REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

SEVENTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND THE MOTOR ACCIDENTS COUNCIL

At Sydney on Friday, 31 March 2006

The Committee met at 10 a.m.

PRESENT

The Hon. Christine Robertson (Chair)

The Hon. D. Clarke
The Hon. R. Colless
The Hon. G. Donnelly

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CHAIR: Welcome to the public hearing of the Standing Committee on Law and Justice's seventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council. Today we will be hearing from witnesses from the Motor Accidents Authority and the Motor Accidents Council as well as from the Insurance Council of Australia and the New South Wales Bar Association.

Before we commence I would like to make some comments about aspects of the hearing. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the Legislative Council guidelines governing the broadcast of proceedings are available from the table by the door. In accordance with the guidelines, members of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any film or photographs. In recording the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the Standing Orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. I therefore request witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

Could everyone please turn off their mobile phones for the duration of the hearing, including mobile phones on silent, as they still interfere with Hansard's recording of the proceedings.

RICHARD JOHN GRELLMAN, Chairman, Motor Accidents Authority and Motor Accidents Council, 580 George Street, Sydney, sworn and examined, and

DAVID BOWEN, General Manager, Motor Accidents Authority, 580 George Street, Sydney,

CONCETTA RIZZO, Deputy General Manager, Motor Accidents Authority, 580 George Street, Sydney, and

KATHLEEN HAYES, Manager, Injury Prevention and Management, Motor Accidents Authority, 580 George Street, Sydney, affirmed and examined:

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr BOWEN: I am.

Mr GRELLMAN: I am.

Ms RIZZO: Yes, I am.

Ms HAYES: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request.

If you are unable to answer any of the questions put to you at this time, you may take questions on notice. If the Committee does not have time today to ask all the questions, I will ask you to take the remaining questions on notice. Questions on notice must be forwarded to the secretary of the Committee by Friday 14 April 2006.

I would like to let you know that I recognise that you have put a phenomenal amount of work into putting together the answers to written questions. The Committee does not yet have your written questions and is awaiting those. The Committee is comfortable that we will have the written questions for our final deliberative and for the secretariat's reporting process. It does not mean that you have to cover all of the work that you have already put in, but if you could refer to them when necessary it would be very useful to us in our questioning. Sometimes we may ask questions which you may perceive you have already answered in that format, so please bear with us.

Would anyone like to start by making a short statement?

Mr GRELLMAN: I will make a short introductory statement, firstly, to say that we are very pleased to be here. It is a great opportunity for us to open up a number of issues that we see when we look at the scheme. From the authority's point of view and certainly from the perspective of the board, we continue to believe that the scheme is functioning well. It is not perfect and probably never will be perfect, but we are continuing to feel very comfortable that in terms of its affordability, its fairness, its efficiency and its effectiveness, which are the four key measures that we apply when we try to understand whether the scheme is delivering what we hope it will deliver, each of those measures is being met.

In terms of affordability, premiums have been holding or falling and we believe, in relative terms, that now the affordability is at its lowest point since the current thinking around this form of statutory scheme commenced in 1995, so for people who actually pay for this policy we believe it is at its most affordable point.

Benefits are flowing promptly to claimants and we are particularly pleased with the larger claims, the more seriously injured. They are getting attended to promptly and that equates to a level of fairness that we feel comfortable about.

In terms of efficiency, the percentage of premiums finding their way through to claimants remains acceptable. We no doubt continue to feel that we would like to see that improve, but it is certainly, under the current scheme, a much higher percentage than we have seen in previous schemes and in terms of the effectiveness of the scheme, just the way claims are managed, the efficiency of the processes, we think again we are seeing improvements all the time, so there is a level of effectiveness that we feel is acceptable.

The governance arrangements of the scheme remain as before in that we have a six person board of directors and a Motor Accidents Authority Council. At the moment we have a vacancy on the board and the Minister has not yet appointed the sixth person, but the other five directors are the same people who were on the board when we met 12 months ago. The council's term came to an end in October 2005. I understand the Minister is just at the point of appointing a new council and I think that may be going to Cabinet next week, so at the moment we do not have a council but I should think within a week or so we will have and then we can start reconvening that group and dealing with the issues that the council worries about.

The authority itself is in good hands with David Bowen and his personnel, so, although sitting here today we are not complacent and we are not feeling overly smug, we feel that the scheme which is now entering its late adolescent years is showing all the signs of functionality that we would hope it could be showing and we think that it is delivering the benefits that we believe a statutory scheme should deliver.

I will not say anything about profit because that is going to be the basis of a significant submission that David is going to be covering later in the meeting, but there will be ongoing dialogue around that issue. It is a complicated issue and one that deserves plenty of time I think to fully understand the issues.

In conclusion, we are pleased to be here. We will do the very best we can to answer all of your questions and if you can find a question that we cannot answer then we will get back to you very promptly with a written response.

CHAIR: I did miss something at the very beginning. I do have to make a public statement about interest in this particular issue because I am currently a recipient in relation to this Act, so I just put that on the table.

There is something else I would like to say before we start: As you know, this Committee since it came into being has questioned how to more effectively participate in this particular inquiry, and that is not anything about sticking anyone but actually being active participants for the terms of reference of the inquiry, and it is important that you recognise that is why there is more detail in the information that we requested of you this time.

Under 206(2)(b) of the Motor Accidents Compensation Act the Motor Accidents Authority is required to advise the Minister as to the administration, efficiency and effectiveness of the scheme. Can you outline the criteria that the Motor Accidents Authority uses to measure the administration, efficiency and effectiveness of the scheme?

Ms RIZZO: When we are reporting on the scheme we use four performance indicators and the four indicators are affordability, efficiency, effectiveness and fairness. I guess if I refer to our most recent annual report, we outline those performance indicators in a great amount of detail and we do that on that regular basis. We do it on a more regular basis if needs be, if there needs to be updates on that throughout the year.

In summary, the position as it was when we lodged last year's annual report in regards to affordability, the premiums have continued to come down in this scheme. The average premium now for Sydney Class 1, which is the biggest group and is our headline indicator, the average premiums in December were $322 plus GST. The reason we always add GST is to compare it to the old Act when it was GST free, so that compares to an average of $441 in 1999 before the legislation was

introduced. The best price is even lower than that and that is another indicator of how affordable the scheme has become.

In relation to average weekly earnings, it has dropped from 50 percent of average weekly earnings before 1999 to below 28 percent now, or as at December, so that is a huge drop. It is very clear that premiums have reduced on average for the majority of motorists in the State.

With respect to efficiency, that is calculated on the filings that insurers submit to us and that is always summarised in the annual report. The approximate figures, without going to the table, are that around 60 percent of that premium goes in payments to the claimants. About another 11 percent goes to legal and investigation costs, 8.7 percent is the insurer targeted profit margin in the filings, and the remainder of the whole are the acquisition and claims handling expenses that the insurers incur in running their departments. That was higher than efficiency was in the previous scheme when it was 58 percent.

With regard to effectiveness, what we do there is measure how quickly claims are made now compared with how long it took them to be made in the previous scheme, and that has certainly been quicker. The main reason for that is we have introduced the accident notification form into the scheme and that has been hugely successful. I cannot remember the figures offhand. I would have to check the actual figures but a substantial proportion of people put in an accident notification form before they lodge a full claim form. That means they have access to $500 worth of money for their treatment, so that means that treatment can be started more quickly than if you had to put in a full claim.

The insurers under the new Act have obligations that they did not have under the old Act and one of the main ones is they have to make liability decisions within three months, and once they have made liability decisions, a whole lot of conditions apply to the way they handle the claim and that means that the obligation makes it faster for the claimant.

Claims are finalising more quickly so in total, as far as effectiveness is concerned, it is faster and it is shorter. Fewer people have to go to court because we have assessment services to address interim disputes as well as the ultimate disputes. There is the option for very complicated claims to be exempted from that process and to go to court, so from that point of view people do not have to go through that experience as they would in the past.

The last indicator is fairness and the way we measure that is we relate that to the most serious claims and because the most serious claims take quite a long time to settle, we have selected very serious brain injury claims as our group of claims on which to base the fairness indicator, and according to that, the indicators are that it is faster and that those serious claims at the moment are in fact getting larger damages than they were in the previous scheme. That, of course, can go up and down depending on the actual claims in the sample, but at the moment they are certainly being treated as least as fairly and their damages are higher than they were in the previous scheme. In summary, they are the four performance indicators that we use.

CHAIR: Have you got any processes in place to actually review the criteria that you use to measure the effectiveness and do the processes include consultations with interested stakeholders, including insurers, claimers, community groups, service providers and legal representatives? Do you actually review your indicators?

Mr BOWEN: The indicators were originally set in discussion with the Motor Accidents Council and they prompted quite a bit of discussion at the council when we put them forward some years ago and, from recollection, they were the source of some discussion at the first and perhaps second hearings of this Committee when first constituted after the 1999 Act had passed.

We report on those indicators to the council annually. In that sense we regularly review

them. We have identified within the MAA and with the Motor Accidents Council the need to add to the list of indicators by looking at health outcomes and I reported on this at last year's Committee hearing. We are taking the step to do that. We have reported on a particular project, looking at health outcomes from whiplash, which I was able to give early indicators on last year, and there is a more detailed report on that in the annual report, and I think it is a little bit more detailed in the response to questions, so we have in mind that health outcomes need to become a key indicator of scheme performance as well as other measures but appreciate that requires really some system of measuring and we are in discussions with some medical groups about how we can apply that to particular injury types other than just whiplash.

The Hon. DAVID CLARKE: Mr Grellman, in your opening comments you said that in some ways the scheme was not perfect. I think they were the words you used. In which way do you think that it needs to be improved? What were you referring to when you said the scheme was not perfect?

Mr GRELLMAN: I guess I was not referring to any particular aspect of the scheme as wanting. It was just a reflection of the reality of life, that perfection is an elusive aspiration and it is a mindset that we try to retain around the board table not to be complacent, to keep looking for areas where we might be able to improve. I am sorry if I misrepresented myself, but it was more in that context.

The Hon. DAVID CLARKE: It is more a throw away comment. You think the scheme is operating very effectively and efficiently and there is no major area where it needs to be improved?

Mr GRELLMAN: No. I think it is operating fairly. The only area that I continue to ponder, and it is going to be the point of a lot of discussion this morning, is the question of profit. Here we have a scheme that relies upon the capital of the general insurance community to carry the risk and our attitude is that they should reasonably expect to receive a fair return on the capital in point and that will equate to a return on capital or profit. There is a very live debate about what a reasonable level of profit might be for a class like this. It is easy to be shallow and flippant about this.

One of the reasons, for example, that profit from a class like this ought to be perhaps higher than some other classes is that it is a long tail scheme with the underwriters having to carry the risk for many, many years in the case of bigger claims and keeping those risks open and dealing with the issues is a capital intensive exercise, so if there is one area that I am still thinking carefully about, it is the question of profit, but Mr Bowen and Ms Rizzo will be covering that in some detail this morning.

The Hon. DAVID CLARKE: On the question of profit, the annual report of the MAA for 2004-05 says that a review of the profit shows the profit level being achieved by the CTP insurer is well in excess of those predicted in the premium filings. Do you have any figures on that?

Mr GRELLMAN: Mr Bowen might have those numbers at his fingertips.

Mr BOWEN: Mr Clarke, are you referring to the total at page 82 of the annual report?

The Hon. DAVID CLARKE: I am referring to the profits being excess, referred to on page six of the annual report, yes.

Mr BOWEN: In our response to the questions on notice we have provided some additional information on profit and a detailed report on the process of arriving at a view as to what is an adequate and reasonable but not excessive profit in the premium filings. We also have included a report on the release of capital by the insurers to date in a form which shows both, so what we show there is what was the final estimate of the profit, what is our current estimate of the profit that is likely to be made, and what is the pre-tax profit realised for each particular year. You can pick out one of those years if you wanted and run through it, but it will be announced in detail in our report.

The Hon. DAVID CLARKE: Mr Grellman, are you concerned about the excessive profits that are being made out of the scheme?

Mr GRELLMAN: I am far from sure that there are excessive profits at the moment. There is a very active debate taking place between the MAA and the underwriting community and the Insurance Council of Australia as to what we are actually talking about, because profit is one of those frustrating issues that can be measured in different ways, depending on actuarial analyses and so on that can be applied that may produce different answers, depending on who does the calculation, but my attitude, Mr Clarke, is that there is a point at which a fair and reasonable return on the capital employed is met. Beyond that it would be, I think, unacceptable and the debate and the discussion is very live at the moment, so I cannot actually say to you that I think that the profits that have been derived are definitely unarguably excessive.

I can say to you that I think they have been quite high and I do not know whether it is sustainable for them to continue at that level but, as I say, it is an open issue at the moment. I should say, however, that it needs to be an iterative process because without the underwriters employing their capital to write this risk, then the scheme as we have presently constituted cannot exist.

The Hon. DAVID CLARKE: Should the profit level be reduced?

Mr GRELLMAN: I suspect that will be my conclusion, but I do not have enough facts yet to be sure.

The Hon. DAVID CLARKE: There seems to be a conflict between the Motor Accidents Authority and the Insurance Council of Australia because the insurance council has stated that the MAA profit estimates are unreliable. You are aware of their criticism?

Mr GRELLMAN: Yes.

The Hon. DAVID CLARKE: What is your response to that?

Mr GRELLMAN: Well, my response is that I look to my general manager and say, "You'd better help me here", because actuaries have become involved at this point and, like most humans, I find myself struggling.

Mr BOWEN: Mr Clarke, I had understood that this is an issue that the Committee would want to explore. I have a short presentation. I hesitate to overuse Power Point, but I think it may be useful at this point.

I really wanted to answer two questions. One is: What is the basis for setting the level of profit that the Motor Accidents Authority allows in premium filings? Secondly, and perhaps a more important question: Why are the current estimates of the profit that insurers will take out of the scheme significantly different and, in actual case, higher than that that was estimated at the time the filing was made? I am going to cover some of those points.

The starting point is the composition of the premium, and Ms Rizzo has indicated some of these figures already. In a premium filing we get detailed information on the level of the risk premium, separated between claim payments and legal and investigation costs; secondly, acquisition costs; thirdly, claim handling expenses and, fourthly, a target profit margin. For the purposes of the discussion today, we can take it that the acquisition costs and the claims handling risk expenses remain reasonably stable and that the actual payment for those is as predicted in the premium filing. The reason for the variation then is that the risk premium in the filing is different to the actual claim payments for the profit - actual claim payments that are made - so the amount that is estimated for the cost of all the claims in the year of the filing is then compared to the result and current estimates of what the cost of those claims will be and, where the cost of the claims is lower than the risk premium, that will translate into additional profit for the insurer. If the reverse were true and the claim costs

were higher then that would translate into a loss for the insurer.

Before we get to that, there is the issue of what constitutes a reasonable profit in the insurer's filing and the Motor Accidents Authority is constrained by the legislation. We have a particular statutory task to undertake that involves two considerations. First, we have to ensure that the insurer's filing provides for an adequate return on capital. In other words, we cannot approve an insurer filing where they file for a loss, and that is part of making sure the scheme remains fully funded at all times. So at one end of the equation, if you like, the Motor Accidents Authority has to be certain that the amount allowed in the filing provides an adequate return on capital and, at the other end, we have to make sure that the amount of the filing in total, including the provisioning for profit, is not excessive. They are the two tests that we have.

We are about four years into a debate about what those parameters are. At the beginning of this process we engaged Taylor Fry, who are the MAA actuaries, to do some work to determine for our purposes what constitutes an adequate return on capital and they did that in a very detailed paper, a very complex and actuarially difficult paper, but nevertheless they addressed that particular issue and converting their work back into a profit as a percentage of the gross premium, which is the way it was reflected there, so this is not as a return on capital, this is reflecting return on capital as a percentage of average premium, they came up with a range of between 4.5 and 6 percent of gross premium as representing an adequate return on capital. For the purpose of the Motor Accidents Authority's statutory duty we took that as being the bottom end of the range. In other words, the Taylor Fry methodology set a level that met the statutory target providing an adequate return and above that there was a margin where it was adequate but not excessive and there was a point at which it became excessive. In practice we think that the profit level as a percentage of gross premium should be that it is reasonable in the 6 to 8 percent range and that anything at 10 percent or above would be excessive.

The insurer view that you adverted to is that those figures are too low. They take issue, and indeed many other actuaries have taken issue, with the Taylor Fry methodology and the insurance council provided a detailed response from PricewaterhouseCoopers to the Taylor Fry discussion paper. As an indication of their position, and I am sure Mr Booth this afternoon will be able to give you information on this in greater detail, they would take the view that the market expectation for CTP as a long-tail class of business is to provide a return on capital of 12 to 17 percent, which converting it to a percentage of gross premium would be 10 to 14 percent, so 10 to 14 percent are comparable figures, and they would take the view that anything below 9 percent is inadequate and does not meet the statutory tests. So you can see that there is a variation in views on this and that is a matter for ongoing discussion. At the moment the level of profit which the insurers file for is within the Motor Accidents Authority's view of what constitutes "reasonable", but clearly from the insurer position at some point they will want to have that tested somewhat further.

What the insurer is getting a return on capital for is the risk and what makes up the risk premium is a variety of variables which need to be determined in setting their premiums going forward. Those are what I would regard as the key ones: The assumed level of claim frequency, which is just the rate at which people are claiming; the propensity to claim, which is the number of claims compared to the number of motor accident injuries that occur; the level of injury severity, which may vary from year to year, a variation in frequency that has very little impact, for example, on overall claim costs if it was only a variation in smaller claims and the larger claims were still there; the average claims cost, how much is being provided on average for claims through settlements, CARS decisions and verdicts of the court, the level of legal and investigation costs; because insurers hold this money for a long time we also need to take account of inflation and investment assumptions, and the final one, superimposed inflation, is the level to which claim costs grow over and above inflation. Superimposed inflation is a key variable in all compensation schemes wherever you go in the world and I will give you an example of that in a moment.

The Hon. GREG DONNELLY: In terms of those assumptions you have just gone through, do the insurers with their methodology agree or disagree with that list of assumptions? Do they accept them in principle or do they have their own set of assumptions?

Mr BOWEN: No, they would agree that those are the key matters to be looked at and addressed in a premium filing. They would perhaps have different views on what the levels of each of those are.

The Hon. GREG DONNELLY: You said in an earlier comment that their view of client expectation or customer expectation was about 14 percent.

Mr BOWEN: Yes, they would say that the profit level in the filing needs to be in the order of 10 to 14 percent of the gross premium to provide a return on capital that the investment market, the share market, would require for this line of business.

Before I go on to talk about the variables, I think this is the critical point that I would like to make today: The Motor Accidents Authority looks at the premium filings and the level of profit one year at a time, that is a requirement of legislation and the guidelines under the legislation, so the fact that the insurers have made a profit or indeed a loss in one particular year, other than as it impacts upon the variables in the next risk premium, is left with that year. There can be no adjustment to the premiums that they are filing this year because they have made excess profit or they have made a loss in a prior year. That issue comes up repeatedly when we are asked to address this issue.

One of or perhaps the most critical issue in explaining why there have been estimated excess profits in the early years of this scheme has been the drop in claim frequency. I have made the point to this Committee that this is not a scheme-related drop. It is not an effect of the 1999 reforms. It is driven primarily, it appears to the Motor Accidents Authority, by road safety improvements because it is happening all around the country and indeed in many comparable jurisdictions elsewhere. If you look at the black line down the middle you will see that from September 1999 there has been a drop in the number of claims which somewhat mirrors - not always exactly but somewhat mirrors - the drop in casualty rates.

The Hon. DAVID CLARKE: Is another major reason for the drop in claims because there has been a cap put on benefits and benefits in many instances have been slashed quite considerably? Is that a factor also?

Mr BOWEN: That may lead to a reduction in the claim size but it should not lead to a reduction in the claim numbers because in fact we have made it, through the AMF process, simpler for people to bring a claim for a small amount.

The Hon. DAVID CLARKE: In fact are there not some injuries that you could previously claim for but you cannot now?

Mr BOWEN: No.

The Hon. DAVID CLARKE: Or the benefits that you received have been reduced considerably so that some people do not bother to bring claims now because it is not worthwhile?

Mr BOWEN: There has been no injury for which you cannot bring a claim. The major change in the 1999 legislation was to introduce a threshold or a new threshold. There has always been a threshold for non-economic loss. It was to introduce a new threshold. That impacts upon the amount of damages people get, but it was unlikely to have influenced the number of claims that are brought because we know, for example, people will bring AMFs for a couple of hundred dollars. We encourage them to do that. We want them to get the treatment. We do not want them thinking it is too hard and they will not bother. I do not think that has lead to a reduction in the claim numbers. It will impact on the claim size but not the numbers.

I suppose the point I want to make with this graph is you are an actuary sitting preparing a CTP filing in September 1999. The only information you have on claim frequency is that graph that has gone up to that point, from which there is no way you can do other than assume that the frequency

will continue at that sort of trend line. Even when you get to September 2000 you will see there was a little blip that year. You would be sitting there thinking it has dropped a little bit over the four quarters of 1999-00 but it has risen in this last quarter. Does that mean as I am preparing the filing this year it is going back up, it is going down, or going to the same plateau? Following that it had a gradual drop with a couple of blips in between.

The point about that is if you put up over the top of what has happened to premium prices, as the frequency has gone down in that staggered way the premium prices have chased them down, but because there is a significant gap on frequency and this is quite sizeable, it has gone from .4 percent to .24 percent. That is an enormous drop in claim frequency and that has lead to the risk premium, based on that frequency, having been set much higher than the claims cost coming out of that year, but in a way that was not predictable at the time that the filing was made. That is the key message today.

Over the same period the average claim size has in fact risen and we brought these figures all forward to 2005 values. That tells us that what has happened is that the majority of the matters dropping out of the scheme, the drop in claim frequency, has probably come from less severe injuries, so there has been no significant reduction in the number of catastrophic and very serious injuries. We look at the hospitalisation rates as being a drop but not as significant a drop in hospitalisation rates, so the claims drop. The reduction in injury has probably been at a less severe end, meaning that those claims that are left in the scheme have achieved a higher average claim size. It is to be expected but is not enough to offset the big reduction in the overall difference between the filed risk premium and the current estimated claims cost.

The other point I would make is that in our annual report we provide an indication of the current estimate of the claims cost for each year and at the request of the Committee, in answer to one of the questions, we have done that right back to 1990. Obviously on a development from 1990 there is now virtually all of the claims finalised and the level of claim costs estimated as outstanding is very reliable but the closer it is to the present, the more that estimate is unreliable because it is based upon assumptions that the claims costs will continue to be determined by the same factors that have influenced claim costs up to that point of time and how that can be changed is primarily through changes to decisions by courts.

Let me just give you three examples, from the last few months that may affect some less than others, different levels of payment by the insurers. In 2001 the Court of Appeal found a new head of damage, Sullivan and Gordon damages, which was compensation paid to the injured person for the loss of their ability to provide services to, usually, a family member and the classic one is child care. Earlier this year, or late last year, I cannot recall, the High Court in a case of CSR v Eddy found that there was no basis for those damages. That will impact upon the insurers reserving practices on open claims as to whether or not they would allow for that head of damage in their claim estimate and that will influence the level of estimate that goes into the reports that the MAA produces.

A more recent case of Zhang in the New South Wales Court of Appeal had two findings. First, contrary to what has been 20-odd years of practice, the Court of Appeal found that the life expectancy tables that should be used in assessing life expectancy for determining future care and future economic loss are not the ABS tables but more predictive tables based on the current age of the claimant. That will impact again on the insurer's reserves on open claims where life expectancy is a variable.

They also found that the section 45 payments, which are the payments insurers are required to make for care and medical, where they have admitted liability, are not to be taken into account when applying contributory negligence reductions to a final award, so the previous practice has been to work out the value of the claim, including all the prior payments, and then the court would make a reduction off that total for the contributory negligence of the claimant, deduct the amount already paid and the residual would be the amount owing. The courts found that those statutory payments are not

to be reduced by the amount of contributory negligence. Again, the effect of that would be to increase the reserves that the insurer would need on open claims where they are making those sorts of payments. Zhang was a 1997 case under the old Act, so it is 10 years old and it will now influence case estimates going forward.

I do not regard any of the those as having enormously significant impact upon cost estimates but it just reinforces the point that would I like to make that the estimates that we provide to you of insurer profit for any given year are based upon reserves that are based upon applying assumptions about the value of claims, applying the law as it is understood today and the ultimate cost of that claim may well be different because of those sorts and other sorts of variables.

The Hon. DAVID CLARKE: You said that the Taylor Fry method of assessing profits suggest that a 4.5 percent return on capital is an accepted level. What is in fact the return on capital for insurers under the scheme?

Mr BOWEN: The Taylor Fry methodology - we have converted all of the return on capital estimates to percentages of gross premium because it is easier to make comparisons. The Taylor Fry methodology for assessing return on capital produces 4.5 to six percent of gross premium as being the adequate level. We currently believe six to eight percent constitutes a reasonable range and we disallowed premium filings where the profit is 10 or greater.

(Short adjournment)

The Hon. GREG DONNELLY: On the matter of the proposed lifetime care and support scheme, if perhaps we can go to some discussion on that, the Committee is aware of the bill before the Parliament to establish the lifetime care and support scheme administered by what will be a new lifetime care authority. Can you give the Committee an outline of the difficulties faced by persons with a catastrophic injury under the present scheme?

Mr BOWEN: I should say, subject to guidance from the Committee Chair, as the MAA undertook some of the development of that proposal for Government, I feel quite happy to answer factual questions but I will not answer any policy questions on a bill before the House, but I will take that as a factual question. The position is that there are around 125 people per year who have a catastrophic injury as a result of a motor vehicle accident and that is defined as a spinal cord injury or a traumatic brain injury of a certain level that means that they will require some lifetime assistance. There may be up to two or three other types of matters that fall into that category, including severe burns, loss of sight, and double amputations, but primarily we are talking about spinal cord injury and brain injury.

Of that group around 65 of those people will have a compensation claim because they have been injured by negligence of another person. The other 60 will not have a compensation claim because they have injured themselves or they have been injured in circumstances where they cannot prove fault. For those people who are non-compensable they would have access to other government disability services. Our research and some studies show that of the 65 who receive compensation between a quarter to a third will have some reduction in the amount of damages they receive because of contributory negligence and that reduction may be anything from 10 percent up to theoretically 100 percent, and occasionally we get one in the 90 to 100 percent range, but generally they will be in the order of 25 percent reduction for failure to wear a seat belt, which is a classic clear-cut case of contributory negligence. It is either contributing to the injury or contributing to the accident.

Of the people who get a lump sum that is not reduced because of contributory negligence we have tried to project forward where those people will be over the course of their lifetime by looking at some studies we did on people who had received spinal cord injury and damages exceeding $1 million under our scheme, and other studies looking at things such as life expectancy for people with those injuries, and projected it forward to a 20 year point in time. We know of the 40 or 45 who

receive full compensation that in 20 years' time around eight to 10 of them will have died. They may have died leaving some of their compensation to relatives, or they may have used it up, we do not know, and of the rest we know that around half of whom are left will have no funds left at the 20 year point in time.

A fairly major piece of research conducted in 1997 followed up a very large number of people Australia-wide who received compensation benefits and they found that on average people were back on to social security 17 years after their settlement. So what it clearly shows is that people catastrophically injured, a big chunk do not get anything; of those who get compensation, some get a reduction; of those who get full compensation, a significant proportion of them will have run out of funds within a 20-year period. I suppose that is what the lifetime care scheme is aimed to address. It is saying, rather than make the entry to it fault-based and rather than make it based on the provision of lump sum damages, it is providing a regime of care and support to the person over their full life.

The Hon. GREG DONNELLY: In terms of the typical profile of these catastrophically injured, and linked to that issue you have just explained how the lump sum expired as an adequate amount after a 17 to 20 year period, could you explain what that profile typically is of the catastrophically injured person?

Mr BOWEN: Yes, the Minister and the former Premier released a discussion paper on this last year, which had the age profile in it. From recollection it is 50 percent below the age of 20 and 70 percent below the age of 30. So they are predominantly young and they are overwhelmingly male, so the classic is a young man, late teenage, early 20s.

The Hon. GREG DONNELLY: In terms of the proposed arrangement, injured people will need to make a choice as to whether they enter the lifetime care and support scheme or make a claim for damages under the existing Act.

Mr BOWEN: No, that is not correct. People who are eligible will have their care and support provided for life. If they also have a CTP claim they will have a claim for all of the other heads of damage, for which they can get a lump sum, but not for the matters that are provided by the lifetime care and support scheme.

CHAIR: So it does not exclude them from a CTP claim?

Mr BOWEN: For people who are compensable, that is injured through the fault of another person, they would certainly have a claim for non-economic loss and we would expect that they would be getting close to the maximum if not the maximum amount of non-economic loss and I would feel fairly certain that they would also have a claim for loss of future earning capacity because they have a lifelong disability. So depending up their circumstances pre-accident they would still get a fairly significant sum of money in lump sum compensation as well as the provision of benefits for care and medical.

The Hon. GREG DONNELLY: Could you please explain to the Committee what mechanisms will operate under the proposed new scheme to ensure that persons who enter the scheme and their families are empowered to make decisions about their own needs rather than be subject to the decisions of scheme administrators?

Mr BOWEN: Yes, the legislation sets up a system where eligibility to enter the scheme following a threshold determination that they were injured in a motor vehicle accident - that is one issue, so that is determined - is by a diagnosis-related system based on the injury they got and the level of care or level of supervision that they may require. Those guidelines have been produced really by groups of clinicians. In the case of spinal cord injury it requires a person to have a neurological deficit and that seems relatively easy to measure. In the case of brain injury it requires a person to have suffered post-traumatic amnesia exceeding one week, which is a good indicator of lifelong need for support, plus an indication of a need for supervision on what is called a functional independence measure, which is already used by all of the brain injury units, so it has diagnostic

reliability within those units.

Once a person is accepted into the scheme, the level of care and other support that they get is also determined by guidelines. In practice, for each person there will be a lifetime care coordinator to assist the person through the process and the coordinator will meet with the person and their family while they are still in acute care to plan for release from hospital and to maximise their level of participation in the community, in employment or education, in conjunction with their physical rehabilitation, rather than wait until a person is released and then start it at that stage.

Where the person has the capacity and the desire to self-manage their own care, the legislation permits that by allowing the authority to come to an agreement with that person for their own self-management of their care on a periodic basis, whether that be six-monthly or annually or indeed, in the case of some injuries, over a longer period of time.

Where the family wish to be the carer, which may well be the case in relation to children, the scheme works on the assumption that the person is entitled to have all of their care needs met through the provision of professional care services and the disability organisations have strongly urged a presumption in favour of that so that it does not change the family dynamics, it does not change the dynamics from a family relationship to a carer and client relationship, but recognising that there will be circumstances where the family member is best placed and it is in the interests of the injured person for the family member to be the carer, the proposal is that the family member will be engaged as a paid carer, so it will not be gratuitously provided, and that they would have all of the protections of employment and that they would be trained to undertake the specialist care that needs to be provided. It is trying to move away from any reliance at all upon gratuitous family care so that, if it is required, it should be paid for.

The Hon. RICK COLLESS: Mr Grellman, is it correct that your guarantee of service states:

> If you write to us by letter or email we will respond within 10 working days of receiving your letter/email. If we cannot fully answer your inquiry in that time we will give you an interim response.

Mr GRELLMAN: Yes, I believe it does.

The Hon. RICK COLLESS: In submission number 16 it says:

> In my case, 10 days turned into nine and a half months.

CHAIR: Submission number 16 is the one that we just handed to you.

The Hon. RICK COLLESS: The section that I read is on the first page of submission number 16, about halfway down the page. Is there some sort of monitoring system in place to catch those who fall through the net, if I can use that expression?

Mr GRELLMAN: It might be better if I defer to Mr Bowen, but we certainly monitor our service standards very carefully and the board, and indeed the council, gets data on how we are performing against our stated service standards, but Mr Bowen may wish to elaborate.

Mr BOWEN: From just a very quick examination of this matter, it relates to an application for medical assessment and I think what is probably preferable is that I take the question on notice and provide you a reply when we have access to our file on what was said at what point of time and, if there was - as there may well have been - a delay in undertaking a medical assessment, what the reasons for that were.

CHAIR: I might point out that it is outside the terms of reference of the Committee for us to ask about specific cases, so the questions are about process.

Mr BOWEN: I will answer then in terms of providing a description of the process when dealing with medical assessment applications and what are the expected timeframes and how often we do and do not meet those timeframes. Would that be acceptable?

The Hon. RICK COLLESS: That is fine. I am just wondering if we might also ask Mr Bowen to comment on the series of questions that that same submission asks on page 2, again from the process perspective rather than individual case perspective?

Mr BOWEN: Yes, I would be happy to give you a comprehensive answer on this on notice.

CHAIR: Going back to the insurer profits issue, I do thank you for the presentation, it did make it a lot clearer to the Committee and I know that for many years we have pushed and hassled for such information. It is very useful to us. The Committee is interested in the impact of insurer capitalisation levels on the profit margin on a CTP premium required to support an adequate return on capital. Is it the case that as capitalisation levels fall a smaller profit margin expressed as a percentage of premium is required to support an adequate return on capital expressed as a percentage of the capital investment?

Mr BOWEN: It is certainly the case that the less capital the insurers need to hold against their business then the lower the return that they need and in CTP the lower the level of profit expressed as a percentage of gross premium can be.

We have for some years - and this is referred to in our written answers - been having discussions with APRA, the Australian Prudential and Regulatory Authority, over the level of capital required to support the CTP business. It is treated by APRA as a long-tail class and it certainly is a long-tail class of business and clearly it therefore has much more intensive capital needs than the short-tail class of business in which the premium comes in and claims are received and paid out within a very short period of time. But APRA has not agreed to our submission that the regulated nature of this product distinguishes it from other long-tail classes of business and should allow for a lower minimum capital requirement. I should point out that in any event APRA does not really regulate on a line of business basis. It sets a global minimum of capital for a particular general insurance company and it really is only to the extent that CTP is a contributing factor in that that we are having our discussion with them, but we have been unsuccessful in convincing them of that particular point of view.

CHAIR: And so does this lead to the statement in your report that the Taylor Fry methodology overstates the level of capital required by the New South Wales CTP scheme? Is that the same issue? Does the Taylor Fry methodology overstate the level of capital required, do you think?

Mr BOWEN: No, I do not.

The Hon. RICK COLLESS: Mr Bowen, given the long tail nature of the business that you just talked about, when do you actually declare a profit?

Mr BOWEN: We do not declare a profit, the insurers declare profits. They release capital that they hold as against the liabilities and the prudential margin on those liabilities as they pay the claims. In our response to the written questions this year we have included information on releases of capital by the insurers under the new scheme, so this is the first year we have provided that so that is, if you like, the actual profit they have taken to date out of the scheme, but the insurance companies do not also release capital as against a line of business. They declare a profit on their whole business. It may be that if they have made losses in other areas it is not ever apparent that there has been a release of capital and a profit taken on a particular line of business.

The Hon. DAVID CLARKE: Mr Grellman, in your opening comments you said that at the moment you do not have a council, is that correct?

Mr GRELLMAN: Yes.

The Hon. DAVID CLARKE: You were referring to the Motor Accidents Council?

Mr GRELLMAN: I was.

The Hon. DAVID CLARKE: How long has than been the situation?

Mr GRELLMAN: The previous council's term expired in October 2005.

The Hon. DAVID CLARKE: October 2005.

Mr GRELLMAN: Late October 2005 and the Minister is obviously the officer responsible to choose and appoint a new council.

The Hon. DAVID CLARKE: Since October last year to the present time we have not had a council at all?

Mr GRELLMAN: Correct.

The Hon. DAVID CLARKE: Has that situation arisen before when there has been a long period of time without an operating council?

Mr GRELLMAN: There has not. The board did not suffer any interregnum. There was a short one but they have been reappointed, so the board has continued to meet, but not the council.

The Hon. DAVID CLARKE: In the past what has been the longest delay between a council finishing and a new council being appointed, from your recollection?

Mr GRELLMAN: I would be guessing, to be honest. I think it would be probably no more than a couple of months, maybe shorter than that. Bear in mind that they are three-year terms so this is the third time, or the second time, so it is a relatively young scheme.

The Hon. DAVID CLARKE: Do you have any comments to make about the fact that for this number of months we have not had a council at all?

Mr GRELLMAN: Not really.

The Hon. DAVID CLARKE: Keeping in mind we know when the term of a council is going to come to an end, so it is not something that just happens without any notice.

Mr GRELLMAN: It has not frustrated any of the machinery of the authority because the council, as has been explained before, is really a forum for stakeholders and service providers to be kept abreast of developments in the scheme and there are a number of key personalities representing service providers with whom we have met informally over the time, so there has been informal dialogue with members of the legal profession, with some underwriters and indeed some medical practitioners. One of, not the only, but one of the benefits of having a council is that it provides a mechanism for information, current factual information, on the scheme to be fed back to the various service providers, so we have certainly attempted to keep the lines of communication open, albeit informally.

The Hon. DAVID CLARKE: So the council has an important part to play in the overall scheme of things?

Mr GRELLMAN: It is an important part of the machinery.

The Hon. DAVID CLARKE: It is the Minister who appoints the members of the council?

Mr GRELLMAN: I understand he makes the recommendation and Cabinet makes the final decision.

The Hon. DAVID CLARKE: The MAA is empowered under section 27 of the Act to reject CTP premiums which are excessive. Has the MAA ever had cause to reject a premium on that basis?

Mr GRELLMAN: I will ask Mr Bowen to respond to that, but I would like to come back to the earlier issue if I may, Chair. One of the problems that I know that the Minister had in making his final determination on the constitution of the council is that he requested various representative organisations to nominate who they thought might be appropriate to become council members, and I think I am right in saying that there were some delays in getting information back from representative bodies, so some of the representative bodies themselves held the process up and I think I am right in saying that there was a couple of months when we were pushing one of them and I think the Minister's attitude was that he wanted to go to Cabinet with one recommendation and it was a lot of pushing and prodding to get that organisation to give us that information.

The Hon. DAVID CLARKE: That would involve when the requests went out in the first place to those organisations to submit a representative for the council, would it not?

Mr GRELLMAN: Yes, but the requests went out before the expiration of the now expired term.

The Hon. DAVID CLARKE: How far before the expiration?

Mr GRELLMAN: I cannot remember, I am afraid. We can take that on notice.

The Hon. DAVID CLARKE: Before the expiration; it could be one or two weeks?

Mr GRELLMAN: I think it might have been a month or two, possibly. I am very happy to ascertain that accurately.

The Hon. DAVID CLARKE: You will take that on notice and come back to us?

Mr GRELLMAN: Yes.

The Hon. DAVID CLARKE: Do you have some comments on the question of rejecting excessive premiums?

Ms RIZZO: This was included in the questions on notice and we have responded to it, but I can refer to that response. We have in fact used that power on four occasions under the Motor Accidents Compensation Act.

The Hon. DAVID CLARKE: What were those four occasions?

Ms RIZZO: On each occasion the premium was rejected as it was considered excessive.

The Hon. DAVID CLARKE: Which insurance companies did that involve?

Ms RIZZO: I would have to take that on notice.

The Hon. DAVID CLARKE: You will take that on notice and you will come back to us on that?

CHAIR: I do not know that that is in our terms of reference relating to individual corporations.

The Hon. DAVID CLARKE: I do not know that it is not within our terms.

CHAIR: I am sure it is not.

The Hon. DAVID CLARKE: Could you advise us to what extent you considered the premiums excessive on those four occasions?

Ms RIZZO: Not today.

The Hon. DAVID CLARKE: Could you take that on notice?

Ms RIZZO: Yes.

Mr BOWEN: If I could add to that, the process of receipt of premium involves some internal review by the MAA. It invariably involves some questions back to the insurers and perhaps in those questions an indication of areas of concern which often lead to the amendment of filings, so in addition to rejection there is a process that would lead to, on occasions, amendments of filings before it got to a rejection stage, if you like.

CHAIR: The question in relation to which insurers is certainly outside our terms of reference. Maybe the question could actually detail the process utilised to make the decision that the issue was excessive, so that we understand about the negotiation process. We will change it to that.

The Hon. DAVID CLARKE: You will be able to advise us of the extent to which those applications were excessive?

CHAIR: Yes, but the question on individual insurers is not a question that will be followed up.

Mr BOWEN: I am sure Ms Rizzo will correct me if I am wrong on this but my recollection, certainly of the most recent one that was rejected, was because the filing included a proposed profit margin of 10 percent. It was rejected on that ground. Is that the sort of detail you are looking for, the grounds for the rejection?

The Hon. DAVID CLARKE: Instead of your four and a half to six percent range.

Mr BOWEN: The tail range.

The Hon. DAVID CLARKE: It was actually seeking a premium double the level that you think acceptable.

Mr BOWEN: That tail price, say, was adequate, whereas I have mentioned we think that six percent is reasonable.

The Hon. DAVID CLARKE: That is the basis you use to determine accuracy?

Mr BOWEN: The basis we use to determine the level that represents an adequate premium, and there is clearly a margin above that which is reasonable but not excessive, and we regard at this stage anything 10 and above is excessive.

The Hon. DAVID CLARKE: Have there ever been any applications made that are in

excess of 10 percent?

Mr BOWEN: There was one that rejected in excess of 10 percent.

Ms RIZZO: Just the one that Mr Bowen has referred to. There might have been one or two that have been above 10 percent, which we would have rejected.

The Hon. DAVID CLARKE: That is included in those four that you have rejected?

Ms RIZZO: I would have to check on the years but yes, I would say that both of those are included in those four.

The Hon. DAVID CLARKE: We will have that information when you reply?

Ms RIZZO: Yes.

The Hon. GREG DONNELLY: I gather the council has a secretariat or a function which supports it?

Mr GRELLMAN: Yes, it does.

The Hon. GREG DONNELLY: That secretariat or administrative support has been in continuous operation since the expiration of the immediate past council members?

Mr GRELLMAN: The secretariat function is performed either by Mr Bowen's secretary or some other employees of the authority who have a broad range of responsibilities, so given that the council meetings often run until 6 p.m. or 7 p.m. whoever is the secretary of the day is the person that has to sit back and take the minutes.

The Hon. GREG DONNELLY: That function still is there even though, strictly speaking, the board members have obviously not met?

Mr GRELLMAN: Correct.

Mr BOWEN: If I could add, we make it a practice each year obviously to present our annual report, and particularly the report on the operation of the scheme, which is the basis of this Committee's hearing. We report that to the Motor Accidents Council. In the absence of a formally constituted council, we nevertheless invited all of the prior members of the council and most of them attended a meeting in early December to present a scheme report and to get feedback and, as Mr Grellman indicated, we have kept the formal lines of communication open with all of the representative groups since then.

The Hon. GREG DONNELLY: You would have a reasonable expectation that in the immediate future a decision will be made in regard to the board?

Mr BOWEN: To the council, yes.

The Hon. GREG DONNELLY: Yes, to the council.

CHAIR: I think you have touched on my next question in some ways but this is about instances that the MAA has stated it will consider intervening in the CTP market. What criteria would the MAA apply when deciding whether or not to intervene in the market and what goals would the MAA hope to achieve by such intervention?

Mr BOWEN: I think that may be a question relating to the premium filing process that is

properly in response to the statement made by the chairman and myself last year, that we were satisfied with the level of competition and the filing process, but that if we thought that the position in relation to profit was not rectifying itself through the market we would intervene and that would be formally through the rejection of premiums and informally through the discussion with the CTP insurers. I expect that the process information on that will be part of our response to Mr Clarke's question about the circumstances in which we have rejected a premium.

CHAIR: So the range of options that you have available to intervene in the market relates to the premiums?

Mr BOWEN: Yes, and to the risk rating factors used by insurers. We cannot intervene in a positive way to require them to use particular rating factors, but we would intervene if we thought a rating factor they used was not objectively based or if it contravened the premium determination guidelines, the key one of which is that there cannot be ratings on geographic areas beneath the zone rating system and of course there cannot be discriminatory grounds of rating, particularly there is a prohibition on rating on race.

CHAIR: Can I go back to the question about premiums? How do you monitor them? Do they have to send them to you if they want to set a price or do you have to do informal monitoring?

Mr BOWEN: No, it is a formal process where they lodge with us a premium filing and it is quite a detailed document. We could give you an indicative one if you wish, which would have all of the actuarial evidence behind it to satisfy both the statutory provisions and the provisions of the premium determination guidelines. What they file for is a base premium from which they determine a price for metropolitan class 1, class 1 being sedans and normal vehicles. To set individual prices they then apply a table of relativities based on the different classes of vehicles and different zones, so, to give you an example, the relativity for a taxi compared to class 1 is around nine times. That pretty much correlates to the amount of extra time that taxis spend on roads and, for example, buses and trucks have different relativities. Then there are five geographic zones: Metropolitan, outer metropolitan, central coast and Newcastle, Wollongong, and everything else is country. To give you an example, on class 1 the country relativity is around 80 percent of that in the metropolitan area. For each insurer, that then sets a base rate for class and zone to which they apply their own individual risk rating factors. Those may be the age of the driver, the age of the vehicle, the type of vehicle, the gender of driver. We have had a new risk rating factor this year on the basis of safe driver record, on demerit points and, whilst it is not directly a risk rating factor, the existence of a holding by the policy holder of comprehensive or third party property insurance on the vehicle, but each of them have individual ways in which they do that. We do not have any statutory power in relation to those other than to reject it if it was discriminatory or outside the bounds, so we have no regulatory power in relation to the price that they charge an individual customer as long as it is within those broad parameters.

CHAIR: I am going to move back to the issue in relation to lifetime care and support. You will be administering this program?

Mr BOWEN: No, the legislation sets up a separate authority to administer.

CHAIR: The next question relates to CTP premiums costings. I do not know if we can ask directly the process for setting that cost. Do you have anything to do with that?

Mr BOWEN: Yes, at the moment we are doing the work for it. Do you mean setting the levy for the lifetime care?

CHAIR: Yes.

Mr BOWEN: The process is that there is a liability valuation, which estimates the lifetime cost on the assumed number of entrants to the scheme in the next year and taking or applying to that an assumption in relation to investment returns and assumptions about cash flow payments you set an

aggregate amount that is required to be collected, which in year one of the new scheme will be in the order of $300 million. That is then applied to individual policy holders by way of something akin to a relativities table, so there will be a different percentage of the CTP policy for different classes and geographic zones, a vehicle that tries to reflect the risk or the cost of a person injured by one of those types of vehicles. So, for instance, motorcycle riders will be extremely disproportionately represented in the lifetime care scheme compared to the number of vehicles on the road, so the impact on motorcycle riders will be much higher. Applying that across the board in the existing CTP scheme indicates that the average levy will be in the order of $66 per vehicle and that translates to about, on average, a $20 net increase in the amount paid by the motorist, but that will vary so that people who are on better risk, over 55s and indeed 30 to 50 year olds, will pay a little bit less; those who are at a much higher risk and more likely to be participants or the cause of participants in the lifetime care scheme will pay more, up around the $33-34 mark.

The Hon. RICK COLLESS: That is on top of the CTP?

Mr BOWEN: Yes, that is an average increase. Over the whole scheme the average net increase is $20.

The Hon. GREG DONNELLY: Could I please go to the presentation that you kindly took us through and go to page 3 on premium filing?

Mr BOWEN: Is that the table?

The Hon. GREG DONNELLY: Yes. Do you have that?

Mr BOWEN: Yes.

The Hon. GREG DONNELLY: In regard to that table and the way it sets out percentages and dollar figures, do the insurers have a view about this? Do they agree in principle with the way in which it is divided under these various headings?

Mr BOWEN: Yes, this compresses a number of different components into what is hopefully a reasonably simple and easy to follow table. The actual premium filing breaks that up quite a bit more and requires, for example, that list of information that I put up to be proved or the basis of the calculation of the different components to be demonstrated to the Motor Accidents Authority's satisfaction, so the various elements that go to making up the risk premium, such as frequency, average claim costs, superimposed inflation, the insurers will put in an actuarial report that shows their specific assumptions on each of those and the basis upon which they have arrived at those assumptions.

The Hon. GREG DONNELLY: Could I ask some specific questions about some of the items: Under the heading "Risk Premium - Legal & Investigation costs", so I can get some perspective on this, are we seeing that item increasing, decreasing or remaining the same over time?

Ms RIZZO: Under the 1999 legislation it has generally remained fairly stable, but there has probably been a very slight increase in the amount of legal and investigation costs. Just from last year, from memory, there has been an increase from, say, 10 percent to 11 percent, so the change is fairly minimal but there is a slight increase.

The Hon. GREG DONNELLY: So that is within the bounds of CPI?

Ms RIZZO: Yes, definitely.

The Hon. GREG DONNELLY: Regarding the next item, acquisition costs, just for my own information, could someone please explain what that means?

Ms RIZZO: Before I explain it, I should say that we have put the wrong headings there. The 5 percent relates to claims handling expenses and the 15.3 percent relates to acquisition expenses,

so they are the wrong way around. With acquisition expenses, that relates to all of the costs that the insurer has to spend their money on in terms of selling the policy, manning their call centres, their branches, setting up systems and doing all of those infrastructure services that sit around the green slip, selling the green slip itself.

The Hon. GREG DONNELLY: But not caught within the category of legal and investigation costs?

Ms RIZZO: I should just explain that. Legal and investigation costs are what the insurer pays once a claim is made to its own legal representatives and also to the legal representatives of the claimant and it refers to the investigation expenses that the insurer undertakes in investigating a claim, whereas the acquisition expenses are to do with the selling of the green slip, so it is at a different stage in the process.

The Hon. GREG DONNELLY: I would imagine there would not be a need to have large advertising costs associated with the selling of green slips?

Ms RIZZO: Well, over the last year or 18 months there actually has been a lot of green slip advertising. I do not know if you would have seen some of the AAMI ads - they are bright red - that have been on your TV screen, but there has actually been a lot of AAMI advertising. IAG has also been advertising in relation to CTP. So there is advertising from time to time on that large scale and insurers also advertise on a micro-scale in some specific locations where they are trying to market their product, for example, QBE has recently introduced a rating factor, which is demerit points, and they have introduced that as a pilot program in Wollongong and in some parts of metro Sydney as well, but they have actually conducted a full-on advertising campaign in Wollongong to launch that product, so yes, there is advertising for their particular market segment.

The Hon. GREG DONNELLY: But that is a commercial decision by those individual enterprises, is it not, to market their product in a competitive environment?

Mr BOWEN: Yes, it is. Perhaps the best way I can explain this is to indicate that about three years ago we looked at the acquisition costs on CTP compared to companies' overall acquisition costs as disclosed in their returns to APRA and were satisfied that the level of APRA's acquisition costs in relation to CTP were consistent with overall industry practice and the amount that is recorded for other products. The nature of the costs will vary depending upon how the insurer writes their business, so for example for the NRMA and the GIO, which tend to have shopfronts, it will be meeting a component of the shopfront costs. For others who write primarily through brokers it will be their brokers' and agents' commission and fees. It also includes in acquisition costs the levy payable to the Motor Accidents Authority, which is around 2.5 percent of premium, and a fee payable to the RTA for the RTA's processing of the green slips in conjunction with certificates of registration, so we are satisfied that the acquisition costs are an accurate reflection of actual costs. It has tended to be increasing as a percentage by a small amount but that is because green slip prices have been falling and acquisition costs are fairly much a fixed cost per policy in the circumstances where the total amount is falling the acquisition costs are, as a percentage, creeping up a little bit but the actual amount is reasonable and not increasing.

The Hon. GREG DONNELLY: In relation to the claims sampling expenses, which we now see as five percent in terms of that percentage, has that been increasing, decreasing, or has been stable over time?

Ms RIZZO: That has been very stable over time.

Mr BOWEN: That is also extremely comparable to every other scheme you could look at. About five percent of claims handling seems to be reasonable.

The Hon. GREG DONNELLY: Returning to the issue of profit, I think it was

Mr Grellman who at one stage said about profitability there has been dialogue going on for a period of about four years with insurers lining up with their particular point of view on the profits, and there is the alternate view based on the methodology that we have been taken through this morning. Can you see whether there is a movement towards some consensus on this at all, or is it going to be essentially a moot point which we will have to live with over time?

Mr BOWEN: I do not believe we are moving towards a consensus on it and I would expect that the difference between what the MAA is allowing as profit and what the insurers say they require to meet market expectations will at some point need to be tested and the mechanism for testing it under the legislation is that if the MAA rejects a filing and the insurer is unhappy with that rejection, the matter can be referred to IPART for determination. I suspect at some point that will occur, but it has not occurred yet.

The Hon. GREG DONNELLY: Have there been instances where it has nearly occurred?

Mr BOWEN: On each occasion where we have rejected a premium, because the profit was excessive, the filing has been amended.

The Hon. RICK COLLESS: At whose instigation? Did you tell them they had to adjust it, or did they see the error of their ways?

Mr BOWEN: We told them if they persisted with a level of profit we regarded as excessive we would formally reject it. It is quite a complicated process. If it is formally rejected there has to be an attempt to reach agreement through arbitration and there is the appoint of an authorised person by IPART to investigate.

Mr GRELLMAN: I would have to say that the likelihood of this dispute ending up in IPART would be, in my view, remote because once you end up in that forum there is a high level of risk that someone is going to get the wrong answer, so I think pragmatism is likely to continue to be a factor in this discussion, and Mr Bowen has alluded to this earlier, but the four rejections - there would have been many more informal discussions over a cup of tea, if you like, that would have seen a refiling and that is consistent with the relationship that the MAA attempts to maintain with the underwriters.

It is a very open relationship. At the moment we are agreeing to disagree on this but at the end of the day if they wish to keep writing this business they have to do it under our regime and reflect our view of the situation, and at the moment I think their profitability is such that they are happy to keep writing, so the dialogue continues.

The Hon. DAVID CLARKE: Mr Grellman, has there been a comparison of our MAA scheme with that in the other States with regard to premium levels, level of benefits and profit margins?

Mr GRELLMAN: Yes, Mr Clarke, there have been quite a number of comparisons, but the comparisons are not comfortable comparisons because you certainly get a great variety in terms of the benefits that flow under the various schemes. It can be as fundamental as some are default based and others are no fault and the differences are quite profound and that will drive differences in premiums, but there has been quite a number of studies and indeed there is an annual get together of the various CTP managers from around Australia and that occurs on an annual basis. Mr Bowen attends those meetings and there is a fair bit of dialogue.

The Hon. DAVID CLARKE: If we take the fault-based schemes, what do they show with regard to the level of benefits paid? Is there any trend there in comparison with the other states that have fault-based schemes?

Mr BOWEN: In the questions on notice we have provided information on the premium levels for each state. There is a data set of information comparing benefit levels between different states that is updated through the heads of CTP committee which I am happy to obtain and provide to you.

The Hon. DAVID CLARKE: What information do you have on the level of benefits paid to those under the scheme in New South Wales and other states that have a fault-based scheme?

Mr BOWEN: The most comparable jurisdiction to New South Wales is Queensland which has a privately underwritten fault-based scheme. They have benefit restrictions somewhat akin to New South Wales. They have limitations on non-economic loss through a tariff-based system rather than an impairment threshold. They have very significant restrictions on legal costs which lead to fairly big reductions in claims and claims costs and they have caps on future economic loss for earning capacity.

There may be others and we can provide that by taking the question on notice to give you a fulsome answer. The ACT has a privately underwritten fault-based scheme. They have very few restrictions. It is essentially a common law scheme and I suppose the level of premium there reflects that. It is privately underwritten but it is, in effect, a monopoly insurer. It is not mandated but there is only one insurer participating in that scheme. South Australia and Western Australia also have fault based schemes but I would have to take the question on notice to give you an indication of benefit levels.

The Hon. DAVID CLARKE: Can you take that question on notice?

Mr BOWEN: Certainly.

CHAIR: Thank you very much for sending us copies of the guidelines when they were produced. The Committee received them. Can you tell me how the implementation of those new guidelines is going?

Mr BOWEN: We have a few new guidelines.

CHAIR: That was the guidelines for the assessment of the permanent impairment.

Mr BOWEN: We may not be able to tell you how it is going. I am not sure I would be in a position to answer that. We would need to probably take that on notice. I am sure that there are ongoing discussions with the medical assessors who apply those guidelines and if there is any feedback we can pass that on to the Committee, or specifically seek it, but I do not have an answer to that question.

CHAIR: The consultative process for the production of them?

Ms HAYES: The guidelines have recently been reviewed. The consultative process is usually the stakeholders involved in that would come together as a group to review what is there. Generally it would be a consensus approach to the recommendations based on the best available evidence at the time.

CHAIR: There has been some debate in this place in other fora about the functions of MAAS and whether or not it should be referred to a generalist regulatory tribunal, its process, or perhaps integrate the disputes process with the WorkCover processes. Do you people have any ideas on this as far as process and implementation?

Mr BOWEN: There was a recommendation of the General Purpose Standing Committee to introduce a personal injury tribunal and the MAA is contributing to a whole of Government response

to that and I do not really want to say anything in advance of that response. We have provided, in response to some particular questions from the Committee, information on the operation of MAAS, the level of appeals and the timeliness of the determination, which I think indicate that despite the criticisms it is in fact functioning very well. There have been extremely few matters taken from MAAS through to challenge in court and all of those have resolved and the timeframe for the determination of medical assessments is now dropping. We hope to keep that trend up through some packages of reform, both process and administrative reforms.

CHAIR: The questions Mr Colless has put on notice are related to that.

Mr BOWEN: We will put some detailed information into that.

CHAIR: There is some debate around this place and including in that Standing Committee relating to objections to the AMA guidelines being utilised which are the basis for the new guidelines. What do you think of this criticism of the AMA guidelines?

Mr BOWEN: The proposition that was put to the General Purpose Committee was, as I understand it, to abolish the impairment guidelines and have what is perceived as a consistent test for access to non-economic loss based on the civil liability provisions, which is a subjective test as to whether or not a person is 15 percent of the worst case. It is a little bit more complex than that, but that is the indication. That in fact is the position that operated in the Motor Accidents Scheme. There was a verbal threshold which operated there up until the 1999 reforms. If it was put back you could expect that the $100 taken off the price of green slips would go back on to the price of green slips.

The Hon. RICK COLLESS: I think one of the concerns about the AMA guidelines was that there was a different version in use for motor accidents and WorkCover and that lead to a great deal of confusion about which was the right one and which was the wrong one.

Mr BOWEN: At the time that the Motor Accidents Compensation Act were passed AMA4 were the most up to date guidelines and similarity at the time the workers compensation amendments went through in 2002 there was an AMA version five out. We persisted with AMA4 because we had invested a huge amount in training medical assessors and in fact providing a course to broaden the practitioners' knowledge of their operation and the specific elements of them. I would think it would be desirable if both used a similar set of guidelines and moved towards that.

It is not necessarily the case that when an updated version comes out you should immediately adopt that, because you do not want to give away the investment in training of the assessors and the benefit you get from a consistent approach to an assessment, at least within the one scheme, and there are not that many significant differences between AMA4 and AMA5 in any event.

The Hon. RICK COLLESS: If you say there is not that many significant differences, why is there necessarily a big reinvestment in training to update to the next version?

Mr BOWEN: Well, it is a matter of balance between the extent to which it will or to which there are differences as against calling back and replacing all of the guidelines. Each version of this, which we are required to purchase, has a value of $180, and we have distributed some thousands of those and we have a guideline that sits over the top of it and we have our assessors who are comfortable using it and achieving consistent decisions, and I think the focus should be on the two schemes working together to create a consistent set of guidelines and we have talked about that and will hopefully be moving towards that.

The Hon. RICK COLLESS: So have you had discussions with WorkCover on that?

Mr BOWEN: Yes, we have had discussions with WorkCover on that and we participate in each other's guideline reviews.

If I could add to that, this is duplicated unfortunately right around Australia. The AMA guidelines are used in a variety of different compensation schemes around Australia, a variety of different versions. I think until recently CompCare were using AMA2 and Victorian WorkCover and TAC were using different versions of AMA. It is a problem that really warrants some development at a national level and we have certainly raised that for discussion with heads of CTP and with our colleagues through their heads of workers' compensation committee as well. I think ideally there would end up being an Australian set of guidelines instead of reliance upon the American ones which are then subject to another set of guidelines on how to interpret them.

CHAIR: I am going to move forward to the health outcomes work, which you have touched on, recognising that this is an incredibly difficult issue. Can you tell us what processes you are using to try to set some and if there has been any success in actually setting indicators relating to health outcomes?

Mr BOWEN: Yes. I will not refer to it in detail because we have included it in the answers to questions detail on the update of the outcomes studies associated with the whiplash and associated disorders guidelines. The bottom line for that is that on a controlled study comparing a cohort of claimants prior to the 1999 Act and then after the 1999 Act but prior to introduction of the guidelines and then after the introduction of the guidelines over those three cohorts there has been a significant improvement in health outcomes and a lower cost in relation to medical and treatment costs associated with the treatment of whiplash. What it suggests is that the earlier intervention that was required, the earlier treatment that was required as a result of the 1999 amendments and then the provision of clinical information to GPs and physiotherapists, has led to significant improvement in health outcomes, and I should mention that the health outcomes are measured on a World Health Organisation indices and it is a self-report, so it is how people are reporting they feel against a number of different domains, and that has come at a lower cost, which in health economic terms is fairly counter-intuitive. Normally an intervention in the health area comes at a cost and you measure the cost benefit on that basis. Here we have a health improvement and at a lower cost. Our guidelines relate to acute care and acute treatment for whiplash. We are now looking at adopting guidelines for chronic whiplash and we will subject those to the same level of evaluation and we are currently looking at an evaluation mechanism for guidelines we put out in relation to anxiety and post-traumatic stress to see whether we are getting any improvement there.

The more difficult question becomes how to measure health outcomes in other areas and particularly surgical intervention. We have had the benefit of a presentation from Ian Harrison, an orthopaedic surgeon at Liverpool Hospital who did an examination of health outcomes for people post-surgery looking at all the studies he could collect from around the world, which unfortunately duplicates what we know generally, that people who are in compensation schemes have worse health outcomes even in a post-surgical setting. I have written to the Society of Orthopaedic Surgeons and said that that is something that we would like to work with them to address to see whether the development with them of some clinical guidelines on treatment for some of the more common orthopaedic surgery associated with motor vehicle accidents would lend itself to improving health outcomes in that area, but I suspect - well, I don't suspect, I know - it will be many years before I will be in a position to report back on any success with that, but I think we are moving down the correct path if we are focusing on that area.

The Hon. DAVID CLARKE: Mr Grellman, the Motor Accidents Compensation Bill of 2006 will, if passed, increase the maximum allowance for commission payable to insurers' agents from 4 percent to 5 percent of premiums. Are you aware of that?

Mr GRELLMAN: Yes.

The Hon. DAVID CLARKE: Did your authority recommend that?

Mr BOWEN: Yes, we did. The position is that with the lifetime care scheme coming into operation - assuming the lifetime care scheme comes into operation - it will leave a lower residual CTP premium and the increase in the percentage amount of the commission will leave the same dollar

amount commission available to those insurers who sell through brokers and agents, but we anticipate that the total acquisition costs will remain the same, but it will remain with them to meet higher commission charges to still deliver the same dollar amount of commission to their agents.

The Hon. DAVID CLARKE: Did the authority receive representations from insurers or their agents that the 4 percent was inadequate?

Mr BOWEN: We received representations that the 4 percent would be inadequate post-lifetime care.

The Hon. DAVID CLARKE: What will be the likely effect on CTP premiums if there is this 25 percent increase?

Mr BOWEN: We would think that it will be an increase in the commission payable to particular agents, but that it will still be within the total acquisition costs that insurers have in the scheme, so in other words they may pay some additional commission to particular agents, but it will be absorbed within the total acquisition costs remaining at the same real dollar amount.

The Hon. DAVID CLARKE: So it will not impact at all on acquisition costs? The percentage of acquisition costs will remain--

Mr BOWEN: The percentage of acquisition costs will increase because the premium is decreasing significantly with the removal of the component of the risk premium associated with lifetime care and the associated reduction in profit and insurance costs, so as a percentage acquisition costs will increase; as a dollar amount we expect them to stay much the same other than inflation adjustments.

CHAIR: Something else that has come up from your report - and the Brain Injury Association talked about this as well - is a community participation program jointly managed by the Motor Accidents Authority and the Department of Ageing, Disability and Home Care targeting spinal injuries. Can you tell us how that is going?

Mr BOWEN: Again this was a question on notice and we have given a detailed answer on that.

CHAIR: The George Institution for International Health submitted that the Motor Accidents Authority should place a greater emphasis on road safety projects. In 2004-05 the MAA spent $4.409 million on road safety projects sponsorship. Can you let us know what your current efforts and emphasis are on road safety projects?

Ms HAYES: The current priorities at the authority are specifically young people, and children in particular. Other groups that we are interested in are pedestrians and motorcyclists and the reasons that we are interested in these particular groups are that they are the groups that are either high incidence or high cost to the CTP scheme. In relation to young people and children clearly it also means that there is a rather large burden both on families and the community where people have injuries for a long time, so they are the particular groups that we are focusing on at the moment. In relation to the sort of activity that we do, it must be understood that the MAA is not the lead road safety agency in New South Wales, that is the RTA, so in a sense we pick and choose the types of activities that we are involved in and we have a particular emphasis on education and behavioural type programs rather than, say, engineering law enforcement.

The Hon. GREG DONNELLY: Could you perhaps give us some overview of the education program with respect to young people that is currently being undertaken?

Ms HAYES: When we say young people, we are talking about 17 to 25 year olds, if I could qualify that.

The Hon. GREG DONNELLY: Yes.

Ms HAYES: There are probably two main streams of activity that we have in relation to young people. One of them is where we try to engage with young people directly so that we offer grants to groups of young people who, with the assistance of an organisation, will run local road safety activities in their own area. Typically the sorts of things that we would fund through that would be the production of films, music, videos, murals - very community-based entertainment that young people consider would work for them. We have done that for three years in a row and typically we have funded about 20 projects each year, so there are probably about 60 all up that we have funded so far.

It is hard to actually judge how successful they may be. We think that they are reasonably successful in actually engaging those young people who are involved in it, bearing in mind that working with young people is not an easy task and we are handing over in a sense the responsibility of doing it to them, so you have to sort of wear the vagaries of that I suppose.

The other large component of that program is our sponsorship based programs where the authority provides funding to a range of activities that young people are already involved in in an attempt to try to engage with them, so that we fund a range of sporting activities for men and women, in rugby league for men and soccer and netball with women, and the main focus of those programs is two-fold: Firstly, we would have naming rights, we would do advertising at those events in association with any activity they would do, and in addition to that we will sometimes use athletes and players to talk to young people directly about road safety issues.

The Hon. GREG DONNELLY: I understand the cohort 17 to 25, but obviously young people, particularly young males, at the age of 15 start thinking actively about their licence coming up in what is a relatively short period of time. Has there been any thought given to starting to frontload some education perhaps to young people as early as that about issues that they will need to deal with and think very carefully about and confront as they move towards that point of getting their licence and getting on to the road proper?

Ms HAYES: I think all road safety education is sort of age-targeted, so that you will find that if you are in kindergarten and in primary school you get information and education about bicycle safety, pedestrian safety, as you get older sort of targeted to whatever stage you are at in your life, so obviously school programs would focus on, as you get to that age, preparing to get your licence. There is a new licensing system in New South Wales now for young people so that young people are required to have a graduated licensing where they will only be allowed to go at a certain speed for a period of time. They are also required to get 50 hours of practice, and that is probably a significant change in the last few years, so that you can no longer have five lessons and go and get your licence. You have to have a logbook and show that you have got 50 hours on-road experience and we also recommend that is done in a range of conditions.

The Hon. GREG DONNELLY: Those school programs that you briefly mentioned, are they programs that the MAA is associated with or are you talking about something broader?

Ms HAYES: There are a lot of organisations involved in road safety. The Roads and Traffic Authority is obviously the lead agency in that area. Our particular themes have been in sport sponsorship, but we would clearly support the RTA in whatever programs they are involved in.

The Hon. RICHARD COLLESS: Following up on a question of training, I am also on the StaySafe Committee, which is the road safety committee of Parliament, and driver training is something that I am particularly interested in and, in particular, a skills-based training course rather than simply a licensing procedure and making sure you have done so many hours on the logbook. What is your view on skills-based training for young people?

Ms HAYES: That is a complicated issue. There are several schools of thought on what is the best way to approach the process. The graduated licensing system is seen to be a very good

approach because you are actually encouraging young people to practice in a range of circumstances. In relation to that you might be thinking of off-road training or those one day type of interventions. The road safety people would generally say that they do not support that type of intervention because when they have looked at the statistics it would appear that often the people who go through those training programs may end up over- confident and invariably end up in situations where they are involved in accidents, so that is that side of it.

I think there are other people who would believe that clearly the more skills you can give people then the better driver you are going to be, but it is how you deliver that which is the issue. There is quite a large research program going on at a national level, looking at whether if you do intervene in that way and give people some skills-based training, that will result in a better outcome. I think we are still a few years away from that.

The Hon. RICK COLLESS: It is my belief that one of the issues surrounding young people and their higher per capita number of accidents they have is it is not only they believe themselves to be bullet proof, which obviously they do, but also the fact they do not have the driving skills accumulated over 15 or 20 years of driving that most of us who have been on the road for a while have.

Ms HAYES: Clearly experience is a big factor.

The Hon. DAVID CLARKE: Mr Grellman, just getting back to the Motor Accidents Council, for what period are members appointed to that council?

Mr GRELLMAN: It is a three year appointment.

The Hon. DAVID CLARKE: Commencing from what month of the year?

Mr GRELLMAN: The current scheme came into existence in October 1999 and so the first three years concluded in October 2002, and then the one that we have talked about earlier concluded in October 2005.

The Hon. DAVID CLARKE: The beginning or the end of October?

Mr GRELLMAN: I have 5 October in my mind, but I cannot tell you why.

Mr BOWEN: The fifth was the day of commencement of the scheme, but I cannot tell you whether that was the date of appointment of council. There might have been a lag.

The Hon. DAVID CLARKE: You say it might have been 5 October?

Mr GRELLMAN: That was the date of the commencement of the scheme. We have to give you the date of the appointment of council. It may have been some period from that but within the month of the October.

The Hon. DAVID CLARKE: If it was from the end of October, I want to clarify that you are saying that the Motor Accidents Council has not operated for November, December, January, February, March, which is five months. Is that the situation?

Mr GRELLMAN: Yes.

The Hon. DAVID CLARKE: It is a very unusual situation, is not it? It is not very satisfactory, is it?

Mr GRELLMAN: There is only one Motor Accidents Authority Council. It is six years

old and for the last five months there has not been one, so I guess people have to reach their own conclusions.

The Hon. DAVID CLARKE: They might very well reach the conclusion that that is a very scandalous state of affairs that the Motor Accidents Council, which has very important powers, has not been functioning for a minimum of five months and possibly six months.

The Hon. GREG DONNELLY: I cannot take a point of order because the Chair is not here, but I think Mr Clarke said that it has very important powers. I am not quite sure what powers it actually does have.

Mr GRELLMAN: Not very many.

The Hon. GREG DONNELLY: It has functions perhaps, but not powers, so I think we need to get that quite clear.

The Hon. DAVID CLARKE: It has the power to advise, and clearly the Government considered that it was a body important enough to be established in the first place, and it has the function of advising the MAA and the Minister in regard to any matter relating to the Motor Accidents Scheme under the Act, so that is an important function, would you not agree, Mr Grellman?

Mr GRELLMAN: The concept of a council, there is no doubt it is integral to the running of scheme. The concept first emerged in the workers compensation arena and was picked up in the CTP arena. Although it is a representative body of stakeholders and service providers who are there to advise and be appraised of developments, and although it does not have any real decision making authority or powers, as such - those reside with the board or with the Minister - for the well running of the scheme to ensure that people who are interested in the scheme, particularly service providers and stakeholders are well aware of what is happening, what the trends are looking like et cetera, it is a very useful group to have meet on a fairly regular basis.

The Hon. DAVID CLARKE: Does the council, in your view, continue to be an effective forum for the discussion of issues pertaining to the Act, apart from the last six months where it has not been functioning at all.

Mr GRELLMAN: I am sorry, the question was?

The Hon. DAVID CLARKE: Do you see it as an effective forum for the discussion of issues?

Mr GRELLMAN: I think it is a very effective forum.

CHAIR: Five months.

The Hon. DAVID CLARKE: That is in dispute.

CHAIR: End of October.

The Hon. DAVID CLARKE: I think there was a question whether it was the beginning of October or the end. We are not certain.

The Hon. GREG DONNELLY: This is an as a matter of fact.

Mr BOWEN: We can find that out.

Mr GRELLMAN: We will certainly let you know that.

The Hon. DAVID CLARKE: We are talking of a period between five and six months?

Mr GRELLMAN: Yes. What the council enables all interested parties to do is provide a mechanism whereby they can have access to the facts and prior to having a council there was a lot of unfounded rumours and speculation as to what was taking place, and I have mentioned this before to this Committee, but I chair both the board and the council and the attitude of the board is that if information becomes available that might be of interest to the council, then it should be given to them at the earliest date, so it is not unusual for the council in fact to have access to data and information before the boards get access to it.

The Hon. DAVID CLARKE: Does the council generally come to a consensus view on these matters?

Mr GRELLMAN: No.

The Hon. DAVID CLARKE: It does not?

Mr GRELLMAN: For example, on issues where you might be talking about claims and benefits or insurer profit, you will have a natural tension that exists between members of the legal profession, members of the insurance community, and perhaps health practitioners, and so it is not a forum where certainly, as chair, I expect to have consensus on every issue. That is why on only the rarest of occasions anything, for example, is put to a vote because you can predict that voting might take place along fairly expected lines, so it is much more of a forum for discussion, for information conveyance, and for members of the council to bring issues of concern forward that may require work by the authority or consideration by the board.

CHAIR: In relation to this issue with the MAC, have you required specific consultation processes to be utilised since late October, seeing as this was really your consultative body?

Mr GRELLMAN: The first thing we did, which I think was quite important, was that the draft of the annual report was conveyed to the members of the council, even though they had ceased to exist. We invited them in for a briefing and they were given early access to all of them. Since then there have been informal meetings with members of the legal profession, the underwriting community, and medical practitioners on several occasions to let them know issues of interest. I know that certainly Mr Bowen more than myself has been involved in a number of discussions with each of those parties and so there has been very good informal dialogue, and one of the issues that I think needs to be said, to keep all of this in perspective, because of the nature of the claims profile here, it is not as if the shape of the world changes from one month to the next. It is a very gradual trend and development that we see unfolding and to think that you might not attend a meeting one month and find that the scheme has gone topsy turvy, that is not going to happen, because it is a very gradual, long tailed scheme and so matters take months and sometimes years to determine whether or not a trend has become a fact.

CHAIR: I do realise that this particular year we have extended the role of the Committee in the review of the MAA and I would like to know if you people have any comments on what we have done this time?

Mr BOWEN: I thought that the response from the Committee was excellent in generating a lot more submissions and a lot broader based submissions from interested parties on the scheme and if that can be maintained I think it is excellent to get perspectives from people who have been through it, from victims' associations, from medical professions, from road safety, and the rehabilitation community because otherwise unfortunately we run that risk of dealing with the commentary on the scheme as being a debate between the lawyers and the insurers and we miss the breadth of it, so I think it was excellent that we generated those submissions. It makes work for us but it is work that

we welcome. I have made that point before.

I think this is an excellent process in being able to put on to the record how we think the scheme is operating and then being interrogated on that record. I think that is quite appropriate and it is good transparency in relation to regulation, so to that extent I think it has been an excellent development.

I know you are having both the ICA and the Bar Association speaking today. If there was anything otherwise to add, where time permitted, I think in future hearings, say for example the views of some of the senior medical staff, who are some of our expect medical assessors, on how that is going may give you a better perception on that particular issue than perhaps listening to the parties who have had either good or bad outcomes before the assessors. The intent of that whole scheme, for example, is to have the decision making on expert medical issues made by the expert medical practitioner.

I am sure they have a view on it quite different from the two sides who may appear before them, for example, but I also know that the time of the Committee members may preclude broadening it that far, but there was a very good set of questions, I thought, that we were given this year and I thought the submissions were very broad. I am very glad you did not pass all of the questions on. I am sure we would not have been able to answer them all in the time.

CHAIR: I would very much like to thank you for your work. I hope in some way that the Committee's oversight role actually enhances your function, rather than the perception of impost on the function. We have a few more questions on notice, thank you.

Mr GRELLMAN: Thank you for the opportunity. There is no doubt at all that we would concur with your concluding comments. We think this does enhance rather than inhibit the work we are trying to do, so it is always a pleasure to come before the Committee and our open invitation remains for you to attend a council meeting if time permits. We will let you know the dates they are set once we have our new Committee in place and if you can come along you would be more than welcome.

(The witnesses withdrew)

DALLAS WAYNE BOOTH, Deputy Chief Executive, Insurance Council of Australia Limited, 56 Pitt Street, Sydney, sworn and examined:

CHAIR: If you should consider at any stage during your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee will consider your request; however, the Committee or the Legislative Council itself may subsequently publish the evidence if they decide it is in the public interest. Would you like to make an opening statement?

Mr BOOTH: Very briefly, thank you, Madam Chair, and on behalf of the ICA we appreciate the opportunity to appear before the Committee today as part of its annual review of the operations of the Motor Accidents Authority and the Motor Accidents Council.

As has been mentioned in evidence already today, the six insurance companies underwrite the financial risk of compulsory third party insurance in New South Wales. They collect the premiums, they pay the claims, they are responsible for the legal obligations that are imposed and for meeting the entitlements of compensable people who sustain injuries on the roads.

The ICA has put a submission to the Committee dated 23 January 2006 and I do not propose to go through all of that, but the key points that we wanted to make are set out in that submission. In terms of the operation of the Motor Accidents Authority, there is a range of detailed regulatory activities that the MAA undertakes both in terms of premiums, in terms of claims, injury management and rehabilitation and road safety and other functions. Many of those regulatory activities involve and directly impinge upon the insurers. In some of them, for example the road safety aspects, the insurers are not as involved, but the key points in terms of the operation of the industry we believe we have set out in our submission to the Committee.

There is one other point that I did want to make: The ICA is very conscious of the Trade Practices Act and the obligations that it imposes on organisations in trade and commerce in terms of price setting and collusive behaviour and other matters. For that reason the insurance council does not become involved in specific premium filings by insurance companies and any negotiations in relation to specific premium filings are negotiations that take place between the Motor Accidents Authority and the insurance company involved, so our role is not to become involved in relation to specific insurance company activity on a company by company basis, but I am certainly happy to answer questions and to outline the broader role of the industry and of insurers in relation to the scheme.

CHAIR: You understand that our role is to review the exercise by the authority and the council of their functions under the Act and we have not actually had the opportunity to hear oral evidence from insurance companies or the ICA as to their view as to how the MAA and the MAC operate. Would you like to comment in general terms on the exercise by the MAA and the MAC of their functions and can you identify any areas that you perceive need improving, please?

Mr BOOTH: First of all, I would like to echo the words of the chairman of the MAA in that there is a good working relationship between the Motor Accidents Authority as regulator and the insurance companies as the underwriters of risk and the financiers of the scheme. There is healthy debate and discussion on a broad range of issues. There is good dialogue between the Motor Accidents Authority and the industry. There are issues on which the Motor Accidents Authority and the industry from time to time do not agree. That is also healthy because, at the end of the day, we understand and respect the fact that the MAA is a statutory body commissioned by Parliament to undertake a regulatory role. The relationship, by and large, is good and we commend the general manager and his executive team for their preparedness to meet with insurers on a relatively regular basis in order to identify issues that may be affecting the operation of the scheme. There is also specific dialogue between the Motor Accidents Authority and individual insurance companies if the MAA has concerns about any particular activities that a particular insurance company might be doing.

We welcome and appreciate the relationship that we have between insurers and the Motor

Accidents Authority. We respect the role as the regulatory body. The aim of the insurers I believe is very similar to the overall aims of the Motor Accidents Authority, which is the effective operation of the legislation, fair compensation to people who have sustained injuries, particularly severe injuries, in motor vehicle crashes in New South Wales, a system that overall is efficient and fair across the board, that is competitive between the insurance companies so that the policy holders when buying green slips get the benefit of a competitive market and that overall there is an efficient and effective process for motor accident compensation in New South Wales.

The Hon. DAVID CLARKE: Mr Booth, does the Insurance Council of Australia have representation on the Motor Accidents Council?

Mr BOOTH: Representatives of two insurance companies were members of the Motor Accidents Council. ICA itself was not represented, but two insurance company executives were on the council effectively as representatives of the industry.

The Hon. DAVID CLARKE: Do you know whether they have appointed or been asked to appoint representatives for the term of the council commencing some time in October last year?

Mr BOOTH: The ICA was asked to nominate representatives at that for reappointment and the ICA did that.

The Hon. DAVID CLARKE: How long ago did you do that? How long ago did you advise the Minister?

Mr BOOTH: I believe it was in December, but it may well have been earlier than that.

The Hon. DAVID CLARKE: The Motor Accidents Authority has commissioned a review of profits, which indicates that realised profits will be well in excess of those contained in premium filings. In its submission your council says that the estimates are inherently unreliable and, in any event, the insurers have fully complied with their obligations under the Act. How many years must elapse after the close of an underwriting year before it is possible to produce a reliable estimate of the profit realised in respect of that underwriting year?

Mr BOOTH: In this business, for a reliable estimate of profit, you are looking at 10 years.

The Hon. DAVID CLARKE: Given the insurance council's view that estimating profit is inherently unreliable, do the estimates serve any useful purpose or is the whole exercise counter-productive?

Mr BOOTH: I would like to answer the question by making a brief comment on the overall assessment of profits. I would like to talk about prospective profit and I would like to talk about retrospective profit.

In relation to prospective profit, there is a very detailed regulatory process which has to occur and which has been mentioned already to the Committee today. Before an insurance company can charge a price they have to file their premiums or their proposed premiums with the Motor Accidents Authority. As well as indicating the proposed premiums, the Motor Accidents Authority requires a very detailed actuarial justification for all aspects and all components of that premium. The Motor Accidents Authority presented to the Committee this morning an outline of the core components of a premium and I think mention was made that a detailed actuarial report goes with that premium filing. I can assure the Committee that that is certainly the case and the average actuarial report would probably be well in excess of 100 pages, if not approaching 200 pages, of very thorough detailed analysis. Part of that analysis is what is the appropriate component in terms of the proportion of premium to be charged and at the moment I think the annual report indicates that the current on-average premium loading is 8.7 percent of premium as the proper component. That is constantly reviewed on a regular basis. It is clearly the subject of discussion between the Motor Accidents Authority and individual insurance companies and that is no doubt the subject of ongoing discussion between the Motor Accidents Authority and insurance companies as each company files its proposed

premiums on a regular basis. That is a process which is happening in accordance with the legislation and it is a process whereby the profit loading in premiums is constantly and regularly reviewed by the Motor Accidents Authority.

Once the premiums are set and the insurers then go to market with those premiums, they will sell a whole bunch of green slips and they will collect a premium pool covering the risks for the policies that they are writing. As I said, the insurers then basically bank the money because the claims will be paid over a period of time, they will be paid over a period in excess of 10 years, in some cases it might be 20 years whilst some of the claims are still being paid in respect of that particular period of time. Over that period of time the insurers will be constantly monitoring whether they have sufficient provisions - it is called "provisions" - for their outstanding claims, for the claims that have not yet been paid, and it is the obligation on the insurer to ensure at all times that they have more than sufficient provisions for their outstanding claims at all times. Insurers at the moment - I looked at a number this morning - are currently holding in excess of $9 billion worth of assets for claims that are in the process of being paid or still to be paid. So they hold these provisions and then over time, in answer to an earlier question, it will become apparent as to whether a particular premium that operated for a particular time was adequate or inadequate or otherwise. As I suggested earlier, to be confident of the outcome of that particular price, you would want 85 to 90 percent of all of your claims costs to have been paid; you would want to have reasonable confidence that you have a good handle on the outstanding claims still to be paid for that period and you can then work out with a degree of confidence whether the premium was originally adequate or otherwise. That is inherently the nature of long-tail insurance business and that is the inherent nature of personal injury in Australia. So at any particular point in time, insurers, MAA and other commentators will be wanting to assess whether the premiums for 2000, 2001, 2002 were adequate or otherwise or profitable or otherwise and insurers have to go through that process internally, but at the end of the day it is not until the great bulk of claims arising out of those periods have been finalised and paid that you will know whether the premium pool for that particular time was profitable or otherwise.

The Hon. RICK COLLESS: How do you declare your profit each year, given those inherent difficulties?

Mr BOOTH: Insurance companies have to go through and provide at their balance date each year - they go through their entire book of business and look at the premiums they have received in the last 12 months and look at the claims they have paid in the last 12 months across their book of business. The on thing they will do is say that is the premium income we have received, they are the claims we have paid and they will then say what about my outstanding claims across my whole book of business. For each portfolio the insurer has to go through a very detailed process of determining what the outstanding claims provision needs to be for each of the lines of business.

This is all done in accordance with actuarial standards and in accordance with accountings standards and in accordance with the prudential standards which are determined by the Australian Prudential Regulation Authority. If in particular lines of business an insurer is running short in terms of its outstanding claims provisions, they have to be topped up in order to meet the relevant standards and to make proper provisions. If they have more than sufficient provisions in a particular line of business, they can release the provisions and that essentially becomes available to go into the profit return for the year.

Each year, as well as looking at premium income, claims being paid, an insurance company also has to go through a full adjustment across its provisions for outstanding claims. By the time it has finished that process it will also take into account its cost of operating the business and it will also take into account its investment returns that it has earned on a various range of investments across the board. The detail end of that process will be the determination whether the insurer has done well or otherwise for that particular year.

In the context of long tail business such as CTP, it is one of the areas where each year the

insurer again looks at the premium coming in, it looks at the claims being made, it looks at the provisions for outstanding claims and the other parts of the operation of the business. At each balance date they determine their profits and their financial returns and the cycle commences against for the next financial year.

The Hon. DAVID CLARKE: Do insurers have their own estimates of realised profits for the concluded accident years under the new scheme? Are these estimates showing anything different from those commissioned by the MAA?

Mr BOOTH: Each insurer will have its own view how its portfolio is travelling. They must do that in terms of setting their own provision for outstanding claims for their broader capital management and financial management of the company. It is an area that happens in each company and is an area that ICA does not become involved in.

The Hon. GREG DONNELLY: We heard some evidence earlier today about the resolution of an issue that might be between the MAA and a particular insurer in terms of the way in which they might be addressing a particular matter in terms of the claims. Have you any comment to make about the way in which issues that might arise between the MAA and insurers are actually managed and dealt with?

Mr BOOTH: The insurers, in terms of claims handling, if that is essentially the nature of the question, are subject to statutory obligations. There is a number of provisions in the Act which impose obligations in relation to handling of claims. There are further claims handling guidelines and other expectations issued by the Motor Accidents Authority. That is backed up by a regular auditing program that the MAA has in terms of the management of claims and compliance with the guidelines and statutory provisions.

From time to time insurers are concerned about the excessive and zealous nature of the auditing program but primarily because the insurers feel that on one side of the claim the insurer response to the claim is thoroughly audited and monitored on a regular basis, but often those who are responsible for the assistance of the claimant are not necessarily audited and in fact may not be audited at all but there are really, in order for the claims process to work very efficiently, the making of the claim and the provision of information has to be happening as efficiently as the handling of the claim and the assessment of the damages and the payment of the claim.

From the insurer's point of view I think there is occasionally a feeling of excessive and zealous auditing of obligations without necessarily taking account of the total situation in terms of claims handling generally, but I think that is something where those things occur, again it is an opportunity where insurers are capable of raising those matters with the MAA. We have an honest and sometimes very frank dialogue and it is good that we can and we appreciate the opportunity to be able to do that.

The Hon. GREG DONNELLY: On the issue of the Taylor Fry methodology that the MAA have used in terms of coming to a view about profit levels being made, or profit margins being attained, would you like to present to us your view as an organisation, of that methodology and where you differ, as we understand, in your view about the accuracy or otherwise of that methodology?

Mr BOOTH: Taylor Fry undertook a very thorough and a very technical analysis of what might be regarded as an appropriate profit loading for a compulsory class of business such as CTP. Without wanting to be unfair to Dr Taylor and the work which was done, it was highly theoretical and highly technical. The nature of capital markets around the world does not give a clear answer to this question and that is both unregulated capital markets and regulated capital markets. There is no easy or clear methodology for coming to that view. There is a range of very highly technical and very highly complex methodologies for arriving at what might be a correct level of profit.

We expressed a number of reservations in relation to that methodology as being highly technical and highly theoretical, but not being sufficiently realistic in terms of the operation of the capital markets in Australia. We certainly put that view before to the MAA.

The alternative view that we prefer is that rather than a technical theoretical approach to capital, the alternative that we prefer is a market-based approach to capital and that is for insurers to operate in the CTP market they have to have capital backing provided by their shareholders. They cannot actually operate the business unless the shareholders provide the surplus capital which must be provided and which must operate behind the business.

In order for the companies to therefore provide that capital, they have to go to the capital markets and they have to say in order to write $1 billion worth of premium in New South Wales CTP - no insurer does - but in order to write $1 billion worth of premium I need $1 billion worth of capital. The capital markets might that is fine, we will give you the $1 billion, but what will be the return on that capital we provide to you? The insurer then has to go through the process of deciding am I going to be able to provide a return on the capital which the capital markets provide to me, in order for me to be able to participate in this business.

That is an analysis which goes on every day in insurance companies in terms of what is the correct level of capital that they need to put behind the business, what is the capacity to get a return on that capital, ensuring at all times that the insurer maintains its minimum capital obligations to APRA, the federal regulator, so from ICA's perspective it does not really matter whether the technical answer is somewhere between 4.5 and six, if the capital markets are not going to give you the capital to operate your business if that is the sort of profit return which will become available, from an insurer perspective it is no use entering into a debate about whether the number is correct, or not, they just cannot operate the business.

It is more of a market based approach whereby insurers can only operate across the various lines of the businesses that they operate in if they can provide a reasonable return on the capital that has to back up those businesses and the reasonable rate of return ultimately is set in the capital markets.

CHAIR: The MAA states in its annual report that insurers did not factor in 100 percent scheme effectiveness into their CTP premiums when the scheme was first introduced. The MAA has further stated that its review of profit shows that the profit level being achieved by the CTP insurance is well in excess of those predicted in the premium filings, primarily as a result of the CTP insurers being slow to pass on reductions in risk premiums. Could you comment on these statements and were insurers too slow to pass on to clients the risk premium to motorists?

Mr BOOTH: The history of the current legislation, since it took effect in October 1999, has been one where particularly for the first three or four years of the scheme primarily the claim numbers have been significantly different to what everybody expected. They are different to what the insurers expected. They are different to what the MAA expected. They are different to what everybody expected.

CHAIR: Excuse me, higher or lower?

Mr BOOTH: On this occasion they were lower. In previous years they have been higher, but on this particular occasion they were lower and they were lower in the first couple of years. They were lower to a reasonably surprising degree. So you say well for the first years as experience starts to emerge, that is interesting, we have a lower number of claims here. Nobody expected that. With all the work done prior to the development and passage of the Motor Accidents Compensation Act nobody, the actuaries, the insurers, the Government, nobody expected there would be this sort of a change.

You try to say well, we got it wrong the first time, what should we do the next time, because you do not know what is going to happen again, you just have to form a view and that is what the whole premium process is. Low and behold, second time around there was a further reduction in the number of claims and it was not meant to happen. It was not intended to be happening. No-one designed legislation to produce a lower number of claims, it just happened. What was originally a blip starts to become a trend, and then the third year the same thing happened again but nobody expected it to happen.

Clearly for the first three to four years of the scheme the numbers of claims coming in have been lower than expected. Our information, and is this is looking at the total industry or the total claims experience, our information is in the analysis that we have done, the monitoring done for us, has shown that claim frequency has now stabilised and it has been stabilized for the last two years or so, so there are no further reduction in claim numbers.

The point really is that when the new legislation is introduced, almost all legislation produces an outcome different to what people expect, particularly in the context of personal injury. There are phenomena known as spikes and honeymoons; there are all sorts of other phenomena that occur. It is very, very difficult to predict with real accuracy the true outcome of a legislative change, particularly of new legislation such as the 1999 legislation. The beauty of the process that exists under the legislation is that through the file and write premium review process, each time insurers want to charge a new price they have to justify their price and in the course of justifying their price they have to take account and justify to the Motor Accidents Authority that they are taking account of all known trends. To that degree I would very respectfully challenge one of the slides that was put before the Committee this morning where Mr Bowen said there was no adjustment to correct for profit or loss. If an insurer makes a loss in CTP they cannot go and load next year's premium to cover the loss, they cannot do that, but there is a process of constant adjustment taking account of all the trends that are known and are being observed all the time and the process of constant adjustment has been occurring and our submission is that, as the trends in claim numbers have been seen to be firm, the insurers have responded to that, they have adjusted their prices accordingly, they have adjusted their assumptions, the core components of what makes up a premium, and they have reduced their prices and have provided the benefit of that back to the community of New South Wales.

The Hon. RICK COLLESS: Following on from those comments and also your previous comments about return to shareholders and so on, when do you declare your dividends and when do you declare profits? Which comes first?

Mr BOOTH: The insurance companies at each of their annual balance dates prepare their financial accounts for the group, they determine their profits and then the boards of the companies determine their dividend policy.

The Hon. RICK COLLESS: So the dividend is paid after the profit is announced?

Mr BOOTH: Correct.

The Hon. RICK COLLESS: In your view, what do you think then on the capital that you require from the shareholders? What is an adequate return on that capital? Do you think probably it is best expressed as a percentage of the capital invested or also as a percentage of the premium that is involved?

Mr BOOTH: ICA does not have a view on that. It is really a matter for each company to determine what appropriate target return on capital it wishes to aim to deliver to its shareholders and that is an area where a market is operating, the insurers are competing for capital, they are all competing for the confidence of the market. We have four listed insurance companies in Australia and those four are active in New South Wales CTP. We have two other insurance companies who are listed in Europe. So all of the CTP insurers are listed insurance companies, they are all seeking the confidence of the capital markets in providing the backing of that. From time to time the companies and their boards are regularly forming views as to the sort of returns that they are seeking to offer to

their shareholders and the markets then form their views as to whether, firstly, those returns are in accordance with market expectations and, secondly, whether the companies are delivering the returns.

The Hon. RICK COLLESS: Typically, what sort of rates do we see?

Mr BOOTH: From memory, most of the companies at the moment have been aiming to achieve 15 percent return on equity.

CHAIR: We do have a few more questions and I am very sorry we have not come to them. Would you be comfortable to take those questions on notice?

Mr BOOTH: Very happy, Madam Chair, to the best extent that we can, very happy to.

CHAIR: It just helps us when we are doing our deliberative part of the process for the report if we have them all answered. I would very much like to thank you for coming. Perhaps if you come back next year we will allow a bit more time because you are very interesting. Did you have anything else you wished to say?

Mr BOOTH: We again echo the comments of the chairman of the Motor Accidents Authority: This is an important process. It is important that the Parliament and the people of New South Wales have confidence in the motor scheme. Insurers are raising premiums in excess of $1 billion a year for this scheme, so it is a significant burden that has to be carried by each and every motor vehicle owner in New South Wales. At the same time, those who sustain serious injuries also have a very significant burden, which then has to be cared for and properly responded to, so it is an important component of public policy in New South Wales. Insurers play a very important part of that and we are keen that the Committee has an opportunity to understand the role of insurers in the operation of the scheme.

(The witness withdrew)

PHILIP ALAN SELTH, Executive Director, New South Wales Bar Association, Selborne Chambers, 174 Phillip Street, Sydney, affirmed and examined, and

ROSS VICTOR LETHERBARROW, Co-Chair, Common Law Committee, New South Wales Bar Association, Selborne Chambers, 174 Phillip Street, Sydney, sworn and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr LETHERBARROW: Yes, I am.

Mr SELTH: Yes.

CHAIR: The Committee is required to enquire into the exercise by the Motor Accidents Authority and Motor Accident Council of their functions under the Act. Putting aside the issue of insurer profits for one moment, how effectively have the MAA and the MAC exercised their functions under the Act, in your mind, and do either of you see any room for improvement?

Mr LETHERBARROW: I was the Bar's representative on the MAC I think from 1999 to 2002. The MAC is largely a toothless tiger, it has no power to do anything other than to make recommendations. It is a good meeting group to find out what is going on, but it basically has no power and is a frustrating group in a lot of ways. The MAA has the power under the Act to make representations to the Government and the like and they work very hard, although my own view is that they are dragging the chain considerably on two issues, one being insurer profitability and the second being the fairness of the system primarily in relation to the 10 percent threshold, and I think there could be a lot more done by them in relation to both of those things.

CHAIR: Is this in assessing the 10 percent threshold or the method of assessment or the actual 10 percent?

Mr LETHERBARROW: Well, it is probably all of those things, but the Bar is of the view that the 10 percent threshold has been shown to be operating unfairly and a lot of people are knocked out of non-economic loss for capricious or odd reasons. There are many examples that come across my desk. I have practised in this area now since 1978 and I have been through all the various Acts ever since and this Act with this 10 percent I find continually surprising as to who breaks it and who does not break it. There are strange inconsistencies in these guidelines, which to me were designed purely to knock 90 percent of people out of getting non-economic loss. That was the design. Of all the people injured in motor vehicle accidents, this 10 percent was designed to preclude 90 percent of people getting non-economic loss damages and to do that it had to chop away at a lot of things and, frankly, the 10 percent is inconsistent; it is capricious. If you have a look at the MAA's own report this year, of the matters that go to review from MAA's assessors, 50 percent are reversed, and that has been the case for a number of years, by their own internal assessment process. Another 35 percent are altered in a significant way. So of all the matters that go to review, something like 84 percent are successful. Of court appeals, 20 percent are successful. To me there are so many things wrong with it, I could spend hours here giving you chapter and verse and example after example.

CHAIR: We actually have no role to investigate individual issues in cases.

Mr LETHERBARROW: I know.

CHAIR: But are you able to give us some examples without identifying them?

Mr LETHERBARROW: I can, and this is not meant to go against the Committee's terms of reference, but we have here two examples of what we say are the amazing consequences of this assessment process, which we are happy to table. We do not wish to identify the people and we do not want this material going public, so to speak. The people have given us permission to deal with it in the Committee, but we would prefer if it were not published. These are scarring examples where

people did not break the 10 percent for scarring and they are just horrendous examples of the unfairness of this scheme. You will see the first lady sustained very serious spinal injuries and the scars appear in the next few pages - her stomach, her back - they are just horrendous, and that is 9 percent under this system. The lady at the end had, when a car turned over, her ear torn off and she now has no ear and you will see the scarring there. She is 9 percent. My wife is also a barrister and, while she does mainly appellate stuff, she still does first instance trials. She had a matter the other week where a person was 10 percent psychiatric and 10 percent physical. Now you may or may not know that under these scales you cannot add the two together, but to get 10 percent physical you are pretty badly injured, but you do not get a result. To get 10 percent psychiatric, you are also pretty badly injured. You add those two together and you have a human being who cannot function, but you cannot add them together. Consequently, the people just do not receive a result and this, we say, is dreadfully unfair, and as I think two members of this Committee would know, those who sat on the General Purpose Standing Committee, there have been recommendations made by that Committee to bring this sort of assessment back under a Civil Liability Act idea, where the frivolous claims do not get a result but the seriously injured who miss out under this system get a result and it is a very affordable fix because, going back to the profitability, we say the cat is finally getting out of the bag here and after years of the lawyers saying that insurers are making a lot of money, it is now becoming apparent to everybody, including the Motor Accidents Authority which in the summary of its report sets out the fact that in the first four years of the scheme they are making more than they expected, they are making so much money now this cap could be abolished.

It was assessed to save $150 million a year. If it was abolished completely they would still make their 10 percent profit. They are making now on the MAA's own actuaries, profits in excess of 20 percent and it is too much and it is too unfair and that is our position.

The Hon. DAVID CLARKE: Mr Letherbarrow, it is true to say, is not it, that the real reason why premiums have fallen and profits have remained very healthy is simply because benefits to the injured parties have been cut?

Mr LETHERBARROW: That is a very correct statement. There is a number of other reasons. Claim numbers are reducing and have been and the figures are set out in the MAA's report.

The Hon. DAVID CLARKE: One reason for the numbers of claimants reducing is that there are cost penalties on some claimants to dissuade them from bringing court action; is that correct?

Mr LETHERBARROW: There are cost penalties. For a lot of claimants it is just not worth it any more. The lawyers in relation to the smaller claims, albeit the ones which frankly should get some non-economic loss, can charge so little money that no-one bothers to have a go. The cost penalties are such that insurers can bleed you dry in relation to a lot of matters. Just by putting up a fight the cost penalties are such that it just become uneconomic for people to actually make a claim.

I have sat through a lot of the evidence this morning and I have heard it all before. I have heard insurance companies saying for decades: Oh well, it is a very long tail. We do not know how long it will be before we know whether we have made a profit or not. The last witness said 10 years. Well, it just does not make sense. If the insurers did not know whether they were making a profit or not, why are they in the scheme? They are in the scheme because they know they are making one hell of a profit. And this "it will take us 10 years to know what is going on" the word premature keeps coming up in these sorts of submissions by insurers.

This premature baby of whether the insurer is making a profit or not will still be, according to them, premature when this scheme is long since dead. It is frankly ridiculous. That is the Bar Association's view anyway.

The Hon. DAVID CLARKE: The overall position would be this, is this a true summary,

we have lower premiums but escalating profits for insurance companies, because benefits to the injured parties have been slashed and many injured parties are dissuaded and discouraged from bringing legal actions in the courts for their injuries because of a bar and thresholds that have been put in there with regard to costs?

Mr LETHERBARROW: That does not touch upon all issues but it is correct in its substance.

The Hon. DAVID CLARKE: Is it true to say that there are many people out there in the community who have suffered injuries as a result of motor accidents and they are unable to get proper compensation?

Mr LETHERBARROW: They are unable. They cannot, if they make a claim, because they did not break the threshold. There are a lot of lawyers who used to provide these services who have literally gone out of business, and the lawyers still acting in the area have contracted a lot, so a lot of people were for a number of years literally turned away and those who turned up at shop fronts saying I have been injured were told that there is no more money in this any more, go away. It has got to a stage where something has to be done.

The Hon. DAVID CLARKE: That is probably the major reason why the number of claims have fallen, because benefits have been slashed and claimants have been discouraged from bringing action?

Mr LETHERBARROW: I have heard that road safety is one of the major reasons allegedly. That somewhat surprises me. I think that would be definitely a factor, but one of the larger factors, as you have put it, people are discouraged what is the point to make claims. Road safety does impact upon this but I think not as much as the scheme in itself. It basically discourages people from seeking compensation and people who are very badly injured.

The Hon. DAVID CLARKE: Has your association provided the Minister with the name of a person, a representative to sit on the Motor Accidents Council?

Mr LETHERBARROW: Yes.

Mr SELTH: We were asked by Mr Bowen on 1 September last year for nominations. We provided three names on 9 September last year.

The Hon. DAVID CLARKE: Have you had any response?

Mr SELTH: No formal response.

The Hon. GREG DONNELLY: A previous witness in describing the way in which an insurance company wrote its insurance was that it seemed to me a bit of a siloing of the business, in other words different aspects of the insurance business, and the CTP area was part of it. In each area there was an examination of how the insurance could be written and then obviously that was put again the ability of insurance companies to raise capital in the market to fund it. I have not seen the reports you have referred to from the MAA and the actuarial comments about it, but in terms of the actual way in which the insurance companies declare their profits publicly, can you inform the Committee whether or not there is any revelation into the profit made by the individual insurance companies with the respect to the CTP aspect of their business?

Mr LETHERBARROW: Directly, no. I know that they would have to file tax returns and they would have to indicate in the tax returns what profits they are making. I know the Bar Association has made submissions and my recollection is that those submissions extracted from the various insurance companies' own internal documents what their level of profits were, and perhaps we

can take that on notice and provide you with that material, such as we have been able to isolate.

The Hon. GREG DONNELLY: Clearly the corporations will be required to file tax returns but I am wondering whether in terms of public documents or even in the context of the tax returns there is a way in which through an exercise of discovery we can actually see what is the profitability with respect to this CTP aspect of their work.

Mr LETHERBARROW: I have been advised by someone who knows better than I do that apparently insurers aggregate their lines of business for profit reporting, so it may well be very difficult to isolate from their own documentation how much money they are making in this area.

The Hon. GREG DONNELLY: Can you imagine any way in which there could be a way of finding out how profitable this business is that they are writing, in a way which is different from just looking at the actuarial calculations, where obviously one set of calculations can be debated as not being accurate by another set because they are based on different assumptions. You will always be able to produce a different model and different methodologies and you could easily say we have a difference here. Looking at the actual position can you envisage any way in which profitability can be, in a very hard cold way analysed.

Mr LETHERBARROW: I am not an actuary and I am not an insurance company person. I do not have a lot of experience in business. I imagine there must be a way. Taylor Fry have proceeded under one method which, as I understand it, has not been heavily criticised and the MAA was happy to adopt it, but the insurers say we cannot figure it out until we have settled most of the claims.

The MAA figures show that for the first year of the scheme that 67 percent of claims have been paid out. That is on page 86 of the MAA's report. For the second year of the scheme 55 percent. For the third year of the scheme 31 percent, so in the first year two thirds of the claims have been finalised and in that year they paid out $646 million, which is well less than 50 percent, so even if we need wait year after year for this to occur, what figures are coming in are all pointing in one direction.

I do not know of any evidence from anybody, be it the MAA, be it the ICA, be it any insurer, which suggests that the insurers are not making a handsome profit. Every year when this is looked at -as I said the cat is finally getting out of the bag - all the evidence is pointing one way and I do not know of anything else that points the other. If it did point the other, the insurers would be screaming blue murder and saying we do not want to be in this scheme any more. They are making such a handsome profit that they are happy to stay in it.

It is very difficult, for various reasons obviously, to get to the bottom of this and you can have cynical views about that and I do, but I do not need to express them, but the evidence that is there from all fronts is all one way.

The Hon. GREG DONNELLY: I raise it as an issue of transparency, to be able to understand, and what you have said does not surprise me because I would have thought their reporting would have produced a global report, not a specific report, on the aspects of the business that they are writing insurance against.

Mr LETHERBARROW: One thing, as a follow up to my earlier answer, the General Purpose Standing Committee's report, which is an excellent report of this House, went into great detail to try to isolate the profits that the insurers were making in all areas and their report in fact isolates different areas of insurance and they were prepared, after hearing a lot of evidence from a lot of different organisations and a lot of different experts, to say in relation to motor accident profitability, and this is at page 103 of their report, at paragraph 1168 that the data available does suggest that the insurers have been making strong profits in recent years and that it was in the first

year more than 20 percent.

That is probably the best investigation that anyone has ever undertaken of this scheme and with evidence from as many stakeholders as possible, and that is the conclusion. The Committee was not prepared to make similar comments in other areas of insurance, and quite properly, because I do not think the evidence was there, but the evidence in this area looked at under a microscope and very well presented, again is of the same nature.

The Hon. GREG DONNELLY: The association has raised its concerns or one of its other concerns as that of the 10 percent threshold formula and the way in which it is supplied. Can you explain to the Committee what you see as a way forward to improve from the current position?

Mr LETHERBARROW: This House's recommendations under the General Purpose Standing Committee, a Civil Liability Act threshold where you have to be a certain percentage of a most extreme case will knock out frivolous cut finger cases and claims that should not be brought. It is working. The Civil Liability Act has now been in for five or six years and it works and the private insurers are not complaining about it. They are not saying we are paying too much money in non-economic loss damages under the Civil Liability Act. That is a system which works and stops frivolous claims, which I should say and am happy to say should have been stopped but, unfortunately, in stopping them it has stopped a lot of other claims as well. The pendulum has swung too far, not through any intent, but perhaps in trying as a good intent to cure a situation that needed fixing but has gone too far and has to be dragged back.

That scheme is working well. It is our view that motor car injuries should be put under that scheme as well and, frankly, so should work injuries and other things because the thing that is totally illogical to me is that I see that exactly the same injury, causing the same pain and suffering, is assessed completely differently whether you have it in a shopping centre, in a motor vehicle accident, at work, on a plane, and you get no result in one, a lot of money in another, half the money in another, and it is the same person, the same injury, the same consequences.

The Hon. DAVID CLARKE: You are saying the pendulum has swung against genuinely injured persons in respect of motor accidents claims?

Mr LETHERBARROW: Yes.

The Hon. RICK COLLESS: Mr Letherbarrow, the previous witness from the insurance council told us that in his view insurance companies were attempting to achieve a return on capital of 15 percent. What you are suggesting, correct me if I am wrong, is that is probably in excess of 20 percent in your view. Is that on their CTP business or across the board generally?

Mr LETHERBARROW: What they are trying to achieve?

The Hon. RICHARD COLLESS: I think you said it was 20 or better.

Mr LETHERBARROW: That is the CTP figures.

The Hon. RICK COLLESS: That is just the CTP figures?

Mr LETHERBARROW: That is the CTP figures and they are extracted in the MAA report. The MAA report is very good, but fairly lengthy. The actual hard information is not over a lot of pages. It is between pages 75 and 95 and it is the body or the end of the report, and the table that everyone needs to really look at is the table on page 82 which sets out the estimated profit in the four years of 2000 to 2003 and it is 24.8 percent, 19.8 percent, 21.5 percent, 18.9 percent, and the only explanation or the counter argument is, oh, we've got long-tail. Well, this takes the tail into account. The fallacy of some arguments that, oh well, we don't know what is going to come out and

bite us, is that these insurers have known of these files for six years, someone who is injured that cannot be assessed now, and they have continual audits, continual examinations of them. They know what is in them and for them to say, oh look, it might come out of the woodwork, it will not come out of the woodwork. They know what is there. From a practitioner's point of view as well, old claims - and I have done a lot of old claims over the years - do not turn out to be huge matters. The old ones tend to be ones that turn up in court or are assessed and there are all sorts of problems with them. They do not turn out to be the big claims. They often turn out to be the junk claims. In any event, the insurers have been examining these claims for years, they know what is in the background, they know what is in the tail.

The Hon. RICK COLLESS: In your submission the association notes that the preparation required for a claims assessment and resolution service assessment is greater than was typically provided at district court hearings. Can you expand on that comment and what do you think needs to be done to ensure that that preparation can be reduced to a more realistic level?

Mr LETHERBARROW: Quite a lot of cases now that go to CARS, that assessment process, are quite big cases. I have done a couple myself and there have been a number of CARS awards in excess of $1 million. The CARS assessors quite correctly, when they have a complicated matter in front of them, want help and they ask: Can you give us a chronology; can you give us a schedule of this; can you give us a schedule of that? Even though it is an informal process, to cover the issues, the work has to be done and this is not work that the lawyers are doing off their own bat, although a good lawyer should, but the CARS assessors are asking for it. Some judges do not, although if you are a good lawyer you do the same stuff for court judges, but reasonable size CARS assessments are not that much different from running a case and once you get to court you get normal party-party costs in a motor car case, but before you are at court, if you are at a CARS assessment, there are the various caps and it is very unprofitable to do the work. That is one of the reasons why I think the claims numbers have gone down, because a lot of lawyers have said, look, there is no point in doing this work any more, we are not making any money, we will let it go to the specialist firms who can swings and roundabouts it. A lot of insurers do not like CARS either because they are caught with the result. The claimant, if he does not like the result, can go to a judge and there are cost penalties if he does not get a higher figure. The insurers are stuck with what the CARS assessor assesses in relation to quantum. A lot of them privately say we would like to get rid of CARS and go to court because at least in court we can appeal if we do not like the judge's view. So I think CARS should go in a similar way that MAAs should go, but if it does not, because of the size of these cases, the costs need to increase. Insurers have a lot of money to defend in front of CARS and the plaintiff's lawyers can only get a certain amount. The insurers can fight these just with an open cheque book and that is what happens.

CHAIR: I want to extend an issue that you raised earlier and that was your explanation of the decreasing claims. Are you inferring that Medicare or the hospitals or private health insurers are picking up the bill for claims that are not put forward?

Mr LETHERBARROW: I do not think there is any doubt about that.

CHAIR: I do understand that in the hospital structure that is not possible, so I am interested in the question. I understand that you are talking about non-economic loss. I also understood that the notification was as soon as possible and they get their money for medical expenses, so you do not think that is part of the assessment?

Mr LETHERBARROW: Well, I just do not know how many people would go through with a claim to pay their medical expenses.

CHAIR: So they pay out of their pocket?

Mr LETHERBARROW: Well, they pay out of their pocket; they go to the casualty ward. Some people obviously don't, they do make a claim for medical expenses, but the system is so not forthcoming in relation to a lot of claims that I think a lot of people do not bother making a claim and,

if they do sustain out of pocket expenses and lost wages and the like, it ends up falling upon them. It is not something which I think adds enormously to the social security bill, but I think it does add something to it.

CHAIR: I would very much like to thank you for coming along. Before we finish, I would like to ask if you think the MAA adequately reports on the scheme's performance or what sort of extra information you would like, recognising all your issues about how you hate it.

Mr LETHERBARROW: Well, they are starting to become much more forthcoming I think. I do not think the MAA ever tried to hide anything and I think they were given a very complicated task to set up a whole new system and for a number of years it was very difficult for them to quite know what was going on, but we are now seven years down the track and the information is starting to come out. All I could hope is that, if this system continues, Taylor Fry type reports are created more often because the only way to really value whether this is a good or a bad system is to know how much profit is being made and how much money is being paid out to injured people, so the only thing I could suggest is that those that regulate the regulators, probably being yourselves, keep pushing the issue of how profitable the scheme is and how much injured people are getting as opposed to insurance companies.

CHAIR: The documents you have handed to us are very exposing of the human beings in them. The Committee members here today have observed them. We would not accept these photographs, but could you resubmit your case study?

Mr LETHERBARROW: Yes.

CHAIR: If you do not mind, we will return these to you.

Mr LETHERBARROW: That is fine.

CHAIR: Do you wish to say anything further, Mr Selth?

Mr SELTH: Yes. Could I say that these photos were provided to the General Purpose Committee, so that is why we brought them.

CHAIR: That is fine.

Mr SELTH: You asked about our relationship with the MAA. Well, we do not like the legislation that they administer, we do not like some of their policies, but I think we have a professional relationship with them and it is a very good one and I would make no criticism of the officers at all.

Another point Mr Letherbarrow touched upon was a reference to the report of the General Purpose Committee. We have since written to the Premier on that report, which also refers to the motor accident legislation. We sent a copy to the chair of the Standing Committee and I am asking whether this Committee would like a copy of it as well? We did not send it here, but it does cross into what you have been looking at. There is a copy in the building, but I am not certain it is formally in your records.

CHAIR: No, it would be very good if it could be provided.

Mr SELTH: I will have that provided this afternoon.

(The witnesses withdrew)

(The Committee adjourned at 2.10 p.m.)