

**NINTH REVIEW OF THE EXERCISE OF THE FUNCTIONS  
OF THE MOTOR ACCIDENTS AUTHORITY AND THE  
MOTOR ACCIDENTS COUNCIL**

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**Telephone:**  
**Date received:** 8/05/2008

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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

RECEIVED

7 May 2008

- 8 MAY 2008

Dear Ms Robertson

**NINTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS  
AUTHORITY AND THE MOTOR ACCIDENTS COUNCIL**

The Insurance Council of Australia<sup>1</sup> is pleased to contribute to the Standing Committee on Law and Justice's Ninth 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 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.

Our submission, detailed in the attached document, addresses issues raised in the *Motor Accidents Authority of NSW and Motor Accidents Compensation Scheme Performance Annual Report 2006-07* (the MAA Report). The Insurance Council submits that the current operation of the CTP scheme in New South Wales is largely achieving the aims of the government's 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.

In the second part of our submission, we also take this opportunity to raise a number of matters for your consideration particularly in relation to the CARS process.

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<sup>1</sup> 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. 2007 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$28.9 billion per annum and has assets of \$83.6 billion. The industry employs approx 60,000 people and on average pays out about \$70 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

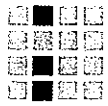


The Insurance Council and its members look forward to working with all stakeholders to ensure the continual evolution of a successful CTP scheme. If you have any questions or comments in relation to our submission please do not hesitate to contact John Driscoll, Insurance Council's General Manager Policy, Consumer Directorate on (02) 9253 5120 or [jdriscoll@insurancecouncil.com.au](mailto:jdriscoll@insurancecouncil.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Kerrie Kelly".

Kerrie Kelly  
Executive Director & CEO



**INSURANCE  
COUNCIL**  
OF AUSTRALIA

**Ninth Review of the Exercise of the  
Functions of The Motor Accidents  
Authority and The Motor Accidents  
Council**

**Submission by Insurance Council of Australia**

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May 2008

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## Introduction

The Insurance Council of Australia<sup>1</sup> is pleased to contribute to the Standing Committee on Law and Justice's Ninth Review of the exercise of functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC).

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 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.

## Motor Accidents Compensation Scheme Annual Report 2006-2007

This submission addresses some of the issues raised in the *Motor Accidents Authority of NSW and Motor Accidents Compensation Scheme Performance Annual Report 2006-07* (the MAA Report). The Insurance Council submits that the current operation of the CTP scheme in New South Wales is largely achieving the aims of the government's 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. We also take this opportunity to raise a number of matters for your consideration particularly in relation to the CARS process.

## A Competitive CTP Insurance Market

The MAA notes that the CTP insurance market is competitive<sup>2</sup>. The Insurance Council submits that an open and competitive CTP insurance 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 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.

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Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

<sup>2</sup> Motor Accidents Authority Annual Report 2006-2007, pages 75 & 77

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### Affordability

The MAA Report contains a graph showing an improvement in affordability from December 1998 to June 2007.<sup>3</sup>

The Insurance Council submits that this affordability of CTP premiums has been improving despite:

- ongoing community wage inflation in the order of 3.8 - 4.8% per annum
- ongoing consumer price index inflation averaging 3.9% for the period March 2007 to March 2008 (inclusive)<sup>4</sup>
- ongoing growth in health expenditure averaging 5.1% over inflation rates for the period 1995-1996 to 2005-2006<sup>5</sup>
- 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 (LTCS 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.<sup>6</sup> 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.

### Report on Profit

The issue of insurer profits cannot be understood merely on the basis of a simple equation being the amount of premiums minus claims paid totals insurer profits for that year. Almost all claims cannot be paid out in full immediately. This is because it takes time for injuries to stabilise and therefore time for the insurer to determine the extent of a person's injury and a person's need for subsequent rehabilitation. If the claim was settled immediately, the pay out may well be insufficient to meet all of the costs associated with the injured person's future treatment, care and rehabilitation.

To ensure that injured people receive the appropriate level of ongoing support (both medical and financial), insurers make financial provision for future payment of that support over a 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 also mandated for legal and regulatory purposes.** It ensures that the insurance industry can make financial payments to an injured person when they are required by the person. It is incorrect and ill informed to claim that funds set aside for provisioning are simply profit for insurance companies. An example of how this works is in the situation of a child injured in a motor vehicle accident whose injuries can take years to stabilise. If the insurance companies treated as profit the money received in the year the policy was sold, there would be no funds to pay the claim years later when the injury stabilises and the full extent

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<sup>3</sup> Motor Accidents Authority Annual Report 2006-2007, page 76

<sup>4</sup> Australian Bureau of Statistics catalogue number 6401.0 Consumer Price Index Australia

<sup>5</sup> Australian Institute of Health and Welfare Canberra Health expenditure Australia 2005-06 p xiv and table 1 on p 8

<sup>6</sup> Motor Accidents Authority Annual Report 2006-2007, page 77

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of damages are known. Thus, this is the reason for the extremely strict statutory prudential requirements for claims provisioning.

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 eight years (1999-2000 to 2006-2007) insurer profit margins have averaged between 7.7 and 8.7%. In the last year, profit levels have reduced to 6%. The MAA reports that this has been impacted by the introduction of the LTCS Scheme. The MAA considers this range of profit margin to be reasonable.<sup>7</sup>

#### **Scheme Effectiveness**

The MAA report highlights some of the benefits of the ongoing effectiveness of the scheme. This includes the success of the Accident Notification Form (ANF) scheme which allows claimants early access to medical benefits for minor injuries. The MAA Report demonstrates that 42% of claimants have used this simplified process up to 30 June 2007.<sup>8</sup>

The benefits of early access to medical treatment for injured claimants are also highlighted by the improving trend in the time taken by insurers to make the first payments and to decide liability. This is confirmed in the MAA report where the average time for insurers to make first payments has dropped by 12% and the time taken to decide on liability has reduced by 28%.<sup>9</sup>

#### **Medical Assessment Service (MAS)**

The Insurance Council submits 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.

We further submit that a greater use of evidence based medical assessments should 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.<sup>10</sup>

The Insurance Council supports 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 adequately provide a mechanism for these to be provided and as a result these relevant records are often not available for consideration by MAS and CARS.

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<sup>7</sup> Motor Accidents Authority Annual Report 2006-2007, page 79

<sup>8</sup> Motor Accidents Authority Annual Report 2006-2007, page 83

<sup>9</sup> *ibid*

<sup>10</sup> Motor Accidents Authority Annual Report 2006-2007, page 11



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

The Insurance Council is of the view that there are indications the level of CARS Assessments has increased over time (this is often referred to as superimposed inflation). The Insurance Council submits that this trend, if left unchecked, will lead to upward pressure for premium setting in the future. For ease of comparison we have used statistics of claims which are coded as severity 1 whiplash claims as an example of the trend which allows a greater level of like-with-like analysis. Severity 1 whiplash claims involve claims for soft tissue injuries to the neck without any neurological involvement.

In this section of our submission, except where otherwise referenced, all the data tables and graphs referred to is sourced by the Insurance Council using information obtained from our members unless otherwise referenced. The majority of the analysis below has been undertaken on a decision year basis because of the variability in the age development of claims when they proceed to CARS assessment which may distort trends if the analysis is done on an accident year basis.<sup>11</sup>

The MAA Report contains a table which shows the number of claims made since October 1999 total 97,419. The yearly claims frequency has been reducing over this period, however the number of claims for the years 2000-2003 remained substantial and averaged approximately 13,780 per year.<sup>12</sup>

Since the inception of the current scheme in 1999 to 31 December 2007 there have been 1,067 matters which have proceeded to CARS assessment without an assessment for non-economic loss (NEL). Of these, 579 have been coded as severity 1 whiplash matters. This represents 54% of all matters decided and, in our submission, provides a relatively homogenous basis of comparison. As the percentage of claims which have proceeded to CARS assessment is only a small proportion of the total number of claims it is worthwhile, in the Insurance Council's submission, to concentrate on the largest subset of those claims. We conclude that the trends shown in severity 1 whiplash matters are indicative of trends across the entire CTP scheme in NSW and that the effect of adverse inflation in CARS decisions has a contagion effect across the whole CTP portfolio.

Whilst the majority of decisions occurred in the years 2004 to 2007, these arose from injuries which occurred primarily in the years 2000 to 2003 which is illustrated in table 1 below. The time lag between the two periods is explained by the three year limitation period for a claimant to bring an action. The Insurance Council submits that the greater reduction in frequency of claims seen in the last 2-3 years has not impacted on the results for the decision years 2004-2007. In fact during the decision year period 2004 to 2007 the number of severity 1 whiplash matters (shown in graph 1 below) has remained fairly steady.

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<sup>11</sup>Please note that all costs have been inflated with wage inflation to December 2007. It is also likely that the data for 2007 is not complete as there may be late CARS information with decision dates prior to the 31 December 2007. Similar factors will also apply to the number of settlements outside CARS which may increase due to claims that finalise in 2008 but have settlement dates in 2007 (finalisation can be delayed for example due to sorting out legal costs or some outstanding medical bills).

<sup>12</sup>Motor Accidents Authority Annual Report 2006-2007, page 81

**Table 1 CARS decisions with no Non-Economic Loss (NEL) by injury group showing the distribution of claims by injury severity and accident year.**

Injury Group	Accident Year									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	
Severity 1 Whiplash (minor)	48	152	132	103	91	44	6	3	0	
Non whiplash severity 1 (minor)	8	25	27	12	11	12	4	0	0	
Severity 2 (moderate)	16	70	62	48	38	24	7	0	0	
Severity 3 (severe)	10	27	29	14	12	12	2	0	0	
Severity 4+ (catastrophic)	1	3	6	1	4	2	1	0	0	
<b>Total</b>	<b>83</b>	<b>277</b>	<b>256</b>	<b>178</b>	<b>156</b>	<b>94</b>	<b>20</b>	<b>3</b>	<b>0</b>	

For severity 1 whiplash CARS decisions in 2007, the level of CARS assessments were 29% higher than they had been in 2006 primarily due to higher average future economic loss and future care costs. Despite the falling frequency of claims overall the number of CARS decisions for severity 1 whiplash have remained fairly constant since 2004. This indicates, in our view, that they represent claims of similar complexity. Table 2 shows the increasing cost of CARS decisions over the whole period of the scheme.

**Graph 1 showing the increasing cost of whiplash claims since 2003.**

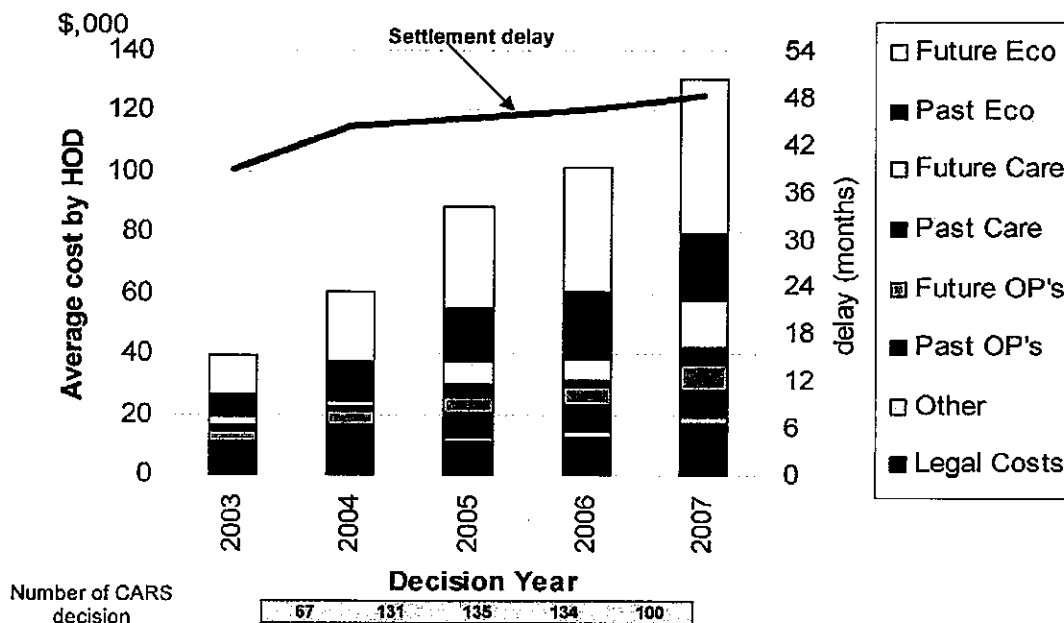


Table 2 shows the increase in average costs of CARS decisions for all accident years.<sup>13</sup>

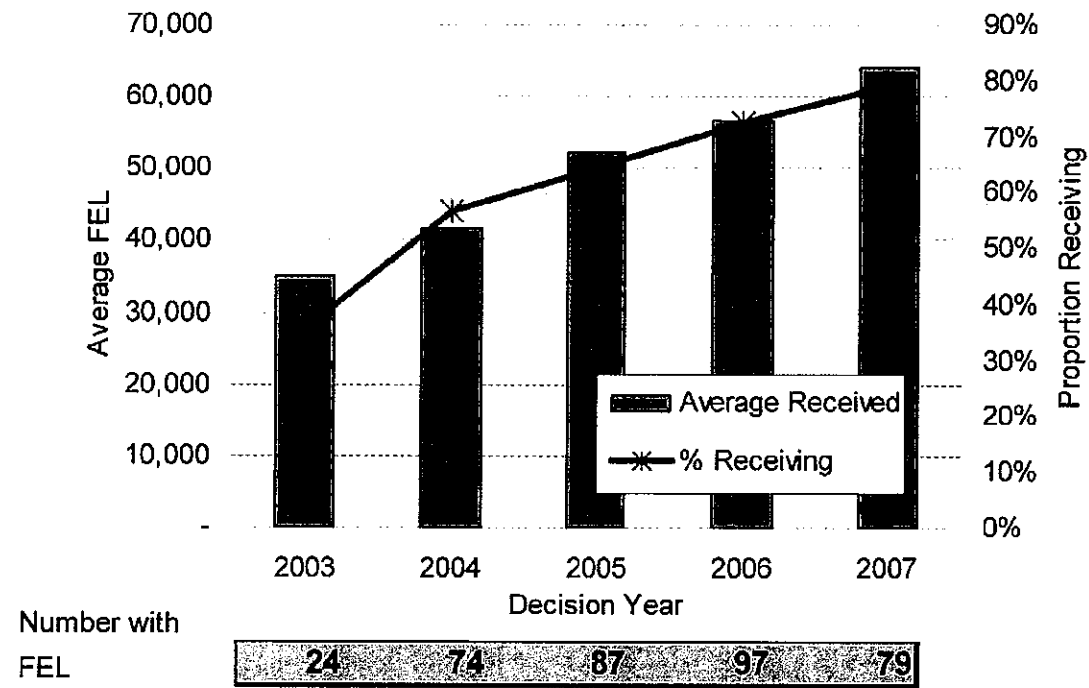
#### CARS Decisions

Accident Year	Decision Year				
	2003	2004	2005	2006	2007
1999	38,095	53,870	225,559	83,801	33,539
2000	46,520	77,130	77,522	107,013	166,579
2001	10,076	48,621	91,490	70,289	138,447
2002	6,655	26,441	78,852	123,273	170,285
2003	n/a	n/a	94,184	93,465	140,336
2004	n/a	n/a	33,817	91,770	115,239
2005	n/a	n/a	n/a	24,669	41,417
2006	n/a	n/a	n/a	n/a	44,533
Avg	39,351	60,796	88,444	101,521	130,304

When the assessments for future economic loss (FEL) are examined more closely in Graph 2 below it can be seen that the average amount assessed for FEL has increased by 18% since 2004. As the figures have been adjusted for inflation to December 2007, this increase is in addition to the average rate of wages inflation of 4% per annum. Not only has the average assessment increased but the proportion of claims receiving FEL has been steadily increasing from 2004 to 2007 from 55% of claims in 2004 to 80% of claims in 2007 which has a compounding effect on overall claims costs.

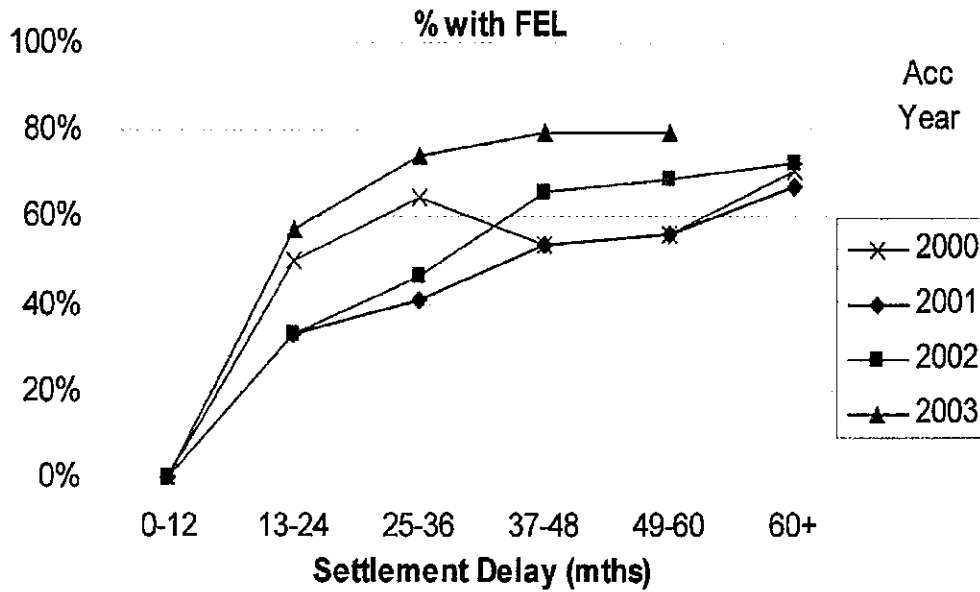
<sup>13</sup>Please note that for the 1999 accident year the averages for the later decision years (particularly 2006 and 2007) represent very low numbers of claims left in the system and thus the averages are affected. In 2006 the average is based on 2 decided claims. In 2007 there was only 1 decided claim.

**Graph 2 shows the increase in % receiving & size for Future Economic Loss claims.**

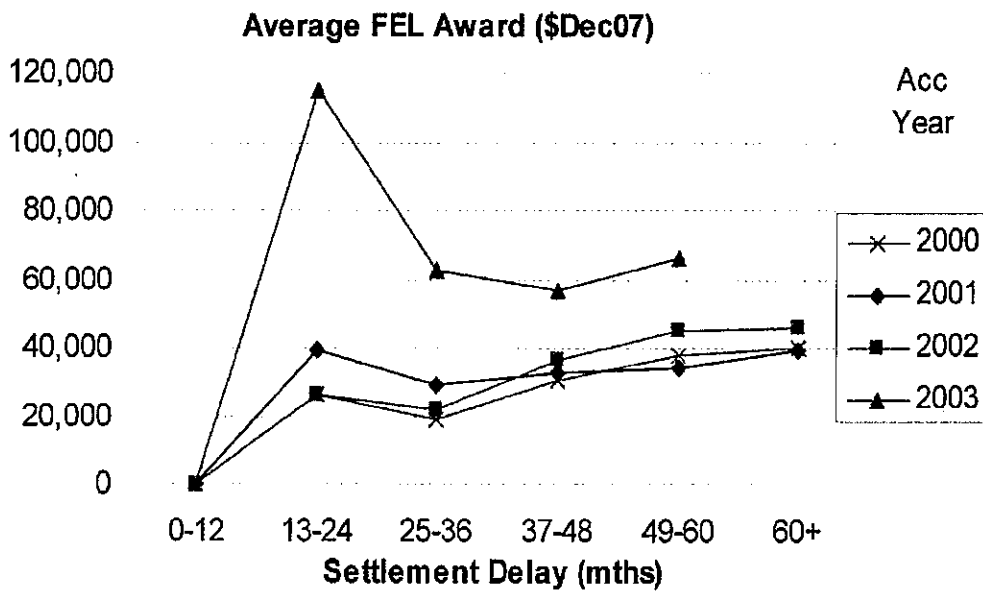


The above analysis is confirmed when looked at on an accident year basis. Graphs 3 and 4 below clearly show an upward trend in relation to the percentage of FEL assessments by CARS assessors and the increasing average size of those FEL assessments awards by CARS assessors.

**Graph 3 showing the increasing trend of % receiving FEL <sup>14</sup>**



**Graph 4 shows the trend in the increasing size of the average assessment of FEL at CARS<sup>15</sup>**

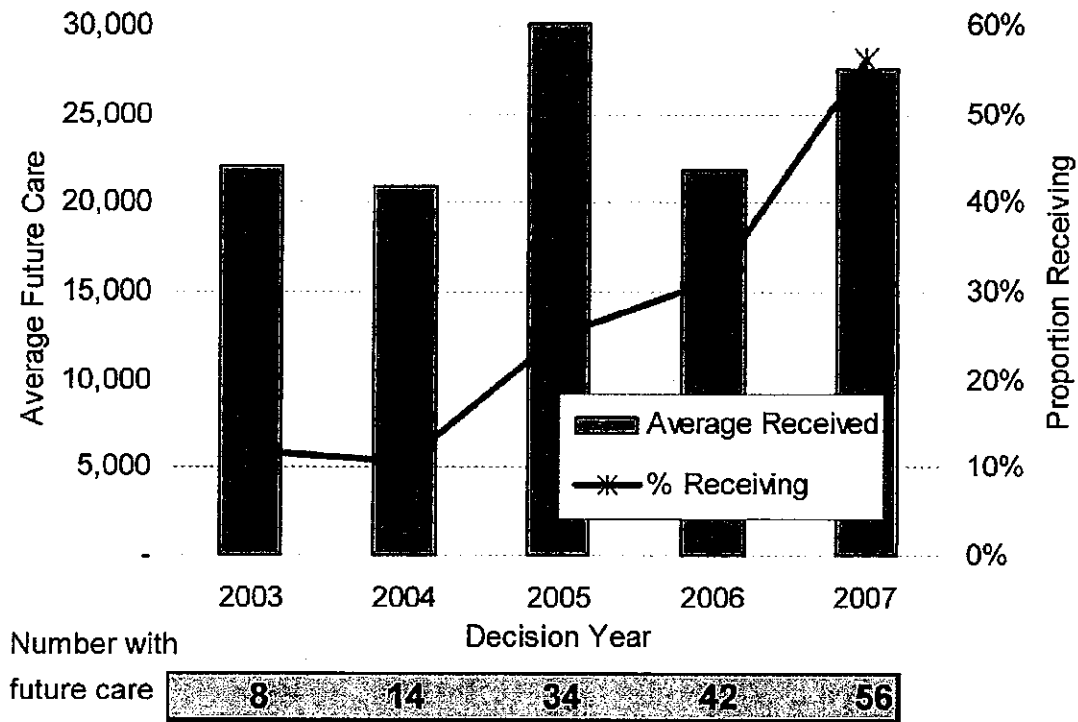


<sup>14</sup> Data sourced from full MAA database provided to insurers as at 31 March 2008 concerning severity 1 whiplash claims without assessments for NEL.

<sup>15</sup> Ibid

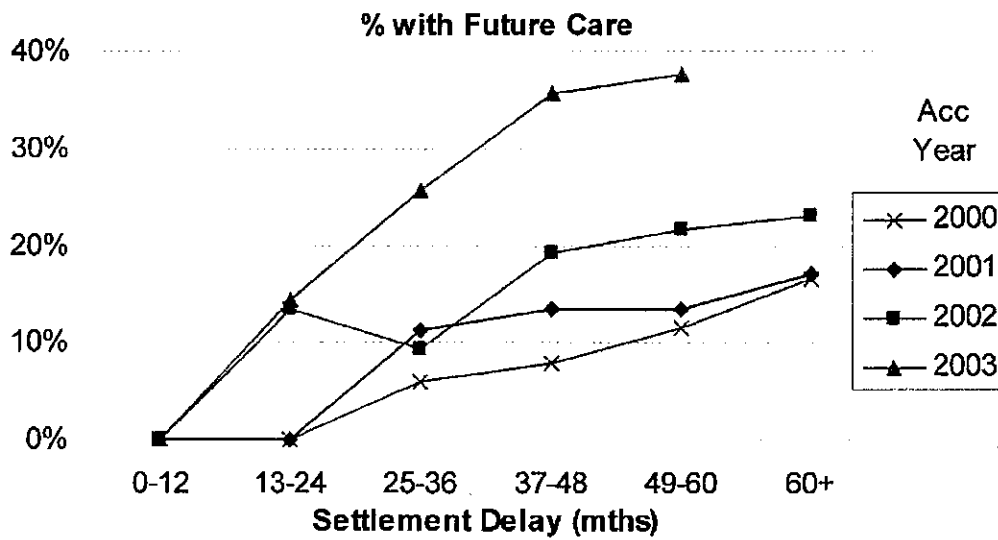
A similar analysis can also be done in respect of assessments of future care. In 2004 approximately 10% of claims received assessments of future care; by 2007 it had risen to 55% of claims. There is however no real discernible trend in relation to the level of the assessments for future care over the period. Although the sample sizes are small the increases in the proportion of claims receiving future care are significant and the trend is continuing.

**Graph 5 shows the increase in % receiving Future Care**

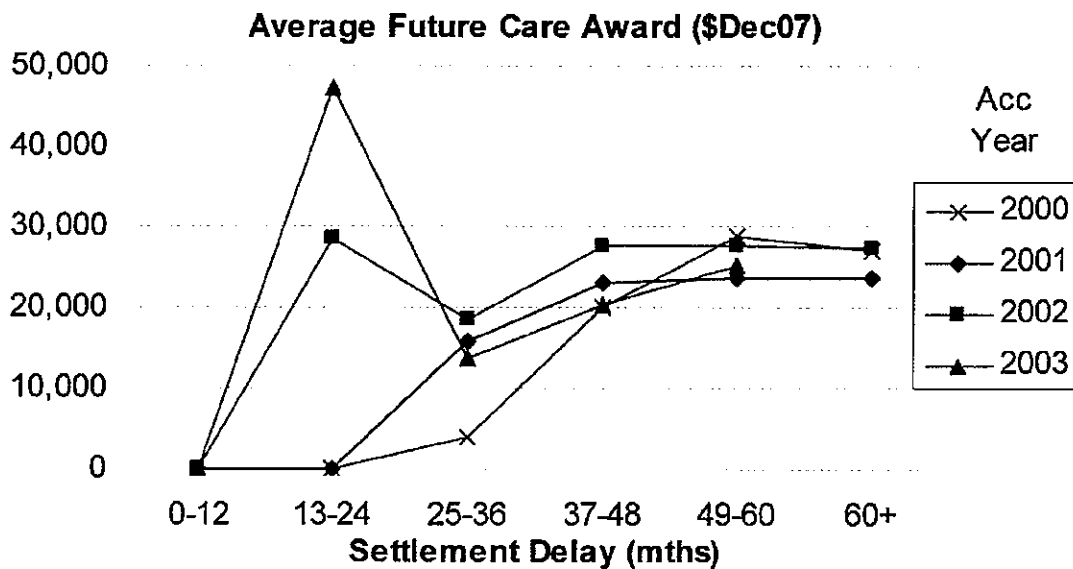


The same trend can be seen if the analysis is done on an accident year basis. The percent of cases assessed with future care has increased markedly for the 2003 accident year although the amount of the assessment is more stable.

Graph 6 shows the increasing trend of % receiving Future Care<sup>16</sup>



Graph 7 shows that the average assessment for Future Care has remained at a similar level after some early volatility



<sup>16</sup> op cit note 13

When the average size of CARS assessments are compared by decision year with those claims settled outside the CARS process or after CARS referral in graph 8 below, it can be seen that the CARS process results in a substantially higher assessment than those claims settled outside CARS. The Insurance Council submits that these results highlight the trend towards superimposed inflation in CARS assessments. The increases in non CARS matters show little increase in cost over the period while there have been substantial increases in the level of CARS decisions.

Graph 8 also indicates that some claimants are willing to trade off earlier receipt of settlement monies for the chance of a higher assessment at a later date. However the level of settlement for this type of claim has remained relatively steady over the period. Nevertheless, claimants proceeding to CARS assessment are receiving substantially more per head of damage (and particularly FEL) in 2007 than claims settled prior to this stage. This trend is inconsistent with the goals of the scheme, which are to encourage early claim resolution. **The Insurance Council submits that claimants who resolve their claims earlier have better outcomes than those whose claims linger in the system unresolved.**

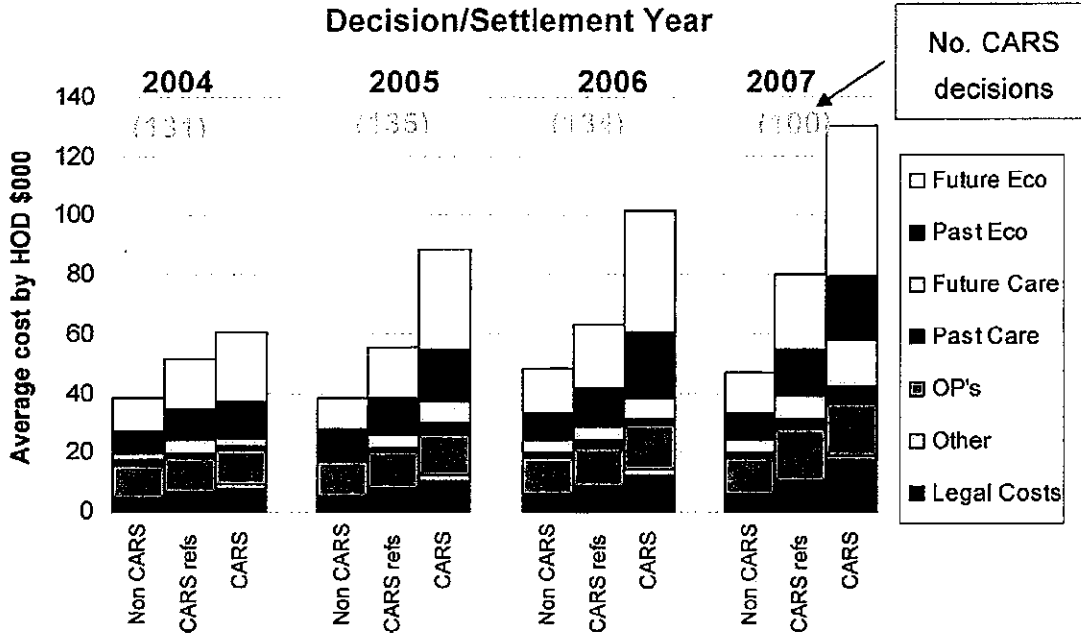
The significant increases in the heads of damages assessed at CARS in the 2006 and 2007 years exacerbate the picture and has a flow on effect to all matters which have been referred to CARS. The Insurance Council submits this is a strong indicator of the emergence of superimposed inflation in these particular heads of damage. If superimposed inflation is left unchecked then the significant, unplanned upward pressure on insurance rates, which is a feature of superimposed inflation, begins to quickly erode the benefits of the scheme. Tables 2 (above) 3 and 4 provide detail of all the claims involved.<sup>17</sup>

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<sup>17</sup> The matters referred to as non-CARS involve claims which have been on foot for over 3.25 years and consist of claims that are referred to CARS, but are resolved prior to a CARS assessment. These are included because they have similar development and complexity of claims resolved at CARS. CARS referrals include all matters which have been referred to CARS but settle before the assessment.



Graph 8 highlights the difference in cost of whiplash claims which were decided without CARS involvement, were referred to CARS but not heard by CARS & matters assessed by CARS.



**Table 3 Whiplash claims not determined by CARS  
Represented Non CARS > 3.25 years**

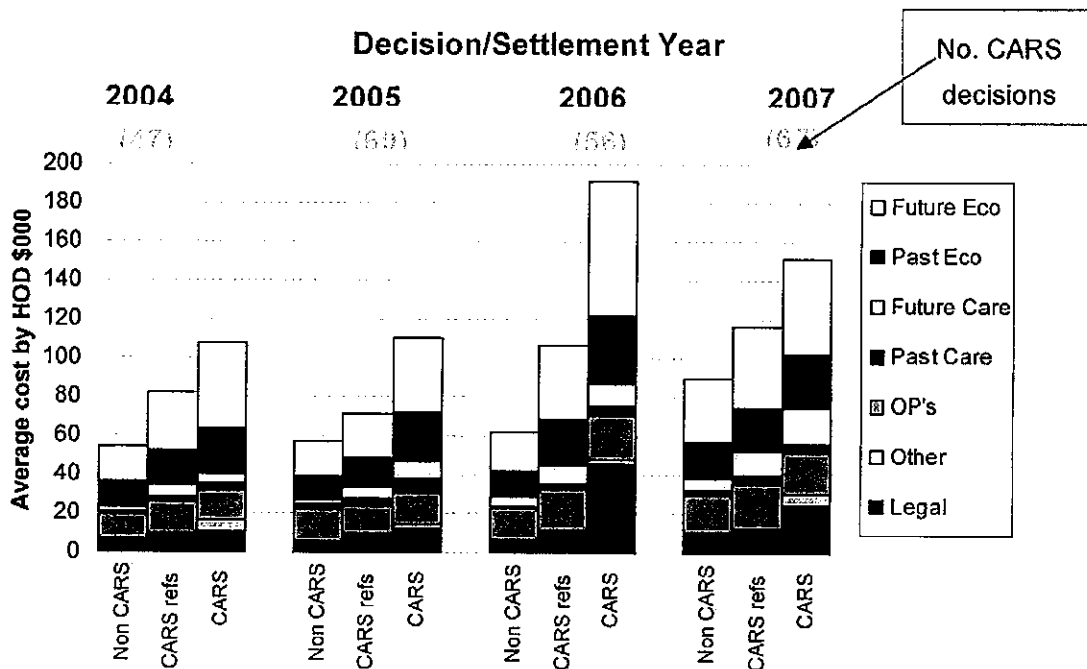
Accident Year	Settlement Year				
	2003	2004	2005	2006	2007
1999	32,500	41,311	27,965	24,011	18,494
2000	25,805	43,230	47,760	18,234	54,262
2001	n/a	29,164	37,770	48,738	36,918
2002	n/a	n/a	32,827	55,735	37,337
2003	n/a	n/a	n/a	55,689	49,654
2004	n/a	n/a	n/a	n/a	52,199
2005	n/a	n/a	n/a	n/a	n/a
2006	n/a	n/a	n/a	n/a	n/a
Avg	28,218	39,861	39,261	48,881	47,502

**Table 4 Whiplash claims referred to CARS but settled prior to assessment  
CARS Referrals**

Accident Year	Settlement Year				
	2003	2004	2005	2006	2007
1999	41,467	81,445	54,353	50,756	101,833
2000	50,416	53,480	75,531	68,612	107,514
2001	38,072	48,493	53,811	68,763	57,455
2002	6,039	38,310	56,299	66,373	94,536
2003	n/a	57,259	42,272	63,368	81,235
2004	n/a	n/a	15,866	62,616	76,254
2005	n/a	n/a	n/a	33,551	73,031
2006	n/a	n/a	n/a	n/a	22,062
Avg	45,273	53,239	56,508	64,167	80,236

The Insurance Council submits that the trends shown above are also reflected in the other severity streams although the numbers involved are small. Graph 9 below shows a similar analysis as graph 8 above for severity 2 matters. This group includes a wider range of injuries including fractures and other soft tissue injuries with some neurological involvement. As can be seen these claims also exhibited increases over the period. Although the numbers are much smaller (265 for all accident years— see table 1 above) and accordingly more volatile they do show a similar trend upwards of claims costs.

**Graph 9 shows the increase in cost for severity 2 claims (generally claims involving more serious injures than soft tissue damage)**



**Suggested Measures to address Increase in CARS Assessments**

The Insurance Council submits that the significant escalation in the level of CARS assessments, in part, results from the lack of transparency in the CARS process as it allows individual assessors to make determinations without providing evidence-based reasons for assessments. In order to address this lack of transparency the Insurance Council suggests that:

- All stakeholders will benefit from a greater use of treatment reports and records from treatment providers to ensure that CARS assessments have the benefit of all the relevant factual information.
- The requirement that all CARS assessments clearly state what evidence is accepted as the basis for findings of FEL be reinforced in circumstances where the claimant is working at the time of assessment and thus apparently not suffering from any economic loss.
- A qualitative monitoring and feedback system for all stakeholders be developed and implemented for all stakeholders.
- Quarterly presentation of MAA performance reports be provided for all stakeholders.
- Access to CARS Assessors' practice notes be made available to all stakeholders.
- The process piloted in the MAAS Reference Group (MRG), a key stakeholder committee, to provide a mechanism for qualitative feedback and monitoring of the CARS process which is available to all stakeholders, become a regular, annual review process. At present there is little opportunity for qualitative feedback by stakeholders directly to the MAA on CARS issues apart from the formal complaint process.
- The data provided in the MAA report on the status of the CTP scheme be provided to stakeholders on a more frequent basis to monitor closely what is emerging as superimposed inflation. It will also enable implementation of solutions to emerging issues. The data could, we submit, be provided to stakeholders in conjunction with the regular MRG meetings.
- Greater transparency in the CARS process will result in a greater understanding of the assessments made. To this end we submit that stakeholders should be given access to practice notes which are provided by the Principal CARS Assessor from time to time. We submit that this will reduce friction costs as all stakeholders will have a clear understanding of the relevant issues and likely outcomes in the CARS process.