

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND JUSTICE**

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

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**At Sydney on Monday, 17 December 2001**

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**The Committee met at 10 a.m.**

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**PRESENT**

The Hon. R. D. Dyer (Chair)

The Hon. P. J. Breen  
The Hon. J. Hatzistergos  
The Hon. J. F. Ryan

Limited

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**BELINDA GAIL CASSIDY**, Manager, Motor Accidents Assessment Service, Level 22, 580 George Street, Sydney,

**RICHARD GRELLMAN**, Chair, Motor Accidents Council, Level 22, 580 George Street,

**STEVEN CLOUGH**, Principle Compliance Officer, Motor Accidents Authority, Level 22, 580 George Street, Sydney, sworn and examined, and

**DAVID BOWEN**, General Manager, Motor Accidents Authority, Level 22, 580 George Street, Sydney, and

**CONCETTA RIZZO**, Manager Insurance Division, Motor Accidents Authority, Level 22, 580 George Street, Sydney, affirmed and examined:

**CHAIR:** Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

**Mr BOWEN:** I did.

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

**Mr BOWEN:** I am.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Ms CASSIDY:** I did.

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

**Ms CASSIDY:** I am.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

**Mr GRELLMAN:** Yes.

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

**Mr GRELLMAN:** Yes.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Dr CLOUGH:** Yes.

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

**Dr CLOUGH:** Yes, I am.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Ms RIZZO:** Yes.

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

**Ms RIZZO:** Yes.

**CHAIR:** Could I commend the thoroughness with which the Motor Accidents Authority has responded to the questions on notice we have submitted to you from interest groups such as the Law Society and the Bar Association and others. We are very grateful for the help that the Committee has been given in that regard.

Mr Grellman, could I invite you to make a brief opening statement if you wish?

**Mr GRELLMAN:** Thank you. On behalf of my colleagues, could I firstly thank you for the opportunity to meet with the Committee. We are happy to provide all assistance that we can as you move through the issues. My colleagues have been formally introduced and so there is no need for me to repeat the role that they play within the organisation.

As a brief pre-qualification to some of the answers that will be given, I need to say that whilst the scheme is now two years old it is still very much developing. In its developmental phase we are now seeing a little more certainty attaching to a number of the issues but we really will not be sure about the integrity of the scheme for up to another two years, which is when the larger claims under the current legislation will start entering into the scheme. That is when we will be better placed to give less qualified answers. Having said that, there is some more certainty entering aspects of the scheme which will help us answer some of your issues and concerns.

I thought I might make a quick comment about the board of directors and the Motor Accidents Authority Council. The board consists of six people. Two of them are at this table, David Bowen and myself, and there are four others. It is a group that is quite demanding. They have quite a good relationship with management but I would not call it a compliant board. They ask hard questions and they require information. It is quite a focus group and what I think makes this board particularly productive is there are no stakeholders involved in filling board positions. Each of the directors are able to govern the organisation without any conflicts that might otherwise attach to people with a stakeholder relationship with aspects of the scheme.

The council consists of 12 people other than David Bowen and myself and the Deputy Chair of the board. There are nine other people, 12 in total. This is the group that does have stakeholders and service providers sitting on it. We have two solicitors, two insurers, two medical practitioners, a consumer representative, an injured persons' representative and a motorists' representative. In a sense we have a group that covers service providers and stakeholders in the scheme. That group is getting quite active now because again it was never going to be fully occupied until we started seeing some scheme development occurring. Detailed proposals that the MAA might be contemplating introducing are often run past this group. Any trends that are evident are conveyed to the group and if any of the individuals have queries or concerns about aspects of the scheme they are taken on board and reported back to the group.

My view is that that is a good model because it has dialogue with the service providers particularly, which is very helpful because it means that we are able to bring them with us as our understanding of the scheme matures. Through their broader constituency they can inform their professional colleagues on how things are developing.

We are happy to be here. As you mention we have conveyed to you written answers to a range of questions but we are very happy to elucidate on any of those issues or answer any questions that the Committee may wish to put to us.

**CHAIR:** Thank you. I think I am correct in believing that on this occasion you do not wish to make any preliminary statement, Mr Bowen?

**Mr BOWEN:** No, nothing further, Mr Chairman.

**CHAIR:** In commencing the questioning period, could I indicate that any question I might ask or my colleagues might ask may be responded to by one or more of you as you choose.

Could I start where I started 12 months ago at the previous annual hearing and that is by raising the matter of structured settlements. I think 12 months ago we might have been somewhat pessimistic, having regard to past experience, as to whether the law would be changed to facilitate structured settlements. However, I believe that a few months ago there was a very positive

development. Could I invite you to tell the Committee what you wish to regarding that and how you see the future regarding structured settlements?

**Mr BOWEN:** Thank you, Mr Chairman. I anticipated this question because I know of your personal interest and the interest this Committee has in structured settlements. I believe there was a recommendation that it be pursued in one of the earlier committees in the 1996-97 review of the scheme.

I am going to struggle for the month - I think it was August this year - the Federal Government announced that it accepted the principle of structured settlements and set out the parameters under which it would introduce legislation to amend the tax laws. Those parameters were negotiated through the Structured Settlements Group, which I chair, which comprises representatives of a wide range of interests and perhaps worth putting on the record, includes the Law Council, Australian Plaintiff Lawyers Association, The Insurance Council, the NRMA, Medical Defence Union in New South Wales, and over the last 12 months an increasing number of the medical professional colleges and the AMA were sending representatives, and representatives of a number of injured persons groups, including Injuries Australia, have been very active in it, and Judy Stevens in her personal capacity.

The process was one of getting acceptance of the principles and then negotiating on the details and we are at the point now where, with the Federal Government's announcement, it is clear it is going ahead. The imperative is to ensure that the potential users of structured settlements, that is the plaintiff lawyers and the insurance companies as defendants, are aware of the benefits, aware of how it might work and aware of what sort of products might be available. Through Joan Ferguson, who has been a driving force, and in fairly strong negotiations with the life insurance industry about what sort of annuities and other types of financial products that meet the parameters that may be involved, we have been given an undertaking by the Federal Government that the Structured Settlements Group would be consulted in the course of drafting. I would hope that by the time we appear here next year that legislation will be in place.

There will need to be amendments to State legislation and to State court rules to facilitate structured settlements. I have recently written to Laurie Glanfield, the Director General of the New South Wales Attorney General's Department and he has undertaken to put the issue on the agenda of the Standing Committee Attorneys General, so each State can look at individually what amendments they may need to make to facilitate the introduction, but that is very positive news indeed.

**CHAIR:** I suppose we can assume that some time in the ensuing 12 months, some time next year, the Federal Government would be in a position to legislate to facilitate structured settlements?

**Mr BOWEN:** The announcement was made not that far in advance of the Federal election being called. That put a halt to all further discussions with the Treasury officers who we need to consult with. I think we have entered that pre-Christmas period now; we are anticipating that we will go back into dialogue with them in early February and ideally they would introduce the legislation perhaps as part of the budget package next year, or, if on a stand-alone basis, introduce it in the first session of next year to be legislated in the second or later session.

**CHAIR:** The complementary State legislation to which you refer, would that be largely to facilitate appropriate court procedures?

**Mr BOWEN:** In New South Wales we have it under the Motor Accidents Compensation Act, and it was recently put into the Worker's Compensation Act and indeed in the recent medical liability legislation provisions that specifically empower the courts to award damages by way of a structured settlement. I believe for matters outside of those statutory schemes it would need amendment to court rules and we have written to the heads of jurisdiction. That might not be absolutely necessary in the case of the Supreme Court, which probably has an inherent jurisdiction to award damages in that form. Certainly in the case of the District Court, it will need an amendment to the District Court rules.

**CHAIR:** That process will be advanced by the Standing Committee of the Attorneys General?

**Mr BOWEN:** Yes, who are in dialogue with the Council of Chief Justices. It flows down through the system in that form.

**CHAIR:** Mr Grellman, in your opening remarks you made some reference to I think not being able to tell with absolute certainty at the moment what the position is regarding the integrity of the

scheme, given that it is still not quite in its infancy but it is quite young. When in your view will the scheme mature to such an extent that you will be able to get a handle, to use that expression, on the integrity of the scheme, if that is the correct expression?

**Mr GRELLMAN:** If I can defer to Ms Rizzo. My understanding is that in a further two years we would be fairly sure that the data would be fairly reliable, and between now and then our level of insurance would progressively increase.

**CHAIR:** Would you like to add anything?

**Ms RIZZO:** I would refer the Committee to the second report that we sent you which was on cash flow. When you look at that diagram of the table you can see the pattern of claim payments gradually increases until you get to the third or fourth year. There where you see 159, down to 2003-04, where those large payments are, the bulk of the payments start to be made. That is when we would be the happiest to talk about the development of the scheme.

**CHAIR:** Why do the projected claim payments during any one year diminish from then onwards?

**Ms RIZZO:** Because what happens is that you gradually pay out the claims for any particular year and then it mounts up and then there is a huge bulk of payments that are made in those third and fourth years after the beginning, and then because that bulk is made, there are fewer payments to be made, and it is usually the very large claims that are just diminishing at the end. By that year the bulk has been made and the pattern is established.

**CHAIR:** Mr Grellman, the Committee received a number of brief reports on Tuesday, 11 December, including a report on the CTP insurer profit and CTP insurers reserving of non-economic loss. Could you briefly summarise for the Committee, or any other witness for that matter, the results of the work done by Taylor Fry Consulting Actuaries and the key issues contained in their report?

**Mr GRELLMAN:** Again Ms Rizzo is the right person to answer that.

**Ms RIZZO:** I will summarise the profit paper first and that falls into two areas, first of all, retrospective profit and what we refer to as prospective profit. The retrospective profit is an estimate of the profit that the insurers have made in the underwriting years that have passed, but given that the claim payments have to develop, it is still an estimate, even though it is in the past.

I would refer you to table 2 of that paper, which looks at the deregulated period before the Motor Accidents Compensation Act came into force, and I would refer you to the last column. Overall, what we are saying in that last column is that for that deregulated period between 1992-99 the insurers have made four per cent of gross premiums as profit. That four per cent includes a prudential margin which is at the level that APRA is suggesting in their reforms at 75 per cent level of sufficiency. Without that prudential margin, the average profit is eight per cent of gross premiums. That is in the second last column, but if you look at each underwriting year you can actually see that in 1994 the insurers made a 34 per cent loss. The pattern during that period of time shows that they made rather large losses down to 34 per cent, but the highest estimate of their profit is 24 per cent, which is at another extreme. On average it is eight per cent and if we add a prudential margin, as we ought to, it is four per cent.

**CHAIR:** The percentages of four per cent and eight per cent respectively at the bottom of those columns are an average for the years 1992-99 inclusive?

**Ms RIZZO:** That is correct. That is the previous scheme. What of course we are all interested in is what the percentage of profit is for the new scheme. I direct your attention to table 3. The information that is included in table 3 is actually from the insurers' own premium filings which are submitted to the authority for the first underwriting year under the new legislation. The only actual figure there is under "Premiums written", that is the actual amount of premiums that were collected, 1.3 billion.

Using their own estimates of their expenses and costs, we derive an estimated profit of five per cent of gross premiums for the first year of the scheme. As we just discussed, this is at an early stage because the claim payments have not developed yet. We would want to revise that as time goes

on.

**The Hon. JOHN RYAN:** Would you explain what "discounted claims payments" and "acquisition expenses" mean? As a lay person they mean nothing to me.

**Ms RIZZO:** The discounted claim payments, that is really just present value. What the actuaries do is project what the claims are going to cost in future years dollars and then they discount that to bring you back to present value.

**The Hon. JOHN RYAN:** Discounted by what, for what reason?

**Ms RIZZO:** When you project claim payments you are projecting in future dollars. What you want to do is bring it back to today's value so you can compare with the actual amount of premiums that are collected. You want to compare like with like dollars. You discount by the risk free interest rate to get to the discounted rate, which is what you would pay in today's dollars in the future.

**CHAIR:** In estimating what happens in the future, are we largely talking about what is commonly called a "tail"?

**Ms RIZZO:** It is more than that because where this information comes from is from the insurers' own filings which they submit to the Motor Accidents Authority to derive a premium. This was for the very first year under the new legislation, so there was no experience. What they say is: This is the legislation; we have what has happened in the past under the old legislation; we have these changes; we expect that they will be effective to a certain degree and we will do the projections based on those assumptions. Then they come up with a certain amount of claim payments that will be paid based on the assumptions that are in the new legislation.

**The Hon. PETER BREEN:** In the answers to, I think it is the Bar Association, you have said, "The table calculates total premium written of \$1.325 billion projects, an insurer profit of \$61 million or five per cent of premiums." Is that consistent with the old scheme? It sounds like an awful lot of money.

**Ms RIZZO:** Five per cent of?

**The Hon. PETER BREEN:** Premiums.

**Ms RIZZO:** That is our calculation. That it is five per cent of our gross premium is our estimate on the profit they have made on the first year of the scheme.

**The Hon. PETER BREEN:** Which is \$61 million?

**Ms RIZZO:** I have not got my calculator with me, but yes.

**The Hon. PETER BREEN:** How does that compare with the old scheme?

**Ms RIZZO:** It is similar. The old scheme is there under table 2 and our average there is four per cent which includes a prudential margin. So it is very similar to the old scheme at this stage.

**CHAIR:** Could I ask in regard to a document that is entitled "Final Non-Economic Loss Performance Audit Report", are you able to summarise the four main observations noted in the executive summary, and can you inform the Committee whether the MAA will be monitoring the industry's response to the four recommendations made by the auditors? If so, would that be reported to the Committee on the implementation of those recommendations once they are met?

**Dr CLOUGH:** I should preface my response by saying that the recommendations made in the executive summary of that report were made based on further observations, which were made during the performance audit, which was conducted relating to the awarding by insurers of non-economic loss. The recommendations here were made in the context of recommendations for the insurers to consider, and, if I understand your question correctly, you are wanting to know whether they will be followed up on by the Motor Accidents Authority?

**CHAIR:** Yes, that is the effect of the question.

**Dr CLOUGH:** I would anticipate that they will be. My preliminary findings and recommendations to the Motor Accidents Authority at this stage, with regards to the first recommendation, regarding the lack of documented in-house determinations of percentile person impairment, would probably run along the lines that I think there is merit in the insurers documenting it. It was largely a question of the lack of documentation on the claim files. That is not to suggest that the insurers were not necessarily accurate, that the insurers were giving the impression that they were accurately making per cent WPI determinations, but it was the recording, the lack of documentation on the files. That is certainly a recommendation I would be making as a part of the final wrap up of these NEL performance audit reports to the MAA, and I have a draft report for the MAA executive to consider such recommendations. As I will be making recommendations on the other further observations that were made during the NEL performance audit.

These were side issues. These were extras; they were bonuses that we obtained from the audit which was focused principally on non-economic loss. As we went through and reviewed the files, any other issues that arose that I thought, and other auditors thought, were significant issues that could possibly be addressed by the insurers were raised as further observations, and I have prepared a draft internal report for the MAA executive to address those further observations.

**Mr BOWEN:** If I could add a little bit to that, Mr Chairman?

**CHAIR:** Yes.

**Mr BOWEN:** We have been concentrating, in terms of our education and information activities about the whole person impairment guidelines, on getting a body of assessors available to do this. A lot of our activities have been focused on the assessor training. Over the last three or four months we have increasingly been focusing on detailed information on how to interpret the guides and use the guides to the insurers and to the legal profession. We had a successful seminar for the legal profession in Sydney only two weeks ago. We had an attendance in excess of 100 practitioners. As we start seeing the bigger cases that are getting potential involvement of non-economic loss, we are starting to see the practitioners and insurers who should properly be interested in it being interested in more than just "Somebody else tell us what the answer is", but being able to make their own reasonable approximation of how the guides will apply, which clearly assists in settlement discussions and negotiations.

**The Hon. JOHN RYAN:** Just referring to your response to the Law Society's questions at 1.2 and 1.3 regarding non-economic loss and appropriate compensation, the Motor Accidents Authority pointed to something that they called a "fairness indicator", which is addressed on pages 29 to 30 of the annual report. Can you explain further to the Committee what are the components and the formula of the fairness indicator?

**Ms RIZZO:** The intention of the fairness indicator is that the scheme provides a fair and equitable system for claimants, all claimants, but ensuring that the most seriously injured receive maximum compensation. So when the new Act was introduced there was a reduction in benefits for minor claims but we wanted to ensure that those people with very serious injuries continued to get maximum compensation. That is how we define it. What we have done in order to test it this year, and what we have reported in our annual report, is a comparison of those claimants who have serious brain injuries. What we found, in summary, was that the number of people who have notified of serious brain injury in the two comparable years that we are looking at is about 200 each, but on all indicators, on all timing indicators, the system has improved, and on all compensation indicators, in other words money that is passed to the claimants, they have continued to improve. They have not suffered from the new legislation. In fact their situation has improved.

**The Hon. JOHN HATZISTERGOS:** That partly reflects the choice that you have made in looking at those particular categories of injured persons, has it not?

**Ms RIZZO:** Certainly.

**The Hon. JOHN HATZISTERGOS:** If you take someone with a less serious injury but still serious, a serious back injury, you might get a different outcome?

**Ms RIZZO:** Yes, you might.

**The Hon. JOHN HATZISTERGOS:** Might it not be better to look at that situation in terms of working out fairness?

**Ms RIZZO:** I take your point. I think it is a good idea to look at different categories of injuries and we do intend to do that.

**The Hon. JOHN HATZISTERGOS:** When do you intend to do that?

**Ms RIZZO:** Early next year.

**The Hon. JOHN HATZISTERGOS:** Why did choose the brain injuries?

**Ms RIZZO:** They are very serious injuries. They cover a range of injury as far as being extremely serious to moderate. They are claims of which we have had a substantial number.

**The Hon. JOHN HATZISTERGOS:** You would not have expected a different outcome in terms of your fairness examination from the one you actually obtained looking at that category, whereas you would have for something else?

**Ms RIZZO:** I did not have expectations, but the result was that there was an improvement for them. We will look at the other categories as well.

**The Hon. PETER BREEN:** Can I ask about that? The expression "fairness indicator" suggests some kind of benchmark, but the words are not even used in the report. Is it intended that it only apply to brain injuries?

**Ms RIZZO:** No. The words actually used are "most seriously injured".

**The Hon. PETER BREEN:** If you use the words "fairness indicator", is it appropriate to describe your benchmark that way? The words do not appear in the report.

**Ms RIZZO:** When we talk about benchmark the way we have done, the analysis is that we have compared brain injury that has been notified to the insurers in the first year after the introduction of the legislation with the brain injuries that were notified in the last year of the previous legislation. The benchmark is really the last year of the previous legislation.

**The Hon. PETER BREEN:** Is that what you are calling the "fairness indicator", is it?

**Ms RIZZO:** The fairness indicator is something the committee agreed with some time ago and that refers to the most serious injured. We took brain injury as one example of the most seriously injured, because it is an important group.

**The Hon. PETER BREEN:** You will not be applying that same fairness indicator across the board to other lesser injuries?

**Ms RIZZO:** We will.

**The Hon. PETER BREEN:** You are not going to get the same outcome, you are not going to get an improvement in all categories of injuries in the new scheme as opposed to the old scheme?

**Ms RIZZO:** I will wait and see the analysis. I do not know.

**Mr BOWEN:** We would hope we get an improvement for those with very serious and catastrophic injuries, and the reason for choosing brain injury is it is by far overwhelmingly the largest category of the most serious injured in our scheme. Of 260 per year on average catastrophic injuries, 220 of those 260 are brain injury.

**The Hon. PETER BREEN:** At some point you are going to have to pay less money to people for less serious injuries?

**Mr BOWEN:** For the less serious injuries we would expect that there is a reduction in



compensation and all of the transaction costs, but the fairness indicator was about how those with the most serious injury fared under the new scheme compared to the old, and the position is that the indicator shows that on timeliness and on quickness of payments it has all improved.

**The Hon. PETER BREEN:** Can I ask also, at page 29 of the report it says in the new scheme of 26 brain injury claimants, 14 per cent initially lodged their claim as an accident notification form before completing a full claim form. I do not understand the significance of that. The Law Society and the Bar Association in their questions keep raising that as an issue. I must say I am obviously missing something. Can you explain the significance of that statement in the report, that 26 per cent were initially accident notification forms?

**Mr BOWEN:** We have dealt with this issue raised by the Law Society and the Bar Association. The Law Society and the Bar Association would like us in analysing these statistics to take out the effect of the accident notification form. We refused to do that because it was one of the key reforms of the new scheme to get payments through quicker. You cannot say we will take out the system that allows you to get payments through quicker to people and then compare how quickly claimants get their full claims compared to all of those who made claims under the old scheme. We put in there just an indicator of the fact that people will commence some matters through accident notification forms. We expect that it will be, as that figure shows, at a much lower rate when you have a more serious injury. People with more serious injuries are inclined to go straight to a full claim. There is no particular benefit from the accident notification form because often they have been in a period of acute care in hospital during the time when the accident notification form would have effect.

**The Hon. PETER BREEN:** There is to requirement to fill out an accident notification form?

**Mr BOWEN:** No.

**CHAIR:** Am I correct in thinking the accident notification form is a condition precedent to the payment of the \$500 initial medical expenses?

**Mr BOWEN:** That is correct. We therefore anticipate that it will be used by those people who have a fairly minor to moderate injury and they go and see a doctor, they fill in the accident notification form with the then general practitioner, they get immediate access to up to \$500 medical treatment.

**CHAIR:** You are saying the experience regarding lodgment of the ANFs is a legitimate indicator of scheme performance?

**Mr BOWEN:** What it is showing is that the existence of the accident notification form has speeded up considerably the time within which people get their first compensation payment.

**The Hon. JOHN HATZISTERGOS:** Is not the point being made that this was an avenue that did not exist under the old scheme; therefore, people were catapulted, if they wanted to pursue the matter, into litigation, and that therefore had a time factor. You have introduced this reform but you are not actually comparing like with like because this was not in existence under the old scheme. If you focused on disputed claims and resolution of disputed claims, what would the finalisation figures be?

**Mr BOWEN:** Do you have an answer to that?

**Ms RIZZO:** I do not have an answer. My comments would be that the introduction of the form is integral to the new scheme.

**The Hon. JOHN HATZISTERGOS:** You keep saying that but I really want to focus on not non-disputed claims but disputed claims. One of the arguments that was raised was that we have them all finalised quicker.

**Mr BOWEN:** I am not sure how you identify what constitutes a disputed claim.

**The Hon. JOHN RYAN:** It was claimed in debate that there were about 1,770 odd claimants a year who suffered the injuries necessary to get a claim. So far you have been able to tell us that 36 claims have been finalised in the course of the year. We are either measuring two things that are so substantially different that it is not possible to compare the two, and I think this Committee, at least I

feel, as a member of the Committee, that I have some duty to be able to compare the old scheme with the new scheme and make reasonable comparisons. I would be stunned if you people have not asked yourselves the same question, as to how the old scheme compares with the new scheme. It is impossible for us to make anything meaningful when we are talking about 36 as compared with 1,700. I understand your respect for the new bureaucratic arrangements which might make things faster. We still have to make a reasonable comparison between scheme 1 and scheme 2 and work out whether one scheme is fairer. You seem to be avoiding the question by using two different ways of measuring which cannot in any way be compared to each other. I cannot believe that you have not done, at some stage or other, some research as to how the two schemes compare with each other in terms of the number of people likely to make a claim?

**Mr BOWEN:** I think your criticism is unfair because the report here shows our estimates or our count of the number of people who are claiming compensation. We do that on a comparative basis; we compare it to a similar period of the old scheme at an identical point of development; we measure the time within which it is taken to have the claim processed, the time taken to the first payment; we measure the average payment made. When it comes to non-economic loss and the entitlement to that, which is the 36 number, we have given an identical comparator for the number under the old scheme who had benefits at that level at that same point in development. Even on that measure the new scheme is performing better.

**The Hon. JOHN HATZISTERGOS:** Let me ask you this question: You say it is not fair to take the ANFs out for your calculations. Assuming for the purpose of the exercise we ask you to do that, irrespective of the debate whether you say it is appropriate or not, what outcomes do you get?

**Mr BOWEN:** I would not be prepared to even do that analysis unless there was some mechanism to take out of the old scheme those claims that are equivalent to the matters being done under the ANF, otherwise you are not producing a like to like comparison and we would be misinforming the Committee, and anyone else who read the report, were we to do that.

You would be comparing to the full body of claims, from the tiniest little thing up to the most serious, under the old scheme with a much reduced number of only the more serious matters commenced directly by a claim form under the new scheme. Of course you will not get results that are the same as when you include the ANFs, but it is not a legitimate exercise as far as I am concerned.

**CHAIR:** You are saying to the Committee, I take it, that it is necessary for us to consider the new scheme as it stands in all its components and that it is not necessarily legitimate to take out something that might be a feature of the present scheme for the purpose of comparison with the previous one?

**Mr BOWEN:** What we have tried to do is look at it from the point of view of an injured person and answer the questions: How quickly will I get my claim processed? How quickly will it be until I get my first payment? How quickly will it be until the matter is settled altogether? To do that you have to include the whole body of claims and notifications, like the two different ways now in which people will have a matter dealt with.

**The Hon. JOHN RYAN:** Can I ask what happened to the 1,770 claims that were predicted in the speeches by the two Ministers' leading debate? One presumes that they have not invented those. They have probably used those figures as a result of advice from the MAA.

**Mr BOWEN:** We have in our report to you the results of our audit of non-economic loss. Because of the limited number on which payments are made, because non-economic loss is on the more serious claims, we undertook an audit of the insurers to see their reserving practices. That is reported in here. The way it averaged over the whole industry is that the insurers are reserving on 12 per cent of claims, which will bring a figure of around 1,560, and I think that is a reasonable figure.

**The Hon. PETER BREEN:** That figure of 1,560 is to be compared with the old figure of 1,770?

**Mr BOWEN:** The 1,770 was just applying a rule of thumb that we estimated that about 10 per cent of claimants would get over the 10 per cent threshold and have access to non-economic loss. There were 17,000 claims in 1998, so you divide it by 10 and you can say that will be a rough indicator of what you would expect to get NEL. We are still without enough matters through. I make the point that I made to Mr Ryan before that if you compare it to a similar period of the same point of

development in the old scheme, it is not no different. You cannot say under the old scheme people got all these non-economic loss matters settled within two years. The proportion was at that same sort of low point at that point in development.

To provide the Committee with some information and to reality check to see whether the costing assumptions under the new scheme are correct, we undertook this non-economic loss audit. It is based on the reserving practices of insurers. Dr Clough has indicated there are some issues as to how the insurers identify and reserve, and we will take that up with them, but it is the best indicator we have at this stage of how many we anticipate will finally get non-economic loss.

**The Hon. JOHN RYAN:** As a Member of Parliament I have difficulty explaining to my constituents that a group of people who are likely to make a profit from this exercise have reserved an amount of money, which is yet still an estimate, and so far 36 claims have been finalised, 1,500 at least to go, and I am yet unable to explain to people at some stage or other when am I going to be able to say to them that you will start to see the other 1,500 or 1,700 odd claims show up in claims as finalised to justify to them that they are paying an appropriate amount of premium. At the moment if those claims are not realised for the money for which it has been reserved, then it might be reasonably said the insurers will make that much profit, plus its interest, at well above what they had estimated.

**Mr BOWEN:** Miss Rizzo answered the question earlier in which she referred to the cash flow document in here which shows the payment trend. I would point out again that that sort of payment profile is very similar to the old scheme, and the experience, in terms of when payments come through, which is the bulk of them will come through in years three, four and five, is true of the new scheme as it was of the old scheme. As the more serious get to the point where the injuries have stabilised and you can start to make reasonable assessments of what the person's full compensation will be, given that it is a lump sum once and for all payment system.

**The Hon. PETER BREEN:** After five years we will be able to look back and say there were 1,700 non-economic loss claims in that first year?

**Mr BOWEN:** Our estimate now is around 1,560, that is because the claim numbers are down, partially because more matters than we anticipated are being resolved at an ANF stage.

**The Hon. PETER BREEN:** It will be roughly 10 per cent of claims that will get non-economic loss. If it drops below that, my understanding of your answer to one of the questions to the Law Society is that you will recommend to the Minister that the figure should be increased so the figure gets back up to 10 per cent.

**Mr BOWEN:** We would make an appropriate policy recommendation to the Minister. I would not want to tie myself to saying that the threshold be varied is the only way you could respond to that.

**The Hon. JOHN RYAN:** Can I make reference to the MAA claims assessment guidelines and the basis for which claims can be considered sufficiently complex to be exempted. The MAA has stated that each case is assessed and checked on its facts. Can you explain the criteria for assessing these facts? Is there a check list of sorts to check the claim's complexity?

**Mr BOWEN:** Ms Cassidy is the principal claims assessor and that is her role, so I will hand that question to her.

**Ms CASSIDY:** There are two ways of getting an exemption from the claims assessment and resolution service. The first way is almost an automatic kind of exemption. You have to satisfy me as the principal claims assessor that your claim involves either a denial of liability, a contributory negligence alleged of greater than 25 per cent, there is a fraudulent or misleading claim alleged or the claimant lacks legal capacity, they are an infant or so severely brain injured that they cannot act on their own. Once you have satisfied me, that is almost an automatic exemption, a certificate of exemption is issued with a brief statement of reasons supporting it.

The other way section 92(1)(b) of the Act says you can be exempted from the assessment process is to have a finding that your matter is not suitable for the assessment process. The claims assessment guidelines list a number of matters to be taken into account in exercising a discretion to exempt a matter under that section and they basically revolve around issues of complexity. If the

matter involves the complex assessment of damages, there are complex issues of fact, complex issues of law, the claimant for example may reside outside the jurisdiction, they are matters that are taken into account when determining whether a matter is not suitable for assessment.

What is complex is not necessarily the amount of money involved and the issue that I see as important in determining whether a matter is so complex that it should be sent to the courts for the courts to determine it is the disputation or the level of disputation involved in the claim. A big claim is not necessarily a complex claim. A big claim may have five issues in it, four of which settle, one of which is in dispute. If that issue is not complex, then I think that can be determined by CARS.

**CHAIR:** Can I go back to the matter of ANFs for a moment? There are statistics given at pages 27 and 28 of the MAA's annual report and it is indicated there that in the first 21 months in the new scheme a total of 10,343 ANFs were lodged. That is 44 per cent of all claimants used the ANF to notify the insurer of their claim for compensation. It goes on to state that by the end of the 21 month period with which you are dealing, 4,631 or 45 per cent of ANFs had converted to full claims. If you expect that 45 to 65 per cent of ANFs will ultimately convert to claims, could you tell the Committee what in the MAA's view are the benefits of the ANF notification system as opposed to how a claim traditionally would have been made in the past, and can still be made for that matter?

**Mr BOWEN:** The ANF is working as anticipated, in that it is providing a simple means of lodging notification of your injury and getting quick payment for that. It is having a number of other additional, and what we might call ancillary, benefits of finding that when the insurers get notified of the matters earlier, even more serious claims, what they can do is start to stream them in to whether it will be finalised at an ANF form level or whether the person is going to need ongoing medical treatment and rehabilitation, and in that case they can have their injury management, their rehabilitation people, contact the person earlier and they can start courses of treatment that lead to, if not full recovery, at least maximum recovery for the person.

One of the problems in the old scheme was that there were considerable inbuilt delays in getting treatment and rehabilitation when it was unclear as to whether the insurer would pick up and admit liability for it. We have seen that this process of the ANF and getting it in to the insurer earlier has changed the culture within the insurer, where they put a greater focus on earlier rehabilitation and treatment, I have to say based I am sure on their analysis that if you help a person get better earlier it reduces the overall cost of the claim. There is an economic benefit in doing that, but there is a personal benefit to the injured person.

**The Hon. JOHN HATZISTERGOS:** Look at the next section of the annual report, "Timing and Service Delivery". You talk there about an analysis of 21 months for the new scheme dealing with ANFs and what you term as full claims and comparing the performance in terms of settlement or finalisation of those matters, in some cases separating out the ANFs from the full claims and talking about the speed and the improvements in the finalisation of those claims.

Why could you take the ANFs out for the purpose of that analysis and you could not for the Bar Association's questions? Is that not really the information that was being sought in another way over another time period?

**Mr BOWEN:** My understanding of it is that perhaps more the Law Society was seeking information upon what is the average time to finalisation comparing claims under the old scheme with claims, minus ANFs, under the new scheme. We have put into this report indicators relating to ANFs to show how it has sped it up but at all times we focused on total time taken for the whole body of claims and not trying to say we will discount or leave aside the effect of the ANF and therefore we will be able to say, well, things are not happening quite as well as the MAA says.

I still have trouble with the intent of that analysis. I think the intent is to suggest that things are not working well under the new scheme, but then what you are no longer doing is comparing like with like.

**The Hon. JOHN HATZISTERGOS:** The second last paragraph, taking ANFs out, says:

Considering full claims alone, average times to notification, to a liability decision and to finalisation all decreased, the main improvement was the reduction in the time taken for insurers to make a decision on liability. The average time decreased by 15 per cent to 85 days.

That is taking the ANFs out, is it not?

**Mr BOWEN:** Yes, it is.

**The Hon. JOHN HATZISTERGOS:** Is that an answer?

**CHAIR:** That is being said to be a benefit of the new scheme, is not it? The main improvement is said to be the reduction in the time taken for insurers to make a decision on liability.

**The Hon. JOHN HATZISTERGOS:** Is that comparing the old scheme to the new scheme, 15 per cent reduction?

**Ms RIZZO:** The major point of issue there is that the timing of the liability decision relates only to full claims. So the reduction in the average time to liability decision only relates to full claims, so it could only be compared with full claims and that is a valid comparison.

When we are talking about overall claims, it is a slightly different issue. Mr Bowen has already said with the ANFs the decision on liability is completely different. In fact it is deemed that it is accepted if it is within ten days. There was a timing constraint introduced that insurers should make their liability decisions within three months of receiving the full claim form. That is what the point of that last sentence is.

**The Hon. JOHN RYAN:** How many of those claims made under the ANF have just been paid \$230, that nominal amount? You have said the present average payment on ANF, one that has not been converted to a claim, is \$230?

**Ms RIZZO:** That is the average.

**The Hon. JOHN RYAN:** How many claims have only got \$230?

**Ms RIZZO:** I cannot tell you today. I am happy to take that on notice and provide the exact number. My comment today is that that is the average and there are numbers of claims that receive up to \$500, which is the maximum, but in addition to that the insurers are not limiting their payments to \$500 at the maximum. There are ANFs that receive more than that where the insurers judge that it is appropriate and they do not then require the claimant to lodge a full claim. That is the average and I do not know how many exactly there are.

**The Hon. JOHN HATZISTERGOS:** Is it the situation that those ANFs are basically supplied by doctors?

**Mr BOWEN:** That is correct.

**The Hon. JOHN HATZISTERGOS:** So they can get their fees paid?

**Mr BOWEN:** The GP usually only has the consultation fee. Most of those payments are for some form of therapy, usually physiotherapy.

**The Hon. JOHN HATZISTERGOS:** Previously the situation would be if the doctor wanted to be paid, he would have to put it through the Health Insurance Scheme or he would have to send the patient off to a solicitor to litigate a claim.

**Mr BOWEN:** That is correct.

**The Hon. JOHN HATZISTERGOS:** He is able to deal with it himself and get himself paid?

**Mr BOWEN:** A consultation fee and a fairly nominal fee to fill the form in.

**CHAIR:** Ms Rizzo has said that insurers are in some instances paying beyond \$500. In doing that I assume they are acting beyond their statutory obligation?

**Ms RIZZO:** That is correct.

**The Hon. JOHN HATZISTERGOS:** That is done in some cases in their own interest, is it not, to prevent the claim being litigated?

**Mr BOWEN:** Absolutely.

**Ms RIZZO:** Not so much to prevent the claim being litigated.

**The Hon. JOHN HATZISTERGOS:** Or develop into a full claim.

**Ms RIZZO:** That is correct, yes.

**The Hon. JOHN HATZISTERGOS:** With the extra costs that that may involve?

**Ms RIZZO:** That is correct, and at the same time it is providing the claimant with access to those funds without the added complication of bureaucratic claim forms.

**The Hon. JOHN HATZISTERGOS:** What advice is given to claimants have who put in ANFs as to what other entitlements they may have that they are not pursuing because they are getting their medical treatments only paid?

**Mr BOWEN:** The ANF form itself has the Claims Advisory Service phone number on it for the MAA Claims Advisory Service and that service is available to provide advice to people, or say to them, if they have lost work in excess of five days, if they look like they are going to have continuing problems, continuing medical treatment, or they are going to be off work for a period in the future, they have a right anyway, but in those circumstances they clearly have a right to put in a full claim form. The service also will refer people to the Law Society if they need legal advice on that.

**The Hon. JOHN RYAN:** Going back to the comparisons you have made between the old scheme and new scheme, is it not reasonable to say that there are a large number of people under the new scheme that are only going to receive a nominal payment in the order of \$230 to \$500 by comparison to people in the old scheme who clearly can receive a lot more than that? To some extent comparing the old scheme and the new scheme, in the way in which you have done, in order to get fairness indicators and so on is perhaps a little misleading and it is necessary to point out, to at least people reading the annual report, that there is a significant difference between the batch of figures describing one scheme and a batch of figures describing the other.

**Mr BOWEN:** I believe the fairness indicator is a reasonable comparison. I take the point of your question in that it is clearly the case that people getting the \$230, or thereabouts, are getting less under the new scheme than they were under the old scheme. They are no longer getting the first five days off work. That in particular would be the reduction in damages for people with fairly minor injuries. Those who get a bump, they go and see their doctor within a week or so, they have a short course of physiotherapy. The major reduction in compensation for them will be from the reduction in the withdrawal of the first five days loss of work as being compensable. It may also be a reduction in the time or the period of therapy and that is really more as a consequence of the fact that the treatment now is happening earlier, so it can be more intense. Previously quite often people kept going for courses of physiotherapy for month after month after month without little addition to their prognosis. That is clearly the case.

In what we might call the more moderate claims where it has involved something more serious but to the point where they are not going to get non-economic loss, then certainly for that class of claimant there will be a significant reduction in the amount of damages that they get overall. There is a group, in our estimate, of around about 30 per cent of claimants who under the old scheme received a non-economic loss payment who will not receive a non-economic loss payment under the new scheme and they will have a reduction in the benefits they get.

**The Hon. JOHN HATZISTERGOS:** Just on that issue, in answer to the questions from the Law Society I think you stated that you anticipated that you would be on target in terms of 10 per cent of claims making the non-economic loss threshold and in the first year of operation of the scheme you would pay out, I think it was \$150 million, which was Price Waterhouse Coopers, is that right?

**Mr BOWEN:** That was the overall savings. That was not the first year payout.

**The Hon. JOHN HATZISTERGOS:** That was the overall savings? How much did you pay in the first year of the operation of the scheme?

**Mr BOWEN:** That is shown in the cash flow document. Is that actuals for year one and two?

**Ms RIZZO:** No, it is not.

**The Hon. JOHN HATZISTERGOS:** You may not have it in the last year. How much have you paid?

**Ms RIZZO:** In answer to one of the Bar's questions, 8.3.

**The Hon. JOHN HATZISTERGOS:** Just a moment, I will just try to find it. 8.3, was it?

**Ms RIZZO:** Yes, page 41.

**CHAIR:** Ms Rizzo, is it relevant in responding to the question that has been asked to refer to the sheet headed "Simple Pie Chart Approach Estimate"?

**Ms RIZZO:** Yes. In fact, our response to the Bar's question, the response 8.3, compares the estimates which are in that cash flow with the actuals.

**The Hon. JOHN HATZISTERGOS:** I am not following this.

**The Hon. JOHN RYAN:** We are now referring to the annual report, are we?

**Ms RIZZO:** We are referring to the cash flow.

**The Hon. JOHN HATZISTERGOS:** Page 41?

**Ms RIZZO:** Page 41 is one document. The chair is referring to the cash flow which is in the second report.

**The Hon. JOHN HATZISTERGOS:** Attachment 2?

**Ms RIZZO:** Yes.

**The Hon. JOHN HATZISTERGOS:** What do you want to say?

**Ms RIZZO:** I just need to read it. It is the last paragraph of our response to the Bar where we say that the actuarial projection for claim payments in the first two years is \$47 million discounted, which is on the cash flow chart. That is the projection. What was actually paid for claims arising from the first accident year in the new scheme is \$54.8 million.

**The Hon. JOHN HATZISTERGOS:** I am puzzled by the graphs that you have on pages 28 and 29 of your annual report which show that 21 months non-economic loss, you are comparing the old and the new Act, non-economic loss appears - I might be reading this wrongly - to have gone from \$16.5 million, is that right?

**Ms RIZZO:** Yes.

**The Hon. JOHN HATZISTERGOS:** To something like about \$2 million, is that right?

**Ms RIZZO:** That is correct.

**The Hon. JOHN HATZISTERGOS:** Where do those figures come from?

**Ms RIZZO:** They are actual figures that the insurers report to us; they are actual payments. That is correct.

**The Hon. JOHN HATZISTERGOS:** They have gone from \$16 million to \$2 million?

**Ms RIZZO:** That is correct.

**The Hon. JOHN HATZISTERGOS:** In non-economic loss payments?

**Ms RIZZO:** Correct.

**The Hon. JOHN HATZISTERGOS:** How do you get the other figures?

**Ms RIZZO:** The other figures are the total payments for every head of damage, including non-economic loss, but also including everything else.

**The Hon. JOHN HATZISTERGOS:** I see. So non-economic loss payments as a component of the scheme have gone down from 20 per cent to --

**Ms RIZZO:** 3.2.

**The Hon. JOHN HATZISTERGOS:** 3.2. Is that where the major savings have come from?

**Ms RIZZO:** That would be correct.

**The Hon. JOHN HATZISTERGOS:** The major savings in the scheme, from the old scheme to the new scheme, have been in non-economic loss?

**Ms RIZZO:** Yes.

**The Hon. JOHN HATZISTERGOS:** And also economic loss?

**Ms RIZZO:** Correct, and legal costs.

**The Hon. JOHN HATZISTERGOS:** Legals and investigations have gone down but not by anywhere near the same as the amounts for economic loss and non-economic loss, is that right?

**Ms RIZZO:** I agree with your comparison with non-economic loss.

**Mr BOWEN:** It is worth thinking about what sort of claims are finalised or paid out at the 21 month point. It will not include the most serious claims in both old scheme and new scheme. I believe that the reduction in the economic loss will be reflecting that the bulk of these claims are on smaller claims. There is no longer an entitlement to the first five days of loss of wages, and over a period of time, as the larger claims, both old and new scheme, are finalised, that will flatten out because economic loss can be a sizeable component of it.

The non-economic loss also will be compounded by the fact that the payments at this point of time will be on the old scheme on smaller claims that attracted non-economic loss and those sorts of claims would not get an entitlement under the new scheme. We expect that it will be clearly the case that non-economic loss is a source of the major saving but in percentage terms that percentage will reduce over time as more matters come through and are finalised.

**The Hon. JOHN HATZISTERGOS:** You actually summarise on page 29 that you are meeting the objectives of the scheme, one of which was to limit non-economic loss to claimants with greater than 10 per cent permanent impairment and not to pay people for the first five days and to ensure that those people who have relatively more serious injuries get compensation, and by reducing transaction and legal investigation costs, you have actually compared the old and the new. Now, you are trying to say, as I understand it, that that comparison is not totally appropriate.

**Mr BOWEN:** It is a valid comparison but it needs to be understood at a point of time, and I am giving you my thoughts as to how I think that will look in years to come, which is that there will continue to be a reduction in both of those but it will not be as pronounced, but over a period of time we expect legals to drop even further.

**The Hon. JOHN HATZISTERGOS:** The legals have gone from 8 per cent to 6 per cent, that is out of a small pie. From \$6 million to \$2.9 million?



**Mr BOWEN:** Yes.

**The Hon. JOHN HATZISTERGOS:** That is a relatively modest saving.

**Mr BOWEN:** Yes.

**The Hon. JOHN HATZISTERGOS:** The savings are in economic and non-economic loss. It is benefits, is it not?

**Mr BOWEN:** Yes, at this point in time.

**The Hon. JOHN HATZISTERGOS:** To keep the scheme within the parameters that you expect it to be, the saving is going to have to be in those areas. You cannot go much further in legal terms.

**Mr BOWEN:** Particularly in non-economic loss there would be big savings.

**The Hon. JOHN HATZISTERGOS:** Even if you drop the legals down further, the fact of the matter is to keep the scheme within the parameters that you anticipated it is going to have to get the benefits that are contained, is it not?

**Mr BOWEN:** That is correct.

**The Hon. JOHN RYAN:** Why have medical benefits reduced, given that one imagines that the people who are injured in accidents have been relatively stable? Why have you been able to save \$3-4 million in payment for medical expenses?

**Ms RIZZO:** It is a difference of \$1.9 million.

**The Hon. JOHN RYAN:** In any event, why would you be saving on medical expenses? Doctors are hardly any cheaper.

**The Hon. JOHN HATZISTERGOS:** If you treat them earlier you need less; if you treat people earlier, then they will not become chronic.

**The Hon. JOHN RYAN:** At the earlier stage of the scheme you would expect to see medical expenses increasing then. Why would it be coming down?

**CHAIR:** Would it in some way relate to the five day front end deductible?

**Mr BOWEN:** No, that is showing up in the economic loss.

**The Hon. JOHN RYAN:** Do I understand where the graph says "medical expenses" we are talking about payments for treatment, not payments for reports?

**Mr BOWEN:** That is correct.

**The Hon. JOHN RYAN:** Treatment costs have come down. Have you investigated why? Given you expected to be spending more on treatment as a means of long term savings, why has the cost of treatment of people injured in accidents come down? Given that there has been little evidence, in my view, to explain that doctors have reduced their charges for treatment, it seems a bit of an unusual outcome, does it not, and would you expect that trend to continue?

**Ms RIZZO:** I would see that the difference is actually between \$27.9 million and \$26 million. If we look at rehabilitation also, which is the second category, which has gone up -

**The Hon. JOHN RYAN:** Not by much.

**Ms RIZZO:** The difference is between \$1.7 million and \$2.2 million.

**The Hon. JOHN RYAN:** Half a million?

**Ms RIZZO:** If you add those two together, you get \$29.6 million compared to \$28.2 million.

**The Hon. JOHN RYAN:** If you properly categorised rehabilitation in the previous year, why would you add those two figures together?

**Ms RIZZO:** I am only adding those two together because they both relate to treatment. My point is that the difference might be explained merely by the fact that there are statistical fluctuations in any group of numbers.

**The Hon. JOHN RYAN:** One of the things that I do not think the scheme was ever meant to do was to minimise the amount of treatment that people receive from injuries arising from motor accidents. Given that you have had a difference in a differential between the two, is it not worth investigating in a little more detail as to why treatment costs have come down, just to be sure that people are not foregoing treatment or not claiming for treatment they are receiving which might be another reason? I would hate to think that one of the outcomes of the new scheme was that people who should be being treated were not.

**CHAIR:** Is it possible that some people are not troubling about relatively smaller claims and that reflects in medical costs as well?

**Mr BOWEN:** The fact that we have more people making claims under this scheme than we do under the old probably means that because of the ease of coming in through an ANF more people are claiming small amounts of treatment and so in that respect the differential is not huge, but I take the point and it is worthy of some investigation.

**The Hon. JOHN RYAN:** It is a substantial proportion when compared to non-economic loss. It is a fifth of what you are saving in that regard. It is not an insignificant saving.

**Mr BOWEN:** We are prepared to have a look at that further and report back to the Committee.

**The Hon. JOHN RYAN:** Is it possible there was a level of fraud in the old scheme with regard to medical costs?

**The Hon. JOHN HATZISTERGOS:** Over servicing.

**Mr BOWEN:** I think it is possible there was over servicing.

**CHAIR:** You have undertaken to investigate the issue?

**Mr BOWEN:** Yes. I do not have an explanation for why that has gone down. In the longer term we expect that there will be more appropriate therapies as a result of some of the guidelines we are issuing such as the guideline on whiplash, which is out there. I hardly believe we can claim credit for that at this early point.

**The Hon. JOHN HATZISTERGOS:** How many CARS disputes have there been over medical treatment?

**Mr BOWEN:** Disputes on medical assessment would go to the Medical Assessment Service. We do have that figure. That figure is much higher than we did anticipate.

**The Hon. JOHN HATZISTERGOS:** What is it?

**Mr BOWEN:** What has become apparent to us now is that as there was no forum to resolve a dispute on treatment under the old scheme, issues got left in abeyance.

**The Hon. JOHN HATZISTERGOS:** A large number of them were being paid, whereas now you might dispute them and they go to the MAS?

**Mr BOWEN:** I suspect the insurers have not suddenly got less litigious. I suggest under the old scheme they were not being paid and they were left to compound under the settlement discussions.

**The Hon. JOHN HATZISTERGOS:** I want to know what the statistics are.

**Ms CASSIDY:** I think we are up to about 1,500 MAS disputes in total, of which 25 per cent are treatment disputes.

**The Hon. JOHN HATZISTERGOS:** About 375 or something?

**Ms CASSIDY:** 370.

**The Hon. JOHN HATZISTERGOS:** How many of those have been resolved favourably to injured parties?

**Ms CASSIDY:** I have not got the outcomes.

**The Hon. JOHN HATZISTERGOS:** Do we have statistics?

**Mr BOWEN:** We are instituting a case management system, which means we will be able to report on this by February.

**Ms CASSIDY:** February/March.

**The Hon. JOHN HATZISTERGOS:** Sorry?

**Mr BOWEN:** We are in putting place a case management system into the assessment areas and we will be able to report on the outcomes by February/March and we are happy to provide an updated report to the Committee on those figures.

**The Hon. JOHN HATZISTERGOS:** I do not see a lot of those cases reported in the bulletins.

**Ms CASSIDY:** If I can answer for that as the editor of the bulletin; probably because they have no precedent value. There is as yet no clear pattern either way. In the current issue of the bulletin that will be distributed next week there is one treatment dispute reported that incorporated a hell of a lot of issues in it. It is too early yet, apart from the fact that 24 or 25 per cent of the applications revolve around treatment disputes, not all of those have been determined yet. Of the 1,500 applications that have been received, only about 500 have been determined. It is still too early.

**The Hon. JOHN HATZISTERGOS:** I do not know that I accept the argument that it has no precedent value. There are a lot of things in here that do not have any precedent value but they do have some guiding value and they provide information to people who are interested in the scheme as to performance.

**Ms CASSIDY:** When we are able to measure the outcomes with a case management and data system, I think we will be able then to pick some trends and report on some of the cases that are reflecting those trends.

**Mr BOWEN:** Just very quickly in answer to Mr Ryan's earlier question, I am reminded that the other factor that is different under the new scheme is that we have schedule treatment fees and for that purpose under the scheme we have adopted the AMA rates. To the extent that there are a lot of practitioners out there charging above AMA rates, there could be a flow-on effect from that.

**The Hon. JOHN RYAN:** Are people able to charge over and above those rates and from the patient, as opposed to patients paying gaps?

**Mr BOWEN:** Yes.

**The Hon. JOHN RYAN:** Have you any idea what the level of the gaps are?

**Mr BOWEN:** No, we are having a look at the potential gaps in legal costs at the moment and with the Justice Research Centre. It has not been an area where there has been complaint to us but it is worthy of some further investigation.

**CHAIR:** Are you saying that a possible explanation for the lower total quantum of medical fees is that they are now fixed according to an AMA schedule and that differs from what the position was hitherto; are you saying that?

**Mr BOWEN:** I am saying that schedule is in existence. It is a possible explanation. I cannot say it absolutely is. It is worthy of some further investigation as to the impact it is having.

**The Hon. JOHN RYAN:** It is an AMA schedule. It is not a Medicare schedule which is written by the Government.

**Mr BOWEN:** In terms of the compensation schemes, it is the most generous schedule in Australia.

**The Hon. JOHN RYAN:** It is likely to be at the generous end rather than the restricted end.

**The Hon. PETER BREEN:** Can I ask about the drop in the non-economic loss payments from \$16.3 million to \$1.6 million? You have said earlier that the early part of this scheme will not show up non-economic loss, particularly for catastrophic injuries, and it will gradually increase over the next four or five years until we can then look back and review it as about 10 per cent of the payments.

What I am concerned about is if it has dropped so radically in the first two years of operation and you say that there is only a 30 per cent reduction in the amount of non-economic loss payments that have been made, is it not the fact that that figure is going to jump back up over the next three years? At the moment it has gone down to \$1.6 million, but could it not go up to something in the order of \$15 million?

**Mr BOWEN:** I have been thinking of how we could present this to the Committee in a way that would be useful for you and I think what we will try and produce is a profile of non-economic payments, old scheme and new scheme. What that will show is that under the old scheme about 40 per cent of claimants were getting non-economic loss. What we can show then is the break down in terms of the dollar amounts, how many got zero to \$10,000 in each range right through to the cap, and we will then be able to compare to that a profile of the 10 per cent of claimants who we expect to get non-economic in the new scheme and the breakdown of payments there.

What it will show, for example, is that under the old scheme there was a fair concentration of non-economic loss payments. There were a lot more people getting it but at lowish amounts. We anticipate that those people who get over the threshold in the new scheme will get payments commencing around \$35-40,000 and above. The payment profile will be quite a bit different because of the different numbers of claimants.

**The Hon. PETER BREEN:** Is my point a valid one though, that the payment, although it is low now, may actually be quite high over the next three or four years?

**Mr BOWEN:** In total.

**The Hon. PETER BREEN:** In total?

**Mr BOWEN:** There will still be a sizeable amount of non-economic loss paid because -

**The Hon. PETER BREEN:** Because you will be picking up through the years when there is no economic loss being paid virtually in comparative terms?

**Mr BOWEN:** Yes, but it still will be the area where there is the most significant saving old scheme to new scheme.

**The Hon. PETER BREEN:** When these figures turn up next year, that three per cent is likely to be much higher, is it not?

**Mr BOWEN:** Yes.

**The Hon. PETER BREEN:** In fact, it could get right up to in excess of 20 per cent theoretically, if it is including all the lag in the first book.

**Mr BOWEN:** The total payments.

**The Hon. PETER BREEN:** If it includes the lag from the first couple of years where there are no figures or a much reduced figure of three per cent?

**Mr BOWEN:** But also the others will all be going up as well. For example, as you get further on in the development, your rehab costs will go up considerably as the people with long-term care need to start to come in. For example, once you get all the people with catastrophic injuries, the biggest component of their settlement will be for future care, so these all of these figures will adjust as years of development go on.

**The Hon. PETER BREEN:** Is it fair to say that this might be as good as the new scheme will ever look?

**Mr BOWEN:** It may be fair to say that. In fact, it is true, some of the timing indicators will flatten out, and that is because you expect the timing to impact mostly upon the smaller claims. It is a very valid point. Most of the impact of this new scheme was focused upon small claims. You would expect the small claims to come in quicker and be dealt with quicker and get out of the system quicker, and as time goes on and you are getting more and more matters finalised where there is no change old scheme to new scheme, your indicators will flatten. Hopefully, they will remain positive.

**The Hon. JOHN HATZISTERGOS:** It is not just small claims that you have taken out. You have taken out some moderate claims.

**Mr BOWEN:** We have taken out non-economic loss on moderate claims but no other hits.

**The Hon. JOHN HATZISTERGOS:** I notice here - I know that these do not get precedent, unless Ms Cassidy provides them for us and whatever value they have - you have got de-gloving injuries to the lower leg did not make it above the 10 per cent. I think that is a not insignificant injury. A number of fractures to different parts of the bodies, including a torn meniscus and a fracture to the tibial talus, did not make it over the 10 per cent. So you would not regard that as a permanent injury?

**Ms CASSIDY:** The ten per cent threshold is entitled to non-economic loss only. It will not affect their entitlements to domestic assistance, either paid or unpaid. It will not affect their entitlement to economic loss past and future, past or future treatment. It only affects their entitlement to non-economic loss.

**The Hon. JOHN HATZISTERGOS:** I know that. I am only responding to Mr Breen's suggestion that the non-economic loss component might increase with time. You are not just saying that the rate that you are finding under 10 per cent in level of disability required to get over 10 per cent, you have got more room for optimism to contain it rather than the other way around?

**Ms CASSIDY:** We only see the cases that come to us. There are, I hope, and Dr Clough may be able to answer the question, but there are a number of cases that we do not see where there is no dispute as to the entitlement to non-economic loss. We really only see claims where the insurer and the claimant cannot agree to entitlement to non-economic loss. They come to us and they get their PI assessment. The more serious injuries we suspect we will never see, because we hope that there will be an agreement between the insurer and the claimant and/or the claimant's lawyer if they are greater than 10 per cent and have an entitlement. So these figures and the cases that are under or over are really the borderline cases coming to us.

**The Hon. PETER BREEN:** Just in response to the observation that Mr Hatzistergos made, you have said that the total reduction in non-economic loss will be about 30 per cent old scheme/new scheme.

**Mr BOWEN:** Yes.

**The Hon. PETER BREEN:** And the point that I think you need to make is that this reduction here from 21 per cent down to 3 per cent is far in excess of 30 per cent.

**Mr BOWEN:** It is a reduction in 30 per cent of claimants who are anticipated to have an

entitlement, but it would be less than 30 per cent in claim payments because you are taking out the 30 per cent of claimant's who would have the lower level of entitlement to non-economic loss under the old scheme. Ms Rizzo, do you know in dollar terms what the anticipated reduction in non-economic loss is?

**Ms RIZZO:** We can find that out.

**Mr BOWEN:** We can find that out for you and provide that.

**The Hon. PETER BREEN:** That is relevant to those figures in the report?

**Mr BOWEN:** Yes, it is.

**The Hon. PETER BREEN:** Given the reduction in the number of insurers in the market and that the MAA considers that six insurers in the market managing eight licences are sufficient to keep premiums competitive - this is the written questions. I thought you had the questions.

**CHAIR:** Not on that, no.

**The Hon. PETER BREEN:** Should I repeat that question again?

**Mr BOWEN:** I think we have that question from you.

**CHAIR:** We are dealing with the issue of the licensed insurers, and the first question we want to ask you arising out of the HIH collapse is if you are able to advise the Committee whether six licensed insurers would be considered to be a minimum number, and, if not, what that number would be and on what basis you would determine the desirable minimum number of licensed insurers? You appreciate that two licensed insurers have dropped out in the wake of the HIH collapse.

**Mr BOWEN:** There has been a rationalisation of the industry over the last few years. Some of the insurers that we have have surrendered a licence, such as GIO is now wholly owned by NRMA, others are a smaller market, and RSA, once they became a hundred per cent owner of AAMI they dropped out of a licence in their own name. I think that we are comfortable now with six insurers, given their level of market share and the fact that they file with us an intent to write premiums that suggest about 110 per cent of the market would be written.

The chairman might like to comment on this as well. I really do not think that we could stand the loss of one of our current insurers, given that they have over five per cent of the market share. I do not know whether there is capacity there amongst the other insurers to pick that up. Ideally it would be our preference to have more insurers competing in this businesses, although what we probably know about the withdrawal with small market share is that you need to aim for a minimum of three and probably minimum five per cent of market share to remain viable in the longer term.

**Mr GRELLMAN:** I think what we are seeing in New South Wales reflects what is occurring nationally and internationally. There is a significant consolidation occurring in the non-life sector and general insurance sector globally and there is a movement towards greater size so as to capture economies of scale and best practice most efficiently. My view is that the scheme is functional with six operators, but, like the General Manager, I would not like to see any less and I have a very clear preference to see a couple more come in. At the moment that is relatively unlikely.

**The Hon. JOHN HATZISTERGOS:** They are not competing very aggressively, are they? The sort of advertisements we saw when the previous legislation came in, the difference in products being offered, the different rates, now you hear nothing.

**Mr GRELLMAN:** The way the scheme is designed now provides very little opportunity for pricing difference because they are all writing effectively an identical product. Their actuaries price the risk that they are accepting and that turns out a number. I am just saying that around the margins you will get an opportunity for the underwriting community to offer a point of difference on pricing by using the bonus MAAS technique that really, if the actuaries are doing their sums correctly, they ought to come up with a real risk rating which is pretty well the same from one insurer to another.

**Mr BOWEN:** We are in the middle of market research at the moment just to see what

consumers think about CTP as a product. It is clearly a price driven product, being compulsory. One has to have it, no-one particularly wants to pay for it, and so the main differentiator is price. It leads to something of a paradox in our role in that product and we get criticisms to us because the insurers have quite disparate prices for the same product. At the same time we are trying to say it is worth shopping around and we will provide web sites and we will provide a phone service and lots of other information on price.

Most people will consider moving insurers now. I think one of the things the insurance industry has to address is that over the last five years they have lost a huge amount of customer loyalty and the number of customers who are prepared to change insurers each year or at least are prepared to shop around each year seems to me to be increasing.

**The Hon. JOHN HATZISTERGOS:** There is virtually no advertising at the moment in the market by the insurers for CTP.

**Mr BOWEN:** Apart from a little bit of marketing that GIO did last year, I do not think there has been any for probably five or six years or more.

**The Hon. JOHN HATZISTERGOS:** No, but if they want a bigger share of the market you would think they would be out there touting for business, but they do not seem to be.

**Mr GRELLMAN:** It is probably the dynamics at the moment. Two of the underwriters would write about 17 per cent in total and the other four are picking up five to ten per cent each, so the four smaller writers have got a long way to go to write a significant share. I think it is fair to say that at the moment the non-life sector is struggling with a variety of challenges and my view is that this is a reasonable product for them to be writing, and if our analysis of the profit that they are generating is accurate, then it is providing a reasonable return on capital, but it is not providing a tremendously hugely profitable line of business for them. It is really just a stock standard product that they are providing. I think the way the market percentages are set at the moment, with two big providers writing a very large chunk of the book, is again probably a natural out-working of the consolidation that we have seen take place.

**CHAIR:** Regarding the possibility of further rationalisation in the market, Mr Grellman, you referred to that a short time ago, there has been a recent acquisition by Suncorp-Metway of GIO's general insurance business as I understand it. On my advice Suncorp-Metway is the largest CTP insurer in Queensland with some 56 per cent of the market. Is there a concern about the potential for further rationalisation of the market and what can be done about that if it should happen?

**Mr GRELLMAN:** If I could comment on that, I am not sure that we could say that we have a concern about further rationalisation. I think that one has to be realistic about it. It is likely that there is going to be some further rationalisation, probably by way of merger or takeover, but I am not sure that there is a huge appetite for that and I am not confident that very much more will occur, but it is a global trend and Australia cannot be isolated from that global imperative to acquire the most effective economies of scale possible. So yes, there is a possibility of further rationalisation through takeover or merger, but I do not think if there is we will see very much of it in this country. It may well be in fact driven more by what the big overseas conglomerates do and whether or not a local player, being part or a branch of a larger player, gets caught up in some transaction that ultimately impacts on this product in this market.

**CHAIR:** I am really asking my question against the background of the MAA's view that six insurers managing eight licences is sufficient to keep the market competitive, and I am really suggesting, I suppose, if the number of licensed insurers drops, would you maintain your view that the market is still competitive?

**Mr BOWEN:** Let me put that point I made earlier. If one of our underwriters was to withdraw at this stage, it would be of considerable concern to us.

**The Hon. PETER BREEN:** In fact, you used much stronger words before. You said, "We could not stand the loss of one of our CTP insurers".

**Mr BOWEN:** That is right. I would have some serious questions as to whether the other underwriters would be prepared to pick up that further share of the market.

**Mr GRELLMAN:** I think you have to look at that issue in the context of the underwriters we are talking about. If for some reason, and I could not contemplate what may precipitate this, NRMA decided they did not want to write CTP, there would be no doubt that the rest of the underwriting industry could pick up 38 per cent, or something in that vicinity, but if a five per cent writer dropped out, with Suncorp-Metway now in the New South Wales market with quite a good book, the GIO book was quite a good book, then they might be prepared to take another five per cent, but it is quite a big ask.

**The Hon. JOHN HATZISTERGOS:** Could I just ask this question on marketing: Is it not the fact that previous experience with marketing resulted in increases in the type of people who were shifting CTP who tended to be people who were most price sensitive, who also happened to correlate with the highest risk in terms of claims, in terms of accidents, and is it a situation where insurers are reluctant now to market their products to try and attract business because they may end up getting more or less --

**Mr BOWEN:** It has a big influence upon the sort of marketing that the public is prepared to do. Anything that is based solely on price will not happen, for the very reasons you have said, the higher level of risk, which tends to be the young people who are also more price sensitive and the quickest to move. So the type of marketing that is occurring is through grouping CTP with other products or offering first party add-ons to CTP policies, that sort of thing.

**The Hon. JOHN HATZISTERGOS:** Or offering maybe discounts for example for people who are relatively safe?

**Mr BOWEN:** The insurers use the bonus MAS structure to do that. In terms of the risk factors that we allow the insurers to take into account, other than the obvious, having to do with the profile of the owner of the vehicle, a particular age and issues of geographic location and then some particular matters to do with the vehicle itself, particularly the age of the vehicle and the like, the big Australian factor is whether or not the owner has comprehensive insurance or other types of insurance and periods of no claim bonus. That varies considerably between the insurers. Some of them use it just to get - "If you have got comprehensive insurance with us, then you will get CTP at the best possible price." Some of them say, "If you buy comprehensive and CTP together, then we will knock \$50 off the comprehensive." There are strategies like this out there.

**(Short adjournment)**

**The Hon. PETER BREEN:** Just to pick up where we left off, I noted your response to the New South Wales Bar Association's questions 6.2.1 to 6.2.3, regarding the MAA's liability as nominal defendant for the CIC and the FAI "tail" in the wake of HIH collapse. Is there anything that you would like to detail in regard to this liability and the proposal by the Insurance Council of Australia for the raising of funds by the insurance industry?

Could I also add to that a question in relation to the payments being made by Allianz. It is not clear to me the basis of their liability, whether it is a voluntary payment on their part. Would you able to comment on that?

**Mr BOWEN:** If I can deal with the second question first.

**The Hon. PETER BREEN:** Yes.

**Mr BOWEN:** Allianz have been engaged by the Motor Accidents Authority to manage the FAI/CIC claims for which Motor Accidents Authority as nominal defendant is now liable. Under our Act the nominal defendant becomes liable for payments due to claimants where the insurer becomes insolvent, so it is a straight management agreement. Under that agreement Allianz contracts with the service providers and it is not just making payments but we provide them with the funding to do that and we in turn get that funding from the Treasury.

In relation to the proposal to replace the policy protection tax with another proposal, it is probably a question more properly directed to the Treasurer, but as there has been no further advancement I feel quite comfortable to report to you that the discussions are still going on there. As I understand it, the industry is due to pay a tax installment, or was due to pay a first tax instalment on



Friday, the previous one having been deferred while these negotiations took place. To the best of my knowledge that second round was not deferred and so the tax is now in operation and running. It seems to me that the main delay in terms of getting a replacement scheme in place is a fairly detailed accounting advice that the industry is waiting on, things like the tax treatment of the responsibilities it would have to pay a charge and just the mechanics of setting it all up, but it has not progressed for some months.

**CHAIR:** If I could just deal with a procedural issue, Mr Bowen, are you willing to table the written responses to the questions on notice?

**Mr BOWEN:** Yes.

**CHAIR:** And the annual reports, so that they can be made public and distributed?

**Mr BOWEN:** Yes.

**Documents tabled.**

**CHAIR:** Could I ask you a question arising out of the Bar Association's question 2.2.4? They queried there whether the MAA believes there is consumer resistance to use of the CARS assessment system, and if you believed there was, why that was so and what the authority might be doing to address it. In your response you highlighted what you term "lawyer resistance" and you briefly outline the measures used to address that resistance. Would you like to say anything by way of elaboration regarding that response and perhaps express an opinion as to the success of any steps taken to address that issue of what you termed "lawyer resistance"?

**Mr BOWEN:** Chairman, we were perhaps being a little provocative in our reply under the brunt of some questions from the legal profession. As I have indicated in the past, I am quite happy to have hard questions asked and we will do our best to answer them.

It is a fact that when a new scheme is introduced, the insurer is in a much better position to accommodate the changes and make themselves aware of the new procedural needs. It is a concentrated business within the insurers and they can have a variety of in-house educational programs and the like. With the legal profession, personal injury for a great majority of practitioners is just part of their practice and the fact is that whenever significant changes are introduced in a scheme, the tendency is to put aside the need to become acquainted with those changes until a matter actually arises, but I would say that is probably reflected in the fact that the accredited specialists in particular would be very well acquainted with the new scheme and we have had good attendance on the legal profession.

We have done I think now three roadshows, as we call them, around the State, meeting in regional centres and the like. We have been taking on those previous answers. We are now getting a good response to the lawyers on the program running and bringing them up to speed on impairment, but it is nevertheless the case, and I think it is reported somewhere in our report, that a goodly number of the inquiries we get to our own claims advisory service are from lawyers who quite often are confronted with the first client they have had under the new scheme and they recall there has been a lot of changes and they make some inquiries. It is also the fact that with new procedural bodies like CARS and like the Medical Assessment Service, most lawyers like to have a bit of comfort in knowing what will be the outcome before they go in. That is not the case at the moment. There is a bit of a tendency, I think, to hang back and wait and not be the first one to see what happens. I had a call from a solicitor in Wagga the other day who had a matter on where an exemption had been granted and the matter had got through and was listed and was up for hearing in the District Court and he said to me, "Is there any case law yet on the assessment of non-economic loss under the new scheme?" I said, "No, but if you have got a matter on, you may well be setting it." It is sort of that point of development. He was not particularly too happy to be involved in that sort of matter.

We think that as time goes on, and particularly over this next twelve months, some of that reluctance perhaps more than resistance will dissipate and we will see more matters pushed through, particularly as more and more matters go through and it becomes, we hope, more apparent that there is a consistent outcome from the CARS process.

**The Hon. PETER BREEN:** Can I just ask a further question on that? On page 28 of the

annual report, the percentage of claimants making a full claim that involves a solicitor has dropped from 63 per cent to 52 per cent. That is the top of the second column at page 28.

**Mr BOWEN:** Yes.

**The Hon. PETER BREEN:** What is the benchmark there? Are you referring to the old scheme?

**Mr BOWEN:** Yes.

**The Hon. PETER BREEN:** Are you suggesting that there were only 63 per cent of claimant's using a solicitor in the old scheme?

**Mr BOWEN:** That is correct.

**The Hon. PETER BREEN:** Were people making third party claims on their own?

**Mr BOWEN:** Yes.

**The Hon. JOHN HATZISTERGOS:** That was just under the old scheme?

**Mr BOWEN:** Yes.

**CHAIR:** That was mainly in small claims I suppose?

**Mr BOWEN:** Mostly small claims, yes.

**The Hon. PETER BREEN:** They were claims that were run in the small debts courts, for example, were they?

**Mr BOWEN:** No, but they would nearly always settle. It was only out-of-pockets and past medicals and maybe a couple of days of lost income.

**The Hon. JOHN RYAN:** On page 20 of your responses to questions, in response to question 2.2.6 from the New South Wales Bar Association you stated there have been no cases referred to the Senior Assessor's service. The New South Wales Bar Association noted that you asserted in the MAA annual report that the agreement of professionals to nominate senior practitioners to serve on the Senior Assessment Service constituted acceptance of the goodwill towards the scheme. The Bar Association has apparently questioned that if there had been no referrals, would the MAA consider that there has been less than complete acceptance of the goodwill towards the new scheme? Can you elaborate on your response to the Bar Association's question?

**Mr BOWEN:** I will let Ms Cassidy answer the first part.

**Ms CASSIDY:** No cases have yet been referred to the Senior Assessment Service, and the answer was that the big cases are not yet ready for assessment, and I think that highlights a lot of the discussion that has taken place earlier this morning about the small cases settle quickly and early but the bigger cases take time to mature and time for the investigation of how much that claim is going to be worth. For example, an impairment may take 12 to 18 months post-injury to become permanent. Brain injury may take a number of years to settle to a stage where the prognosis for the future is certain enough for their claim to be quantified and the matter to proceed to settlement and resolution.

The thing is that the Senior Assessor's service is designed for those big cases that would otherwise be exempted or exemptable to come by consent to CARS, and, if you like, have a bit of a go in a less formal atmosphere than having to go to court, and I hope that in a couple of years time that four or five years after an accident has happened, if there is a big claim, that they will come, but again I suppose it is too early to say.

**The Hon. JOHN RYAN:** When we were discussing the HIH collapse and so on, I recall recently being with a group of insurers and the panic attack amongst those at the festive season was the concern that will arise from the increased costs of underwriting that would come from the September 11 and other associated terrorist attacks. You were in fact asked to provide some sort of

response as to whether that was expected to make any impact on motor accident insurance claims, and essentially I suppose, if I may summarise your response, it was "We don't know". Why is it not possible to say reasonably categorically that driving a car is clearly a completely different separate and distinct risk from being bombed by a terrorist and therefore one would not expect that to have an impact given that there is apparently legal protection from any insurer using this scheme as a means of financing shortfalls in other forms of insurance?

**Mr BOWEN:** That is a question with two parts. The Minister has announced in a ministerial statement a proposed amendment to our Act next year to remove the fairly remote possibility of a claim under the Motor Accidents Scheme as a result of terrorism. That was due entirely to the fact that there was no re-insurance capacity any more for those sorts of matters. But the fact is that the cost of re-insurance has to do with its availability firstly, and, secondly, with the risk of not being re-insured, and therefore the re-insurance premiums may fluctuate considerably depending upon what else is happening all around the world, without any regard at all to the risk involved in the New South Wales Motor Accident Scheme.

That is a trend that you can look at over very many years. For example, after the Exxan Valdez went down in about 1998, there was a huge billion dollars claim at the time, re-insurance costs escalated for every sort of re-insurance product. It had nothing to do with the underwriting risk for that product; it had to do with the sheer matter of availability.

The other thing about that is that the underwriters will say to me, "We can get re-insurance but it is obscene great pieces of paper". We quite frankly do not want to purchase any re-insurance at that sort of level of credit rating. We would prefer that they buy re-insurance, even if the premium is a bit higher, that gives a much higher certainty that the claims will be paid out.

The difficulty with September 11 is indicated, for example, in what happened with QBE, firstly to assess what the total cost may be of terrorist claims and the extent to assess the capacity of the re-insurance market and the underwriters to meet those claims. For example, if one of the large re-insurers who has a very big exposure to the September 11 attack was unable to meet the claims from the underwriters, then that is going to come down through the underwriting community. More generally, there is a reluctance by the underwriters to take on additional risks at this time of fluctuating market. Some of our underwriters who have governing boards in Europe, we are now giving them directions that they are to limit the sort of risks that they open themselves up to. So it is a bit of a fluid situation at the moment.

Having said that, re-insurance costs are not a huge component of the premium, so while we expect there will be a flow on, we do not expect it to be significant.

**The Hon. JOHN RYAN:** What do you mean by not significant?

**Mr BOWEN:** It would be less than two per cent of premium.

**The Hon. JOHN RYAN:** The annual question that I ask every year and I get told that there is an answer on its way is with regard to parents who lose their children as a result of an accident in which they are not themselves involved. Is there any consideration being given to determining them as being deemed to have passed the 10 per cent level, so that they can proceed to make a claim for non-economic loss?

**Mr BOWEN:** We have been monitoring that fairly closely. We have a reply which I am happy to table. We were anticipating a question on this. I am not sure whether it is referred to in here, but there has been one case where a parent got graded as just over 10 per cent on psychiatric impairment because of the grief reaction to the loss of her child. There have not, to my understanding, been any where they have been taken and found not to be, but presumably the others just have not been taken yet.

**Document tabled.**

**The Hon. JOHN RYAN:** You do not think there have been any parents in that situation who have applied and not been found to be above the 10 per cent?

**Ms CASSIDY:** I am not aware of any others. There have been a number of cases referred to

MAS where there has been a psychiatric involvement in terms of post-traumatic stress disorder, that sort of thing. The only one of which I am aware is the case of the grieving father who was still setting the table and buying his son Christmas presents after his son had passed away in a car accident. He did not witness the accident; he simply had been told of his son's death. He was diagnosed with a complicated grief reaction and he was under a psychiatric impairment rating scale medium class three, graded in terms of grief.

**The Hon. JOHN RYAN:** That obviously is parents who have lost their children in circumstances in which there has not been contributory negligence. The argument was that parents have to cope, they are not able to be impaired because they have got other children to bring up. Therefore, their level of impairment is difficult to determine, given the circumstances under which it is currently determined. Are there parents who have lost children as a result of a motor vehicle accident that have not been passed to be 10 per cent impaired? The suggestion is that we need to interfere legislatively to provide for those people to be deemed to be at least 10 per cent impaired, because by any common sense situation they would be, and as I understood it in previous answers to my questions, I was told that there was something being examined to do that.

**Mr BOWEN:** The situation is that there has only been the one application, so no-one has been found to be under. The issue of whether there should be what is in effect a death benefit introduced into the scheme is one that we have looked at. We have been seeing how we go, what was happening with the current scheme. I would want to take that proposal to the Motor Accidents Council before the MAA made any recommendations to the Minister on the issue.

**The Hon. JOHN RYAN:** That seems unusual, that only one parent would have applied, because I do not imagine that there is only one parent who has lost a child in a motor accident.

**Mr GRELLMAN:** I think the point is well stated. There must be other instances where a child has been killed and the question is why have the parents not made a claim. Is that really what you are asking?

**The Hon. JOHN RYAN:** It would seem odd that they have not. I imagine that would be something that they would look for. It would be hard not to say that they had lost something and it would be unusual that they would not have made a claim through law.

**Mr BOWEN:** We cannot really identify claims by parents which would be a compensation for relatives claim.

**The Hon. JOHN HATZISTERGOS:** Compensation for relatives claims would not have a lot of value because of they actually depend on the circumstances.

**Ms RIZZO:** It would be a claim by the parents.

**Mr BOWEN:** A direct claim by the parents.

**Ms RIZZO:** For suffering, anxiety or depression.

**Mr BOWEN:** Can we identify that?

**Ms RIZZO:** We can identify that.

**Mr BOWEN:** We will identify those under the new scheme and give you an indication of what the outcomes have been.

**CHAIR:** In any event, Mr Bowen, you have tendered this written response for incorporation in the Committee's report arising out of this hearing.

**Mr BOWEN:** Yes.

**The Hon. JOHN HATZISTERGOS:** In relation to those children who are killed in accidents, you have only had one case?

**Mr BOWEN:** One case where a parent has been found to be greater than 10 per cent impaired

as a result of a psychiatric impairment as a result of a grief response to a child's death.

**The Hon. JOHN HATZISTERGOS:** What happens where there are young children where there is liability attaching to one of the survivors in terms of turn-around times of payment of funeral and burial expenses?

**Mr BOWEN:** We would have to look at that.

**The Hon. JOHN HATZISTERGOS:** Could you and let us know?

**Mr BOWEN:** By all means.

**The Hon. JOHN HATZISTERGOS:** I want to ask you about the Justice Policy Research Centre reviewing the impact of legal costs regulation. When do you expect to receive the report and will the report be publicly available?

**Mr BOWEN:** I can answer your second question and say the report will definitely be publicly available. We make all our reports available. Ms Rizzo, are you in a position to talk about the time involved?

**Ms RIZZO:** All the information we have provided to you is in the MAA audit and evaluation program, and as to the report on legal costs, that will be in the report of July 2002.

**The Hon. JOHN HATZISTERGOS:** One other question, if I could follow-up. In terms of guiding people in relation to injuries that might get 10 per cent above, 10 per cent below and so on, could we have greater detail provided?

**Mr BOWEN:** In the -

**The Hon. JOHN HATZISTERGOS:** In whatever form. It would be useful if we just had some more information about what sort of people and what circumstances are falling under the 10 per cent.

**Ms CASSIDY:** In terms of the case studies, there was a volume that we published over a year ago now which had 110 cases, older cases, where we got a doctor to look at the file and the medical reports to do an assessment on the papers, and we distributed that before MAS had had any disputed cases to report back on, just in order to give some educational information out there, to lawyers particularly, and to the insurers.

We are planning and we have commissioned somebody to take 100 case studies, or 100 of the assessment reports that have been produced under this scheme from MAS and to put that into a second volume of case studies which will be real case studies under this scheme rather than old ones. We had hoped that that would be out by Christmas, but that is just not realistic. It will be early in the New Year that we will get it. The consultant that we have got is Sally Ingliss, who is one of our treatment assessors and she is summarising the case studies.

**The Hon. JOHN HATZISTERGOS:** Can we get a copy of that?

**Ms CASSIDY:** When it is produced, when it is published, you will be on the mailing list.

**The Hon. JOHN HATZISTERGOS:** Have any of these cases gone on appeal?

**Ms CASSIDY:** In terms of review under section 63, yes, they have. In the current issue of the newsletter, which is about to be sent out today or tomorrow, there is a five page article on the review system with a lot of statistics on how many review applications have come in and what has happened. There have been I think, just off the top of my head, something like 10 review applications that have proceeded through to review by the panel, and I think the numbers are fairly even in terms of certificate confirmed, certificate revoked from the original assessor. But in terms of administrative law appeals outside the assessment service, I have not heard of any or I am not aware of any.

**The Hon. JOHN HATZISTERGOS:** None of the non-procedural fairness or -

**Mr BOWEN:** We have had an eminent barrister advising us and training our assessors on

procedural fairness.

**CHAIR:** Could I ask you regarding the MAA's sleeve sponsorship of South Sydney Rugby League team? The MAA clearly has a role in supporting injury prevention and rehabilitation. I am probably correct in saying, I think, that as part of that sleeve sponsorship there would be some hospitality benefits as part of the arrangement or package. Is there any intention or is it possible to provide those hospitality benefits on occasion to these injury rehabilitation organisations to assist them with possible fund raising events?

**Mr BOWEN:** The short answer is yes. The longer answer is, if I could make a comment on the concept of sleeve sponsorship, we have been very careful to talk about being a partnership. For the MAA the benefit of having a sign "Arrive alive" written onto the sleeve is just to give a name to the campaign. The primary benefit that we purchased in the sponsorship is the players' availability to become advocates to young people at a fairly unprecedented level. It fitted in quite nicely with South Sydney taking the view that they wanted their players to be involved in community events and community activities and not be getting in trouble, as football players sometimes do.

The level of that is that we have each player in the first grade and in whatever is the next division down team, 25 appearances from each player each year. We are training them in public presentation; we are training them in road safety issues. We will use a number of those players in appearances of the whole team and then we will pick some others, who are perhaps more articulate or more attuned to delivering messages, to go out and speak to young people about it in fact, given our target audience is young men 17 to 24-year-olds, and that is pretty much the profile of the players receiving this huge advantage as long as they also behave themselves and abide by the message they are delivering, and we have penalty clauses built in in case they do not.

We have not quite finalised the contract. We have got all the matters of intent but there will be some hospitality facilities available. It is uncatered. It is essentially I think 13 seats in a box and the other 10 somewhere in a grandstand or tickets to each game. When we had a corporate box as part of the Paralympics, it was the decision of the board that there was a limited amount of hospitality that the MAA can do in any event, although, Mr Chairman, we might get your advice on whether there is any conflict of interest in inviting members of the Committee along to a game next year, but we made it available to Paraquad, the Injuries Association, to Wheelchair Sports and the Illawarra Disability Trust. I am sure there were some others involved in that and in fact for some of them we also catered so that they could use it as a more formal fund raising event. It is not our intention, other than perhaps once or twice a year, to use that facility in a catered way. We would either provide it to somebody else or make use of the tickets.

**The Hon. JOHN RYAN:** You were saying you were going to use the South Sydney players to address groups of young men in the appropriate age group. How were you going to do that? They do not often gather together in a manner in which they are prepared to listen to addresses from anyone. How were you going to do that to get \$500,000 worth of value from these people? I think it is a good idea, but the usual way is to tag it to a television sponsorship program or something of that nature. I do not imagine there would be too many 17, 18 or 19-year-old boys who would be willing to interrupt their drinking behaviour, for example, to listen to a short message from a South Sydney Rabbitoh.

**Mr BOWEN:** We have some experience with this through the Paralympic program that we ran, in fact to the point where that was so successful we could not keep up with the demand for it. One thing we have been careful of particularly this year is to modify demand and just for us to assess the level of player viability. It is likely that we will do some of these through schools in the local area, and South Sydney have a number of players that come from throughout the State in country areas and some Aboriginal communities. We would like to look at using those sorts of players back in their home location. We also had discussions about them talking to TAFE classes. We might target, for example, motor mechanic students who have a particular affinity with cars and vehicles and deliver messages there. Otherwise we just think that rugby league players are likely to go and talk to rugby league clubs and be talking to other players of that age group or a little bit younger than themselves.

**CHAIR:** Speaking at sporting presentation functions for instance?

**Mr BOWEN:** Yes. We got overwhelmed by requests on the Paralympian program. Just on first grade players, if you multiply the 25 players by 25 appearances, there is a potential for 625

appearances if we use each one individually. It is in between knowing whether we will be able to generate that many appearances as against not trying to create such a big demand that we cannot continue to move it.

We have talked to the Children's Hospital at Randwick and the Prince of Wales Hospital about using some of those players on visits to particularly children who have been injured in motor vehicle accidents or in the local hospitals, perhaps with the players who are less articulate in message delivery so that they can still have an involvement. It is six weeks into it. We are frantically still thinking and trying to review it as it develops.

**Mr GRELLMAN:** It is probably worth just reinforcing one of the points David made, that this team has a higher number of indigenous players than any other rugby team, and of course that section of the community are somewhat more likely to find themselves in motor incidents. Our research suggests that this team more than any other team has a very wide geographic constituency. Their supporters do not just come from the Redfern South Sydney area. They really are scattered across the State. So to have the young indigenous players go back into their communities and speak to the young men particularly we think is a very powerful model.

**The Hon. JOHN RYAN:** I for one do not think it is not valuable. I am just wondering whether having now got it, have you got the distribution means to get a message out? The Paralympian program was supported with a billboard campaign, on the backs of magazines and other things of that nature. It does seem to need some sort of mass media exposure and I was wondering when and how you were going to get that.

**Mr BOWEN:** In fact, the sort of advertising campaign that went with the Paralympics was really at the end of our program. The use of the Paralympian athletes from 95 onwards built up primarily by word of mouth and repeat invitations, not only across schools, as I mentioned before we had a lot of community organisations, Lions Clubs and Rotary Clubs and the like. There are a lot of organisations out there.

**The Hon. JOHN RYAN:** They are not the target audience, are they?

**Mr BOWEN:** No, but they recognise the seriousness of the issue and they are quite prepared to try and ensure that we do meet target audiences in the area.

**The Hon. PETER BREEN:** Can I ask how much it is costing? Did you say \$500,000?

**Mr BOWEN:** \$500,000 per year and we would sign for three years.

**The Hon. PETER BREEN:** And you have got a potential 625 appearances each year?

**Mr BOWEN:** That is right, the first grade players will have access to the first division, I think they are called, and then some of the lower grade players as well.

**The Hon. PETER BREEN:** It will be a huge task managing it all.

**Mr BOWEN:** Yes, it will be. We had 23 Paralympians who we organised around the State and so we have some experience of what is involved.

**The Hon. PETER BREEN:** 25 times 25?

**Mr BOWEN:** Particularly in the first year, we may have a number of full team appearances and others where we use three or four players together. I am not anticipating that we use one player on one occasion for \$625,000.

**The Hon. PETER BREEN:** Could you ask them not to say "mate" more than a couple of times in each sentence?

**Mr BOWEN:** I think part of the attraction is that they speak the language of the audience they are speaking to and it is not someone from the Government coming along to tell them about road safety.

**CHAIR:** If I could ask one final matter: On my part at least I note in your General Manager's message in the annual report you refer to the cost of green slips. That was an important driver for the Government's reforms or amendments to the law, as you would realise.

Could you say something for the record about what the impact of the new scheme has been from the authority's perspective and according to its experience on the cost of green slips?

**Mr BOWEN:** This is a report to the end of June, so it is based upon the premiums as filed in October last year, which is why in information terms it has not varied significantly from what you have seen before. At the end of June the position was that on the average metropolitan premium there had been a reduction from \$342 to \$441, on the average which was \$99. The target was of course \$100.

One of the problems with averages is that it means that has outliers. Some people, particularly the over 55s, have got significantly higher decreases because we extended what previously had been a 10 per cent discount, previously available only to pensioners, to all over 55s, because of the lower risk at that level. It means that some people have not got a 10 per cent reduction at all. The young drivers, it was a deliberate strategy that while there was a reduction there, that it would not be passed on in full because they were already heavily subsidised and it was allowing a reduction of about \$30 off the maximum price at the time. So that type of reduction at the other end.

Over the course of the two years we changed the geographic zones to better reflect some risk rating. That led to some variations of people based upon whether they were no longer in a country zone but in the outer metropolitan or expanded Newcastle/Central Coast zone. Those changes were about fairly reflecting the risk in the area. We have some ongoing problems with that where we have postcode rating to identify the areas within zones and some postcodes can span fairly large areas that are from semi-urban right through to rural and that is a problem and we recognise it. Unfortunately we do not have a solution to it at the moment.

The experience since June was the insurers refiled again for further premiums commencing on 5 October. The refiled amounts were increases of around about \$3-6 over all of the insurers on the best price, which was considerably lower than any of the inflators you might use. In real terms the premiums continue to decrease.

**(The witnesses withdrew)**

**(The Committee adjourned at 12.40 p.m.)**