

**STANDING COMMITTEE ON LAW AND JUSTICE**

**12TH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF  
THE MOTOR ACCIDENTS AUTHORITY OF NSW  
PRE-HEARING QUESTIONS ON NOTICE**

**Affordability**

**Q1. The Motor Accidents Authority's (MAA) Annual Reports note the 'best price' for a Sydney Metropolitan Green Slip. As at 30 June 2008, this price was \$377, and as at 30 June 2013, it was \$505. What is the MAA's view on this increase over the past five years?**

**Response**

Green Slip increases over the past five years have resulted from a range of factors including increased claims frequency, extension of some benefits to at-fault drivers, inflation, the impact of the global financial crisis on long term bond yields and an increasing number of claims involving legal representation. The Scheme has poor efficiency and in February 2013, New South Wales Green Slip prices became the least affordable in Australia.

**Q2. Considering affordable premiums are a primary objective of the Scheme, does the MAA regard the current average premium as affordable?**

**Response**

The Motor Accidents Authority (MAA) measures affordability based on the percentage of New South Wales average weekly earnings that the average premium for a passenger vehicle represents. As at 30 June 2013, the average Green Slip premium represented 36 per cent of New South Wales average weekly earnings.

As a proportion of weekly pay, New South Wales Green Slips are among the least affordable in Australia, raising concerns that the Scheme is not providing fair, affordable pricing for the customers who are required by law to purchase Compulsory Third Party (CTP) insurance. The Scheme reforms proposed by the *Motor Accident Injuries Amendment Bill 2013* would have improved affordability, however the Bill was withdrawn.

**Q3. The New South Wales Bar Association state in its submission that in 2012, the New South Wales premium went up by an average of \$50 and that during the same time the Queensland Government permitted less than \$15 in premium increases. Can you comment on why the 2012 NSW premium increase was substantially higher than the Queensland increase?**

**Response**

The MAA must review New South Wales insurer filings strictly in accordance with the requirements of the legislation. The New South Wales legislation does not permit the MAA to put a ceiling on CTP prices in the way that Queensland does.

Premium changes in each jurisdiction are not always comparable because local issues, as well as global issues, will affect the level of premium changes. For example, Queensland has a relatively flat claims frequency in recent years.

Also, capping of premiums in Queensland reduces competition between insurers such that, for the most part, prices are the same across all insurers irrespective of risk. As a result, good risk motorists in Queensland pay comparatively more than they should to cross subsidise poorer risks. This happens to a much lesser extent in New South Wales, where insurers, in a competitive market using their own risk factors, price within a range. The MAA encourages motorists to shop for the best price using its Green Slip calculator.

**Q4. The New South Wales Bar Association notes in its submission that the NSW premium went up by an average of \$50 in 2012 with some insurers increasing the premium by \$70 while others increased it by as little as \$12. Can you please explain the substantial differences in insurer premium increases in 2012?**

#### **Response**

The CTP insurers compete in different sectors of the market, which is integral to sustaining competition. Each insurer uses different distribution models and each has a different risk profile in their customer base (eg driver age, vehicle type and geographical regions). This mix influences the premium that can be justified to the MAA based on projected claims and claims costs.

In addition, insurers have varying capital allocations and target rates of return, in line with their specific market strategies, which can vary over time and will often be influenced by their relative market position at any point in time.

These differences mean that the market does not generally move in unison.

**Q5. Can you please provide a breakdown of premium increases by each insurer for the 2010/11, 2011/12 and 2012/13 financial years?**

#### **Response**

Insurer premiums vary for different vehicle classes and geographic regions and according to rating factors such as the age of the vehicle, age and driving record of the owner and age of youngest driver. Insurers may file to change all of their prices, or to increase or decrease their premium for a particular segment in order to reposition in the competitive market. For this reason the MAA uses a 'benchmark' price, being the best available premium price offered to a new customer for a private use passenger vehicle garaged in the Sydney metropolitan rating district with the youngest driver aged 30 to 54.

The table below provides a snapshot view of these benchmark insurer premiums as at 30 June, excluding levies and GST.

The price changes shown below are not indicative of all the premium price movements over the period, and some individuals may have experienced greater or lesser price changes, depending on their individual circumstances.

Insurer	30 June 2010	30 June 2011			30 June 2012			30 June 2013		
	\$	\$	\$ increase	%	\$	\$ increase	%	\$	\$ increase	%
<b>AAMI</b>	290.87	334.25	<b>43.38</b>	<b>14.91</b>	339.72	<b>5.47</b>	<b>1.64</b>	387.23	<b>47.51</b>	<b>13.99</b>
<b>Allianz</b>	301.41	326.95	<b>25.54</b>	<b>8.47</b>	353.19	<b>26.24</b>	<b>8.03</b>	389.36	<b>36.17</b>	<b>10.24</b>
<b>CIC Allianz</b>	318.31	363.83	<b>45.52</b>	<b>14.30</b>	378.00	<b>14.17</b>	<b>3.89</b>	381.56	<b>3.56</b>	<b>0.94</b>
<b>GIO</b>	284.78	326.20	<b>41.42</b>	<b>14.54</b>	329.05	<b>2.85</b>	<b>0.87</b>	378.01	<b>48.96</b>	<b>14.88</b>
<b>NRMA</b>	293.27	332.39	<b>39.12</b>	<b>13.34</b>	341.37	<b>8.98</b>	<b>2.70</b>	387.48	<b>46.11</b>	<b>13.51</b>
<b>QBE</b>	296.49	326.24	<b>29.75</b>	<b>10.03</b>	338.30	<b>12.06</b>	<b>3.70</b>	358.16	<b>19.86</b>	<b>5.87</b>
<b>Zurich</b>	309.83	344.68	<b>34.85</b>	<b>11.25</b>	359.57	<b>14.89</b>	<b>4.32</b>	395.74	<b>36.17</b>	<b>10.06</b>

Best available premium price (excluding Medical Care and Injury Services levy and GST) offered for a new customer for a private use passenger vehicle garaged in the Sydney metropolitan rating district with the youngest driver aged 30 to 54 as at 30 June of each financial year

### **Effectiveness**

**Q6. In 2012/13 what was the average time taken for insurers to make the first payment on CTP claims?**

**a. How has this changed since the 2010/11 and 2011/12 financial years?**

### **Response**

Under the current common law based system, payment of an injured person's entitlements is made in a single lump sum on final settlement of the claim. However payments for reasonable and necessary medical treatment and rehabilitation expenses are paid as they are incurred, and in some cases advance payments may be paid directly to an injured person in cases of hardship. (Note that all public hospital and ambulance costs are paid in bulk on a monthly basis and are therefore not included in this analysis). The average time for insurers to make a benefit payment (such as payment of medical or rehabilitation expenses or a 'hardship payment') is shown below for claims where liability was accepted. The number of days from lodgement of the claim to first benefit payment is shown.

	<b>Claims lodged in 2010/2011 Data as at 30.9.11</b>	<b>Claims lodged in 2011/2012 Data as at 30.9.12</b>	<b>Claims lodged in 2012/2013 Data as at 30.9.13</b>
All claims	68 days	65 days	63 days
ANF only	44 days	42 days	45 days
ANF converted to full claim	59 days	59 days	52 days
Full claim (no ANF)	85 days	79 days	80 days

For all claims lodged in 2012/13 where liability was accepted, the average time from claim lodgement to first benefit payment was 63 days, compared to 65 days for claims lodged during 2011/12 and 68 days for claims lodged in 2010/11.

Some claims are first lodged via an Accident Notification Form (ANF) which was introduced to facilitate early payment of medical expenses and lost wages for up to 6 months from the date of accident. Claims involving more extensive losses must lodge a full claim form to have damages determined.

The average time to first benefit payment is lowest for those claims that were lodged and resolved via an ANF. The average time is greater for those claims that were lodged as an ANF and then converted to a full claim, while those claims that did not use the ANF at all had the longest average time to payment.

### **Fairness**

**Q7. Can you please comment on paragraphs 49 to 51 of the New South Wales Bar Association submission which asserts that ‘the [MAA] Scheme is so complex that many feel compelled to resort to a lawyer in order to understand how to pursue their claim’?**

#### **Response**

The existing CTP Scheme is fault-based, complex and adversarial. Because of the complexity and adversarial nature of the Scheme, and because many claimants have never dealt with formal dispute resolution processes, many engage a lawyer to help them with their claim. The system deters unrepresented claimants.

**Q8. According to the MAA 2012/13 Annual Report ‘during the reporting year, the MAA consolidated a rigorous approach to insurer price filings, involving more comprehensive requirements and an enhanced evaluation tool’. Can the MAA please elucidate this statement?**

#### **Response**

The insurer filing requirements were expanded, including:

- the insurer’s internal method of allocating capital between lines of business;
- the insurer’s actual or notional internal capital allocation for New South Wales CTP, how it was determined and how it is expressed, APRA Prudential Capital

Requirement (PCR) or other method<sup>1</sup>, including the amount and treatment of risk margins included in provisions for outstanding claims liabilities and unexpired risk liabilities;

- the insurer's target rate of return on capital and how it was determined;
- the insurer's investment policy, the rate of future investment return assumed for each category of investment, and how these are related to the target rate of return on capital; and
- details of the method and calculations used to derive the proposed profit margin from the capital allocation, target rate of return on capital, investment policy and rates of future investment return assumed.

The MAA evaluation tool used this information to derive the projected rate of return for each filing. A comparison was then made with the insurer forecast and any material variances are questioned.

In addition, the MAA commenced collecting the current Insurance Liability Valuation Report (ILVR) for each insurer annually. The assumptions used in this report are then compared to the filing assumptions.

Justification and comparison of any differences between the filed assumptions and the New South Wales CTP portfolio ILVR assumptions must be provided in filings lodged for:

- claim frequency assumed for premium liabilities;
- average claim size assumed for premium liabilities;
- claim handling expense assumed for premium liabilities;
- policy and administration expense assumed for premium liabilities;
- superimposed inflation; and
- economic assumptions.

The new filing requirements have been enhanced by the MAA commencing a new approach whereby insurers are being engaged annually with actuarial presentations and individual interviews to take a more proactive approach in the filing process.

## **Efficiency**

**Q9. How efficient was the Scheme in the 2010/11, 2011/12 and 2012/13 financial years, in terms of the proportion of each dollar paid in premiums returned to injured persons as compensation?**

**a. Is the MAA satisfied with the current efficiency level of the Scheme?**

**b. Is there scope to return a greater proportion of each dollar paid in premiums to injured persons?**

## **Response**

Scheme efficiency considers the proportion of each dollar paid in premiums that is directly returned to injured people as benefits (excluding the Lifetime Care and Support Scheme).

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<sup>1</sup> If capital allocation is expressed other than APRA PCR an estimate of the equivalent APRA PCR must also be provided.

The benefits that are considered to have been directly returned to injured people include loss of earnings payments, general damages, medical and related costs paid on the injured person's behalf.

It should be noted that data from the most recent three accident years have not yet matured. CTP insurance is a 'long tail' business and many disputes will be lodged in future years on claims from the last three accident years.

The assessment of efficiency for the more recent underwriting periods is largely based on models and assumptions on expected claims experience. Actual claim outcomes can emerge materially differently to that estimated. As actual claims experience gradually replaces the modelled estimates over time, the assessment of efficiency can change as a result. It may take more than five years for the claims experience to emerge, therefore, the data relating to accidents that occurred before 30 June 2010 are considered to be more stable and consequently more reliable.

The MAA has released a report by the independent scheme actuary into the performance of the CTP Scheme between 2000 and 2010. The report did not include more recent years in the analysis as so many claims in recent years are still unresolved.

The report highlights that on average between 2000 and 2010, only 50 cents of each dollar of CTP premium paid to CTP insurers by policyholders ended up in claim payments received by people injured in a motor vehicle accident, and that 50 per cent is before many claimants paid their own lawyers extra out of their settlement payout.

For smaller claims, where people are less severely injured, the efficiency is even worse. For all claims less than \$50,000 only 36 cents of each CTP premium dollar is returned to injured people. These small claims make up 70 per cent of all claims in the Scheme.

For legally represented claims of less than \$50,000 only 28 cents of each CTP premium dollar is returned to claimants due to the higher proportional cost of legal services (after adjusting for contracted-out legal costs).

Both insurer expenses and insurer profits are also impacting CTP insurance premium prices and reducing CTP Scheme efficiency. Since 1999, expenditure on three types of overhead costs (legal assistance and investigations, insurer expenses and insurer profits) in the CTP Scheme have each exceeded the expenditure on medical treatment and rehabilitation for injured people in the NSW CTP Scheme

The Government issued a policy statement in February 2013 that raised concerns about the comparative inefficiency of the current Green Slip Scheme (excluding Lifetime Care and Support Scheme).

In 2013, the Government introduced the *Motor Accident Injuries Amendment Bill 2013*, which proposed to make a number of changes to the New South Wales CTP Scheme that would have improved Scheme efficiency, paid benefits faster and reduced legal and investigation costs and insurer expenses. The Bill was withdrawn, however, the Government remains committed to continuing to find a way to improve the CTP Scheme so it is efficient, affordable and provides prompt, high quality support to all those injured in motor vehicle accidents.

**Q10. Can the MAA please comment on the following statement by the New South Wales Bar Association that 'the current hardship system does not work because the process is bureaucratic and insurers are allowed to generate needless disputes over what should be straightforward interim payments'?**

## **Response**

Section 84A of the *Motor Accidents Compensation Act 1999* imposes a duty on insurers to make interim payments to an injured person in cases of financial hardship where liability has been admitted or determined against the insurer. Disputes regarding entitlement hardship payments may be determined by the Claims Assessment and Resolution Service by way of special assessment.

In the 2010/11 financial year, hardship payments were made on 134 claims. This number has decreased to 129 claims in the 2011/12 financial year and 82 in the 2012/13 financial year.

A total of 11 disputes were heard at Motor Accidents Assessment Service (MAAS) in 2012/13 by way of special assessment. Of these 11 disputes, eight were resolved in favour of the claimant (i.e. the hardship payment must be made).

The reforms proposed by the *Motor Accident Injuries Amendment Bill 2013* included the introduction of statutory benefits, including income replacement, which would have removed the need for hardship payments, however the Bill was withdrawn.

The MAA has noted the concerns raised about the process around hardship payments and has commenced looking at options, in consultation with stakeholders, to further streamline claims processes and remove red tape.

## **Legal Representation**

**Q11. Can you please comment on why legal representation for full claims has been occurring earlier and also increasing?**

### **Response**

The MAA intends to examine the issue of increasing legal representation in the CTP Scheme as part of a survey of CTP claimants in 2014.

In addition to the survey, the MAA has recently funded a study which will explore the advice-seeking behaviour of claimants, including those seeking legal representation.

## **Claims Assessment Service (CARS)**

**Q12. What was the outcome of the CARS review with regards to the late claims process?**

- a. Has the report to this review been made public?**
- b. If not, can you please provide a copy to the Committee?**
- c. What was the MAA's response to the CARS review?**

### **Response**

- a. The report in relation to the Claims Assessment and Resolution Service (CARS) review was completed in 2010 and has not been made public. The MAA has

engaged one of the principal authors to provide a contemporary update to the CARS review with a view to public release.

- b. A copy of the updated CARS review will be provided to the committee.
- c. The recommendations following the CARS review were considered as part of the pricing review, which led to recommendations for significant Scheme reform. The reforms proposed in the resulting *Motor Accident Injuries Amendment Bill 2013* were not supported and the Bill was withdrawn. The MAA is now considering aspects of the review that can be acted upon without legislative change and this is being informed by the update to the review.

**Q13. Regarding the late lodgement of claims, the Australian Lawyers Alliance argued in its submission that it is unconscionable that insurers should be able to deny claims altogether merely due to a delay in lodgement (some of which are only a few days late) considering that insurers have collected premiums in anticipation of these claims. Can the MAA comment on this statement?**

### **Response**

The *Motor Accidents Compensation Act 1999* (the Act) provides that a claim must be made within six months after the date of the motor accident (section 72). A claim may be made more than six months after the date of the accident if the injured person is able to provide a full and satisfactory explanation for the delay in submitting the claim to the CTP insurer (section 73). A decision by an insurer that a full and satisfactory explanation has not been provided can be reviewed by a CARS assessor.

The rationale behind the late claim provisions is to encourage the early and appropriate treatment and rehabilitation of people injured in motor vehicle accidents, consistent with the objects of the Act. Insurers also need some level of certainty about their ongoing liabilities when setting price.

Of the 14,376 claims made in 2012/13 (*the most recent financial year that data is available*), 14.4 per cent (2,075 claims) were made late. 46.4 per cent of these late claims (964 claims) were more than six months late. Of all late claims made, 10.4 per cent (217 claims) were rejected by insurers.

60 late claims disputes were determined at MAAS in 2012/13 by way of special assessment, down from 113 such disputes in 2010/2011. Of these 60 disputes, 50 were resolved in favour of the claimant (i.e. the late claim may be made).

The above figures suggest that only a small proportion of late claims are denied by insurers on the grounds that the claimant has lodged the claim late and cannot provide a full and satisfactory explanation for the delay.

The reforms proposed in the withdrawn *Motor Accident Injuries Amendment Bill 2013* intended to better address late claims by extending the period in which a claim could be made without explanation (up to a year), but reducing the insurer's obligations to make initial back-payments (thereby encouraging early lodgement).



**Q14. The Law Society of New South Wales and the Australian Lawyers Alliance raise concerns that the recent Court of Appeal decision in *Smalley v Motor Accidents Authority of NSW* [2013] NSWCA 318 makes it considerably easier for both insurers and claimants to obtain an exemption from CARS due to the exemption of cases where liability is denied. Can the MAA please comment on this concern?**

#### **Response**

In response to the decision of *Smalley v Motor Accidents Authority of NSW*, the MAA has consulted with stakeholders, including the legal professions and insurers, and proposes to make amendments to the Claims Assessment Guidelines, to reduce the scope of claims exempted from CARS. In addition, amendments to the Claims Handling Guidelines are proposed to clarify insurer responsibilities in issuing liability decisions. The MAA is working with insurers in early 2014 to develop agreed templates for liability decisions, to help improve consistency and transparency. The MAA will continue to monitor insurer compliance with the Act and Guidelines.

**Q15. Can you please provide the Committee with a copy of the proposed amendments to the MAA Claims Assessment Guidelines referred to in the New South Wales Bar Association submission?**

#### **Response**

The proposed amendments to the guidelines are currently being developed in consultation with stakeholders.

**Q16. The Law Society of New South Wales states in its submission that ss 89A to 89E and s 91 of the *Motor Accidents Compensation Act 1999* should be repealed as ‘pre-filing requirements add unnecessary complexity, uncertainty, cost and delay to the CARS assessment process’. Can the MAA please comment on this suggestion?**

#### **Response**

Sections 89A – 89E and section 91 of the Act provide for the early preparation, particularisation and negotiation of motor accident claims. The requirements aim to ensure that disputed motor accident claims can be resolved as quickly as possible.

The *Motor Accident Injuries Amendment Bill 2013* proposed significant reforms to the current requirements under Division 1A of the Act, including the removal of Section 89A. Following the withdrawal of the Bill, the MAA will be conducting further consultation with stakeholders in 2014 with a view to streamlining the process within the constraints of the current legislation.

#### **Medical Care Injury Services (MCIS) Levy**

**Q17. What were the results of the trial on the MAA’s website to provide motorists with a breakdown of the insurer premium, MAA levy and LTCS levy when comparing green slip prices?**

## **Response**

Data collected by the MAA following the introduction of this service shows that 29 per cent of motorists using the Green Slip Calculator accessed information about the breakdown of the MCIS Levy while comparing Green Slip prices.

This service continues to be available for motorists shopping around for their Green Slip.

### **Q18. What are the details of the review of the MCIS levy which led to an overall average reduction of 2 per cent for all vehicle classes?**

## **Response**

The Motor Accidents Authority and Lifetime Care and Support Authority conducted a review of the Medical Care and Injury Services Levy, which led to an overall average levy reduction of 2.0 per cent.

The MAA component of the MCIS levy was revised in 2013 to incorporate an increase to the amount paid to the Ministry for Health for public hospital and ambulance services, reflecting new activity based costing model applying as part of the national health reforms.

This was more than offset by an average decrease to the Lifetime Care and Support Authority component of the levy following a re-evaluation of its liabilities. The new levy rates came into effect from 1 July 2013.

## **Legal Causation**

**Q19. Recommendation 11 of the Committee's 11th review called for the MAC to form a sub-committee to review, analyse and recommend a course of action to the MAA on the issue of legal causation. The Government response to this recommendation stated that this issue would be considered as part of the Pricing Strategy. As the MAC is no longer in existence and the Pricing Strategy has been completed, what is currently being done to review the issue of legal causation?**

## **Response**

The sub-committee explored this issue, however, they did not have the opportunity to make any recommendations regarding causation prior to the Motor Accidents Council being dissolved.

Questions of reasonable and necessary treatment, causation and the degree of permanent impairment of injuries are matters of specialist medical opinion, which should be addressed by appropriately qualified medical and allied health specialists. The Government did not seek to change this principle in proposing the withdrawn Motor Accident Injuries Amendment Bill 2013 and the principles in the current Act remain in force.

In accordance with sections 58 and 61 of the current Act, certificates issued by a medical assessor in relation to:

- whether the treatment provided or to be provided to the injured person was or is reasonable and necessary in the circumstances;

- whether any such treatment relates to the injury caused by the motor accident; and
- whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10 per cent,

are conclusive evidence and are, therefore, binding on the parties, CARS and the courts.

The MAA is required by the Act to appoint suitably qualified persons as medical assessors. In appointing medical assessors, the MAA consider their expertise, independence and credibility within their area of specialty. They are each accredited to assess one or more different types of dispute and receive regular training in connection with their role in providing conclusive certificates in relation to medical assessment matters.

The Act provides several avenues for review of a medical assessor's determination. For example, if either party to a matter is of the opinion that a medical assessor has made a material error in the course of their assessment, they may seek a review under section 63. If either party has additional relevant information about the injury, or if the injury has deteriorated, they may seek a further assessment under section 62 of the Act. Furthermore, a claims assessor or a court may refer a matter back to the Medical Assessment Service for further assessment under section 62(1). Section 61 of the Act also provides that a Court may reject a certificate in circumstances where there has been a denial of procedural fairness.

**Q20. Can the MAA please comment on the assertion by the Australian Lawyers Alliance that MAS Assessors consistently fail to apply legal tests of causation (and repeatedly apply the incorrect test of causation) when making their determinations, and that causation should instead be determined by CARS Assessors and judges?**

#### **Response**

Refer to response to question 19 above.

#### **Carers**

**Q21. The Carers NSW submission expressed concern that the MAA has not voiced an adequate commitment to meet the requirements of the *Carers (Recognition) Act 2013*. What is the MAA's response to these concerns?**

#### **Response**

The MAA recognises and supports the important role of carers in providing assistance and care to people with disabilities, including people recovering from injury and mental illness. The Authority is committed to meeting its obligations under the *Carers (Recognition) Act 2010* and the New South Wales Carers Charter. The Authority supports employees who have carer responsibilities by providing flexible work practices including leave entitlements and flex time.

**Q22. Recommendation 9 of the Committee's 11th review requested the MAA to 'produce and publish on its website information specifically directed to assist carers'. In its submission to the current inquiry, Carers NSW state that 'there is still limited reference to, and information for, carers on the LTCSA and MAA websites, and that the references and information that do exist are difficult to find'.**

**a. What is the MAA's response to this assertion?**

**b. What actions has the MAA undertaken since the 11th review to produce and publish information specifically directed to assist carers?**

**Response**

The MAA has placed information about Care and Support Services on its website, but notes the concerns of Carers NSW about its prominence and limitations. The MAA is currently reviewing its website content as part of an upgrade and will ensure that information specifically designed to assist carers is reviewed and easily accessible on the MAA website.

**Disability Care Australia**

**Q23. What preparation has the MAA undertaken for the implementation of DisabilityCare Australia?**

**a. What implications does the program have for the MAA?**

**b. Has the MAA had any specific involvement in the roll-out of the program in the Hunter Region?**

**Response**

It is not anticipated that the National Disability Insurance Scheme (NDIS) will impact the New South Wales Motor Accidents Scheme significantly. The NDIS is designed to provide long-term care and support to people who would not be covered by existing insurance arrangements such as the Motor Accidents Scheme, including the existing Lifetime Care and Support scheme.

The Safety, Return to Work and Support Division (SRWSD), on behalf of the MAA and other SRWSD agencies, has provided input through a range of inter-agency and inter-Government channels regarding both the NDIS and National Injury Insurance Scheme.

**Motor Accidents Compensation Regulation 2005**

**Q24. Recommendation 6 of the Committee's 11th review requested the MAA to 'expedite the remaking of the *Motor Accidents Compensation Regulation 2005*'. In response to this recommendation the Government stated that any amendments to the Regulation would be dependent on the outcome of the Pricing Strategy. As the Pricing Strategy has now been completed, could you advise:**

**a. What is the progress in remaking the Regulation?**

**b. Why did the MAA extend the current regulation in September 2012 for a further two years, until 1 September 2014?**

**Response**

The remaking of the *Motor Accidents Compensation Regulation 2005* was delayed in 2012 and 2013 pending the outcome of the CTP Pricing review and the introduction of the *Motor Accident Injuries Amendment Bill 2013*, which proposed extensive reforms to the current Scheme and dispute resolution mechanisms.

The changes proposed by the Bill had significant impacts on the provisions in the Regulation and work had commenced on aligning the Regulation with the Bill. As the Bill was withdrawn, work has now commenced on the remaking of the Regulation within the current constraints of the *Motor Accidents Compensation Act 1999*. It is anticipated that the Regulation will be remade before September 2014 when the current regulation expires.

### **Injury Prevention Strategies**

**Q25. What is the current role of the MAA in regards to promoting road safety?**

#### **Response**

In 2007 the New South Wales Government created a Centre for Road Safety within the then Roads and Traffic Authority (RTA) with the express purpose of co-ordinating the efforts of all State agencies with an interest in road safety. Since that time, the New South Wales Centre for Road Safety (CRS), now located within Transport for NSW, is the lead agency with responsibility for coordinating road safety across all levels of Government, community and stakeholders.

The MAA's funding for road safety is now primarily delivered through a Road Safety Partnership with the CRS. The MAA contributed to the development of the New South Wales Road Safety Strategy 2012-2021, which outlines the objectives of the New South Wales Government in road safety and injury prevention.

In 2013/14, the MAA has committed over \$2 million in funding to support the delivery of the New South Wales Road Safety Strategy. This funding is tied to initiatives that deliver the broad road safety message as well as those specifically related to the MAA's prevention priorities including improving safety for motorcyclists, pedestrians and pedal cyclists, many of whom are young people. In addition, the MAA is funding work in the area of post-crash response and improvements in the use and analysis of data to better understand the impact of road trauma injury.

**Q26. Youthsafe state in their submission that aside from the NSW Centre for Road Safety funding partnership, MAA road safety grants for young people continue to focus on one off events and sponsorship of sports people which are unlikely to take full advantage of the potential for the MAA to influence road safety for young people.**

**a. Can the MAA comment on this statement?**

**b. Can the MAA also comment on the statement by Youthsafe that funding should be used to support a multi-strategic approach which is coordinated with other stakeholders and incorporates whole of community principles to address issues regarding young people and road safety?**

#### **Response**

A new Road Safety partnership under a Memorandum of Understanding with the NSW Centre for Road Safety has been in place since 2011. The MAA has progressively withdrawn from direct sponsorships and grants in the road safety area, replaced by direct funding of the Centre for Road Safety for whole of government and whole of community approaches to dealing with road safety within the NSW Road Safety strategy.

The road safety strategy in NSW applies the 'Safe System' approach, delivered through coordinated and collaborative strategies including initiatives specifically targeted at youth. The MAA supports the initiatives in the NSW Road Safety strategy directed towards young people, and continues to maintain specific information targeted at young drivers on its website.

**Q27. Given the disproportionate number of young men who are severely injured in motor accidents and require support from the Lifetime Care and Support Authority, does the MAA have any projects or initiatives aimed at educating this target group on road safety?**

### **Response**

In addition to the approaches to road safety outlined in answer to questions 25 and 26 above, the MAA is working to support evidence-based decision making about strategies to prevent serious injury.

To this end, the MAA has partnered with the NSW Centre for Road Safety to link CRS data on accidents to CTP claims data, hospital data and data from the Lifetime Care and Support Authority. Analysis across these databases will improve our understanding of the characteristics of accidents that result in serious injuries and the associated costs. This will in turn assist in the prioritisation of road safety activities.

### **Whole Person Impairment**

**Q28. The Government's response to recommendation 10 of the Committee's 11th review noted that the MAC had formed a sub-committee to review issues relating to the whole person impairment threshold.**

**a. Did the sub-committee complete the review, and if so, what were the results?**

**b. If not:**

**i. could the MAA outline what progress was made by the sub-committee before the MAC was abolished?**

**ii. what steps have/will been undertaken by the MAA to review the whole person impairment threshold?**

### **Response**

The sub-committee commenced but did not complete their review because of the abolition of the Council.

The sub-committee liaised with the MAA and planned to seek input from a group of expert medical assessors to help identify issues in the current impairment guidelines. Even with the abolition of the Motor Accidents Council, this work has continued.

Any stakeholder can raise concerns about the assessment of particular injury types or particular provisions of the MAA Permanent Impairment Guidelines. All such issues are considered by the MAA and a group of expert medical assessors.

Where clarification of current provisions is required, a Guidance Note is issued and published on the MAA website. To date 14 Guidance Notes have been issued.

Any issues which would require amendment of the current guideline provisions will be considered when the MAA Impairment Guidelines are reviewed in the second half of 2014.

### **Physiotherapy**

**Q29. Recommendation 8 of the Committee's 11th review called for a review of the Physiotherapy Notice of Commencement and Physiotherapy Review Forms.**

**a. Has this review, in consultation with appropriate stakeholders, taken place?**

**b. If so, what were the results of the review?**

**c. If not, why not?**

#### **Response**

The MAA has met with the Australian Physiotherapy Association regarding the Physiotherapy Notice of Commencement and Physiotherapy Review Forms. The MAA has also formed Service Provider Guides working group, which includes a nominee from the Australian Physiotherapy Association, to focus on streamlining communications between providers and insurers so as to facilitate faster access to approved treatment by injured people.

The working group will address issues raised by the service provider groups, including undertaking a review of the Physiotherapy Notice of Commencement and Physiotherapy Review forms. The MAA is currently collating feedback from the service provider groups. The working group will meet in February 2014.

**Q30. Can the MAA comment on the Australian Physiotherapy Association's claim in its submission that physiotherapists should be more appropriately utilised by the MAA and should receive higher rebates for the specialised treatment services they provide to injured road users?**

#### **Response**

The MAA does not prescribe a fee schedule for physiotherapy services. The fees paid to physiotherapists for treating compensable patients injured in motor vehicle accidents is therefore a matter for CTP insurers.

The Act requires CTP insurers to make "reasonable and necessary" payments in respect of treatment and rehabilitation expenses for motor accidents claims on an "as incurred basis" once liability for the claim has been admitted. Neither the Act nor the Claims Handling Guidelines prevent insurers from developing their own payment scales in respect of treatment.

### **Insurer Competition**

**Q31. During the 11th review, the MAA advised the Committee that approximately 22 per cent of CTP policies were not renewed with the existing insurer. What proportion**

**of policy holders have changed insurer at the time of CTP renewal during the 2010/11, 2011/12 and 2012/13 financial years?**

**Response**

During the 2010/11 financial year, 22 per cent of policy holders changed insurer at the time of renewal, 20 per cent changed insurer in 2011/12 and 21 per cent changed insurer in 2012/13.

**Longtail Claims**

**Q32. The Motorcycle Council of NSW raised in its submission that the issue of long tail claims resulting in greater insurer profits could be addressed 'by implementing a claims pool for long tail claims. Once the claims are settled reasonable costs and profit margins could then be returned to the insurers and the balance could then offset costs in the system and reduce premiums'. Can the MAA please comment on the viability of this suggestion?**

**Response**

The MAA does not currently have the legislative power to implement such a mechanism, and there is insufficient detail about the proposal to enable comment.

The MAA is currently reviewing the premium framework within the current legislation and will continue to consult with stakeholders during the review process, including motorcycle peak bodies.

**Accident Notification Form**

**Q33. Can the MAA provide the Estimated Ultimate Notifications for the 2012/13 reporting period (until 30 September 2013)?**

**Response**

The Estimated Ultimate Notifications for the 2012/13 reporting period is 14,100. This comprises 3,500 Accident Notification Forms and 10,600 full claims.

**Q34. The MAA 2012/13 Annual Report states that the frequency and propensity to claim continues to increase as awareness of the expansion of Accident Notification Form benefits grows. Can you explain what has been done to increase this awareness?**

**Response**

Information on the ANF and benefits under the Scheme is updated on the MAA website.

An ongoing survey of callers to the MAA showed that injured people predominantly found out about the ANF from their General Practitioner (GP), the MAA or their insurer.

In order to increase awareness and use of the ANF when benefits were expanded in 2010, the MAA undertook a targeted communications campaign including a mail out to all New South Wales GP's providing information and a copy of the new ANF form, advertising and



editorials in GP and allied health professional related magazines, industry journals, professional association newsletters and industry websites.

Search engine marketing was undertaken to reach injured people who use an online search engine such as Google for information about making a CTP related claim, so that a link to the MAA website appears at or near the top of pages for these searches.

The MAA also engaged with other stakeholders, including the licensed CTP insurers regarding the expansion of benefits.

### **Nominal Defendant**

**Q35. Can the MAA identify why there was a 7.6 per cent increase in the 2012/13 reporting year for nominal defendant claims, compared to a 1 per cent increase in 2011/12 and a 2 per cent increase in 2010/11?**

#### **Response**

The ratio of Nominal Defendant claims to all other claims made under the Scheme has been relatively stable since 1999. During this time, the increase in the number of Nominal Defendant claims, as a percentage of all claims, has been less than half a percent.

The MAA has observed that there has not been a significant increase in the number of Nominal Defendant claims ultimately accepted by insurers against uninsured vehicles.

### **Whiplash Guidelines**

**Q36. What does the comprehensive implementation strategy for the revised Guidelines for the Management of Acute Whiplash-Associated Disorders entail?**

#### **Response**

The implementation strategy for the revised Guidelines for the Management of Acute Whiplash-Associated Disorders is currently being finalised. The approach will adopt best practice strategies aimed at eliciting behaviour change in the practitioners involved in the assessment and treatment of these injuries, as well as information and education for injured people.

### **Changes to Reporting Structure and Abolition of Advisory Council**

**Q37. What steps has the MAA undertaken to ensure the public and relevant stakeholders are aware of changes caused by the implementation of the *Safety, Return to Work and Support Act 2012*, including the abolition of the Motor Accidents Council?**

#### **Response**

The MAA has published information on its website alerting the public and relevant stakeholders to the new governance arrangements. Information regarding the new governance arrangements is also available in the September 2012 edition of the MAA

Bulletin, which is distributed to MAA stakeholders and published on the MAA website, and the MAA's 2012/13 Annual Report, also published on the MAA website.

### **Workers Compensation Legislation Amendment Act 2012**

**Q38. What impact has the changes to the *Workers Compensation Legislation Amendment Act 2012* had on the Scheme with regards to claims made for persons injured in motor accidents travelling to and from work?**

#### **Response**

The Motor Accidents Scheme has always provided a level of coverage to eligible people injured in motor vehicle accidents travelling between home and the workplace.

Workers compensation insurers may recover the cost of such claims from the CTP insurer where the claimant makes a claim for workers compensation rather than CTP. However, such recoveries are limited by what is actually expended by the workers compensation insurer, not what the claimant might have been entitled to in a CTP claim.

To the extent that there is a gap between what is currently recovered by the workers compensation insurers and the likely cost arising to the CTP Scheme from claimants directly pursuing a common law lump sum payment, there is a likely cost impact from the amendments to the *Workers Compensation Legislation Amendment Act 2012*.

However, at this stage, the MAA has not observed trends in claims frequency directly attributable to the worker's compensation reforms. The impact of these amendments is being closely monitored.

### **Advisory Committees**

**Q39. Section 10 of the *Safety, Return to Work and Support Act 2012* makes provision for the establishment of advisory committees.**

**a. Are you aware of any plans to establish any advisory committees for the MAA?**

**b. If so, please provide details including when they will be established and information regarding the proposed makeup of the committee/s?**

#### **Response**

In accordance with the Act, the establishment of any advisory committee is a matter for the Minister.

Currently, the MAA engages with stakeholders via a number of forums such as the Motor Accidents Assessment Service Reference Group, a quarterly forum with the legal professions, meeting bi-monthly with the Motor Accidents Insurance Standing Committee and quarterly with the Motorcycle Council, among others.

Additional consultation with stakeholders on specific issues occurs as required or requested.

Key stakeholders attended a CTP Roundtable in July 2013, and subsequently the Minister for Finance and Services has met with most of the major stakeholder groups, including the legal professions.

**Q40. The New South Wales Bar Association submission outlines three important functions of advisory committees in paragraphs 78-80. If the establishment of an advisory committee has not been proposed, please address how the MAA intends to fulfil each of these three functions?**

**Response**

The MAA engages regularly with stakeholders, including through the stakeholder groups outlined in the above response to question 39, in order to seek their feedback on the Scheme, to educate and update them on developments and to seek input on ways to enhance it.

**Q41. Following the discharge of the *Motor Accident Injuries Amendment Bill 2013* on 20 August 2013 and the comment by the Chair of the NSW CTP Roundtable on 19 August 2013 that ‘I was left with little doubt of a shared view among the bulk of participants that operate within the Scheme that reform is needed’.**

**a. Is there still an agenda to reform the Scheme?**

**b. If so, can the MAA provide details regarding the timeframe and process?**

**Response**

This is a matter for Government.