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

At Sydney on Monday 11 December 2000

The Committee met at 10.00 a.m.

PRESENT

The Hon. R. D. Dyer (Chair)

The Hon. P. J. Breen
The Hon. Dr A. Chesterfield-Evans
The Hon. J. F. Ryan
The Hon. Janelle Saffin

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

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

ADRIAN MARK GOULD, Consulting Actuary, Level 4, 5 Elizabeth Street, Sydney, affirmed and examined.

CHAIR: Mr Bowen, in what capacity are you appearing before the Committee?

Mr BOWEN: As General Manager of the Motor Accidents Authority.

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

Mr BOWEN: I did.

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

Mr BOWEN: I am.

CHAIR: Would you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr BOWEN: I am the General Manager of the Motor Accidents Authority. As such, I am a member of both the Board of Directors of the authority and a member of the Motor Accidents Council.

CHAIR: Ms Rizzo, in what capacity are you appearing before the Committee?

Ms RIZZO As Manager of the Insurance Division of the Motor Accidents Authority.

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

Ms RIZZO I did.

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

Ms RIZZO I am.

CHAIR: Would you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Ms RIZZO As the Manager of the Insurance Division I have been responsible for preparing some of the material that will be accessed.

CHAIR: Mr Gould, in what capacity are you appearing before the Committee?

Mr GOULD: I am an employee of Taylor Fry Consulting Actuaries, who are actuarial advisers to the Motor Accidents Authority.

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

Mr GOULD: Yes, I did.

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

Mr GOULD: I am.

CHAIR: Will you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry.

Mr GOULD: My relevant professional qualifications are that I am a Fellow of the Institute of Actuaries of Australia. My relevant experience is that I have been involved in providing advice in relation to the New South Wales Motor Accidents Scheme and its successor scheme since 1992 to a variety of parties, including the Motor Accidents Authority and a number of insurers licensed to underwrite business under that scheme.

CHAIR: If any of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request.

The Hon. JANELLE SAFFIN: Before we start could I make the comment that I have only now received the answers from the Motor Accidents Authority [MAA] and have not had an opportunity to read them. I do not know when they were provided to the Committee, but the fact that I have only now received those answers makes it extremely difficult for me to comment and ask informed questions. It may be that I have to reserve my right to ask questions at a later date.

CHAIR: I indicate that the annual report of the authority was tabled quite late and that has led to a compression of the timetable. The answers to questions on notice posed by the Committee, the Law Society and the Bar Association were received just before 11.00 a.m. last Friday. Accordingly, that is as much notice as we have had. I regret that, but we shall just have to do the best we can this morning. Mr Bowen, I invite you to make a brief opening submission to the Committee.

Mr BOWEN: Perhaps I might comment upon that. The authority was well aware of the needs of the Committee in putting our report together. However, we felt that it was appropriate to try to get statistics on the full year's operation of the scheme, which involved returns not coming in until well into November. There was then analysis of those returns and putting it all together in a report to the Committee, so were also suffering under time constraints. I pass on apologies from Richard Grellman, the Chair of the Board of the Motor Accidents Authority and the Chair of the Motor Accidents Council. He has been detained overseas and was unable to be present today, but he has indicated to me that he would like to pass on a request to you as Chair of the

Committee and to any member of the Committee that, if they wish, they can contact him to gauge his perception of how the scheme is operating.

The Motor Accidents Authority welcomes this opportunity to present a report and answer questions on the first year of operation of this scheme. The senior officers of the MAA have found the process of preparing the report and responding to questions a valuable means of assessing the scheme. It has confirmed two things: first, that regulation is made valuable when it is transparent and accountable, and the process of accountability through the Motor Accidents Council and through this Committee has helped the MAA to consider and improve its functions. For example, some of the questions and issues that have arisen in this process have made the staff of the MAA stop and think about what we are measuring and why. We regard that as being a very good outcome.

Second, this process has confirmed my view of the scheme performance indicators of affordability, efficiency, effectiveness and fairness and the correct measures of the operation of the scheme. The MAA has attempted to provide detailed answers to questions on notice, with the exception of a series of questions from the Bar Association concerning the reasoning behind decisions of the Principal Claims Assessor. It is quite appropriate that the authority be questioned concerning the administration of the operation of the Motor Accident Assessment Service, but the MAA cannot direct a claims assessor in the conduct of an assessment, and it is not appropriate that this forum be used to ask questions concerning the reasons for decisions or which require an opinion on an interpretation of the Act taken by the Principal Claims Assessor. For that reason we have not addressed those questions in detail.

In very brief terms, the summary of the report that has been provided to the Committee is that the scheme is operating within the cost assumptions that underpin the scheme reforms and operating generally positively, as measured against the scheme performance indicators. However, the MAA still finds itself in the frustrating position of having to say that it is too early to tell in relation to some of the key scheme reforms. I wish to briefly touch upon some of those areas that have been the focus of many of the questions to the Committee, and particularly the questions from the legal profession.

First, the MAA is very aware of the strong anecdotal evidence from solicitors that there has been a significant reduction in the number of people who make a claim, as distinct from obtain benefits, under the accident notification form. The evidence at the end of the first year is equivocal on this point. Overall notifications are up, from which positive conclusions have been drawn in our report about access to the scheme and early access to compensation, but it will be some time—and perhaps another full year—before the MAA can properly assess the ultimate claiming rate.

The second issue is access to non-economic loss compensation. Again, there has been a suggestion put to me, and it is implicit in the submissions from the legal profession, that the access to non-economic loss will be limited to less than the assumed 10 per cent. Indeed, it has been suggested to me that it will be limited to only about 5 per cent of clients. As these claims involve people with serious injuries, it was not expected by the MAA that there would be many, if any, claims for non-economic loss settled in the first year. That has proven to be the case.

However, the MAA has otherwise attempted to assess the impact of the impairment guidelines, and has undertaken a review of 110 files supplied by CTP insurers which have been sent for a paper assessment. The result of that process suggests to the Motor Accidents Authority that the access to non-economic loss compensation will be in line with predictions; that is, that about 10 per cent of claimants, representing those with the most serious injuries, will meet the greater than 10 per cent whole person impairment threshold. Recently, when this issue was raised at a presentation that the MAA gave to the Law Society's personal injury committee, I extended an offer to the committee to provide 50 or more completed files to go through the same process for the solicitors, so that we could give them an assessment based on their files as well.

I wish to make one other comment about the impairment guidelines. The guidelines were produced in close consultation with medical expert advisory groups. Details of those groups and that process were submitted at the last of the Committee's hearings. The purpose of the guidelines is to obtain consistent and objective means of measuring whole person impairment. So they are a measurement tool. If the result of the use of those guidelines in accordance with the legislation is that significantly more or significantly less claimants access non-economic loss than was anticipated, then it will require a policy response. The MAA's view is that it will not, and indeed cannot, manipulate those guidelines to achieve a desired result.

I also wish to briefly mention in opening the issue of insurer profit, because it is a matter upon which the MAA has a specific statutory charter to report to this Committee. At the last hearing I indicated that work had commenced on setting a methodology to allow the authority to better fulfil this task. Subsequently, the MAA released two issues papers, copies of which have been sent to the Committee, and it has taken the responses to those papers into account in developing a preferred approach to measuring profit. This obviously has involved us in extensive consultation with the industry and also with the Australian Prudential Regulatory Authority [APRA], which is the overall industry prudential regulator.

The MAA will apply its proposed methodology as a trial run on the next round of premium filings. Mr Gould from Taylor Fry is here to assist in answering any questions about that process. I would also extend to the Committee an offer that, if any members wish to sit down with me and Mr Gould, or any other officers, to work through that process in detail—because it is very complicated—we are more than willing to do so.

Finally, the assessment of profit is only one part of the MAA 's regulatory responsibilities. Since the passage of the Motor Accidents Compensation Act the authority has promulgated a range of guidelines that cover insurer behaviour and set in place audit and reporting programs. These serve two purposes. First—and, in my view, the primary purpose, particularly at this early stage—is to assist the industry in improving practices. Second—and only if that first purpose fails—it is to penalise bad behaviour. While the authority has had, during the first 12 months, isolated occasion to censure some insurers concerning breaches of the claims handling guidelines, I would like to put on record my view that the industry has generally made some very significant and positive changes to the way in which it deals with claimants, and is to be commended for this.

Mr Chairman, we now have for you a presentation by Ms Rizzo which covers the operation of the scheme against the four scheme performance indicators, which we presented to the last hearing of the Committee.

CHAIR: Before Ms Rizzo does that, I might deal with two formal matters. First of all I might announce that the Committee members present at this stage, apart from me, are the Hon. Janelle Saffin and the Hon. P. Breen. Also present is the Hon. Dr A. Chesterfield-Evans, who is present not as a member of the Committee but as a member of the Legislative Council. Dr Chesterfield-Evans has the right to ask questions, if he wishes, but not to participate in the subsequent deliberations of the Committee.

The next matter that I should attend to is to invite a member of the Committee to table my letter to the Minister, the Hon. John Della Bosca, dated 4 December 2000, forwarding questions on notice and correspondence from stakeholders, together with later correspondence from stakeholders, and also the Motor Accidents Authority's written answers to questions on notice and questions proposed by stakeholders.

Documents tabled, and made public on motion by the Hon. Janelle Saffin.

Ms RIZZO: The material to which I will refer has been included in the report from the Motor Accidents Authority. Basically, it is a summary of the four indicators. The four indicators that have been referred to in our report are affordability, effectiveness, efficiency, and fairness. The first one, affordability, is straightforward. It looks at how affordable the premiums are for the motoring public. There are three measures that we have used. On each of those measures, the affordability has improved. With regard to premiums to 30 September 2000, first of all the average premium for an ordinary motor car in Sydney is the bottom part of the graph. After the introduction of the new Act, the premium has reduced. In fact, it has reduced from $441 in June 1999 to $345 in September 2000. While that has reduced, average weekly earnings have in fact gone up.

The next graph shows the pattern of the premium as compared to average weekly earnings. It has dropped from 48 per cent before the Act to 37 per cent after. In regard to affordability, in the first year of the new Act, insurers were under an obligation to ensure that the majority of ordinary motor cars in Sydney had a premium of less than $330. In fact, over 70 per cent of premiums were under that level. So that was a clear majority. In addition to that, insurers, in their premium filings for the second year under the new Act, have estimated that the majority of premiums for the ordinary motor car in Sydney will be under $318; that is, excluding GST. So a summary of affordability is that before the Act to after the Act, on a number of indicators, the premium has reduced.

The second indicator is effectiveness, which measures how well the scheme is working. To do this we have looked at claim numbers and claim payments. The claim numbers show, on the bottom line, that, compared to the equivalent period in the previous year—so it is a like with like comparison—15 per cent more injured people have had access to compensation. I should note that under the Act there are both full claims which can be made, and accident notification forms, which allow people to have access to medical treatment payments much more quickly. With regard to timing, there has been an improvement of 14 per cent in the time from the accident to the notification date. That is partly because of the introduction of this new form of applying

for compensation. In addition to that, looking at full claims, there has been an improvement of 7 per cent in the time that insurers have finalised those claims.

If we exclude legal and investigation costs—which do not go to the claimant, and do not go to their treatment—the total amount of payments that have been made, only on full claims, not on ANFs, is $10.2 million, compared to $11.2 million in the previous year, which is a decrease. But when we look at the average compensation payment that has been made to claimants, it is an increase of almost 10 per cent. The graph which refers to payment profile shows the types of payments that have been made. The very first bar shows that there has been an increase in payments for treatment expenses—for medical and other health professionals.

There have been three important decreases. The first is in economic loss payments, the second is in non-economic loss payments, and the third is in investigation costs. All three of those are consistent with what the Act intended to happen—a reduction in economic loss, with no economic loss to be paid for the first five days off work; a reduction in non-economic loss to be paid according to the impairment threshold; and a reduction in investigation costs, one aspect of transaction costs.

In summary, as far as effectiveness is concerned, there is a better reach; more people are accessing compensation more quickly. As I said, medical payments have increased. Three sorts of payments have decreased, as intended by the Act. The amount of money going to lawyers has not decreased at this stage, but the proportion of legal representation for full claims has decreased from 60 per cent to 50 per cent. In addition to these early indicators, we have also put in place the evaluation of the services that the MAA has established—the claims assessment and resolution service, and the medical assessment service—and that evaluation will commence next year.

The third indicator is efficiency. This means that, as a proportion of the premium dollar, the amount that goes to claimants must be as high as possible. In order to do that, we need an increase in payments and a decrease in transaction costs—transaction costs mean legal costs, investigation costs, insurer profits and insurer expenses. This information comes from two sources. In the right hand column are the current filings which insurers must lodge with the MAA, and they are estimates. In the first column are the actuarial allocations based on what actually happened between accident years 1993 and 1998.

What you will see from that is that payment benefit, which is called scheme efficiency, has increased from 58 per cent to 62 per cent and at the same time acquisition costs have increased as well. Legal and investigation costs have decreased from 15 per cent to 11 per cent. Claims handling expenses have not increased as a percentage. Insurance profit loading has decreased from 10 per cent to 8 per cent. The additional comment I should make about this slide is that the premium itself has decreased in the most current filings. So although the percentages, for example, for claims handling costs have not decreased, the actual quantum has.

The Hon. J. F. RYAN: What are acquisition expenses?

Ms RIZZO: Acquisition expenses are what the insurer must pay to acquire the business, and they include infrastructure, re-insurance costs, money that the insurers must spend on their computer systems, their branch networks, those sorts of expenses.

The Hon. Dr A. CHESTERFIELD-EVANS: Marketing?

Ms RIZZO: Yes, marketing as well. In brief, for efficiency, as you can see, the transaction costs have decreased except for acquisition costs, which did go up from 13 per cent to 15 per cent largely because of re-insurance and also computer systems. In addition, as Mr Bowen said, we have put in place a methodology to report to the Committee on both prospective and retrospective profit. Furthermore, the MAA has also commissioned research to evaluate the effectiveness of the legal costs regulations. As you saw in a previous graph, legal costs have not decreased at this stage but we would expect under the legal costs regulations that legal costs would decrease.

The Hon. JANELLE SAFFIN: Is that research with the justice research centre?

Ms RIZZO: It is. The last indicator is fairness. As you have seen from the slides before, there has been quicker and easier access to compensation, and there has been quicker finalisation of claims. In addition, the MAA has established a new service called the claims advisory service, which has an outreach program and this is to help claimants with their claim forms and applications to MAS and CARS, the assessment services. As far as fair treatment for claimants by the insurers, the MAA has, as Mr Bowen has referred to, put in place claims handling guidelines and treatment guidelines for insurers to accommodate into the way they provide their services. The insurers will be audited on both of these guidelines next year.

With regard to fair treatment for claimants by health and allied professionals, the MAA has put in place treatment guidelines to act as standards for the profession to incorporate into the way it treats claimants. Lastly, evaluation of the MAA services has been put in place. That is with the justice research centre as well. By this time next year we will be able to evaluate the impact of the scheme on seriously injured people as those claims develop. In summary, in terms of affordability, premiums have reduced on a number of indicators. In terms of scheme efficiency, some transaction costs have dropped, notably investigation costs and insurer profit margins. At the same time, scheme efficiency has increased from 58 per cent to 62 per cent. As for effectiveness: more insured people have accessed earlier compensation more quickly and claims are being finalised more quickly. Medical payments have increased and investigation costs, as I said, has decreased. In our opinion these signs indicate that the response to the Act is heading in the right direction.

CHAIR: My first question deals with structured settlements. You will recall that that was the first question I asked last May and it is the first question on notice to which a response has been given. Do you know the Commonwealth Government's reasons for not proceeding with the desired taxation amendment in May this year? Has the Commonwealth articulated any reasons for its failure to proceed with that desired amendment to the taxation law, despite what I understand was the recommendation of some finance treasury committee within the Government?

Mr BOWEN: I recall that at the last hearing we were quietly confident that we would get a positive result in the last Federal budget because of the breadth of the groups that were promoting structured settlements and the strength of the argument, if I might say so. The Commonwealth Government did not proceed with that in the

budget process and has not at this stage provided the structured settlements group or any of the individual members with reasons for that, other than that it considers it to be a particularly complex issue. So in that sense there has not been a final no from the Commonwealth Government, only that it is still under consideration but drawing the conclusion that it is not likely to proceed in the immediate future.

CHAIR: You have not lost hope but you cannot give the Committee a firm indication, I take it?

Mr BOWEN: The issue is again before the Federal Government in the context of representations that medical profession and medical defence unions are making on the issue of medical indemnity insurance. I know that they are all raising the issue of structured settlements as part of those submissions so it is still being promoted.

The Hon. J. F. RYAN: Do you know what the obstacle was? Was it simply a straight political decision or were there submissions to the Federal Government which countered the sorts of submissions New South Wales would have made through your organisation?

Mr BOWEN: There was a fairly detailed submission provided to the Government and indeed through the whole process there was a lot of very good questioning of the details of that submission on every occasion. The committee went back with answers to the particular questions raised, including quite extensive meetings at officer level with Treasury officials. I could perhaps draw some conclusions but I hesitate to do so because there has been no written response from the Commonwealth Government, and I think it would be unfair to give my sense of what its reasoning might be without it having put that down in writing.

The Hon. J. F. RYAN: Is it simply a budget allocation, or is there some structural problem which we need to address?

Mr BOWEN: We are aware that the concerns of the Commonwealth Treasury—this is the Treasury officials—relate to the potential for this to operate as a precedent for other tax law changes that might favour one group over another, and that seems to be probably the major stumbling block.

CHAIR: I take it that no fundamental criticism has been made of the form or the merits of the submissions that were before the Commonwealth Government.

Mr BOWEN: No. There has been some hard questioning about the cost-benefit analysis that was prepared by a Melbourne-based actuary before the committee. It is making some conclusions about the ultimate significant saving to the Commonwealth based on some early lost tax income as against the amount it might have to pay out later on social security once people have used up their compensation entitlements. After the first submission was put and the questioning process, the committee in fact had the analysis re-done at a much more conservative level so that we could say, "Well, even if you use almost conservative assumptions, there will still be significant savings to the Commonwealth out of the process."

The Hon. Dr A. CHESTERFIELD-EVANS: Is it likely that the Commonwealth would lose a lot of tax from them?

Mr BOWEN: The profile shows that the Commonwealth loses some tax income which is the tax on interest earned on the settlement during the early years that a person has his or her settlement invested. That applies then the usual or the average term upon which a settlement lasts, which is very rarely that whole person's life. In fact, the history is that these lump sum compensation payments are used up much more quickly than ever anticipated and after that of course the person then becomes a claimant upon the social security, welfare and hospital systems. So what you have is a pattern and it is in our structured settlements report, which I think we may have tabled at the last hearing, there is a line of some small lost income for maybe 10 years or 12 years, after which there is a significant increase in the amount that would be paid by health and welfare payments.

The Hon. Dr A. CHESTERFIELD-EVANS: But you would have some actuarial concept. My understanding is that they discount future payments to such a large extent, compared to ones that are more immediate in time, that the figure after about ten years or 15 years becomes very small, does it not?

Mr BOWEN: That is correct.

The Hon. Dr A. CHESTERFIELD-EVANS: Given that situation, do you think this is influencing the Commonwealth Government's thinking? Let me ask it another way. You must have done actuarial calculations in your submissions.

Mr BOWEN: Yes, that is correct, and they take into account, as I have said, that lost income, that lost tax revenue during the period in which a person is getting income from interest on the invested lump sum. It shows that that is significantly less than what is eventually paid out to support that person once he or she has used up all of his or her settlement moneys.

The Hon. Dr A. CHESTERFIELD-EVANS: So in fact the short-term tax benefit does not outweigh the other in the long term from the Commonwealth's point of view?

Mr BOWEN: No. The long-term cost significantly outweighs the short-term loss of tax revenue for structured settlements. That is also because most people, even with quite catastrophic injuries, have life expectancy approaching normal, which is a significant change to 10 years ago. So people who have been compensated 10 years and earlier will not have been compensated on the basis of a normal life expectancy. Funds naturally run out. The information that is available to us from studies conducted all around the world on lump sum compensation schemes shows that money is used up well within the period for which it is intended to compensate the person.

The Hon. Dr A. CHESTERFIELD-EVANS: So if you have done the actuarial calculations which show that the Government would be better off with a structured settlement, what precedents would there be that would affect its decision? If the Government is going to make money out of it, unless the Government disputes your calculations, would it not grab that option?

Mr BOWEN: I do not disagree with you, and that is the argument that the structured settlement group has been putting to the Federal Government. The issue

would be that to accommodate that, there would have to be a view taken that interest on a specific type of arranged settlement—that is, a structured settlement—is not considered to be taxable income. While our view is that the number of people who would take advantage of that it is very small—it is only a benefit to people who have significant lump sum compensation payments of at least a million dollars plus, and you might have 300 to 400 people maximum Australiawide—I think that the Commonwealth has the concern that in making a tax law change, that not only has a small effect but is also setting a precedent for providing similar types of tax-change benefits to other groups or people, perhaps.

The Hon. Dr A. CHESTERFIELD-EVANS: Do you know which ones they are?

Mr BOWEN: No.

CHAIR: I refer now to another matter, that is, long-term care of the very seriously injured. In response to the Committee's question on notice you have indicated that the Motor Accidents Authority [MAA] has just received a draft report on the cost of providing no-fault, long-term care from an actuary, Mr John Walsh. In relation to the draft report, are the likely costs broadly the same as those identified by the former Standing Committee on Law and Justice in December 1997? Does the MAA have a feel for whether the various stakeholders might be more willing to consider this proposal now than they might perhaps have been in the past?

Mr BOWEN: I will have to answer you on the basis of the discussion I had with Mr Walsh because his report in fact arrived on my desk on Wednesday morning, at much the same time as did the questions from this Committee. Quite frankly, I have not had an opportunity to look at his report yet but in a briefing that he provided to me and other officers of the MAA, he indicated that is preliminary conclusions were that the numbers of people involved and the costs were very much the same as in his previous report to the Motor Accidents Authority in 1997. I would be fairly confident that the groups who formed part of the long-term care working party previously are still interested in pursuing options to better improve long-term care for both compensable and non-compensable persons who are injured in motor vehicle accidents.

The authority is doing more work prior to reconvening that working party, and that additional work is focusing upon looking at different types of care delivery. We recently visited the Transport Accident Commission [TAC] Victoria which has a very, very good program in terms of care provision. It is looking at quite different options other than just in-home care or nursing home care or, indeed, group home care. It has options that involve people being given control of their own care. For example, people may have an allocation of a certain number of hours of care per week and they can use that as it suits them.

They can in fact bank that care if they want to have some weeks at home when they are not doing very much and then have a carer to be able to go on holidays. Those sorts of innovative approaches to care need to be factored in to any conclusions that we draw. We are quite keen to identify all of those options and have Mr Walsh take a look at them and their cost implications before we draw back the working party. I envisage, however, that that is something—as it is already under way—that will be concluded

probably by about March or April next year. I would envisage reconvening the working party at about that time.

The Hon. J. F. RYAN: Can you clarify the position in relation to the current and future role of psychologists in assessments of impairment?

Mr BOWEN: Yes. There is no role for psychologists in assessment of impairment as assessors under the Motor Accidents Medical Assessment Service because the impairment guidelines require that the assessor be a medically trained person. However, we are not limiting those who may undertake the impairment assessment training, so that will be open to psychologists to go through that training program if they wish, and they may then provide reports and, I suppose, their own assessments to insurers or claimants. But they will not be medical assessments conducted by the medical assessment service: that will be limited to medically trained people. We have had significant discussions with the relevant professional body. We have a big involvement of psychologists as medical assessors dealing with treatment disputes and that seems to be quite satisfactory to that profession at this stage.

The Hon. J. F. RYAN: There are a couple of issues arising from our previous report. The promise was made to the Committee that by now we would have two issues papers on assessing insurers profit and a long-term strategy outlined for the assessment of insurer profits. The annual report, which is contained in the folder I show you, made some reference to answers to questions. I recall reading that you are awaiting a response from an actuary in regard to some of those issues. But what happened to the two issues papers that you promised us would be circulated at the end of October last year?

Mr BOWEN: The issues papers were prepared and circulated.

The Hon. JANELLE SAFFIN: To whom where they circulated?

Mr BOWEN: I must admit that I was reasonably confident that we had provided them to the Committee.

CHAIR: I am advised that there was an issues paper dealing with capital and profit that was circulated in May or perhaps June this year.

The Hon. J. F. RYAN: Has there been a response to those?

Mr BOWEN: It is also my recollection that, when we provided that to the Committee, we offered a briefing in the letter accompanying it. Those papers were circulated and we have had responses to them primarily from the industry. As a result of that, we have settled a preferred methodology for looking at the measurement of profit in the insurer's premiums, and that preferred methodology is set out in attachment four to this report. That is what we call the assessment of prospective profits. In terms of the assessment of retrospective profit or an assessment of the overall scheme performance, we have engaged Mr Gould to provide us with a summary of where that is up to, and that is imminent.

It has been made more difficult by the fact that the Australian Prudential Regulatory Authority is changing or has a number of papers out, proposing changes to the way in which it will assess solvency and capital adequacy and in terms of the reports

that it will require insurers to submit to it. Our view is that it is the primary prudential regulator of the insurers and what we do in this area needs to fit in with what its proposals are, and that is why that has been a little bit more delayed. This proposal which is set out in attachment four is one which we would intend to apply to the next round of premium filings. I have indicated in response to questions that we anticipate that that will either be in June or September. There are two likely triggers for either of those dates.

Because we are entering sort of uncharted territory here and there are no precedents for us to apply, we want to do that first one as a trial run. We would certainly see that we will be reporting results of that to this Committee but we really regard this as a learning experience for ourselves and for the industry in applying it on the first round.

The Hon. J. F. RYAN: While we are still on the issue of insurer profits, a little while ago in the briefing that Ms Rizzo gave, she referred to something called "acquisition extensors" in a table which referred to filings from 1993 and 1998. One of the things she mentioned was the costs of re-insurance. I recognise that this is a technical point but re-insurers, in the main, are insurers too. What potential is there for insurers to simply move one aspect of their profit one stage down the line to put it away from the capacity of the MAA to look at? It may well be that a re-insurer makes a substantial profit that somehow or other trickles back to the local brokers and insurers, which escapes your attention. Is there any chance of that occurring, given that re-insurance appears to be a factor now?

Mr BOWEN: There is a provision in our Act—section 173, from memory, and if it is not that, it is very close to it—which requires the insurers to get approval from the MAA if their re-insurance will exceed 15 per cent of the gross premium, otherwise we also have access through the premium filing process to the cost of re-insurance and can determine whether that cost is reasonable, given our knowledge of what is happening in the re-insurance market at a given time. I make one additional comment on acquisition costs: it is not unexpected that acquisition costs will increase as a percentage when the overall amount of premium collected decreases because they represent a fairly fixed cost per policy issued and in that sense they are unavoidable. As the amount of premium decreases and that fixed cost stays the same, it is going to increase as a percentage of the total premium.

The Hon. J. F. RYAN: But if the benefits paid out under the scheme are lessened, should there not be a decrease in the cost of re-insurance? They cannot have it both ways, can they?

Mr BOWEN: Most of the re-insurance costs will relate to large claims where we are not expecting any significant—or not expecting any decrease at all—in benefit payments.

Mr GOULD: I will make just a couple of points to amplify the previous point made by David Bowen. Typically, the nature of re-insurance arrangements with this scheme would be that the insurer concerned would retain the first portion of costs of claims arising from a particular motor accident, regardless of how many individual claimants there were. The amount that would be retained by the individual insurer would typically vary anywhere from about $2 million to about $5 million, depending on

which insurer is involved. You are actually looking at only a very small proportion of claims by number but large individual claims that will exceed that limit. As David said, those large claims that are expected to be little, or not at all, affected by the 1999 legislative amendments.

The other point I would make is that the heading which Ms Rizzo showed as acquisition expenses I think contains five subcomponents, which are: insurers' internal operating expenses; commissions that insurers pay to third party intermediaries through whom they sell their business; the net cost of reinsurance, which we have been referring to; and the two statutory levies, one being the MAA's own levy to fund the cost of the MAA's operations, and the other being the RTA levy or commission, which is essentially for use of the RTA's services involved in running the scheme.

The Hon. J. F. RYAN: I notice that one of the problems that the MAA suffered up until now was that there seemed to be some sharing of the use of the same actuary, in that the MAA's actuary was pretty much the same actuary who prepared the original insurance files. I notice that Mr Gould comes from Taylor Fry. Is that an indication that at least two different companies that are independent of each other are now carrying out this work, or is there still some relationship between Taylor Fry and Trowbridge?

Mr BOWEN: No, there is no relationship between Taylor Fry and Trowbridge. During my time at the MAA, the MAA has used, first, Tillinghast and now Taylor Fry as its consulting actuary. In both instances, one of the conditions of engagement was that those agencies would not prepare premium filings for CTP insurers in New South Wales —and I suspect that that may be correct for most of the history of the scheme.

The Hon. J. F. RYAN: I recall some evidence being given that Trowbridge were involved in both. In any event, another issue was raised in the Committee's last report on which I do not think there have been questions put to you in writing. You might recall that at pages 43 to 45 there was discussion by the Committee about deeming certain injuries as being over the 10 per cent threshold, particularly related to the issue of parents losing children in an accident in which the parents themselves were not involved. I think written answers were provided by either the Law Society or the Bar Association relating to how one treats the fact that parents have to go on and that may not necessarily show up as indicating that they are 10 per cent impaired because parents have to go about the business of being parents in any event.

There was some discussion about that matter, and you said, as is recorded in *Hansard*, that it was an issue that needed to be looked at. Has the issue been looked that? I understand that a change to the law was needed to recognise the fact, as agreed by all parties, that parents who lost a child in a car accident in which they themselves were not involved would be deemed to have suffered a 10 per cent impairment and therefore would be entitled to make claims. It was not an event that happened very often, so it would not be a significant impost on the scheme. Has anything been done to advance what appears to be a reasonably simple but necessary change?

Mr BOWEN: If I could answer the question in two parts. Firstly, I recall that discussion. I think I indicated that one of the reasons that we thought it warranted an examination was that where these impairment guidelines are used in statutory schemes in other States they are then accompanied by a form of death benefits, that is, a set

amount of money that would be payable in the circumstance of a parent losing a child, and the like, and that we would look at that further. Indeed, that is an issue that that policy area of our authority has on a list of many things that would need to be further considered when the Act is next looked at in the parliamentary context.

The other issue was an alternative means of dealing with this, which was to deem certain things to be over 10 per cent within the context of the guidelines. A number of such ones were looked at. It has been difficult doing that, in terms of the psychological and behavioural guidelines. The guidelines themselves were only completed and promulgated in March, just before this hearing took place. They are radically different from what has gone before, in an attempt to put a percentage whole-person impairment on a psychological injury. As such, they have involved officers in the MAA with extensive discussion with the professional associations. We are really only coming to the conclusion of some of those discussions now. We are finding that the feedback to the MAA is generally positive but that these guidelines will need some tinkering. In answer to one of the questions we have indicated that, even though the guidelines are yet to be applied in any cases, we would propose to do a further review in March next year.

The Hon. J. F. RYAN: Do you know of any cases in which the circumstance to which I have referred has been presented to the MAA—that is, a parent who has lost a child in an accident in which the parents were not involved and they have not passed the 10 per cent threshold because, to use your words on page 37 of your responses, they have not be able to demonstrate a 10 per cent impairment under an assessment made by a psychiatric medical assessor?

Mr BOWEN: I am not aware of any such cases, and I believe I can say with reasonable confidence that no applications that would fit into those categories have been made to the medical assessment service. Of course, it may be that because of the application of our Act to other transport industries, particularly rail, that issue will be looked at in the context of claims arising from the Glenbrook rail disaster.

CHAIR: I raise the matter of your response to the question dealing with the state of the industry. In response to a question on notice you said that during the 12 months to 30 September this year three licensed insurers have ceased to write CTP business: New Zealand Insurance, Royal Sun Alliance and SGIO. Towards the end of your comments you say:

> The board of the MAA has discussed what initiatives may be taken to ensure that the market remains competitive both amongst current licensed insurers and to facilitate new entrants to the market.

I invite you to make some brief supplementary comments to the Committee about what is necessary to ensure that the market remains competitive, particularly in the face of some departures from the ranks of the licensed insurers during the first 12 months.

Mr BOWEN: I might commence by noting the comment directly above the one you have quoted, that we are confident that at the moment there is a sufficient level of competition amongst the insurers to keep some pressure on premiums being competitive. I will answer the question in two parts. Firstly, to promote some competition amongst existing insurers, the MAA has already undertaken some analysis

of its claims database to identify different risk variables so that we can invite insurers to price on different risk factors.

You may recall that I indicated at the last hearing that we would do some work on that, and certainly even when the legislation went through Parliament the Minister indicated that he was going to ask the MAA to do some work on that. We subsequently did some work in terms of both age and gender. In the premium relativity changes that were introduced in October this year, we have provided for an extended discount to over 55s, based on the fact that people over 55 years of age are much less likely to cause accidents involving serious injury. That has been picked up to varying degrees by different insurers, depending upon whether they want to target that end of the market.

We also did an analysis based on gender, which showed that across all age groups women were less likely than men to cause a claim involving serious injury. To my knowledge, one or two insurers have responded to that by particularly taking the young women off the highest loading, recognising that there is a difference between the claims experience of young women compared to that of young men. It is a development that I see going further. We have also done some work with some of the other classes. We have done quite a lot of work looking at claims and risks in the heavy vehicle industry and in promoting accreditation schemes. Those have not come to fruition yet, but in due course I would like to think that through having a safety accreditation scheme there could be reports for vehicles that sign up to that scheme.

We have very recently had some discussion with the Bus and Coach Association about looking at a similar sort of accreditation scheme, and to recognise within that one large class that there is quite a disparity between claims coming from long-distance coaches or coaches that are going out on charter compared to buses that are doing more normal runs. We are trying to provide a lot more information into the marketplace that will allow for more innovative pricing of risk. Secondly, while we have concluded that there are sufficient insurers to have a competitive market at the moment, the board has taken the view that it should promote this scheme as one that other insurers should be perhaps interested in coming into. Over the course of this year we have had three approaches, including one cautious approach, from other insurers which have prompted discussions taking place, but there are no new entries at this stage.

The Hon. Dr A. CHESTERFIELD-EVANS: Have any left?

Mr BOWEN: Those three left. I have given the reasons. New Zealand Insurance were a very small market share, and to be quite frank I think that they had probably been pottering around looking for a reason to drop out of CTP for some time and the new Act was a trigger for that. RSA had acquired a 100 per cent ownership in AAMI, so they are still a participant in the market through AAMI. Similarly, initially when NRMA acquired SGIO, they tended to keep two licences. They have now taken the view that they will just operate through NRMA. In terms of underwriting, it has been only a very small withdrawal of underwriting facilities, even though three licensees have withdrawn.

The Hon. JANELLE SAFFIN: With regard to premiums, why did you not include country people? Why did you include only city people, and what information do you have for country people?

Mr BOWEN: There were three graphs included there. We focused upon the metropolitan class 1 premium because it is the base from which all other premiums are calculated on our relativity table and it is the overwhelming number of vehicles. However, there was also shown on the graph the premium across all classes, and the whole three of them have shadowed each other. So that if you take a sedan in the country, the premium relativity is 80 per cent of that for metropolitan areas, and the decrease in the country had been proportionately the same.

The Hon. JANELLE SAFFIN: What does it mean for country people? You were able to say that premiums have decreased for city people. What is the situation for country people?

Mr BOWEN: The premiums have decreased by exactly the same percentage rate for country people. In fact there will be a larger increase for the country people from the filings from 5 October this year because we have reduced the relativity for the country based on fewer claims and less costly claims.

The Hon. JANELLE SAFFIN: In relation to claiming rates, is the MAA not concerned about the comments provided to the former law and justice committee by a leading actuary to the effect that problems with the former scheme could be attributed in large part to failure to anticipate the rapid rise in claiming rates in 1994 and 1995? This claiming rate should have been expected in view of the experience but it was not. Do you have a comment about that? Are you anticipating those sorts of things now?

Mr BOWEN: Even with the benefit of hindsight it is very difficult to say whether the MAA should have anticipated the fairly dramatic increase from 1992 to about 1994 in the number of claims. Certainly the industry, which had to price the risk, did not anticipate it. It reduced premiums well below sustainable levels and incurred significant losses for a couple of years. Notwithstanding the ability to make comparisons to other schemes, something I have learnt in a short time is that you can only learn a little bit from other places. Each has its own environment and culture within which it operates. In our responses we have produced comparisons with Queensland. It is hard to say why there should be significant differences between common law schemes in Queensland and the New South Wales yet there quite clearly are in terms of levels of legal representation, speed with which matters happen and the like.

As far as I know there were no actuaries at the time who were saying that we were getting it wrong. They were working on information that they had available. Turning that experience to apply it to the current filings, I think that what we would say is that the whole history of scheme changes suggests that there is a honeymoon period for the first two or three years. That is as a result of two things. Firstly, change itself often means a dropping off in the intensity with which matters are pursued as all the players in the industry become accustomed to the changes. The litigation-driven component particularly slows down quite a lot. Matters going through to court slow down a lot. They take longer to come through and to be taken into account.

Secondly, the early experience often represents the changes to the small claims, which are settled quicker. You anticipate seeing the impact of the changes the most with the small claims. This was true in the 1995 amendments and is true again in this round. Because the impact on small claims will be greatest we expect to see that come through much earlier. We engaged Mr Gould to continue to monitor developments of the old

scheme as well as the new. We measured that against the actuarial predictions at the time the changes were brought into play. That is an instructive piece of information for us to determine whether the scheme might go next. It is also fair to say that we have made an assessment of where the scheme can go wrong and we have prepared proposals to respond to a variety of circumstances in which the scheme is not performing as it was anticipated it would when the scheme changes were introduced. But that is by way of protective work in case it is needed. I am not sure whether I have satisfactorily answered the question.

The Hon. JANELLE SAFFIN: You have not answered it at all.

Mr GOULD: Could I supplement that with a couple of observations? If one considers that the motor accidents scheme requires fault of another party to be demonstrated for a party to be able to claim compensation, one can estimate that one might ultimately expect that about 60 to 70 per cent of people with significant injuries arising from motor accidents would be entitled to make some form of claim, that is, be able to establish at least some fault on the part of a person other than themselves. So one might anticipate that one would get of the order of 60 to 70 per cent of injured people ultimately making a claim.

During the first two to three years of the operation of the scheme after 1989 it was a considerable surprise to many people, including the Motor Accidents Authority senior officers at the time, that the proportion of injured people claiming appeared to be only around 40 per cent. A certain amount of analysis was commissioned by the Motor Accidents Authority at the time which concluded that in the early years most of the people with severe injuries who were entitled to make a claim seemed to be doing so, but there was a surprising lack of people with less severe injuries making claims. This was in the early 1990s.

There was some expectation that there would be a slow increase in the proportion of people injured who would make claims but two things occurred which rendered those projections significantly wide of the mark with the benefit of hindsight. One was that the increase in that ratio of people making claims to people injured increased rather more quickly than people had anticipated. The other was that as well as the proportion of people claiming increasing the average cost of claims increased quite sharply in real terms at the same time. The combination of both of those events resulted in premiums at one stage having been set to low and then increasing very sharply over short period.

The Hon. JANELLE SAFFIN: We have that in past evidence, but thank you for allowing us to hear it again.

CHAIR: I refer to acquired brain injury. You have provided a substantial response to question 11. You say among other things that there are a number of policy constraints on MAA for project funding. You go on to say, "The most significant of these is that MAA funding is for new initiatives only rather than projects that require recurrent funding." I was reading this material last night and I was particularly interested and, I must say, also concerned to read that. Is there a case for the MAA perhaps now adopting a more flexible approach which could perhaps include some recurrent funding for BIRP purposes? I think I would be correct in saying that most of the people entering those services do so as a result of motor vehicle accidents. I think that I am

also correct in saying that fewer than 50 per cent of them are receiving compensation under the current scheme. Could you explain to the Committee why that is a policy constraint, that is, that recurrent funding seems to be ruled out?

Mr BOWEN: The authority has taken the view that it has only a limited amount of financial resources to provide to rehabilitation programs and that it should focus on capital requirements. The whole establishment of the brain injury program was funded from capital provided by the MAA and research. As soon as you lock up a component of your funding into a recurrent service requirement it takes that funding out for ever being available to other sorts of initiatives. Brain injury remains a very significant focus for the Motor Accidents Authority. The answer to the question details the significant funding that has been and continues to be applied to brain injury. That will not change. The other issue is that you start to be placed in the position of picking between different sorts of services—which should and should not get recurrent funding. You do that in the knowledge that you will not be able to recurrently fund all the services that merit some support from the authority. The demand is greater than the ability of the MAA to meet out of its resources.

CHAIR: My concern arises partly from the fact that there is an absence of a long-term no-fault scheme. I remember visiting a facility, which I think was funded by the Motor Accidents Authority, at Castle Hill when I was Minister for Community Services. Does the pickup funding normally come from a department such as Community Services or from the Department of Health?

Mr BOWEN: It usually will come from the Ageing and Disability Department. We still provide money for establishments. During the last 12 months I have opened brain injury community outreach centres in the Central Coast and Newcastle. The property was purchased and all the renovations were made with MAA funding but support staff are picked up through the Ageing and Disability Department.

The Hon. P. J. BREEN: I think that last time you were before the Committee you referred to a special hat. People could turn a light on by thinking.

Mr BOWEN: That is the brain switch as I recall, a spinal cord injury project. I would have to find out where that is up to. It is one of quite a number of innovative research programs that we have funded. It might have been a two or three year one. I have not seen a final report on that but I can get you a progress report.

The Hon. P. J. BREEN: I was distracted during your response to Mr Ryan's last question. He was asking you about the 10 per cent threshold for pain and suffering. You mentioned the Glenbrook rail accident. Could you explain again the relationship between the 10 per cent pain threshold and the consequences of the Glenbrook rail accident?

Mr BOWEN: The Transport Administration Act provides that compensation for injuries in rail accidents is to be determined in accordance with the damages provisions of the Motor Accidents Act. Prior to 1999 that provision was located in the Motor Accidents Act. Given that it did not deal with motor accidents, in 1999 it was moved in amendments to the Transport Administration Act, but it had been there since the Motor Accidents Act was introduced in 1988. The consequence is that the damages provision of the Motor Accidents Act limit entitlement to non-economic loss to those

who exceed the 10 per cent threshold. There are also provisions of our Act that limit entitlement of parental claim to those who witnessed or were psychologically affected by a child's death providing that the psychological effect was greater than 10 per cent, as mentioned on the impairment scales. There is a justiciable issue as to how those provisions are applied. I understand that is being pursued through the Glenbrook litigation.

The Hon. P. J. BREEN: So it would be futile to ask you how many people in the Glenbrook rail inquiry have been unable to claim as a result of the 10 per cent threshold?

Mr BOWEN: I have no information at all on that.

The Hon. P. J. BREEN: Is there any way of knowing with regard to motor vehicle accidents generally how many people are no longer claiming as a result of that 10 per cent threshold?

Mr BOWEN: I can tell you what the assumption is in terms of the effect of the Act. The assumption was that the number of people who would be eligible for non-economic loss would reduce from about 40 per cent under the old Act to 10 per cent—the 10 per cent most seriously injured—under the new Act. In terms of what effect that is happening on settlements that are outside of the assessment service, I cannot say. I would think it would be factored in by both claimants and their legal representatives and insurers.

But having said that, we would not have anticipated that there would be very many, if any, claims that would get close to being at or over 10 per cent that would have stabilised at this point in time. That was indeed true even looking at the old scheme. If you looked at the amount of non-economic loss paid on so-called claims in the 12 month development period, it was very low even under the old scheme because these are people with serious injuries and it would not be expected that their injury would have stabilised and they would finalise a claim all within 12 months.

The Hon. P. J. BREEN: There was an assumption, though, that there were a lot of people with soft tissue injury, particularly neck injuries, who would not qualify under the 10 per cent threshold and I would have expected that there should be a dramatic drop in numbers given that those people had represented a considerably large proportion of claims in the past. Certainly in other States such as Queensland where these restrictions are not in place, the number of people who could claim was considerably higher than in New South Wales.

Mr BOWEN: Well, the number of people who can claim compensation here is exactly the same. It is their entitlement to the non-economic loss component that has been restricted. We certainly were not expecting nor have we seen any reduction in the number of claims being made.

The Hon. P. J. BREEN: What about 10 per cent whole-of-body impairment? Should that not result in far fewer people claiming?

Mr BOWEN: There would be far fewer people entitled to non-economic loss, but they will still have other damages that have been incurred for which they will make a

claim. Concetta may be able to advise me otherwise but I would doubt that there would be very many, if any at all, in the history of this scheme where people received a non-economic loss entitlement without any other form of compensation.

The Hon. P. J. BREEN: Is it fair to say that you are now processing those in the office of the Motor Accidents Authority [MAA]?

Mr BOWEN: We have, the figures in here somewhere, 60-odd applications for medical assessment, but quite a few less for impairment. My recollection is about of those, only one has gone to a final assessment because in the other cases the injury had not stabilised. The assessor was unable to make a final determination.

The Hon. P. J. BREEN: The anecdotal evidence is that lawyers certainly in the suburbs are not receiving claims from people with motor accident injuries. The question is: Where are they going? Are they going direct the authority or to somewhere else such as specialist lawyers?

Mr BOWEN: The drop-off in legal representation on claims is not as dramatic on our data as perhaps some members of the legal profession suggest. There has been a drop-off in the level of legal representation from 60 per cent to 50 per cent, which is significant. But what it is showing is that 50 per cent of claims that are notified onto our claims database by the insurers have a lawyer involved for the claimant, which is still a reasonably high amount. I am not sure what the explanation is. A lot of lawyers are telling you and telling me the same: they are not getting any clients walking in the door. It is not supported by the evidence available to us. The only explanation I have is that in addition to that reduction from 60 per cent to 50 per cent there has been a compression in the number of practitioners who are doing this work and whether it has, as you suggest, compressed into more specialist firms is perhaps one explanation for it.

The Hon. P. J. BREEN: In one firm that I know of, I believe I have mentioned it to you on another occasion, the turnover previously was something like $2 million a month in motor vehicle accident work. Now it is down to half a dozen claims a month. That seems to be a dramatic drop.

Mr BOWEN: It certainly does, but I have no explanation why that is being reported when we still have indications that 50 per cent of claimants have a legal representative. It is not sustained by the information we have available to us.

The Hon. Dr A. CHESTERFIELD-EVANS: You said there are 60 claims for non-economic loss which claim to be over the 10 per cent threshold, of which only one has stabilised, is that the figure you have given?

Mr BOWEN: I will find that for you. There have been 60 applications for medical assessment services. I am sure there is nowhere near that many for impairment assessment. It is in an attachment to our response tabled today to the questions, which shows the number of matters and their disposition at both medical assessment service and claims assessment service.

The Hon. JANELLE SAFFIN: Does the 60 per cent to 50 per cent drop represent new or existing claims?

Mr BOWEN: No. Only claims under the new Act can go to medical assessment. So, they are claims where the injury has occurred since 5 October 1999.

The Hon. JANELLE SAFFIN: Is that where the 10 per cent drop in lawyers relates to?

Mr BOWEN: Yes, that is where it drops.

The Hon. Dr A. CHESTERFIELD-EVANS: Are you referring to attachment A?

Mr BOWEN: It is on page 50 of the answers to questions on notice. It is an attachment to those answers. The summary indicates that there were 42 applications for assessment of permanent impairment. Of that, 22 required only an assessment of permanent impairment, others raised other issues. Of those 22, six were assessed, two were withdrawn and there are 13 pending. Of the other 20, which involved permanent impairment and another issue, 13 were assessed, two withdrawn, five pending. It also sets out the results. Perhaps it is better if that is incorporated into the reply rather than me reading it all out.

Leave granted.

_____

MEDICAL ASSESSMENT SERVICE

Applications received to 30 November 2000

- **69 MAS applications received to 30.11.00**
- **42 requesting assessment of permanent impairment**
  - 22 requiring assessment of permanent impairment ONLY
    - 6 have been assessed, 2 withdrawn, 13 are pending
    - 1 is a request for a further assessment of permanent impairment; injuries were not stabilised when this was assessed by MAs previously
  - 20 requesting assessment of permanent impairment and impairment of earning capacity
    - 12 have been assessed, 2 were withdrawn wholly, 5 are pending
- **2 requesting assessment of impairment to earning capacity ONLY**
  - 1 withdrawn before assessment, 1 is pending
- **2 requesting assessment of stabilisation ONLY**
  - -2 are pending
- **23 requesting assessment of a treatment dispute**
  - 13 requesting assessment of reasonable & necessary treatment ONLY
  - 4 have been assessed, 1 resolved at informal conference, 4 were withdrawn before assessment, 4 are pending
  - 9 requesting assessment of reasonable & necessary treatment in addition to other assessments
  - 6 have been assessed, 3 were withdrawn before assessment

- 1 requesting assessment of causation of treatment in addition to other assessments; this has been assessed

OUTCOMES:

- **Permanent Impairment assessments (N=42):**
  - 19 assessments done to date, 12 involving assessment of permanent impairment AND earning capacity, one involving assessment of earning capacity only, because application for assessment of permanent impairment was withdrawn by the applicant.
  - 18 assessments pending, 5 involving assessment of impairment to earning capacity too
  - 4 matters wholly withdrawn before assessment (one withdrew the assessment of permanent impairment but proceeded with assessment of impairment to earning capacity)
- **Permanent Impairment Assessments completed (N=18)**
  - 11 cases where injuries were found to be not stabilised, so no binding determination could be made
  - in 1 of these the injuries were likely to exceed 10% once stabilised; in all other cases injuries NOT likely to exceed 10% once stabilised
  - all of these "not stabilised" cases involved soft tissue injuries, except one involving a knee fracture and one involving a child with a healed fractured femur
  - in 1 of these, application has been made for a further assessment, this is pending.
  - 7 cases where injuries were found to be stabilised and a binding determination was made—in all cases the injuries did not exceed 10%
  - All these cases involved soft tissue injuries, except two cases involving a fractured ankle.
  - In one case the determination was that the soft tissue injuries were stabilised and under 10%, but the post-concussion syndrome was not stabilised and impairment arising from this could not be assessed.
  - In one case the assessment of permanent impairment was withdrawn but assessment of impairment to earning capacity proceeded.
  - There have been no cases yet where a binding determination has been made that injuries exceed 10%.

- **Impairment of earning capacity assessments completed (N=12):**
  - In 3 cases, a partial impairment of earning capacity was confirmed. In 2 of these the claimant had not been employed at the time of the accident, in the other the claimant had been employed and had returned to their pre-injury job, but would be impaired for other types of work.
  - In 9 cases no impairment of earning capacity was confirmed. In one of these it was noted that the claimant was unfit for work, but this was not related to the MVA

- **Reasonable and Necessary treatment assessments completed (N=10):**
- STI neck—facet blocks further physio reasonable
- STI neck/back—only 3 further physio treatments reasonable

- STI neck/back—limited past chiropractic treatment and past ultrasound were reasonable, future chiropractic is not
- STI neck/back—limited past physio was reasonable, proposed specialist investigations are reasonable;
- Fractured knee—Proposed vocational assessment is reasonable
- STI neck/back—Proposed future physiotherapy not reasonable, past investigations and physio were reasonable but proposed further MRI scan is not.
- STI neck/back—Future physiotherapy, massage & acupuncture not reasonable
- Fractured ankle—Future physiotherapy treatment not reasonable
- STI neck/back—Proposed future investigations not reasonable, decision regarding physiotherapy is pending
- STI neck/back & post-concussion syndrome—Decision regarding future physio and exercise program is pending.

- **Causation of treatment assessments completed (N=1)**
- STI neck/back & previous back injury—past physiotherapy and strengthening program was reasonable, proposed future supervised exercise program is reasonable but further passive treatment is not.

Claims Assessment and Resolution Service

Applications received to 30 November 2000

- 169 applications including
- 2 applications for general assessment of the quantum of a claim (allocation in both deferred to allow for MAS permanent impairment assessments)
- 3 applications for special assessment – section 96 dispute (one withdrawn, two determined with the result there is no jurisdiction)
- 159 applications for exemptions (36 pending)
- 123 determinations
- 50 exempted due to denial of liability by insurer
- 22 exempted due to deemed denial of liability by insurer
- 1 exempted on basis that claimant is an infant
- 26 not exempted due to subsequent admission of liability
- 19 not exempted due to time limits (section 91)
- 5 not exempted for other reasons
- 2 applications have been made by insurers all other have been made by claimants
- In 3 applications the claimant has not had legal representation

CARS matters have been rejected for the following reasons:-

- Not signed
- Form not completed
- List of document incomplete or documents not attached
- Use of wrong form – particularly in exemptions use the 1A for 92(1)(a) only, use form 4A for the discretionary exemptions allowed under section 92(1)(b)

The Hon. P. J. BREEN: I note the authority is catering for unrepresented claimants. In answer to some questions from the Law Society you referred to the outreach service and compared it with the service provided by the Commonwealth Administration Appeals Tribunal, which assists unrepresented claimants making appeals. On page 23 of your responses to questions, at the top of the page the Law Society asked:

> Is the aim of the service to replace the role of lawyers in the New Scheme.

Your response states:

> The CAS aims to assist injured persons making a claim by offering procedural information and administrative support through its outreach service. It is in no way intended to replace the services provided to injured persons by legal practitioners.

That response does not directly answer the question. There is a concern by the Law Society and by a number of legal practitioners that ultimately this scheme will replace the need for a lawyer when there is no question of dispute about liability. Do you have an observation about that?

Mr BOWEN: Our interest in this scheme is making sure that claimants receive their fair entitlements to compensation as required by the legislation. The MAA has set up its outreach service because there is an expected drop-off in the level of legal representation and we wish to provide assistance to people who are proceeding with their claim on their own behalf. But the true test as to whether or not a claimant can get through, process a claim and have it dealt with by the insurer without legal representation is how they are dealt with by the insurer. Something I have been at pains to stress to our CTP insurers is that if they deal with claimants in the way they dealt with them under the old scheme, they will drive them back into the hands of lawyers in no time because that approach is very adversarial, it was tactical and it required people to have a lawyer to protect their interest.

The Hon. P. J. BREEN: But is it not true that under the old scheme there was no organisation like the Claims Advisory Service [CAS] to facilitate the process? Claimants were really on their own; previously they were in the lion's den?

Mr BOWEN: That is true.

The Hon. P. J. BREEN: But now with your assistance it could be argued that claimants do not have to be concerned at all; they can simply be guided by what you tell them, is that right?

Mr BOWEN: We are not going to give them advice on whether an offer they have received from an insurer is reasonable; we do not give them advice if the insurer challenges liability for the claim. That type of legal advice is a matter that if the person is unhappy with the response they have from the insurer, they would continue to access.

The Hon. P. J. BREEN: I understand that on the question of liability, but on the question of whether the compensation offer is reasonable, if there is no lawyer in

the equation there is really nobody else for them to go to except to the Claims Advisory Service?

Mr BOWEN: Or if they feel they have been properly dealt with by the insurer. Your opening comments indicated that the type of claims we are dealing with here are ones where there will be no entitlement to non-economic loss. So the claim is for provision of medical services, lost income, and any claim that does not involve that in terms of the past really is quite easy to settle. It is only a matter of adding up the amounts. Where it starts to draw in potential future medical costs and loss of future earning capacity, it becomes a little more complex, and when it gets into non-economic loss it is more complex again. However, if insurers take the trouble to sit down with claimants and explain all of their entitlements and work their way through it, and the claimant is happy with the outcome of that process, it may well be able to be done without a lawyer.

The Hon. P. J. BREEN: Is it your policy generally through this CAS to encourage people who are unrepresented to come directly to you?

Mr BOWEN: No. our policy is to have a service available that can fill what was a massive information gap in terms of what information claimants were given about their entitlements and the procedure by which they would be dealt with. I believe at the last hearing of this Committee I recall referring to some market research that the Motor Accidents Authority had undertaken in 1998 and saying that most claimants, even when they were legally represented, had no idea of what was happening with their claim or how it was being processed. They were given no information at all. This was to fill that sort of gap. It does recognise that there are likely to be more unrepresented claimants go through, but it is not only to fill that demand.

Interestingly, if you look at the profile of where the questions are coming from, the Claims Advisory Service is answering nearly as many questions from legal practitioners as it is from claimants. A number of the claimants who ring the service in fact have a lawyer but the lawyer has not told them what to expect and they have rung the Claims Advisory Service to get advice on the procedure. I think that is fulfilling a very important role in making sure that people know what is going to happen to them when they have suffered an injury and need to make a claim.

The Hon. P. J. BREEN: On that subject, there is a cap of $260,000 for non-economic loss, I believe. Do you have any observation to make about that? Again, I am interested from the point of view of the Glenbrook rail disaster. A number of people suffered injuries that would indicate—certainly prior to this legislation being in place—that their non-economic loss was worth considerably more than $260,000. In addition to that, the figure is also being applied in other jurisdictions where personal injuries or damages are involved.

Mr BOWEN: The threshold under this Act is the same as under the previous Act and it is indexed each year. In fact, because of a timing problem it was not the same, but that has been corrected in a statute law bill. It is now the same and, in regard to its application to matters, there have not been any matters settled so that no-one has been disadvantaged by that. My understanding of this, without having looked at it, is that the amount of that cap is pretty close to the maximum amount of non-economic loss that the Supreme Court might award in personal injury cases. You might get slightly more,

but given that people who would reach the cap for non-economic loss under this scheme are those with really quite catastrophic injuries, non-economic loss represents only a very small proportion of their compensation payments.

The Hon. P. J. BREEN: Do you regard the cap as it stands as adequate?

Mr BOWEN: Yes. It is certainly higher than any other non-economic loss cap in any other jurisdiction. Most of them are significantly lower. In South Australia it is $95,000 and the Comcare system is quite a bit under $100,000 and in fact may be as low as $60,000.

The Hon. P. J. BREEN: Do you have any observation or comment to make about its application to a situation such as the Glenbrook rail disaster?

Mr BOWEN: I really think I should not make any further comment about that. The application to Glenbrook is by the reference to the Motor Accidents Act from another Act, which is under another Minister's portfolio.

The Hon. P. J. BREEN: The other cap that we put on the legislation, as I recall, was in relation to legal costs of insurance companies of $25,000. That was applied as a result of negotiations with the Government at the time. Has any situation arisen, do your knowledge, that would call for that provision to come into play?

Mr BOWEN: This relates to a cost penalty on matters in respect of which there has been a Claims Assessment and Resolution Service [CARS] assessment and it has gone on to court. To my knowledge there have not been any finalised CARS assessments that have been taken to court. In fact, there have only been very limited number of finalised CARS assessments.

The Hon. P. J. BREEN: So that it is too early to make an assessment of that?

Mr BOWEN: It is too early to tell on that, yes.

The Hon. J. F. RYAN: With regard to caps on legal costs, one of the questions asked by the Law Society in regard to legal costs related to a schedule that basically sets legal costs at a particular rate. I have been informed that there is also an opportunity for solicitors to contract out. I think it is referred to in question 8.1. There is a schedule of costs but there is apparently a wide practice by lawyers of opting out of that system of fee regulation. Have you any idea how many legal practices are actually charging those costs and how many are going outside the range? One imagines that ultimately if the case is successful the insurer will wind up meeting those increased costs, and that will be a factor that will increase the costs of the scheme. If the schedule is being so extensively bypassed, is there anything that the MAA proposes to do about either making the schedule more realistic or making more people comply with it?

Mr BOWEN: The schedule of fees operates so that it applies to set the maximum amount of both party-party and solicitor-client costs—the amount recoverable from the insurer and the amount that the client has to pay the solicitor. There are circumstances where that whole regulated fee regime does not apply and those are the matters that are exempted from CARS. There are some specific statutory exemptions and a whole range of discretionary exemptions. It is intended to take the

very difficult or complex matters—either factually or legally complex—out of the fee regulation. For those matters that are subject to fee regulation, it allows the solicitor to contract out of the fee which their client has to pay them. If there is contracting out, the maximum amount that the claimant will recover from the insurer to have their fees paid will be the regulated amount, but they may have to pay more; they will have to pay the contracted out amount to their solicitor.

The Hon. J. F. RYAN: As I understand it, it works a bit like gap insurance from the medical levy.

Mr BOWEN: It does apply the requirements of the Legal Profession Act that the only basis upon which that contracting out can be successful is if the solicitor has a written agreement and has given full disclosure to the client. In these circumstances, in my view, that would require a solicitor to say: "There is a regulated schedule of fees but I am going to charge more than that. If you want to use me you will have to pay this additional amount." We have it on our audit agenda. It had not been raised with me that this was a burgeoning practice previously. We had intended to look at that as per our evaluation in the beginning of 2002. As I mentioned upfront, we have started to adjust that in the light of issues that come up. Given that that issue has come up, I will have a discussion with Professor Ryde about putting forward the evaluation of the legal costs regulation at some time in 2001.

The Hon. J. F. RYAN: Can I read you something that might encourage you to look at this issue. I am advised that your statement that there is not much bypassing is at odds with anecdotal evidence that has been given to the Law Society. Evidence indicates that the legal costs allowed by current costs regulating provisions for matters relating to CARS are so low that virtually no solicitors are performing work under them. Rather, it appears that most solicitors are contracting out of the regulations with their clients. The unfortunate result is that the client must pay the solicitor the difference in legal fees between the amount the solicitor charges and the amount allowed under the regulation, which will ultimately have to be paid by the insurer if the claimant is successful. It appears to be a matter worthy of further inquiry.

Mr BOWEN: In the discussions leading up to the cost regulation with the legal profession, I accepted that the costs regulation imposed is a significant restriction upon the amount of legal costs for matters below $20,000 because it is a straight fee for the service that is provided and it is a low fee. By comparison, in Queensland you do not get any fee at all. There is no legal cost payable for matters under $30,000, so we are in fact more generous than some other jurisdictions in this area.

The Hon. J. F. RYAN: Regardless of what happens elsewhere, I think it needs to be looked at.

Mr BOWEN: Yes, but for matters above $20,000 the event-based costing schedule was intended to replicate the amount of fees that were being previously charged. It seems to me that if we do an evaluation that proves what you suggest is correct, then we should remove the provision allowing contracting out.

The Hon. P. J. BREEN: In relation to that, in answer 4.1 on page 13 in response to a regulation question from the Law Society on you state in part: "The Minister has sought further consultation on a particular amendment relating to the

regulation of medico-legal costs." Is that what you had in mind when you were referring to something being under consideration with regard to costs?

Mr BOWEN: It was not.

The Hon. P. J. BREEN: Is it something that is likely to be on the Minister's agenda in relation to regulation? If there is a regulation to deal with a perceived problem regarding costs, it seems to me that there ought to be something in the legislation rather than dealt with by regulation.

Mr BOWEN: It was not until we received the submissions and questions in this process that anyone had suggested to me—or, as far as I am aware, any officer of the authority—that there was a common practice of contracting out. It has not been mentioned to me in any of the meetings I have had with the legal profession previously. I agree that it is something that we will now have to consider and provide some advice to the Minister on it.

The Hon. P. J. BREEN: It states that the Minister has sought further consultation. Was that at the Minister's initiative or on the initiative of the authority?

Mr BOWEN: This regulation was intended to do a few things to tidy up the existing regulation. It was proposing to deregulate the medico-legal fees. The Minister was unhappy to do that on what was presented to him without some further consultation. That is in hand and we will give him advice on that. I am happy to touch upon the reasons we were proposing deregulation of medico-legal costs, if you like.

The Hon. P. J. BREEN: I would certainly be interested in that.

The Hon. J. F. RYAN: Is that what this proposed unknown regulation would have done?

Mr BOWEN: Yes.

CHAIR: It deals with medico-legal costs?

Mr BOWEN: It deals with some other issues: what is caught by the regulated amount of the legal fee and what is billable over and above that as a disbursement. It also deals with that issue and puts a bit more clarity into it. One of the main components was the deregulation of medico-legal costs. The regulation picked up what I thought was a reasonable scale of fees for medico-legal reports, because it was a scale negotiated between the Law Society and the Australian Medical Association. One would think that ostensibly this would represent a reasonable level of fee. However, it has been the basis of submissions to us by both the insurers and plaintiff lawyers that the amounts under that scale were insufficient to allow them to get the very best experts in some particular field.

We grappled with this to see whether we could create a more detailed schedule that had different sorts of fees for different types of medico-legal reports. We have not been able to successfully set that out. It was with some reluctance that we were in fact recommending to the Minister that he deregulate these fees while we went through a process of determining what the market rates are for a variety of different specialist

reports with a view to reregulating at around about that market rate. The reason we felt it inappropriate to do a recommendation was simply that both sides were telling us they could not get experts to do it at the regulated fees, notwithstanding it is an AMA-Law Society settled schedule. So I am at a bit of a loss on that myself.

The Hon. J. F. RYAN: On the subject of medico-legal fees, the Law Society raised with the Committee a practice among some medical practitioners of charging a client who is being examined a substantial fee for a duplicate of a report that has already been sent to the insurer. I note that in your answer to that you have said that apparently there are some guidelines which state that when a medical report from a treating doctor is provided to the insurer a copy of the report is to be provided to the claimant within 10 days of the receipt of the report. Does that mean that it is now a standard, and basically a required, practice that a medical practitioner cannot charge a customer for a second copy of a report that has already been provided to the insurer?

Mr BOWEN: A claimant who goes back and seeks a second report will be charged for that report. But the suggestion is that claimants will not need to do that because they will have access to the report via the insurer.

The Hon. J. F. RYAN: I am sorry?

Mr BOWEN: They will get the report from the insurer, so they will not need to go back to the treating doctor.

The Hon. J. F. RYAN: They may wish to go back because they have a lawyer who wants a copy of the report. Why is it not reasonable, as when you go to any other specialist, that patients walk out with copies of reports for their own records, for whatever reason they propose to use those, and free of charge, given that it only requires that a report be photocopied?

Mr BOWEN: That probably is an issue that you should take up with the AMA.

CHAIR: Mr Bowen, in referring to a second report, you do not mean a new report. I take it you mean a duplicate or other copy of a report that has already been provided.

Mr BOWEN: That is right.

The Hon. J. F. RYAN: I understand that it is not an uncommon practice that medical practitioners charge the regulated fee to the insurer and a very high fee to the customer, sometimes in excess of the cost to the insurer to get it.

Mr BOWEN: Or vice versa.

The Hon. J. F. RYAN: Should we not close that loophole by regulation? As we are in the business of regulating people, why not close off that loophole altogether and provide that a copy of the same report be provided free to the customer?

The Hon. JANELLE SAFFIN: Could you not refer that to your council as a matter it should look at?

Mr BOWEN: It is a relevant issue, but could I say to you what has happened with current regulations may well happen here: the treating doctor simply could refuse to provide the report.

The Hon. J. F. RYAN: But what if it is a requirement of the regulations that they have to provide it for the client, as they do with any other report?

Mr BOWEN: I would think it may be stretching the regulation-making powers considerably to make a regulation imposing an obligation on another party to require a report. I really think that would require a legislative change. But it is certainly a proposition that warrants some thought.

The Hon. Dr A. CHESTERFIELD-EVANS: All this discussion about fees, however, relates only to plaintiffs' fees, does it not, because the defendants can have in-house lawyers who charge whatever they like and do things whichever way they like?

Mr BOWEN: The insurers are bound by the fee regulation in terms of external legal advisers that they contract. Yes, they can have in-house lawyers, but the overall amount of claims handling costs is an issue that we monitor. It will be limited by other practices. For example, while there is a right to legal representation at a claims assessment resolution service hearing, it is the intention specifically provided for in the guidelines that if the claimant is unrepresented then the lawyer cannot turn up with either an in-house or external legal adviser. There has to be some equality in representation and an expectation that in the vast majority of cases, even where the claimant may be legally represented, the insurer will be represented at those types of assessment hearings by the claims officer who is actually handling the matter.

CHAIR: Mr Bowen, early in the hearing you referred to some documentation that you said had been circulated to the Committee. I note that Ms Muddle, who at that stage was Acting General Manager of the authority, following our earlier hearing in May this year, forwarded to the Committee Secretariat an issues paper dated May 2000 entitled "Capital and Profit in CTP Insurance". That issues paper certainly was circulated to the Committee members. However, we have no record of any second or other report being sent to the Committee.

Mr BOWEN: In fact, it is one bound document that has two papers in it.

CHAIR: That is the answer to the problem. Thank you.

The Hon. J. F. RYAN: If I may go to another matter raised by the Law Society. The Committee has had today a presentation that refers to profit loadings for insurers of 10 per cent and 8 per cent. The Law Society asks, in short terms, since the scheme is largely estimating profit in any event, how can you confidently make presumptions about 10 per cent and 8 per cent? On what basis do you make such presumptions when you report to the Committee that you intend to find a mechanism whereby you can assess profit into the future? I guess what the Law Society wants to know is: How blind is the MAA in regard to profit?

Mr BOWEN: I might ask Mr Gould to comment further on this, but the process of reviewing a premium filing is one whereby the filing includes the insurer's estimate of the risk premium; that is, the amount that is required to meet the claim

costs. It then has added to it all of the other components to the premium—the acquisition costs and the profit being the main two, with the acquisition costs being broken down into the other components that have previously been mentioned. So, in undertaking our assessment we have available to us an independent actuarial assessment of the risk premium.

The risk premium is the major component of the premium. So we can make an assessment as to whether the insurer's risk premium is within the sort of range that is relevant. We also, on things like acquisition costs and profit, can make comparisons with what previously have been included in premium filings. They all do have to add up to a final figure. So, when we say that the insurer's profits have increased, we are saying that in their premium filings, as from last year to this year, the amount that is put aside as representing the insurer's profit has decreased, and that our assessment of that decrease is that it fits in with our overall assessment of the premium filing.

Mr GOULD: There is very little I can add, other than to reiterate that the pie charts in the report concerning insurers' profits are based on estimates. They can only be based on estimates. Frustrating though it may be for members of the Committee, it will be several years before it becomes apparent as to whether those are under or over estimates.

The Hon. P. J. BREEN: But they are the insurance companies' estimates, not your estimates, are they not?

Mr GOULD: They are the insurance companies' estimates, but the major components of them are reviewed independently, and for reasonableness, by the Motor Accidents Authority, with assistance from ourselves as consultants to the Motor Accidents Authority, in relation to the main area of estimated future claims costs.

The Hon. P. J. BREEN: If I could just say that our concern about estimates is that we need to have some understanding about whether they are yours or whether they are from the insurance companies. For example, the slide on premium filings shows that the insurers have included lower percentage legal fees. In your information and in your evidence today you have said that the legal fees being paid out are exactly the same, that they are not lower at all.

Mr BOWEN: We can offer a possible explanation for that. I might deal with that issue and then return to the question of premium filing. The amount of legal costs paid out this year, compared to last year, has been the same. But it is an extremely low amount. It really is recognising that the types of claims that are settled in this first year are ones which, even under the old scheme, had very little legal representation. It does take into account that there has been a speeding up of matters moving to settlement. So it is the total amount of legal costs, not the legal costs per settled claim. If we were looking at it in terms of legal costs per settled claim, then there would be a reduction. It is just a comparison of the total amounts paid.

The other component to Mr Breen's question is whose estimates these are. The system we operate under is file and right. So the insurers file their premium estimates, and the MAA has to consider those within the terms of the legislation, which empowers us not to approve of a premium if we believe it is excessive. One of the factors that is taken into account as to whether or not the premium is excessive is whether or not it

provides for, the words are, an adequate return on capital. So, what we are grappling with through those issues papers and the methodology set out at attachment 7 to the report is: How do we go about verifying that the amount of capital that the insurer indicates in the premium filing is allocated to this line of business is reasonable? Secondly, how do we go about verify that the return on that capital, which is the profit, is reasonable? And what constitutes reasonable or, in our statutory terms, adequate? So that as where we are coming at this from, to really make sure we comply with our statutory requirements.

CHAIR: I would like to ask a question about the accident notification form. The Law Society asked you a question which was perhaps couched in fairly aggressive language. It asked: Was the Motor Accidents Authority campaign carried out with the same intensity and resources as the WorkCover campaign? If not, why not? That is a reference to the publicity campaign. In responding to that question, you say that seminars were organised across the State. You go on though to say, "In May and June 2000 the MAA conducted a random telephone survey of 200 medical practices to establish the level of awareness of the ANF." You say that the survey results show that 40 per cent of practices were aware of the form. Presumably that means that 60 per cent of practices were not aware of it. Could you indicate to the Committee what the authority intends to do in that regard? Can we assume that a fresh publicity campaign, or some measure, needs to be taken to acquaint general practitioners of the existence of the accident notification form and what their obligations are?

Mr BOWEN: Yes. In fact, following that first survey, and indeed another survey that we conducted of claimants, we have done a further mail-out. This time, instead of sending out according to the mail list that we had for the general practitioner, we sent it to the practice, and particularly tried to bring it to the attention of the practice manager. We then brought half a dozen people in-house, and we phoned every one of those practices, to try to make sure, number one, they had received it, and, number two, they were aware of it.

I suppose our problem, by way of comparison with workers compensation, is that the number of claims in motor accidents is significantly less than the number of claims in workers compensation. It is between a quarter and a third of the number. So that a general practitioner, perhaps in sole practice, may expect to see each year no more than between two and four people who have been injured in a motor vehicle accident. It is not a high number. So it is not something that necessarily jumps straight to their minds that, "Ah, there's a separate form that's required" when someone walks through their door.

In the phone back to the practices we were trying to suggest and verify that they keep their forms with the workers compensation ones so that it becomes a matter of habit. However, it is fair to say that the workers compensation one went through much the same sort of teething problems. It takes a while for this to get known. You can run a huge number of seminars. You can write articles and reports and you can send them out. You can send out posters and no-one really thinks about it until they get the person through the door. If it suddenly clicks it clicks, and if it does not they fill in the form and send them away. I would like to think that we have been fairly aggressive in our response to this issue, notwithstanding that it is not at a level that is satisfactory as yet. And we will continue to do that. We will do another survey of that in the first six months of next year.

CHAIR: Can the AMA perhaps be asked for any particular form of assistance?

Mr BOWEN: The AMA and its local practice directories—I am not sure that I have got the name right—have been of assistance. I suspect from discussions I have had with them that they often have similar sorts of problems in getting information that they want out to their members picked up and acted upon.

The Hon. Dr A. CHESTERFIELD-EVANS: Have you asked the drug companies?

Mr BOWEN: Not even the Motor Accidents Authority can afford to engage the drug companies to sell our wares.

The Hon. Dr A. CHESTERFIELD-EVANS: They might use them to get their foot in the door as a marketing ploy.

Mr BOWEN: We had thought about whether we would follow it up with door-to-door attendance. It is a very resource-intensive process and we would like to give a little longer for this further mail-out and the follow-up survey to have effect. If we still have less than 60 per cent knowledge in the next survey of all the practices then I suspect we will have to do the door-to-door attendance.

The Hon. J. F. RYAN: When do you expect to have done the next survey?

Mr BOWEN: In the first six months of next year so I probably think March, April, some time like then would be reasonable. Getting in a large number of people to phone up 4,000-odd practices is a fairly intensive task.

The Hon. P. J. BREEN: Can I make an observation about the form? It does have a separate section for the doctor to fill out and I think a separate section again for somebody else to fill out, perhaps the lawyer or the claimants themselves. Certainly on the face of it, it would be a daunting task for a doctor suddenly confronted with a new form that appears to involve questions other than medical questions. It may be that the doctor simply puts the form in the patient's file and that is where it stays.

Mr BOWEN: The medical certificate component of the form is very similar to the workers compensation one and we did that for the deliberate reason of trying to ensure that it was something they were already comfortable with and already used to using. We wanted to build upon the fact that the workers compensation certificate was already out there and in use, and that this was something along the same lines to assist in getting acceptance. It is also not that much different, although in fact less detailed, than the medical certificate that is required to be filled in attached to the claim form. So we are trying to get a consistency in approach to all of this to make it acceptable. I would have thought the form is reasonably clear on the face of it, that it is only the last page of the medical certificate that is required to be completed by the doctor.

The Hon. J. F. RYAN: On page 19 of the responses you have given to questions you make reference to the fact that a mail-out was sent out using medical practitioners supplied by the AMP company. Is there any reason why the MAA does not have its own database of medical practitioners?

Mr BOWEN: I think that AMP company is the company owned by the AMA. Creating our own database of every medical practice in the State is a daunting task. We simply purchased this one, which is not an uncommon thing to do. In fact, we have done a fairly significant tidy up of it. We have taken out of our list all the ones that relate to specialist health clinics and the like. We also have a lot of return addresses—not a lot but a significant number to suggest that their database needed some updating anyway.

The Hon. J. F. RYAN: Hopefully you can charge them for cleaning up their database.

Mr BOWEN: Yes. I have suggested that we charge them for the updates.

The Hon. J. F. RYAN: On page 21 in response to whether or not potential claimants are properly advised and aware of their rights, I note that it states:

> In addition to information services such as the insurer operated Claims Information Service (CIS and the MAA's Claims Advisory Service (CAS), treatment providers have a greater awareness of the scheme.

I hope that was not a significant part of the extra. It is true that treatment providers have a greater awareness of it but one would not have thought that 3 per cent was a hugely greater awareness.

Mr BOWEN: You can distinguish between the GPs and the other types of health professionals. For example, in addition to what is reported there, we have had quite significant involvement with the Australian Physiotherapists Society. We have had a loss of contact with them and publications in their journals and the like, and making sure that physiotherapists, who are often the first point of contact with people shortly after the doctor, are also aware of the claiming procedures. In fact, we are probably more confident that that statement is true of other health professionals than it is of GPs.

The Hon. JANELLE SAFFIN: My question goes back to when you were talking earlier about brain injury. You said that the authority made a decision about the value of recurrent versus one-off capital projects. I have just had a quick look at the answer and it talks about the MAA in a sense being restricted to that. Was that a policy decision of the authority and of the board or management?

Mr BOWEN: It is. The board of the authority does two things. One, it approves our budget each year, which includes the amount—

The Hon. JANELLE SAFFIN: I am aware that it does that, but in answer to my question, was that a decision of the general manager or—

Mr BOWEN: No, it was a decision of the board.

The Hon. JANELLE SAFFIN: So it is a policy decision of the board?

Mr BOWEN: Yes.

The Hon. JANELLE SAFFIN: Is that being examined again in light of the underexpenditure of those moneys?

Mr BOWEN: Each year the board looks at what will be the funding priorities for the rehabilitation funds for a given year and it approves them, and then we go through the process of advertising, calling for grant applications and then payouts.

The Hon. JANELLE SAFFIN: Can that be looked at? I know it is difficult.

Mr BOWEN: It is looked at every year.

The Hon. JANELLE SAFFIN: The question of recurrent funding is difficult, but that does not mean one should not do it.

Mr BOWEN: The concern is not so much that it is difficult but that the demand for recurrent funding would enormously exceed—

The Hon. JANELLE SAFFIN: You know that and I know that.

Mr BOWEN: There is an extent as to how much you would need to increase the levy on motorists in a fault-based scheme to support services.

The Hon. JANELLE SAFFIN: I do not mind if you do not do it, but your answer was not sufficient either way. There was no rationale provided as to why you do not do it.

CHAIR: Would I be correct in assuming that the policy decision to which you refer in your answer was taken some years ago under previous legislation?

Mr BOWEN: It is a decision that I suppose is reaffirmed each year. During the early years of the scheme all of the funds were essentially used to meet capital demand and once that started to lessen it is then whether you focus upon recurrent service provision or upon research, and the board at that stage—I could not give you the particular year but I suspect that it would be about 1995—decided to focus on research and innovative services, and that has been reaffirmed by boards ever since.

The Hon. JANELLE SAFFIN: In your opening statement you said that some of the initiatives that the insurance industry had taken were commendable. Can you outline a couple of those initiatives that you said were commendable?

Mr BOWEN: I will give you one very good example which I became aware of this week. I had a discussion with an insurer who now has mobile claims officers, who hop in a car, drive to the claimants' homes, help them fill in the forms and process their applications. That type of assistance is something that was unheard of in this scheme 12 months ago. There is much improved customer focus. Some of the insurers have adopted new nomenclature so that they call claimants their customers or clients. That may sound a little corny but in fact if that is reflective of a different attitude amongst their claims staff as to who that claimant is, then it can be quite powerful.

It can establish that sort of personal relationship. Often the insurers pass on to me letters that they have received from claimants thanking individual claims officers for

assisting them through the process and helping them. I imagine they probably got one or two under the old scheme but I think they would have been fairly rare. A number of insurers are taking pride in the fact that they are making those sorts of changes, that they have changed the way in which they will deal with claimants. I wanted to reflect on that because I think that is a very important component to this.

The Hon. JANELLE SAFFIN: My next question relates to section 81 (3), section 81 (5), the principle assessor and the three-month period. Does that ring a bell with you?

Mr BOWEN: Yes, this is one of the Bar Association's questions.

The Hon. JANELLE SAFFIN: I have heard it raised a fair bit in legal circles. As you know, I have not had an opportunity to look at all your replies. How did you address that? What is your view?

Mr BOWEN: I have not. I referred to that in the opening statement. The principle claims assessor has dealt with certain applications for exemptions on the basis of an interpretation of those sections of the act. In my view—

The Hon. JANELLE SAFFIN: So there is something in the Act that actually states that one can apply for an exemption. What section is that?

Mr BOWEN: The exception provisions will be at 81 and the reference is, from recollection, that there is an entitlement to an exemption when the liability is denied. There is then a provision that provides for a deemed denial of liability where the insurer has not responded within a second time. The issue is whether that denial of liability satisfies the test for an automatic exemption or whether it is still a matter for consideration by the principle claims assessor. I will not offer an opinion on that. Quite properly, I cannot direct a claims assessor, including the principle claims assessor, in a determination or an interpretation. It would be wrong for me to offer a view as to what a legal position is on that decision, given that there are appropriate avenues by which that decision could be challenged.

CHAIR: I return to the brain injury matter for a moment. I understand what you are saying about a reluctance on policy grounds to enter into recurrent spending. I simply make the point that perhaps 10 years ago when the authority decided to grant some capital funding to various facilities there was, so to speak, nothing around to assist in the brain injury area. Now there are some such facilities and it is very much to the credit of the authority that they exist. However, does that alter the picture, in your view, to any extent? Arguably, there is less money now than there once was for capital funding. Dare I say that the door might have opened, albeit slightly, to permit recurrent funding?

Mr BOWEN: Certainly the two priorities in terms of expenditure on rehabilitation have been, and continue to be, brain injury and spinal injury just because of the huge costs they are to this scheme and because the claimants who suffer those sorts of injuries are the ones with the greatest need. Having said that, there are other areas that are worthy of research and that will benefit health outcomes for people who are injured in motor vehicle accidents. The task for the board is to balance all of those varying demands against the amount of budget it has available, or which it sets to ensure

the best possible use of the funds. To date, the board has taken the view that that is best done by not starting down the track of recurrent funding.

The Hon. J. F. RYAN: I would like to ask a fairly fundamental question which relates to page 21 of the annual report, the presentation which we were given which stated claim numbers before and after the change, and statements that there had been a 15 per cent increase in notifications. There appears to be, at least according to the Law Society's questioning, a fundamental difference in the meaning of the word "compensation", as it is used in figures such as the 15 per cent and what has previously been the case. The Law Society is wondering—and I must say that I am, too—whether this is a fundamental difficulty in making a comparison between the old and the new schemes.

To relay the concern of the Law Society, is there a question of semantic interpretation of the word "compensation"? The original MAA report compared the number of claims lodged in the old scheme with the number of claims and accident notification schemes lodged under the new scheme. It is arguable that a bona fide claim lodged under the old scheme, when it is finalised, would lead to a final payment of compensation or claim that would close the matter. This would be described as a final compensation for the injury.

Under the new scheme an injured person may lodge an accident notification form [ANF] and receive $500 or thereabouts as an interim payment but may then lodge a claim very similar to that under the old scheme for further compensation and possibly receive more. In this sense the Law Society believes that it is not meaningful to compare the time between an accident and the lodgment of the claim for final compensation under the old scheme and the new scheme because the new scheme introduces something altogether different—the ANF and the interim payment, which did not exist under the old scheme. People used to spend some time researching a claim before they actually presented it. To what extent can we meaningfully make a comparison and draw the conclusion that there has been a 15 per cent increase in notifications when a whole new type of notification has arisen under the new scheme?

Mr BOWEN: I think it is a valid comparison because the whole intention of introducing the accident notification form was to allow earlier access to payments and increased access.

The Hon. J. F. RYAN: I do not disagree with you that what we have done is beneficial, but I guess it is fair to say that it is not exactly a like-with-like comparison, is it?

Mr BOWEN: It is not exactly like with like, but it is a meaningful comparison of how many claims there are and at what time people start to get access to compensation payments. There is no suggestion by making that comparison that these are final payments on either the claims or the ANF. They are payments made to date, so it is comparing two points in time with identical data in that respect.

The Hon. J. F. RYAN: On page it 23 of your notes, you state that in view of the changes introduced by the 1999 Act an emphasis was placed on reducing transaction costs. Is the MAA concerned that the efficiency figure of 62 per cent is still too low? Why is the efficiency figure still less than the 67 per cent efficiency figure for the

Queensland scheme? How does the 62 per cent figure compare with CTP schemes in other countries or in States other than Queensland? Has the MAA set an objective goal for the efficiency of the New South Wales scheme in 2001? I might add that a recent report by the Auditor-General on annual reports makes a strong suggestion that in future all annual reports from all government agencies, and I imagine that that applies to agencies like yours, should include comparative data and objective setting as part of the annual reporting process.

Mr BOWEN: One can only make comparisons when data is available. The reason we compared the scheme to Queensland is that Queensland has adopted that as a measurement of its scheme and that allows us to have an identical comparator, and it allows an identical comparison to be made. Is it too low? Yes. Our objective is to increase that as much as is possible. The view of the Motor Accidents Authority is that this scheme should ensure that the maximum possible amount of premium collected is returned by way of compensation payments. Nevertheless, I think it is a very significant improvement.

I also make the point that a comparison from 58 per cent to 62 per cent is a comparison of the 58 per cent figure which was an average over that 1993 to 1998 period. Our view is that the amount going to claimants in the 1998 year was lower than 58 per cent and probably was as low as 52 per cent or within the 52 per cent to 55 per cent range. So in fact you have an increase that is more significant than it would be by comparison with a previously aggregated period. We would hope that this would be a figure that would continue to trend upwards.

The Hon. J. F. RYAN: Can the MAA elaborate on the interrelationship between various evaluations of the Act and the scheme, including the Justice Research Centre [JRC] study? Who was the client for each of those evaluations? Where does the MAA see this Committee fitting into the structure of these evaluations?

Mr BOWEN: The evaluation of the scheme is, in my view, the responsibility of the Motor Accidents Authority and it is something that we would report, as we have been reporting, on a meeting-to-meeting basis to the Motor Accidents Council and on a six-monthly or annual basis to this Committee. The evaluation of the scheme comprises a number of different components which we have covered although perhaps I have not collated them in this report. They are audits of various scheme guidelines, including claims handling guidelines, treatment rehabilitation and attendant care guidelines and market practice guidelines, which have either commenced or are under way or which are, in the case of the market practice guidelines, programmed to occur.

There is ongoing analysis of information held by the MAA to allow us to evaluate and report as against the scheme performance indicators. That will continue to be done by the MAA by the use of consulting actuaries and others who are of assistance. However, there are also components of the scheme evaluation that require us to contract independent advice, in some cases because we do not have the expertise in-house and in other cases because it involves an evaluation of how well the service is provided by the MAA, or the operation of services such as the assessment services.

The Hon. JANELLE SAFFIN: How does the new scheme implementation committee fit into this? You have not mentioned that.

Mr BOWEN: I am not sure that there is one. There is no scheme.

The Hon. JANELLE SAFFIN: I read about it in one of the reports.

The Hon. J. F. RYAN: We are about to conclude this hearing. There are a few items which I imagine relate to detail and I do not imagine you have the detail to hand immediately. I will put those matters on notice. The Chairman has suggested that I refer to them so that the matters are mentioned on the transcript. In particular, I was wondering if I could receive details about a future audit program that you have referred to in your answer to questions. I think it is an audit program for legal costs. I also want to ask to what extent the actuarial calculations and assumptions about premiums have taken into account a superimposed inflation and what level that is. I also want to ask a number of questions in relation to fraud prevention and your proposals for preventing fraud in the future.

CHAIR: The Hon. J. F. Ryan will reduce the questions to writing and communicate them to the secretariat, who will forward them to the Motor Accidents Authority.

The Hon. J. F. RYAN: Yes, I will put them in writing. There was something else about the various actuarial studies of the scheme and whether they are sufficiently independent, although we have traversed some of that subject already. That might be it but, as I said, they are finer points of detail that I am not entirely sure I understand. They are matters which I think are probably best addressed by written questions.

(The witnesses withdrew)

The Committee adjourned at 12.40 p.m.