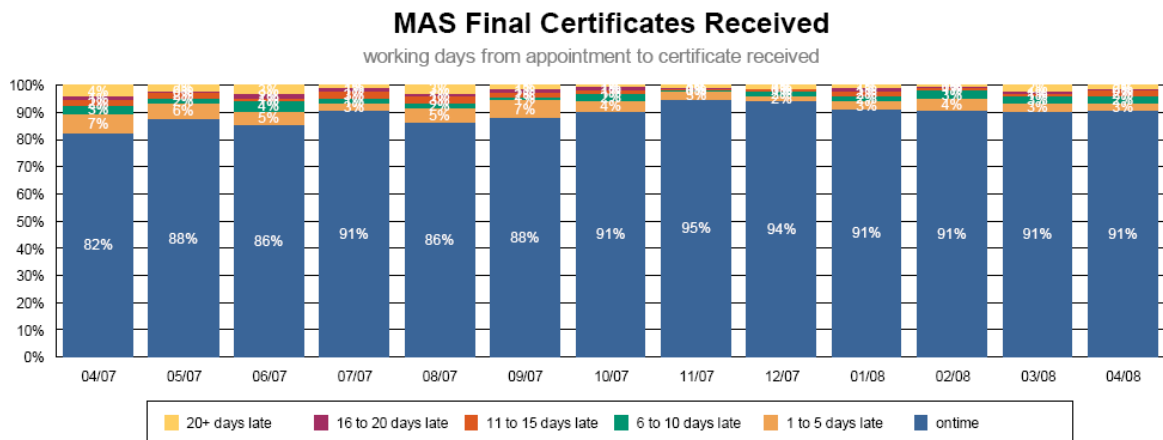
**The earlier exchange of information between the parties, and in particular the earlier lodgement of Medical Assessment Service replies, has contributed to the improvement of the Medical Assessment Service lifecycle. There has been a 20 per cent improvement in the number of replies received on time when compared to the first quarter of 2006. This improvement has a flow on effect, in that the allocation review of a matter by Medical Assessment Service staff can now generally be conducted on time, if not before the due date.**

**The Medical Assessment Service and its assessors have generally been able to offer earlier medical appointments for the resolution of disputes. In the first quarter of 2006, 34 per cent of appointments were booked within 30 days of conducting an allocation review. In the first quarter of 2008, 53 per cent of matters had an appointment booked within 30 days of an allocation review. This has contributed to the improvement in the Medical Assessment Service lifecycle. It is not feasible to book appointments any earlier than that as non-attendance rates tend to increase significantly.**

**There has also been a marked improvement in the timeliness of assessors submitting their decisions to Medical Assessment Service. In the first quarter of 2006, 81 per cent of assessor decisions were received on time, while in the first quarter of 2008, 91 per cent of decisions were received on time, an improvement of 10 per cent, as seen in Figure 2.**

**This can be attributed to a variety of initiatives, such as Medical Assessment Service accepting decisions in electronic formats, which reduces delays with standard mail.**

**Figure 2**



The increased awareness of assessors in regards to their contribution and responsibilities towards the Medical Assessment Service Lifecycle has been a major factor in reducing the lifecycle. The Motor Accidents Assessment Service regularly provides assessors with feedback regarding performance statistics – in particular their timeliness. This has resulted in improved compliance with timeframes by the assessor body as a whole.

The Medical Assessment Service provides, and encourages Assessors to train in additional Whole Person Impairment modules to enhance assessor utility. This reduces the need for multiple appointments and thus contributes to decreasing the lifecycle.

### Claims Assessment and Referral Service (CARS)

21. Please provide an overview of the lifecycle of a CARS assessment.

#### RESPONSE:

- **Registration phase**
  - involves the registration of the application (due five working days after receipt), the time taken for a reply to be lodged (20 days for application for general or special assessment), the registration of the reply (due five days after receipt)

- **Factors affecting the lifecycle at this point might include:**
  - **Rejection of applications or requests by the Claims Assessment and Resolution Service for information to clarify applications**
  - **Requests by respondent for an extension of time to lodge a reply.**
- **Allocation phase**
  - **An allocation review is undertaken by an internal Claims Assessment and Resolution Service case manager within five days of the date the reply form is due. This file review determines if the applications is valid, if the claim is exemptible, if it is ready to be assessed or if a deferral of the allocation review is required.**
  - **If the application is invalid it is dismissed, if the claim is exemptible a certificate is drafted and sent to the parties; if the matter needs to be deferred the new date is diarised and the parties are notified of the next review date and what additional information is required.**
  - **If the claim is ready to be allocated the Case Manager selects an appropriate assessor (subject to the location of the assessment, the nature of the dispute etc) and arranges a preliminary conference time and date with the assessor. The file is forwarded to the assessor and the parties are notified within 10 days of the time and date of the preliminary conference. The Guidelines provide that the first preliminary conference must take place within 15 days of the notification of the outcome of the allocation review.**
  - **Factors affecting the lifecycle at this point might include:**
    - **Outstanding medical disputes (if whole person impairment is not yet determined the Claims Assessment and Resolution Service**

**will not allocate the claim as the claims assessor cannot determine non-economic loss)**

- **The parties are otherwise not ready as more information is required, the claimant may be unavailable etc**
- **The date selected for the preliminary conference may be unsuitable to one or other of the parties.**

- **Assessment phase**

- **The Assessor will conduct the first preliminary conference (a teleconference) with both parties (and/or with their legal representatives present). The Assessor will make enquiries about the claim, what is being claimed, what is in dispute and will to some extent attempt to conciliate the claim. The Assessor will discuss suitability and readiness at the first teleconference and may issue directions and set a timetable for the further preparation of the claim. If the matter is ready to be assessed, the Assessor will determine how it is to be assessed (papers or conference) and, with input from the parties, where and when any conference will take place.**
- **The Claims Assessment Guidelines provide that an assessment conference should take place within 25 days of the date of the last teleconference or the last date one of the parties has to comply with the assessor's directions. The Assessor's reasons and certificate are due within 15 days of the assessment conference.**
- **Factors affecting the lifecycle at this point include:**
  - **The claim may not be ready for assessment because the claimant's injuries are yet to stabilise, the claims assessor may request additional information, the parties may be arranging further medico-legal appointments,**

**the claimant may be unavailable for any number of reasons.**

- **The matter may not conclude at the assessment conference as additional matters may arise at the conference that require further investigation or information.**

22. What qualifications and experience are required of CARS assessors?

**RESPONSE:**

**Expressions of interest are sought from members of the legal profession with a current practising certificate issued in New South Wales. The essential criteria are:**

- **At least seven years experience as a legal practitioner in handling personal injury claims. For solicitors, specialist accreditation in personal injury law is preferable.**
- **Experience of the *Motor Accidents Compensation Act 1999 NSW*, the Motor Accidents Authority's dispute resolution services and an understanding of the Claims Assessment Guidelines and the *Motor Accidents Compensation Regulation 2005*.**
- **Experience in calculating or estimating common law damages.**
- **Excellent written and verbal skills, including the capacity to write clear and understandable reasons for decisions.**
- **Demonstrable impartiality.**
- **Computer literacy, the ability to communicate effectively via email and the ability to learn to navigate the Motor Accidents Authority's computerised case management system.**
- **Professional integrity and credibility within the legal community.**
- **Evidence of commitment to continuing professional development.**

- **Ability to comply with deadlines and strict timeframes.**

23. Please provide CARS annual performance data since the service was established up to the present, including the number of CTP claims overall, lodgements with CARS, assessments made, outcomes and claims proceeding to court. (NB some of this information is provided in the annual report, but not all, and not in an aggregated way.)

**RESPONSE:**

**See Appendix A – attached.**

24. The Committee notes the significant reduction in the average lifecycle of new matters since the introduction of the new Guidelines (from 325 to 124 days), as compared with the increased lifecycle of claims lodged prior to the Guidelines (from 325 to 345 days), resulting in a modest increase in the overall average lifecycle of matters finalised in 2006-2007. Are there any remaining matters lodged prior to the Guidelines that will continue to influence quantum lifecycle performance in the next reporting period?

**RESPONSE:**

**Claims Assessment and Resolution Service assessments have a ‘long tail’. While the majority of matters can be assessed in a timely fashion, there are other matters that cannot be ‘rushed’ for example, due to complexities or medical issues.**

**For example, a claimant may need surgery to an injured part of their body, the Medical Assessment Service assessor may therefore be unable to assess whole person impairment, therefore, the Claims Assessment and Resolution Service assessor is unable to assess damages because the issue of entitlement to non-economic loss is outstanding.**

**A comparison to the District Court is useful as the Court’s jurisdiction is similar to the general assessment jurisdiction of the Claims Assessment and Resolution Service. The most recent statistics from the Court (2006 data published on Lawlink) show that 53 per cent of Court actions are resolved in less than 12 months and 82 per cent in less than 24 months. By comparison Claims Assessment and Resolution Service application years show the following:**

<u>App yr</u>	<u>less than 12 mths</u>	<u>12-24 mths</u>	<u>24mths +</u>	<u>pending</u>
2001	69%	26%	5%	0
2002	56%	34%	10%	0
2003	52%	34%	13%	1% (5 matters)
2004	55%	33%	10%	1% (30 matters)
2005	62%	29%	6%	3% (79 matters)
2006	69%	23%	1%	7% (130 matters)
2007	71%	2%	0%	26% (441 matters)

**The percentage of matters resolved in less than 12 months is expected to remain the same.**

25. The NSW Bar Association (Submission 8 to the MAA, p 3) suggests that the CARS registry 'readily rejects any application that has any procedural deficiency' and claims that changes to the process are intended to make it simpler and quicker for CARS rather than participants. How do you respond to these claims?

#### **RESPONSE:**

**Clause 3.21 of the May 2006 Claims Assessment Guidelines empowers registry officers to reject applications that are procedurally non-compliant (for example the application does not attach compulsory documents or does not list the documents to be attached).**

**The Claims Assessment and Resolution Service has issued guidance material to registry officers in relation to the application of the rejection test to ensure consistency and fairness.**

**For example if the application is not signed and that is the only problem with it registry officers will not reject the application but telephone the party lodging it and request a signed page be faxed or emailed.**

**Applications are only rejected if they are clearly non-compliant. In the last 12 months approximately 14 per cent of incoming applications are rejected which is about 40 matters per month.**



**The most frequent reason is that compulsory documents were not attached followed by the time limits not being satisfied (invalid application), some questions not answered or the application not being signed.**

**The Claims Assessment and Resolution Service is not of the view that applications are readily rejected.**

26. The NSW Bar Association (Submission 8 to the MAA, p 5) claims that it is 'increasingly difficult' to get a discretionary exemption from the CARS system. How many discretionary exemptions from assessment by CARS are granted each year and what is the role of the Principal Claims Assessor in determining whether an exemption will be granted?

**RESPONSE:**

**Section 92(1)(b) of the *Motor Accidents Compensation Act 1999* provides that a claim is exempt from assessment if a claims assessor has made a preliminary assessment of the claim and has determined (with the approval of the Principal Claims Assessor) that it is not suitable for assessment under this Part.**

**This therefore requires a claim to be allocated to a claims assessor, the claims assessor to determine it is not suitable and for the Principal Claims Assessor to approve the claims assessor's decision. As there are 37 claims assessors, the approval of the Principal Claims Assessor is a necessary step to ensure consistency and avoid 'assessor shopping'.**

**Before May 2006 applications for exemption on the basis that the claim was not suitable for assessment could be made on an interlocutory basis, that is, before allocation, however during the course of argument in Supreme Court challenges to exemption decisions at least two judges of the Supreme Court have suggested that it must be the claims assessor to whom the claim is allocated that makes the decision and therefore it cannot be done by the Principal Claims Assessor 'in house' before allocation (which used to be done to speed up the process and exempt clearly exemptible matters quickly before delay and the expense of allocating to an assessor – who charges a fee for doing so).**

**It is therefore true that more has to be done now in order to obtain an exemption on this ground. A party must lodge an application for general assessment with documentation about the whole of the claim (and not just documents about suitability) and the respondent is given the opportunity to respond. Once the parties have thus prepared the claim, it is the Claims Assessment and Resolution Service experience that many claims settle, thereby not requiring an exemption. It is also often the case that once prepared, issues of suitability no longer exist.**

**As time has progressed and the experience of the claims assessors has increased so too has their capability and it is true that more claims are being considered to be suitable for assessment at the Claims Assessment and Resolution Service. Also the impact of the four Supreme Court decisions in 2006 has been important – in all four cases, the Court has given the Claims Assessment and Resolution Service Assessors valuable guidance on what considerations must be taken into account when determining exemptions.**

27. The NSW Bar Association (Submission 8 to the MAA, pp 5-6) raises a number of concerns in relation to the recoverable costs of representation at CARS assessment conferences.

- (a) Do the cost regulations adequately cover the actual costs of an assessment conference?

## **RESPONSE:**

**The event-based *ad valorem* scale adopted in 1999 for the regulation of legal costs was developed by a working group involving representatives from the legal professional bodies, the insurance industry and the Authority. The scale was most recently indexed to take account of inflation in May 2008.**

- (b) If an assessment conference has to be adjourned because of an insurer's action there is no capacity for the Assessor to allow any additional costs to be recovered by the claimant. In the court system the defaulting party would be ordered to pay the costs 'thrown away'. What is the rationale for this difference?

**RESPONSE:**

**The Claims Assessment Resolution Service is an administrative dispute resolution process with the primary aim to resolve motor accidents claims outside the court system. The events based *ad-valorem* scale within the *Motor Accidents Compensation Regulation 2005* provides for the total costs associated with each relevant stage of the process.**

28. The NSW Bar Association (Submission 8 to the MAA, p 6) suggests that the publication of CARS decisions would improve promotion of public confidence in, and consistency of, decision-making. Has the MAA considered the publication of decisions for these reasons?

**RESPONSE:**

**The Claims Assessment and Resolution Service supports, in principal, the publication of claims assessment decisions, provided that the injured person's privacy is protected.**

**The Motor Accidents Authority will investigate the resourcing impact of publication options.**

29. The NSW Bar Association (Submission 8 to the MAA, p 7 and Annexure) suggests that the increase in claims of contributory negligence by insurers in recent years is linked to the decision of the NSW Court of Appeal decision in *Lee v. Lang* [2006] NSWCA 214 which effectively allows the insurer to bring about a rehearing.

(a) Has there been an increase in claims of contributory negligence by insurers in recent years?

**RESPONSE:**

**Work undertaken by the Motor Accidents Authority in response to a similar concern raised by the Bar Association through the Motor Accidents Council indicates that partial admissions of liability (contributory negligence) were made in 6.1 per cent of claims under the *Motor Accidents Compensation Act 1999*. This compares with 5.4 per cent of claims where liability was partially admitted under the *Motor Accidents Act 1988*.**

**In the 12 months prior to the decision in *Lee v Yang* [2006] NSWCA 214 liability was admitted in part in 5.25 per cent of claims, compared with 5.9 per cent of claims where liability was partially admitted in the 12 months following the decision.**

- (b) If so, is this increase linked to the decision in *Lee v. Lang* or is there another explanation?

**RESPONSE:**

**See response to question 29(a) above.**

- (c) What is the rationale for allowing a rehearing of the assessment of damages in a situation where the insurer claims contributory negligence?

**RESPONSE:**

**Allowing for a court to fully consider claims involving contributory negligence, is consistent with the existing exemption regime which enables claims with more contentious features to by-pass claims assessment and proceed directly to court.**

- (d) What is the potential impact for the claimant of an insurer claiming contributory negligence and bringing about a rehearing? What measures has the MAA taken to address this impact?

**RESPONSE:**

**While each party will incur additional legal costs as a consequence of a claim progressing on to court, liability for legal costs will fall to the unsuccessful party. The pursuit of unmeritorious claims through the courts is discouraged by the allocation of costs, as noted by the court in *Lee v Yang* [2006] NSWCA 214 (2 August 2006) by Giles JA at [28].**

**Section 153(1) of the *Motor Accidents Compensation Act 1999* which deals with court orders on costs enables the court to**

**make variations to orders in an exceptional case and for the avoidance of substantial injustice.**

**The question of whether the legal costs regime should make specific provision for costs in insurer initiated court hearings will be considered by the Legal Costs Working Party.**

30. Is any data available on the amounts of compensation determined in CARS assessments in any year or on any qualitative aspects of CARS determinations? If so, what do these data suggest about the performance of CARS and the MAC scheme more broadly?

**RESPONSE:**

**In the 2006-2007 financial year damages determined by claims assessors ranged from amounts assessed at under \$5,000 (which accounted for 2 per cent of assessments) up to amounts exceeding \$1 million (which also accounted for 2 per cent of assessments). In 46 per cent of matters the claim was assessed as under \$100,000. There were assessments in the range \$100,000-\$250,000 in 26 per cent of matters. As the scheme has matured more larger claims are now reaching assessment stage with 57 matters being assessed in 2006-2007 with damages of more than \$500,000 assessed.**

**The range and diversity of matters proceeding to claims assessment indicates that the Claims Assessment and Resolution Service is functioning effectively as an alternative to court litigation in the majority of disputed claims.**

31. In its submission (Submission 6 to the MAA), on the basis of analyses of data from its members, the Insurance Council of Australia contends that the levels of CARS assessments (that is, the amounts of compensation determined by CARS assessors) have increased over time (also known as superimposed inflation), and that if left unchecked, this trend could place upward pressure on premiums and erode the benefits of the scheme. It also argues that the CARS process now results in substantially higher assessments than those claims settled outside CARS, and that this is at odds with the scheme goal of encouraging early claim resolution and thereby better injury outcomes. The submission goes on to suggest that this escalation has partly resulted from a lack of transparency in the CARS process, in that assessors make their determinations without providing evidence-based reasons for assessments. The Insurance Council then makes a number of proposals to address this

perceived lack of transparency. What is the MAA's view of the Insurance Council's concerns, and their proposals to address them?

**In 2006, the Motor Accidents Authority commissioned Pricewaterhouse Coopers (PwC) to undertake a study of superimposed inflation in the Compulsory Third Party Scheme. As at December 2006, PwC did not identify superimposed inflation.**

**In response to Insurance Council concerns, in May 2008, the Authority has commissioned Pricewaterhouse Coopers to undertake a further detailed study of costs in the Compulsory Third Party Scheme to ascertain if there is any current evidence of superimposed inflation. This will include analysis of cases which proceed to Court, those registered at Claims Assessment Resolution Service (CARS), and those resolved without CARS or Court involvement.**

**It is important to note that the Insurance Council contention is based on analysis of severity 1 whiplash claims only but the Pricewaterhouse Coopers study will be far more comprehensive and definitive.**

**The Motor Accidents Authority will be obtaining advice from Pricewaterhouse Coopers, through the course of this study, on improvements to the Authority monitoring systems to enable early warning through lead indicators of superimposed inflation. The Authority will consider reporting these indicators on a regular basis.**

32. One individual's submission (Submission 1 to the MAA) to the review contends that his CARS claim took 11 months to be finalised and alleges that the assessor's decision was influenced by intimidating tactics on the part of the insurance company and its solicitors. What factors lead to such a lengthy dispute? Is this a systemic issue, and if so what measures can be put in place to address it?

## **RESPONSE:**

**The Motor Accidents Authority does not consider that this is a systemic issue.**

**The matter referred to in the submission involved a determination of a preliminary question of whether a claim made outside the statutory time limit could proceed. Due to circumstances beyond the control of the Claims Assessment and Resolution Service, this dispute had to be re-allocated when the assessor initially allocated the matter did not seek re-appointment as an assessor.**

### **Regulation**

33. The Annual report (p 7) indicates that the MAA received 114 complaints about insurers for investigation in 2006-07. How does this compare with other years?

## **RESPONSE:**

**The number of complaints made against insurers over the previous two years has been quite similar. In 2005-2006 there were 116 complaints and in 2004-2005 there were 118 complaints.**

### **Other**

34. The Law Society's submission (Submission 4 to the MAA) notes its concern about insurers' communications with self-represented clients and proposes that the existing Guidelines be reformulated to allow only certain statements to be made by insurers to such claimants concerning procedure, attendances at medical appointments, offers of settlement and associated matters. The Law Society further suggests that the Guidelines should provide an appropriate proforma letter which would not disadvantage self-represented claimants. What is your view on these proposals?

## **RESPONSE:**

**The Motor Accidents Authority expects that any generic information about making and resolving claims that an insurer sends to a claimant is clear, accurate and appropriate.**

**The Motor Accidents Authority proposes to conduct a review in the second half of 2008 to ensure insurers' generic information about making and resolving claims that is sent to a self-represented claimant is clear, accurate and appropriate.**

**The Motor Accidents Authority invites the Law Society to provide the Motor Accidents Authority with any examples of insurers' communications with claimants that it considers may disadvantage the claimant.**

35. The Committee understands that young people continue to be over represented in road accidents and notes the range of initiatives funded by the MAA to address its goal of reducing the number and cost of crashes caused by young drivers. What outcomes have been observed as a result of these initiatives to date?

**RESPONSE:**

**When the various programs referred to were initiated, there was a view that each program or grant initiated safety awareness among younger drivers and that this would all contribute to a safer environment and lead to safe behaviour among an "at risk" group. Many of the programs were initiated and undertaken by local community groups.**

**When the Motor Accidents Authority attempted to measure the results of these investments it became apparent that there was substantial demonstrable evidence that people recognised the safety messages and were able to feed back much of the information to the evaluators. Unfortunately, there was insufficient evidence of outcome measures available from the evaluation.**

**The Motor Accidents Authority acknowledges that investments, such as those mentioned above, have substantial benefits for local organisations, and young people. The Motor Accidents Authority further acknowledges that it needs to focus future investments based on sound evidence of benefit, and those which can also be measured in terms of outcomes.**



36. In its submission (Submission 3 to the MAA), Youthsafe has suggested that the MAA's injury prevention initiatives targeting young people are overly focused on professional sportspeople visiting schools. What is your response to this suggestion?

**RESPONSE:**

**The Youthsafe submission is noted. When the program was initiated, there was strong support for this type of investment. In the past 12 months the Motor Accidents Authority has been engaged in the development of a new strategy, focussed on a sound evidence base, which is focussed on partnerships with the Roads and Traffic Authority, Police Force, Ambulance Service and key groups such as Youthsafe. This strategy will encompass issues around vehicle design, education, alcohol management strategies, the road environment, protective behaviours, enhancing data capacity, areas of New South Wales impacted heavily by claims, motorcycle and scooter safety, pedestrian behaviours and rights etc. The Motor Accidents Authority will also be developing an evaluation plan to reflect on the outcomes from the strategy. Over the next two months the Motor Accidents Authority will be consulting closely with a broad range of stakeholders over the contents of this strategy and its evaluation plan, including Youthsafe.**

37. Do you have any observations or comments you wish to make about trends in road safety in New South Wales?

**RESPONSE:**

**It is clear from New South Wales Health admission data and Roads and Traffic Authority crash data that the number and rate of deaths on New South Wales roads are substantially decreasing. The first broad strategic road safety plan for New South Wales was introduced in 1995 under the name "Road Safety 2000". At this point, it is important to note that traditionally, road safety has tended to be measured publicly by the number of annual fatalities. While fatalities can be seen as the worst ultimate human outcome, they are also a somewhat limited measure of the real cost of crashes both in human and financial terms. In general there are around 10 serious casualties**

**for every fatality, and 100 times as many minor to moderate injury crashes.**

**Road crash death toll alone, is not an adequate measure for the Motor Accidents Authority. Serious injury presents the biggest financial burden to the Motor Accidents Authority, and New South Wales stakeholders.**

**Other key indicators of interest to the Motor Accidents Authority are the fact that the hospitalisation rates for older pedestrians are not reducing but remaining stagnant. Accepting that New South Wales is about to have a substantial increase in the proportion of the population over 65 years, it appears that New South Wales may see a substantial increase in claims from older pedestrians in the future. Another issue of some concern would be an increase in the rate of hospitalisation of pedal cyclists, particularly males aged 5-14 years. While alcohol attributed injury deaths have reduced in NSW the rate of hospitalisation, particularly among males, is climbing fairly rapidly. The rate of hospitalisations for motorcyclists is rising and for motor vehicle occupants has stabilised (and is not reducing).**

**The potential for increased cyclists, pedestrians, motorcyclists and scooter drivers on the roads, perhaps associated with the rising price of petrol, presents the Motor Accidents Authority with a substantial challenge as these groups of road users are relatively more vulnerable to injury than motor vehicle occupants. The Authority expects to undertake research over coming years to identify emerging trends in vulnerability to road crash injury.**