

LJ 10/1518

 **Motor Accidents Authority of NSW**

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Our Ref: 10/325
21 July 2010

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LAW & JUSTICE

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

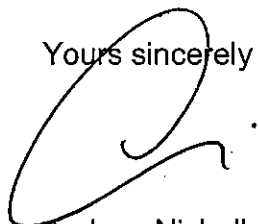
Dear Ms Robertson

I refer to your letter to the General Manager of the Motor Accidents Authority (MAA) dated 25 June 2010 regarding the Questions on Notice arising from the public hearings on the tenth review of the MAA and Motor Accidents Council by the Standing Committee on Law and Justice and the Standing Committee's additional Questions on Notice.

I am pleased to enclose the responses to the further Questions on Notice.

Any enquiries about this matter may be directed to John Dietrich, Manager, Ministerial and Community Assistance, MAA on 8267 1935 or by e-mail: jdietrich@maa.nsw.gov.au.

Yours sincerely



Andrew Nicholls
Acting General Manager

STANDING COMMITTEE ON LAW AND JUSTICE

TENTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND MOTOR ACCIDENTS COUNCIL

QUESTIONS ON NOTICE ARISING FROM THE PUBLIC HEARINGS

QUESTION 1:

The Hon. JOHN AJAKA: I refer to the Zotti case which obviously created a problem as raised by both the Law Society and the Bar Association. What is occurring from the perspective of the MAA in relation to that case and the problems that have clearly been shown?

Ms DONNELLY: The Zotti case concerned a person who was injured when he lost control of a bicycle that he was riding and he claimed there was an oil slick on the road.

The Hon. JOHN AJAKA: From a previous car accident.

Ms DONNELLY: Yes. We are very aware of that case. We have put a proposal to the Minister that he supported to propose some legislation and we are working very hard on that and are quite close to completing legislation.

The Hon. JOHN AJAKA: When did you send your proposal to the Minister?

Ms DONNELLY: I cannot recall.

The Hon. JOHN AJAKA: Will you take that question on notice?

Ms DONNELLY: I am happy to take that on notice.

RESPONSE:

The MAA provided its advice on the Zotti case to the Minister for Finance in December 2009.

QUESTION 2:

CHAIR: The issue of the council not meeting for 16 months is somewhat concerning to the Committee, recognising the incredibly important role the council has played in the past and also recognising that the processes in the MAA have been very effective with small group consultations on specific issues. Part of the process of review has been to review the work of the council. Several of our inquiries have reported that that is incredibly important, not just to the stakeholders but also to the functioning and operation of the MAA and the MAC in its own right. I realise you are saying that it is a matter for Government, but can you tell me what action you took to get this issue resolved? We discussed this issue for some time a couple of years ago when it happened previously. I am interested to know how that played out within your organisation.

Ms DONNELLY: There have been a number of occasions on which we have raised it with Government and sought nominees for the council and provided information about the need to make appointments.

The Hon. DAVID CLARKE: Can you give us details of those occasions when you approached the Government? Can you take that on notice and give us a response?

Ms DONNELLY: I will take that on notice.

RESPONSE:

The MAA wrote to a number of stakeholders seeking nominees for membership on the new Motor Accidents Council. This included the NSW Bar Association, Law Society of New South Wales, Insurance Council of Australia, Australian Medical Association (NSW Branch), Royal College of Australasian Physicians, Australasian Orthopaedic Association, Australasian Faculty of Rehabilitation Medicine, Royal Australian College of Surgeons, Brain Injury Association of NSW, Spinal Cord Injuries Australia, Paraquad, NSW Council of Social Services, NRMA and Choice.

The MAA provided advice to the Government regarding the proposed nominees to the new Motor Accidents Council in June 2009 and followed this up with further submissions in November 2009 and January 2010. The MAA also had ongoing discussions at officer level with ministerial staff regarding progress with the appointments.

QUESTION 3:

CHAIR: It is also interesting to learn through this process that the Government is somehow integrating compensation schemes. Recognising that Ms Lisa Hunt is not here because she is unwell, I would like your perceptions of the structure of the compensation authority and how those processes, which are incredibly diverse, are integrating.

Ms DONNELLY: I will make some comments but it may be that we will need to take some aspects on notice. Certainly the formation of the compensation authority's staffing division as the employing authority and setting up the role of the CEO for that staffing division as the statutory head for the authority have occurred.

RESPONSE:

Further to Ms Donnelly's comments on 11 June, the MAA notes that the Compensation Authorities Staff Division is a NSW Public Service Department created following the restructure of the Public Sector in July 2009. The Division forms part of NSW Treasury being the Principal Department.

The Division consists of the former Office of the WorkCover Authority and the former Office of the Motor Accidents Authority. The Division provides staff to various statutory bodies, being – the WorkCover Authority, the Motor Accidents Authority, the Lifetime Care and Support Authority, the Workers Compensation (Dust Diseases) Board, the Workers Compensation Commission, and the Building and Construction Long Service Payments Corporation.

The Chief Executive of the Division is the Chief Executive Officer of the Motor Accidents Authority, the Lifetime Care and Support Authority, and the WorkCover Authority. The Chief Executive of the Division is also the Independent Chairperson of the Workers Compensation (Dust Diseases) Board. The Chief Executive Officer of the WorkCover Authority is the Chief Executive Officer of the Building and Construction Long Service Payments Corporation.

The Chief Executive of the Division delegates the management of staff and related financial controls to the General Managers or other appropriate staff members of the respective statutory bodies.

The statutory bodies to which the Division provides staff are established under specific legislative arrangements which provide for those bodies to exercise relevant powers, authorities, duties and functions including fund management. The operation of the Division involving the provision of staff to the statutory bodies by way of support does not affect the exercise of relevant powers, authorities, duties and functions by any statutory body. The Division does not affect the administration and management of the funds to which each of the statutory schemes relate.

QUESTION 4:

The Hon. LYNDIA VOLTZ: How do you get around the huge disparity in average weekly earnings where high incomes drag them up and the reality that in, say, the health sector, in particular carers, women are among some of the lowest-paid workers and there is a huge disparity?

Ms DONNELLY: That is a good question. I suppose we would address that if we were comparing the median green slip price to the median average weekly earnings, but I make the point that the green slip price is also skewed in the same way. The average green slip price includes the cost of commercial and fleet vehicles, trucks and so on. I am happy to take that on notice and look at how we could consider particular segments from an equity perspective, which is where you are coming from.

RESPONSE:

Comparison of Green Slip premiums to average weekly earnings is only one measure used by the MAA in reporting on Green Slip performance. The MAA remains of the view that comparisons with average weekly earnings are a better measure of overall Green Slip affordability than comparisons with the consumer price index.

QUESTION 5:

The Hon. DAVID CLARKE: Does a check of what happened in the MAA before you came in reveal whether any proposals were put to the Government in the past to deal with this question of what appears to be bigger-than-expected profits?

Ms DONNELLY: I have seen a number of papers that indicated there was quite a lot of energetic debate about it. I cannot tell you. I will have to take that on notice.

The Hon. DAVID CLARKE: Would you take that on notice and come back to us as to whether there have been specific proposals over the past few years by the MAA as to how the Government should be dealing with this issue of bigger-than-expected profits, to use your words?

Ms DONNELLY: Yes.

RESPONSE:

As noted by the Standing Committee in its seventh report published in September 2006 (p 38):

"The Committee is satisfied that the primary reason for the discrepancy between profit margins contained in CTP filings and the MAA's estimate of the profit likely to be realised on those premiums is the fall in the risk premium between 1999 and the present, comprising a reduction in the claim frequency, propensity to claim and the average cost per claim. The Committee accepts that no reasonable participant in the CTP industry could have predicted the fall in the claim frequency. Indeed, the reasons for the fall are still not fully understood. As the MAA is required to ensure that the motor accidents scheme is fully funded from year to year, the MAA acted reasonably in ensuring that premium prices 'chased' the fall in the claim frequency downwards, rather than racing ahead of the fall in the claim frequency. Further, the Committee considers that it was reasonable for the MAA, in view of its overriding responsibility to ensure that the motor accident scheme is fully funded, to have allowed insurers a margin in respect of the phasing in of the impact of the 1999 reforms on premiums on the basis that there was a risk that the reforms may not have been 100% effective. As a result of the above, NSW CTP insurers have made higher than anticipated profits. Such higher profits are an inevitable consequence of a fall in the risk premium in an insurance scheme backed by private capital".

The MAA continues to monitor competition within the Green Slip scheme. In particular, the MAA has commenced a competition review of the compulsory third party scheme to identify improvements to Green Slip regulation which would enhance affordability and fairness of Green Slip pricing by making the scheme more robust to economic cycles and reforms.

QUESTION 6:

The Hon. LYNDIA VOLTZ: If you were looking at the profits within that period you would expect to see significant changes within the market as a result. Was there a marked increase in the cost of insurance at that time for motor vehicles?

Ms DONNELLY: I might take that on notice.

RESPONSE:

As indicated by the table below, there were only marginal changes in Green Slip premiums in the period immediately following the collapse of the HIH group in March 2001.

Average Green Slip premium (all vehicle classes)	30 June 2001	30 June 2002	30 June 2003
	\$332	\$336	\$328

QUESTION 7:

The Hon. LYNDIA VOLTZ: The Motor Cycle Council said that uninsured motorbikes may be pushing up the premiums, particular the toy ones that kids are getting a ride

on. They think claims are being made against them. Would you like to clear up that matter?

Ms DONNELLY: I am not sure that it is the issue that they think it is. There are always test cases around unregistered vehicles on a road or off road and so on. I am happy to take this question on notice and look at it.

RESPONSE:

The compulsory third party scheme does not cover injuries arising from either the use or operation of a motor vehicle or motorbike that is not capable of registration or the use or operation of an unregistered/uninsured vehicle or motorbike on private property.

The MAA will continue to work with the Motorcycle Council of NSW in examining claim trends against the Nominal Defendant scheme that involve unregistered motorbikes.

STANDING COMMITTEE ON LAW AND JUSTICE

TENTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND MOTOR ACCIDENTS COUNCIL

ADDITIONAL QUESTIONS ON NOTICE

Effectiveness

1. The MAA's response to pre-hearing questions on notice states that the 1 October 2008 legislative amendments have promoted "efficiency in the claims resolution process by encouraging the early settlement of motor accident claims and by facilitating early access to medical treatment and rehabilitation".

- Can you explain how the amendments encourage and facilitate early settlement and access to treatment?
- Should the effect of the amendments be evident in a reduction in the average time taken for insurers to make the first compensation payout?
- If so, what is your view on the fact that the MAA's 07/08 and 08/09 Annual Reports show that the average time taken for insurers to make the first compensation payout has remained steady after a drop in 06/07 of 12%?

Response:

The October 2008 amendments seek to promote greater efficiency in the claims resolution process by creating opportunities for resolving motor accident claims where there is a dispute between the parties at an earlier point in time. The amendments achieve this by requiring insurers and claimants to exchange documents concerning the claim, participate in settlement conferences and exchange offers of settlement on the claim before the claim can be referred for dispute resolution. These changes are designed to shorten the life cycle of a claim.

The amendments also expanded the Green Slip early accident notification process to increase the maximum amount payable under the early payment scheme from \$500 to \$5,000. The accident notification process provides re-imbursment for medical treatment and rehabilitation expenses and any lost earnings related to the accident injury for up to a maximum of \$5,000, within a period of six months from the accident. There was, however, no change to the statutory timeframe for submitting an Accident Notification Form. As the Committee would appreciate, lodgement of the Accident Notification Form is the catalyst for insurers to make a payment to the injured person.

Nonetheless, the time taken by insurers to make the first payment on all claims has fallen from an average of 58.7 days in 2007 to an average of 44.7 days in 2009.

Insurer profits

2. During the hearing 11 June 2010 the Bar Association tendered a document titled 'Summary of Insurer Profitability Projections' (copy attached). Can you comment on the information it sets out?

Response:

The MAA reports on current estimates of claims liabilities for each underwriting year and the estimated profit as a percentage of the written premium. This is only an estimate of what the realised profit will be if the current liability valuation is correct.

3. What is your response to the Australian Lawyers Alliance suggestion that the level of insurer profits over the lifetime of the Scheme indicates a capacity to pay higher benefits to injured persons than have been paid thus far?

Response:

Refer to the MAA's response to the Hon David Clarke MLC to question 5 of the Questions on Notice arising from the public hearings.

4. The MAA's response to pre-hearing questions on notice explains that 'the reported 1% profit for 2008 is based on incomplete recent claims experience' and that 'as more claims are finalised estimated profit margins become more robust ...'

- Notwithstanding the 1% figure is referred to as 'estimated' profit in the MAA's 08/09 Annual Report, does 'reported 1% profit' mean there has been a 1% profit 'so far'?
- If the 1% profit figure is based on 'recent claims experience', albeit incomplete, what future claims experience could result in that profit being upwardly revised?

Response:

No, this does not mean that there has been a 1% profit 'so far'. As previously indicated, the estimated 1% profit for 2008 is based on as yet incomplete recent claims experience.

The MAAS Reference Group

5. In response to the Bar Association's suggestion that a representative from your policy unit be added to the MAAS Reference Group to enhance the connection between the MAA's operational and policy functions, the MAA stated that '[o]fficers from other areas of the MAA may attend meetings of the MAAS reference group as appropriate'.

- Do you think there is a need to enhance the connection between the operational and policy areas of the MAA?
- Do officers from other areas of the MAA actually attend Reference Group meetings?

Response:

The Motor Accidents Assessment Service (MAAS) Reference Group (MRG) is a representative forum of MAAS and its stakeholders to enable cross-industry and stakeholder consultation on, and input into, MAAS policy and procedure changes aimed at continuous improvement in the timely and cost effective resolution of disputes. A key role of the MRG is in fact to provide input into the development and dissemination of MAAS policy and initiatives.

Officers from other areas of the MAA have attended MRG meetings and will continue to do so as relevant to the specific role of the MRG.

CARS review

6. During the hearing on 11 June mention was made a number of times about the Review of the Claims Assessment and Resolution Service.

- **Can you tell us what the terms of reference are for this review and its time frame?**
- **How will stakeholders be involved in the Review?**

Response:

The key objectives of the strategic review of the Claims Assessment and Resolution Service (CARS) are to identify improvements that will:

- ensure that CARS functions to meet the objectives for which it was established; and
- enable CARS to respond to community needs that have arisen since CARS was established.

The MAA has commenced consultations with key stakeholder groups including the Insurance Council of Australia, Law Society of New South Wales and the New South Wales Bar Association in relation to the proposed terms of reference for the strategic review. The MAA is currently considering the feedback received from stakeholders before finalising the terms of reference. It is anticipated that the strategic review of CARS will commence in the second half of 2010.

MCIS levy

7. What is your response to the concerns expressed by the Motorcycle Council of NSW about the 'lack of transparency' of the MCIS levy and that the Levy is 'a state tax of unknown percentage on an insurance premium that is ultimately determined at the discretion of the private sector insurers'.

Response:

The MCIS levy was introduced in 2006 to fund an expansion of the motor accidents scheme to provide lifetime care and support to everyone severely injured in motor vehicle accidents in New South Wales, regardless of who was at fault in causing the accident.

There are two components to the MCIS levy. Firstly, the lifetime care component which covers the cost of medical treatment and providing services such as daily personal and nursing care, wheelchairs, domestic help, respite care and home and transport modifications for seriously injured people. The second component of the MCIS levy is the MAA levy which covers the cost of hospital and ambulance services for people injured in motor vehicle accidents and the administration costs of the motor accidents scheme. This part of the levy is not a new collection but was previously included in the insurer's premium and was not separately identified.

The lifetime care component is set by the Board of the Lifetime Care and Support Authority and the MAA component by the MAA Board. Insurers must apply the MCIS levy rates as determined by each Authority.

8. The Government's response to the 9th Review of the MAA noted that a working group had been established to consider itemisation of the MCIS Levy on CTP Green Slips and that a report to the MAC was expected by 30 June 2009.

- **Has the report been completed and what were its conclusions?**
- **What are the disadvantages and advantages of further information being made available about the MCIS Levy?**

Response:

A report on further itemisation of the MCIS levy on Green Slips has been prepared for consideration by the Motor Accidents Council.

Consistency of Whole Person Injury assessments

9. What has been the effect of the numerous quality control mechanisms, as noted in the MAA's response to pre-hearing questions on notice, on the consistency of Whole Person Injury assessments by the Medical Assessment Service?

Response:

The numerous quality control mechanisms introduced by the Medical Assessment Service appear to be having a positive impact on the consistency of whole person impairment assessments. This is demonstrated by the following:

- The number of total permanent impairment disputes received by the Medical Assessment Service has reduced from 84% in 2008 to a current level of 76%. This reduction in the number of whole person impairment disputes which require assessment by the Medical Assessment Service indicates that the assessment service is effectively educating stakeholders as to whether an injured party meets the threshold for an award of non-economic loss.
- Of those matters which are referred to a medical review panel, those which result in a material change to the original assessment has decreased from 64% in 2008 to 58% currently. At the same time, confirmation or a non-material change to the original assessment has increased from 35% in 2008 to 42%

currently. This indicates that there is a greater level of 'correctness' in initial medical assessments.

- Requests to correct obvious errors in medical assessments have decreased from 52 requests in 2008 to 46 in 2009 and 18 for the half year in 2010. Similarly, the number of requests which have been accepted as containing such an error has reduced from 0.97% of all assessments in 2008 to a current level of 0.47%. This indicates that the quality assurance mechanisms put in place by the Medical Assessment Service are being applied by medical assessors who are making fewer obvious errors in their certificates.
- The total number of complaints against MAS assessor assessment procedures has decreased from 0.79% (33) in 2007-08 to 0.19% (8) in 2009-10.

Discount rate

- 10. Since 2005 have the actual earnings, taxation and inflation rates supported the retention of the 5% rate?**
- 11. At what point, in terms of investment earnings, taxation and inflation rates, would you consider the discount rate should be amended?**
- 12. Will the global financial crisis and its impact on investment earnings have any impact on the discount rate?**

Response:

As indicated in the information previously provided to the Committee by the MAA prior to the hearing, a discount rate of 5% is currently applied by the *Civil Liability Act 2002*, the *Workers Compensation Act 1987* and the motor accidents scheme. The statutory discount rate applied in NSW personal injury schemes is consistent with other States and Territories (except the ACT) which also adopt discount rates in the range of 5-6%.

Motorcycle safety strategies

- 13. The MAA's response to pre-hearing questions on notice states that 'the MAA has committed specific funding for relevant road safety research in conjunction with the Centre for Road Safety'. Can you tell us about the research that is specific to motorcycles and how much funding has been allocated?**

Response:

The MAA has contributed \$25,000 to a program of research by the University of NSW Injury Risk Management Research Centre which is also supported by the Centre for Road Safety, to examine the injury mechanisms that motorcycle riders and pillioners are subjected to when they impact a roadside barrier. This forms part of a body of work that will inform the design of roadside safety barriers to help reduce motorcyclist fatalities and serious injuries.

In addition, the MAA's partnership with the Motorcycle Council of NSW funds education projects that are developed in consultation with the Centre for Road Safety. The MAA has set aside \$250,000 for such projects, and current initiatives include the production by the Motorcycle Council of a short film on motorcycle safety, and the reproduction of booklets produced in conjunction with a number of local councils that promote safe road use by motorcyclists. The MAA's funding will enable the Motorcycle Council to distribute these resources more widely.

The MAA is also actively working with the Centre for Road Safety in developing a motorcycle safety strategy. The MAA has funding earmarked to support these initiatives and is currently considering specific proposals to partner with the Motorcycle Council and the Centre for Road Safety to promote and distribute evidence-based information on motorcycle helmets and protective clothing.

In addition, the MAA has taken the lead in establishing a cross-jurisdictional working party on motorcycle protective clothing. This working party aims to analyse the costs and benefits and develop a business case for establishing an Australian safety testing and star-rating consumer information program, to better enable motorcyclists to make informed choices on protective clothing.

The MAA has also funded a body of work that is exploring the acute management (in hospital) of people suffering fractures in motor vehicle accidents. \$205,000 was provided to fund a pilot study at St Vincent's Hospital to assess the quality of acute care and follow-up of these patients, 23% of whom were motorcyclists. The findings indicated that motorcyclists had a different injury profile to vehicle occupants, and were particularly at risk of poor follow-up. Following this, the MAA has allocated \$390,500 to fund a more extensive study currently running across four Sydney hospitals to trial and evaluate a model of early rehabilitation assessment and follow-up, which is likely to particularly improve the outcomes of motorcyclists who have typically had shorter hospital stays and less access to follow-up services. In addition, the MAA has recently recommended for approval a further \$419,300 to trial and evaluate the use of acute rehabilitation teams for people admitted to hospital as a result of a motor accident in the South Eastern Sydney Area Health Service.

Legal costs

14. The MAA's response to pre-hearing questions on notice states that the FMRC Legal study on the impact of the Motor Accidents Compensation Regulation 2005 'indicates that there is a gap between the fees charged to clients and the amount payable under the Regulation'.

- **How large is this gap?**
- **What is your response to the Law Society's claim that the current gap between legal costs recoverable and real costs means that, in effect, claimants are subsidising the Scheme?**
- **What were the main findings of the FMRC study and what has been the MAA's response to it?**

Response:

The study by FMRC Legal on the impact of the *Motor Accidents Compensation Regulation 2005* and legal costs on compulsory third party (CTP) insurance claimants was limited to a small number of matters (56 files). The key findings of the FMRC Legal report were:

- In all files reviewed there were costs agreements between the client and solicitor.
- The 'gap' between legal fees charged to claimants and legal costs recovered from the insurers could not be determined as the settlement amounts were inclusive of legal fees in virtually all matters.
- There is a significant gap between the fees charged to clients and the amount payable under the Regulation.
- On average the actual legal fees charged are 250% greater than the amount allowed pursuant to the Regulation.
- On average the legal costs charged were 13.19% of the settlement amount. The fees allowed pursuant to the Regulation were 5.22% of the settlement amount.
- The legal fees charged for matters with smaller settlement amounts were proportionally higher than the matters with larger settlement amounts.
- A review of the time recording logs in conjunction with the files indicates that it would not be economically feasible for law firms to conduct CTP matters solely within the amounts allowed under the Regulation.
- The majority of matters settle prior to assessment by the Claims Assessment and Resolution Service (CARS).
- Variance in complexity and therefore costing of CTP matters is in most instances due to factors outside the control of the lawyers conducting the matter.

The FMRC Legal report is a relevant consideration in the Authority's current review of the legal costs regulation which includes consideration of reforms proposed by an independent working party which comprised representatives of the Law Society of New South Wales.

15. The MAA's response to pre-hearing questions on notice states that a working party 'has considered the issue of insurer-initiated court proceedings'.

- **Can you update the Committee on the outcome of the considerations?**
- **Can you tell us more about the working party – who did it consist of, what was the time frame and terms of reference for its work and is it on-going?**
- **The Bar Association in its submission stated that it has been excluded from the current working party process. Can you comment on this assertion?**

Response:

The MAA established an industry working party comprising members of the Law Society of New South Wales, Insurance Council of Australia and the MAA to review the *Motor Accidents Compensation Regulation 2005* and make recommendations as

appropriate. In particular, the working party sought to review the existing regulated legal costs regime for compulsory third party claimants in the light of the significant procedural reforms to the *Motor Accidents Compensation Act 1999* that commenced in October 2008.

The New South Wales Bar Association has been actively involved in the review process. The General Manager of the MAA has met with representatives from the Bar Association to discuss the regulatory review. The MAA has provided the Bar Association with a copy of the working party's terms of reference and has also invited the Bar Association to comment on the summary report of the working party's deliberations. The MAA will continue to liaise with the Bar Association in reviewing the costs regulation.