REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

NINTH REVIEW OF THE MOTOR ACCIDENTS AUTHORITY AND MOTOR ACCIDENTS COUNCIL AND FIRST REVIEW OF THE LIFETIME CARE AND SUPPORT AUTHORITY AND LIFETIME CARE AND SUPPORT ADVISORY COUNCIL

Uncorrected Proof

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At Sydney on Friday 20 June 2008

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. J. G. Ajaka
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
Ms S. Hale

CHAIR: Welcome to this public hearing of the Ninth Review of the Motor Accidents Authority and Motor Accidents Council, and the First Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. Today we will be hearing from witnesses from the Motor Accidents Authority, the Motor Accidents Council, the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

The Law and Justice committee has resolved to conduct the reviews of those bodies concurrently. However, because the reviews relate to different bodies, two reports will be released, one for each review. During today's hearing, witnesses will be questioned according to each review separately to ensure that the distinct issues of both reviews are given adequate attention and are dealt with independently.

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

I also advise that, under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other persons. Committee hearings are not intended to provide a forum for people to make adverse reflections upon others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless that is absolutely essential to address the terms of reference. Can everyone please turn off their mobile phones for the duration of the hearing, including mobile phones on silence as they still interfere with the recording of the proceedings.

I would very much like to welcome the first witnesses: Mr David Bowen, General Manager of the Motor Accidents Authority; Mr Richard Grellman, Chairman of the Motor Accidents Authority and the Motor Accidents Council; and Ms Carmel Donnelly, Assistant General Manager of the Motor Accidents Authority.

DAVID BOWEN, General Manager, Motor Accidents Authority and Chief Executive Officer, Lifetime Care and Support Authority, 580 George Street, Sydney, and

CARMEL MARY DONNELLY, Deputy General Manager, Motor Accidents Authority, 580 George Street, Sydney, affirmed and examined, and

RICHARD JOHN GRELLMAN, Director, Motor Accidents Authority, 580 George Street, Sydney, sworn and examined:

CHAIR: Mr Grellman, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr GRELLMAN: I am representing the Motor Accidents Authority.

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

Mr GRELLMAN: I am.

CHAIR: Mr Bowen, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr BOWEN: As General Manager of the Motor Accidents Authority and Chief Executive Officer of the Lifetime Care and Support Authority.

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

Mr BOWEN: I am.

CHAIR: Mrs Donnelly, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Ms DONNELLY: I am appearing as the Deputy General Manager of the Motor Accidents Authority.

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

Ms DONNELLY: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, the Committee would appreciate if the responses to those questions could be forwarded to the secretariat by Friday 11 July 2008. Would any one of you, or all of you, like to start by making a short statement?

Mr BOWEN: In the interests of a fairly tight schedule, we are not intending to make a statement. We have updated on some slides some of the key information in the annual report. We have copies for each member of the Committee. If you wish, Ms Donnelly can take you through those. Otherwise, we can go to questions on them.

CHAIR: It is the Committee's preference to start with questions. But, if you are willing to table that information, , you might do that now.

Documents tabled.

CHAIR: For the information of those present, I should mention that this week a submission came in from the MAA with a lot more information, and the clerks have this information. I understand it is being circulated at the moment.

In its submission (Submission 6 to the MAA review) the Insurance Council of Australia has documented trends suggesting that the Claims Assessment and Resolution Service [CARS] process is resulting in substantially higher compensation payouts than those claims settled outside CARS, and that

CARS payouts have increased over time, while non-CARS payouts have remained fairly constant. The Insurance Council argues that this "superimposed inflation" could place unplanned upward pressure on insurance premiums and discourage early resolution of claims, thereby leading to poorer injury outcomes. It attributes this escalation largely to a "lack of transparency" in the CARS process which allows individual assessors to make determinations without providing evidence-based reasons for assessments and have proposed a number of measures to address this, including: greater use of treatment reports and records from treatment providers in assessments; establishment of an ongoing annual mechanism for qualitative feedback and monitoring of the CARS process, as was piloted by the Motor Accidents Assessment Service [MAAS] Reference Group; quarterly publication of MAA performance reports, more frequent publication of assessment data, and publication of CARS assessors' practice notes. What is the MAA's view of the Insurance Council's concerns and their proposals to address them?

Mr BOWEN: I will make some comments on that, Madam Chair. The MAA accepts that the average claim size has increased above the rate of inflation. We believe the primary explanation for that is the drop in frequency of taking out smaller cost claims, so that the residual claims that are left will naturally be larger. However, when we last reviewed this, in 2006, we had an assessment by PricewaterhouseCoopers which built up a review of the whole scheme. We are proposing at this stage to re-undertake that review.

The issue as to whether or not the increase in heads of damages being driven by CARS is difficult to extract from the nature of claims that were reviewed by the Insurance Council and, generally, the operation of the scheme. It is our expectation that CARS will be more complex and necessarily have a higher value, because they are the ones that are disputed and will go there. Whether there is an escalation in the claims cost over and above that needs to be further reviewed, and we have now initiated that. If you wish, Mrs Donnelly can talk about the methodology of that further review.

CHAIR: That would be helpful. Thank you.

Ms DONNELLY: We have just recently commissioned PricewaterhouseCoopers to look again at superimposed inflation. The Committee would recall that PricewaterhouseCoopers reported in December 2006. The process is to look at, basically, a lot of hypotheses about what might be the factors that increase costs, and to try to look at like-and-like claims over time and see whether they are increasing more than inflation. So there are quite a range of factors. That research is continuing. As part of that, I have had the consultant from PricewaterhouseCoopers come and meeting claims managers from all the insurers, and hear what their concerns are so that the research can look at those.

I have seen some very early data. The research will take a number of stages. The first is a high-level pass across the analysis that was done for 2006, to see whether there are any changes. I have asked that it look particularly at differences between cases that are referred to CARS, cases that go to court and cases that do not go to either but settle. The early data does now show a clear pattern along the lines of what the Insurance Council of Australia has suggested, but I think we need to keep looking at it in more detail, and we will. One thing I would say is that the study that we are getting PricewaterhouseCoopers to undertake looks at all claims. I think the ICA has had the opportunity to look at a particular subset. So the study that we are commissioning should be a lot more definitive.

The Hon. DAVID CLARKE: Arising from the MAA's answer to question 16: Of the six CARS and MAS user groups surveyed for satisfaction, which were most satisfied and which least satisfied? Are there plans to conduct further user satisfaction surveys?

Mr BOWEN: This review was conducted over a number of years, so each one of those occurred at a different time in the cycle. I am quite happy to table for the Committee the actual reports from the Justice Policy Research Centre, bearing in mind that they are a little bit dated. The difficulty with the report is that there is useful information about the perception of users of CARS, but there is a lot of extraneous comment about the operation of the scheme as a whole. From the point of view of an administrator of CARS, what we need to do is extract how people think it is working in terms of its usability and accessibility and speed—the legislative criteria against which they were set up.

So, perhaps I could take the question on notice and provide the Committee with a bit of summary of each of these. Yes, we will do it again—not in the same level of detail. This was a major review. It was to make sure things were working fine. We have now very robust feedback systems through practice groups with the legal profession and insurance representatives. So we are getting much more immediate feedback. But we will do a further review that also assesses feedback from the claimants, who are the key users of the system.

The Hon. DAVID CLARKE: Are there any general conclusions that come to mind at this stage?

Mr BOWEN: I think the conclusion will be that medical assessors really like the medical assessment system; they would much prefer it than being a doctor giving evidence in front of a court. So I think the concept there is right. The lawyers really do not like the medical assessment system. The lawyers like the Claims Assessment and Resolution Service; it is quick and easy to get into. In particular, the Law Society and the solicitors branch of the legal profession like. In fact, the feedback generally is fairly positive in respect of CARS. I think the insurers have some concerns over elements of CARS that have to do with its statutory basis, and the fact that they have no right to challenge decisions of CARS that are accepted by claimants. They are very critical of that component of it, and they have some other criticisms that are outcome-based. But, generally, the feedback is that it is quicker to get into, it is much more flexible and much more responsive than running the whole case at court, and obviously cheaper in that sense.

We tried to do the claimant surveys at the point where they had been through the process but had not received a result—otherwise, it tends, as with all reviews of tribunal and court outcomes, it is influenced by the result that the person had. If they have a good result, they think the process is excellent; if they have not, they think otherwise. Generally, it led us to the conclusion that we need to be providing more information to claimants about what happens. There is a lot of information that goes to the claimants, and there is an expectation also from us that, given most people are represented at CARS, they will be told by their solicitor what to expect. But, despite all of the information out there, they are probably not as prepared for what goes on, how it is conducted, and what rights and responsibilities they have before the CARS hearing. That is something that we are taking on board, to try and provide a little bit more of customer care, if you like, to assist people on the way through. Again, it might be a question that Mr Player, who is to give evidence this afternoon, can answer in terms of the practical implementation of some of those from our Motor Accidents Assessment Services.

The Hon. JOHN AJAKA: I refer to the answer to question 31, on page 30. Mr Bowen or Mrs Donnelly, you may have touched on this. When is the May 2008 Price Waterhouse Coopers study of costs in the Compulsory Third Party Scheme scheduled to report to the MAA? If the MAA incorporates lead indicators of superimposed inflation into the Annual Report, will there be a point of comparison, for example, with compensation matters settled outside of the CARS system?

Ms DONNELLY: In terms of a deadline for reporting, we have not got a clear deadline at this point. I have asked them to undertake an approach in a few stages, do a scan and then, depending on what they find, drill down. So I expect to be getting more feedback from them in the coming weeks. That would enable me to put a timetable on it. But we are trying to do that as quickly as possible obviously. The second part of your question related to lead indicators. It probably will depend a little bit on what it is that they find but if, firstly, they find that there is superimposed inflation that is to do with the process of resolving disputes, for instance, then there would be lead indicators that we would then be picking up that probably would have some relevance right across the scheme, certainly not just for going into CARS. It would have implications for all the people involved in the scheme.

The Hon. GREG DONNELLY: My question relates to question No. 3. While it is understood that work on developing appropriate outcome measures for assessing the compensation scheme's performance is under way, are you able to provide an indication, for illustrative purposes, of what kind of measure might be used?

Ms DONNELLY: It is not a trivial exercise; it is quite complex. But we have identified that there are types of claims that have more costs associated with them, either because of the number of those sorts of claims or because they have a high cost. Some of those that we are focussing on are whiplash associated claims, lower limb fractures and moderate brain injury, or where there is what health people would call a co-morbidity, where there is not just the injury but there is also some psychological factors or anxiety or stress and so on. In terms of identifying measures, the question that we have is to meet a couple of needs. One of those is to be able to have broadly-based measures so that we can compare the population and then a range of people who have different sorts of injuries to each other, and that will validate it. So we have been getting advice on sorts of things like the SF36, which is one of those measures, but there are quite a number that are in common use and where there is a large amount of data.

The other area that we expect to work on will be looking at some of those more high-priority areas, such as the ones that I have just described. There may need to be specific measures that will be appropriate for those groups. So there is a process of meeting to consult with both academics who can tell us which are the most reliable of those measures, and with health practitioners, because we would be asking health practitioners to use them; and there may be a training burden and accreditation issue, and so on. Often, there

are a number of measures in common use, and we need to evaluate which of those we would prefer. The other issue is how often to subject someone to additional assessment, and how we can fit that into normal operations so that it is not intrusive on the injured person. So those are the types of analyses that we have going on at the moment.

I will give you an example in terms of issues around mental health and wellbeing. We have been looking at what is in use in other types of compensation schemes, such as workers compensation in Victoria and so on, and where there might be some other measures that are not terribly burdensome but have good reliability. What I think we would need to do next is start to trial those. So, in probably the last six months or more, we have had some quite in-depth bilateral discussions with each of the insurers to understand where they are placed, what they require from their health providers in terms of measures and data, and to understand their ability to be analysing that sort of data. We will be bringing forward a strategy on that, but it has been identified that we will probably need to work with the insurers and also health practitioners and the various professional associations to develop some pilot tests to ensure that those measures are feasible for the settings that they should be in, and whereby we give some assistance in developing those studies. So that is really where we are positioned now.

Ms SYLVIA HALE: What is the mechanism for changing the cost regulation? How will the working party mentioned in your answers to questions 13 and 17 contribute to the decision to change the cost regulation, and when do you anticipate the change, if any, will be made?

Mr BOWEN: The cost regulation is a regulation that is made by the Governor on the recommendation of the Minister and is, of course, tabled in Parliament, subject to normal disallowance rules. The current review was intended to serve two purposes: one, to identify whether there was a gap in what complaints were paying for legal costs, as distinct from what they recovered from the insurer under the regulated fees; and, secondly, to look at an alternative basis for setting the fees to take into account the scheme changes and procedural changes that are intended to operate from 1 October this year whereby a lot of the work has been front-end loaded. We recognise that solicitors in particular will need to do a lot of their work earlier in the hope of quicker resolution of matters. But that should be reflected in the fees.

As the answer indicates, we have selected a consultant. The President of the Law Society and I wrote jointly to a number of firms of solicitors, and the consultant is currently chasing them up to get their participation. I think at this stage three or four of the seven or eight who have been approached have agreed to participate in that file review. All being well, we will get that report back and be able to reset the regulation and put it through the Minister so that it will be in place around about 1 October. That would be the ideal.

CHAIR: Mr Grellman, last time we did this inquiry there were some participants at the hearing who were concerned about a feeling that they were not being properly involved or listened to in the board process. But, this time round, through the submission process, we have actually had some positive feedback about the board process. What has happened about making sure that everyone gets to have a say and feels involved? There were persons who presented to us at the last inquiry who did feel that they turned up to the meetings but nothing was happening with their information. Do you know anything about this?

Mr GRELLMAN: This is in reference to the Motor Accidents Council?

CHAIR: That is right.

Mr GRELLMAN: The Committee would recall that the Motor Accidents Council is made up of various stakeholder groups' representatives and service providers' representatives. You would forgive me for feeling as though it is always operated fairly effectively. It is a forum that does provide stakeholders and service providers with the opportunity not only to put forward points of view but also to receive information from the Authority on a very timely basis. In fact, it is not uncommon for data which management has prepared which provides further insight into the scheme to be delivered to the council prior to the board of directors.

I think there was a concern that some particular issues that one or two individuals on the council thought ought to be dealt with, and changes made, did not result in any changes or recommendations going through the board to the Minister. Primarily, those suggestions might have been in areas where some of the natural oppositional forces had different points of view. It is not uncommon, for example, for the insurers and the legal profession to agree on a number of issues, but occasionally they do not agree. If one party puts a point of view and it is not accepted by the other party, the council is not a forum where you would decide

something on a show of hands, for example, because there are a number of neutral observers, like the medical profession and the like. So I take the view that the council is a very good forum for concerns to be tabled.

There are three Motor Accidents Authority directors who are council members—myself, David Bowen, and the deputy chair of the Motor Accidents Authority, Penny Le Couteur. So we have got a very good opportunity to hear these concerns. We would usually take them through to the board, to let them know that there is an issue out there, and the board may or may not deal with that issue in the way requested by the individual. But I think the important thing to note is that it is a forum for concerns to be aired, and we try very hard to listen carefully and ensure that we understand what is being said, and we are very thoughtful then as to whether or not we think changes might be appropriate in light of those concerns.

The Hon. DAVID CLARKE: My question arises from the MAA's answer to question 35. In relation to the evaluation of the initiatives the MAA funded which are intended to reduce road accidents involving young people, what were the outcome measures used in the evaluation and why was there insufficient evidence available in relation to those outcome measures?

Mr BOWEN: Mr Clarke, I might start the answer to your question, and Mrs Donnelly might join in. The issue of assessing the impact of social marketing is a very difficult one. We know that information provided to people can affect the attitudes that they have towards road safety, and we know that attitudes that have can affect their behaviour on the roads, but it is very difficult to say, by running a program directed at providing that information, whether we can measure it in terms of crash reduction or injury reduction, because there are so many other factors that bear upon the measurement. Where we have been able to evaluate it is where those information packages have been specifically tied to concurrent enforcement action in a limited geographic zone; so, for example, where there is an increased police presence in an area targeting a particular activity, such as speeding, ourselves and the police will put a whole lot of information into that area about that activity, and we can measure the reduction in toll and injury, and there is certainly a correlation.

But, outside of that, when we are targeting a group, such as young people, across the whole State, the way we do it is by the same method that advertising agencies use to measure the take-up of their advertisements. What is the recall, both immediately after and what is the recall some months down the track? Where we run programs through the school, we get feedback forms from both the student participants and from the teachers, for example, as to how they think the session went. As you would be aware, we run a lot of programs with different sporting clubs. So, if we send one of the Wests Tigers players to a school at Campbelltown to talk about road safety, it will be built in as part of their normal road safety curriculum, and we will get some feedback as to how that presentation went, what was the recall, and interestingly how they think that message was delivered compared to say hearing it from someone coming along from the government. The hypothesis that we are working on is that to engage young people you have to be speaking to them in a media to which they are receptive. They are not necessarily receptive to myself or Mr Grellman or Mrs Donnelly coming along and telling them how to behave in cars. Generally, it is very positive feedback that we get from those sorts of sessions.

The other thing that we do with the Arrive Alive program is to tie it to the Arrive Alive web site. So we use the advertising of that program to draw young people to the Arrive Alive web site. So, for example, with the Arrive Alive Cup, which is a schoolboy rugby league cup, all the results are posted on that web site and we try to inculcate road safety messages through that web site to get some message pick-up. It is very hard to do that in terms of a return on investment, so we try to use the same sorts of advertising evaluation.

The Hon. JOHN AJAKA: The Motorcycle Council of New South Wales has suggested in its submission that the elements constituting the Medical Care and Injury Services levy be itemised in the Compulsory Third Party [green slip] premium, in the interests of transparency. Is there any reason why this should not occur or is not capable of occurring?

Mr BOWEN: The Medical Care and Injury Services levy comprises the lifetime care levy, and then a Motor Accidents Authority levy, which is itself broken down to a payment for ambulance and acute hospital services, RTA payment and MAA payment. The only reason it is listed as a single levy is that we have a GST exemption from the Taxation Office, so that levy is not subject to GST in the name of that levy, rather than break it down into constituent points. The other element—and the insurers might be able to comment on this—is that the green slip is actually chock-a-block full of information. We do not hide this. The breakdown of it is certainly publicly available both through Motor Accidents and Lifetime Care information. It is really just how much more we can fit on the green slip.

The Hon. DAVID CLARKE: Is there any way in which you would be able to put more information there, in a general way?

Mr BOWEN: This is the first time the question has been raised. The levy has only been shown as a specific levy since October 2006. Prior to that, all of these payments—although there was no Lifetime Care payments, but all those other payments—just formed part of the insurance premium; they were not disclosed in any way. So I suppose we are moving towards having it more transparent. We have put out a lot of information since 2006 with the insurer renewals. There has been a mandatory information sheet provided by the MAA, which has gone out with renewals and which describes all the components of the levy. So it is not like the information is not there; it is just not listed separately on the green slip. If we can fit it in, there is certainly no objection to breaking it down. I think it is in the interests of people to know how much they are paying as part of their green slip that goes to fund that acute care phase, for example.

The Hon. GREG DONNELLY: My question relates to submission No. 10, which you may or may not have had a chance to read. So, you may need to take this question on notice.

Mr BOWEN: Mr Donnelly, which one is that?

The Hon. GREG DONNELLY: People with Disability.

Mr BOWEN: I do not believe we have seen that.

The Hon. GREG DONNELLY: It is one from the People with Disability.

CHAIR: It was only published this morning.

The Hon. GREG DONNELLY: In that case, it would be unfair to drop the question on you when you have not had the opportunity to read the submission. So perhaps it is wise to put this particular question on notice, and you might respond accordingly.

Mr BOWEN: Yes.

CHAIR: Yes, I think it is a good idea to put the question on notice. And the question is a bit long. Would you read the question onto the record?

The Hon. GREG DONNELLY: It is reasonably long. Part of it gives some background, but I will read it all anyway. In its submission People with Disability Australia [PWD] has raised concerns about the MAA's decision to provide $5 million in capital funding from the Injury Management Grants program toward the redevelopment of the accommodation facility known as Ferguson Lodge. PWD argues that the decision goes against the MAA's Injury Management Sponsorship Guidelines, which state that service development projects are not eligible for sponsorship funding. PWD further argues that the redevelopment, which will provide congregate rather than community based care, does not satisfy the guidelines' aim to promote 'best practice through evidence based treatment, rehabilitation and attendant care services''. On what basis was funding provided for the Ferguson Lodge redevelopment, and what is your response to PWD's assertions in respect of the Injury Management Sponsorship Guidelines? I am happy to leave the question on notice, but you may wish to make some general comments.

Mr BOWEN: The reference to the web site relates to our programs of grants to fund pilots of service provision or research. The prohibition in that is funding recurrent services that do not have an alternative funding source. The Motor Accidents Authority has always had a major capital funding program. In fact, the great bulk of MAA funds that have gone external have been through that capital program. The MAA funded the Brain Injury Rehabilitation program in the early to mid-90s in an amount that added up to around about $55 million to $60 million. We have funded major spinal units. We have funded the brain injury rebuild at Westmead Hospital. We have funded a whole lot of similar types of services. This is exactly in keeping with that.

Spinal injury and brain injury are the really high-cost claims within this scheme, as would be seen from the figures from the Lifetime Care, and the board has always looked favourably upon providing capital funding to put bricks and mortar in place. For example, we funded throughout the late 90s and early 2000s a whole range of community facilities for people with brain injury, and I think the rebuild of Ferguson Lodge is exactly in that vein. The board has made at this stage a decision in principle to set aside $5 million. We are working with the Department of Ageing, Disability and Home Care, which is also contributing funding towards that rebuild. It fits in neatly with identifying a range of different accommodation needs people with

high-level disabilities. We will continue to have those accommodation needs from the Lifetime Care scheme going forward. So it seems to me to very much fit the type and nature of the funding and the legislative charter that the Authority has to be in that area. We will give you more details once we have had an opportunity to read the specifics.

The Hon. GREG DONNELLY: I do not want to pre-empt anything, because I have not had a chance to discuss this with the Chair, and the Committee has not had the chance to discuss it, but would we be able to find out the location of Ferguson Lodge? Perhaps I should know the answer to that question anyway, but it might be useful for the Committee to inform itself about such a place.

Mr BOWEN: It is owned and operated by Paraquad. It is on Crown land, which is held for that purpose, on the old Lidcombe Hospital site. The old site is being redeveloped. Ferguson Lodge represents a type of institutional care that is no longer considered to be appropriate. It is hospital ward type accommodation. It is really not sufficient for the needs of the current occupants, and certainly is not the style of accommodation that we would want to have as permanent accommodation for people with severe disabilities going forward.

CHAIR: I think Ms Hale has brought it to the attention of the House a couple of times.

Ms SYLVIA HALE: Yes. We have had a lot of such discussions.

CHAIR: We have run out of time, so we will move to the next segment. But, before we do, it was remiss of me at the beginning of this session not to make a declaration of interest in relation to this process. I have been a participant in the process since I have been the Chair of the Law and Justice committee following a motor vehicle accident. That needs to be put on the record. The other thing I did mention at the beginning of this session was that the Committee has made a decision for CARS to be an emphasis on this particular part of the process, and that has been a long-term view of the Committee in concentrating on specific issues in relation to the MAA during the inquiry process. I thank you very much for your evidence on this segment. We will now have together the witnesses for the Lifetime Care and Support section of the hearing.

CHAIR: Thank you all. I will not read the full opening remarks because most of you were here earlier. This is the Ninth Review of the Motor Accidents Authority, but this component is the First Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. I welcome you and appreciate that you have come to talk to the Committee about these specific issues. This is the first time that this Committee has addressed the lifetime care and support process. When the legislation was passing through Parliament it was perceived that this Committee was the appropriate body to review the annual reporting process regarding lifetime care and support. A decision was made by the Committee that on the previous occasion it was far too early to undertake this process, and we still recognise that it is very early in the process so we are not looking at a lengthy review, because that will take place over the years as the review process is set in place. I welcome the witnesses. Mr David Bowen, you have been affirmed, and Mr Grellman has been sworn already.

DAVID BOWEN, Chief Executive Officer, Lifetime Care and Support Authority, and General Manager, Motor Accidents Authority, 580 George Street, Sydney, on former affirmation, and

RICHARD JOHN GRELLMAN, Director, Motor Accidents Authority, 580 George Street, Sydney, on former oath,

NEIL JAMES MACKINNON, Acting Director, Service Delivery, Lifetime Care and Support Authority, 580 George Street, Sydney, and

STEPHEN PAYNE, Chief Financial Officer, Motor Accidents Authority, 580 George Street, Sydney, sworn and examined, and

DOUGLAS DUGAN HERD, Chairman, Lifetime Care and Support Advisory Council, 323 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: Mr Herd, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr HERD: As Chairman of the Lifetime Care and Support Advisory Council.

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

Mr HERD: Yes, I am.

CHAIR: Mr Mackinnon, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr MACKINNON: I am the Acting Director of Service Delivery for the Lifetime Care and Support Authority.

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

Mr MACKINNON: I am.

CHAIR: Mr Payne, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr PAYNE: As a representative of the Lifetime Care and Support Authority.

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

Mr PAYNE: I am.

CHAIR: Because some of you were not in the hearing room earlier, I will repeat that, if you should consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, pleased indicate that fact and the Committee will consider your request. Question on notice are due back by Friday 11 July 2008, if that is possible. Would any or all of you like to start by making a short statement?

Mr BOWEN: Madam Chair, we intend to forgo an opening statement for this hearing. We have, as with the Motor Accidents Authority, provided some updated information. As you would be aware, the scheme has been in operation for adults since October, so that all of the information is in here and we have copies of that for all Committee members. We will circulate those now.

Documents tabled.

In addition, we were asked by the Committee officers to prepare some case studies. There are some case studies in our answers to the questions on notice, but we were asked for today to prepare some case studies. We are entirely in your hands as to whether you would like Mr Mackinnon to run through those case studies, or whether you would prefer that we tabled them.

Ms SYLVIA HALE: Would it take long?

Mr MACKINNON: Five minutes.

Mr MACKINNON: I have two short case studies of people who are currently in the scheme. I will try not to reveal too much information about them. The first is of a person who entered the scheme as a child in its first year of operation. This person was a 15-year-old who was injured while crossing the road late at night and was not on a marked crossing. He was taken to the nearest trauma centre, where he underwent neurosurgery to remove a blood clot on his brain. A piece of the skull also was removed to relieve the pressure on his brain.

The Authority actually received notice about this fellow from the intensive care unit social worker within a few weeks of his injury. That notification to the Authority gives us some basic information that he is likely to meet the criteria to be in the scheme, and also included a consent from his father that we could then collect some information about him to commence that process. Within the Authority, we deal with these now by actually assigning that person's case to a co-ordinator, and the co-ordinator then has the job to go and make contact with the social worker and with the father to start talking about the Lifetime Care and Support Scheme to them, and to assist them with the application process. That took place.

Alongside that we request details from the police, to confirm the accident details: where the accident was, who was involved, and those sorts of details. We also request details from the Ambulance Service. The time involved there from the accident to when we heard about him was 15 days; the time from receiving an application to when he was actually in the scheme was 3 days. So it is a fairly rapid process because of the no-fault basis of that decision-making.

This young fellow progressed through the intensive care unit, high dependency ward, and went to a brain injury rehabilitation unit. Our involvement in the brain injury unit is to continue to inform the staff there about the Lifetime Care and Support Scheme and assist them with the processes of providing us with information around the sorts of services that this fellow will need to be purchased for him. We also gather information about him, and about what his life had been like until the time of the accident. In that part of the process we find out things like how he had been going at school, what sort of things he did, what were his interests, what his life was like, and what his home life was like.

This young person was in rehabilitation for five weeks. He also went to a transitional living unit for a short time. The treating team prepared a community discharge plan for him. That comes to the Authority. That included his outpatient therapy, case manager time and that kind of information. We also received a request that he go to a hospital to have the bone replaced in his skull, and that happened in a timely manner and also fitted in with his rehabilitation plan. From this young fellow's perspective, it was very difficult for him to have to report to hospital for therapy, and to have many restrictions placed on him while he did not have bone in his skull. I think it was a complex time for him. We actually had involvement with the law and had some great difficulties in the community.

With the support of the case manager, with the Authority funding the case manager, assisted him greatly to re-establish contact with the school system and to get back to school. The Authority is also funding some support for him in order to return to school. He is doing okay at the moment. But it is still early days for someone after such a severe injury. It is not yet two years since his injury, but it is still very early days for him.

The second person is a much more recent case. This will illustrate perhaps where we really are at the moment for the bulk of people in the scheme. This was an 18-year-old woman driving a car with two friends

as passengers on a narrow country road. The shoulder of the road had been washed away, and she lost control of the car, tried to swerve, and the tyres caught on the edge of the road and the car went into the path of a truck. In that accident one of her friends was killed, and another was severely injured, sustaining lots of orthopaedic injuries. As driver, she suffered very severe brain injury and was deeply unconscious at the scene.

Four weeks after the accident we received the notification about this young lady. This was four weeks after she had survived. I guess, having passed that first point of survival, the question is: What happens next? Again the notification comes to the Authority; a coordinator went out to see the family and the social worker. That was completed. Two weeks after the notification, her application was accepted and she was part of the scheme. This young lady is still in a brain injury unit. Many of our participants are still in hospital; perhaps 40 of the 76 are still in hospital. That indicates the newness of where we are at.

This young lady's discharge plan will be a not untypical one in that she is someone who now requires 24-hour care; she will require specialised equipment and a modified house—the whole box and dice. She is still recovering, and those things may well change, but in order for her to leave hospital that is the level of service that she will require. How to meet those needs is the challenge before us now. Her parents have separated. She was actually living on her own. So where does she live? And whom does she live with? Those are very fundamental questions, and we are engaging with her family now to try to assist to put before them the sorts of options that might be possible.

Without Lifetime Care there would be only one option for this lady, and that would have been a nursing home. That is fairly clear in this person's case. We hope to be able to present options that are really not just about today either, but ones that will enable the person to continue making choices, and the family continue making choices about where she should live and whom she should live with. At the moment, I guess we are investigating options. Some of those will be with mum, which might be in Queensland as well, which extends our involvement into other systems even outside New South Wales to generate her supports. That is a story that is ongoing, and I guess that really is where we are at. Many cases are in that ongoing phase of still being resolved.

CHAIR: That was a very good perceptual description for the Committee to receive. The young person appears to be in a rehabilitation stage and moving into a school situation.

Mr MACKINNON: Yes.

CHAIR: Does a person who is introduced into the Lifetime Care and Support Scheme initially obviously moves forward quite considerably actually move through the lifetime care and support process to the other side? Does the person move back out of the process?

Mr MACKINNON: That is a possibility.

CHAIR: It is possible?

Mr MACKINNON: It is possible, yes. So at the two-year point from the time of coming into the scheme—not from injury—there is a review of his eligibility, and at that point he will be in or out. We are already planning how we will do those reviews, and we will start looking at reviews at the 18-month point so that we will have some idea which way people go, to inform everyone involved and to do the assessments in a timely way.

CHAIR: Was it envisaged at the very start that this process would become an incredibly important component of the rehabilitation process?

Mr MACKINNON: I think, from the Authority's perspective, yes.

Ms SYLVIA HALE: In relation to the same young man, even though he may be returned to the community and be able to function fairly well, would he be able to re-enter the scheme if there were a subsequent relapse for any reason?

Mr BOWEN: At the two-year mark, if his level of functioning is such that he can self-care, then he would no longer be eligible for the scheme. However, it is assessed that as a result of his injury at some point he will need further care, then we would keep him as a participant in the scheme. We might say: Well, we do not need to provide support now, but at transition points in his life he will need to stay in the scheme and have some assistance at those points. Some brain injury can manifest itself in those sorts of ways. We have

four people in this position. For our young people in the scheme, we are also developing what we call a school adolescent brain injury program, which is to help the transition from school into the work force, which is particularly difficult for people with a brain injury. There was allowance for interim participation for people with high-care needs, but who then could recover. The great majority of the people, particularly at this point where we are getting in the scheme, have a severity of injury which will mean they will be with us for life.

Ms SYLVIA HALE: Would the presumption be more that people would remain in the scheme?

Mr BOWEN: The presumption is that the great majority will remain in the scheme.

Ms SYLVIA HALE: I have one other question about that young man. You said it was two weeks before the social worker notified you.

Mr BOWEN: Yes.

Ms SYLVIA HALE: Are there people who could be injured in a motor vehicle accident and yet you are not notified? If so, how do you contact those people?

Mr MACKINNON: At the moment there is no time frame for when you can apply to the scheme, so that is not a criterion. The net which, I guess, catches people with very severe brain injury in New South Wales is very good. They do come into the brain injury programs, and we are very much across those programs. The people most at risk of missing the scheme are people with milder injuries who may just meet the criteria, who may have an orthopaedic injury that is treated, but not the head injury. They may well be picked up in reviews some time later by a brain injury specialist, if they are referred on. Our net to catch those folks is comprised of the trauma co-ordinators in the major hospitals, the intensive care unit social workers and those kinds of folk, whom we are continuing to educate. We ran out a very wide education program over the last year, and we continue to provide that.

The Hon. DAVID CLARKE: In its submission to the Lifetime Care and Support Authority review, the Law Society of New South Wales refers to an actuarial report that it commissioned from Cumpston Sarjeant Pty Ltd in 2005. The Law Society notes that the report documented "considerable uncertainties" in the assumptions used by PricewaterhouseCoopers to estimate the financial liabilities of the Lifetime Care and Support Scheme and suggests that it eroded a number of PricewaterhouseCoopers's methodologies and findings, including in relation to the actual numbers of participants that may be expected to be admitted into the scheme. The Committee understands that the report was forwarded to the Motor Accidents Authority at the time, and that there has been some correspondence between it and the Law Society about the matters raised. Could you give us your response to the issues raised in the Cumpston Sarjeant report? Has any action been taken in respect of the Lifetime Care and Support Authority's costings in light of the report?

Mr BOWEN: Mr Clarke, we forwarded Richard Cumpston's report to John Walsh of PricewaterhouseCoopers, who is the actuary for the Lifetime Care and Support Scheme. John would, I am sure, indicate to you also that there is some uncertainty around the valuation because he was compiling it from a range of different data sources. Unfortunately, there is no single data source from which we can extract the numbers of people who are catastrophically injured each year as a result of motor vehicles. We have a reasonable idea from some of the major trauma data, but the costs associated with the level of severity relate to where the critical work has happened.

The assumptions in the actuarial evaluation are reviewed annually. We have just had a further liability report from our actuaries, and we are changing some of those assumptions. For example, the very noticeable indicator, after nearly two years of operation, is that the number of children entering the scheme has been well below that which was expected. So much so that we have reviewed all of the data there, and it seems to have been a significant change. It is a sort of good news story: there have been far fewer children being catastrophically injured as a result of motor vehicle accidents over the past two years than were so injured over the preceding five years. We were so out of kilter that we went back and rechecked all of the data for those five years. We thought that, based on that, the assumption that we went in with was reasonable, but going forward we have reduced the expected children entering the scheme by a third, which is great news, and hopefully that trend will continue.

So the assumptions are undergoing review all the time. At the moment we are with both our actuaries, and Mr Payne from within the Authority building will call a life cost estimator. What we would like to be able to do is take a person, have knowledge of their injury and the severity of their injury, along with a reasonable assessment of their needs, their current age and their life expectancy, making some

allowance for transition points, and then we can build up something that provides us with both a cash flow indicator of their immediate needs in the first five years, and a budget for them over life, just so that we can make sure that expenditure of the Authority is benchmarked against something like that. Hopefully, that will roll back around and validate the actuarial assumptions and lead to some changes in that going forward.

The Hon. DAVID CLARKE: Has that response to the Law Society's concerns been provided to the Law Society?

Mr BOWEN: We certainly had discussions with Cumpston Sarjeant. I have not had a specific further discussion with the Law Society. But we are happy to do that.

The Hon. DAVID CLARKE: You would be happy to provide that response to the Law Society, with the evaluation?

Mr BOWEN: Yes. Our evaluation is certainly made public. There is nothing secret about that, or the assumptions that lie behind it.

The Hon. DAVID CLARKE: Thank you.

The Hon. GREG DONNELLY: My question on notice relates to question No. 4. The Lifetime Care and Support Authority has indicated that to date two applications for membership into the scheme have been rejected on the basis that the vehicle involved did not meet the definition of a "motor vehicle". Are you able to indicate what kinds of vehicles they were? Secondly, are electric bicycles—or scooters—considered motor vehicles?

Mr BOWEN: One of those that were rejected was a motorised pushbike, and the other one was a mini-bike. The basis of entry to this scheme is that a vehicle is either registered—by which it then has coverage for an accident anywhere in New South Wales—or, if it is not registered, that it is capable of registration and it is being used on a road or road-related area. Motorised bicycles, mini-bikes, motocross bikes that are not capable of registration are not able to enter this scheme.

The Hon. GREG DONNELLY: What about those big quad bikes used particularly by farmers on their properties?

Mr BOWEN: Quad bikes are not capable of registration.

Ms SYLVIA HALE: What about elderly people who are in those motorised vehicles?

Mr BOWEN: Those motorised personal transporters have exempt registration if they are below a certain engine size, so they are capable of having green slip coverage, and so they are caught by the scheme—unless they are of the size of a golf buggy.

Ms SYLVIA HALE: Do you believe there is an argument for extending the exemption from registration to electric bicycles?

Mr BOWEN: Yes. But there will always be a grey area as to what constitutes a motorised cycle, as distinct from one that is predominantly a pushbike. I suppose you could argue to extend it from there to pushbikes. Then it could be argued: Why are people who are on other types of things not in the scheme? Or, if they just fall over in the street, how is that different from someone just falling off a pushbike?

CHAIR: Or motorised skateboards?

Mr BOWEN: Yes, or powered skateboards.

Ms SYLVIA HALE: There is no universal coverage.

The Hon. JOHN AJAKA: If a motorised scooter is involved in an accident with another vehicle, but it is the fault of the motorised scooter, does that bring them within the scheme?

Mr BOWEN: No.

The Hon. JOHN AJAKA: So it really comes back down to what the person at fault is riding?

Mr BOWEN: Yes.

The Hon. JOHN AJAKA: From your response to question 7, the Committee notes that case study No. 4 refers to a 17 year old Lifetime Care and Support Scheme participant with a severe brain injury was a highly accomplished musician prior to the accident, but who can no longer read music. The case study notes that the Authority is funding music lessons for the participant. Does the Authority generally take an holistic approach to its decisions? And how does this relate to the "reasonable and necessary" decision-making criteria?

Mr MACKINNON: For this lady, her vocation was in fact music. So we could take it from the perspective that we are returning her to a previous important role in her life, and we support that. There are some limits around that kind of stuff. Even from the point of view of a leisure activity, we have some guidelines on how we support people to return to a leisure activity, or to choose an alternative, or to provide modification so that they can return to a leisure activity. So, in this case, that is the justification in that her specific neurological problems have caused her great problems in learning new music, despite her being an excellent player of things that she has memory for.

The Hon. JOHN AJAKA: Do you also see the possibility of assisting them to return to complete self-care?

Mr MACKINNON: Yes.

The Hon. JOHN AJAKA: That could be part of the criteria?

Mr MACKINNON: Yes.

The Hon. JOHN AJAKA: So, even if there were no indicators that that would assist with the self-care, would the fact that it may assist in other areas would be sufficient as well? Or is it more that moving them to self-care is the paramount consideration?

Mr MACKINNON: I do not know that that is paramount. What is paramount is having a meaningful outcome from the intervention, and a measurable outcome. We are trying to get clinicians to give us that level of feedback. Yes, we want to move people towards independence, and if that is where their desire is, and if that is where they feel they need to go, we will endeavour to support that.

Ms SYLVIA HALE: I want to go back to our first question. Mr Bowen, you said there had been a considerable decline in the number of accidents affecting young people. I am not sure whether you covered my next question. Does that mean that fewer children are being injured, or do you mean that their injuries are less traumatic than was previously the case?

Mr BOWEN: It appears to be both. I know Mrs Donnelly from the Motor Accidents Authority has been looking at the general data on child injuries, and there certainly seems to have been a reduction in the casualty levels there, but there has been a very significant reduction in the number of children catastrophically injured. We went back five or six years, and in any given six-month period there was an average of 16. And the range never fell; it was at least 12 and no more than 20. So it was in the range of 12 to 20, with an average of 16. In the first year of the operation of the scheme we had 9 children enter in one full year. We have had 4 or 5 since.

Ms SYLVIA HALE: But you have no real indication as to whether that has happened.

Mr BOWEN: No. We would like to think—putting my Motor Accidents Authority hat on—that there have been some road safety contribution there. The school zone has, I think, increased general community awareness, not only about children in school zones but being aware of children as pedestrians and bicyclists in road area. Urban zones would have reduced accidents, and certainly taking a lot of low-severity accidents out may be contributing as well. But there is no one thing that I can say has caused it. But it is quite a profound drop.

The Hon. DAVID CLARKE: In its submission to the MAA review, People with Disability Australia raised concerns about a congregate care facility receiving capital funding from the MAA. What is the Lifetime Care and Support Authority's view of the appropriateness of congregate care? Has it or would it fund such facilities?

Mr BOWEN: The Motor Accidents Authority has been working with the Department of Ageing, Disability and Home Care, which has itself commissioned some work on supported accommodation. Our view is that, as a funder of care, the accommodation and care packages are integral, and our primary concern is to give participants in this scheme a choice. Sometimes their personal circumstances and the level of their injury limit that choice, as in Mr Mackinnon's example. But we are quite committed, for example, to make sure that people, particularly young people, are not forced into nursing homes, so we have a responsibility to look at care. My own view is that there is no single care model that fits everybody, and that people will want to live in a range of different circumstances. Mr Herd has probably been having a look at this, and under his other hat he might like to comment on that as well.

Mr HERD: I certainly can. David's observation that choice and variety are key determinants of what we ought to look at I think is valid. It is also pretty clear that the overwhelming majority of people who will come through the scheme will return to some kind of independent community living, with support, funded through the Authority, provided often by non-government organisations. A small number of people will spend shorter or longer periods of time living with others in what might be a form of congregate care, but we are not talking about large institutions. We might be talking about a small group home, with three or four people. And that might be for a period of time. Most people with spinal cord injury probably will find themselves living back at home pretty quickly, subject to the Authority getting in place the support that is needed.

People with a brain injury might have a more complex path back into the community, and they might go through more than one form of accommodation, and they might live in a variety of accommodation forms from a rehabilitation unit, to a small group home, perhaps into a family home, perhaps living independently. But it will be determined by the care plan. The majority, I would have thought, over the life of the scheme—however long that might be—will find themselves living essentially in independent circumstances. I think that is where our advice as a council to the Authority goes: that, as much is as humanly possible, we should find ways of supporting people to live in the community, but what should drive the level and quality of the support is what the individual needs at any point in their life as an injured person.

The Hon. GREG DONNELLY: My question is to Mr Herd, and it is not related to one that is before us. I would like to ask you a general question, Mr Herd. You obviously are the inaugural Chairman of the Lifetime Care and Support Advisory Council.

Mr HERD: Yes.

The Hon. GREG DONNELLY: And it is relatively early days, but I think the members of the Committee would find it very informative if you could give us an overview of how it is progressing so far, of the composition of the council, and any issues you might see as emerging that may be problematic and that we should be thinking about. Could you give us a general overview, because I think that would be helpful?

Mr HERD: I will try my best. We are making it up as we go along, guided of course by the Act. The council is a small council. We have six members, and three of those are medical practitioners and experts in their fields of brain injury and spinal cord injury. We have a representative of the non-government sector through the Brain Injury Association of New South Wales with that particular expertise. We have someone who has a long history of working in the care and support agencies that provide, through the association, support to people with a disability who would benefit from the Authority's services. I obviously have a person and professional interest as I am a person with spinal cord injury of some 24 years standing—if "standing" is an appropriate word to use, when I think about it! I am currently working as a public servant in giving support to the Disability Council of New South Wales, funnily enough, although I have no part to play in the construction of the questions that the council asked the Authority.

The Hon. GREG DONNELLY: No vested interest to declare?

Mr HERD: No. But I thought I should make that clear. As a council, we are developing as good a working relationship as we can with the Authority's board and its Chairman, Mr Grellman, so that we take our responsibilities seriously to give advice on the touchy-feely aspects of the Authority's work, rather than the nuts and bolts of its finances. We try, as chairmen, to liaise with one another, and to work together, so that we understand the consequences of our thought processes for one another. So that our advice is based upon understanding what the financial future of the Authority is. Our role is simply to give advice. It is to draw on our expertise, to listen to what the staff have to say, to try to make sense of that and to embrace our responsibilities as given to us by Parliament to offer advice, give direction and comment upon areas such as the guidelines and, with the benefit of that experience and knowledge, connecting to communities of people with a disability, to government and non-government service providers, and to try to make sure that we

understand both what is in the interests of the people with a disability who are going through what, for them, has to be said are completely unimagined life-changing circumstances of such a profound nature that often they find themselves incapable of making decisions without the support, guidance and assistance of professional staff, family members and others around them. We draw on that experience in a way that hopefully will lay down a solid platform for the future.

I would like to come back to my first point. I think we are not quite sure what we are doing, because it is so very early. Although the costs are very large per capita, the numbers of people involved are very small. We do not have either the economies of scale or the vast numbers of people that would enable us to look at big trends. We are talking about 14 children in 18 months. I do not think we have got a trend line yet. All it would take is one bad year, two years from now, to seriously upset some of the questions that we are asking ourselves, or the answers we are finding.

Although the numbers of adults are much more stable and predictable, we are still dealing in such small numbers that it is a challenge to get it right. I would like to demonstrate one of the responsibilities that we have, and which we take seriously. I will put it this way. When I had my accident 25 years ago one of the first questions I asked my consultant was: What is my life expectancy? I thought that was a reasonable question to ask. He said, "Well, Dougie, the reality is that you probably have a normal life expectancy." I was 27 when I had my injury, and that means I would have perhaps 50 years in a wheelchair. Who knows what it is going to be like for someone with a spinal cord injury 40 or 50 years from now, but those are the kinds of questions that we are having to ask ourselves, because, fortunately, God willing, I will be here when I am 75 years old. That is a new and steep learning curve for all of us. We forget that.

I am 51 years old, but when I was born the life expectancy of a person with my level of spinal cord injury was about six weeks, because there were all kinds of complications that would enter into the equation. The Authority is doing a difficult thing, in new territory, and in a new way, and our job at the council is to try to make the best contribution we can to that developing service, as it emerges out of a good idea, without too much evidence to support what it is doing.

The Hon. GREG DONNELLY: That is a very useful oversight.

Mr HERD: I hope so.

CHAIR: It is. Mr Grellman, would you like to expand upon that answer in relation to the functions of the board on this process?

Mr GRELLMAN: From the board's perspective, we feel similarly challenged. As Dougie mentioned, we are feeling our way to a large extent. We are all absolutely satisfied that the philosophy that underpins the scheme is absolutely right. This is the best way to support people with catastrophic injury. What that might look like, and the costs that sit beside the provision of those services are matters that we are just measuring and living with. We have built our models based on historical analysis in terms of the sorts of numbers of participants that we might receive into the scheme, and the sorts of costs that we think we might incur to support those participants, the most material cost of course being the attendant care cost.

From the board's perspective, and it is only a small board of five people, two of whom are with you today, we are very pleased with the work that the council is doing, because this is a group of experts actually, and they are very interested people who are very much in the nature of a working council, absolutely interested in seeing whether or not their intellectual prowess can help us continue to construct a scheme that well supports people who finds themselves in this situation. I believe it is working very well. The board—I am sure, speaking on behalf of the board—are very pleased with the work that the council is doing. We are working together to try to advance the functionality and the integrity of the scheme, which, incidentally, is seen not only within Australia but internationally as a very interesting and bold model. We are receiving a high level of interest from other jurisdictions in Australia and indeed internationally, asking: How is it going? What is happening? What is the balance sheet developing like? What are your participants feeling about the sort of support they are getting? So it is a very interesting and, I think, so far all the signs are that it will be a very successful model.

The Hon. JOHN AJAKA: Madam Chair, I note the time, so maybe this is a question best taken on notice by anyone, but in particular Mr Herd. Are there any aspects of, for example, the legislation or even the Authority that you feel really could use some fine-tuning? Are there any aspects of the legislation that you feel go too far, or not far enough, or anything of that nature? Could you give some thought to that and bring to our attention any of those matters, especially from the legislation point of view? We might need to tinker

with it to make it work better. Again, I appreciate it is early days, but if something comes to mind, that would be greatly appreciated.

CHAIR: We have not wasted these reviews in the past, for those who are interested.

Mr BOWEN: There is one particular issue regarding paediatrician experts on brain injury. It is nearly impossible to assess the care needs of a child with a brain injury where the child has been injured when aged less than five years, and the two-year interim period will not be sufficient. So we have already identified that if the child is under five at the point of injury we should extend the interim participation period for five years.

The Hon. JOHN AJAKA: Would you take the balance of the question on notice?

Mr BOWEN: We will do that.

The Hon. JOHN AJAKA: I am grateful for that.

Ms SYLVIA HALE: I do not know whether, for formal purposes, these questions need to be read out.

CHAIR: We still have 5, 7 and 8 to go.

Ms SYLVIA HALE: I will read question 5. This is in relation to the Lifetime Care and Support Authority's response to question 17. In its response to the question about whether there have been any emerging issues in respect of the "reasonable and necessary" criteria, you have indicated that the boundary issues for the lifetime care and support participants with a CTP claim where benefits can be accessed from the Lifetime Care and Support Authority and CTP insurers are currently being discussed with the MAA and insurers. Could you tell us more about these issues? You might wish to take the question on notice.

CHAIR: We have two more questions that we will put on notice.

Mr BOWEN: We will take the question on notice because there is quite a lot of information we can provide in response to it. Unfortunately, we can probably tell you what the issues are without having a resolution of it as yet.

CHAIR: The time having run out, I would like to thank you very much indeed for your information. It has been very informative for the Committee and helpful for our deliberations. I thank you very much. Did you have anything else you wish to say?

Mr GRELLMAN: No, thank, you Chair.

CHAIR: Mr Bowen, you tabled some documents in the first section, the MAA section. We need you to formally say, "I formally table the documents," although we have them already.

Mr BOWEN: I formally table the documents from the MAA.

CHAIR: Thank you very much indeed.

(The witnesses withdrew)

(Short adjournment)

CHAIR: Welcome to the Ninth Review of the Motor Accidents Authority and Motor Accidents Council and the First Review of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council. In this particular segment of course we are dealing with both issues. The Committee has resolved to have the hearings for these two reviews on the same day. We will attempt not to move between the two issues in the segment regarding the current witnesses. We will attempt to keep to time, and I will say it is time to move on, but if members want to go back to the Motor Accidents Authority we will do that.

I welcome the witnesses, Mr Macken and Mr Roulstone, from the Law Society of New South Wales.

HUGH MACKEN, President, Law Society of New South Wales, 170 Phillip Street, Sydney, and

SCOTT JOHN ROULSTONE, Chair, Injury Compensation Committee, Law Society of New South Wales, 170 Phillip Street, Sydney, sworn and examined:

CHAIR: Mr Macken, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr MACKEN: I am appearing as a representative of the Law Society of New South Wales.

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

Mr MACKEN: I am.

CHAIR: Mr Roulstone, in what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr ROULSTONE: I am appearing as a representative of an organisation, and that is as Chair of the Injury Compensation Committee of the Law Society of New South Wales.

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

Mr ROULSTONE: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice, the Committee would appreciate the answers by Friday 11 July 2008.

I have to make yet another declaration of interest, and it is that Mr Macken has been responsible for professional advice to me in the past.

The Hon. JOHN AJAKA: Madam Chair, may I make a declaration as well?

CHAIR: Yes, you may.

The Hon. JOHN AJAKA: For the record, I am a member of the Law Society of New South Wales.

CHAIR: Would either of you, Mr Macken or Mr Roulstone, like to start by making a short statement?

Mr MACKEN: If I may, Madam Chair. Firstly, I make a declaration. Not only am I conversant with the Motor Accident Compensation Act but I am also an assessor for the Claims Assessment and Resolution Service, and have continued to work in that capacity.

Can I start by making a few general observations in respect of this system? The Claims Assessment and Resolution System created by the Motor Accident Compensation Act is a fantastic alternative dispute resolution system for assessing motor vehicle claims. It has the wholehearted support of the Law Society. It

is fair, it is fast, it is efficient, it is cost effective, it is flexible, it is supremely well managed, and it is well understood. It is widely acclaimed as a template for how non-litigious claims assessment ought occur. The legal profession respects and supports the system. It was considered controversial and visionary at the time. It remains the preferred option for alternative dispute resolution.

That said, there is no system which cannot be improved in some way. The Law Society has three perhaps, in the big picture, what could be considered to be fairly minor concerns with what is accepted to be a wonderful system. They are, firstly, in respect of costs. We note that they are currently under review. We are quite happy and supportive of the review process which is occurring.

The second is the general issue in respect of thresholds and entitlements to non-economic loss. It remains a difficulty for the profession and for the community generally to have so many different thresholds before you can qualify for non-economic loss. The Motor Accidents Act has a threshold system, the Workers Compensation Act has a different threshold system, ComCare legislation creates a different threshold system, the Civil Liabilities Act has again a different means of assessing non-economic loss, and the common law and the damages available at common law are again different to how non-economic loss is assessed. We would like to see uniformity across the board in respect of the assessment of non-economic loss for peoples injured in this State.

The third concern that we have remains a concern that we voiced some years ago when the Lifetime Care and Support Bill came in, and it relates to the capacity of claimants to opt out of the Lifetime Care and Support Scheme where they are catastrophically injured and have a capacity to make decisions in respect of their own life. They ought have the capacity to opt out of the scheme, have their damages assessed as a lump sum and dealt with on a once-and-for-all basis.

If I could make a couple of observations in respect of how the system works for claimants. The system is wonderful for claimants. It allows access to medical and rehabilitation support very early. This provides top-level care and support, which reduces the impact of their injuries. It is a claims friendly system. The informal procedures obviate the stress and anxiety and concerns associated with litigation. The parties do not wear wigs and gowns; they are not stuck with or inhibited by the operation of the Evidence Act. It is a cordial environment. There is an enormous amount of information widely accessible to the public and the profession explaining the steps that the system goes through in a very user-friendly way. The capacity for free interpreters, the prompt decisions, and the way in which parties can manage the progress of their case are all to be commended and all work to the benefit of the claimants.

Other people can perhaps speak more generally in respect of the system's liability, but the system is a cheap system which manages treatment, rehabilitation and claims assessment very quickly. It provides funding for a body to develop road safety programs, funded by road users, which is very effective and can provide some assistance in respect of reducing the incident of injury. These combine to lower the premiums, which have allowed them to take on at-fault persons injured, even people injured through their own stupidity, and indeed even people who are injured whilst committing crimes. This coverage is to be applauded.

I have made some observations about the non-economic loss threshold, but the one upside of having such a difficult threshold to get over is that it in fact makes the system even more cheap, because so many people are disenfranchised from receiving compensation for pain and suffering because of the threshold which they are required to get over before they can get a dollar for pain and suffering.

I am sure the Insurance Council of Australia can make some observations in respect to it, but the insurers ought be happy with this system because it is cheap. They therefore are able to manage most of the claims in-house. They have the capacity to develop their own systems for the provision of rehabilitation and treatment expenses, which allows them to manage the day-to-day control of claimants. The more assistance they can give claimants early in respect of treatment and rehabilitation, the smaller the claim is, and to that extent they are the masters of their own destiny. This will assist in seeing smaller claims. The viability of the scheme and the low cost of the scheme will ensure and guarantee profit returns which are suitable to the insurance companies' needs, which are to see that their shareholders receive a good return on their work and their investments.

Those are the opening remarks that I wish to make. Have no doubt about it: the Law Society and the members of the Law Society think this scheme is the absolute ant's pants. It's great. That said, there are a number of specific questions. Perhaps it is better if Scott Roulstone, as Chair of the Injury Compensation Committee, is able to address those.

CHAIR: Thank you. Mr Roulstone, do you have an opening statement?

Mr ROULSTONE: I can only reiterate largely what the President has indicated to you. My consensus feeling, through very experienced members of the Injury Compensation Committee who all practise fairly extensively in this area, is in fact correct in that the system works well. I gave evidence last year before this Committee to a similar effect, and indicated the excellent relationships that had been built between the Law Society and the senior management and indeed the entire system at the Motor Accidents Authority. It has been streamlined to a large degree to enable claims to proceed expeditiously, cost effectively and satisfactorily to motor vehicle accident injury victims. The only thing further I would say is that, like any system, there is room for improvement. I do not really need to say any more than the President said as far as the support that is provided by the Law Society.

CHAIR: We have some specific questions to ask. Last year considerable concern was expressed about the process of remunerating the legal profession. I know that the Law Society is involved in a review that is under way. How is that process proceeding?

Mr ROULSTONE: You are referring now to—

CHAIR: How you get paid.

Mr ROULSTONE: The Law Society has worked in unison with the Motor Accidents Authority insofar as the current costs study is concerned, and that was a recommendation from this Committee last year. Indeed, it has been for a number of years. There was a consultative process between the Law Society and the Motor Accidents Authority in relation to the appointment of an independent company. A number of tenders were put out and answered, and the company has been appointed. FMRC are a well recognised body in relation to legal costings throughout the State. One of the principals of that company, Mr Sam Coupland*, is currently conducting the investigation. The study will identify a number of law firms, that is law firms appointed by the Law Society and by the Motor Accidents Authority having large regard to the number of matters that they put through this system, and I think about 30 firms were identified. Letters have been written to all of the firms, signed jointly by the General Manager of the MAA and also by the President of the Law Society, encouraging participation.

I think the firms are being asked for around ten files to review, and results in relation to 30 to 50 result sheets in relation to the determination of matters from the year 2007. It is indeed a quantitative and qualitative process, and the staff from FMRC will in fact attend on the offices of various firms so as to conduct the inquiries. It is current in its invitation form insofar as the letters have gone out and there has been some correspondence and communications between the firms and Mr Coupland* at FMRC.

CHAIR: Do either or both of you perceive that that is taking into account the 2007 legislative amendments?

Mr MACKEN: Yes, they will take into account the 2007 amendments. There are three aspects to costs that concern the Law Society. Firstly, there has not been a significant increase in respect of costs since 2005. If nothing else, inflation has eroded the capacity of those costs, so a review is timely. Secondly, there are restructures that have occurred in respect of the threshold at which costs are calculated, what are called stages in which costs are calculated for each party. Because of what is loosely called in the game front-end loading, which is the provision of information at a very early stage to try and resolve the cases, that provisions shifts work which is normally done at the end of the matter before the claims assessment hearing, to well before the matter goes to the claims assessment hearing.

The consequence of this is that the costs thresholds need to be brought forward to compensate the more labour-intensive work which occurs before the matter is referred to CARS. Thirdly, the glaring anomaly in respect to costs is the amount payable to counsel, that is, barristers who appear at the hearing of a matter. To consider that you are going to get a good, capable barrister to put aside a day for $475 is simply not reflective of the reality of the world. In terms of the disbursements aspect of it, that is the most glaring difficulty that it has, and that is something that the Law Society will say simply creates a vast gulf between what can be recovered and the reality of the charges that will be made to the client.

The Hon. JOHN AJAKA: One of the matters that we raised at the last review is an equal playing field. Is the Law Society looking at there being some advantage to the insurance companies, perhaps with their in-house legal representatives or the fact that there does not seem to be any limitation on their entitlements? In other words, do you find that whereas the insurance company can spend whatever money it needs to a legal representative, a claimant is being disadvantaged because his entitlements to claim costs are greatly reduced in that situation?

Mr MACKEN: In theory, that is correct, that the insurer has a bottomless pit of funds that it can disburse, and claimants do not because claimants can only disburse funds that they are going to be awarded. So, yes, that is true. But it probably ignores the reality, which is that insurers are not in this to part with money unnecessarily. The solicitors that they retain are on fairly small margins in respect of the profitability of it. They do not like throwing money away at anyone, including their own lawyers, and so I do not think that is a particular difficulty. Their own lawyers are under the pump and sweat for their money as much as claimants' lawyers I think, so I do not see that as a difficulty.

The Hon. DAVID CLARKE: Except that if they have to pursue matters, they have the funds there to be able to do that without any restraint.

Mr MACKEN: Which is part of why this is such a magnificent system, because the possibility to sit there and string matters out when they have been referred to CARS does not exist. It probably therefore leads to one other anomaly in the system, which is where liability has been declined and the matter must go to the District Court for an assessment on liability. The preferred position that I see would be to have matters immediately dealt with, and the question of liability, that is, fault, dealt with immediately by the District Court and the matter then remitted back to CARS to have the question of quantum assessed. So the court cannot say: You are going to be funding a one- or two-week long case to have all the issues dealt with in this matter, and if you lose you are going to be paying all our legal costs; you are not in a position to prosecute this without risking your own home in terms of the costs order that will be made against you.

You can avoid that problem by creating a neutral position whereby as soon as liability is declined, if the client considers they can prove negligence in the party, they go to the District Court, a simple hearing on liability only, and then if liability is found in favour of the claimant, even with some large amount of contributory negligence, it is then remitted back to the Claims Assessment and Resolution Service so that they are not disenfranchised from CARS and they can have their matter quantified with the same benefits, entitlements and protections that anyone who can prove negligence against another driver can have their claims assessed by.

At the moment, they are prejudiced and they live under a Damoclean sword by having to litigate the totality of their matter in the District Court. That is a disaster, especially when you consider that a catastrophic injury, very serious injuries where liability is in issue and where the court is then going to be asked to assess quantum: (a) it delays the matter, and (b) it means that they are going to be up for costs for a hearing which could run into one or two weeks, and that can run into hundreds of thousands of dollars, and that is a difficulty.

The Hon. DAVID CLARKE: How long has that disaster for claimants been in existence?

Mr MACKEN: Since the inception of this Act.

The Hon. DAVID CLARKE: And you have been pushing for some time for some equity to be brought into the situation?

Mr MACKEN: It is an idea which is gathering some support, both within the Law Society and more relevantly from court administrators and judges. The concern is that you then end up with two hearings, one on liability and one on quantum. You do not. There is only one hearing. You end up with one on liability, and then you remit the matter back to CARS. It also acknowledges that CARS is a preferred method of claims assessment, and the runs that CARS has on the board in the way in which they manage these things certainly confirms that as a fair assessment of it as being a preferred claims assessment vehicle.

CHAIR: We have mistimed your section, which is unfortunate, because we started a little bit late. We will go through some of these formal questions, which means that we are going to give both of you a list of formal questions on notice, if that is fine. I will first ask the Hon. Greg Donnelly if he has a question.

The Hon. GREG DONNELLY: Thank you, Madam Chair. I am not quite sure whether you have had a chance to read the New South Wales Bar Association submission, which was submission No. 8. The association says in that that it notes a number of concerns associated with the Claims Assessment and Resolution Service [CARS] including the perception that the process is bureaucratic and overly complex, with the effect of encouraging settlement and deterring claims; secondly, it was not designed to deal with the complexity of matters it now regularly deals with; and, thirdly, there has been a perceived decline in the number of discretionary exemptions granted—

Mr MACKEN: If I may interrupt. We have seen these submissions.

The Hon. GREG DONNELLY: Thank you. In respect of the points that they make, what is your response to those? Secondly, to the extent that you believe that they are issues, do you have any suggestions for dealing with them?

Mr ROULSTONE: Mr Donnelly, at times our interests diverge within the profession. If I could indicate that the Law Society position is that the system is not overly bureaucratic. Perhaps one could say historically that it started out that way. That was from the point of inception in 1999. However, we see vast improvements in relation to the streamlining of the systems, particularly in the last few years. We see the focus on alternative dispute resolution as being a positive insofar as it does eliminate or seeks to resolve smaller claims at a very early stage. There is certainly no doubt that a lot of the claims are being resolved prior to the matter going through the CARS system. Was there something else on that?

The Hon. GREG DONNELLY: There was the issue of dealing with complex matters, which it is being increasingly challenged to deal with.

Mr ROULSTONE: Mr Donnelly, the case there is that we find the CARS assessors have been appointed following a very complex and comprehensive system of appointment and they are senior lawyers who have had, in many cases, 20 and 30 years of experience in this particular area, largely from the solicitors branch of the profession. We say they are completely and absolutely qualified to hear a matter of undoubtedly high complexity.

The Hon. GREG DONNELLY: Capable of dealing with those complex matters.

Mr ROULSTONE: Perhaps equally so as a judge in the District Court or Supreme Court, of not more so. Some practitioners have practised in this particular area their entire careers.

The Hon. GREG DONNELLY: Perhaps we will leave it there.

Ms SYLVIA HALE: Madam Chair, you will remind me if I am about to go off on a tangent.

CHAIR: This section is for tangents, because the rest of the questions will be on notice.

Ms SYLVIA HALE: Mr Macken, you remarked about the diversity and variety of thresholds for non-economic loss, pain and suffering. Has this disparity of thresholds ever been dealt with or looked at in a holistic way? I am thinking, is this a relevant inquiry for this Committee to undertake, or is the retention of varying thresholds a result of legislative requirements, or is it people protecting their own patch? How should we consider dealing with this?

Mr MACKEN: All of the above, except it is probably not a matter for this inquiry because it covers other areas. It has evolved that way. The Workers Compensation Act was not going to disenfranchise workers, even where they had suffered a small injury. The Civil Liability Act was keen to get rid of small claims, and so a different threshold came in that way.

Ms SYLVIA HALE: I did not mean so much this inquiry as this Committee, being a Law and Justice Committee.

Mr MACKEN: The difficulty is that lawyers can get their head around it but claimants do not. They come in and they say, "I thought I would only get a small amount of money because all I did was break my finger and my neighbour got $4,000 for a broken finger." And you say: "No, a broken finger will not get you anything from a motor vehicle injury. You need to break your finger at work, not in a motor vehicle accident. Or you could have broken your finger falling over in a shopping centre. Or you could have gone to your doctor, who broke your finger, and then you would get compensation. But you did it in a car accident, so you don't get anything for that." This is the sort of conversation which you have in its various guises and forms, and it is reflective of a justified confusion in the community about how pain and suffering is assessed.

The Hon. DAVID CLARKE: It involves an injustice, does it not, to those who have suffered injuries in motor accidents?

Mr MACKEN: In circumstances where they do not get compensated for pain and suffering, whereas if they did it driving to work they would get money for breaking a finger in a car accident. But, if

you do it driving to your son's football game, you do not. If someone can explain to me why that should work that way, I am all ears.

The Hon. DAVID CLARKE: What explanation has been given to you about that anomaly?

Mr MACKEN: Because different legislation covers each type of accident. One is covered by both the Workers Compensation Act and the Motor Accidents Compensation Act; the other is covered by the Motor Accidents Compensation Act, which has thresholds to ensure that small claims do not proceed.

The Hon. DAVID CLARKE: I understand they are covered by different legislation, but should they not be the same?

Mr MACKEN: That is the question. A holistic approach to the compensation systems in place, both nationally and within each State, would go some distance to eradicating these anomalies.

The Hon. DAVID CLARKE: When you ask that question, what answer do you get?

Mr MACKEN: Yes, it is very confused, and you should write to your member of Parliament and see what they can do about it.

The Hon. DAVID CLARKE: Do you get an answer at all?

Mr MACKEN: It is difficult. I have the answer, because I can tell them what system covers what injury.

The Hon. DAVID CLARKE: No. Do you get an answer given to you?

Mr MACKEN: I am aware of the history of how these things have trolled down. It started in 1926 with the Workers Compensation Act, which first took away these types of compensation from common law assessment. You go back that far, and then you come forward into the first CTP common law schemes and systems which were brought into place 20 years ago, when TransCover was being mooted, and the like. This is a historical anomaly which is exceedingly difficult to untangle.

CHAIR: The whole of the Committee are very interested, but we had better move back to our terms of reference. Did you have another question, Mr Clarke?

The Hon. DAVID CLARKE: No. But I do think this is an issue that is very important because, as I understand it, in fact there are thousands of people out there who have suffered injuries under the motor accident scheme, and they are not getting the level of compensation that people with similar injuries are getting in other jurisdictions.

Mr MACKEN: That is so.

Mr ROULSTONE: It is discrimination, Mr Clarke, across the system.

The Hon. DAVID CLARKE: It certainly appears to be.

The Hon. JOHN AJAKA: Maybe this point is something that the Law and Justice committee can look at as a holistic approach at another time. One of the areas that had been raised previously—and I want to get some feedback on it now—is the aspect of the payment of amounts for medical reports by claimants. One of the things I am concerned about is that claimants are required to obtain one, two or three medical reports to be able to establish their entitlement, only to find out that they are paying a certain amount for the medical report and then the insurance company says, "You are only entitled to a third of that or a quarter of that," with the claimant being out of pocket. Is that still occurring?

Mr ROULSTONE: That is the case, Mr Ajaka. It is particularly relevant in the workers compensation scheme where it is under substantial debate.

The Hon. JOHN AJAKA: Is it relevant in this area as well?

Mr ROULSTONE: Yes, particularly in relation to specialist reports. You can see neurological reports priced at $1,800, that type of complex report which is only minimally recoverable under the scale price for medical report fees.

The Hon. JOHN AJAKA: Knowing at the same time, in fairness to the insurance company, that you do not want to be handing over an open cheque, does the Law Society have a position that there has to be a fairer rate?

Mr MACKEN: It would be our position that the rate ought increase. But you have to be mindful that if you increase the rate doctors follow these things as well as we do, and you increase the rate. You would hope that it is simply not added on, but there is a gap between what you pay for reports and what you can recover. I gather that it is a matter being considered by the costs review going forward. So submissions can be made to that review.

CHAIR: I would like to thank both of you. Next time we will ensure you get a bit more time. I think you very much for both organisations' submissions. They are excellent submissions and will be very useful to the Committee in its deliberations. I recognise that we have not segmented, as was proposed, the lifetime care and support section, but the questions on notice will, and they will be published. I am grateful to both of you for coming along, and I thank you very much.

(The witnesses withdrew)

ROSS VICTOR LETHERBARROW, Chair, Common Law Committee, New South Wales Bar Association, sworn and examined, and

ANDREW JOHN STONE, Representative, New South Wales Bar Association, affirmed and examined:

CHAIR: Mr Letherbarrow, what is your occupation?

Mr LETHERBARROW: I am a barrister.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr LETHERBARROW: As a representative of the New South Wales Bar Association.

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

Mr LETHERBARROW: I am.

CHAIR: Mr Stone, what is your occupation?

Mr STONE: I am a barrister.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr STONE: I appear as a representative of the New South Wales Bar Association.

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

Mr STONE: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take questions on notice, the Committee would appreciate it if the responses to the questions be forwarded by Friday 11 July 2008. I would like to start by thanking you very much for the quality of your submission again this year. As with the submission from the Law Society, your submission is of a very high standard, with good issues in it for us. Would you like to start by making a short statement?

Mr LETHERBARROW: Yes, we would. Could I first of all thank the Committee for its invitation to appear before it. I think it performs a very useful function and gets good feedback from various stakeholders. We understand that the terms of reference limit us to the Claims Assessment and Resolution Service process, and we do support what has been said by the President of the Law Society about the inequities of different thresholds. But that is a matter for another day.

We consider ourselves to some extent in a position where we have no particular barrow to push. We are mainly concerned with making sure that the CARS system works as it was designed to work and provides fair results to injured persons. Our main concern is that the CARS system, whilst it operates quite well—and there is no doubt about that—in relation to the matters in respect of which it was designed to operate, it has somewhat grown over the years, and it is now handling matters which are much larger than it was intended to deal with. This is in fact shown by some documents that we got this morning, which are the Motor Accidents Authority's answers to some questions on notice which appear in appendix A of the prehearing questions. Specifically, in due course, we may go to this in more detail.

Chart or table 12, which appears on page 22, shows the results of general assessments performed under the Act from 2002 through to the present time. For example, in the 2003-04 year, there were 12 general assessments awarded at greater than $100,000, or 8 per cent of all claims. In the 2007 year, there were 250 general assessments awarded at beyond $100,000, or 54 per cent of all claims. In fact, there are 48 general assessments in the 2006-07 year at between $500,000 and $1 million, and a number over $1 million. I myself have run several multimillion dollar cases as CARS assessments, and I can say that the system is simply not

designed to do it. It is not fair to either side. It is a very broad-brush system. To run a multimillion dollar case literally in an hour or an hour and a half is a very strange experience. It requires a very broad-brush approach.

There is nothing we wish to say in relation to the quality of the assessors. The assessors are very good. But they are dealing in a system that has very great restrictions. In other areas of the law—in defamation, in equitable jurisdictions—sums of money of $80,000, $100,000 or $150,000 end up before judges and, in defamation cases, juries, but multimillion dollar claims can end up before CARS for assessment and are dealt with in a very short period of time. We think that, whilst CARS operates quite well, it has now become much greater than it was originally intended to be. There seems to be no stopping it. The number of discretionary exemptions seems to be decreasing, in the sense that the authority is not exempting virtually anything. Very complicated and difficult matters are being heard by a system that simply is not designed to do that. Those are our opening statements.

CHAIR: From your association's perspective, is the answer for these matters to enter the court system, or to extend the CARS processes in relation to this system, or what are you recommending to address the issue that you have just spoken about?

Mr LETHERBARROW: I think that at a certain level matters should enter the court system. Otherwise, you are simply going to replace the court system with the CARS system. To give CARS the ability to handle large cases would require great changes in the system. For example, the costs regulations would have to be massively changed, because otherwise people would be expected to do enormous amounts of work for virtually nothing in very large cases.

We otherwise consider the CARS system works well, but there has got to be a point where persons' rights in very large claims should be determined by an appropriate fairly, with the facility to cross-examine experts, and to properly consider issues. A lot of these cases are educated guesswork when they get into this level. You do not have the time.

The Hon. DAVID CLARKE: Are you suggesting that many of these claimants are receiving unjust awards, that they are receiving less than they otherwise would have had those matters been more fully adjudicated?

Mr LETHERBARROW: I do not believe that is the case. It might explain why some stakeholders before this Committee are happy or say little about it, because they come from their own area or they have their own interests. The Law Society represents plaintiffs of this State. The insurers find the scheme quite profitable. Whether each of them wants to rock the boat they would have to answer themselves, but we look at it, hopefully, from a position where we are not trying to get anything out of these changes. We are simply saying it is too complicated for very large matters.

Mr STONE: It is not the quality of the people. It is the nature of the system, which shorthands the process.

The Hon. JOHN AJAKA: Are you looking at a situation, if I can use the analogy, that if a matter is of a certain monetary threshold it goes to a Local Court, or of a certain monetary threshold it goes to the District Court, and to a certain monetary threshold it goes to the Supreme Court? If I understand you correctly, are you saying that basically that up to a certain monetary threshold it is appropriate for CARS, but if we talking, for example, about a million-plus claim, then in reality all litigants, whether insurance companies or claimants, should have the right to be heard in a full and open court and have the matter judged accordingly? Is that the essence of what you are putting to the Committee?

Mr STONE: If I could take it back a step. When this scheme was being devised—and I went to a lot of meetings where it was—initially there was talk about CARS being quick, simple and cheap, doing the $100,000 or $200,000 cases and other things would be exempted. The guidelines made provision for that, because there is a discretionary exemption that can be given for complex cases. The problem is that as CARS has become more self-confident, it no longer regards anything as complex, because complex is in effect an admission of defeat, that we are not up to it.

It is not complex because the people are not skilled enough; it is complex because the forum does not allow the matter to be properly ventilated and dealt with. In some ways, we would like not to have a monetary threshold, because there might be some large cases that are very simple, where there is very little in dispute. We would like the discretion to be better used than it is at the moment, and in a less "we can do everything" fashion.

The Hon. JOHN AJAKA: Is the problem the time period being allocated in the CARS assessment? In other words, if an assessor is competent to deal with the matter, but the problem is that we are asking the assessor to deal with it in one or two hours when in fact it should be dealt with over one or two days, is that part of the dilemma?

Mr STONE: That is part of it. But, if it is a controversial issue, it might be the absence of sworn evidence. It is the inability to summons witnesses to appear; you rely on their co-operation. It is the inability to hear from experts, because again the forum does not allow it. By just making a CARS assessment longer—and we were being told earlier of a CARS assessment that has now been set down for five days—is to make the cost regulations fit the amount of time it is taking, which is a separate issue that the Law Society raised with the Committee. There are a whole series of reasons why. In what are very important financially for people, once you get into million-dollar cases, it ought not to be done on best guess, based on having to judge two experts' reports, when they have conflicting views, without hearing from each of them in order to try and reach a sound determination as to which one to believe.

The Hon. JOHN AJAKA: If the aspect is not purely a monetary threshold, which is why it has always been easy to work out whether it is the Supreme Court or the District Court, who makes the decision that it is complex and goes out of CARS into a court? Obviously, would it have to start at CARS? From a legislative point of view, how do we suddenly create a framework that says: well, this one does not go into CARS and this one does?

Mr STONE: At present, it is decided purely on the discretion of the principal claims assessor. You will hear the Insurance Council back us up on most of the submissions that we have just made about excluding large cases, because the Insurance Council has taken four or five appeals to the Appeals Court, arguing that it is a case that ought to be exempted, and the Supreme Court has basically said, "We are not that much interested in reviewing these; they are administrative decisions and we are not going to get involved."

The Hon. DAVID CLARKE: Have you made a recommendation to fix this problem?

Mr STONE: It is very difficult to do because the Principal Claims Assessor, who makes this decision, is a statutory office-holder, and it is not as if you can go to more senior people at the Motor Accidents Authority and say, "We would like you to interfere with the decision-making because she cannot be interfered with; there is a statutory prohibition on it.

CHAIR: Is there any way in which the exemption process could be better delineated? Would that be a way forward on this issue in your minds?

Mr STONE: Certainly there are improvements that can be made. At the moment, they will not grant a discretionary exemption until in effect you put all of your material on, it gets allocated to an assessor, and the assessor then looks at it and says, "This is too hard for me," or, "It is not too hard for me." Immediately, you have got ego involved in that decision.

CHAIR: I think we all recognise what you said about the process. I am thinking of some concrete way forward on the issue. Are there some sorts of recommendations that you people may have for the process that actually allows for the discretionary exemption to take effect?

The Hon. DAVID CLARKE: It could go to the Minister.

CHAIR: I am not necessarily saying that.

The Hon. DAVID CLARKE: But I am.

CHAIR: You have put this issue forward several times because this is a CARS-specific issue. We should have it balanced.

Mr LETHERBARROW: Can we come back with some more concrete suggestions?

CHAIR: Yes, thank you.

Mr LETHERBARROW: However, your suggestion in relation to some form of monetary limit is one of them. I am not sure how it currently works in relation to the discretionary exemptions. I think ultimately the principal claims officer still has power over all of them, and we believe there have been several instances where claims assessors have themselves determined that they should not hear the matter for

complexity reasons, and the matter has gone back to the principal claims assessor, who has said, "No. This can be heard by CARS." So perhaps individual claims assessors should be given the power to determine the issue before them. They have the paperwork and they have the matter referred to them, and it is their case. But, as I understand it, on occasions their own views are overturned. So perhaps individual CARS assessors can say: This is too difficult, or it will take too long, as well as having some form of monetary limit. But, if we could take that question on notice, we would appreciate that.

The Hon. JOHN AJAKA: In addition, could you look at what was raised by the Law Society as well from the point of view of what is your view, if it is an issue of liability it goes to court, and is dealt with by a court, and then flicked back to CARS? Could you bring that question into the question on notice, I would be grateful.

The Hon. DAVID CLARKE: Why do you not put a specific submission to this Committee as a starting point?

Mr LETHERBARROW: Very well.

CHAIR: They have put a submission to the Committee.

Mr LETHERBARROW: But it is not detailed enough.

The Hon. DAVID CLARKE: On this particular and important issue.

Mr STONE: It is a relatively new idea, so what you will be getting will be some start-up thinking on it, rather than necessarily the fully developed thinking. But we are happy to give the Committee some comment.

Mr LETHERBARROW: Could I say briefly that, in relation to courts determining liability and a matter being flicked backwards and forwards, I can see that incurring quite a lot of costs. There is nothing wrong, we believe, with CARS dealing with appropriate matters completely, and similarly courts dealing with appropriate matters completely.

The Hon. JOHN AJAKA: That is what I would like to hear from you about, if you would take that on notice.

Mr LETHERBARROW: We will.

CHAIR: Thank you. Do you have a specific question, Mr Donnelly?

The Hon. GREG DONNELLY: Not at this stage.

CHAIR: Ms Hale?

Ms SYLVIA HALE: No. I defer to my legal colleagues.

CHAIR: Turning to the Lifetime Care and Support Scheme, do you have any issues in relation to that process and your organisation?

Mr STONE: We stand by the one issue which we raised. Having seen the Lifetime Care and Support Authority's answer to it, in fine tradition, they do not actually answer the point. That is that people in the scheme have their care needs assessed by a bureaucrat making an assessment of what you need. The paraplegic needs X number of hours of care per week. Most of the time I assume they will get it right. But there were will be times when the injured person says, "I need something extra because of this reason or that reason," and there is a dispute about.

There are mechanisms for resolving that dispute. You can apply to have it dealt with by a neutral and independent assessor. Indeed, if you do not like that assessor's decision, you can go on and have it further reviewed by a panel of three assessors, if you can show a material error in the original assessor's decision. Already, I see your eyes glazing over. That is not something that an injured person is going to easily deal with. It is something that the non-English speaking parents of a brain injured child are not going to deal with at all.

We are not saying we necessarily want to get lawyers involved in that process and create legal fees and so on. All we want is for there to be some sort of advisory service, or independent person, who can act as an assistant to somebody who says, "Look, I'm not happy with the care plan I've got; I would like to challenge it. How do I go about doing that? Who will help me fill in the forms? Who will help me get the letter from my GP saying that I need X amount of this medication, rather than the amount they have allowed?" Who is providing the assistance to somebody who wants to make some challenge to the bureaucratic assessment of their needs.

The Hon. JOHN AJAKA: Are you suggesting that the Advisory Council should be extended to cover that, or should a different independent body be created?

Mr STONE: I think it has got to be something different. The Advisory Council advises on policy. This has to be an "accessing your rights" person.

Mr LETHERBARROW: This is something that I think will become more important as time goes on because there are certain concerns that the scheme may become much more expensive than originally thought and that consequently there is bound to be some pressure, even if it is subconscious, to cut back on the amount of benefits. Then persons will be saying, "Look, I can't get by on four hours a day, or four hours a week," and they need someone to be able to advocate for them in those areas. Can I also say that the Bar Association thinks this is an excellent piece of social legislation. It is something for which the community should be very grateful to the government and the Parliament for bringing in because it provides care for people who otherwise would not get any care.

The Law Society does make the point that they believe people should be able to opt out. We understand that that would create financial issues through having two separate schemes running at the same time. But the Bar Association commends the legislative authority for this scheme. It is an excellent idea.

CHAIR: There is one question within the questions that we will put on notice on which I would not mind hearing from you today. It is in relation to the Insurance Council. I will read it onto the record.

Mr STONE: We do not need you to read it out, Madam Chair, because we looked at it and we thought that is a very big question, and it is such a big question that it requires a written response. So, in the past 48 hours, we have cranked out a written response. I would seek leave to table it.

Document tabled.

Perhaps we could take two minutes to address a couple of the issues that they have raised.

CHAIR: We would be grateful if you did that.

Mr STONE: The first is that we say be a little bit aware of the Insurance Council when they turn up and, we say, cry wolf over fears of superimposed inflation. The actual studies that the Motor Accidents Authority has carried out, in response to the last cry of this nature, found that no, there was not such superimposed inflation. In particular, be careful with their complaint that CARS assessors will give more for a similar injury than the insurance companies settle them for. We have given you a list of reasons why that occurs. One is that of course cases settle for less early because that is the discount you take in order to get the early settlement. Of course CARS assessors give more, because their experienced and neutral evaluators look at all the evidence and come up with a fair result, rather than the early get-it-done result, which invariably favours the insurer. Of course you get better results from CARS assessors because almost everybody is legally represented and therefore they exercise all of their full rights and entitlements and get properly compensated. In the settled cases you have got a significant number of unrepresented litigants, and we suspect with those who do not know all of their full rights, the insurer more often than not gets a bargain.

So it is hardly surprising that there is a difference between the two. That does not show any imbalance in the scheme, except that some people do not do as well by taking the early money. But that is a personal choice they get to make. We would like to think they make it deliberately, rather than through ignorance.

In terms of some of their recommendations, there are some of them that we agree with. There are some of them—such as their claim that there ought to be better access to treating records, and that these ought to be provided to the CARS assessors—where we say, as the Motor Accidents Authority has responded, that is exactly what happens now. So you have got there a fairly detailed response to the issues that they have raised.

Mr LETHERBARROW: I think one of the problems that stands behind their position as well is the fact that the CARS system is now dealing with much bigger cases. They are in fact saying: Look, to try and help us out at CARS, can we have access to this material, or can we subpoena this person? They are effectively saying: Can we turn the CARS process into a court case, because we are dealing with bigger cases and we are getting bigger results? So standing behind a number of their submissions is in effect what we are saying; that is, that the CARS system is turning into a court system without the powers. Someone has to determine what is going to happen, whether we actually hand over everything to CARS or we decide at some point that persons' rights at a certain level should be properly looked at, especially when we are dealing with millions of dollars, whereas a lot of defamation cases and Supreme Court equity cases are over matters less than $100,000, and you end up with judges and transcripts and all the bells and whistles, whereas persons who are injured and are fighting over many times as much have to get effectively second-rate justice.

CHAIR: I thank you very much. I know your time here has been too short, and we will increase it next time. Certainly the information you have given us we will make a decision about whether it will be public and will be part of the transcript of this inquiry. The questions that we sent to you we will treat now as questions on notice. We have a date for return of those. Thank you very much for coming today.

(The witnesses withdrew)

(Short adjournment)

CHAIR: Welcome, Mrs Maini and Mr Cooper, to the Ninth Review of the Motor Accidents Authority and Motor Accidents Council, and the First Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. You are addressing Motor Accidents Authority issues. I would like to thank you formally for coming so soon again. I do not think I need read the regulatory statements as you were here earlier.

PHILIP WILLIAM COOPER, Chair, Motor Accidents Insurance Standing Committee, Insurance Council of Australia, 56 Pitt Street, Sydney, and

MARY MAINI, Insurance Manager, Motor Accidents Insurance Standing Committee, Insurance Council of Australia, 56 Pitt Street, Sydney, sworn and examined:

CHAIR: Mr Cooper, what is your occupation?

Mr COOPER: Insurance Manager.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr COOPER: I appear on behalf of the Insurance Council of Australia in my position as Chair of the Motor Accidents Insurance Standing Committee.

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

Mr COOPER: I am.

CHAIR: Mrs Maini, what is your occupation?

Mrs MAINI: Insurance Manager.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mrs MAINI: I am appearing as a representative of the Insurance Council of Australia.

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

Mrs MAINI: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice, the Committee would appreciate if the responses to those questions could be forwarded to the secretariat by Friday 11 July 2008. Would either or both of you like to start by making a short statement?

Mrs MAINI: I would like to disclose that I am a member of the New South Wales Law Society.

Mr COOPER: Madam Chair, I would like to start by saying that the New South Wales scheme on the whole is performing well. The current operation of the CTP scheme in New South Wales is largely achieving the aims of the reforms in 1999. While the scheme is performing well on the whole, insurers believe that there has been a steady increase in the level of CARS determinations made, particularly since 2004.

Our submission details some worrying trends, in our view, and we have concentrated on the largest proportion of the claims, which is whiplash injuries to the neck which do not involve neurological symptoms. It is likely that the same comparison would apply across other injury classes. The comparison of whiplash claims indicates an increase over and above the normal inflationary pressures in the level of CARS decisions for these claims, as opposed to those claims settled without any CARS involvement.

The data in our report points specifically to an increase in future economic loss and increases in the proportion of claims receiving future care. Our submission has suggested improvements in the transparency

of the CARS assessments. These include quarterly presentations of Motor Accidents Authority performance reports to all stakeholders; finalisation of the process to allow qualitative feedback for the MAAS reference group; and stakeholders to be given access to the CARS assessors' practice notes.

In respect of claim handling guidelines, we confirm that, whilst CTP insurers largely supported the revised claims handling guidelines, we are however concerned that the increased level of regulation in the scheme leads to increased costs in complying with those requirements, which in turn of course leads to increased scheme costs overall. That is a balance that has to be taken.

In terms of costs and profit levels, the CTP insurance is a long-tail scheme; that is, premiums collected today have to be kept in reserve for future claims. Almost all claims cannot be paid out in full immediately. On average, it takes three years, and sometimes longer, to finalise complex claims. The Motor Accidents Authority ensures that the CTP scheme is fully funded from year to year, and that insurers are in a financial position to meet all claims costs as they arise and for the full duration of the claim. Over the eight years from 1999-2000 to 2006-07 insurance profit margins have averaged between 7.7 to 7.8. In the last year, profit levels had reduced to 6 per cent. The MAA considers that this has been impacted by the introduction of the Lifetime Care and Support Scheme, and the latest MAA report, for 2006-07, confirms that the MAA considers this range of profit margin to be reasonable.

I conclude my remarks by saying that the Insurance Council believes the motor accidents scheme in New South Wales is meeting public expectations—not quite the "ant's pants" perhaps, but very good—and we wish to ensure that more of the compensation dollar is going to meet the needs of injured people, whilst providing a high degree of affordability. That is a particularly important point that we would like to make, considering some of the other remarks that we have heard here today. We submit that the scheme is on the whole working well. As a stakeholder, we value our relationship with the MAA and the ability to provide information and assistance over a wide range of areas.

CHAIR: I will start with the questions. Several of our members will be a bit late; they may arrive towards the end of the session. The Insurance Council of Australia submission presents data from our member organisations to document trends which suggest that the Claims Assessment and Resolution Service [CARS] process is resulting in substantially higher compensation payouts than those claims settled outside CARS, and that CARS payouts have increased over time, while non-CARS payouts have remained fairly constant. You go on to note that this "superimposed inflation" could place unplanned upward pressure on insurance premiums and discourage early resolution of claims, thereby leading to poorer injury outcomes. You attribute this escalation largely to a "lack of transparency" in the CARS process—and you have outlined some measures to address that—which allows individual assessors to make determinations without providing evidence-based reasons for assessments. On what basis do you attribute it to this? Could you explain how, in practical terms, you believe the current CARS decision-making process is contributing to escalating payouts? Have you actually raised these concerns with the Motor Accidents Authority, and if so what has been the response?

Mr COOPER: There are a number of questions there, and I will answer them one at a time. One of the Insurance Council's concerns is that as the CARS assessors' decisions are not published there is no real mechanism for peer review of the nature and size of those decisions. Also, there is no opportunity for insurers to understand the guidelines and practice notes which the CARS assessors apply in making their determinations, and their reliance on the actual evidence presented. In other words, it is very difficult for us to know the basis on which some decisions are made. If we had an understanding of that, we would be aided in the resolution of claims and avoid greater disputes.

In addition, we are saying that the claims assessors' determinations should be based on actual evidence presented, rather than on assertions; so, real evidence as to why these decisions were made. However, we consider that many of the latest reforms which provide for medical evidence to be provided prior to the lodgement of CARS applications will in fact help this process and lead to greater transparency. In practical terms, insurers are concerned that some CARS assessors have made CARS decisions for future medical, economic loss and care needs without the appropriate medical evidence to support those decisions. And, yes, we have raised these concerns with the Motor Accidents Authority, and there are ongoing discussions about those.

CHAIR: You referred in the latter part of your response to medical evidence, and I would like to get a better handle on that. Can you give us an example of evidence versus assertions, without using a case?

Mrs MAINI: One example might be that there might be medical evidence to support past treatment, but there is nothing in the medical evidence to say that there is any requirement or need for future treatment

or future care. In a number of cases that we have, decisions have been made for future treatment or future care needs without anything in support of those matters. That is a direct example that we are seeing. One of the strengths of the scheme is that it is more focussed towards a medical evidence based scheme, and some of the decisions are not in sync with the original philosophies behind the scheme.

CHAIR: Is this perception of evidence that you end up with?

Mrs MAINI: Yes.

CHAIR: That is why you are asking for more detailed information?

Mrs MAINI: Yes.

CHAIR: Or, at least, one of the reasons.

Mrs MAINI: Yes, one of them. I could give another example. It really is more in the area of the future heads of damages that are being decided. We are asking for greater dependency or reliance on the treating practitioners and the treating clinicians when CARS assessors are making assessments in relation to future needs. In other cases we have had examples where future care has been decided on the basis of statements by family members. That is a very different test compared with whether there was medical need or actual need. That is not medically based.

Ms SYLVIA HALE: Mr Cooper, you spoke about non-publication of decisions, presumably because the reasons for those decisions are not published, and therefore the practice notes may not be reflected, or what are you saying?

Mr COOPER: There are two points in that. The first one is that the CARS assessors have a set of guidelines and practice notes by which they are supposed to make decisions. I presume they largely do. The point is that we do not have the benefit of seeing those, so we do not have the ability to make a decision on what the outcome is likely to be. That is why that rate of transparency would help the process.

Ms SYLVIA HALE: Has there been any explanation as to why the practice notes are not available?

Mr COOPER: I think it is largely historical; that they were developed just for assessors. As the scheme has developed, we feel it would be useful to have these practice notes more widely available.

Mrs MAINI: It also assists in achieving consistency, so that you know that if you are going to go to CARS assessment and there are practice guidelines around that assessment, everyone—whether legally represented or not legally represented—knows how the scheme works. We have mentioned this through the MAAS reference group, the working party, and they are quite supportive of releasing those practice notes.

Mr COOPER: I guess it is about avoiding disputes. If we all have a much clearer understanding of what the outcome might be from a CARS decision, we will be less likely to even go there in the first place.

Ms SYLVIA HALE: Is there anything else, other than the practice notes, that you think should be made available to achieve more transparency or openness but which is currently not made available?

Mr COOPER: The nature of this process is that it is not supposed to be an adversarial type of process. So we have to trade off a little bit. Therefore, the assessors must be given some discretion in order to make their decisions. I think it would be a little difficult to have much more prescriptive things for us to make decisions on.

The Hon. DAVID CLARKE: Madam Chair, I apologise for being late, but I was unavoidably detained. Mr Cooper, could you give the Committee your views on the objectives in the initial period of operation of the Lifetime Care and Support Scheme.

Mr COOPER: As you are aware, Mr Clarke, it is very early. Our involvement in lifetime care is limited in that we provide the non-care component for those are in the lifetime care scheme. So we have a limited involvement in it. My understanding and my experience to date is that it is working well, though there are a lot of things to learn. The one suggestion we would make is that some of the care arrangements are likely to be precedent setting for what we do in relation to the people who are not in the scheme. Therefore we feel we are stakeholder in that process and we would like to be at least involved in determining what will be the sort of care provided, because it does have a flow-on effect to us as well.

The Hon. DAVID CLARKE: Do you have any knowledge of what is taking place in that particular area?

Mr COOPER: The MAA and the Lifetime Care and Support Authority have been quite transparent. They have been very involved in it and have allowed us to be involved in that process—but not at the clinical side in terms of actual treatment that participants receive, because that is not really appropriate for us anyway. But they have been quite good in involving us. It is just that there is not a formal process to have us involved, and since we are potentially stakeholder in the outcome, we would like to have some formal involvement in that process.

CHAIR: While we are dealing with the Lifetime Care and Support Scheme, I would like to inform you that this morning a question was put to the Motor Accidents Authority about the suggestion of the Motorcycle Council that the elements constituting the Medical Care and Injury Services levy be itemised in the Compulsory Third Party [green slip] premium, in the interests of transparency. What does the Insurance Council perceive regarding delivering on that somehow?

Mr COOPER: We do not have a firm opinion on it. I think it is in fact very appropriate that the levy and the costs borne by the remainder of the scheme are spelt out, so that there is transparency in how much is going into the lifetime care scheme versus those that are going to the remainder of the privately underwritten scheme. The Insurance Council and its members do not have a great viewpoint on the need to break up the levy itself, because it is going to go to a whole range of things.

CHAIR: Would there be any issue if you were requested to do it? Would it be hard to do?

Mr COOPER: It would not be us in the first place, Madam Chair. It would be the Lifetime Care and Support Authority, which says what costs go to these areas. We are not actually involved in that.

Mrs MAINI: Printing and renewals.

Mr COOPER: Thank you. It would be a slight problem in that there is a fair bit of information that has to flow backwards and forwards in order for that to be achieved. There are quite a lot of motorists in New South Wales, and there is a huge databank that would have to be sent backwards and forwards between the MAA and the insurers to do that.

Mrs MAINI: The reality would be that it would require quite some lead-in before the insurers would be able to do that, because each insurer would need to modify its own systems. It would probably require a significant lead-in to be able to do that.

The Hon. GREG DONNELLY: In your submission you have called for ongoing qualitative monitoring and feedback systems for all stakeholders in the CARS system along the lines of the process piloted by the Motor Accidents Assessment Service Reference Group. Could you elaborate on what you say there?

Mrs MAINI: At the moment the system works quite well in that there are various elements on which you can provide feedback to a medical assessor or a medical assessment. In relation to CARS, the main feedback is through a complaint. We are suggesting that, if you look at it from a continuous improvement perspective, then there should be other elements taken into account, because with some assessments that I have seen we have not necessarily disagreed with the assessment but sometimes we are disappointed with the way that the assessors have communicated that assessment. So it is about providing feedback through clearer reasons and timeliness. There are all these independent variables on which we could say that this makes an effective CARS assessment process—timeliness, communication, feedback, whether good, bad or indifferent, and a number of other indicators that we would like to work on with the Motor Accidents Assessment Service Reference Group to really build, so that we can say that on each independent measure this is how the system is progressing.

The Hon. GREG DONNELLY: Have you gone so far as to put those thoughts down on paper, so to speak, as to the model or framework that you have just described?

Mrs MAINI: I have now. We have had some preliminary discussions, and we have tabled that as an insurance group view through the Motor Accidents Assessment Service Reference Group. I do not speak for the Motor Accidents Authority, but I think the authority has been quite supportive in looking at developing

the system. It is just that we have had some guideline changes go through that I think have really taken priority before we get to this point in this process.

The Hon. GREG DONNELLY: Of course, the Committee will have to deliberate on this matter and make a decision as to what we believe, but do you believe that is a matter that we should address by way of recommendation in our report?

Mrs MAINI: Yes, we do. That is one of the recommendations that we have made.

Ms SYLVIA HALE: You refer in your submission to the Claims Handling Guidelines for insurers. Do you have any comments to make on those revised guidelines?

Mrs MAINI: We support changes to the Claims Handling Guidelines. The only point that we would like to make is that we work collaboratively with the Motor Accidents Authority, and those guidelines are then sent to the Law Society and the Bar Association for comment. But we are at the stage where an insurer, in complying with the guidelines, needs to undertake 178 process steps. The latest guidelines add another 22 process steps.

Ms SYLVIA HALE: It makes it a round figure, doesn't it?

Mrs MAINI: It does. The only thing we would like to add is that regulation is welcomed by the insurance industry, but it reaches a point where you say that the scheme is quite well regulated, and if anything might be over-regulated, and we do not need to keep adding more to the Claims Handling Guidelines.

Ms SYLVIA HALE: You are saying there are now 200 process steps. How many of those are necessary?

Mrs MAINI: That is a very good question. We have not really sat down and said: What are the real outcomes? Maybe there is an opportunity for us to sit down with the Motor Accidents Authority and the licensing area and say: Let's break that down and have maybe 10 key qualitative outcomes, rather than 200 process steps.

Mr COOPER: Perhaps I could add to that.

Ms SYLVIA HALE: Yes.

Mr COOPER: I do not think the Insurance Council is saying that any of these steps are not achieving an end. They all do, and they were all quite good ideas when they were put up. It is just that there has to be a trade-off at some point about the amount of information that is provided versus the cost to the scheme. That is part of the problem.

Ms SYLVIA HALE: Presumably it is about to come into effect, if it has not already. Will you trial it for twelve months and then come back with thoughts on it?

Mr COOPER: We are largely at the behest of the MAA. Having said that, they are very consultative, and I am sure if we have got some real problems we will sit down and talk about them.

CHAIR: The Bar Association has provided the Committee with answers to questions, and we have now provided you with those, but it is far too soon to ask questions on those issues.

Mr COOPER: Perhaps I could make a couple of comments, Madam Chair.

CHAIR: Yes.

Mr COOPER: In initiating the study that we did we took particular care to make sure we picked a cohort of claims that would be similar across all areas that we were looking at. They are also very high frequency claims, which are the whiplash claims. We made sure also that they were, in both non-CARS settlements and CARS decisions, legally represented. So we took as much care as we could to ensure that we were comparing like with like. I know that it is difficult to do, and that there will be some reasons for why that occurred, but the difference in costs being awarded by CARS versus what was being settled outside was statistically significant.

Our concern is that if this were to lead into the non-CARS settlements, it would be a significant increase in the costs of the scheme, and those costs have to be borne by road users. Therefore we think it is the beginning of what might be called superimposed inflation, and we wished to bring that to the MAA's attention as soon as we could. Having said that, the MAA I think has responded very appropriately and said it will be initiating a study to see what things are causing this. It is very difficult for us to do because we cannot get behind CARS decisions, but the MAA has initiated something to look at that, and I think we will be very interested to see the outcomes of that study.

CHAIR: Thank you very much for that. The other matter I would be interested in hearing from you on is also from the New South Wales Bar Association submission 8 to the MAA and Motor Accidents Council review. The association says, "The CARS process is overly complex and bureaucratic with the effect of encouraging settlement and deterring CARS claims; the CARS system was not designed to deal with the complexity of matters it now regularly deals with; and the overall time it takes to resolve claims (from the time of accident to settlement or award) has changed little under CARS, in that purported reductions in claims resolution times mask the time it takes for cases to be prepared prior to lodgement with CARS." Could I ask what the view of the Insurance Council is to those assertions?

Mr COOPER: First of all, in terms of the complexity, we do not often agree with the Bar Association, but in this case we think there are claims which are appropriate to be handled at this sort of forum. We are particularly talking about complex legal matters, such as negligence. It is just an inappropriate forum to deal with those in the CARS process. Typically, we have very technical, complex expert evidence that needs to be examined and cross-examined, and that is not an appropriate forum in which to do that. It was never designed to do so.

In terms of the quantum awards, this morning I heard it suggested that there might be a monetary limit set on it. I do not think that is really the point. Quite often there will be a very large claim where the only point of contention might be one small head of damage that might be worth $10,000, in a $2 million claim. It would be inappropriate to send that off to court because it is a very large claim. It is really the complexity of the matter that should be the determinant of whether it goes through the CARS process or courts process. It is a very difficult thing to create criteria, and we have considered this issue this morning and we think it is something that we should go away and think about and provide the Committee with some written submissions on that.

CHAIR: That will be very useful, and I thank you very much for that.

Mr COOPER: As for the complexity of the process deterring people from going to CARS, we actually have the opposite opinion. We think that the fact that people are not going to CARS means that the process is actually working quite well. In other words, to a large extent, we have a common understanding of what the likely outcome is going to be, and we are avoiding the cost for the claimants, the injured parties, going into a CARS hearing because we can agree on what the outcome should be before we even go there. That is in large part why claims are now settling prior to CARS.

The Hon. DAVID CLARKE: You have come to that view. Is that on any strong anecdotal evidence?

Mr COOPER: Merely the fact that we have less terms of disagreement when we are talking to claimants or their solicitors on what the outcomes should be, what the settlement amounts or types of settlements should be, because we have a very good understanding of what the outcome is likely to be in a CARS process. So, to the extent that that has become transparent, it obviates the need to go to CARS in the first place.

CHAIR: There are questions that we would like you to take on notice.

Mr COOPER: We would be happy to do that.

CHAIR: We have given you some other work to do on notice. Thank you very much indeed for taking that on board. We look forward to the responses. Thank you very much for coming along today.

(The witnesses withdrew)

CHAIR: Welcome to the hearing. We will be asking you questions about the Lifetime Care and Support Scheme. The Committee decided to have just one day's public hearing for both the Ninth Review of the Motor Accidents Authority and the Motor Accidents Council and the First Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council, mainly because many of the witnesses for those bodies were one and the same. We will produce two separate reports on the reviews. There are broadcasting guidelines in relation to public hearings and I do not think we need to go through those. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witness under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless that is absolutely essential to address the terms of reference. Would anyone with mobile phones mind turning them off because they interfere with the recording systems that we have for the process.

I welcome you to the hearing and thank you for giving us your time today.

ADELINE ELIZABETH HODGKINSON, Chair, Greater Metropolitan Clinical Taskforce for the Brain Injury Unit,

JEREMY BRUCE GILCHRIST, Manager, Southern Area Brain Injury Service,

JOSEPH ANDREW GURKA, Medical Director, Brain Injury Unit, Westmead Hospital, and

MATTHEW HOWARD JAMES FRITH, Co-ordinator, Brain Injury Rehabilitation Directorate, John Hunter Children's Hospital, sworn and examined:

CHAIR: Dr Gurka, what is your occupation?

Dr GURKA: I am a rehabilitation specialist, medical practitioner.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Dr GURKA: As the representative of an organisation.

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

Dr GURKA: I am.

CHAIR: Mr Frith, what is your occupation?

Mr FRITH: Brain Injury Co-ordinator and speech pathologist.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr FRITH: As the representative of an organisation.

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

Mr FRITH: Yes, I am.

CHAIR: Dr Hodgkinson, what is your occupation?

Dr HODGKINSON: I am Director of the Brain Injury Rehabilitation Unit at Liverpool Hospital and also the Chair of the Greater Metropolitan Clinical Task Force for the Brain Injury Network. I am a medical practitioner.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Dr HODGKINSON: As a representative.

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

Dr HODGKINSON: Yes.

CHAIR: Mr Gilchrist, what is your occupation?

Mr GILCHRIST: I am the Manager of the Southern Area Brain Injury Service and also a social worker.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr GILCHRIST: As a representative of an organisation.

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

Mr GILCHRIST: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, we would be very appreciative if they were returned to the secretary by Friday 11 July 2008. But, if that time is too soon and causes difficulty, would you negotiate with the secretariat. Would any of you or all of you like to start by making a short statement?

Dr HODGKINSON: I will make a statement, because the invitation came to the greater metropolitan taskforce. I am representing the Greater Metropolitan Clinical Taskforce. That is why we are here as well. The brain injury task force directorate is a directorate looking at the network of brain injury rehabilitation units across the State, co-ordinating not so much their management but the policy and service evaluation and future directions and needs of that network. I am here as the Chair, Matthew Frith is here representing the paediatric services, Jeremy Gilchrist is here representing rural and regional services, and Joe Gurka is here representing metropolitan services.

CHAIR: I should declare another interest: I have been the recipient of the rural segment of the brain injury unit. I will start by asking the general questions. Could you please explain the role of the Greater Metropolitan Clinical Taskforce brain injury rehabilitation directorate? And would you tell us a bit more about your membership?

Dr HODGKINSON: As I mentioned before the GMCT is a clinical taskforce, which means its focus is on clinician-led interests, arranged according to what are termed craft groups, but perhaps also means particular clinical focuses. Ours is brain injury rehabilitation. Our members come from the network of brain injury rehabilitation units, of which there are a number of rural based services, three paediatric services and three metropolitan services. We manage brain injury rehabilitation after the acute hospital stay, and provide for their inpatient rehabilitation and follow them through into long-term community management. So our focus is dealing with the rehabilitation aspects following severe traumatic brain injury.

The Hon. DAVID CLARKE: Doctor, could you present us with a couple of case studies to illustrate the kinds of injuries that you deal with in the scheme, and the role you play as rehabilitation clinicians?

Dr HODGKINSON: I have prepared two cases. Jeremy has one, and Matthew has one. I can circulate those documents.

Documents tabled.

Mr GILCHRIST: I am going to talk from a rural perspective. As rural service lifetime care scheme clients are only just starting to come through our system, it is a new experience for us. My case study demonstrates the positives of the scheme, and some other case studies will demonstrate some of the challenges of the scheme to date.

I am going to talk about a guy called Paul, who was injured in a high speed motor vehicle accident in early 2008. He is a 20-year-old male. Paul was the front-seat passenger in a car being driven by a learner-driver. At the time Paul held a provisional licence, so that he should not have been supervising a learner. So there is some liability on Paul's behalf there. In the accident he sustained a very severe head injury, had a GSC of 5 at the scene, so was unconscious. He was airlifted to Liverpool Hospital. Initial CT scans showed multiple contusions; he had a severe injury. He was in an intensive care unit [ICU] for 40 days. He was initially minimally responsive and had a PTA [post traumatic amnesia] of 128 days. So he was in a quite confused state for 128 days.

Functionally, Paul requires assistance with mobility. So, to get around, he has difficulty with activities of daily living tasks, such as toileting, meal preparation, feeding and those sorts of things. He has significant cognitive problems, such as memory, and he requires constant prompting to do things in his day. However, he has made significant improvements during his time at Liverpool Hospital. Paul now, because of his improvements, is in the process of being discharged from Liverpool Hospital to our unit, and that is where Goulburn comes in, that is, the Southern Area Brain Injury Service. He is to be transferred to our transitional living unit, where we will continue the rehabilitation that he has been receiving at Liverpool. I suppose the focus now will be more on getting him home into his place he lives, just outside Goulburn.

Due to Paul being admitted to the Liverpool brain injury unit, the lifetime care scheme became involved with Paul early in his admission. We have one other case at the moment where we had someone admitted, not to a brain injury unit but to an orthopaedic ward, where they did not know about the lifetime care scheme, and then that person went to a regional hospital, where they did not know about the lifetime care scheme. This young man Paul though was picked up early and because of that early intervention he started to receive the lifetime care scheme support.

The lifetime care scheme is now working closely with our service to ensure Paul's needs are met. We have carried out a home visit before he came down and are in the process of obtaining equipment for weekend leave and his eventual discharge home. So, even before his return, he has come to our unit and we are able to look at those things and, prior to the lifetime care scheme, that would not have been possible.

Prior to the introduction of the lifetime care scheme, clients such as Paul would have had difficulty accessing equipment and other care services. Clients like Paul would be reliant on the limited public system and early planning regarding equipment and care, planning requirements, et cetera, would not have been possible. So, hopefully, because of this early intervention with the lifetime care scheme and their resources, we will be able to get Paul home sooner, and the outcomes hopefully will be better for him.

Ms SYLVIA HALE: You said that in the second case the person had gone to an orthopaedic unit and then to a regional hospital. Are there any steps being taken to inform those units or hospitals of the existence of the scheme?

Mr GILCHRIST: Since we have had that issue, they went to a rehabilitation hospital in Young, and we have sent our staff out to talk to them about the scheme. Well, we talked to the social workers there, so their social workers are aware of it. I think probably across the board brain injury services are informing different areas about the scheme, and I think this issue will come up again in another case study.

CHAIR: The Hon. Greg Donnelly?

The Hon. GREG DONNELLY: I have no further questions at the moment.

Ms SYLVIA HALE: If you could continue to go through the case studies.

Dr HODGKINSON: I have two short case studies. The first one I thought would draw attention to a point that I have raised regarding some confusion over the eligibility for the scheme. This was a 55-year-old lady was a pedestrian hit by a truck in March and sustained very severe injuries. She had a not so severe head injury, but frontal contusions, but her Glasgow coma score [GCS], which is a measure of coma at the scene, was only 14 and she was confused and had a PTA for a period of 8 days. This means, according to the criteria, that she would be eligible for lifetime care if her functional status was also impaired. But, as you can see, she also sustained fractured ribs, bilateral hip fractures, pelvic fracture, sacral fracture, a fracture of one orbit, fracture to the jaw and the spine as well as the skull and the ankle and fibula. So, she was really very severely injured.

She spent a long time in the orthopaedic ward, and then her rehabilitation was planned to occur in a private hospital after the CTP claim had been accepted. Her function at the point of discharge was not subject

to a formal assessment, however she did have some impairment in her memory, some dizziness, she was anxious and depressed, and had difficulty understanding documents. She required assistance in walking and self-care. She has now been discharged home from that private rehabilitation service and referred to the Brain Injury Unit. This gives rise to some issues. At this stage she is independent with aids and equipment, so with walking frames and with rails in the shower she is independent. So a functional independence measure [FIM], assessing her now, would not mean that she would be eligible for the Lifetime Care and Support Scheme. However, if she had been assessed at an early stage, two months ago, she would have been eligible and possibly accepted into the scheme.

That is an issue that I think has not been properly looked at by the Lifetime Care and Support Scheme, as to when the assessment should be occurring. Post traumatic amnesia as a measurement is a very clear thing. It is a prospective measure, and the length of time that it is measured does not change. There would be some confusion if, say, you omitted to collect it, and then you would have to make some other assessment. But the FIM is something that is assessed at the point in time that you are seeing them, and you cannot really assess it retrospectively, and it is used widely in rehabilitation wards but not in orthopaedic wards.

The Hon. GREG DONNELLY: Is that irrespective of the age of the person?

Dr HODGKINSON: Yes. There is a different scale for children called the WeeFIM. My next issue is: What is the scope of the scheme? Is it intended to support someone like this? They do not have a very severe head injury, however catastrophically injured at the point in time, so what is the issue here? Should this person be included in the Lifetime Care and Support Scheme or not? I think that is a question of what is the target group of the scheme? Should this person be included or excluded? In the orthopaedic wards Lifetime Care and Support are now educating all of the social workers where this occurred, in Liverpool Hospital, and I think they have been broadening their education for the scheme to more general staff.

CHAIR: So the person fits the definition early post injury time?

Dr HODGKINSON: Yes.

CHAIR: But does not necessarily fit the definition later?

Dr HODGKINSON: Yes. Yet the acceptance into the scheme really is at the point that the form is submitted with the assessments of PTA and their assessment at that time.

CHAIR: Is your suggestion to have a graduated system of acceptance into the scheme? I am trying to get a handle on it.

Dr HODGKINSON: There is an interim phase for two years, and then it can be re-assessed. But if, in looking back at the patience, that this person, but for the awareness of the scheme may have been accepted, then that may be important then to accept someone like that into the scheme, based on what evidence you have in the notes that this person has had a severe injury.

CHAIR: Did you have another case study to tell us about?

Dr HODGKINSON: My other case study addressed the issues of communication and paperwork. In some ways, those issues have been dealt with in some of the responses. The second one is a 46-year-old married woman, mother of two, a driver involved in a severe accident in February this year. She was ejected from the vehicle. Her Glasgow coma score was 3, so that was extremely severe injury. She again had multiple fractures and head injuries. Her post traumatic amnesia was 29 days, so again quite severe. She entered early on into the lifetime care scheme, and I think partly because of her history, with a very distressed husband, two children that were quite traumatised, and a supportive family that were crying out for help.

There was a lot of emotional and practical support actually provided by the Lifetime Care co-ordinator in almost a therapeutic role. So that by the time the patient was transferred to us for rehabilitation the role of the lifetime care co-ordinator was perhaps misunderstood. Instead of co-ordinating a scheme, they were viewed as a person critical to the rehabilitation of that person at a clinical level. I think this continued to be an issue perhaps because it was not as openly stated as that until we then, towards the end of the person's rehabilitation, addressed it as a specific issue and looked at mechanisms by which we could avoid that sort of thing happening in future. I think that accounts for one of the ways in which we can see that the co-ordination of the scheme role can overlap with the clinical role, particularly when you have a family in distress who are asking for help.

CHAIR: So the co-ordinator in effect took over the social worker's role?

Dr HODGKINSON: In some ways, yes. Then the only other component to this was that because she went home with an extensive amount of care and some equipment and comprehensive therapy, we were quite aware of the amount of paperwork required. The forms expected to be completed are sometimes repetitive, so that a form requesting equipment may repeat the same information requesting another form requesting therapy, and the same form requesting care and attendant care. So, at the moment the scheme has commenced I am aware, through the implementation committee, that they are planning an online system which may avoid a lot of that duplication. But, at the moment, it is quite cumbersome.

CHAIR: I know it is quite a lengthy question that we have on our page, but do you have any recommendations, or do you have ideas about addressing that issue? The online system obviously will assist in some way, but is there any proposal to perhaps have the full situation recorded somewhere and then be able to put the request in? What sort of resolution are you hoping for?

Dr HODGKINSON: Inevitably, there is additional work with this. Even with mechanisms and computer software and structures that will assist, there will be a greater demand on non-clinical time. Our solution is really that the Brain Injury Unit is set up to bill fee for service and to use that revenue to employ sufficient staff for the support. However, we exist in a health system where funding is simply not given when you ask for it, and revenue tends to be filling the black holes. We want recognition that we need to employ more staff. Maybe Joe Gurka should say something.

Dr GURKA: Paperwork is not something new to those of us working in the area of brain injury rehabilitation and those working in catastrophic injury. We have had to comply with procedures of insurance companies under the CTP scheme before. I guess the advent of lifetime means that the number of people in our units now who are actually going to be funded through this scheme has approximately doubled compared with the number of people we have previously managed with an insurance claim. So the paperwork, while it is not new for us to have to do it, is going to depend on a much higher number of patients. The actual procedures that we will need to follow with lifetime will mean there are a larger number and greater variability in all the different forms that have to be filled out than there were under the old CTP scheme. So, even when we get more familiar with the paperwork and more used to it, there will still be a significantly greater load.

I support what Adeline has said about looking at how the revenue that is raised through the area health services can come directly back to the programs in order for them to use that revenue to increase their resources, because we definitely are going to struggle to meet timelines, deadlines, unless our resources are increased, because this additional workload has come without any additional resourcing. Different area health services have very different ways have very different ways in which they deal with revenue. Very few programs get the direct benefit of that. I think there is a case here to say that that should be looked at.

CHAIR: Mr Frith, you had a case study.

Mr FRITH: Yes. I have one case study. I have three roles with our team. I am a case manager, so I liaise directly with the co-ordinators for co-ordinating the services for the children. But I am also manager of the unit, so I have been involved in the implementation of the procedures for identifying the kids when in hospital at the John Hunter Children's Hospital. The numbers of children that come through Lifetime Care, as you know, have been small, so I am commenting on behalf of the three children's hospitals. Our numbers are about 12 in total, and 3 from our service. So it is not like the adults, who are getting a lot more coming through. We have got CTP with a no-fault claim. These kids would be covered by CTP if they were not covered by Lifetime Care.

I will outline the case study. Kate is a five-year-old girl who was walking across the road with her mother and young brother when she was hit by a car and was hospitalised for three weeks. It involved severe weakness to her right side, so she had difficulty walking and needed a lot of support from her mother. But she also had experienced difficulties with concentration, memory and her speech. She was eligible for lifetime care and support based on her WeeFIM score, which was highlighted by her physical disability. But she was also eligible for CTP.

Lifetime Care was able to visit Kate's mum, which was great, and discuss the scheme, its role, and provide support for the case manager, which was all very useful. Also, a positive with Lifetime Care was that it provided services for Kate's mother and brother, who required counselling and support due to witnessing

the traumatic event, whereas this may not always have been provided with a CTP insurer. So that is a great thing. And this was very much needed in the early phase of Kate's recovery.

Kate is an interim participant and she is making a very good recovery, particularly with her physical difficulties. However, her invisible difficulties, such as learning, concentration and communication, are still evident. When Kate is reviewed for eligibility to lifetime care and support there is some concern that maybe the WeeFIM may not be sensitive enough to identify these subtle difficulties, which will impact her greatly, her learning and school success in the future. But the good thing is that she will still be covered by CTP insurance to get that support.

Also in this case study, Kate received aide funding at preschool. However, we are finding that school staff are requiring a lot of additional support with completing the education support requests due to, I think, just time but also the different philosophies regarding goal setting between education and rehabilitation, so navigating the forms and actually putting all the right information in. That has created some minor delays in getting aide assistance for these children at school, which they would not be able to obtain through the Department of Education and Training. So we are supporting teachers probably a little bit more with completing this paperwork. But mum's feedback has been very positive and, with careful discussions with her delineating the roles between case manager and co-ordinator, she knows who to come to and ask the right questions.

Ms SYLVIA HALE: There was a matter raised earlier by the Lifetime Care and Support Authority which says: The Committee notes that the actual numbers of children entering the scheme is lower than expected, and that this is consistent with recent data from the New South Wales Institute of Trauma and Injury Management. In your experience, do you think that the smaller numbers are attributable to fewer children being injured, or is it that their injuries are less traumatic, or is it a combination of the two, or is it attributable to something like drought and dry roads?

The Hon. GREG DONNELLY: Or all of the above.

Mr FRITH: It is my personal experience that the number of traumatic brain injuries that come through the hospitals ebbs and flows. There has been a lower number of children, and I think that might be to do with the education that is out there. But also traumatic brain injury due to a motor vehicle accident really only makes up a small number of the clients that we see. So we still get a high number of children who have had a trauma to the head, but it might be from horse-riding or something like that, which is more often seen with children in the rural and regional areas. Does that answer your question?

Ms SYLVIA HALE: It seems that no-one can be absolute, and nor can they be.

Mr FRITH: It is a good thing.

Ms SYLVIA HALE: One just worries whether there is in fact a reversal of that trend in the figures.

Dr HODGKINSON: Could I add that the data from the institute of trauma injury and management does look at all trauma, and particularly all road trauma. So it is not that they are less severe injuries; I think it is more that there are less injuries happening as well. And I think it is true that the drought, petrol prices and road safety awareness are all contributing to dropping numbers—unless, of course, we are proven wrong next year and things blow out again.

The Hon. GREG DONNELLY: I refer to question on notice No. 8. Your submission suggests that the incorporation of individually negotiated solutions into the lifetime care and support process will assist the scheme's implementation. Could you elaborate on that and explain what you mean by that?

Dr HODGKINSON: There have been a number of examples. I have one in which one of the requirements before care is put in place to assist someone is that the care and needs form is completed. This is a 15-page document on analysing their care needs. However, we had the need to support someone on weekend leave with carers because of the extent of his impairments, before we were able to complete that form. We could not honestly assess him as needing this amount of care or that amount of care, but with an individual negotiated solution we came to a situation where care was able to be put in place without that form being completed, and for the period of time that we need it. So I think it showed flexibility on the part of lifetime care and support, which we appreciated.

CHAIR: I am getting some interesting thoughts from you people about the differences between extensive rehabilitation requirement and an actual definition of lifetime care and support. I am thinking about

your case study about the lady who got home but still needed, and was not assessed for, lifetime care and support.

Dr HODGKINSON: In some ways, our emphasis is on the rehabilitation, and then following the rehabilitation phase someone may then need what we would call lifetime care and support for their life. But the vast majority of these people—and this was always understood in the establishment of the scheme—would actually benefit and their disability would be reduced by the intensity of the rehabilitation provided for a shorter period of time. I think this is the two-year mark that has been given as the point at which the interim participant may convert to a lifetime participant.

CHAIR: I understand that now. Thank you. We have run out of time, but I would like you to talk a little bit about your interactions with the Lifetime Care and Support Advisory Council and your ways of contributing. Are you involved as practitioners?

Dr HODGKINSON: I am actually a member of the Lifetime Care and Support Advisory Council.

CHAIR: Do you feel that you are listened there? Is it an interactive group so that you are feeling that your recommendations are being listened to?

Dr HODGKINSON: From my point of view on the council, yes, as far as the council. But perhaps as to some of the day-to-day workings, that is where we are using the implementation committee. This is where I have brought examples along to the implementation committee. Joe, did you want to talk about any of your interactions?

Dr GURKA: With the council?

CHAIR: With the process.

Dr GURKA: We have a number of mechanisms available to us to negotiate things and try to fine-tune things with the implementation of this scheme. There is the implementation committee, which is a formalises structure set up by the brain injury directorate which we can feed into directly and have them address and liaise with the Lifetime Care and Support Authority around issues that come up. The Lifetime Care and Support Authority has also encouraged us to talk directly with the various co-ordinators attached to our programs and try to resolve local problems directly that way, and I think there is scope to do that. I think there is a willingness on both sides to try to improve things as it goes.

You asked earlier about any suggestions about some of the issues, such as the paperwork et cetera. I do not know that we have necessarily got the answers to those, but so long as the Lifetime Care and Support Authority is aware that for a clinical services this has been quite a major impost and that they are open to the fact that after some stage, perhaps after twelve months of the scheme being in place, we can all regroup and have another look at all the paperwork and the documents, review them and see if they can be revised in some way that makes the whole task less onerous, that would be good. I think that is the spirit within which we are all working at the moment.

One thing came up in one of the other case studies relating to the communication issues. I think there are still a lot of unclear issues on both sides about exactly what the roles of different people within the clinical teams might be, and how they may conflict with or complement the roles of the co-ordinator. So I think that there is still a lot of work that needs to be done in terms of us trying to improve clarity around those roles and reducing the confusion that can arise. There have been a lot of cases where that has happened, to the detriment of the clinical cases. But, again, I think that just needs more work.

CHAIR: Did anybody else wish to add anything that we missed? We did not ask several questions on your questions on notice list, and we would be very grateful to have those back to the secretariat. But did anyone wish to say anything else? No. Thank you very much. Your information is very helpful to assist us to get a handle on how it is working on the ground.

(The witnesses withdrew)

COLIN MICHAEL STOTEN, Assessor, Claims Assessment and Resolution Service

HELEN KATHERINA WALL, Assessor, Claims Assessment and Resolution Service, and

BELINDA GAIL CASSIDY, Principal Claims Assessor, Motor Accidents Authority, sworn and examined, and

CAMERON PLAYER, Assistant General Manager, Motor Accidents Authority, affirmed and examined:

CHAIR: Mr Stoten, what is your occupation?

Mr STOTEN: Solicitor.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr STOTEN: As a representative of the Claims Assessment and Resolution Service.

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

Mr STOTEN: I am.

CHAIR: Mrs Wall, what is your occupation?

Mrs WALL: Barrister.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mrs WALL: As the representative of an organisation.

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

Mrs WALL: Yes, I am.

CHAIR: Ms Cassidy, what is your occupation?

Ms CASSIDY: I am a public servant.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Ms CASSIDY: A representative of the MAA.

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

Ms CASSIDY: Yes, I am.

CHAIR: Mr Player, what is your occupation?

Mr PLAYER: Public servant.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr PLAYER: A representative of the Motor Accidents Authority.

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

Mr PLAYER: Yes.

CHAIR: I would repeat that you have heard the information given to the Committee today. We would be grateful for some feedback on some of those matters. It could well be that the Committee and/or the secretariat will prepare and send to you some questions, and we would appreciate replies by 17 July. If there is any issue with that, you can negotiate with the secretariat for a longer period if you require that. Do any of you wish to make an opening statement? No. Can you provide a brief description of a typical CARS assessment? Or is there such a thing?

Ms CASSIDY: I think there is a typical CARS assessment. If you are talking about from the time it is allocated to an assessor, leaving aside what goes on in the office before it actually gets to the assessor. I will talk about my own experience because I am a claims assessor, and I do do a fair amount of assessments.

The file hits my desk, I look at it, I read it, and I check to make sure I am not in conflict with any of the parties. A preliminary teleconference date has already been set. When that day arrives I telephone the parties. You get both of them on the phone, so you are having a three-way teleconference with them. All of the cases that I have had have been with persons who were unrepresented. I think I have only ever had one unrepresented claimant before me.

At the first teleconference I go through the claim in detail with the legal practitioners. They are invariably solicitors. Very rarely at that stage is a barrister involved, although having said that, I have had some teleconferences where a barrister has appeared for the claimant. At the teleconference it is my goal to work out what is in issue between the parties. I think, particularly from the Bar Association, you have heard not much about the difference between CARS and the court and how they would much prefer to be at court. One of the fundamental differences I think between CARS and the court is that a CARS assessment is inquisitorial in nature. It is not an adversarial trial-by-ambush situation. It is very much an inquisitorial role that I take.

So I will look at the claim and I will look at all the material before me, and I will talk to the parties about what the claim is about. Is there an issue of contributory negligence? If so, what is that issue? Is it a failure to wear a seatbelt? What is the evidence in support of that? Does anybody need more time to get information about that? If there is an issue of quantum, there may be an issue of causation of the injury—for example, the claimant may have had a previous accident, or a subsequent accident, or had a pre-existing condition—and you try to tease that out at the preliminary conference. So the assessor is aware of what the issues are, but I think a by-product of that is that you actually get the parties to focus on the issues, and you get them to focus on those issues at a much earlier stage than you do if you are talking about a court process. So that is the teleconference. The aim of it is to narrow the issues, and to decide whether the claim is ready to proceed to assessment, or if there is additional material, or whether the parties themselves may not be ready, and there may be an issue about some medico-legal assessments, or there may be an unresolved Motor Accidents Assessment Service [MAAS] issue.

The teleconference happens, and I will set a date for either another teleconference if it is not ready, or I will set the matter down for an assessment conference if I determine that I am going to need an assessment conference to deal with it. Some matters can be dealt with on the papers, and I have done a number of those. We have heard submissions about the suitability of claims for assessment. I have had matters allocated to me where, for example, the claimant is living in London and one or other of the parties says, "Not suitable, claimant lives in London, need to take evidence from the claimant, we've all got to trot off to London." As much as I would like to go, the first thing I ask the parties is, "Find out what is in issue, because it may be that you do not need to hear from the claimant; or it may be that the claimant is perfectly willing and able to come back to Australia." I have had assessments where that has happened, where the claimant has been willing and able to get on a plane and come out here and have an assessment here.

I have had matters where the claimant lives in England and the parties agree that it can be dealt with on the papers, and I have looked at it and said, "Yes, I have got sufficient information; I am going to do it on the papers." So those sorts of issues come into play: suitability, readiness and, once the matter is ready, set it down for an assessment conference, if that is going to happen; and then you turn up to an assessment conference on the day that everybody agrees. My method of approach is again that I am very inquisitorial. I have read all the material beforehand. I have taken it out of the paper files that CARS gives it to me in; I put it into a folder; I have dividers and post-it notes everywhere, with everything having been read and highlighted, and I have worked out what my questions are going to be, and I will question the parties.

I start with an introduction, with the claimant sitting before me, and I will always address my introduction to the claimant, because they are the injured person. Legal practitioners may have been there twenty times or more, but the claimant has only ever been there once, and so I will explain the process to the claimant, I will explain who I am and what the CARS process is, and what is going to happen during the

course of the assessment conference. Once that is done, I will often give the parties the opportunity to explore settlement, if they have not fully explored settlement. I may give an indication of how I view the information that is in front of me. If they settle, they settle. If they do not, the matters runs.

I ask questions first, and then I ask the claimant's representative if they have any questions, and then I ask the insurance company if they have got any questions. That goes on with all the witnesses. Once the evidence has been given, I will then ask for submissions. I will usually engage in a debate or a discussion about the quantum of the claimant's submissions with the practitioners who are present—again in the sight and hearing of the claimant, because it is their claim. If everybody has finished off, within 15 working days, but usually faster than that, I will turn out a decision and it is sent to the parties.

The Hon. DAVID CLARKE: What happens if a party does not want you to just deal with the matter on the papers? You said you will make a decision where you could do it on the papers, in regard to a conference.

Ms CASSIDY: It is the CARS assessor who determines how it is going to be run. I usually say, "I have formed the view that I can deal with it on the papers. Does anybody have anything to say against that?" If somebody does, they will tell me why. I will listen to the other side, and I will then give some brief reasons as to why I am going to embark upon that course of action. But I will certainly hear from the parties before I make a decision.

The Hon. DAVID CLARKE: What happens if neither party wants you to deal with it on the papers?

Ms CASSIDY: If I still think it can be done on the papers, I will say so. But usually, if both parties want it done in assessment conference, I will do it in an assessment conference—unless it is in London! And then I've got problems.

The Hon. DAVID CLARKE: What percentage of claims that you deal with do you do on the papers before you?

Ms CASSIDY: We have the statistics there, but I think it is about 10 per cent; but a lot of those that run to an actual decision settle. I think the early experience was: Set it down for an assessment conference and it is more likely to settle, because you get the parties in the room and they start talking when they are face-to-face.

The Hon. JOHN AJAKA: I am not sure you were here earlier when the Bar Association people gave evidence.

Ms CASSIDY: I have been here all day.

The Hon. JOHN AJAKA: Basically, if I understood the Bar Association's submission, they feel that there are certain matters—and I think they were trying to say far too many matters—that are just too complex and should not be dealt with by CARS assessors or by CARS assessment. They almost implied that the problem with the system is that the CARS assessors will not admit that a matter is too complex for them and simply say, "No, it should go to a court." What are your personal experiences in relation to that, and whether you agree with the Bar Association or completely disagree with them?

Ms CASSIDY: I personally think that the CARS assessors can deal with everything because they are an extraordinarily experienced bunch of practitioners. They have been appointed for their expertise in dealing with motor accident cases. I do not think anybody has disputed that.

The Hon. DAVID CLARKE: Except that they are not all experienced to be judges.

Ms CASSIDY: Where does a judge get a judge's experience? From being a judge, I guess. I think we have gone down the road of having personal injury practitioners trained to be decision-makers, rather than picking people who we think would be good decision-makers and training them to understand motor accident claims and assessing damages. We have undertaken a lot of training with CARS assessors, from the day they were first appointed, in case management, in decision-making, in decision-writing, with similar training to the training that is offered, as I understand it, to Local Court magistrates, AAT tribunal members, and even District Court judges I understand have had the same fellow give them training on writing decisions as we have had. So I think that we have given plenty of training to the CARS assessors on being "judges".

The Hon. JOHN AJAKA: With the court system, my understanding as a lawyer of over 30 years standing is that magistrates were appointed because they are seen as being experts in that particular area, and then there are the District Court judges and Supreme Court judges, and there is no doubt that there is a hierarchy. With CARS assessors, is there a similar system? Do you have assessors who are looking at the million-plus claims because they are really trained for that and that is their expertise, or are these matters just flicked to whoever is next on the list?

Ms CASSIDY: That is a fantastic question, because we had that very issue arise two weeks ago. We have a Motor Accidents Assessment Service Reference Group, which Mr Player chairs, which is if you like the users group upon which the stakeholders sit. An issue has arisen with them about this idea: If you are going to have big cases dealt with at CARS, which it looks like will continue to happen, let us have some big-case assessors. I support that. Cameron and I will be working with the Motor Accidents Assessment Service Reference Group to work out a method of selecting them. I have not taken that idea back to the assessors yet because I have not had time. But I can give you a personal example.

Last week I was allocated a matter which I handed back to the case manager and told the case manager to allocate the matter to somebody else because it was a catastrophic claim. Firstly, I do not have time at the moment to deal with something like that because of the implementation of the reforms, but I was the first person to admit that it has been ten years since I was in private practice and since I had handled a catastrophic claim. I had not dealt with a catastrophic claims as a CARS assessor, and I did not think I brought the desirable expertise to bear on that claim, and so I referred it back to the case manager to allocate it to somebody else.

The Hon. JOHN AJAKA: At the moment does the case manager just flick it to someone else?

Ms CASSIDY: It is a bit ad hoc. I am aware of the practitioners who have the expertise, but it is not regimented in any way, and it is not set down in any procedure. I know there are some claims assessors who have, over the last year for example, demonstrated an ability to be able to deal with complex causation cases—simply because I have read their decisions, and I have read their preliminary conference reports, and they have talked to me about the way they handle things. So I have got an idea of some of these assessors who seem to be better at dealing with causation cases.

CHAIR: On that issue, the Act or the guidelines or whatever provides for the exemption process. You are not using it.

Ms CASSIDY: No. Mr Stone did not suggest it was the CARS assessment. He seemed to think it was all my fault. The Act sets out that a claim is exempt from assessment if a claims assessor makes a preliminary determine that it is not suitable for assessment and the principal claims assessor approves it. So a claims assessor has to have a case in front of them, make a decision that it is not suitable, refer it to me, and I have to agree with them or I disagree with them. So, yes, I have the ultimate say, I guess. I think there was some criticism of that process. One of the suggestions made during the evidence of Mr Letherbarrow that the discretion should not reside in me, that it was something that should come straight from the CARS assessor. My response to that is that I think there needs to be a consistency check. There are 37 CARS assessors, and trying to get a consistent approach from all 37 of them as to what is suitable and what is not might be a bit difficult.

But, certainly, on the issue of complexity, the Supreme Court has given us some very good guidance on what is not complex and what is complex, and it was Justice Sully in a decision of Larousso* who said: Complex is anything that a CARS assessor does not think they can deal with. A subsequent Supreme Court decision, affirmed by the Court of Appeal, said that a CARS assessor was entitled to bring their experience into the decision-making process. So, effectively, if a CARS assessor thinks they can deal with it, they should deal with it.

The Hon. JOHN AJAKA: And that is the end of that?

Ms CASSIDY: Yes.

Ms SYLVIA HALE: The Insurance Council, which gave evidence today, suggested that it would be useful to have reasons for a decision and that they would like guidance in terms of practice notes. What is your view about that?

Ms CASSIDY: Firstly, in relation to the publication of decisions, I wholeheartedly support that. The Bar Association I think criticises us for not doing so on the basis of a comparison with other jurisdictions. I

think they speak about the workers compensation jurisdiction. The difference between us and the workers compensation and other tribunals is that in the workers compensation legislation there is a specific provision that says Workers Compensation Commission hearings are to be conducted in public. Once they are conducted in public, that means decisions are public. At the moment, we do not have in our Act or in our guidelines anything about that, so we have taken the approach that they are private and CARS assessments can only be done in the presence of the parties to the assessment, as a result of which we cannot publish the decisions at large.

What we have done in the past is circulate, certainly within the assessors, de-identified decisions. So we take out the claimant's name, and we take out any reference to their doctors, so that there is essentially no breach of privacy. So, yes, I have got no problem with publishing decisions. We would have to have some form of de-identification check. I understand the Motor Accidents Authority is looking at upgrading its Internet web site, and I suspect that is probably where they will lie and where they will be placed.

Ms SYLVIA HALE: Do you see any benefit in a legislative change that would require the assessments to be held in public?

Mr PLAYER: I do not really think we need it. My own view is that the assessments are better conducted in private. We are intended to be a fast, cheap, more informal process, and rather than replicate the court process, I think the method that Belinda Cassidy was talking about would deal with the issues that are being raised. We would happily publish the decisions as long as they can be de-identified and the individuals' privacy protected.

The Hon. JOHN AJAKA: Are the hearings transcribed?

Mr PLAYER: No.

The Hon. JOHN AJAKA: That is your first disaster. If you are going to start going down that path, you will have to start going into full transcription.

Mr PLAYER: And that pushes you into a formal court setting, where you need all the associated equipment. If I could deal with the other issue about practice notes. I am not sure how this has come about, but all the practice notes that we have got for the assessors are public. They are available on the Motor Accidents Authority web site; they have been consulted on through the Motor Accidents Assessment Service Reference Group with all of our users, the Bar Association, the Law Society and the assessors themselves; and we have absolutely no problem with making them public. Part of the reason that they were created in the first place was to assist the practitioners to know what to expect when they come before a CARS assessor. They are all about: these are the issues that should be considered when looking at this type of issue when you are looking at contributory negligence. They are not about telling the assessors what decision they should make, but about guiding the parties and the assessors to make sure that all the issues that need to be considered are considered, to ensure that we are getting consistent decisions that are accurate and correct.

Ms CASSIDY: I would like to add that there is material that is not public. For example, there is a practice manual that was published in February this year. It is a comprehensive document, and it is called the CARS Assessors Practice Manual. It is, if you like, the equivalent of a judicial bench book. As I understand it, judges have—and I have never seen one because I am not a judge—judicial bench books that give them guidance as to how to approach, for example, sentencing. There are, as I understand it, sentencing guidelines that give judges a clue about how to do certain things. I think there is talk of a civil bench book in the Supreme Court.

The practice manual that I have written for CARS assessors has three introductory chapters about what the Motor Accidents Authority is and what the scheme is and things like that; there is a chapter about what happens before cases get to them; and then there is advice on how to avoid being biased, how to conduct a fair hearing, how to case-manage cases; and there is a chapter on decision-writing; there is a chapter on the assessment procedure and how to conduct yourself. So it is very much procedural stuff that I write for the assessors, because they need it, and it is not written for the public. It is really written for the assessors.

We have an informal electronic newsletter that I circulate every two or three weeks, and it contains an item like: An assessor rang me with this inquiry, and this is what I said about it. We have formal and informal briefings with the assessors. So there is certainly material that I produce that is not available generally. It is not that it contains anything extremely secret, but it is something that I write for the audience that I write it for, for the assessors.

The Hon. JOHN AJAKA: How many of the 37 assessors are full time?

Ms CASSIDY: There are three what we call internal assessors; they are full-time public servants of the MAA, of which I am one. The remainder are private practitioners. I do not think you would call any of them full time; there is not enough CARS work for them to be full time. And, in any event, we want them to be coalface practitioners.

The Hon. JOHN AJAKA: And regarding conflicts of interests, have you had any situations where halfway through a hearing one or parties say, "We don't want you any more; we want you to disqualify yourself"?

Ms CASSIDY: There is the odd matter where conflicts raise their ugly head. We have a two-tier system. In our electronic case management system within the office we have a series of identified conflicts. So, for example, Mr Stoten identifies his firm as a conflict, so the system will not let us allocate a matter to him involving his firm. Another assessor may act for the NRMA insurance company, so we do not allocate that assessor any matter that involves the NRMA. CARS assessors are encouraged—and it is part of their code of conduct, their terms of engagement, and there are paragraphs about it in the practice manual—to proactively disclose their conflicts. My understanding is that they do that. But every once in a while somebody takes issue with something or draws something to their attention.

If you would want to know an extreme example, I had an assessor who knocked back a matter where he had discovered accidentally that when he was on holidays one of his partners was opening the mail and came across something in relation to a CARS matter that referred to the name of the driver of the vehicle at fault. He recognised the name and looked it up, and determined that their firm had actually acted on a conveyance for the driver of that vehicle. In that case, liability had been admitted by the insurance company, so there was never any chance that that person was ever going to be there to give evidence, but the assessor disclosed it, the parties said, "We think it is a good idea that you not have any involvement in this case," and the matter was allocated to another assessor. That, to me, is a very extreme example. I probably would have knocked that one back.

The Hon. JOHN AJAKA: Are some assessors seen as being very pro-insurance and others seen as very pro-claimant, and suddenly we are assessor shopping?

Mr PLAYER: The claims assessment guidelines have in them a provision that allows either party to challenge the allocation to a particular assessor, similar to the medical assessment guidelines, within I think it is ten days of when we notify them that it has been allocated to someone. We very rarely get any issue raised along those lines at all. I am not aware of any particular arguments along those lines about a particular assessor. We have a very robust appointment process for all of our assessors.

CHAIR: Can you outline the appointment process, please?

Mr PLAYER: The selection criteria are listed in one of the attachments that were made available today. They are very comprehensive. I think it was answer No. 22. The appointment process involves a subcommittee of the Motor Accidents Assessment Service Reference Group, plus a number of MAA staff, reviewing the applications that were received from assessors. The criteria are comprehensive, so I will not go into those because you have them there. After that, recommendations were made to the general manager and the assessors were appointed in, I think, June 2006 for a three-year term. We are very, very happy with the quality of the panel of assessors that we have got.

Feedback we have had from all of our stakeholders, and I think the evidence we have heard from people whilst we have been in the room, has been that there is absolutely no quibble with the quality of the assessors that we have got. I think someone made a suggestion they would be more comfortable with our assessors than with the District Court judge panel. I take that as a big vote of confidence, because this was a novel system when it was created. The policy idea of having coalface experienced, expert practitioners as decision-makers in this area is really paying off and showing some dividends, because the quality of the decision-making, I would contend, is better than it has been in the past.

The inquisitorial aspect to which Ms Cassidy referred means that there is much more information available to the assessors at an earlier point in proceedings than was ever made available to District Court judges, who would often find that information coming to them as the last submission during a case. I think that covers the appointment process, but the selection criteria are comprehensive. They are expert

practitioners of at least seven years standing. But maybe our assessors practitioners would like to add something.

Mrs WALL: Practice in the area, an ability to calculate damages under the scheme, knowledge of the Act and the guidelines, impartiality, and I think a big plus is people-friendly so that you can deal with conflict.

The Hon. JOHN AJAKA: May I ask what your background was before you became an assessor?

Mrs WALL: I was a barrister, and still am a barrister. I was a barrister for about ten years, dealing in personal injury mainly, before I became an assessor.

The Hon. GREG DONNELLY: I will ask one of the scheduled questions, about discretionary exemption, because there were some comments made about this earlier today by some other witnesses. Could you take us through the process whereby discretionary exemption is provided, and enlighten us about that process?

Mr STOTEN: It does occur, not frequently but from time to time. When an assessor is faced with a discretionary exemption and you have a preliminary conference to discuss the issues raised, the basis for it often melts away. For example, I think the most common reasons given for an application for discretionary exemption are, firstly, that there are documents that an insurer cannot get hold of. That problem is solved by simply obtaining an undertaking from the claimant's solicitor that the claimant will sign an authority giving the relevant holder of the documents authority to release those documents, and they are therefore obtained in that fashion. I have never had a situation where that has been refused by a claimant's solicitor. So that basis falls away.

The second basis normally is: This is a complex medical issue, and we would like to cross-examine doctors and we cannot do that in the CARS system. Well, you can do that in the CARS system, and I have done it. I had a complex psychiatric case last year where the parties were poles apart and the issue was whether the claimant had an accident-based psychiatric impairment, or whether it was due to some other reason, and that assessment conference, which took place over only three hours, took place in the presence of the claimant and the competing psychiatrists involved. It was dealt with in the fashion that the claimant gave some evidence about what his problems were. I then invited the psychiatrist to express an opinion based on what they knew from the material and what they had heard from the claimant. I made a decision. I found out subsequently that the claimant accepted that decision and that the insurer was happy with the decision as well. That is a case that would have taken, I would think, at least three days of court hearing time. So that argument falls away as well.

The last time I actually recommended an exemption was, I think, for the reason that the file had come through to me by mistake because it involved an infant and there was compulsory exemption in any event. So the numbers of applications for discretionary exemption are, in my experience, few and far between, and they can usually be dealt with in that fashion.

The Hon. GREG DONNELLY: Do you think it might be worthwhile for CARS to have an open day and invite the New South Wales Bar Association to come along and see what goes on?

Mr STOTEN: I am not aware of specific case examples that they refer to. Similarly, with the insurers' comments about our reasons not being evidence based. We have extensive training on how to write reasons and make sure they are evidence based. I am not aware of any complaints, certainly not in respect of my decisions, that they are not evidence based. It seemed to me that unless they can come up with some concrete examples to say, "This clearly is not evidence based because of X, Y and Z reports," or whatever, those comments are really meaningless.

CHAIR: They were talking specifically about future medical needs.

Mr STOTEN: Yes, future medical needs. Those are dealt with in medical reports and in the material you obtain from the claimant and the claimant's care givers. It is based on evidence.

The Hon. JOHN AJAKA: One of my concerns was that the Bar Association felt that maybe the hearings were just too quick, that not enough time was spent on the CARS assessment. I have no idea what an average assessment time period is. Could someone give me an indication?

Mr STOTEN: Mine are usually between 1½ and 2 hours, sometimes 3 hours. I have never had one go beyond a day.

The Hon. JOHN AJAKA: Compared to the usual 2 or 3 days in the District Court or Supreme Court.

Mr STOTEN: That is purely because you have all the information already before you, you have read it, and you understand the issues. The rules of evidence do not apply, so you do not have the usual, "I put to you this happened," because of the rule in *Brown v Dunn*. None of that is required.

The Hon. JOHN AJAKA: So you get straight to the point.

Mr STOTEN: You get straight to the point, yes.

The Hon. JOHN AJAKA: Are you aware of any complaints from any claimant or insurance company saying that they felt it was rushed in some way, or that they were not given appropriate time? That is, apart from the Bar Association!

Ms CASSIDY: I know there have been complaints in relation to CARS assessments and the conduct of CARS assessments. Happily, I can say they have been few and far between. I think it would be safe to say that the majority of complaints are often about the outcome, rather than the process.

The Hon. JOHN AJAKA: Are we permitted to take on notice, without identifying the parties, what the nature of the complaints are, and how many complaints there have been?

CHAIR: If that would be useful, and if you people can give us that information.

The Hon. JOHN AJAKA: If you would take that on notice, of course deleting any reference to identification of a claimant.

Ms CASSIDY: One of the submissions, I think it was No. 11, was from Mr Saunders, who was complaining about a period of time, and that was the response to that.

The Hon. JOHN AJAKA: I saw that.

Ms CASSIDY: That was an anomaly, I think. He was talking about the length of time it took, rather than the length of time that at the assessment conference. I would echo what the assessors say. The idea of CARS is to work out what the issues are, and I think that makes it efficient. I do not think I have ever had a hearing that has gone longer than two or three hours, and I have had some pretty complicated cases. You get to the issues of the case pretty quickly.

CHAIR: I do not want to put words in your mouth, but I am probably going to. The process is about ensuring that all those who wish to contribute have contributed and you have heard what you need to hear. Am I correct in that?

Ms CASSIDY: Yes.

CHAIR: I am sorry to put words in your mouth.

Mr PLAYER: That is absolutely right. It is intended to be a flexible process, and it is. That is what we have heard—from one hours to two hours, and a complex case with two experts will take three hours and nothing more than a day. I think that was the whole purpose of it; you custom fit the case to suit the parties. If they need more time, you don't want them to be rushed; you give them more time. I think that is what we are seeing in the assessments, because we certainly do not get any major feedback at all that people feel we are rushing through the process. I was surprised to hear that today, to be honest. The Bar Association raised some valid points, but the Bar can add value, and do add value, to claims in CARS, particularly the larger claims. I think their issue about the representation fee at CARS is a valid one, particularly in relation to the larger claims; they can certainly distil the issues and help the presentation of the case. I do not think anybody would quibble with that at all.

The Hon. JOHN AJAKA: On the larger claims, has any consideration been given to maybe a three-panel assessor situation where, rather than referring it to the District Court or the Supreme Court and spend three, four, five or six days on the matter? Is it appropriate that three assessors will get together to

determine it, each with a little bit of different expertise? I would think it would still be cheaper for the parties to have three assessors determine it, compared with sending it off for a week's hearing in the Supreme Court.

Ms CASSIDY: A lot of tribunals sit with a panel of three. I have no problem with it. It would obviously require legislative change.

The Hon. JOHN AJAKA: That is what we are here for.

Ms CASSIDY: I was hoping you would ask me a question about what I would like to change.

The Hon. JOHN AJAKA: Take this as an open question.

Ms CASSIDY: Someone mentioned infants. Mr Stoten mentioned that he was allocated a matter that involved an infant. I think there is probably merit in exploring a panel of three. I suspect that a claims assessor sitting alone would be just as good. They might all start fighting with each other if you make them sit as three.

The Hon. JOHN AJAKA: That is why I suggest three.

Ms CASSIDY: I think that is a matter that could be explored. But at the top of my wish list is that we need power to approve infants' claims. There are obviously some big infants claims that need to go to court, but we have no power to approve infants' terms of settlement.

The Hon. JOHN AJAKA: That is one of the areas that I was thinking of. Rather than flicking it to the District Court or Supreme Court, maybe the reality is that a claims panel of three would be more appropriate, especially if you get to a situation where certain assessors are identified for their expertise. With an infant, you could have a panel of three.

Ms CASSIDY: There are many very small claims involving children; for instance, the child has had some psychological or behavioural delay because of an accident that happened when the child was five years old and goes back to bedwetting or something like that. Then there are significant and serious infants claims. A lot of the smaller ones the parties tend to settle, and they have to get an exemption to go off to court to get the court to approve the settlement. Wouldn't it be wonderful if they could come to CARS with their settlement, to have it approved there, rather than having that extra step?

Ms SYLVIA HALE: I address this question to Mr Stoten or Ms Wall. Does being an assessor result in any financial disadvantage to you? Do you have to apply to be an assessor? How big a proportion of your practice would assessment comprise?

Mrs WALL: Yes, you do have to apply. About 5 per cent of my practice is allocated to CARS assessments and dealing with them generally. Financially, yes, your income drops; you get less for a CARS assessment than you would as a barrister. I speak from a barrister's point of view. But the advantage is that you keep up your knowledge base; you are in the ring, and you know what is going on in that area of law, and you have colleagues and a fantastic principal claims assessor for guidance. So it is a camaraderie thing, and that is very important if you practice in the area.

Ms SYLVIA HALE: Is that your experience, Mr Stoten?

Mr STOTEN: It is. I think CARS work comprises about 20 to 25 per cent of my practice. It is financially less rewarding than other work.

Ms CASSIDY: Can I comment on that?

Ms SYLVIA HALE: Certainly.

Ms CASSIDY: I know Ms Wall alluded to it, but I have always known that. We have got to have checks and balances in the scheme, and I cannot afford to pay them as much as I would like to. But I think they get a lot of goodwill out of it, and vice versa. A case comes down from the Supreme Court and there is an email out to the assessors in not five minutes but pretty quickly to tell them about it. Regarding legislation changes, they are the first people to know. So I try to keep them updated on what is happening and give them as much knowledge as I can. I guess that is the balance, that is the compensation for the enormous and fantastic work that they do.

Ms SYLVIA HALE: You say there are 37 assessors, 3 of whom are full time assessors. Is that a sufficient number?

Ms CASSIDY: It is too many actually. I would like to have a slightly smaller group. The number of claims assessors we needed on 30 June 2006 was 37, but there has been a decrease in the amount of work as a result of changes from 1 May because a number of matters are settling upfront. I suspect, with the new legislation that is coming in, and if the costs regulations in particular are changed, there will be even more cases settling before they get to CARS, or before they get to CARS assessment, as a result of which I imagine there could be a contraction of the panel. I am hoping that will be as bloodless as possible. I do not want to have to do that, because I think I have a fantastic relationship with all of them; I think they are a terrific bunch, and I would like to have twice as many cases to give them all twice as much work.

The Hon. JOHN AJAKA: Are all of the panel members up for reappointment at the end of the three-year period?

Ms CASSIDY: It is not a reappointment. It is a fresh appointment.

The Hon. JOHN AJAKA: So you call for tenders, and anybody can apply, including the 37?

Ms CASSIDY: Yes.

The Hon. JOHN AJAKA: If there is to be a decision made on a change in the number, it needs to be made when the advertisements go out, saying we are looking for 35, 33 or 32?

Ms CASSIDY: Yes. Before 30 June last year I think we had about 45 assessors, and I made it clear in the information package that went out to prospective applicants that we were looking to reduce the size of the panel as a result of an anticipated reduction in work flow, and so we managed the expectation that way.

Ms SYLVIA HALE: Have you had any experience of assessors who have been unsatisfactory?

Ms CASSIDY: Yes.

Ms SYLVIA HALE: How do you deal with that situation?

Ms CASSIDY: There have been one or two assessors in respect of whom I have had to recommend to the general manager that their appointment be terminated. It was all because of the lateness of decisions and being unable to extract a decision from them. They went relatively quietly. There was another assessor who also had a problem with the timeliness of his decisions, but he did not seek further appointment at 30 June last year.

CHAIR: So your quality control relies on knowing what is happening at the time, or have you got measures?

Ms CASSIDY: We have measures. We have timeliness measures. We measure timeliness of their preliminary conferences, preliminary conference reports, the assessment conferences, the assessment conference reports. We have a case management system that regularly reports on the number of overdue assessments, and I keep an eye on that and try to jump on it before it becomes a problem. In one particular case I offered to pay for transcription, for a secretary to transcribe dictated tapes, and all that sort of thing. The most important thing is to get a decision out for the people who are waiting for it. Certainly since 30 June, I have not had a complaint about a delay in a decision. Our timeliness rate we have reported on in the appendix. The timeliness of decisions themselves is something like 80 or 70-something per cent. And, even when they are late, they are only a couple of days late.

The Hon. GREG DONNELLY: I understand that assessments are done outside the Sydney metropolitan area.

Ms CASSIDY: Yes.

The Hon. GREG DONNELLY: Are there any differential problems or issues associated with dealing with and management of assessments outside Sydney as compared with the Sydney metropolitan area?

Ms CASSIDY: I think there are six country assessors located as follows: 1 in Byron Bay, Wagga Wagga, Orange and Wollongong, and 4 in Newcastle. So it is more than six. Anyone who nominates on their application for assessment form for one of those locations gets that assessor. Those assessors also service the surrounding areas. So the Byron Bay assessor will go to Lismore and Grafton. I have got one at Tamworth. The Tamworth assessor will go to Armidale, Glen Innes and down to Muswellbrook and so on. So we can access all areas.

We are not bound to circuits, as are the courts. I can fly anywhere to do an assessment at the drop of a hat. So it is extremely flexible. We have done some interstate assessments where the claimant has been unable to travel. I have been to Adelaide and to Victoria. The Byron Bay assessor regularly goes into Queensland.

Mr PLAYER: We have backups as well, because if you are the only assessor in say Tamworth you may have a conflict with some of the other people in that region. In that case we look to the assessor in the nearest region or one of the Sydney assessors to go to that area. As we said before, the conflict issue is not that big an issue.

The Hon. JOHN AJAKA: But you do not go outside the 37 in any circumstances, do you?

Ms CASSIDY: No.

Ms SYLVIA HALE: Ms Cassidy, how do you decide which claims you will hear and which you will not?

Ms CASSIDY: The case managers allocate the work, and there are 15 case managers. I have a set of allocation principles, as they have. The case managers are divided into teams. There are three teams, and the assessors are split into those teams. So team 1 allocates matters to the people in that team. Country assessments are allocated according to geography. You take into account conflicts. You take into account the workload of the assessors. Once a week, everybody gets a printout to show who has got what work, so that you can see whether Helen Wall has got less than somebody else, so you might bump up her assessments and give her a few extra.

As to matters that are allocated to me, any time there is an overseas location nominated for the assessment it has to come via me—not necessarily to be allocated to me, but to be allocated out. Ditto the interstate assessments—just so that I can keep a handle on matters; I do not want three assessors turning up in Melbourne on the same day because that would be silly. So we try to keep an eye on that. But the care and support managers are certainly the ones responsible for allocating, and I do not have anything to do with that. They would only come to me with difficult questions.

The Hon. JOHN AJAKA: You have given us a terrific picture of what happens when an assessor is allocated. Can someone give us a brief idea what actually happens from when it first goes to the case managers? Are we hearing of any problems there? Is it working well there? Are they overstaffed, or understaffed?

Ms CASSIDY: Cameron is probably best positioned to answer the question, but as the principal claims assessor, who hears from the assessors, I think the case managers are doing a terrific job. The errors are few and far between. They are human.

CHAIR: What method is used to pick up an error?

Ms CASSIDY: Usually an assessor will ring me and say, "I have been allocated something by mistake. Can you flick it to somebody else?" It is that sort of thing.

Mr PLAYER: How does the process work? An application will come in from either party, because either party can commence the proceedings. The insurers never had that ability under the old system. So either party could commence proceedings. The respondent gets a copy of the application and all of the supporting materials. Before May 2006 the application form was quite lengthy and the attachments to it were relatively limited. In May 2006 we changed the requirements, so that we really beefed up the attachment process. So the form shrank and was made easier to complete, but we required the parties to be better prepared and to have much more of the information available. That has resulted in the settlement rate that everybody has been talking about increasing.

The respondent gets the application and the documents. They have I think 20 days to lodge a reply—and, again, that is a shortened version of the form, but we have beefed up the evidentiary requirements. And, after that application and reply, that should be it. The whole point of the system that we brought in in May 2006 was to get all of the documents on the table at that stage so that the case has the opportunity to settle as early as it can, either before it goes to the assessor or straight after that first preliminary conference.

The Hon. JOHN AJAKA: Are there no complaints of delays because documents or files or sitting on officers' desks and not getting to an assessor quickly enough?

Mr PLAYER: No. I think it would probably be the opposite. In the early days, when I started at the MAA, the assessment services were running on about half the staff and they had a huge pile of work and they were really struggling, and there were delays in the system. People were horribly overworked. I think the resourcing has been sorted out impeccably. The team structures that we have in place now seem to be working very well. The life cycle of disputes, particularly since the ones since May 2006 is coming down. There are going to be outliers. There will be cases in any system that will take a long time. There are a lot of others that we can get through quite quickly. The allocation is working faster than it ever has. We are seeing that the quality of disputes that we are reviewing to allocate to assessors after the application replies, I think we have ten days to review then, and when we reviewed them at that point, in the past we had been deferring a lot of cases because they were not ready. Most of them now are being allocated straight to the assessors.

The Hon. JOHN AJAKA: That is because of the front-end work that is being done.

Mr PLAYER: That is absolutely right.

The Hon. JOHN AJAKA: Are legal profession claimants receiving fair legal fees because so much work is being done at the initial stage and that is helping to settle, or is that one of the complaints that is coming out of the professions?

Mr PLAYER: It is, to a limited degree. I would absolutely agree that we need to better recognise the front-end loading of preparation of work, and we should have been doing that since May 2006.

The Hon. JOHN AJAKA: Otherwise, no incentive?

Mr PLAYER: Yes. The reason that that has not happened is that the reform process that we are going through was split into two stages; the first stage came on board in May 2006 and the second needed legislative reform. We had hoped that that would come close after the other reforms, but it looks like it will be October 2008 that it kicks in. The process that was discussed earlier by Scott Roulstone from the Law Society about the review of the costs regulations is one that I am heavily involved in. I have been involved with setting up the study jointly with the Law Society to look at the gap between solicitor/client and party/party costs, and then on the working party to review the costs. We would agree that that is definitely a factor that needs to be reviewed, because we want to make sure that the costs regulations and the stages and the way they are structured do not create disincentives to early settlement and also that they adequately compensate people for the work that they do. I think everybody in this scheme recognises that.

Mr STOTEN: This morning there was mention by Mr Roulstone or Mr Macken about the regulated costs for medical report fees and the like.

The Hon. JOHN AJAKA: I raised that question.

Mr STOTEN: There was a bulletin issued by the Motor Accidents Assessment Service in 2001 which says that medico-legal report fees are unregulated unless the matter has been the subject of a Motor Accidents Assessment Service or a Claims Assessment and Resolution Service application. So that claimants can apply to recover the full costs of those report fees up until the date of lodgement of a CARS or a MAAS application. With the front-end loading system of course, that should solve that problem.

CHAIR: Do you people have something to say on an issue that we have not asked you about? No. We thank you for coming to speak with us. It has been a very good hearing and I thank you very much indeed.

(The witnesses withdrew)

(The hearing adjourned at 3.45 p.m.)