

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

14 September 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 thank you for the opportunity of giving evidence 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) on 27 August 2007.

In response to issues raised at the hearing and the supplementary questions posed by the committee we advise as follows:

Question raised at hearing 1 – Applications to the Supreme Court

As noted in our evidence to the Committee, the NSW CTP Scheme is designed to give claimants more avenues for review than insurers.

A CARS Assessor, after reviewing all the material before them, will issue a determination and a certificate under section 94 containing their assessment of the injured person's damages. If this determination is accepted by the injured person within 21 days of the decision then the insurer must pay the amount. The insurer has **no** right to seek a review of the decision apart from a challenge to the Supreme Court on administrative law grounds, which is not on substantive grounds, but is only on the grounds of procedural fairness.

Our members have comprehensively reviewed their records, which we understand, reveal that in the 8 years since the inception of the scheme in 1999 there have been only 11 matters that have been taken by insurers to the Supreme Court. When comparing this figure to the 21,019² CARS matters since the scheme's inception this review rate of 0.0005% is extremely low.

On the other hand if an injured person is not satisfied with the assessment made at

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 D Bowen, *NSW CTP Scheme and Lifetime Care and Support Scheme Update*, Presentation to the Institute of Actuaries of Australia XIth Accident Compensation Seminar 1-4 April 2007, p 13. The figure is for matters lodged up to March 2007.

CARS they have the right to go to the District Court and commence legal proceedings – a right not afforded to insurers. Should the injured person be successful in improving the assessment of damages, they will be entitled to costs in the District Court. They can also apply to the Supreme Court on administrative law grounds although this is not usually necessary as they have the right to a fresh hearing in the District Court.

This, in our submission, explains the apparent discrepancy in the number of cases being brought in the Supreme Court by insurers.

Question raised at hearing 2 - Online police reports

As stated at the hearing, one of the obligations on insurers is to determine liability as expeditiously as possible. Within the current scheme insurers have 90 days.

Our members believe that they could greatly reduce the time it takes to make that determination if they had online access to police records, similar to the access that Queensland insurers have in that State to the police system.

We understand that in Queensland, insurers have access to online government databases through a system called CITEC Confirm. CITEC is the primary technology service provider for the Queensland Government which delivers IT services.

Through CITEC Confirm, insurers can access a range of information online including:

- Company information, including bankruptcy, business names and investigative corporate reports.
- Vehicle lodgements and searches, including Queensland motor vehicle register.
- Police searches, including Queensland traffic incidents (through QPRIME³) and crime reports (through CRISP).⁴

Through a database called QPRIME insurers are able to have access to police reports. In Queensland when a claim is lodged, an insurer will conduct an online police search. The report, in the vast majority of cases, is available instantaneously⁵.

In New South Wales it has, in the past, taken up to 6 weeks to obtain such a report. This is because an insurer needs to send a physical request to the NSW Police Force.

In relation to any privacy concerns with QPRIME, we understand that these are addressed through both: the strength of security measures undertaken before access is available; and restriction of access to certain groups of users including insurance agencies, legal representatives and parties involved in an incident.

In order to access the database an insurer must apply for high security access. The QPRIME system's information is confidential and must not be disclosed to unauthorised persons. Details of all transactions, including Secure IDs, are automatically recorded by the computer and can be retrieved. In addition, use of the QPRIME system constitutes consent to security monitoring.

³ Queensland Police Records and Information Management Exchange

⁴ Crime Reporting Information System for Police

⁵ This will be dependent on police data input.

The Insurance Council supports the use of a similar system in NSW to increase the efficiency of claims management.

Question on Notice 1 - Are there any new insurers interested in entering market?

The competitive nature of the CTP market in NSW is confirmed in 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.⁶ However the Insurance Council cannot comment specifically on the commercial decisions of individual insurers.

Question on Notice 2 - Gap between CTP and public liability insurance

The Insurance Council has dealt with the MAA on the issue of the gap since at least 2003. This matter has also been raised by the Insurance Council on a number of occasions with our members, and our members have given detailed consideration to the issues raised by the MAA.

Our members have carefully examined a number of scenarios put to them by the MAA and have found that their examples did not highlight a gap based on the use and operation of a motor vehicle between the public liability and CTP policies.

Our members also advise that they have reviewed their public liability policy wording with many of our members considering that the problem has been largely dealt with – and that their policies effectively bridge the gap.

Nevertheless there may be some instances where an injured person may not have received compensation for bodily injury as a result of the operation of a vehicle. It should be noted that public liability is a very long tail class of insurance where claims are able to be made many years after an incident – 20 plus years in the case of minors. This means that an old policy that did not have newer wording may still allow for the gap.

The Insurance Council welcomes the information provided by the MAA on its website encouraging people to check the terms of their policies.

Question on Notice 3 - Motor Accidents Council

The Insurance Council and insurers have a good relationship with the MAA and the MAC and meet regularly to discuss issues and exchange opinions both formally through the MAAS Reference Group (MRG) and informally. We submit that the MAC is an effective body for the provision of the views of various stakeholders. It also provides the venue for constructive debate of the views of stakeholders.

Question on Notice 4 - CTP Premiums - Impact of Life Time Care Scheme

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 in the MAA Report⁷ in fact shows a steady decline in premium pricing

⁶ Motor Accidents Authority, *Annual Report 2005-2006*, page 84

⁷ Motor Accidents Authority, *Annual Report 2005-2006*, page 83

- particularly in the last two to three years despite the introduction of the Lifetime Care and Support Scheme.

The Life Time Care Scheme (LTCS) is funded via a levy on CTP greenslips. According to the MAA, the liability valuation is currently \$280 million per year. Income generated on the levy collected will need to support such a liability.⁸

A reduced levy (to cover the cost of the scheme for children) has been collected since 1 October 2006. A full levy has applied to all policies incepted after 1 April 2007.

The MAA 'expected the impact of the levy to be an average increase in the amount paid by motorists of around \$20 per policy'. Nonetheless, the MAA noted that 'in fact because of the high level of competition at present much of this has been absorbed by insurers.'⁹

Question on Notice 5. Medical Assessment Service process

The Insurance Council has no further submission to make on length of time the MAS process takes. Our members advise that this has in the past been an issue, but that this is improving. Insurers are working collaboratively with other stakeholders, through the MRG, to identify issues and develop solutions as the need arises.

Insurers as part of their general practice seek to obtain the best medical evidence to determine issues. In most respects, this involves the MAS report supplemented by the use of treatment reports. These policies do not lead to the widespread use of medico-legal reports by insurers.

Other Matters

The Insurance Council is keen to assist the Law and Justice Committee in its deliberations and accordingly we provide the following information which addresses some issues raised at the hearing.

Legal Costs

A matter was raised at the hearing relating to legal costs. There was a suggestion that the legal costs regulations¹⁰, under the *Motor Accidents Compensation Act 1999*, put claimants in an unfair situation as compared to insurers and that claimants were unable to obtain adequate reimbursement for legal costs.

The Insurance Council does not consider that the injured person is put in an unfair situation by the legal cost regulations. In fact since the introduction of the regulations, a greater proportion of the settlement is going to the injured person.¹¹ The legal costs regulations also allow for, in our submission, reasonable recovery of costs against an insurer.

The *Motor Accidents Compensation Act 1999* regulates the legal costs that can be claimed by legal practitioners from insurers. Specifically the regulations fix the

⁸ D Bowen, *NSW CTP Scheme and Lifetime Care and Support Scheme Update*, Presentation to the Institute of Actuaries of Australia XIth Accident Compensation Seminar 1-4 April 2007, p 14.

⁹ *ibid*

¹⁰ *Motor Accidents Compensation Regulation 2005*, Part 3 and Schedule 1

¹¹ Motor Accidents Authority, *Annual Report 2005-2006*, page 86

amounts that legal practitioners are entitled to claim. The current regulations work on a staged system, where a legal practitioner is entitled to costs, depending on how advanced the claim is in the scheme's process. There are also additional costs available for claims that settle over specific staggered threshold amounts, as the regulations recognise that claims with higher values tend to be of greater complexity.

The following are three scenarios which demonstrate possible amounts recoverable under the regulations (in addition to the settlement payout).

Case Scenario 1: \$40,000 matter

A matter settles by negotiation (Stage 4) for \$40,000 plus costs. The insurer wholly admitted liability. The work completed by the claimant solicitor included preparing the matter for 3 medical disputes and involved 4 conferences at CARS.

The costs allowable are:

Stage 1	: Nil
Stages 2-3	: \$590
Stage 4	: \$2,990
MAS Disputes	: \$1,400
Conferences	: \$600
GST	: add 10%
Total	: \$6,138.00 + disbursements

Resolution at **Stage 5** (a CARS certificate is issued under Section 94) would see this amount increase by 2% to **\$7,018.00 + disbursements**

Case Scenario 2: \$100,000 matter

A matter settles by negotiation (Stage 4) for \$100,000 plus costs. The claim was lodged late by the claimant's solicitor and the matter proceeded first to a special assessment. The insurer later alleged 20% contributory negligence. The work completed by the claimant solicitor included preparing the matter for 2 MAS disputes and involved 6 conferences at CARS.

Stage 1	: Nil
Stage 2-3	: \$590
Stage 4	: \$11,600
MAS Disputes	: \$1,200
Section 96	: \$700
Conferences	: \$900
GST	: add 10%
Total	: \$16,489.00 + disbursements

Resolution at **Stage 5** (a CARS certificate is issued under section 94) would see this amount increase by 2% to **\$18,689.00 + disbursements**

Case Scenario 3: \$500,000 matter

A matter settles by negotiation (Stage 4) for \$500,000 plus costs. The insurer wholly admitted liability. The work completed by the solicitor included preparing 4 MAS and 8 conferences at CARS.

Stage 1	: Nil
Stages 2-3	: \$590
Stage 4	: \$18,600
MAS Disputes	: \$1,400
Conferences	: \$1,200
GST	: add 10%
Total	: \$23,969 + disbursements

Resolution at **Stage 5** (a CARS certificate is issued under Section 94) would see this amount increase by 2% to **\$34,969.00 + disbursements**

It should be noted that in all the above scenarios, the matters are settled by negotiation prior to CARS assessment or after CARS. It should be further noted that these costs are in addition to the settlement paid to the claimant and so do not affect their settlement.

If a matter is settled following commencement at court, the cost available increases significantly with **additional** costs of representation in court (per day) available of: \$1,750 for advocate other than senior counsel; and \$2,550 for senior counsel.

It is also important to note that when a claim is litigated following an exemption from CARS that the costs are no longer assessed in accordance with the regulations and the increase in the amount a legal practitioner can claim is substantial.¹²

Other matters – research on early resolution of claims

The Insurance Council notes that the *Motor Accidents Compensation Scheme 2005-06 Report* (the MAA Report) includes references to studies of the benefits of early resolution of claims including a long term study of whiplash associated disorders (WAD) and health outcomes since the changes to CTP legislation in 1999. The WAD guidelines provide advice to medical and health professionals, insurers and consumers on the management of WAD for the first 12 weeks following a motor vehicle accident.

The MAA reports that the study so far indicates that health outcomes two years after injury have improved following the 1999 legislation and the introduction of WAD guidelines.¹³ The following information is taken from the MAA Report.

In May 2001, the MAA commissioned a consortium of PricewaterhouseCoopers (PwC) and the University of Sydney to evaluate the impact of the 1999 legislation and the WAD guidelines on the health outcomes of claimants. The evaluation was based on three cohorts of claimants namely people injured in 1999 (before the legislation changes), 2001 and 2003.

Overall, the study found that health outcomes two years post injury improved, i.e. following the 1999 legislation and WAD guidelines: 52% of the 2001 cohort and 49% of the 2003 cohort had recovered two years after injury (as defined by a score of ≤ 25 on the Functional Rating Index) compared to 37% of the 1999 cohort.

¹² When a section 92 certificate is issued then it operates retrospectively so that costs are outside the regulations.

¹³ Motor Accidents Authority, *Annual Report 2005-2006*, page 16

Similarly, the later cohorts reported significantly better physical health related quality of life. Pain, disability and physical functioning all improved over time. However, there was no significant difference in mental health related quality of life between the 1999 cohort and the 2001 and 2003 cohorts.

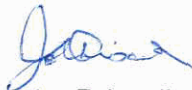
In addition to improved health outcomes, the cost of WAD claims was reduced. Overall, the pattern of costs reflected earlier access to treatment, reduced legal fees and reduced non-economic loss payments. In particular, average claim size of smaller claims that finalise relatively quickly reduced. However, for larger claims that were slow to finalise there were higher medical and economic loss payments.¹⁴

The Insurance Council will continue to support these and other strategies to improve the health outcomes of injured people.

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