

**Submission
No 8**

INQUIRY INTO REVIEW OF THE MAA AND THE MAC - EIGHTH REVIEW

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

23 August 2007

Dear Ms Robertson

Eighth Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council

The Insurance Council of Australia¹ and our members are pleased to contribute to the Standing Committee on Law and Justice's Eighth Review of the exercise of functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC).

As you may be aware, the Insurance Council's Strategic Blueprint relating to personal injury management and compensation contains the following objectives:

- A competitive industry for personal injury insurance
- To promote reforms to personal injury management and compensation that are focussed on optimal health, lifestyle and work outcomes
- Harmonisation of the benefits and CTP scheme design for CTP insurance so that injury management and compensation systems operate on a stable, predictable, affordable and nationally consistent basis, for the benefit of insurance consumers, injured people and their families.

This submission will address some of the issues raised in the *Motor Accidents Compensation Scheme 2005-06 Report* (the MAA Report). The Insurance Council and its members submit that the current operation of the CTP scheme in New South Wales is achieving the aims of the reforms in 1999. We also submit that the CTP scheme is meeting public expectations to ensure that more of the compensation dollar is going to meet the needs of injured people.

CTP Insurance Market

The MAA notes that the CTP insurance market is competitive². The Insurance Council submits that an open and competitive market is operating in New South Wales for the benefit of motor vehicle owners. Owners have a choice of insurer, each of which offers a

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system.

² Motor Accidents Authority Annual Report 2005-2006, page 84

range of prices depending on the insurer's assessment of the price required to fund the risk exposure provided by the CTP policies they underwrite. At all times, insurers offer prices in accordance with the *Motor Accidents Compensation Act 1999* (the MAC Act), and the MAA's Premium Determination Guidelines.

CTP Premiums

The MAA records³ that CTP premiums again reduced during 2005-2006, with the average premium for a Sydney metropolitan passenger vehicle in the June 2006 quarter being \$314, compared to a premium of \$322 in the June 2005 quarter. The average premium for all NSW vehicles was also lower in the June 2006 quarter.

The Insurance Council submits that CTP insurers have passed the benefits of recent claims experience on to motor vehicle owners, via lower premiums in 2005-2006. The affordability of CTP premiums in NSW remains at historically low levels. The graph provided by the MAA⁴ in fact shows a steady decline in premium pricing - particularly in the last two to three years despite the introduction of the Lifetime Care and Support Scheme.

Affordability

The MAA Report contains a graph showing an improvement in affordability from December 1998 to June 2006.⁵ The Insurance Council submits that this affordability of CTP premiums has been improving despite:

- Ongoing community wage inflation in the order of 3.5-4.5% per annum
- Ongoing consumer price index inflation averaging 2.81% for the period September quarter 2001 to the June quarter 2007 (inclusive)⁶
- Inflation allowances normally assumed by insurers being at rates that are higher to include provision for superimposed inflation
- The significant impact of the inclusion of the Lifetime Care and Support Scheme.

Competition

The competitive nature of the CTP market in NSW is confirmed by the MAA Report, where the MAA indicates that a number of insurers reduced prices voluntarily during the course of the year, and that insurers also adjusted their discount/loading structures. The Insurance Council understand that insurers regularly review and adjust both their prices and their discount/loading arrangements to ensure they continue to offer the best prices they believe are appropriate for the CTP market and the portfolio of risks that they insure.

Profit levels of insurers and return on capital

The Insurance Council submits that the issue of insurer profits cannot be understood merely on the basis of a simple equation being the amount of premiums minus claims paid equals insurer profits. Almost all claims cannot be paid out in full immediately. This

³ Motor Accidents Authority Annual Report 2005-2006, page 83

⁴ *ibid*

⁵ Motor Accidents Authority Annual Report 2005-2006, page 84

⁶ Australian Bureau of Statistics catalogue number 6401.0 Consumer Price Index Australia

is because it may take a long period of time to determine the extent of a person's injury and a person's need for subsequent rehabilitation. If the claim was settled immediately, the amount may not be sufficient to meet all of the costs associated with the person's treatment, care and rehabilitation.

To ensure that injured people receive the appropriate level of ongoing support (both medical and financial), insurers make financial provision over a long period of time. This ensures that money is available to provide the appropriate level of compensation when the injured person needs it, and when a person's injuries and rehabilitation needs are more completely understood.

This type of financial provisioning by the insurance industry is vital and is required for legal and regulatory purposes. It ensures that the insurance industry can make financial payments to an injured person when they are required. We submit that it is incorrect to claim that funds set aside for provisioning are simply profit for insurance companies.

Based on figures contained in the MAA Report approximately \$6.9billion has been collected in insurance premiums for the period 2000 to 2004. Of this \$2.2billion has been paid as claim payments. However not all claims have been finalised. In respect to the number of claims made in the year 2000, 6% remain outstanding. The percentage of claims finalised in subsequent years is substantially less. For example the percentage of claims paid for 2004 is 49%. As noted above insurers are required to hold reserves for amounts that they expect to pay out for received and anticipated claims. The MAA Report notes that the estimated final claims cost is an additional \$2.5billion after discounting, and allowing for expenses and prudential margins. Once a further \$1billion is set aside for operational costs and reinsurance this leaves an estimated return of \$1.2billion for a period of 4 years for all insurers who have a combined APRA capital requirement of \$3.3billion annually.⁷

The MAA ensures that the CTP scheme is fully funded from year to year and that CTP insurers are in a financial position to meet all claim costs as they arise and for the full duration of the claim. Over the last six years (1999-2000 to 2005-2006) insurer profit margins have averaged between 7.7 and 8.7%. The MAA considers this range of profit margins to be reasonable.⁸

Compliance/Complaints

The MAA notes that during the reporting period the MAA's compliance branch received 116 matters for investigation, the majority of which related to insurers.⁹ The Insurance Council submits that compared to the number of outstanding claims that this level of complaint is low. In fact the number of complaints is less than 0.54% based on the number of total current claims¹⁰. We understand that injured people are informed of their right to challenge an insurer's decision and the mechanisms for making a complaint.

⁷ Motor Accidents Authority Annual Report 2005-2006, page 89

⁸ Motor Accidents Authority Annual Report 2005-2006, page 87

⁹ Motor Accidents Authority Annual Report 2005-2006, page 13

¹⁰ Motor Accidents Authority Annual Report 2005-2006, page 92, total notifications 86507 less total finalised notifications 64929

Furthermore, we understand that the MAA is proposing to publish insurance industry compliance reports on their website, which will allow further transparency as to compliance activities and outcomes. The insurance industry supports this initiative as it provides the public with a clear understanding of the insurance industry's performance against compliance criteria. We also submit that this initiative will illustrate the insurance industry's improvement in compliance since the introduction of the CTP scheme.

Our members advise that the results of the 2006 Claims Handling Guidelines (CHG) audit indicated that the insurance industry showed a sustained improvement in compliance performance in 2006 in comparison with 2005. In 2006, the overall claims handling compliance performance for the Industry was rated very good.¹¹

The Insurance Council submits that there has been a significant improvement in industry compliance performance in the majority of the requirements in almost all areas of the CHG. These areas include:

- Timely actions on Accident Notification Forms and associated payments
- Timely acknowledgment of claims
- Claims investigation and timely provision of police reports
- Investigations
- Contacting legally represented claimants
- Requests for information
- Timely payment of expenses
- Timely settlement offers.

The MAA also has in-depth and relevant criteria for compliance, which are audited and reported upon on a regular schedule. Very strict and high levels of compliance and self reporting are imposed on CTP Insurers. In addition, insurers are required to provide an annual assessment report on their levels of compliance with respect to the CHG and the MAA's Treatment, Rehabilitation and Attendant Care Guidelines (TRAC).¹²

Legal costs

Legal Costs under the CTP scheme are regulated in order to encourage early resolution and decreased litigation and unproductive disputes. Since the introduction of the Legal Cost Regulations, a greater proportion of the settlement is going to the injured person¹³.

Road safety

It is an integral part of the Insurance Council's Strategic Blueprint relating to community safety and support to facilitate the insurance industry's partnership in supporting communities and in identifying, assessing and helping to manage community risks. In particular the Insurance Council and its members are pleased to contribute to government and community programs particularly those concerning road safety. We

¹¹ Motor Accidents Authority Annual Report 2005-2006, page 93

¹² *ibid*

¹³ Motor Accidents Authority Annual Report 2005-2006, page 86

submit that effective risk management requires mutual responsibility by individuals, communities, insurers and Government.

Health outcomes

The CTP scheme has been focussing on improving health outcomes for all persons injured in motor vehicle accidents. The insurance industry supports the following initiatives:

- A new guide "A physiotherapist's guide to providing treatment in the NSW Motor Accidents Scheme 2006"
- New Neuropsychology Guidelines
- Revision of the 2001 Guidelines for the Management of Acute Whiplash Associated Disorders and the accompanying documents for insurers and consumer (revision in development)
- Spinal Cord Injury Guidelines
- The introduction of the Lifetime Care & Support Scheme, which allows catastrophically injured people and at-fault children to be covered by the CTP scheme providing prompt, relevant, lifetime care and treatment for these injured people
- The introduction of the Life Time Care for catastrophically injured adults, which will come into operation on 1 October 2007 providing prompt, relevant, lifetime care and treatment for these injured people
- The inclusion of inevitable accidents in the CTP scheme as at 1 October 2007.

The Insurance Council and its members also support other measures to improve health outcomes. To this end we submit that greater weight be placed on the academically researched Treatment Guidelines, especially by MAS Assessors. This should, in our view, prevent the need for competing medical evidence to be obtained.

CTP Scheme Efficiency

We understand that CTP scheme improvements are continuously being addressed through the MAAS Reference Group (MRG), which is consulted on major legislative reforms via the MAAS Reform Agenda. The MRG will also be working on developing a feedback mechanism on the qualitative performance of MAS and CARS Assessors.

The Insurance Council submits that the efficiency of the CTP scheme could be further improved by the ability to have online access to the Police data (similar to the system in Queensland) which would allow insurers to determine liability more rapidly. The health outcomes of injured people would also benefit from the earlier intervention of insurers.

Medical Assessment Service (MAS)

The Insurance Council and its members believe that the main benefits of MAS are that the medical assessments are independent and objective. In relation to important issues

such as determining whole person impairment, MAS assessments are definitive and binding.

The Insurance Council submits that an area for further improvement is the length of time the MAS process takes, particularly where reassessments and reviews are involved. Our members have a duty to resolve claims expeditiously and delays at MAS can affect this obligation. Nevertheless there have been improvements in this area and the insurance industry and other stakeholders, through the MRG, are working collaboratively in identifying issues and developing solutions.

We submit that a greater use of evidence based medical assessments should also be made. This is particularly the case where considerable academic expertise has been used to develop treatment protocols such as those in place for Whiplash Associated Disorder.¹⁴

Our members support the reduction in the use of competing medico-legal reports when independent reports from MAS are available. The process, we submit, could benefit from a greater use of treatment reports and records from treatment providers as their opinions not only assist MAS Assessors but also CARS Assessors. The current system does not provide a mechanism for these to be provided and as result these relevant records are often not available for consideration by MAS and CARS.

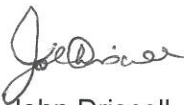
Claims Assessment and Resolution Service (CARS)

The Insurance Council and its members consider that there is the potential for an increasing level of CARS Assessments to occur over time (this is often referred to as superimposed inflation). This escalation results from the CARS process as it allows individual assessors to make their determinations without providing sufficient reasons for some assessments. The MRG is working collaboratively to provide a feedback mechanism to CARS to ensure that CARS Assessments are transparent and as consistent as possible.

Conclusion

The Insurance Council and its members look forward to working with all stakeholders to continue to evolve a very successful CTP scheme.

Yours sincerely



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¹⁴ Motor Accidents Authority Annual Report 2005-2006, page 95