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Minister for Finance
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Leader of the Government in the Legislative Council

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28 APR 2006

GPSC's

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

26 APR 2006

Dear Ms Robertson

I refer to your letter of 23 February 2006 regarding the seventh review of the Motor Accidents Authority (MAA) and Motor Accidents Council by the Standing Committee on Law and Justice, and attaching the Committee's questions on notice.

I am pleased to enclose the MAA's responses to the Committee's questions. As requested, I have also enclosed the following additional materials for the Committee's information:

- MAA's *Review of Insurer Profit* – re question 1.1;
- MAA Regulatory and Enforcement Policy – re question 14.1;
- Justice Policy Research Centre's reports to date on stakeholder perceptions of the Medical Assessment Service and Claims Assessment and Resolution Service (5 reports) – re question 23.1.

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

I trust that this information will be of assistance to the Committee.

Yours sincerely

John Della Bosca MLC

Received at 11:30am
Thursday 27/4/06
Lynn Levelled
for Clerk of the Party.

**SEVENTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MAA
AND MOTOR ACCIDENTS COUNCIL**

MAA RESPONSE TO QUESTIONS ON NOTICE

1 Report on insurer profits

- 1.1 Can the MAA provide the report to the Committee? Will the MAA provide its instructions to the report authors to the Committee?**

A copy of the MAA's *Review of Insurer Profit* is attached (Attachment 1). The report was prepared by the MAA and includes advice received from Taylor Fry Actuaries.

- 1.2 Did the MAA consult with the NSW CTP insurers in drafting the report?**

No.

- 1.3 Did the MAA consult with any other interested stakeholders in drafting the report? If so, with whom?**

No.

- 1.4 Has the MAA supplied a copy of the report to the NSW CTP insurers? If so, what comments has the MAA received from the insurers in respect of the report?**

No.

- 1.5 Has the MAA supplied a copy of the report to the MAC? What is the view of the MAC in respect of the report?**

No.

2 Insurer profitability

- 2.1 The General Manager of MAA has previously given evidence to the Committee that 6-8% of total premium written represents a reasonable rate of return to CTP insurers. Does the MAA remain of this view?**

The MAA remains of the same view. See the response to Question 6.1.

- 2.2 What is the MAA's view as to current projections that CTP insurers will average over 20% profit (as a percentage of premiums written) over the first four years of operation of the new scheme? How does this figure compare with the MAA's target of 6-8% of premium retained as a reasonable profit level?**

The higher estimated profit than that assumed in the filings is a result of the updated estimated cost of claims being lower than the risk premium assumed in the filings. Refer to the response to Question 2.4.

2.3 Are the estimated actual rates of profit cited above 'excessive' for the purposes of section 27 of the *Motor Accidents Compensation Act 1999*? If not, what level of profit would the MAA regard as 'excessive'?

The MAA's 2004/05 Annual Report (p 80) states that the average profit margin in insurer filings for the years 1999/2000 to 2004/2005 ranged from 7.7% to 8.7%. The MAA has not accepted a profit margin over 10% in premium filings and is still of the view that, based on actuarial advice from Taylor Fry Actuaries, 6%-8% of total premium written represents an adequate rate of return to CTP insurers.

2.4 What was the average rate of profit in the NSW CTP scheme for each of the years 1989 to 1999?

Underwriting year ended 30 June	Estimate % profit/(loss)
1990	56
1991	52
1992	12
1993	(12)
1994	(33)
1995	(12)
1996	26
1997	25
1998	21
1999	25
Average	22

2.5 Given the MAA's statement noted above regarding possible intervention in the market, has the MAA developed a policy to determine when such intervention would be justified? If so, will the MAA provide the Committee with a copy of the policy? When does the MAA think such intervention would be justified?

Refer to the response to Question 2.6.

2.6 What range of actions would the MAA contemplate in the event that it decides to intervene in the CTP insurance market? What would be the object of such intervention, for example, to lower premiums, reduce insurer profits or some combination of these goals?

Section 27 of the *Motor Accidents Compensation Act 1999* provides that if the MAA rejects a filed premium, the insurer may request the MAA to reconsider the rejection. If the MAA has not withdrawn its rejection of a premium within four weeks after a request to reconsider the rejection is made, the matter is to be arbitrated under section 27(6) of the *Motor Accidents Compensation Act 1999*. The arbitrator may then determine the premium that may be charged by the insurer.

According to section 27(6) of the Act, the arbitrator may be appointed by agreement between the MAA and the insurer. If there is no agreement on the issue, the Independent Pricing and Regulatory Tribunal (IPART) may act as an arbitrator to hear and determine the matter. Alternatively, the Tribunal may appoint a person to act as arbitrator. The person is to be appointed from a panel constituted by the Minister and consisting of people with appropriate knowledge and understanding of economics, general insurance and the interests of consumers.

In practice, in addition to the formal procedures to reject a filing, if on receipt of a filing the MAA is concerned with any aspect, the MAA will first seek clarification and/ or amendment of the filing. The MAA regularly intervenes at this level.

2.7 Is it premature to assess estimated or realised profit in the NSW motor accidents scheme, given the long tail nature of CTP insurance?

Each year Taylor Fry Actuaries determine the actuarial estimates of profit for each underwriting year in the motor accidents scheme. The yearly profit estimates for the earliest years of the scheme have been consistent, suggesting that additional development has not deviated from expectations in the estimates.

As only 66% of the estimated total claims cost of the first year of the *Motor Accidents Compensation Act 1999* has been paid (and lower proportions for more recent underwriting periods), it is still possible that the experience of the actual claim payments will differ from the actuarial estimate. The scheme is always susceptible to court rulings that change compensation entitlements. For example, according to the recent Court of Appeal decision in *Zhang v Golden Eagle International Trading Pty Ltd & Ors*, damages under section 45 of the *Motor Accidents Act 1988* (section 83 of the *Motor Accidents Compensation Act 1999*) should be reduced for the amount of the section 45 payments already made by the insurer before being reduced by the relevant percentage attributable to contributory negligence. As 25% of large claims involve contributory negligence, the decision has the potential to significantly increase projected payments on claims and therefore reduce the estimates of profit. The claim in this particular case related to an accident that occurred in 1997.

While it may be too early for the ultimate profit to be exactly estimated, insurers have acknowledged the experience of the early years by releasing some reserves. The MAA obtained information from insurers in relation to their release of profit from NSW CTP. The MAA requested that each insurer's response be based on accounting standards used for Australian statutory accounts and relate to the insurer's normal accounting periods.

Profit margins and released profit					
	Filed profit margin % of gross premium	Projected profit/loss % of gross premium		Pre tax profit release % of gross earned premium reported by insurers to MAA	
99/00	7.7	\$328m	24.8%	\$253m	19%
00/01	7.9	\$261m	19.8%	\$257m	19%
01/02	8.2	\$288m	21.5%	\$195m	15%
02/03	8.2	\$264m	18.9%	\$161m	12%
03/04	8.5	\$252m	17.1%	\$53m	4%
04/05	8.7			\$9m	1%
Notes	Filing periods: year ending 30 June	Underwriting years Ending 30 September		Accident years / accounting years Differ by insurer: therefore approximate	

2.8 Given the ICA's assertion, what confidence does the MAA have in the profit estimates contained in the CTP premium filings? How many years must elapse before it is possible to generate a reasonable estimate of the likely profit margin on any given under-writing year?

The ICA comments relate to actual profit experienced and not to the profit margins included in filings.

2.9 To the extent that profit estimates for any given underwriting year are unreliable, what further information could be made available to the MAA by insurers, or any other party, that would enable the MAA to form a more reliable estimate of likely profit?

The profit estimates included in the premium filings are reliable indications of insurer profit assuming that the actual cost of claims accords with the risk premium in the filing.

The actual cost of claims will vary from the risk premium when there are changes to any one of a number of factors including:

- claim frequency and propensity to claim - determined in part by the accident rates;
- claim severity;
- average claim costs as affected by changes to common law damages or the calculation of heads of damage and superimposed inflation above or below that assumed particularly in relation to areas such as treatment costs;
- legal and investigation costs.

At the time a premium filing is determined, a "best estimate" is made of these matters having regard to trends and costs to that point in time. The insurer is on risk for these variables.

The actuaries that prepare premium filings have regard not only to current scheme information but also to such other data sources as RTA accident data, hospital injury data and Australian Bureau of Statistics (ABS) data on average weekly earnings, life expectancy and demographics.

The MAA is not aware of any other significant data sources that would assist in this process.

2.10 In which of the years since 1989 did NSW CTP insurers sustain losses? How large were the losses? Are these figures actual losses or estimates of loss?

There were losses in three years. For two of the three years the losses were 12% and for the third there was a 33% loss. These figures can be considered to be actual losses as almost all claims for those periods are finalised.

2.11 In the event that a NSW CTP insurer sustained a loss in the future, are there any mechanisms by which that insurer could have 'recourse to motor vehicle owners, public funds or other funding sources' to recover the loss? For example, could an insurer increase premiums in subsequent years to 'cover' a loss made in a previous year?

No. The fully funded test set out under section 27(8) of the *Motor Accidents Compensation Act 1999* requires each underwriting year to be fully funded and losses cannot be recompensed by future premiums.

2.12 Does the MAA monitor the payment of Insurance Protection Tax by NSW CTP insurers? If so, how much Insurance Protection Tax did NSW CTP insurers pay, in total, in each of the underwriting years since the commencement of the *Insurance Protection Tax Act*?

No. This is not an MAA function.

3 Premium prices

3.1 Can the MAA provide the Committee with an update on CTP premium movements in 2005-2006?

The average premium for Sydney metropolitan passenger vehicles in the December 2005 quarter was \$322 compared to \$337 in the December 2004 quarter. The average premium over all NSW vehicles was \$328 in the December 2005 quarter compared to \$339 in the December 2004 quarter (Refer to Attachment 2).

As a proportion of average weekly earnings, the weighted best price dropped from 50% before the 1999 legislative reforms to below 28% in the December 2005 quarter. Average premiums for Sydney metropolitan passenger vehicles have fallen from over 55% of average weekly earnings to below 30% of average weekly earnings. These figures exclude GST so that comparisons can be made with the previous scheme (Refer to Attachment 2).

3.2 On present estimates, are CTP premiums likely to become more affordable as a percentage of average weekly earnings in 2005-2006?

See the response to Question 3.1 for the 2005/06 trends to the end of December 2005.

3.3 How do NSW CTP premiums compare to CTP premiums in other states?

Best price metro car premiums (including GST)		
	2005/06	2004/05
NSW*	\$326 for motorists 30-54 \$287 for motorists 55+	\$329 for motorists 30-54 \$290 for motorists 55+
Victoria	\$347	\$339
Queensland	\$303	\$329
WA	\$250	\$250
SA	\$375	\$385
Tasmania	\$332	\$332
ACT	Not available	\$386
NT	\$426	\$426

* Prices are for metropolitan premiums. In NSW, lower premiums are available in Newcastle, Wollongong, Country and Outer Metropolitan.

4 Fall in claim and accident frequency; fall in risk premium

- 4.1 Can the MAA provide the Committee with an update on this trend? Does the MAA agree with the assertion by the ICA that 'scheme experience indicates that claim frequency has now stabilised?'**

The MAA's 2004/05 Annual Report (p 84) shows that for the first five years of the reformed scheme, there was a downward trend in claim frequency. For the two latest years there was a minimal reduction from 33 to 32 claims/ 10,000 vehicles. The MAA is awaiting actuarial advice on projected future claims frequency.

- 4.2 What is the Heads of CTP Committee and what is its role? Who are its members? Does the Heads of CTP Committee anticipate that the accident frequency will continue to decline?**

The Heads of CTP Committee includes the Chief Executive Officers (CEOs) of CTP schemes in each of the Australian states and territories and New Zealand. The CEOs meet every six months to update one another on the experience of the schemes in each jurisdiction, address issues of common interest and identify initiatives that can be adopted in other jurisdictions. In reporting claim frequencies, Australian jurisdictions have reported a decreasing trend in recent years. Those states which include forecasts in their reporting anticipate a continued downward trend, but at a slower rate.

5 The role of the MAA in regulating insurer profit levels

- 5.1 How many insurers, if any, have filed CTP premium changes in the 2005-2006 financial year to date?**

Five of the seven licensed insurers have filed changes in 2005/06.

- 5.2 Of the CTP premiums filed in the 2005-2006 financial year, how many have been increases and how many decreases, and by what percentages?**

Of the thirteen separate filings filed in the 2005/06 financial year, all were for decreases in either the best price and/ or the base price. The effect of the filings was that insurers' best prices dropped by between 1% and 1.5% during the period and base premiums dropped by 2.5%. Some filings related only to changes in the best price or base premium. Others related to changes to the discount/ loading structures with or without changes to the best price or base premium.

Changes in the discount/ loading structure can result in significant changes for some motorists. For example, one insurer introduced demerit points as a new rating factor which has not previously been used by any other insurer. Motorists with zero demerit points were able to obtain lower premiums from that insurer. As a result, some motorists' premiums were \$230 (over 40%) cheaper than before.

- 5.3 Of the CTP premiums filed in the 2005-2006 financial year, how many have been rejected by the MAA? On what grounds did the MAA reject these premiums?**

No premiums filed in the 2005/06 financial year have been rejected by the MAA to date.

5.4 Of the CTP premiums filed in the 2004-2005 financial year, how many were rejected by the MAA? On what grounds did the MAA reject these premiums?

In 2004/05, six of the seven insurers filed for changes at least once. One filed premium was rejected because the MAA considered that the profit margin included in the filing was excessive.

5.5 On how many occasions since 1999 has the MAA utilised the power contained in section 27 of the *Motor Accidents Compensation Act 1999* to reject a premium? On how many of these occasions was a premium rejected because it was 'excessive'?

The MAA has used the power contained in section 27 of the *Motor Accidents Compensation Act 1999* on four occasions. On each occasion, the premium was rejected as it was considered to be excessive.

5.6 What steps does the MAA take to review the assumptions on which premium filings are based? What skills and expertise does the MAA possess that enable it to assess premium filings? For example, does the MAA employ actuaries, either directly or indirectly, to assess premium filings?

The MAA first reviews filings in-house with particular reference to previous filings by the insurer, a comparison with industry benchmarks and against industry reports provided by the MAA's actuarial advisors, Taylor Fry Actuaries, on the industry average risk premium. The in-house reviews are undertaken by the Senior Premiums Analyst and the Deputy General Manager of the MAA. The MAA may obtain advice from Taylor Fry Actuaries on specific aspects of the filings or request that Taylor Fry Actuaries undertake a complete review of all assumptions in the filing. Taylor Fry Actuaries provide independent advice as they do not prepare rate filings for any of the insurers.

5.7 Did or has the MAA reviewed and/or amended its guidelines issued pursuant to section 26 of the Act regarding CTP premiums in 2004-2005 or 2005-2006? If so, what changes were made? If not, when was the last time the MAA reviewed the guidelines?

The Guidelines were amended in March 2003 to coincide with changes relating to the application of the GST legislation and the availability of dual premiums to NSW motorists.

5.8 Given that insurer profits have been 'well in excess of those predicted in the premium filings', has the MAA changed the way that it reviews premium filings and the assumptions underlying those filings?

The margins identified in filings reflect the insurer's estimate of the margin required to service the capital allocated to the business. Changing the margin will not have an effect on the ultimate profit or loss made. Further, because of the fully funded test the profit (or loss) in one underwriting year cannot be adjusted by decreasing (or increasing) the profit margin in a subsequent filing. Each filing must represent a fully funded premium.

6 CTP insurers view as to the appropriate rate of profit in NSW motor accidents scheme

6.1 Did the MAA enter discussions with NSW CTP insurers in 2004-2005 or the current financial year regarding the profitability of the CTP insurance market?

The Government's response to the *Fifth Report* noted that, in relation to recommendation 7:

In May 2000 the MAA initiated a consultative process to develop suitable methodologies with the distribution of an MAA Issues Paper on *Capital & Profit in CTP Insurance*. In July 2000 the MAA convened a forum including representatives of the insurance industry, the actuarial profession and APRA to discuss the proposals. Following that process the MAA has adopted a methodology, prepared by Taylor Fry Actuaries, which looks at three issues:

1. a suitable method for estimating the rates of return to be used in discounting different types of cash flow
2. the quantum of capital allocated by insurers to CTP business
3. a methodology for deriving a profit margin from 1 and 2.

These are incorporated in the MAA Premiums Determination Guidelines (made pursuant to section 24 of the *Motor Accidents Compensation Act 1999*), which prescribe the manner for calculating estimated profit.

Debate over what is an adequate profit margin in an insurer's filing and the methodology for determining the appropriate level has continued and was most recently considered in the following forums:

- A meeting between the MAA and insurers, called by the ICA in March 2004, in which two papers were presented. The first was a November 2003 paper prepared by PricewaterhouseCoopers for the ICA on *Issues with the MAA model for evaluation of insurance premium profit margins*. The second was a January 2004 paper prepared by Trowbridge Deloitte on *Profit margins for NSW CTP*.
- A seminar in July 2004 sponsored by the Institute of Actuaries of Australia and the Insurance Australia Group on the "Economic theory of profit margins". The seminar included the above two papers as well as other additional presentations. The MAA asked Taylor Fry Actuaries to provide the MAA with its views of the issues discussed and to update their previous advice on profit margins. Taylor Fry Actuaries concluded that, in the main, the matters canvassed at the two forums did not change their previous conclusions or the Taylor Fry methodology.

6.2 Are the NSW CTP insurers still of the view that the level of profitability derived from the Taylor Fry methodology is inadequate?

Yes.

6.3 Have the NSW CTP insurers suggested an alternative methodology for deriving an adequate level of profit for the CTP insurance scheme? If so, what is that methodology?

Refer to the response to Question 6.1.

6.4 In the opinion of the NSW CTP insurers, what is an appropriate rate of profit in the NSW CTP insurance market?

The Trowbridge study (Brigstock and Copping, 2004) was one of the papers presented at the 2004 forums referred to in the response to Question 6.1. The study's conclusion was that market expectations of Return on Equity for CTP business lie in the range of 12%-17% per annum. In relation to profit margins expressed as a percentage of gross premiums, the profit margin should fall within the range of 10%-14%. They considered that a profit margin below 9% almost certainly would be considered as unlikely to produce an adequate return on capital.

6.5 Given the current arrangements for the setting of insurance premiums, can the MAA envisage circumstances in which any of the insurers could sustain a loss? If so, what are those circumstances?

Yes. Given the experience of the previous scheme, it is clear that this potential exists and would happen if any of a number of features of the current scheme changed or experience deteriorated. This may include, for example:

- an increase in claim frequency;
- an increase in the crash rate;
- an increase in propensity to claim;
- average claim size increase;
- a departure from the expected number and frequency of large claims;
- inflation rates beyond expectation;
- increased superimposed inflation;
- changes to precedent in calculating damages (see the response to Question 2.7 which refers to a recent NSW Court of Appeal which has the potential to increase damages payable in contributory negligence cases);
- deterioration of the 10% whole person impairment threshold.

7 Competition in the NSW CTP insurance market

7.1 Given that the accident frequency and therefore the risk premium of NSW CTP insurance has decreased, to what extent can decreases in premiums be seen as evidence of increased competition, particularly when four of seven insurers did not file for reductions for their best priced premiums in 2004-2005?

The MAA's 2004/05 Annual Report (p 77) reports that three insurers filed for reductions in their best price during 2004/05, after their initial 1 July 2004 filing. Six of the seven insurers filed at least once during the year with reductions to their best prices, base premium and/ or changes to their discount/ loading structure and there were, in total, ten submissions from the six insurers.

Insurers aim to underwrite as many good risks as possible in their portfolio by correctly identifying the risk factors which differentiate good risks and poor risks. Insurers offer their lowest prices to the segments of the market that they have identified as good risks. Competition amongst insurers is a function not only of the base rate or the best price but also of pricing competitively based on identified risk factors. Different insurers use different rating factors and make adjustments to their discount/ loading structures based on their underwriting experience.

7.2 How does the MAA view its role in promoting competition in the NSW CTP insurance market? What steps has the MAA taken to enhance competition in the market?

The MAA has laid the groundwork for maximum competition in the MAA Premiums Determination Guidelines. The Guidelines allow insurers to use objective risk rating factors of their own choosing (except race) to determine levels of discount and loading on their base prices, with a restriction that insurers cannot rate on geographical areas smaller than the MAA declared regions.

In 1999, the Guidelines were amended to provide a wider range within which insurers could apply discounts and loadings. For motorists under 55, the maximum discount is 15% off the base rate. For motorists 55 and over, the discount can be as low as 25%. The maximum loading is approximately 50%. The range provides insurers with a wide range to distinguish risk while still maintaining an affordable premium. In addition to the Guidelines, the MAA has promoted competition through its website greenslip price calculator which allows policyholders to obtain the best price and at the same time acts as a competitive benchmark.

7.3 Would competition in the NSW CTP insurance market be enhanced or diminished if the MAA's power to reject premium filings was removed?

The MAA's power to reject a premium filing serves three purposes:

- to ensure that insurers collect enough premiums to fully fund the scheme;
- to ensure that premiums are not excessive; and
- to ensure that the risk rating factors used by insurers are valid.

The 1998 Competition Policy Review of the Scheme looked in detail at the 'file and write' scheme and concluded that it offered the balance between the need to facilitate competition in setting premiums and providing best outcomes for consumers, including meeting the community rating requirements. These matters were further examined in the statutory review of the *Motor Accidents Compensation Act 1999* undertaken in 2002 and tabled in Parliament by the Minister for Commerce on 24 October 2002.

7.4 What factors enhance, and what factors diminish, competition in the NSW CTP insurance market?

The main factor that diminishes competition is the size of the market. While the Competition Policy Review led to the removal of the requirement of a minimum market share, the consolidation of the general insurance market in Australia means that the MAA does not see scope for further entrants (Refer to the response to Question 7.7).

The premium setting restrictions and particularly the fact that the premiums are not fully risk rated introduce a distortion to the market which can limit competition but does so for good social policy reasons which have been extensively reviewed and validated (see the response to Question 7.3).

Within these limitations, the MAA believes that the market is competitive as demonstrated by recent premium reductions, loading and discount changes and high levels of advertising for CTP.

7.5 Will the NSW motor accidents scheme become more or less competitive in 2005-2006?

The MAA sees no reason why the current levels of competition will not continue.

7.6 Has the MAA had discussions with the Australian Competition and Consumer Commission regarding competition in the market? If so, what is the view of the ACCC as to competition levels in the NSW CTP insurance market?

No.

7.7 Is the MAA anticipating any more insurance companies entering the market in the near future? Has the MAA had discussions with any prospective new entrants to the NSW market?

No. Of the APRA licensed insurers with a level of net assets comparable to currently licensed NSW CTP insurers, none are suitable as candidates for a CTP licence because they are either reinsurers, in run-off, or part of a group which already holds a NSW CTP license.

7.8 Given that the NSW CTP scheme has moved from a 'pay as you go' scheme to a fully funded scheme, is it the case that an over-estimation by the CTP insurers of the claims frequency will result in 'windfall' profits for the CTP insurers? Is competition in the NSW CTP insurance market sufficiently robust to ensure that the incentive for insurers to over-estimate the claims frequency is eliminated?

The identification of claims frequency and in particular, the estimation of projected future claims frequency, is an actuarial exercise based on observed trends. The MAA receives advice on claim frequency and projected claim frequency from its own independent actuaries. The MAA uses these estimates to assess the reasonableness of insurers' estimates. In the current scheme, when claim frequency dropped, insurers responded by adopting lower projected claim frequency in filings for future premiums which appeared reasonable at the time of the filing. However, claim frequency continued to fall in a way that could not reasonably be predicted by analysts.

8 CTP premium levy for 2005-2006

8.1 What is the CTP premium levy for 2005-2006?

2.5% of gross premium.

9 Scheme savings

9.1 Are these figures expressed in real terms or absolute terms?

These figures are expressed in real terms.

10 Road safety and rehabilitation strategic plan

10.1 Has this strategy been finalised?

10.2 Can the MAA supply the Committee with a copy of this strategy?

10.3 Is the strategy publicly available?

As is noted at page 15 of the MAA's 2004/05 Annual Report, the three year strategic plan and evaluation framework is due to be finalised during the current financial year. A copy of the plan will be provided to the Committee once finalised and endorsed by the Board of the MAA.

10.4 Can the MAA update the Committee on the structure and performance of the MAA Grants Program in 2004-2005?

10.5 Can the MAA provide the Committee with an update on the PWC review of the Grants Program? Have the recommendations of that review been fully implemented?

10.6 What mechanisms has the MAA put in place to review the effectiveness of the Grants program into the future?

A summary of the key results and achievements of the MAA's grants program in 2004/05 is set out at pages 28-30 of the MAA's 2004/05 Annual Report.

As is noted at page 15 of the MAA's 2004/05 Annual Report, a number of recommendations of the independent review of the MAA grants program have been implemented. The recommendations focus primarily on the grants funding process and the overall strategic direction of the Injury Prevention and Management program.

Since the completion of the review, the MAA has engaged a consultant to provide advice on strategic directions and funding priorities for the grants program and to develop reporting mechanisms to the Board of the MAA. During this ongoing process, the Board has agreed to meet all funding commitments already made over the next four years but not to commit to any new major projects.

11 MAS Guidelines

11.1 Can the MAA provide the Committee with an update on the draft MAS guidelines?

The MAA *Medical Assessment Guidelines* were gazetted on 3 March 2006 to commence on 1 May 2006.

11.2 In summary, what does the MAA consider to be the important changes contemplated in the draft MAAS guidelines?

Key revisions to the MAA *Medical Assessment Guidelines* include:

- clarifying the procedures and requirements for the lodgement of applications for medical assessment and replies;
- reducing by half the timeframe in which officers of MAS are to register applications, provide copies of documents and advise parties of outcomes;
- clarifying the procedural requirements for a further medical assessment;
- extending the time limit for claimants to lodge an application for review of a medical assessment from 20 days to 30 days after the receipt of the certificate of assessment;
- clarifying the definition of 'material' regarding applications for review;
- providing a simplified method for addressing obvious errors;
- clarifying that all documents that parties intend to rely on should be provided in the application or reply.

12 CARS Guidelines

12.1 Can the MAA provide the Committee with an update on the draft CARS guidelines?

The MAA *Claims Assessment Guidelines* were gazetted on 3 March 2006 to commence on 1 May 2006.

12.2 In summary, what does the MAA consider to be the important changes contemplated in the draft CARS guidelines?

Key revisions to the MAA *Claims Assessment Guidelines* include:

- clarifying the procedures and requirements for the lodgement of applications for claims assessment and replies;
- reducing by half the timeframe within which the Principal Claims Assessor is required to make a determination regarding an application for exemption;
- tightening the timeframe within which the Principal Claims Assessor or an officer of CARS is to allocate a matter to an assessor for assessment;
- clarifying the circumstances in which surveillance film can be lodged at CARS and ensuring that claimants are able to provide submissions in response to such film;
- providing that allegations of false or misleading statements give rise to a discretionary exemption ground as opposed to a mandatory exemption ground so that all claims are assessed on the merits;
- clarifying that CARS assessors have the power to dismiss applications that are not being pursued or where directions are not being complied with;
- clarifying that all documents parties intend to rely on should be provided in the application or reply.

13 Prudential regulation

13.1 What are the MAA's views as to the level of capitalisation of the NSW CTP insurers? Are capitalisation levels in the NSW CTP scheme too high?

NSW CTP insurers must meet APRA's capital requirements. Under APRA's risk-based capital adequacy model, which came into force in July 2002, CTP insurers have different levels of capital requirements depending on the classes of business they write and the amount of premiums written, the outstanding claims provisions and other business risks. The mechanism for calculating the minimum capital requirement is set by APRA. While the MAA takes the view that capital required to support CTP should be less than other long tail classes of business, APRA has not accepted this view. In any event, although APRA aligns capital requirements to business classes and takes into account the long and short term nature of different classes, ultimately capital is assessed on the whole company, not for individual lines of business.

13.2 What would be the effect on NSW CTP insurer profit levels of a reduction in capitalisation requirements? Would such a reduction lead to an increase in scheme profitability?

It would be expected that a reduction in capital would warrant a lower prospective profit margin, that is, a lower margin in filings to service the allocated capital.

13.3 Has APRA recommended any changes to the operation of the motor accidents scheme, including insurer capitalisation levels? If so, what is the MAA's view of such recommendations?

No.

13.4 Have any insurers yet released reserves in relation to the new scheme? If so, what reserves have so far been released, how much has been released and in relation to which years?

Refer to the response to Question 2.7.

14 Compliance with Claims Handling Guidelines (CHG) and Treatment Rehabilitation and Care Guidelines (TRAC)

14.1 Can the MAA identify any aspects of the CHG and TRAC where there is a need for improvement? If so, is there a need to amend the CHGs or TRACS in respect of these issues?

The MAA is proposing to update the injury codes in respect of the Treatment, Rehabilitation and Attendant Care Guidelines.

14.2 Has the draft regulatory and enforcement policy referred to at page 13 of the 2004-2005 Annual Report been finalised? Can the MAA supply the Committee with a copy of this policy?

The MAA has finalised the Regulatory and Enforcement Policy, which sets out the criteria and procedures to be followed by the MAA in issuing breach notices to insurers in the case of non-compliance. A copy of the Policy is attached (Attachment 3).

14.3 What are the particulars of the three major breaches of the draft regulatory and enforcement policy referred to at page 13 of the *Annual Report*? What steps has the MAA taken to follow-up on these breaches since it issued breach notices to the insurers involved?

One of the three breaches involved an insurer not meeting its statutory duty to ensure the expeditious funding of a claimant's treatment (breach of section 84(2) of the *Motor Accidents Compensation Act 1999*). The other two breaches involved insurers who made late changes to their determinations on liability, and consequently were not expeditious in their duty to resolve the claim (breach of section 80 of the *Motor Accidents Compensation Act 1999*).

In relation to the first breach, the MAA requested detailed information from the insurer about claims handling staff training, experience, case loads, organisational structure and future staffing levels. The MAA reviewed the information and determined that the insurer had taken appropriate remedial action to address the breach.

In relation to the other two breaches, the MAA required the insurers concerned to implement more rigorous policies and procedures for reviewing and approving liability determinations.

14.4 Can the MAA provide the Committee with copies of insurer self-compliance reports for January 2006?

The MAA is in the process of preparing a summary report of insurer self-compliance to be included in the 2005/06 Annual Report. The MAA is agreeable to providing the individual insurer reports to the Committee subject to the Committee making a non-publication order.

15 Risk ratings

15.1 What role does the MAA have in accepting or rejecting particular risk ratings?

The determination of a premium is a three stage process:

Stage 1

Insurers are required to classify vehicles according to vehicle categories and geographic zones as set by the MAA. There are five geographic zones: Metropolitan Sydney, Outer Metropolitan, Newcastle, Wollongong and the remainder of NSW called Country. There are approximately 30 separate vehicle categories, for example, motor car, motor bike (based on engine size) and goods vehicles (based on gross vehicle mass).

The MAA briefs external actuaries to review the claims experience of each of the vehicle classes and geographic zones and to develop a table of relativities which reflects the risk of each vehicle/ region category relative to an ordinary motor car in metropolitan Sydney.

Stage 2

Insurers file with the MAA the base premium that they intend to charge for an ordinary motor car in metropolitan Sydney. The base premiums for all other classes of vehicles and regions are calculated by applying the relativities set by the MAA.

Stage 3

Insurers may offer discounts or impose loadings according to the risk being insured within the range allowed by the MAA Premiums Determination Guidelines. The maximum discount is 15% for motorists under 55 and 25% for motorists aged 55 and over. The maximum loading is approximately 50%. In deciding to offer a discount or impose a loading, insurers may take into account any objective risk-rating factors other than race. Insurers are not permitted to break down the geographical zones and rate on geographical areas within the MAA prescribed zones.

Insurers apply rating factors differently so that a vehicle which attracts a loading from one insurer may attract a discount from another insurer. For example, some insurers use the age of the owner/ driver as a primary rating factor, while other insurers use comprehensive insurance history, no claim bonus or the age of the vehicle being insured.

15.2 Do all NSW CTP insurers apply the same risk ratings to their premiums?

Insurers use a wide range of risk factors. Different insurers use different factors and combine them in different ways. Some factors are used by a number of insurers and some factors are used by only one insurer. Some insurers may use the same factor but apply different categories of the factor. The MAA website (www.maa.nsw.gov.au) sets out the rating factors comprehensively as all factors must be captured so that the prices from all insurers can be calculated. Rating factors include:

- age of vehicle;
- whether vehicle is comprehensively insured or insured for third party property;
- the motorist's no claims bonus on comprehensive insurance;
- collision claims;
- age of owners and/ or drivers;
- gender of drivers;
- age of youngest driver;
- moving traffic offences;
- demerit points.

15.3 What is the actuarial basis of the risk rating by gender? To what extent, if any, does risk rating by gender affect CTP premium prices?

Female drivers have consistently lower crash involvement than males, across all age groups. Currently only one insurer offers a lower price for female motorists. Previously other insurers offered differential premiums but stopped using gender as a risk factor.

The reason given by insurers for not rating on gender is that there is a tendency for motorists to switch the ownership of a vehicle to the female partner if a lower premium is available, in which case the premium does not reflect the true risk for all drivers.

15.4 To what extent, if any, are drivers over 55 years of age subsidising all other drivers by paying higher CTP insurance premiums?

Drivers over 55 years of age have access to lower prices compared to all other age groups. Insurers can offer drivers over 55 years of age a discount of 25% compared to the maximum discount of 15% available to drivers aged 30-54, reflecting the lower crash involvement rates of drivers aged 55 and over, particularly drivers aged between 55 and 79.

16 Legal costs

16.1 Can the MAA provide the Committee with an indication of the gap between solicitor-client costs and recoverable party-party costs in CARS assessments? Is this gap growing? If so, what are the reasons for this growth?

The MAA's Regulatory Impact Statement (RIS) on the *Motor Accidents Compensation Regulation 2005* noted that, despite various efforts, the MAA has not been able to obtain information about the rate at which legal practitioners contract out of the regulated fees structure and the costs borne by claimants as a result. The MAA reported to the Standing Committee during the sixth review with regard to research into the effects of the legal costs regulation commissioned from the Justice Policy Research Centre (see pp 15-16 of the *Sixth Report*) that:

Professor Ted Wright, Belle Wiese Professor of Legal Ethics, Dean of Law and Head, School of Law, University of Newcastle and Director, Justice Policy Research Centre, has indicated that the project "ran into impossible difficulties in gaining access to lawyers' files. Basically the difficulty is a dual-layered one, from a researcher's point of view. Our previous research indicates that lawyers are generally very reluctant to give access to detailed cost information, and the position from a professional conduct point of view is probably that they need their clients' permission to give us access to the file. We proceeded on that basis, and then ran into the second layer of difficulty, in the form of a restrictive ethics clearance which required us to approach claimants in writing and to request a written permission (by return mail). Ultimately we got this permission only from 35 claimants - too small a number."

In the course of undertaking public consultation on the *Motor Accidents Compensation Regulation 2005*, the MAA requested submissions on the effects of the contracting-out provisions in the legal costs regime, particularly with regard to the effects on claimants (refer p 18 of the RIS). No submissions on this issue were received by the MAA.

16.2 Should the costs regulation be amended to include costs penalties against insurers to encourage the expeditious settlement of CARS proceedings? For example, by allowing a claimant to recover party/party costs if they beat an offer that had been made to the insurer?

The issue of cost penalties is inconsistent with the objectives of the Claims Assessment and Resolution Service (CARS). CARS is an administrative process that was established for the primary purpose of resolving claims rather than assessing cost disputes. It should also be noted that the MAA issues guidelines for insurers regarding the management of claims.

16.3 If it is the insurer who triggers the rehearing, why should the claimant's costs be restricted? Does this situation require amendment of the costs regulations?

The MAA will consider the issue of claimant's costs in rehearing matters in any future review of the costs regime.

16.4 Is the MAA aware of this problem? What action does the MAA propose to take to remedy this problem?

The *Motor Accidents Compensation Regulation 2005* enables a Claims Assessor, in making an assessment and specifying damages under section 94 of the *Motor Accidents Compensation Act 1999*, to include in the assessment an assessment of the claimant's costs.

16.5 Does the MAA plan to undertake a review of the costs regulation in the near future?

The Government's response to the *Sixth Report* noted that, in relation to recommendation 2, a detailed review of the options for regulating legal costs in motor accident matters was undertaken by the MAA in the course of developing the *Motor Accidents Compensation Regulation 2005* (refer pp 12-21 of the RIS). The RIS also noted that (p 4):

The approach to legal fee regulation has been retained as there have been no notable variations in motor accidents scheme practice and procedure since the introduction of the scheme reforms in 1999. A further analysis of the value of legal services and the appropriateness of the current regulatory regime will be conducted in the event of any significant change to the practices and procedures within the scheme.

17 CTP and public liability insurance gap

17.1 Has the MAA considered the case of *AMP General Insurance Ltd v Kull* [2005] NSW CA 442? Does this case, or others like it, raise any new issues regarding the gap between CTP and public liability insurance? If so, what are those issues? How should those issues be addressed?

No. The MAA is aware of the case of *AMP General Insurance Ltd v Kull* [2005] NSWCA 442. The MAA understands that the exclusion clause in the relevant public liability insurance policy excluded liability for injuries covered by a CTP insurance policy. The MAA notes that the Court of Appeal held that the injuries in question did not fall within the definition of "injury" as defined by the *Motor Accidents Compensation Act 1999* and accordingly, the exclusion clause did not apply. In the Court's view there was no gap in insurance cover.

17.2 Until the amending legislation is introduced, what role does the MAA have in informing people of the gap between CTP and public liability insurance?

The Government's response to the *Sixth Report* noted that, in relation to recommendation 5:

The MAA previously advised the Standing Committee that the legal advice clarified the application of the *Motor Accidents Compensation Act 1999*. It is anticipated that legislation dealing with the application of the Act will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

During the fifth review, the MAA advised the Standing Committee that the MAA has raised the issue of the gap in public liability cover with the Insurance Council of Australia. It was also noted that the Insurance Council of Australia issued a General Circular to insurers on 28 November 2002 inviting insurers to review their motor or personal liability cover under home contents to provide gap insurance.

The functions of the MAA as set out under the *Motor Accidents Compensation Act 1999* relate to monitoring the operation of the motor accidents scheme. The MAA does not have a role with regard to the operation of public liability insurance.

18 MAAS Reform Package

- 18.1 Were the MAAS reforms implemented on 1 January 2006? If not, when does the MAA expect the reforms to be implemented?**
- 18.2 To the extent that the reforms are in place, can the MAA provide the Committee with an update on the performance of the reforms?**

Refer to the responses to Question 11 and Question 12 regarding procedural reforms to MAAS including the revised MAA *Medical Assessment Guidelines* and MAA *Claims Assessment Guidelines*. With regard to reforms requiring legislative amendment, the Government's response to the *Sixth Report* noted that, in relation to recommendation 1, it is anticipated that legislation to give effect to the MAAS reform agenda will be introduced into Parliament in 2005/06, subject to the parliamentary program.

19 Quality and timeliness of MAS assessments

- 19.1 Can the MAA provide the Committee with an update on compliance by MAS with QA standards?**

In the six month period from 1 July 2005 to 31 December 2005, 82% of medical assessments met the Quality Assurance standards. That is an increase of 12% compared to the previous financial year.

- 19.2 Has the MAA set a target for improvements in compliance with the QA standards by MAS? What would be an acceptable compliance rate with the QA standards by MAS?**

As the new Quality Assurance measures take effect, the number of certificates/ reasons issued by MAS assessors containing obvious errors that require amendment should continue to improve towards a compliance target of 85%-90% by 31 December 2006.

- 19.3 Is there any scope to reduce the average length of the MAS general assessment life cycle from 142 days? What steps has the MAA taken or propose to take to reduce the average length of the assessment life cycle?**

As a result of the revised MAA *Medical Assessment Guidelines* and new Quality Assurance measures, the MAA has set a target to reduce the average MAS matter lifecycle to 132 days by 31 December 2006.

- 19.4 How many complaints has the MAA received of bias on the part of MAS assessors in 2004-2005? Did the MAA investigate these claims? What was the result of the investigations and what action, if any, did the MAA take in respect of the bias claims?**

The MAA has received no complaints alleging bias on the part of a MAS assessor.

19.5 Can the MAA update the Committee on the rate of finalisation of MAS assessments in 2004-2005? In the opinion of the MAA, what factors are tending to reduce the finalisation rates of MAS assessments? What actions, if any, has the MAA taken to address these factors?

In 2004/05, a total of 5,693 MAS applications were received. Of these, 5,357 matters (approximately 94%) were finalised within that period.

It is noted that the necessary processing lifecycle timeframe of 120-140 days is affected by a number of issues that arise during the assessment process including:

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

20 Quality and timeliness of CARS assessments

20.1 Why were 66% of assessment conferences not on time?

The MAA *Claims Assessment Guidelines* provide that an assessment conference is to take place within 25 days of a preliminary assessment/ conference.

The main reason that 66% of CARS assessment conferences were not held on time in 2004/05 was because the parties were not ready to 'take a date' within that time period for various reasons including:

- applications were not properly prepared;
- assessors allowing the parties a reasonable time period to comply with directions to prepare the matter for assessment (i.e. a typical situation allowing three weeks for the claimant to submit their material and then two weeks for the insurer to submit their material takes the date of assessment beyond 25 days);
- difficulties were experienced in finding a date convenient to the assessor, the claimant and the claimant's legal representatives, the insurer and the insurer's legal representatives.

20.2 Of those conferences that were not on time, how lengthy were the delays before the conference was held?

The length of time from preliminary conferences to assessment conferences held between 1 July 2004 and 30 June 2005 comprised:

Number of Days	Number of conferences	%
0 to 25	366	33.5%
26 to 35	150	13.7%
36 to 45	164	15.0%
46 to 55	159	14.5%
56 to 65	113	10.3%

66 or more	141	12.9%
Total	1093	100.0%

20.3 What steps has the MAA taken to ensure that assessment conferences are held on time?

The timeliness of the assessment conference is very much in the hands of the parties. It is essential that claims are prepared in order to ensure a true and proper assessment is made and the MAA has taken steps to ensure that the parties to a dispute (both claimants and insurers) are prepared at the time an application for general assessment is lodged. The revised MAA *Claims Assessment Guidelines* and general assessment forms require the parties to a dispute to lodge all supporting documentation and provide a summary of the case at the time that the application is lodged. The Guidelines also provide for the lodgement of additional information only at the request of the claims assessor or by consent of both parties.

It is anticipated that the overall time between lodgement and assessment conference will decrease as a result of these reforms.

20.4 Is there any scope to reduce the average length of the CARS general assessment life cycle from 243 days? What steps has the MAA taken or propose to take to reduce the average length of the assessment life cycle?

As a result of the revised MAA *Claims Assessment Guidelines*, it is anticipated that the CARS general assessment life cycle will decline by 31 December 2006.

20.5 Will the MAA increase the number of CARS assessors in 2004-2005? If so, how many additional assessors will be engaged and how much will this cost?

An additional 12 CARS assessors were recruited in November 2004. The MAA does not anticipate an increase in the number of CARS assessors in the immediate future.

20.6 Does the amount of documentation required to be prepared by a claimant in preparation for a CARS assessment now typically exceed that which would have been prepared by the same claimant for court proceedings under the old scheme?

No. While a strict comparison of old scheme cases versus new scheme cases is not possible, the following observations may be made:

- For a claimant to prove his or her case in the District Court or at CARS, a similar amount of documentation including tax returns, letters from employers, medical reports and accounts is required. The number of medical reports required under the new scheme has reduced due to the involvement of MAS.
- The CARS forms are simpler than the Statement of Claim, Defence and Statement of Particulars that are required to be filed in the District Court.
- Both CARS and the Court require schedules of damages to be prepared.
- New CARS forms commencing from 1 May 2006 are significantly streamlined.

20.7 To what extent, if any, is the CARS process tending to become more and more formalised, adversarial and quasi-judicial? What steps has the MAA

taken, if any, to ensure that the CARS process remains a quick, efficient and cheap Alternative Dispute Resolution Mechanism?

See the responses to Question 20.3 and Question 20.4.

21 CARS assessments and the Supreme Court

21.1 Can the MAA provide the Committee with a brief overview of 2004-2005 cases in which applicants sought review of a CARS assessment in the Supreme Court?

A total of 17,727 applications have been lodged at CARS between 5 October 1999 and 28 February 2006. Of these, 5 applications (0.028%) have been made to the Supreme Court to challenge various types of decisions made in respect of these assessments. This includes:

Newman	Insurer's challenge to exemption decision – Principal Claims Assessor refused insurer's application to exempt the claim made by 83 year old paraplegic lady.	Claimant died, summons discontinued and claim is now to be assessed at CARS.
Hancock	Insurer's challenge to assessment decision – CARS assessor allowed interest by reference to the <i>Civil Liability Act 2002</i> and not the <i>Motor Accidents Compensation Act 1999</i> .	Summons settled.
Richards	Insurer's challenge to assessment decision – CARS assessor allowed <i>Sullivan v Gordon</i> damages.	Summons proceeding.
Prakash	Insurer's challenge to exemption decision – Principal Claims Assessor refused to exempt claim on basis that liability denied as breach of duty was admitted, only damages were denied.	Summons dismissed – parties agreed that the claim should be exempted on the basis there are complex legal issues involved in the claim.
Hewes	Insurer's challenge to procedural decision - CARS assessor refused to adjourn an assessment conference and refer back to MAS for further medical assessment.	Summons discontinued.

21.2 What changes to CARS procedures has the MAA instituted in light of challenges to CARS processes in the Supreme Court?

Under section 105(2) of the *Motor Accidents Compensation Act 1999*, neither the MAA nor the Principal Claims Assessor can interfere with an assessor's decision. The Principal Claims Assessor does, however, monitor all such applications and any court decisions and these are

taken into account when undertaking ongoing assessor training and developing practice notes for assessors.

22 Cost of MAS and CARS disputes

22.1 What was the average cost to the MAA, to claimants and to insurers of a MAS assessment in 2003-2004 and 2004-2005?

22.2 What was the average cost to the MAA, to claimants and to insurers of a CARS assessment in 2003-2004 and 2004-2005?

Data on average costs is not available.

22.3 Are costs of MAS and CARS disputes likely to increase or decrease in coming years?

Refer to the response to Question 22.1 and Question 22.2.

22.4 What steps has the MAA taken, consistent with quality and timeliness, to reduce the costs of CARS and MAS assessments?

It is anticipated that the reforms to the Motor Accidents Assessment Service (MAAS) will lead to greater efficiencies and improved quality and timeliness of assessments, thereby reducing the cost of CARS and MAS assessments. Refer to the responses to Question 11 and Question 12 regarding procedural reforms to MAAS including the revised MAA *Medical Assessment Guidelines* and MAA *Claims Assessment Guidelines*. With regard to reforms requiring legislative amendment, the Government's response to the *Sixth Report* noted that, in relation to recommendation 1, it is anticipated that legislation to give effect to the MAAS reform agenda will be introduced into Parliament in 2005/06, subject to the parliamentary program.

23 Research by Justice Policy Research Centre

23.1 Did or has the MAA receive any reports from the Justice Policy Research Centre in 2004-2005 or 2005-2006? If so, can the MAA provide copies of these reports to the Committee?

The MAA has received the following reports by the Justice Policy Research Centre (JPRC):

- *MAS Assessors' perceptions of MAS* (October 2004);
- *CARS Assessors' perceptions of CARS* (October 2004);
- *CTP Insurers' perceptions of MAS and CARS* (October 2004);
- *Solicitors' perceptions of MAS and CARS* (March 2005);
- *Claimant perceptions of MAS* (May 2005).

A survey of claimant perceptions of CARS commenced in 2005 and is expected to be finalised in mid 2006. Following completion of this study, the JPRC will prepare an overall final report, which is expected to be finalised in late 2006. Copies of the reports to date are attached (Attachment 4).

24 Litigation

24.1 In 2004-2005, what percentage of Year 1 full claims had commenced CARS proceedings? Relative to the old scheme, are more or less motor accidents claims being disputed?

In 2004/05, 17% of year 1 notifications had lodged applications for CARS general assessments.

25 Assistance by the MAA to unrepresented claimants

25.1 What level of assistance does the MAA offer to unrepresented claimants?

The MAA's Claims Advisory Service (CAS) provides an outreach service for direct claimants who have lodged an application with either the Medical Assessment Service (MAS) or Claims Assessment and Resolution Service (CARS). A direct claimant is someone without legal representation who is managing his or her own claim.

The outreach service provides procedural advice and general support and information to direct claimants. The service seeks to ensure that direct claimants have a complete understanding of the MAS and CARS processes and procedures, and that all relevant information is provided to the particular dispute resolution service.

CAS outreach officers provide a contact point for any questions or concerns that the direct claimant may have during the processing of their application. The outreach officer also assists direct claimants to complete applications and replies, offers reminders of appointments and explains the options available once an application has been finalised.

25.2 What was the cost of the Outreach program in 2004-2005?

The outreach service is integral to the activities of the MAA's Claims Advisory Service. A separate costing on the outreach service is not available.

25.3 As a percentage of disputed claims, how many unrepresented claimants received no assistance from the Outreach program in 2004-2005?

As reported in the MAA's 2004/05 Annual Report, 1,699 direct claimants accessing the dispute resolution services were contacted by the outreach service in 2004/05 (p 26).

All direct claimants accessing the dispute resolution services were contacted by the Outreach service in 2004/05.

25.4 Does the MAA have any plans to expand the Outreach program?

The MAA does not consider that there is a need to expand the Outreach service at this time.

26 Community Participation Program

26.1 Can the MAA provide the Committee with an update on the Community Participation Program?

The \$2 million Community Participation Program, jointly managed by the MAA and the Department of Aging Disability and Homecare (DADHC), involves the trial and evaluation of a model of service coordination to improve the community participation of people with spinal cord injury.

A control group of spinal cord patients receiving the usual services is being compared to an intervention group receiving additional service coordination and gap funding for services. The Rehabilitation Studies Unit of the University of Sydney is using standardised measures to evaluate the effect of the intervention for participants and their families. As the data collection timeframe is based on time since injury and/ or discharge, the availability of data for comparison is only in the initial stages.

There are currently 41 people being assisted through this project with the first patient discharged from hospital in October 2004 and the last expected to be discharged in March 2006. An analysis of the early data has shown a 25% reduction in the length of hospital stay for the intervention group. This has been achieved through improving the coordination of existing services and utilisation of the current systems for housing, home modification, transport and personal care. Gap funding has been used to purchase services while on waiting lists for the DADHC Attendant Care Program.

Following spinal cord injury a person must make significant changes to their life. Of the 41 participants in the program, 27 changed their housing arrangements and 29 required home modifications. 13 require high level personal care assistance on an ongoing basis. The post hospital support being offered by the project to participants has been extended from one to two years. This will provide the opportunity to support participants to engage in community or vocational activities.

26.2 Can the MAA identify any other groups of injured persons, such as persons with serious brain injuries, who would benefit from a community participation program? Does the MAA propose to develop any such plans?

The MAA is currently developing three additional projects to improve the community participation of people with a brain injury. Two of these projects are being developed with the Department of Education, the Independent Schools, the Catholic Schools, the Paediatric Brain Injury Units and DADHC and will address the needs of children with a brain injury at school and when leaving school. The third project will involve trialling a model of a therapy intervention for people with challenging behaviours in the community.

27 Brain Injury Care and Support Protocols

27.1 Can the MAA provide the Committee with an update on the trial of the draft protocols?

The *Traumatic Brain Injury Care and Support Protocols* for adults and children in the NSW motor accidents scheme were introduced on a trial basis in February 2005. The MAA hosted a series of training workshops for service providers and CTP insurers on how to apply the protocols, including case study examples for participants to gain practice in their use. Approximately 200 CTP insurers, case managers and care providers attended the training sessions.

A review of the protocols commenced in November 2005. To date, the review has included a survey of CTP insurers and service providers about their use of the protocols and a discussion forum attended by CTP insurers and service providers about how the protocols might be improved. The results from the survey indicate that both service providers and insurers appreciate the comprehensive structure of the protocols and the importance of the information exchanged through the recommended reporting practices.

The MAA is currently considering the options arising from the survey and discussion forum with a view to incorporating these options into the protocols.

28 Relationship between RTA and MAA

28.1 Have the MAA and RTA entered into formal protocols or a memorandum of understanding to document their approach to road safety? If so, can the MAA provide this document to the Committee?

The MAA is a member of a number of interagency committees convened by the RTA including the Government Agencies in Road Safety (GARS) and the Road Safety Taskforce. These committees meet on a regular basis and ensure a coordinated approach to road safety issues in NSW. Other issues are addressed on a case by case basis and individual contractual arrangements are developed for larger joint projects such as the Sober driver program or advertising/ awareness programs.

28.2 Has the MAA considered whether there is any overlap between its functions and those of the RTA? If so, what steps has the MAA taken or propose to take to eliminate that overlap?

The MAA recognises that the RTA is the lead agency for road safety in NSW and develops its road safety strategy in accordance with the Government's overall *Road Safety Strategy 2010*. The MAA has a particular focus on reducing serious injuries in areas with greatest cost impact to the CTP scheme.

The target groups for road safety activities for both the MAA and RTA include young people, children, pedestrians and motorcyclists. To ensure duplication does not occur, the MAA and RTA communicate on a regular basis about proposed initiatives and in some cases jointly fund activities.

28.3 Does the MAA plan to undertake any further joint operations with the RTA such as Operation Westsafe in October 2004?

The MAA and RTA jointly fund a number of initiatives including:

- Sober Driver Program – an education program for repeat drink drive offenders.
- Motorcycle and driver education public education campaign – a motorcycle safety awareness campaign targeting both motorcycle riders and drivers.
- Operation Roadsafe (incorporating Operation Westsafe) – to address road safety issues in the Sydney metropolitan region.

28.4 Can the MAA provide the Committee with an update on the Sober Driver program?

The MAA continues to work with the RTA, Attorney-General's Department and the Probation and Parole Service of the Department of Corrective Services on the NSW Sober Driver Program. Following piloting and revision of resource material, the nine-week program was rolled out state-wide from July 2003. A version of the program for use in regional and remote areas of NSW was developed and rolled out state-wide from July 2004. Aboriginal resources have been developed and incorporated into the program following extensive consultation with Aboriginal communities. Training of program facilitators and information sessions for Magistrates has also been undertaken.

An independent evaluation of the program has commenced and is expected to be completed in 2006. The program is jointly funded by the MAA and RTA until June 2007 pursuant to a memorandum of understanding with the Department of Corrective Services.

28.5 Should the MAA become a 'more active advocate for government investment in road infrastructure'?

The RTA, as the lead agency for road safety in NSW, is in the best position to advise the Government on the most appropriate areas for investment in road infrastructure.

29 Proposed 'no-fault for children' scheme

29.1 Can the MAA inform the Committee of the 'no fault for children' proposal? How has the obligation of insurance companies to provide treatment and care for children been extended?

The *Motor Accidents Compensation Amendment Bill 2006* was introduced into the Legislative Assembly on 9 March 2006.

30 Children and road safety

30.1 Can the MAA provide the Committee with a brief update on the CREP program?

The Child Restraint Evaluation Program (CREP), undertaken by a number of organisations including the RTA and the NRMA, seeks to assess the relative performance of child restraints available in Australia. The program covers crash testing, installation, use and compatibility of child restraints with a range of cars. It is understood that a round of such testing has recently been completed with results to be published as soon as possible.

See the response to Question 30.2 regarding the MAA's *Choose Right Fit Right* community education campaign.

30.2 What other programs does the MAA have in place aimed at the safety of children? What further actions will the MAA take in 2005-2006 to promote the safety of children?

In 2003 the MAA developed its Child Road Safety Program. The program focuses on influencing attitudes and behaviours of road users and incorporates research and cooperative action across agencies to reduce road trauma. The key target groups within the program are child passengers, pedestrians and pedal cyclists.

Key initiatives under the MAA's Child Road Safety Program include:

- The *Choose Right Fit Right* community education campaign, launched by the MAA in 2005 in partnership with Kidsafe NSW, aims to encourage the proper use of restraints for child passengers. The campaign was developed in response to MAA sponsored research into child passenger safety which found that children are being moved on from child restraints before they are ready. The state-wide campaign assists parents and carers of children aged between two and six years to choose, correctly fit and use restraints that are appropriate for a child's size.
- The MAA is sponsoring additional research into child restraints including a three year project to describe the use, misuse and appropriate use of child restraints in motor vehicles with a view to contributing to the development of further improved protection for child passengers.
- The MAA convened 'Children killed and injured in driveways project steering committee' seeks to reduce the risk to young pedestrians from low speed off road accidents such as those in driveways. The Committee has sponsored research to determine the circumstances surrounding such accidents and initiatives to promote increased supervision wherever vehicles might be moved, as well as the provision of safer play areas for children. The Committee has also supported the preparation of a technical specification to improve vehicle rearward visibility.
- The MAA continues to work with Kidsafe NSW to address child pedestrian safety through the *Kids Need a Hand in Traffic* campaign. The campaign targets parents and carers, including those from diverse cultural backgrounds, in 16 local government areas and aims to build awareness of the need to supervise children in traffic environments.
- The MAA continues to support the *Walk Safely to School Day* multi-agency project, co-ordinated by the Pedestrian Council of Australia.
- In addition to research into aspects of child pedal cycle safety, the MAA continues to work with Kidsafe NSW to promote safer cycling, particularly through the use of helmets.

Further information about MAA funded strategies to promote child passenger, pedestrian and pedal cycle safety, including key results and achievements in 2004/05, is set out at page 29 of the MAA's 2004/05 Annual Report. Child road safety reports are also available on a dedicated child injury prevention page on the MAA's website at www.maa.nsw.gov.au.

The MAA child safety program will continue to develop during 2006 through the refinement of target groups, the development of inter-sectoral relationships and the further application of relevant research outcomes.

31 Young people and road safety

31.1 Can the MAA provide the Committee with an update on its strategy to reduce serious injuries amongst young people?

The MAA's *Arrive alive* road safety program for young people aged between 17 and 25 years was introduced in 2000. The program focuses on alerting young people to the issues associated with being a young road user (e.g. inexperience, attitudes and behaviours, risk taking) and provides information about how to handle these issues. The *Arrive alive* program currently comprises two main activities:

- *Arrive alive* youth grants scheme – which provides grants of up to \$10,000 to groups of young people to address local road safety issues. Three rounds of funding have been provided throughout NSW for approximately 50 road safety projects including the production of films, music events and art work. Another round of funding is proposed for 2007.
- *Arrive alive* sponsorships – which provide funding for an innovative range of activities of common interest for young people in areas such as sport, music and the arts. The aim of the program is to involve young people in activities they enjoy while positively influencing attitudes and behaviours on the roads. Sponsorships typically involve naming and signage rights, advertising and promotions at events and in some cases, the use of athletes/ players to make presentations to students on road safety issues.

A dedicated website, www.arrivealive.com.au, has been established to support the MAA's *Arrive alive* road safety activities. The *Arrive alive* website uses music, art, sport and competitions to engage young people's interest and promote road safety messages in an appealing and innovative way. The site has proved very popular with young people and receives up to 20,000 hits each month.

Further information about the *Arrive alive* road safety program, including key results and achievements in 2004/05, is provided at page 28 of the MAA's 2004/05 Annual Report.

31.2 What steps does the MAA plan to take to elicit the views of young people in the course its 2005-2006 review of injury prevention and management programs?

The MAA accesses the views of young people through a range of forums. As an example, an advisory committee has been established under the *Arrive alive* grants scheme and includes up to six young people. The committee is directly involved in the selection and implementation of individual projects and provides a leadership role for young people undertaking projects.

The MAA is also in regular contact with non-government organisations and Government agencies which are directly involved with young people in relation to specific injury prevention management issues and programs.

31.3 What role, if any, does the MAA consider that it has in promoting the use of safe alternative transport for young people?

The MAA supports the promotion of the use of safe alternative transport for young people and provides funding for transport (generally shuttle buses) associated with MAA sponsored events. In the past, the MAA has provided funding for transport to and from Youth Week

activities, the University Games and *Arrive alive* youth grants scheme projects. As is noted at page 28 of the MAA's 2004/05 Annual Report, in 2004/05 the MAA sponsored Youth Week and YouthRock and provided grants to 35 local councils to operate shuttle buses to and from events.

31.4 Will the MAA collaborate with Youthsafe, and any other interested stakeholders, to promote the use of safe, alternative transport options by young people?

The MAA supports any collaborative efforts to promote the use of safe, alternative transport options by young people. The MAA is not, however, in a position to commit additional funding to this area other than that already provided through current projects.

31.5 Can the MAA provide the Committee with an update on the Arrive Alive program? What plans does the MAA have to improve and expand the Arrive Alive program in 2005-2006?

See response to Question 31.1 for an update on the MAA's *Arrive alive* program. Further information about the program, including key results and achievements in 2004/05, is provided at page 28 of the MAA's 2004/05 Annual Report.

The MAA has sponsorship commitments in relation to the *Arrive alive* program to 2007. All sponsorships will be reviewed during 2006 and opportunities will be investigated to continue these programs beyond 2007.

32 Motorcyclists and road safety

32.1 Can the MAA provide the Committee with an update on its strategy to reduce serious injuries amongst motorcyclists?

The MAA has developed a range of strategies aimed at contributing to a reduction in motorcycle road-related injuries and their impact on CTP claims and costs including:

- Continued support of a joint advertising campaign (outdoor, print and radio advertisements) with the RTA targeting both drivers and motorcyclists and highlighting issues of speeding, drink riding, braking safely, protective clothing and driver awareness of motorcycles.
- Provision of funding to the Motorcycle Council of NSW (MCC) for a range of projects including the development of the *Motorcycle Council of NSW Road Safety Strategic Plan* and the *Users Guide to Motorcycle Protective Clothing*, as well as the Motorcycle Protective Clothing Seminar which resulted in the formation of a working party to further protective clothing standards.
- Provision of funding for research to improve the research and evidence base for future program development.
- Development of professional knowledge and skills through seminars and conferences.
- Provision of opportunities through the MAA Local Government Road Safety Grants Program, administered by the Institute of Public Works Engineering Australia (IPWEA), for councils to apply for grants for projects targeting motorcyclists and drivers.

33 Pedestrian road safety

33.1 Can the MAA provide the Committee with an update on its strategy to reduce serious injuries amongst pedestrians?

Key MAA initiatives to promote pedestrian safety include:

- The 'Children killed and injured in driveways project steering committee', convened by the MAA, has been established to reduce the risk to young pedestrians from low speed off road accidents such as those in driveways. The Committee has sponsored research to determine the circumstances surrounding such accidents and initiatives to promote increased supervision wherever vehicles might be moved, as well as the provision of safe play areas of children. The Committee has also supported the preparation of a technical specification to improve vehicle rearward visibility.
- The MAA continues to work with Kidsafe NSW to address child pedestrian safety through the *Kids Need a Hand in Traffic* campaign. The campaign targets parents and carers, including those from diverse cultural backgrounds, in 16 local government areas and aims to build awareness of the need to supervise children in traffic environments.
- The MAA continues to support the annual *Walk Safely to School Day* multi-agency project, co-ordinated by the Pedestrian Council of Australia.
- Local councils can apply for grants to target identified local issues in MAA priority areas, including pedestrian safety, through the MAA Local Government Road Safety Grants Program.
- The MAA continues to support *Operation Roadsafe*, a joint initiative with the RTA and NSW Police and supported by local government, which aims to reduce road fatalities and injuries in metropolitan Sydney. One of the key targets is to reduce speeding which has the potential to decrease the number and severity of pedestrian injuries. The Operation targets a population base of more than 3.5 million people.

34 Rural and regional motorists and road safety

34.1 Are rural and regional motorists at any special risk of serious road injury? If so, what steps has the MAA taken to reduce these risks?

According to RTA road traffic crash data in relation to fatalities per 100,000 of the population, the fatality rate is significantly lower in the Sydney region compared to the rest of NSW. The injury rate in the Sydney region is, however, similar to the rest of NSW.

Country areas have lower claim numbers but higher costs which reflects the more serious injuries sustained by those injured in these areas. For sedans and other ordinary passenger vehicles, the claim frequency (i.e. claims/10,000 vehicles) in the country is 0.6 times the claim frequency in the Sydney metropolitan area. However, the country claim size is 1.2 times the Sydney metropolitan claim size.

The MAA targets rural and regional road safety issues through the provision of funding opportunities on a statewide basis. The MAA funded Local Government Road Safety Grants Program, for example, offers funding to councils for local activities that focus on MAA target groups such as pedestrians, motorcyclists, young people and children. These grants are offered annually. Funding is also offered annually to groups of young people for projects targeting local issues through the *Arrive alive* grants scheme, as well as sponsorship of a number of statewide activities such as Youth Week, the Arrive alive Cup and the statewide schoolboy rugby league competition.

In addition, in May 2004 the MAA participated in the *Country Road Safety Summit* which provided an opportunity for a bipartisan review of safety on country roads. The summit released a Communiqué which included 137 recommendations to be considered by Government.

35 CTP premiums for buses and coaches

35.1 Does the MAA have any comment on the Association's suggestion that CTP claim forms be altered so that the MAA can collect information regarding claims involving buses and coaches?

The MAA understands that the concern of the Bus and Coach Association is that there is very different claims experience as between different types and usage of buses. In particular, the MAA understands that the main concern relates to the different experience as between buses which pick up passengers on local routes and coaches travelling between cities and regional centres.

A change to the claim form to capture this information will still not allow the MAA to provide for separate categories for the reasons outlined in the response to Question 35.2.

35.2 What potential difficulties and advantages involved in calculating CTP premiums for buses and coaches on a 'primary use' basis? Does the MAA support this proposal?

Of particular relevance for the MAA's consideration of the proposal is whether the RTA accepts the Association's proposals, captures and maintains the data, and provides the data to CTP insurers. CTP insurers use the information provided by the RTA to allocate vehicles to the correct categories.

The main consideration, however, is the size of the premium pool. There are already five different bus categories in the MAA's Schedule and the numbers of vehicles in each category are relatively small (see table for numbers of buses in the two largest regions). It would be unwise from an actuarial point of view to split them any further for the following reasons:

- It is difficult to rate a small class of vehicles because CTP claims are relatively unusual events and the smaller the class, the longer is needed for experience to accrue.
- Catastrophic accidents happen from time to time. Even if the normal claim frequency is reasonable, it can be expected that large vehicles could cause very serious injuries in crashes with either pedestrians or other smaller vehicles, for example. In determining the appropriate premium for a class of vehicles the occurrence of these unusual events must be taken into account. The smaller the base that the claims cost is spread across, the larger the premium that is allocated to individual vehicle owners.

Bus categories: Sydney metro and Country regions: Annual policies			
		Number of annual policies	
		Sydney metro	Country
6a	Omnibus/tourist vehicle fare paying >16 seats	2,225	3,699
6b	Omnibus/tourist vehicle fare paying 10-16 seats	1,022	632
6c	STA	1,750	0
6d	Charity bus	683	326
6e	Private/Pensioner bus	1,197	896

As discussed in the response to Question 15.1, the MAA Premiums Determination Guidelines provide insurers with a wide discretion in the application of rating factors and the application of discounts and loadings based on their claims experience. If an insurer identifies that a particular type of bus or a specific fleet of buses has a claims experience that warrants a discount on their premium, the insurer can make this available at the present time.

36 Accident Notification Forms

36.1 Should the 28 day time limit on ANF claims be extended to 3 months?

The MAA does not consider that the 28 day time limit to lodge an accident notification form (ANF), as prescribed by section 48(c) of the *Motor Accidents Compensation Act 1999*, should be extended to 3 months.

Based on the information provided, the claim in question appears to relate to a Nominal Defendant claim where the motor vehicle accident was caused by an unidentified vehicle. Clause 2.1 of the MAA Claims Handling Guidelines provides that, if a person lodges an ANF in circumstances where the vehicle at fault in the accident is unidentified:

'The insurer will advise a person, who seeks to lodge an ANF where the vehicle held at fault in the accident is unregistered or unidentified, that an ANF is not applicable and provide the person with a claim form. The insurer will also advise that the completed claim form should be forwarded to the MAA for allocation under the Nominal Defendant Scheme within 6 months of the date of the accident.'

The submission of the claim form also means that an injured person is able to pursue a claim if their treatment expenses exceed the \$500 threshold of the ANF and/ or if they wish to pursue a claim for other compensation entitlements not applicable to the ANF – e.g. loss of income.

36.2 Does the MAA have any comment to make in respect of this proposal?

If an injured person contacts a licensed CTP insurer, then as indicated in the response to Question 36.1, the insurer is obliged to advise the injured person that an ANF is not applicable and provide the person with a claim form.

36.3 What measures does the MAA have in place to advise potential claimants of their rights to bring an action against the Nominal Defendant? Is it appropriate for the MAA to be providing this kind of advice?

In addition to the requirements imposed by the MAA on CTP insurers under the MAA Claims Handling Guidelines to advise potential claimants of their rights to bring an action against the Nominal Defendant, the MAA makes information about the Nominal Defendant claims process available via a number of sources including:

- MAA's Claims Advisory Service on 1300 656 919;
- MAA website, www.maa.nsw.gov.au;
- An MAA brochure entitled *A guide for people injured in a motor vehicle accident on or after 5 October 1999*, which can be requested over the phone from the MAA or can be downloaded from the MAA's website. The section on the Nominal Defendant is set out at pages 4-5 of the brochure.
- MAA's Motor Accident Personal Injury Claim Form on page v: 'Steps to Making a Claim for Personal Injury Compensation.'

37 Late withdrawals of admissions of liability

37.1 Can the MAA update the Committee on the issue of the late withdrawal of liability by insurers?

Refer to the responses to Question 14.3 and Question 37.2.

37.2 Has the MAA evaluated the performance of the two insurers referred to above since the implementation by them of new policies in respect of this issues?

The two insurers concerned have advised the MAA that, since the implementation of the new policies and procedures for determining liability on 1 January 2005, there have been no subsequent withdrawals of an admission of liability to date.

38 Relations between NSW Police and motor accidents claimants

38.1 Can the MAA briefly advise the Committee of the way in which CARS assessors rely on NSW Police Service accident reports?

Liability is in issue in very few cases before CARS. A CARS assessor will consider all of the evidence before them when assessing a case. This would include a NSW Police Service accident report, where it is part of the evidence presented.

38.2 Is the MAA aware of any instances in 2004-2005 when the limitation period expired prior to the finalisation of a NSW Police investigation into a motor accident claim? Is the MAA aware of any instances where the claimant failed to file a claim before the expiration of the limitation period because a police investigation had not yet been finalised?

As at 28 February 2006, 338 applications for leave to bring a claim to CARS out of time have been finalised. Of these, 69% (232 matters) determined that a late claim could be made while 31% (106 matters) determined that a late claim could not be made. On the information available to the MAA, a late police report has not been the determinative issue in any of the decisions in which a late claim was not allowed to be made.

38.3 Did any CARS assessor raise with the MAA any issues in respect of the quality and reliability of police accident reports in 2004-2005, or in any previous year?

No.

39 10% Whole Person Impairment (WPI) Threshold

39.1 Does the MAA have any comment to make in respect of the recommendation by General Purpose Standing Committee No 1 to abandon the 10% WPI threshold for access to damages for non-economic loss?

The recommendations made by Legislative Council General Purpose Standing Committee No 1 in the December 2005 report on *Personal injury compensation legislation* are currently being considered by Government.

39.2 Has the MAA conducted a review as to the fairness and consistency of the AMA guides and the MAA Permanent Impairment Guidelines? If so, can that review be provided to the Committee?

The Government's response to the *Sixth Report* noted that, in relation to recommendation 10, the MAA established a working group comprising representatives from various medical fields and the MAA to undertake a review of the MAA *Guidelines for the assessment of the degree of permanent impairment*. Following consultation with the medical colleges, Australian Medical Association (AMA), MAS medical assessors, Law Society of NSW and compulsory third party insurers, the revised MAA *Guidelines for the assessment of the degree of permanent impairment* were published in Government Gazette No 29 of 22 July 2005 at page 3857. The Minister for Commerce provided a copy of the revised Guidelines to the Committee Chair on 5 August 2005.

39.3 Will the MAA amend the MAA Guidelines to remedy the discrepancy noted above in relation to nerve root impingement (DRE III) in the cervical spine and the lumbar spine?

The MAA relies upon expert medical advice in the preparation of the MAA *Guidelines for the assessment of the degree of permanent impairment*. The issue of nerve root impingement (DRE III) in the cervical and lumbar spine will be raised with medical experts in any future review of the Guidelines.

40 Sullivan v Gordon type damages

40.1 Have NSW CTP insurers been filing for premiums over the past five years on the basis that *Sullivan v Gordon* was the law of New South Wales? If so, will CTP insurers receive a windfall profit as a consequence of the abolition of *Sullivan v Gordon* type damages?

The MAA's 2004/05 Annual report (pp 78-79) notes that a compulsory third party insurer's base premium comprises the risk premium (the insurer's estimate of the cost of claims based on projected claims frequency and projected average claim size) plus a number of other components such as acquisition expenses, claims handling expenses and profit margin.

Potential exposure to *Sullivan v Gordon* type damages would be considered by insurers in projecting the average claim size.

40.2 What effect would reintroducing *Sullivan v Gordon* type damages have on CTP premiums?

The issue of *Sullivan v Gordon* type damages is currently being considered by Government in response to the December 2005 report on *Personal injury compensation legislation* by Legislative Council General Purpose Standing Committee No 1.

41 Life time care and support scheme (LTCS)

41.1 Under the present LTCS proposal, will beneficiaries of the LTCS scheme retain any entitlement under the *Motor Accidents Compensation Act* to claim damages for either economic or non-economic loss?

41.2 Will claimants have a choice as to whether they enter the LTCS scheme or make a claim under the existing *Motor Accidents Compensation Act*?

The *Motor Accidents (Lifetime Care and Support) Bill 2006* was introduced into the Legislative Assembly on 9 March 2006.

42 The adequacy of the 5% discount rate

42.1 What would be the cost to the NSW CTP scheme of reducing the discount rate from 5% to 3%? Can the MAA estimate the impact on premiums of such a change?

The issue of the 5% discount rate is under consideration by Government in response to the December 2005 report on *Personal injury compensation legislation* by Legislative Council General Purpose Standing Committee No 1.

43 Care of trauma victims

43.1 Should trauma care be concentrated in major hospitals?

43.2 What role, if any, does the MAA have in creating a fund to encourage the specialisation of surgeons in general trauma care?

43.3 Is the long-term follow-up of trauma patients currently inadequate? If so, what steps does the MAA think should be taken to remedy this problem? What role does the MAA consider that it has in encouraging or facilitating the long-term follow up of trauma victims?

The MAA supports in principle the proposal by the College of Surgeons to concentrate trauma work in fewer institutions. Overseas research indicates that an institution must receive 750-800 trauma patients a year (about 15 per week) to develop the critical mass necessary to gain expertise and efficiencies in managing trauma. Where there are a great number of institutions available, the fewer the patients who will present to each institution. In these cases, trauma personnel may only see very small numbers of patients. This can result in inexperience in managing trauma and difficulties in maintaining knowledge of current best practice.

With fewer centres, there would be greater opportunities to maintain a best practice approach to the management of trauma and the promotion of early rehabilitation. The MAA is keen to ensure that trauma patients are followed up and in particular, that the need for rehabilitation is identified as early as possible and the necessary referrals made. It may also assist in encouraging the specialisation of surgeons in general trauma care referred to by the College. In addition, this approach would foster research opportunities not currently available such as in following up trauma patients. This model has been adopted in Victoria, which has one major trauma centre, and appears to be working well.

While the MAA is generally supportive of this model, it is acknowledged that the issues surrounding the care of trauma patients in NSW hospitals is a matter for the Minister for Health.

- 43.4 Is there a 'need to reinstitute prevention back into the clinical coalface'? If so, what steps has the MAA taken, and what steps does the MAA plan to take, to encourage this?**
- 43.5 Is there a need for a sophisticated road trauma prevention campaign? What role does the MAA think trauma surgeons and hospitals should play in such a campaign? What role does the MAA think it should take in such a campaign?**

A range of agencies, including the MAA, already make a substantial funding commitment to comprehensive road safety programs in NSW. The MAA acknowledges that there may be opportunities for trauma surgeons as well as specialist medical personnel to be involved in current road safety programs. Trauma surgeons and medical personnel are well placed to provide early advice on trends in trauma and new types of injuries, and are perceived as credible spokespeople on specific issues. The MAA already engages medical professionals to speak on particular topics including brain and spinal cord injury and driveway injuries. It is noted that NSW Health is a member of both the Government Agencies in Road Safety (GARS) and the Road Safety Taskforce.

- 43.6 What is the MAA's view of the College's proposal to form a partnership between the MAA and the College? Has the MAA had, or does the MAA plan to have, discussions with the College regarding the partnership proposal?**

The MAA would be pleased to work cooperatively with the Royal Australian College of Surgeons on injury prevention and management issues. It is noted, however, that any proposal to reward treatment centres based on outcomes is a matter for the Minister for Health.

- 43.7 Is the MAA involved in the Hunter trial referred to by the College? If so, please advise the Committee of the particulars of this trial?**

No. As is noted in the response to Question 43.6, the issue of rewarding treatment centres based on outcomes is a matter for the Minister for Health.

44 Whiplash and associated disorders

- 44.1 Can the MAA provide the Committee with an update on the MAA's work on the treatment of whiplash and associated disorders?**

The MAA recognises that whiplash is the most prevalent injury from motor vehicle accidents and is the basis of nearly 40% of all claims. For this reason, the MAA has taken steps to improve both the management and treatment of whiplash associated disorders by developing guidelines and commissioning research.

Guidelines

The MAA released the *Guidelines for the Management of Whiplash-Associated Disorders* for acute whiplash-associated disorders (up to 12 weeks after injury) in January 2001. The Guidelines, developed by a multi-disciplinary committee, reviewed the available evidence and made consensus recommendations on best treatment and management practices. Separate publications were developed for medical/ health professionals, insurers and consumers. Copies of the publications are available from the MAA's website at www.maa.nsw.gov.au.

Since the release of the Guidelines, the MAA has pursued an ongoing education program to promote their use, particularly among medical/ health professional associations. This has included education sessions targeting physiotherapists and insurers as well as a pilot project on the Central Coast involving visits with individual general practitioners to promote awareness of the Guidelines and the Accident Notification Form.

A review of the Guidelines is currently underway and is expected to be completed by mid 2006. A similar promotion and education strategy will be commenced in relation to any revised guidelines.

Following the review of the *Guidelines for the Management of Whiplash-Associated Disorders*, the MAA will commence development of guidelines for the management of longer term whiplash-associated disorders (greater than 12 weeks after injury).

Research

The MAA has engaged an expert team including the University of Sydney and PricewaterhouseCoopers to undertake comparative research on the health outcomes of people with whiplash as a result of a motor vehicle accident.

The methodology used by the team was to compare health outcomes at two years post injury for three cohorts of injured persons. The first cohort group included people who were injured in 1999 and therefore dealt with under the prior motor accidents scheme. The second cohort group included those injured in 2001 after the introduction of the *Motor Accidents Compensation Act 1999*, with its heavy emphasis on early and appropriate treatment. The third cohort group included those injured in 2003 after the introduction and dissemination of the MAA guidelines for the treatment of whiplash, which included both practitioner and consumer guides.

While the study is ongoing, the results to date indicate that health outcomes have improved following the 1999 legislation with a greater number of claimants injured in 2003 recovered within three months and six months post injury compared with those injured in 2001.

44.2 Can the lessons learnt from the MAA's work on whiplash and associated disorders be applied to any other injury or disorder commonly suffered by motor accident victims? If so, what steps has the MAA taken to ensure this happens?

The MAA considers that developing treatment guidelines is an effective strategy for improving the management of motor vehicle related injuries. Guidelines promote an evidence-based approach to management by key stakeholder groups (health professionals, insurers and consumers) and provide information that would otherwise not be readily available. This strategy has worked particularly well in relation to whiplash-associated disorders which are a common injury but were previously not well managed. The same model has already been applied to anxiety and further guidelines will be developed for chronic whiplash.

The MAA monitors and considers the need for guidelines in new areas and is in regular dialogue with the medical profession.

45 Update on recommendations contained in the Sixth Review

Please advise the Committee of progress in respect of the following recommendations contained in the Committee's *Sixth Review* of the MAA:

45.1 Recommendation 9 regarding the incorporation of guidelines regarding surveillance into Claims Handling Guidelines.

The MAA sought feedback from the insurance industry in relation to the proposed change to the Claims Handling Guidelines in November 2005. The industry noted that current practice accords with surveillance principles. The MAA is in the process of finalising an amendment to the Claims Handling Guidelines to incorporate surveillance principles from 1 July 2006.

45.2 Recommendation 10 regarding the review of the MAA Guidelines for the Assessment of Permanent Impairment.

The Government's response to the *Sixth Report* notes that, in relation to recommendation 10, the MAA *Guidelines for the assessment of the degree of permanent impairment* were revised following a working group review and consultation with the medical colleges, Australian Medical Association (AMA), MAS medical assessors, Law Society of NSW and compulsory third party insurers. The revised Guidelines were published in Government Gazette No 29 of 22 July 2005 at page 3857. The Minister for Commerce provided a copy of the revised Guidelines to the Committee Chair on 5 August 2005.

45.3 Recommendation 12 regarding the adequacy of damages for the catastrophically injured.

The *Motor Accidents (Lifetime Care and Support) Bill 2006* was introduced into the Legislative Assembly on 9 March 2006.

46 Rehabilitation and accident prevention

46.1 Is there any evidence that the MAA treatment guidelines are contributing to either or both of lower aggregate treatment costs across the scheme, and to better health outcomes for injured persons?

As is noted in the response to Question 44.1, the MAA has commissioned a long term study on whiplash disorders and health outcomes. The study indicates that health outcomes have improved following the 1999 legislation with a greater number of claimants injured in 2003 recovered within three months and six months post injury compared with those injured in 2001.

The introduction of the *Guidelines for the Management of Whiplash-Associated Disorders* in 2001 is considered to have contributed to these improved health outcomes. Rehabilitation and treatment payments for these claims are consistent with the guidelines.

46.2 To what extent do the treatment guidelines tend to diminish the number of disputed treatment claims referred to MAS? For example, is there any evidence to suggest that the MAA guidelines in respect of whiplash have contributed to a lower number of treatment disputes for people suffering from whiplash and associated disorders?

The treatment guidelines are considered to have generally contributed to both a reduction in disputes at MAS or are useful in resolving disputes that are referred. Statistical information collected by MAS indicates that, since the second half of 2002, the number of overall treatment dispute applications being referred to MAS has been decreasing. This data cannot, however, definitively state whether or not the treatment guidelines published by the MAA have had an effect on the number of treatment dispute applications referred to MAS.

The current *Guidelines for the Management of Whiplash-Associated Disorders* cover the first 12 weeks after injury. It is more likely that disputes about treatment occur after that period.

46.3 Can the MAA provide the Committee with an update on its driveway safety program?

Refer to the response to Question 30.2.

46.4 Can the MAA update the Committee on trends regarding claims for treatment for anxiety disorder, acute stress disorder and post-traumatic stress disorder arising out of motor accidents? Are these claims increasing in terms of numbers and/or cost per claimant?

In most cases people who are involved in or witness a motor vehicle accident will not develop Acute Stress Disorder (ASD) or Post Traumatic Stress Disorder (PTSD). Prevalence studies of ASD and PTSD after a motor vehicle accident have largely involved people requiring hospital treatment - i.e. having suffered physical injuries. The results of this research indicate that approximately 15% will develop ASD, 10%-30% will develop PTSD and 2.5%-8% will develop late onset PTSD (after 6 months).

Under the motor accidents scheme, claims involving psychological injury typically involve multiple physical injuries. There is no evidence of an increasing trend, although recent years still have undeveloped injury information. In the last two years of the old scheme,

psychological claims accounted for approximately 11% of claims. There has been a decrease under the new scheme to approximately 9% of claims. The average cost for physical and psychological injuries has also decreased under the new scheme.

- 46.5 In what ways does the MAA propose to better integrate injury prevention and management initiatives into the motor accidents scheme?**
- 46.6 Has the MAA identified the ways in which it can 'add value' to its injury prevention and management programs? If so, how?**

The MAA currently relies on analysis of NSW-based information such as CTP claims and RTA and NSW Health data to monitor trends and identify injuries/ issues that result in significant costs to the CTP scheme. This analysis guides the selection of priority areas for funding and resources. It is proposed to utilise trend information from other jurisdictions, both national and international, as well as conduct an audit of the CTP scheme to identify new road safety initiative opportunities in 2006/07.

- 46.7 How much money has the MAA allocated to rehabilitation programs in 2005-2006 and how will this money be spent? Similarly, how much money has been allocated to road safety in 2005-2006 and, in broad terms, how will this be spent?**

As is noted in the response to Question 10.4-10.6, since the completion of the independent review of the MAA grants program, the MAA has engaged a consultant to advise on strategic directions and funding priorities for the program as well as provide reporting mechanisms to the Board of the MAA. During this ongoing process, the Board has agreed to meet all funding commitments already made over the next four years but not to commit to any new major projects, other than one-off capital grants.

Funding of approximately \$10.4 million has been committed for ongoing MAA road safety and rehabilitation projects in 2005/06. In the road safety area, this covers initiatives for children, young people, motorcyclists and inter-sectoral initiatives. In the rehabilitation area, this includes projects for capital development, professional education, guideline development and research.

Questions on notice to the MAC

47 Motor Accidents Council

- 47.1 Is there a need for the MAC to promote itself and its role to the broader public? Does the MAC consider that it needs to raise its public profile?**

In accordance with section 208 of the *Motor Accidents Compensation Act 1999*, the membership of the MAC comprises a broad range of the key stakeholder groups who have an interest in the motor accidents scheme. This includes representatives from the insurance industry, legal profession, medical/ health professions, injured people/ disability groups and consumer organisations.

- 47.2 On what issues did the MAC advise the Minister in 2004-2005? On what issues has the MAC advised the Minister in 2005-2006?**

Key issues considered by the MAC during 2004/05 - 2005/06 included:

- proposed MAAS reform strategies identified during stakeholder consultations in 2003 and 2004;
- proposals for inclusion in legislative reforms to the *Motor Accidents Compensation Act 1999*;
- proposed Lifetime Care and Support (LTCS) scheme;
- four wheel drive vehicles CTP claims experience;
- bereavement counselling for families who have lost children in motor vehicle accidents;
- revised draft MAA *Guidelines for the assessment of the degree of permanent impairment*;
- draft MAA *Regulatory and Enforcement Policy*.

During 2004/05 -2005/06, the MAC considered progress of the continuing research project by the University of Sydney and PricewaterhouseCoopers on *Legislative change and improved health outcomes for people with whiplash: pre and post comparison* as well as the Justice Policy Research Centre's studies on stakeholder perceptions of MAS and CARS.

The MAC also monitored reports on motor accident scheme performance trends, based on quarterly scheme performance indicator updates and the MAA's 2003 *Claims Handling Compliance Audit Report*. In addition, the MAC provided input to the recommendations of the *Sixth Report* by the Standing Committee on Law and Justice.

47.3 Who are the present members of the MAC? Which specific members represent the interests identified in sub-sections 208(1)(c)-(h) of the Motor Accidents Compensation Act 1999?

The Minister appointed the members of the second MAC for a period of three years expiring in November 2005. A list of these members is included in the MAA's 2004/05 Annual Report (p 10). This includes:

- Mr Douglas R Pearce – representing the insurance industry under section 208(1)(c);
- Ms Robyn Norman – representing the insurance industry under section 208(1)(c);
- Mr Andrew Stone – representing the legal profession under section 208(1)(d);
- Ms Penny Waters – representing the legal profession under section 208(1)(d) (*Ms Waters replaced Ms Geraldine Daly, who resigned from the MAC in November 2004*);
- Dr Stephen Buckley – representing the health profession under section 208(1)(e);
- Dr John Frith – representing the health profession under section 208(1)(e);
- Dr Michael Henderson – representing the non-insurance industry and nominated by the NRMA under section 208(f);
- Ms Felicity Purdy – representing injured persons under section 208(g);
- Mr Michael Griffiths – representing consumers under section 208(h).

Arrangements are currently underway for the appointment of members to the third MAC.

47.4 What steps does the MAC take to ensure that it is representative range of stakeholders in the NSW CTP scheme?

Section 208 of the *Motor Accidents Compensation Act 1999* requires the Minister to appoint a range of stakeholders to the MAC following broad consultation. This includes:

- 2 persons involved in the insurance industry appointed by the Minister after consultation with the Insurance Council of Australia (refer section 208(1)(c));
- 2 legal practitioners appointed by the Minister after consultation with the Law Society of NSW and the NSW Bar Association (refer section 208(1)(d));
- 2 health practitioners appointed by the Minister after consultation with the Australian Medical Association (NSW) Limited and such other associations of health practitioners as the Minister considers appropriate (refer section 208(1)(e));
- 1 person not involved in the insurance industry appointed by the Minister on the nomination of the NRMA (refer section 208(1)(f));
- 1 person appointed by the Minister after consultation with such associations concerned with injured persons as the Minister considers appropriate (refer section 208(1)(g));
- 1 person appointed by the Minister after consultation with such consumer organisations as the Minister considers appropriate (refer section 208(1)(h)).

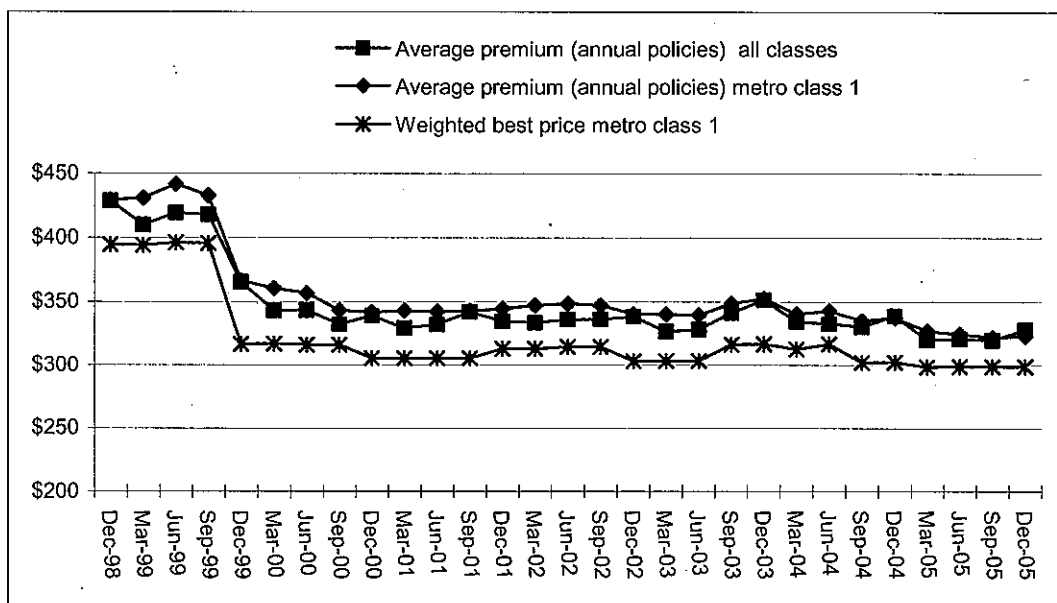
47.5 On what issues did the MAC advise the MAA in 2004-2005 and in 2005-2006? Has the MAC provided the MAA with any written representations or reports in this period? If so, can the MAC provide these documents to the Committee?

See the response to Question 47.2 for an outline of the issues considered by the MAC in 2004/05 - 2005/06.

No written representations or report were provided to the MAA by the MAC during the aforementioned period.

Premium trends to end December 2005

1. The average premium for Sydney metropolitan passenger vehicle in December 2005 quarter was \$322 compared to \$337 in December 2004 quarter.
2. The average premium over all NSW vehicles was \$328 in December 2005 quarter compared to \$339 in the December 2004 quarter.



As a proportion of average weekly earnings, the weighted best price dropped from 50.0 per cent before the 1999 legislative reforms to below 28 per cent in December 2005 quarter.

