

**Standing Committee on Law and Justice**  
**Review of the exercise of the functions of the MAA and the MAC**

**Hearing Tuesday 15 March 2005**

Questions Taken on Notice

**Question 1**

**The Hon. GREG PEARCE:** I want to explore the issue of where the savings that have been gouged have gone. Page 94 of the annual report indicates that average city-metropolitan CTP premiums were \$343 for the June 2004 quarter, compared to \$339 in the June 2003 quarter. Average premiums over all New South Wales vehicles was \$332 in the June 2004 quarter compared to \$328 in the June 2003 quarter. No more savings have been passed on to the drivers and owners of cars in this State. If you look at the diagram in that paragraph it shows that the premiums have effectively plateaued since 2000.

**Mr BOWEN:** It represents a saving in that claim payments will be inflating, usually in line with average weekly earnings. So there are, in effect, real savings there. More importantly, outside this reporting period, on 1 July 2004—the current year but not part of the current reporting period—there were further premium decreases. Two insurers refilled for quite significant drops in January this year. So the trend has continued to be down.

**The Hon. GREG PEARCE:** What is the average in January?

**Mr BOWEN:** We do not have a January average. We can provide the average to the end of December.

**The Hon. GREG PEARCE:** Yes, please take that on notice.

**Response**

The average premium for a Sydney metropolitan car for the December 2004 quarter was \$337 compared to \$352 in the December 2003 quarter. The average premium for all NSW vehicles for the December 2004 quarter was \$339 compared to \$351 in the December 2003 quarter.

**Question 2**

**The Hon. GREG PEARCE:** It does not tail off, but certainly it is reducing. In 2001 the excess profits are \$177 million, which is still 21.34 per cent of premiums. In 2002 it was \$170 million, which is 20.64 per cent of premiums, so it is definitely dropping. In 2003 the excess was \$106 million, which was down to 15.63 per cent of premiums, but still nowhere near your upper level of 10 per cent. Do you have figures for 30 June 2004?

**Mr BOWEN:** These are September years, so we do not have that.

**The Hon. GREG PEARCE:** Why would you not have worked that out yet?

**Mr BOWEN:** Primarily it will be straight out of our filings, because it remains an estimate of the risk premium.

**The Hon. GREG PEARCE:** I understand that, but it is another year on.

**Mr BOWEN:** We can give it to you on the basis of the last filings.

**The Hon. GREG PEARCE:** Yes, that is fine, you can take that on notice. You can provide an update of that table.

## Response

As reported on page 94 of the MAA's 2003/2004 Annual Report, the total premium collected during the 2003/2004 financial year was \$1.45 billion. As reported on p 99 of the Annual Report, the most recent composition of the premium available to the MAA, based on the most recent filings, includes a profit margin of 8.7%. Applying the profit margin of 8.7% to the total premium collected gives a profit estimate of \$126 million.

## Question 3

**The Hon. GREG PEARCE:** Again while you are looking for that, last year in the responses to questions on notice—and we perhaps did not get around to asking this question—we asked for a rundown of the total actual payments. It was question number four which was taken away from the hearing. At that stage there had been \$407 million payments under the new scheme, and you recall you gave us a table which showed the amounts for economic loss, which were down on the old scheme, and treatment was up? Other costs were down as well but non-economic loss was down from \$175.8 million to \$48 million. I wonder if you could—and you will probably have to take this on notice—give us that same table for the current time, given the fact that even looking at the table on page 102 there has been \$852 million paid out now?

**Ms RIZZO:** I will take that on notice.

## Response

	Old Scheme	New Scheme (as at 30/6/04)	Average / Claim (Old scheme)	Average / full claim (New scheme)
Total	\$1,371.0	\$861.0	\$19,600	\$17,400
NEL	\$412.5	\$114.8	\$5,900	\$2,400
Economic Loss	\$331.8	\$253.4	\$4,800	\$5,200
Treatment and other care	\$326.5	\$361.1	\$4,700	\$7,300
Investigation Costs	\$86.7	\$43.2	\$1,300	\$900
Legal Costs	\$213.6	\$88.5	\$3,100	\$1,800

## Question 4

**Ms LEE RHIANNON:** The annual report states, "an additional six complaints relating to the cost of CP premiums". What were those complaints about?

**Mr BOWEN:** We would have to come back to you on that.

## Response

Four of the six complaints involved queries as to whether the correct premium had been charged. Three of these complaints were resolved in favour of the complainant and one was resolved in favour of the insurer.

Of the remaining two complaints, one involved a complaint by an insurer's agent regarding high risk customers and the other involved the cancellation of a policy. Both of these complaints were resolved in favour of the complainants.

### **Question 5**

**The Hon. AMANDA FAZIO:** It is not so much about disputes; it is about the range. When you talk about treatment options, are alternative therapies included in the range of treatment options you think are appropriate or that insurers approve?

**Mr BOWEN:** We produce treatment guidelines under the Motor Accidents Authority Scheme, not for all injuries or every injury but for those which are high volume matters, like whiplash or lower back pain, or involve regular therapies like physiotherapy, or are a high cost for the scheme, such as spinal cord and brain injuries. There is a whole range of injuries where there will be an enormous variation in the treatment options. It is really a matter to sort out between the parties, with access to medical assessment if there is a dispute. I can make inquiries to find out whether we have had any of those matters dealt with in recent years.

**CHAIR:** That is a question on notice.

**Mr BOWEN:** Yes.

### **Response**

The *Motor Accidents Compensation Act (1999)* provides that an insurer is obliged to pay for a claimant's treatment, rehabilitation and attendant care costs that are "reasonable and necessary" in the circumstances. The MAA and insurers have developed a decision making tool for insurers and a brochure for service providers to assist decision making about what might constitute "reasonable and necessary" treatment, rehabilitation and attendant care.

The MAA has also developed guidelines for treatment and rehabilitation to assist the management of the most commonly occurring motor accident injuries. The guidelines provide information for clinical decision-making and claims management and were developed by working parties representing various medical associations.

Recommendations about treatment in the guidelines are based on the evidence available from clinical trials. Alternative therapies are included in these recommendations. For example, the *Guidelines for the Management of Whiplash Associated Disorders* recommends mobilisation, manipulation and acupuncture as an appropriate treatment for Whiplash-Associated Disorders in certain circumstances.

### **Question 6**

**The Hon. ERIC ROOZENDAAL:** I noted this morning some news reports in relation to pedestrian accidents and the presence of alcohol. I want to ask you about the October/November 2003 public education campaign and pedestrian safety campaign that you

funded jointly with the RTA. Can you comment on how successful or otherwise the campaign has been and whether any success has been evaluated?

**Mr BOWEN:** I am aware of it, but I am not well enough aware of it to comment in any detail. I can certainly provide you with a precis setting out the background to it and purpose of it. There has been an evaluation—

**The Hon. ERIC ROOZENDAAL:** So you will take that on notice?

**Mr BOWEN:** Yes, I will come back to you with more detail on that.

## **Response**

In 2003/04, the MAA, in partnership with the RTA, developed a public education campaign to raise awareness about pedestrian safety. The campaign utilised television, print, radio and outdoor media and urged pedestrians and drivers to “watch out” for one another.

The campaign was primarily directed at two road user groups – young drivers aged 18 to 39 and pedestrians aged 55 and over. The ‘drivers’ element comprised a television advertisement, a bus shelter poster and two radio ads with the tagline “Watch out, people about”. The ‘pedestrians’ element comprised two radio and two press advertisements with the tagline “Watch out, cars about”.

The campaign sought to:

- raise awareness about the number of pedestrian accidents occurring on metropolitan roads;
- encourage drivers to “watch out” in areas of high pedestrian traffic;
- raise awareness among older people of the risks they face as pedestrians; and
- promote safer road crossing practices among older pedestrians.

Post campaign tracking of the campaign period indicated successful increases in community awareness of pedestrian safety issues. Overall campaign awareness was especially strong with drivers (69%) compared to pedestrians (44%) and with males (69%) compared to females (44%) and with younger respondents.

A public education campaign to address “drink walking” is proposed for 2004/2005 and is expected to cover both metropolitan and country urban areas. The campaign seeks to raise awareness among young people of drink walking as a road safety issue.

## **Question 7**

**The Hon. GREG PEARCE:** In that response you referred to the Catsicas matter and the reviews in relation to MAS staff basically assisting in medical reports. I refer to page 29 of the questions on notice. That is the basis on which you are saying that there is no real inconsistency between the assessors' decisions.

**Mr BOWEN:** I was dealing with a more general issue. This is a specific issue about communication between staff and assessors. Sorry, the answer is dealing with a more specific issue as to whether communication between the MAS staff and an assessor raises an issue of procedural fairness. There is a particular case that is going to the Court of Appeal, and we will wait to see what happens with that. It was my view that whatever the position in law may be—and we will find that out in due course—it is important for the integrity of this service that it not only operates fairly by the saying to operate fairly. For that reason we engaged Mr

Zipser from counsel, who I did not previously know. He was recommended to me as being a person who would do a scrupulous and fair job. He has had a look at a number of files. His report will go to the Motor Accidents Council this afternoon, and overlapping timetable. I am happy to provide it to the Committee at that stage.

**The Hon. GREG PEARCE:** Thank you, the Committee would like to see that report. He reviewed only 34 files. When we see the report we will find out his rationale.

**Mr BOWEN:** Yes, he reviewed a selection of files in which there had been communication. There have been a huge number of files in which there has been no communication at all, so it was not a relevant issue in those. Ms Rizzo may wish to comment on that. I am told that statistically they would—

**The Hon. GREG PEARCE:** Statistically valid, so that is 4 per cent. You saying that there are several hundred instances? What is the total number that were identified?

**Mr BOWEN:** I will find out and let you know.

## **Response**

Data from the MAAS Case Management System (SIRIUS) shows that since the beginning of the motor accidents scheme, 25% of assessment reports have involved a request for amendment. Amendments may include correcting an administrative error (eg., an incorrect factual detail such as a date or address) or addressing an incorrect application of the guides or guidelines.

The most recent figures for January 2005 indicate that 82% of amendment requests involved administrative errors and 18% involved methodology and/ or reasons for decisions.

Mr Zipser was given unrestricted access to all MAS files that contained documented communication between MAS staff and an assessor. After reviewing 34 files, Mr Zipser advised the MAA that he was satisfied that this number was sufficient for the purpose of the review.

## **Question 8**

**The Hon. GREG PEARCE:** I am concerned about the period between now and the decision by the Court of Appeal. Should there be some independent check? If the Court of Appeal finds that there is a problem, will there be a whole bunch of assessments that are subject to challenge for that reason?

**Mr BOWEN:** For what reason?

**The Hon. GREG PEARCE:** If several hundred have taken place where there have been all sorts of communications.

**Mr BOWEN:** If that is the case we will provide the parties with all of the correspondence between the medical assessment service and the assessor and they can consider their position. Based on Mr Zipser's sample there will be a limited number in which the communication could be said to be other than appropriate. Even the ones that he identified where the questions went perhaps beyond just technical issues, they were really matters which made no difference to the outcome. The nature of the question was not seeking to make a difference to the outcome but was seeking to gather more information.

**The Hon. GREG PEARCE:** I hear what you say. However, I remain concerned that if there is a problem with what is happening, people's rights and determinations could be prejudiced. If you are going to leave it to them to try to fix it later on through some appeal process, I

really do not think that is a completely responsible way to do it. Will you take it on notice to look at that, as to whether there is some sort of process that should be put in place now, between now and the court decision.

**Mr BOWEN:** Yes, that is a fair point. I am quite happy to accept that.

### **Response**

In the light of Mr Zipser's report, the MAA is of the view that there are no fundamental issues that need to be addressed prior to the Court of Appeal decision.

### **Question 9**

**The Hon. GREG PEARCE:** I was going to ask you a question about the catastrophic damages, and it was a technical question you avoided answering in questions on notice in relation to the discount rate for calculating damages. I think it is 2.5 per cent or 5 per cent in the UK, or something. You took the Sir Humphrey route and said that was in the last bill and that the Parliament did not change it. I would like your advice as to whether the Parliament should have changed it, using your best qualifications and experience to form a view.

**Mr BOWEN:** Let me take that one on notice. I will come back to you on that.

### **Response**

The MAA is not aware of information or evidence which would indicate the MAA should provide advice to Government regarding a change to the discount rate.

As noted at the sixth hearing, the MAA has attempted to examine the adequacy of damages for the catastrophically injured under the old scheme compared to the new scheme in the context of spinal cord injury. The MAA identified 48 matters where a person with a spinal cord injury had received an award exceeding \$1 million pre-1996. However, the MAA was only able to make contact with approximately 20 of these individuals and only six consented to participate in the study. While these six individuals were interviewed, no conclusions could be drawn about this issue (refer page 25 of the *Report of Proceedings*).

### **Question 10**

**The Hon. AMANDA FAZIO:** I want to go back to one of my favourite topics—the nominal defendant. We put a few questions on notice to you about the nominal defendant, but there are also a few other issues that we are interested in. On page 18 of your annual report you stated that the nominal defendant allocated 541 claims in the last financial year and returned 221 claims to claimants, claimants' solicitors or insurers, mainly due to the vehicle not being insured or the accident not occurring on a road. Can you explain what these figures mean and whether they are comparable to previous years' figures?

**Mr BOWEN:** The second part of that question I will have to take on notice and come back to you because I do not have the previous years' figures here, although I would say that I do not believe there have been any significant changes in the trends of the ratio of nominal defendant claims to total claims.

## Response

The number of Nominal Defendant matters returned as a percentage of the number of matters received since 1999/2000 is shown in the following table:

Year	Percentage Returned
1999/2000	$257/1132 = 23\%$
2000/2001	$316/1079 = 29\%$
2001/2002	$212/843 = 25\%$
2002/2003	$339/919 = 37\%$
2003/2004	$221/762 = 29\%$