LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

12TH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY

QUESTIONS ON NOTICE ARISING FROM PUBLIC HEARING 17 MARCH 2014

Question 1

CHAIR: What is the variance between the lowest price and the highest price for premiums? I am not talking about competition.

Mr NICHOLLS: It varies over time and I will take on notice—

CHAIR: Yes, take it on notice.

Mr NICHOLLS: I will take on notice the question of the explicit range of prices at the moment, but it varies over time and it is in the order of probably around $50 for the best price in the marketplace. I think the reason I will take it on notice is because the prices vary by different types of vehicle, they vary by whether you are a 30-year-old or whether you are a 55-year-old. So the actual spread of prices is quite different for each individual. I would like to give you a technically correct response.

Response

The table below sets out some of the Green Slip premiums currently available to New South Wales motorists. Prices are current as at 1 April 2014 and include the Medical Care and Injury Services (MCIS) levy and GST.

Vehicle type	Age of vehicle	Garaged	Age of driver	Demerit points	At-fault claims	Lowest price ($)	Highest price ($)	Variance ($)
Private car	2014 model	Sydney	30-54	Nil	Nil	517	573	56
Private car	2014 model	Sydney	Over 55	Nil	Nil	455	519	64
Private car	2000 model	Sydney	30-54	One	Nil	532	771	239
Private car	2000 model	Sydney	Over 55	Nil	Nil	471	771	300
Private car	2000 model	Country	Over 55	Nil	Nil	355	582	227
Private ute	2000 model	Country	30-54	Nil	Nil	374	526	152
Medium Motorcycle	2014 model	Sydney	30-54	One	Nil	263	612	349
Large Motorcycle	2014 model	Sydney	30-54	One	Nil	455	997	542

Question 2

Mr DAVID SHOEBRIDGE: Do you disagree with the information from the Insurance Council that said that the average period within which claims are settled has significantly reduced and is now about 4½ years?

Mr NICHOLLS: I am saying that over the life of the scheme since 1999—

Mr DAVID SHOEBRIDGE: Would you answer the question? Has it reduced and is the average time now about 4½ years?

Mr NICHOLLS: The average peak in cash flow is about 4½ years, that is correct.

Mr DAVID SHOEBRIDGE: Has it reduced? It is a simple question, Mr Nicholls. Has it reduced?

Mr NICHOLLS: I will take that on notice.

Response

The average time to payment has reduced from about 5½ years in 2000 to about 4½ years in 2013.

Question 3

The Hon. PETER PRIMROSE: I have two questions, one of which is on notice. What is your response to the suggestion that the MAA should have the power to impose a levy on insurer super profits if they rise above a certain level?

Mr NICHOLLS: I believe that that would be difficult to implement in practice, given the length of time it takes for accident years to emerge. I also believe that a large part of the answer to the question of super profit is not in regulatory power; it is in the way we design the scheme and the way we remove risks from the scheme and the way in which we can make the scheme operate much more efficiently and effectively. I am not confident that applying a tougher regulatory regime would ultimately result in those uncertainties being removed. As a result, I do not expect that we would suddenly see insurers in a better position to be able to address those future risks simply because of the prospect of a penalty being there.

The Hon. PETER PRIMROSE: I refer to the part that leads on from that and I also take account of some of your earlier responses. Will you take this question on notice and provide the Committee with the details of suggestions you have already made? You have already made a number of suggestions in relation to super profits on which I will not quiz you any further. However, it seems to me you are specifically saying—not the reasons as the Committee is exploring them here—what you recommend the Committee should be looking at as a way of overcoming this.

Mr NICHOLLS: Certainly I am happy to take that question on notice.

Response

The question of whether the MAA should have the power to impose a levy on insurer super profits if they rise above a certain level is a matter for the Government, and ultimately the Parliament.

So-called super-profits can be addressed by reducing risks and uncertainty in the scheme. This can be achieved by removing the uncertainties of negotiated settlements, and replacing it with a system in which benefits are clearly prescribed by legislation – a so-called statutory or defined benefits scheme. Such schemes around Australia tend to be more efficient – and in private markets, much of this efficiency would come in the form of lower realised profit margins. Regulating prices and profits in such a scheme is also more straightforward.

However, regulation of premium pricing is not a panacea. While regulation that drives less conservative premiums may have a short term effect on affordability and profit margins, it may also have the long term effect of increasing risks to insurers, the Government and the community by leading to possible losses, an inability to pay benefits to claimants (increasing the risks to the Government as underwriter of last resort) and/or reducing the insurer's tolerance to stay in a voluntary market like CTP (compared with redeploying capital to other lines of business). Regulatory controls in price setting can have unintended consequences. For example, Queensland has recently seen the exit of a major insurer from its CTP market due ostensibly to price capping.

However a statutory scheme requires a legislative solution, which is outside the scope of the MAA's remit. The MAA has therefore considered the opportunities that can be considered within the scope of the current legislation. These factors may not avoid super-profits but may help mitigate them to some degree by introducing efficiencies and allow for more certainty and guidance to insurers to be created where possible. These include-

- Amending claims handling guidelines and associated processes to: remove unnecessary processes and disputes; provide better guidance to insurers on how to handle key decisions, including model forms and letters; and provide better support to claimants throughout the process – including simplifying notification processes and other unnecessary red tape.
- The *Motor Accidents Compensation Regulation 2005* is due to be automatically repealed under the *Subordinate Legislation Act 1989* on 1 September 2014. The Regulation will be remade as required.
- Best practice templates and forms for claims and disputes, including a new simpler claim form.
- Charters to promote best practice between scheme participants – insurers, lawyers and claimants.
- Improving market practice guidelines to promote innovation – such as allowing electronic renewals in lieu of paper based renewals and the introduction of technology solutions to streamline the online purchasing process.
- Tightening premium guidelines to: have the regulator compel consistent assumptions and standardised industry benchmarks; and controlling expenses including acceptable acquisition expenses such commissions or advertising/policy add-ons.
- Reviewing premium structures to: set a benchmark for affordability and transparent cross subsidisation model including consideration of risk pooling; and
- A more risk based, outcome focussed approach to regulation and insurer supervision to target high priority actions that ensure claimants are getting their statutory due and insurers are operating in the legal bounds and intent of the legislation and rules.

Question 4

The Hon. SHAOQUETT MOSELMANE: I think Mr David Shoebridge asked a good sequence of questions that I hope drew out some answers. I have been on this Committee for the past three or four years and we seem to be going in circles all the time about this issue of super profits and insurer profitability. This is a point of complaint by many of the bodies that came before us. We are supposed to make recommendations on these issues. From what I am hearing from you, you are not helping us to find solutions or recommendations that we could

come up with. If that is the case, where can we find the circuit breaker? What is the essential issue that we can really hone in on and say, "This is the issue that we must address to impact on this issue of profits"?

Mr NICHOLLS: The uncertainty in the scheme, in my view, is the biggest issue that we need to address. At the moment we have a scheme in which negotiation takes place. We need to look at more guidance around how settlements can be made. One of the reasons why the Government promoted a defined benefits scheme last year was that that removed a lot of the uncertainty from the scheme. In my view, addressing the reasons why those variabilities occur is a higher priority than looking at the immediate regulatory powers.

The Hon. SHAOQUETT MOSELMANE: Are you able to write down what those uncertainties are? We could then make recommendations as part of our final report to the Government.

Mr NICHOLLS: I am happy to take that question on notice.

Response

You have asked that MAA provide some further commentary on issues of uncertainty in the current CTP scheme:

Pricing of insurance policies is generally harder than for other types of products because the ‘cost of production’ (ie claims costs including overheads) is expended *after* the price is set and collected, meaning that the insurer must predict, using actuarial estimates, the likely future costs of claims and other factors when they set prices. Because of the uncertainty associated with predicting the future, the gap between the estimates and actual experience can be the difference between either large losses or large profits. This gap will often be greater when risks are relatively uncertain, and can be influenced by changes to social, economic and legal environments.

For example, an insurer will be able to better predict how much they need to pay to replace a car that is written off in an accident than the costs associated with the injuries to the people in the car, especially in a common law system where payments are negotiated over a protracted period of time (which in turn means reserving more capital for longer by the insurer, exposing them to the fluctuations in yield rates).

In a common law system, legal precedents can also drive unexpected cost (known as super-imposed inflation, which is the rate of escalation of claim costs which exceeds ordinary inflation). Insurers can also not be sure of the ultimate number of claims that will be made – for example, in recent years, claims frequency and claims propensity has been rising despite improvements to road casualty rates. Insurers will add a margin to reflect the uncertainty in these and other variables.

Because personal injury insurance is inherently more risky than say, motor vehicle property damage insurance, an insurer must target a better return on their capital for personal injury. Since the HIH collapse, and the ensuing Royal Commission, the need to ensure strong prudential margins in capital allocation has not only been about better practice, it has become compulsory under Australian Prudential Regulation Authority (APRA) requirements.

The *Motor Accidents Compensation Act 1999* requires all premiums to be fully funded so that the insurer can meet future claims expenses. The MAA continues to regard the collapse or exit of an insurer as one the highest risks in the MAA risk register – because it has happened already in this market.

This analysis suggests that it would be an over-simplification to assume that insurers make super-profits because of regulatory failure or that regulatory solutions are the only or best solution. Indeed, there is evidence that regulatory controls in price setting can have

unintended consequences. For example, in Queensland, where price capping occurs, the market has recently seen an exit of a major insurer.

Regulations that drive less conservative premiums may have a short term effect on affordability and profit margins, but may also have the long term effect of increasing risks to insurers and the Government and the community – by leading to possible losses, an inability to pay benefits to claimants (increasing the risks to the Government as underwriter of last resort) and/or reducing the insurer's tolerance to stay in a voluntary market like CTP compared to moving their capital to other lines of business.

Question 5

The Hon. SHAOQUETT MOSELMANE: The Motorcycle Council of NSW notes in its report that insurers must only be allowed to charge for third party insurance and nothing else. It should be permitted because it distorts the costs to the system. Will you respond to that?

Mr NICHOLLS: My recollection of the Motorcycle Council of NSW submission was that they were raising concerns that some insurers offer a first party add-on to policies mainly for motor vehicles. My recollection from hearing their evidence this morning was that their concern was that was not being made available to other types of vehicles. The Motor Accidents Authority does not directly regulate those kinds of add-on insurance type products. However, we allow insurers to have a range of marketing strategies in order to differentiate their product. As you would appreciate, the underlying green slip is essentially a vanilla-type product; it is the same kind of insurance cover, irrespective of which insurer you are using.

Different insurers use different marketing strategies to target particular risks and groups of users, and I believe it is four insurers—and I will confirm that is the number on notice—that also offer an add-on for no fault.

Response

Six of the seven CTP insurers in New South Wales currently offer additional 'at fault' driver cover (restrictions apply). These insurers are GIO, Insurance Australia Group (NRMA), Allianz, CIC Allianz, QBE and Zurich.

Question 6

Mr SCOT MacDONALD: I finish with the minor severity legally represented people. Is there a cohort that we should be aware of? Are we going back to the Griffith days of whiplash and the like?

Mr NICHOLLS: I think we are seeing a shift to legal representation. We are seeing some increase in claims frequency as well, but I think what we are seeing is more of a trend away from not being represented to being represented rather than it being an unusual cohort.

Mr SCOT MacDONALD: Not demographic or class, country versus city, or age?

Mr NICHOLLS: I am happy to take that question on notice.

Response

There are no significant trends or cohorts in relation to gender or age. There is a general increase in legally represented claims and, although this is weighted towards cohorts and

demographic groups that are known to have higher risks, the MAA is not aware of systematic fraud being perpetrated in the scheme.

To address occasional pockets of fraud, the MAA has established a Fraud Taskforce, consisting of the MAA, CTP insurers, the NSW Police Force and NSW Fair Trading.

Question 7

Mr DAVID SHOEBRIDGE: Mr Nicholls, do you know what were your actuaries' assumptions or your assumptions in respect of claims numbers when you were setting premiums for 2013? Are you expecting them to rise or fall?

Mr NICHOLLS: My recollection is that we were expecting them to increase, but I am happy to take that question on notice.

Response

The MAA does not set Green Slip prices. Green Slip prices are set by the licensed CTP insurers based on a detailed assessment of available industry data and their claims experience, within Guidelines set by the MAA.

Based on historical experience, for premiums effective from 1 January 2014, the MAA's independent scheme actuary, Ernst & Young, estimates that overall claims will increase by approximately 3%.

These figures are based on Ernst & Young's assessment of claims data as at 30 June 2013.

Question 8

Mr DAVID SHOEBRIDGE: All right. Can we put those two pieces of information together? You were expecting claim numbers to go up and they actually went down. You set the prices on an assumption that there would be a certain number of claims. Should we expect an unhappy and unpleasant surprise in respect of insurer profits because of those two factors?

Mr NICHOLLS: The actuarial advice we received is that that short-term impact of workers compensation recoveries should be picked up when those come through as claims within the CTP system and they have not yet flowed through.

Mr DAVID SHOEBRIDGE: I am asking you: When we see the next year's profit reporting are those two factors likely to see a markedly increased profit percentage from what you have put in your latest annual report. Yes or no?

Mr NICHOLLS: I will take that question on notice.

Response

Actuarial advice indicated that workers compensation recoveries in the CTP scheme would increase in the 2013 accident year due to the removal of journey claims from the Workers Compensation Scheme from 30 June 2012. The expectation was that most of these workers compensation recovery claims would be reported as full claims or ANFs in the CTP scheme.

While it is possible that some workers compensation recovery claims are being made in the CTP scheme, it is not possible to identify them from the available data. However, the claims experience in the 18 months ending December 2013 shows that workers compensation

recovery claims reduced by about 70 per cent while full claims and ANFs have not yet shown a corresponding increase.

Question 9

Mr DAVID SHOEBRIDGE: A good many submissions have indicated that the kind of analysis that the MAA does about scheme efficiency is inherently flawed because it does not really look at the overall scheme for motor accidents in New South Wales, which particularly include lifetime care and support, and that if we could get a rational set of figures that looked at the efficiency of the MAA and the lifetime care and support together, we would have a much better understanding about the value for money for motorists. That seems like something that your agency should be looking at and giving that kind of information to motorists and to this Committee. Can you do that?

Ms DONNELLY: I have seen the submissions and I am aware that that issue has been raised.

Mr DAVID SHOEBRIDGE: Well it is right, is it not?

Ms DONNELLY: I think that you can look at efficiency in a number of different ways. One of the opportunities we have—and I know the MAA is working on this—is to take that feedback on board and look at the best efficiency measure going forward. One of the other things the Committee might be interested in—

Mr DAVID SHOEBRIDGE: I was interested in an answer to my question, not you going off on a tangent.

Ms DONNELLY: I understand that.

Mr DAVID SHOEBRIDGE: Could you focus on the question? That would be a better measure for efficiency, yes or no?

Ms DONNELLY: I think it is an alternative measure for efficiency and it depends on what question you want to answer and what I was going on to say—

Mr DAVID SHOEBRIDGE: In terms of the amount of dollars that people pay for their green slip for those two schemes and the amount they get back in benefits?

Ms DONNELLY: There are two questions that you might want to answer and one is looking at the two schemes together that are aiming to do the best for people who have been injured in New South Wales: do we want a measure that combines them and does that answer some questions? I agree with you that it does.

Mr DAVID SHOEBRIDGE: Could you give us that?

Ms DONNELLY: I can take that on notice, but I would like to also say that if you want to measure the efficiency of the CTP scheme, which does have a different structure, then if it is always combined with the Lifetime Care and Support Scheme, you do not get a view on how the CTP scheme itself is performing.

Response

There are two separate schemes that support people injured in motor vehicle accidents in NSW that have different funding arrangements and sources, and fundamentally different scheme structures and operating models.

The Green Slip has several components:

- A CTP component, which is collected by private insurers covers a wide range of expenses including benefits to injured people, legal and investigation costs, acquisition costs, claims handling expenses, and business operating costs such as salaries, rent and government charges and taxes, plus a profit margin.
- A Lifetime Care and Support component, which is collected as part of the MCIS levy and delivers direct care and support services to injured people. It does not incur acquisition costs, general legal and investigation costs as it is a no fault scheme, claims handling expenses, certain government charges, and is not required to return a profit or dividend. Subsequently, this scheme has minimal delivery costs and the majority of the money collected through the levy is expended on the provision of direct services to participants, irrespective of fault.
- A Motor Accidents Authority component, which primarily covers public hospital and ambulance services, with a smaller portion to cover the regulation of the scheme, also collected as part of the MCIS levy.
- GST, which is collected by the Commonwealth Government and returned to States as general revenues.

It is possible to derive a notional measure of efficiency, based on the expected payments to be made from the overall average Green Slip to meet the needs of injured people. Currently, the actuaries of both MAA and LTCSA estimate that the notional efficiency is 67.3% excluding GST. This is the expected notional efficiency for the current premium year (2013/14) and is therefore based on the expected level of costs, expenses and, for the CTP scheme, insurer profits.

We note that estimate of expected claims costs (i.e. the claim payments received by claimants, and therefore the driver of the efficiency index) is formed on different bases for the two schemes. This is because of different accounting and actuarial requirements for the schemes.

It is not meaningful to provide a combined efficiency measure for historical years because whilst the CTP scheme is in a “mature” state the LTCS scheme is still developing and therefore it would not be a like with like comparison. Accordingly, this measure cannot be compared with efficiency measures for other schemes such as motor accident schemes in other States.

Although a seemingly simple measure, both Scheme Actuaries caution against using it to draw meaningful conclusions. In particular:

- Due to the differences between the schemes and funding, it is not meaningful to attempt to create a combined efficiency measure and efficiency is best considered separately. Including the funds collected and paid by the Lifetime Care and Support scheme with the money collected and paid in the CTP scheme would create an artificial measure that does not reflect the efficiency of either scheme.

- Measuring actual efficiency of the overall average Green Slip overall is difficult because most of the funds collected by Lifetime Care will not be spent for a very long period of time. For example, if we compare the breakdown of claims cost for the 2008 accident year between the CTP and LTCS schemes:
    - For the CTP scheme approximately 85% of the total expected claims cost has actually been paid to claimants to date.
    - However, for the LTCS scheme about 5% of total expected claims cost has actually been paid to claimants to date.

- Using a combined prospective figure for efficiency masks the very real actual inefficiencies in the CTP component of the Green Slip. For example, it would make the historic profit component collected by insurers look considerably smaller as a percentage of the overall Green Slip.

- The CTP Scheme cannot be properly evaluated if its performance indicators are always combined with the Lifetime Care and Support Scheme performance indicators.

For these reasons, the MAA's preference is to be as transparent as possible about the operation of the CTP scheme, which it does regulate, and publish annual analysis of 'scheme efficiency' based on actual claims payments, which take some years to develop.

Between 2000 and 2012 about 50% of the collected CTP premium dollar has been paid in direct claimant benefits. The MAA is focussed on improving the efficiency of the premium dollar, to reduce where possible, the variable costs to ensure a greater proportion of premium is returned to injured people as benefits.

Question 10

Mr NICHOLLS: We have, in the MAA's annual report, historically included both pieces of information but it comes back to Ms Donnelly's point that there are different purposes that we are looking at this information. From the MAA's point of view, we regulate private insurers. I think that we would be criticised by the community and by this Committee if we were seen to be distorting the true story and the CTP scheme by adding the highly efficient Lifetime Care and Support Scheme into the mix and then going out into the public domain and trying to say that somehow this scheme or the private insurers are performing better than they actually are. We do need both pieces of information and I agree with that. We have reported that but from my point of view I am concerned that the underlying CTP scheme is not efficient, so I think legitimately we should, as a community, have that information fully distilled out there so that people can draw their own conclusions.

Mr DAVID SHOEBRIDGE: Mr Nicholls, can you provide on notice whether you provided that information in your most recent annual report?

Mr NICHOLLS: I am happy to take that on notice. I am not sure that it was in the most recent annual report.

Mr DAVID SHOEBRIDGE: Can you provide on notice where you have provided that information?

Mr NICHOLLS: We have published it in the past.

Response

The MAA's 2011/12 Annual Report sets out the proportion of premiums going to claimants as benefits between 2007/08 and 2011/12 (refer page 73). This data includes Lifetime Care and Support Authority participants who are entitled to CTP claims payments and excludes non-compensation payments such as legal and investigation payments. The figures are based on estimates of future costs projected by insurers in their premium filings to the MAA (i.e. a prospective view).

As indicated in the 2011/12 Annual Report:

Premium filing period	Claimant benefit (% of premiums)
2007/08	63.0
2008/09	64.0
2009/10	66.5
2010/11	64.6
2011/12	64.0

As outlined in question 9, this combined measure does not reflect the true efficiency of either scheme and has been replaced in the 2013/14 MAA Annual Report with a measure that focuses solely on the efficiency on the CTP Scheme as this is the Scheme regulated by the MAA.

Question 11

Mr DAVID SHOEBRIDGE: You were given an actuarial report from the Bar Association a year ago that said you could expect a $4 saving on premiums and substantial efficiency gains by expanding the ANF to $20,000. Are we still in the "should" territory or have you actually looked at it?

Mr NICHOLLS: We have looked at it and our actuaries—and I am happy to provide you with a short report from our actuaries who are Ernst and Young—on their review on this report.
....

Mr DAVID SHOEBRIDGE: And for absolute clarity, you are going to provide to this Committee your actuarial workings and reports on the Bar Association's proposal about the ANF, including whether or not you have thought about any other threshold for the ANF, is that correct?

Mr NICHOLLS: I am happy to table today, if that is of assistance to the Committee, the analysis on the proposal. Would that be of assistance?

Mr DAVID SHOEBRIDGE: Table what you can and provide everything else you can on notice.

Response

The MAA has tabled the actuarial analysis of the Bar Association's proposal.

In accordance with section 51(2) of the *Motor Accidents Compensation Act 1999*, the MAA reviews the maximum benefit provided under the ANF each year. The Authority's most recent review found that there were no grounds for varying the maximum benefit payable under the ANF as the average payment made was $1,714.

The MAA is commencing a review of the operation of the ANF in its current improvement program and will welcome the input of stakeholders with a range of views about how it might operate more effectively.

Question 12

Mr DAVID SHOEBRIDGE: When I look at the graph, which is figure 3, the biggest increase is in what is called "minor rep", minor injuries with legal representation. What is the average payment for those "minor rep" claims?

Mr NICHOLLS: The average payment for a minor severity claim is in the order of $120,000 or $130,000 but I am happy to take that on notice in terms of providing an accurate response.

Response

The average payment for claims for minor severity injuries with legal representation was $122,511 as at 30 June 2013.

Question 13

Mr DAVID SHOEBRIDGE: I am just wondering what your definition of "minor" is?

Mr NICHOLLS: We use the injury severity scale that is used typically in accident schemes, so it is a severity one injury.

Mr DAVID SHOEBRIDGE: How long is someone off work? Do they have a permanent injury? Do not just say "a severity one injury"; what kind of injuries that you call minor are we talking about?

Mr NICHOLLS: It could be whiplash or a hand injury; in general, not particularly severe injuries. I am happy to take on notice and give you guidance on what those injury types are.

The Hon. SARAH MITCHELL: You talk about minor, moderate and serious. Can you provide scope on all three for the Committee?

Mr NICHOLLS: Yes, we will. There is a six point sliding scale from the least injured through to the most severe form of injury which at its extreme is a fatality. We classify all of our injuries in that classification system. I am happy to take on notice and provide the Committee information about how that system works.

Response

The MAA uses the injury severity code rankings in the Abbreviated Injury Scale (AIS) to classify and describe the severity of specific individual injuries. A claimant can have up to five injuries coded, with each injury given a score from 1 to 6 according to its severity in terms of its threat to life.

The table below sets out the AIS severity codes and some of the injuries typical of each severity score. Note that some injuries, such as brain injury, may have different scores depending on the severity of the injury.

AIS Injury severity level code	Description	Examples of types of injuries
1	Minor	Whiplash; superficial cuts, bruises or abrasions; lower back strain; strains or sprains of joints; soft tissue injury to the chest (seat belt injury)
2	Moderate	Simple fractures to the upper or lower limbs or the rib cage; concussion; severe cuts, abrasions or bruising

3	Serious	Complex fractures; lower limb muscle, tendon or ligament injuries; more serious rib cage fractures; chest injuries; brain injury
4	Severe	Brain injury; chest injury; internal injuries
5	Critical	Brain injury; spinal cord injury (paraplegia, quadriplegia); serious internal injuries
6	Maximal	Fatal injury of any type; extremely severe brain injury (probably not survivable); high level quadriplegia

Question 14

Mr SCOT MacDONALD: Can I also add a request for the typical legal costs, particularly for the minor severity injury with legal representation—is it 15 per cent, 20 per cent or whatever?

Mr NICHOLLS: I am happy to include that also.

Response

Scheme Actuary, Ernst and Young, estimate from past experience and trends in legal representation that for the accident year ending 30 June 2013, legal and investigation costs account for approximately 23 per cent of the total cost per policy for claims for minor severity injuries that involve legal representation. This does not include any direct solicitor client costs which are paid by the claimant from their final settlement.

Question 15

The Hon. SHAOQUETT MOSELMANE: I am sure they would, but that is one feasible approach, that you could address super profits?

Mr NICHOLLS: My concern is that it would be easier to do in a scheme where there was a greater level of certainty in the benefit payments where the amount of money paid by insurers was paid much more quickly and you could see in much more real time what the final level of profit was or was not. If you look at the transitional provisions in the bill that the Government brought forward last year, there was a provision there that allowed the MAA to apply for both harvesting, if you like, of excessive profits or allowing insurers to catch up in the instance that they get caught out. That was a specific transitional provision we had there. In my view that model worked well in a system where we would know very quickly what the final level of profit actually is. We could audit that within one or two years and then make some kind of assessment or adjustment. The challenge in this particular scheme is that once it goes five or six years before we are starting to see what is occurring in profit it creates challenges around how you sort of catch that up when the scheme is moving somewhat in slow motion.

Mr DAVID SHOEBRIDGE: What is the challenge? You just take a proportion of the profit once you know how it has crystallised five years later. What is the challenge? It is mysterious to me what the challenge is. You tell me what the challenge is. You know what the profit is, you know what the cost is five years down the track, what is the challenge?

The Hon. SHAOQUETT MOSELMANE: Can you take that on notice and come back with a brief response whether the issue of a levy is possible so that the Committee can then look at it?

Mr NICHOLLS: Yes, I am happy to take it on notice.

Response

The question of whether the MAA should have the power to impose a levy or tax on insurer super profits if they rise above a certain level would require legislative change and would be a matter for the Government and ultimately the Parliament.

There is no known example in Australia of a super-profit (royalty) tax on the profits of private financial institutions, three of which in CTP are listed companies on the Australian Securities Exchange.

Such a tax would require the concurrence of all Australian Governments under the principles of COAG taxation reform. Such a super-profit tax would also need to meet the prudential requirements of APRA and not act as a disincentive to effective capital management by insurers. There may be other constitutional issues that would also need to be explored.

Question 16

Ms DONNELLY: Mr Shoebridge, I do not want to ignore the question you have just asked but I would like to add something to the question before, if I might. Some information was provided to the Committee in the tenth review. I tabled that document and it should be available to you. It goes through quite a lot of detail about those figures, how they are estimates of profit by independent scheme actuaries, the difference between those and what an insurance company itself might have on its accounts and the way they are estimated. It also highlights some of the pitfalls in interpreting them, which we are very open about, particularly as there was some earlier discussion about early years in the last decade and in the figures before 2006 there was a different method, so there has been improvement in that estimation so there is some caution there.

I am just wondering whether perhaps, to assist the Committee, we could update that explanation. It does help to show that what the Motor Accidents Authority of New South Wales is doing is building transparency and publishing estimates. They are not necessarily the figures that are in the accounts of each individual insurance company so there is an additional challenge there.

Response

The document referenced by Ms Donnelly that was tabled at the 2010 hearings provides an explanation from the then scheme actuary, Taylor Fry, as to the creation of the profit table in the MAA annual report that shows a central estimate as well as high and low estimates of profit.

The current scheme actuary, Ernst & Young, now update the profit tables which are presented in the MAA Annual Report and detailed in the scheme performance report and letter from the actuary that was tabled at the MAA Hearing. These figures are retrospectively derived from an assessment of known premium collection as reported to the MAA, and known expenses as reported to the MAA in filings and the claims register, plus an estimate of unknown future expenses for claims. As these future expenses are paid the table is updated and as a result the estimated profit changes over time.

Question 17

Mr NICHOLLS: The advertising component of the green slip scheme is a relatively small component of the overall costs. It is between about $2 and $8 on each premium. It represents a small portion of the activities of some insurers who are engaged particularly in direct retail selling. So these are companies like NRMA, AAMI and GIO, for example, who undertake more direct activities. I think there is a fruitful area that the Committee may want to look at—that is, the question of acquisition expenses more generally and how they operate. But we should look at that holistically—not only at the advertising component but also in particular at the operation of commissions.

Several insurers use intermediaries and they pay commissions to those intermediaries. The component of premiums that is paid to commissions is larger. It is around $15 to $30 per premium, in comparison to the $2 to $8 per premium spent on advertising. It is one of the areas that we are particularly looking at. I have commissioned Finity consulting to complete a review of acquisition expenses across all of the insurers. We are looking at how we can build into our new premium guidelines some opportunities to put some containment around exactly how those things are defined. I want to look at it across all of the areas of acquisition not just advertising, and in particular to pay attention to commissions because they are actually a much larger dollar component of the cost.

Mr DAVID SHOEBRIDGE: Could you provide that detailed information on acquisition costs to the Committee?

Mr NICHOLLS: Yes, we can. We publish our acquisition data in our annual report. I know that at the hearings Friday week ago there was some speculation that we do not publish that information but in fact we do. It is in our annual report. What we do not publish—

Mr DAVID SHOEBRIDGE: Is the breakdown.

Mr NICHOLLS: I think it is a fair comment. I am happy to take that on board and to take that breakdown into account for future reports so that you can understand what proportion of the acquisition expense is spent on advertising.

Response

The composition of insurer business acquisition expenses vary by insurers. The way in which insurer acquisition expenses are reported to the MAA in premium filings also varies by insurer due to the different models adopted for presenting these expenses. Acquisition expenses include all expenses incurred by insurers in acquiring and retaining CTP business including personnel costs, rent and insurance premiums; information technology costs; finance costs such as accounting, auditing and actuarial costs; marketing and advertising costs; commissions and other overhead costs.

As at 30 September 2012, insurer acquisition expenses totalled $219 million. This included:

- $169 million for acquisition expenses excluding commission and reinsurance
- $36 million for commission
- $15 million for net cost of reinsurance

Not all insurers break down their expenses further than this and the MAA will be addressing this in future reporting.