REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY AND THE MOTOR ACCIDENTS COUNCIL—SIXTH REVIEW

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At Sydney on Tuesday 15 March 2005

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The Committee met at 9.15 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. D. Clarke
The Hon. A. R. Fazio
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. E. M. Roozendaal

Corrected Proof

BOWEN David, General Manager, Motor Accidents Authority, 580 George Street, Sydney, and

RIZZO Concetta, Manager, Insurance Division, Motor Accidents Authority, 580 George Street, Sydney, affirmed and examined:

GRELLMAN Richard John, Chair, Board of Directors, Motor Accidents Authority, and Chair, Motor Accidents Council, 580 George Street, Sydney, sworn and examined:

CHAIR: Welcome, this is the second time that the Standing Committee on Law and Justice has convened to review the functions of the Motor Accidents Authority. We have already learnt a great deal from you. Also, thank you for the work you have done during the year in Government responses and questions on notice. If there are any media in attendance the Standing Committee on Law and Justice has previously resolved that the press and public be admitted to proceedings of the Committee and that the media may broadcast sound and video excerpts of the public proceedings. In accordance with the Legislative Council's guidelines for the broadcast of proceedings, only members of the Committee and witnesses may be filmed or recorded. 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 or interpretation they place on anything that is said before the Committee. Would any of you like to make an opening statement?

Mr GRELLMAN: I would like to make a brief opening comment. Normally before this Committee I would make a brief introductory comment regarding the governance of the authority. I think as members are aware, we have a board of directors of six individuals. There are five non-executive directors and one executive director, who is Mr Bowen. The board obviously under the legislation has the responsibility to oversee the workings of the scheme, to review the activities of management and to generally satisfy itself that the scheme is fulfilling its various purposes. Obviously, through the general manager, we have access to the Minister. The board of directors schedules to meet about six to eight times a year. There is a good working environment and the board can confront difficult issues. We do not all agree on every issue, which, I think, is a healthy sign that we can have our discussions and conclude the meeting on good terms.

The Motor Accidents Council [MAC] is a group of what I would call stakeholders and service providers. The council is a very important part of the fabric of the scheme. Because we have stakeholders that perhaps might sit on opposite sides of a particular issue, we have a little bit more potential for debate within the council. Again, that is undertaken in a very positive and constructive way. The council as a group will not agree on every issue but the discussions are always cordial and productive.

I would regard the main purposes of the council as twofold. Firstly, it provides the Authority and clearly the board of the Authority with a gateway to the key stakeholders. The stakeholders or service providers who are particularly interested in the workings of the scheme have very easy access to what is happening with the scheme and what is happening with the legislation. Secondly, and as importantly, because we have interested service providers or stakeholders at that table, it provides us with a mechanism to hear from concerned parties, who are often articulating on behalf of their constituents, issues of concern. It really is a very good environment for communication. I mention that the council is meeting this afternoon at 4.30. I think I may have said this last year by way of invitation, but if Committee members would like to attend and observe a council meeting it will take place this afternoon at the Motor Accidents Authority at 4.30 and you would be very welcome to attend.

A number of issues have been before the council over the last 12 months since we have met with this Committee. I do not think I need to take any great time now to outline all of the issues that we have taken to the council, suffice to say that the council is very interested in areas like the Motor Accidents Assessment Service [MAAS], which is in many respects the key activity under the legislation to ensure that we have a functioning scheme. We provide the council with very detailed reports on how MAAS and the Claims Assessment and Resolution Service [CARS] are operating. Indeed, it is not unusual for the council to receive that information, because of the timing of the production, before the board does. So we try to maintain a very open line of dialogue with the council.

It is pleasing to note, and Mr Bowen will no doubt comment on this a little later, that MAAS and CARS are both operating in an increasingly efficient way.

Also the scheme's performance is a matter of interest to the council: What trends are we seeing? What are the key indicators as to whether or not those involved in motor vehicle accidents are being dealt with in a timely and appropriate way? Is there a reasonable turnaround in terms of the various stages a claimant might have to go through prior to the finalisation of the claim? So the council is very keen to see that the various ways we measure the scheme's performance are being reported to them. In addition, we did undertake a user participant consultation, which commenced, from memory, in late 2003. That was an attempt to find out from the people who are interfacing with the practical workings of the scheme whether or not there might be administrative amendments that we should make to the legislation or aspects of the way the scheme is administered to make it more transparent and more efficient.

Quite a number of amendments to the workings of the scheme have been brought forward and worked through into a line of thinking. The council members particularly were closely involved in helping us to ensure that if there were finetunings appropriate to be made in what is now a five-year old statutory scheme, then they ought to be carefully considered.

That is all I wanted to say at this point, Madam Chair. As I said when I commenced, the council is a valuable part of the governance framework of the scheme and the board, of course, is critical. I think it would be fair to say both the board and the council are very well served by the staff of the Motor Accidents Authority in making sure that we get the appropriate information on a timely basis.

In conclusion, I would like to say that as an authority we are very happy to be here and we are very happy to take any questions and do the best we can to answer them.

CHAIR: Thank you, some time during the year we will take up your offer to visit the board. Mr Bowen, do you wish to make an opening statement?

Mr BOWEN: I would like to take about 10 minutes to deal with some issues that are raised in our annual report but which, I think, warrant the attention of the Committee and have not really come out in the process of questions on notice. The two issues are health outcomes of people involved in motor vehicle accidents—which, I am sure, is a matter dear to your own heart, Madam Chair—and the conduct of the participants—particularly insurers and lawyers in dispute resolution—and, in particular, giving effect to the changes introduced by the scheme in trying to adopt a more informal, flexible and, hopefully, efficient process of resolving disputes.

The health outcomes matter has been very much on the Motor Accident Authority's [MAA] agenda for some time. I believe we have reported on this before but by way of background I mention again that in 2000 the Motor Accidents Authority and WorkCover engaged with a body called the Committee of Presidents of the Medical Colleges, which is exactly as it sounds. All the presidents of the medical colleges get together as a group. It covers all the experts and specialists in New South Wales and operates at both a State and national level. The result of those discussions was that we paid for some research, which the committee commissioned, into health outcomes. It was not a clinical study. It did not go out and talk to people who had been through the system. Rather, it was a literature and research search from all of the clinical studies that have been undertaken around the world in a variety of compensation schemes. So it needs to be looked at in that context.

The finding from that report was absolutely clear, that is, a person who gets caught up in a compensation system has a much poorer health outcome than a person with a similar injury who is not involved in the compensation system. It is really quite important not to attribute that to the conduct of the person who is injured. It really is an extremely complex matter to explain and it has more to do with, I believe, the stresses of the complexity of the compensation system, which can prolong injury and recovery. I regard that as being the most significant target that this scheme, and therefore the MAA, has to address. We have been doing so. Today I foreshadow one particular success we have had.

You will appreciate that the problem in dealing with this is that it is very hard to measure health outcomes without undertaking a clinical study in which you look at people before and after, or you look at groups with similar sorts of injuries. In the context of our scheme that is not always possible, particularly for our most prevalent injuries, but we have had one particular study. But there have been other ways in which we have looked at it. We started with some assumptions, which, I think, are quite reasonable. Firstly, the earlier treatment occurs the more likely it is that the person will get a better health outcome, and secondly, if the treatment is appropriate and reasonable to the person's injury it is more likely to lead to a better health income. Those are the areas where the scheme has made changes, and which have been successful. The first of those is the accident notification form, which has allowed for a simple system to bring a claim for a small injury by simply filling in a two-page form in conjunction with the general practitioner.

It clearly requires the insurer to accept liability and allows for the payment of the first $500 treatment. It is a much faster process of having a matter brought to the insurer's attention and having improved payment, and treatments are now occurring at a much earlier point in time, and payments are being approved at a much earlier point in time, and I regard that as being a significant success. The second was to try to get more appropriate treatments, and by that I do not mean to prescribe clinical practice for health professionals. At the end of the day the appropriate treatment will be determined by the treating doctors and other health professionals in conjunction with their clients. But there is clearly a need to provide better information to the health professionals about a range of treatment options. For that reason the MAA has taken very seriously the requirement put into the 1999 legislation that we produce treatment guidelines and information.

I know we provided this to the Committee on your appointment, but these are the sorts of documents that we provide—care protocols for brain injury, or ways to resolve medical disputes and insurers' guide to managing lower back pain. For most of these we will produce an insurer's guide, we will produce a guide to the medical practitioner and we will produce a guide to the claimant. We have physiotherapists' guides, but the ones I want to particularly to talk about today, because we have had a study in relation to it, are the whiplash guidelines, and they comprise a guide for medical practitioners, a guide for insurers and a simple little handout that is given by the medical practitioner to a person who sustains a whiplash injury. It talks about what is appropriate and what is not appropriate, because the one thing that was clear was that there was a lot of inappropriate treatment for whiplash that, in fact, prolonged the person's injury.

The reason we chose whiplash is that it is the most prevalent injury in motor vehicle accidents. More than 40 per cent of claims will involve a whiplash claim, and it can be quite debilitating if a person does not get on to an early recovery. In fact, it can lead to years of treatment for those who do not recover quickly and early. Those guidelines have been out there, with some hesitation on our part even though they wear put together by expert groups. We did not sit down and construct these internally. We commissioned expert groups of treating doctors, rehabilitation specialists and, of course, most importantly, physiotherapists to develop those guidelines and issued them. But there was some hesitation on my part as to how they would be accepted by general practitioners, as to whether we were telling them how to do their job. But the response has been overwhelmingly positive. We get an enormous number of requests for these guides because we found that GPs really found it useful to have some general information and some information they could give to their patient to take away.

Just before we made that intervention we decided that this would be an appropriate area to conduct a clinical study on whether or not producing this information and whether or not the scheme reforms had made a difference, and I can foreshadow today that in May/June this year we will release the report on a very detailed study looking at health outcomes for people with whiplash. The way it has occurred has been to look at three cohorts or groups of people who sustained whiplash at six-monthly, 12-monthly and two-yearly intervals by way of interview with those people. It is being conducted on our behalf by PricewaterhouseCoopers and a team they put together, including health economists and, most importantly, Professor Ian Cameron from the Rehabilitation Studies Unit. Recently they gave us a presentation on this and, hopefully, they will publish it in a medical journal come May, but the outcomes are quite stark. We have a 1999 group of people injured pre the scheme, a 2001 group and a 2003 group, and the final interviews will occur in September this year.

The payments for the people in 2001 compared to 1999 are much faster for the treatment payments—that is quite critical to the result—and the payments for the 2003 three group are faster again. For those matters, the 2001 claims are being finalised at an earlier point in time, so the person has made a recovery and they have been able to finalise their claim. For the 2003 group, which is post the guidelines, it is faster again. They are getting treatment earlier and they are getting it faster. But then by way of looking at the health measures we use what is called—and you may well know this, Madam Chair—standard form 36, which is a standard format used to measure population health. It is, in fact, a self-report so you ring up and there are 36 questions you use to get to the person's physical, social and mental wellbeing. The intent was to look at what was the level of disability two years after a whiplash injury, what was the level of pain being sustained by the person and what was the quality of life on a self-reported basis.

The difference between 2001 and 1999 showed a 46 per cent improvement on those outcome measures, which, when they reported this to us, the health economists in the group were sort of jumping up and down because this is a level of improvement that is nearly impossible to achieve in clinical interventions and, of course, what makes it even more profound is that that was occurring despite the fact, or probably in conjunction with fact, that there had been a reduction in payment. The reduction in payment was because people are getting earlier and better treatment and they were not getting it for prolonged periods of time. It would appear, even though the second study, the 2003 group, have not had a two-year follow-up, that on all of those measures there is improvement again from 2003 to 2001. I regard this as being the single best thing the scheme has achieved and that the MAA has achieved, and I know that Professor Cameron believes it is so critically important that he will seek to publish those results in an international medical journal.

We would very much like to give a formal presentation to the Committee on that. Sometimes when you have successes you want to crow about them, but I think this is a success not just for the scheme but, obviously, more importantly, for the people who sustain whiplash injury. It is quite important going forward. That is one active one that we have been able to measure. Ms Rizzo and I have been talking about how we can integrate health outcome measures into our scheme report, bearing in mind the difficulty of doing it without available data. But we would like to look at this for other cohorts in the scheme where there, perhaps, has not been a significant level of intervention. We are thinking of doing some sort of study involving lower limb orthopaedic injuries and just seeing whether or not we are making a difference there, and if we are not who can, perhaps, give us guidance as to how we press ahead in the future.

There is a range of other matters in the area of improved health outcomes where the MAA is either producing material itself or commissioning material to be produced, or through our Injury Prevention and Management Fund paying for research, community participation trials and other types of intervention. All of those are listed for the current year in our annual report. It is quite an extensive area, and we are reasonably proud again of our record there. On all of those matters we list them in the annual report by title. Obviously, all of them have quite a bit of paperwork behind them. If there is any particular one that the Committee is interested in we can certainly provide you with copies of those. The second issue I want to deal with is the conduct of clients, particularly the role of the insurers and the legal practitioners. The background to this really is to go back and look at what the intent of the 1999 reforms were in terms of changing claims management processes, and it was to deal with what we had identified through interviews with claimants and their frustrations with the claims process, which was with the time it took.

It took a long time from the point of entry and making a claim to having it resolved. There was a lack of information provided to the claimant by both the insurer and their own lawyer, and quite often they did not know where it was up to or what was happening. They were getting on to a medico-legal merry-go-round where their own lawyer was sending them for a medico-legal assessment, the insurer was sending them for one and this whole process of adversarial medicine built up. Clients were being sent for clinical examination often with no understanding of why they were there or what the purpose was or how it would be used. The final frustration was that when their matter did resolve, often on the doorstep of the court, it was out of kilter with what their expectations had been and they felt under pressure to finalise at the last minute. The intent of the reforms was to do two things. Firstly, to bring that whole process back to an earlier point in time for those matters that could and should finalise earlier and, secondly, to provide some out-of-court dispute resolution forums that were easily accessible, flexible and quite informal.

These were quite bold ambitions, which we certainly have achieved in establishing, but I do not believe we have achieved in the way that was intended because there remains, and I think this is the main criticism I have of the scheme, far too much of an adversarial approach by both the insurers and lawyers. They continue to engage in a battle and the claimant is the person who, too often, gets left out of this equation. In terms of the insurers, we have significant controls over the way they behave and we do invoke those. Since 1999 we have put in place treatment rehabilitation and attendant care guidelines to moderate their behaviour in how they deal with claimants on all of those matters. We have put in place claims-handling guidelines that have detailed and quite prescriptive obligations on insurers about how and when they are to provide information to the claimants so that we require them to start to fill that communication gap. We have established the Motor Accidents Assessment Service with both the Medical Assessment Service and the Claims Assessment and Resolution Service and, despite some teething problems and delays that were caused by the establishment of those services, as the Chairman indicated, we have them at a point now where they are running pretty close to the optimum they can, but I believe they are still being accessed too late in the claim.

Throughout late 2003 and 2004 the MAA engaged in quite wide consultation on the procedural aspects of the scheme and particularly on those assessment services. We engaged John Hannaford to facilitate two dialogues that we had with all the users, and we were quite open about inviting those users who were most critical of the scheme. So it was not getting together a sort of chummy little group to say, "How can we tinker with it?" It was confronting what the users saw as being the obstacles to good dispute resolution and what they saw as being the means to address those.

The result of that is that there will be some further procedural changes to the scheme this year. We have made some recommendations to the Minister for some enabling amendments to the Act but the bulk of those will be made through changes to those guidelines and changes to the assessment guidelines. But it will still require a change in attitude by the insurers and the legal profession that we are yet to see fully embraced. I think that the insurers, probably because in part they have been driven to it by the level of regulation and by our auditing system, and partly because it may have finally clicked that good claim management actually leads to a better economic result, have not moved a long way.

One interesting piece of information that I thought should have been self-evident to the insurance industry was in fact from a 1998 law and justice committee report, which reviewed the whole motor accidents scheme. In 1998 the Committee looked at the level of litigation by insurer and the outcomes by way of average claim payment. Normally, you would think that you would litigate a matter in the belief that it will reduce the payment you are going to make. I think that would be an insurer's motivation to run a litigation. In fact, it was quite the contrary; the more a matter was litigated, the higher the claim payments. I always thought this was so self evident that it was in their own interests to try to resolve matters early but getting that home truth through to the insurance industry has taken some time. However, I think we have seen an enormous turnaround in the propensity of the insurance industry to litigate.

The good members of the legal profession—and that is the bulk of them—the ones who certainly are big users of this system, the bulk of the accredited specialist practitioners, make use of the new assessment procedures and I think are generally supportive of trying to resolve matters quickly, expeditiously and at a fair return for their claimant. But the fact is that we have a number of legal practitioners who continue to, I call it playing the game. CARS assessors have reported to me that assessment conferences take place in a small room. It is supposed to be sitting around the table. It is supposed to be an informal process and a barrister will turn up for the claimant. In the words of the CARS assessors, they are playing to their clients. They are not there to try to solve the matter; they are mounting an argument for the purpose of impressing the client. I think we need to work much harder with the legal profession to get what is the attitude of those whom I regard as the good practitioners who use this scheme well to be adopted universally.

The Committee may wish to think about whether it would be of some assistance to have some minimum standards imposed on legal practitioners in relation to their claimants about communication and about ensuring that information is provided in a timely manner, in the same way that there are obligations on insurers when they deal with claimants. I will leave that issue here, but if

we do not come back to it during this year I believe we will have to at some point in the future. The further matters that I want to deal with are, I believe, likely to come up during the course of the Committee's questions so I will proceed that way. Then, perhaps at the end if there are some matters I feel that we would like to come back to, I hope that we have your permission to do so.

CHAIR: Ms Rizzo, do you want to make a statement?

Ms RIZZO: No.

CHAIR: I want to ensure that the witnesses know that they may take questions on notice. If we do not get through all the questions today, there will be more questions on notice at the end of today's session. Most of the questions will not be directed at one person specifically so anyone who is comfortable can answer. We will accept any documents that are tendered. For example, we are happy to receive the documents that you are discussing at the moment. Are they public documents?

Mr BOWEN: These documents are all public, yes.

CHAIR: During last year's review the MAA advised the Committee that in the coming year it would concentrate on examining the trends within the new scheme rather than making comparisons between the new and the old schemes. I think we had quite a lengthy discussion on this issue. Can you comment on the process of analysing the trends within the new scheme, compared to the process of comparing the old and the new? For example, what problems or difficulties are inherent in the process?

Ms RIZZO: We attempted to provide information on an accident year basis in our annual report. If you have that handy, on page 108 we have provided basically a snapshot as at the date of the annual report, which is June 2004. That presents a profile for each accident year, and you will see that there are various trends. The problem with doing this is that on one hand it is very informative in that you get an idea of what is actually happening to date as far as how many claims have been lodged, what proportion of those claims has legal representation and what proportion has been finalised, et cetera. The difficulty with looking at this sort of information is that each one of these accident years has to develop. If you look at accident year one, and we are looking at it as at June 2004, it has had almost five years to develop, for people who have had an accident to lodge claims, and for that to develop.

By the time you get to year five, which has just happened, it has had hardly any time to develop. So although you can look at that and see 4,000 claims for year five, compared to almost 14,000 claims for year one, it does not mean that in year five there have been a lot fewer accidents and a lot fewer people making claims. It simply means that the time has not elapsed for them to put in a claim. Although it is a good idea to look at each accident year, the fact is that, because there are different stages of development, it is difficult to compare them. What we do is look at each accident year at an equivalent stage of development, but if you wanted to do that for five accident years you would have an enormous amount of paper to go through. So we try to select the most salient features to be looked at.

We were forced, even in this, while we were trying to look at each accident year in order to make comparisons between the new and the old schemes, to select accident years that were fully developed, and we have done that on page 109. There we have selected the last year of the old scheme and the first year of the new scheme because they have both had almost an equivalent amount of time to develop.

Similarly, on page 109 we have put down the amount of payments and also the incurred costs according to accident year. If I can read out some numbers, for accident year one, the incurred costs are $885 million; accident year five, the incurred costs are $292 million. That is a huge difference; it is about one-quarter. However, as I said before, those costs simply have not developed.

So I guess that is the difficulty we have always had in trying to provide you with information, provide information to the public, on an accident year basis. It takes a long time for each accident year to develop. What we have had to do then in presenting our table on page 104 is that we must rely on actuarial estimates for what is happening in any accident year. The figures on page 104 are on the

basis of underwriting year so it is slightly different, but we have had to rely on actuarial estimates to give us an idea of how each one of those underwriting or accident years will develop. So you will understand that when we look at accident year five or even accident year four there is a lot of estimates in whatever goes into those figures because it simply has not developed, whereas for the earliest accident year there are a lot less estimates, there is a lot less guess work. However, there are still estimates there because even for the first underwriting year about 80 per cent of claims are finalised but only about 50 per cent of the estimated incurred costs have been paid out. So I suppose the bottom line is that with presenting by accident year we come across that difficulty with the development stages.

CHAIR: I had another question about overall trends but I think you have answered that. On page 8 of the MAA's annual report you stated that the corporate plan was revised in 2004. Can you tell us what the main points of difference are between the old and the new corporate plans?

Mr BOWEN: Two thousand and four was the second year of the corporate plan. The difference relates to the priorities, not to the general background and lead in and description of our role. So the difference was the corporate priorities for the 2004 year. That is the same in the current year, and next year we will engage in a new three-year plan which will involve reviewing mission and vision and corporate role once again.

CHAIR: Was there a difference in the priorities between the old and the new corporate plans?

Mr BOWEN: Yes, there were. I struggle to remember the old ones.

CHAIR: There is a revision of the corporate plan on page 41.

Mr BOWEN: Yes, for comparison purposes. I just need to pull out the old one. In 2003-04 the priorities were our continuous improvement project in the motor accidents assessment services. That is carried forward in the 2004-05 priorities as part of what we call the scheme reform package and the MAAS dispute resolution, so that is a carry forward.

The second priority in 2003-04 was a review of the prudential compliance role. That was an internal audit and we provided a copy of that report and the management response as an attachment to the replies to the Committee's questions on notice. So, that is no longer part of the 2004-05 plan. For 2003-04 there was a review of the grants program, again initiated by the board. We have provided a copy of the Pricewaterhouse review and our response to it in the attachments to the Committee's questions. That issue is going forward and is part of our corporate plan, but it is no longer a corporate priority.

The final one for 2003-04 was to develop a community participation program for people with spinal cord injury. That is now well up and running and is to the point of having been implemented, but the evaluation will not occur until late this year or early next year. By that time we will be able to report on it. The additional matters in 2004-05 were to provide advice to the Minister in relation to a lifetime tenant scheme. That priority was part of the current corporate plan and is ongoing, to turn the review of the grants program into a review of the strategic direction of the injury prevention and management program so that we do not look at only the grants but at the whole package of what we do in that area.

The final priority for 2004-05 was to review our insurer compliant strategy. We have done that and currently have a draft compliant strategy, and that has been issued to all of our key stakeholders for comment. We will have that finalised hopefully within the next two months.

The Hon. GREG PEARCE: I want to explore the issue of where the savings that have been gouged have gone. Page 94 of the annual report indicates that average city-metropolitan CTP premiums were $343 for the June 2004 quarter, compared to $339 in the June 2003 quarter. Average premiums over all New South Wales vehicles was $332 in the June 2004 quarter compared to $328 in the June 2003 quarter. No more savings have been passed on to the drivers and owners of cars in this State. If you look at the diagram in that paragraph it shows that the premiums have effectively plateaued since 2000.

Mr BOWEN: It represents a saving in that claim payments will be inflating, usually in line with average weekly earnings. So there are, in effect, real savings there. More importantly, outside this reporting period, on 1 July 2004—the current year but not part of the current reporting period—there were further premium decreases. Two insurers refiled for quite significant drops in January this year. So the trend has continued to be down.

The Hon. GREG PEARCE: What is the average in January?

Mr BOWEN: We do not have a January average. We can provide the average to the end of December.

The Hon. GREG PEARCE: Yes, please take that on notice. Last year we spoke about the insurer profit levels. You then indicated that 5.5 per cent of gross premium was a reasonable profit level, and that was in the context of evidence that is now reproduced in relation to Taylor Fry's calculations. They indicated that the range was 4.5 to 6 per cent of gross premium for the representative insurer. You would recall that we discussed the Taylor Fry report, which showed that for the first year of the scheme profits were expected to be about 23 per cent. You have now produced this table on page 104. On a quick calculation, for 2000 the estimated profit is $315 million, which is roughly $209 million in excess of the percentage expected; it is 23.77 per cent of premiums. Can you give an indication of what percentage the remaining three years are on that table?

The Hon. AMANDA FAZIO: Could you clarify that.

The Hon. GREG PEARCE: I am referring to page 104 of the annual report.

The Hon. AMANDA FAZIO: It is also covered in the Australian Lawyers Alliance Commission report on page 11.

The Hon. GREG PEARCE: Yes.

Mr BOWEN: I will deal with the two aspects of the question. The responsibility of the MAA is to consider when and insurer files for a premium whether that premium is reasonable. We have a statutory function to ensure that the premium provides an adequate but not excessive return on capital. The Taylor Fry report that you referred to is part of our basis of doing that assessment, in that we regard their indication of a 4.5 to 6 per cent profit, expressed as a percentage of premium, as being that which would be adequate. Obviously there is a range which would fall into the category of being "not excessive". Therefore the range that the MAA has allowed in premium filings has been between about 7.5 and 10 per cent of gross premium; it will vary because there is different capitalisation of insurers.

At the time we consider that, it is a construct build-up of the costs of issuing policies and the insurer's acquisition costs associated with writing the business, and the risk premium and that allowance for capital. The single biggest variant is the risk premium. In this scheme two things have happened: firstly, when the insurers filed in 1999, they filed on the basis of setting a risk premium that assumed the scheme reforms would be about 75 to 80 per cent effective. The MAA took the view at that time that that was not unreasonable, because the experience following the 1995 amendments had been that the scheme reforms had achieved about that level of impact; that they have been implemented at about 75 to 80 per cent of their effectiveness and that there was a huge amount of uncertainty giving the extent of the scheme changes and the introduction of new procedural tests and, of course, how well the threshold by way of a whole person impairment test for non-economic loss would work.

Subsequently two things have happened. Firstly, the scheme has performed at least at the level assumed in 1999, meaning that the risk premium in the 1999 filing, in hindsight, was too high. Secondly, something that was not predictable by anybody, the claim frequency has dropped. That is not something that has happened only in New South Wales. I and my counterpart in all the Australian States—and indeed it seems to be something of a western world phenomena at the moment—are grappling with the fact that fewer accidents are occurring. More importantly, the profile of injuries out of those accidents is less severe. So, when you have that type of trend the assumption is that you do

not know until some years down the track that it is a trend. We now know that and that is reflected if you look at the table on page 104. Even though it is dealing with estimates, the table shows that it does tail off.

The Hon. GREG PEARCE: It does not tail off, but certainly it is reducing. In 2001 the excess profits are $177 million, which is still 21.34 per cent of premiums. In 2002 it was $170 million, which is 20.64 per cent of premiums, so it is definitely dropping. In 2003 the excess was $106 million, which was down to 15.63 per cent of premiums, but still nowhere near your upper level of 10 per cent. Do you have figures for 30 June 2004?

Mr BOWEN: These are September years, so we do not have that.

The Hon. GREG PEARCE: Why would you not have worked that out yet?

Mr BOWEN: Primarily it will be straight out of our filings, because it remains an estimate of the risk premium.

The Hon. GREG PEARCE: I understand that, but it is another year on.

Mr BOWEN: We can give it to you on the basis of the last filings.

The Hon. GREG PEARCE: Yes, that is fine, you can take that on notice. You can provide an update of that table.

Mr BOWEN: Generally, care needs to be taken about this is saying that this represents actual profit. There is still represents an estimate of profit, although I would say that given the level of development the estimate is reasonable for the year ending September 2000. Things could happen that could affect that, but given it applies and assumption that the large claims, the matter still to be finalised, will finalise on much the same basis as they did in the scheme. That is not an unreasonable assumption, because nothing affects damages levels to large claims. That is quite a reasonable indication of the likely ultimate cost and the likely profit. Obviously as you go forward that is less and less reliable, and more and more subject to potential distortion.

The Hon. GREG PEARCE: You say that the large claims are the ones not resolved at this stage. What percentage of claims are still not resolved from the last quarter for example? Can you give the figures for last September?

Mr BOWEN: I feel it was about 80 per cent. I can provide an update on that.

The Hon. GREG PEARCE: Page 108 of your report states it was 85 per cent at 30 June 2004.

Ms RIZZO: I can clarify that. The table on page 104 refers to underwriting years and the 85 per cent refers to an accident year. So the accident year will be more developed than the underwriting year, because it is shorter. They are not contradictory, even though they appear to be.

The Hon. GREG PEARCE: Can we assume 15 per cent of claims are still outstanding for the first accident year?

Ms RIZZO: Yes, and for the first underwriting year it is about 20 per cent.

The Hon. GREG PEARCE: What information do you have on those claims as to whether they are large or speculative? What testing have you done to establish whether they are going to be paid out or not?

Ms RIZZO: The information we have on each individual claim is the insurer's estimate of that claim, but what the actuaries do when they are preparing the table on page 104 is that they not only look at that but they look at the development that those estimates are likely to go through on the basis of previous large claims.

The Hon. GREG PEARCE: And what is the sort of trend that the actuaries adopt? Do they generally come to the conclusion that the payouts will be less than the insurers' estimates?

Ms RIZZO: No, they generally come to the conclusion that it will be more, and it is more for a number of reasons: it is more on the basis of individual claims because those estimates are just insurers' estimates, and with large claims they do tend to develop. There is also the case that there are claims that have still not been reported, and large claims do take longer to be reported. So there are two issues there that the actuaries have to take into account.

The Hon. AMANDA FAZIO: Reported to whom?

Ms RIZZO: To the insurer. So it takes quite some time for some people who have been in accidents to lodge a claim.

The Hon. GREG PEARCE: There are not too many claims five or six years old though.

Ms RIZZO: There are still a few. So there is a correlation between late-reported claims and the size of claims, particularly, for instance, to do with children who may have been involved in some horrific accidents and compensation is almost the last thing on people's minds at that stage.

The Hon. GREG PEARCE: So really we can take it from that that the actuaries' table is likely to be on the higher side rather than the lower side of ultimate results?

Ms RIZZO: The actuaries' estimates are estimates and what we have reported is their central estimate. The actuaries will have a band of confidence around the central estimate, but we have reported their central estimate.

Mr BOWEN: Can I just add to that, the assumption that they apply when looking at prior large claims is to include an allowance for inflation, which is naturally occurring, and sometimes to include an allowance for what is called superimposed inflation, which is the rate at which claim payments are inflating over and above average weekly earnings. But, at the moment, there is no apparent superimposed inflation in large claims, so they are not being inflated from that point of view, whereas previously under this scheme large claims have been in the area that have grown at a rate faster than inflation. At the most extreme end of the large claims the level of inflation is still enormous. Say, for example, the single largest claim for a motor vehicle accident has doubled in the last 5, 6 years from about $8.5 million to close to $16 million. That is way ahead of AWE and if that was to apply to all large claims then those estimates would be significantly underestimated.

The Hon. GREG PEARCE: Again, just trying to understand where the savings have gone, at the top of page 109 of your annual report you say that preparing year one of the old scheme at the same stage of development, the total incurred claim costs on reported claims is $225 million lower, so the savings are $229 million. And that basically equates to the fall in premiums. Is that what that means?

Ms RIZZO: Yes.

The Hon. GREG PEARCE: Just on that same page, if we look at the last total on that page which relates to finalised claims under the old scheme and the new scheme, the interesting thing is that for non-economic loss in the old scheme—am I reading this correctly—60 per cent of claimants received a payment and under the new scheme, just on the far right of the table, we only expect 6 per cent of claimants to receive a payment?

Ms RIZZO: That table is on finalised claims only. So what it says is, yes, at the equivalent stage of development under the old scheme 60 per cent of claimants had received NEL, and under the new scheme 6 per cent of all notifications had received NEL. But if I could just go to an answer that we prepared to the questions on notice to give you a fuller picture of what is happening with non-economic loss.

The Hon. GREG PEARCE: Just while you are looking for that, again on that table the figures for past economic loss and future economic loss show that there is quite a drop in the number of claimants who actually receive a payment for that?

Ms RIZZO: Yes, as far as past economic loss is concerned, I should just remind you that the legislation changed in that the first five days lost salary was not paid.

The Hon. GREG PEARCE: I understand that the legislation changed and the legislation changed to take payments away from people, that is understood. You are going to refer to one of the answers on notice?

Ms RIZZO: Yes.

The Hon. GREG PEARCE: Again while you are looking for that, last year in the responses to questions on notice—and we perhaps did not get around to asking this question—we asked for a rundown of the total actual payments. It was question number four which was taken away from the hearing. At that stage there had been $407 million payments under the new scheme, and you recall you gave us a table which showed the amounts for economic loss, which were down on the old scheme, and treatment was up? Other costs were down as well but non-economic loss was down from $175.8 million to $48 million. I wonder if you could—and you will probably have to take this on notice—give us that same table for the current time, given the fact that even looking at the table on page 102 there has been $852 million paid out now?

Ms RIZZO: I will take that on notice. I have found this information on non-economic loss. It is page 33 of the questions on notice. It is in answer to a set of questions the last of which is "what percentage of completed claims". I might just read it out. Excluding interstate payments and ANFs, there are 13,390 year one full claims, of which 11,466 are finalised, so that is 86 per cent. Of those finalised claims 6 per cent have NEL payments, and the average payment is $78,910. In relation to the open claims there is a further $55 million that has either been paid or incurred on 515 of those open claims, which represents an average payment of $107 thousand.

So in total for year one, $119.3 million has either been paid or incurred on year one claims, either open or finalised, which represents 10 per cent of full claims having either an NEL payment or an NEL estimate, which is equivalent to what was expected at the time that the legislation was introduced where the figure that was discussed was that non-economic loss should be provided to the 10 per cent most seriously injured people.

The Hon. GREG PEARCE: If you could give us more up-to-date information that would be useful.

The Hon. DAVID CLARKE: Mr Bowen, you said that the new scheme has meant quicker payments. Is it not also true to say that it has meant far smaller payments to injured parties?

Mr BOWEN: Yes, it has meant smaller payments for those people who would have previously received non-economic loss and who no longer receive non-economic loss, and some reduction for other small claims where the loss of the first five days income compensation is a significant component.

The Hon. DAVID CLARKE: I think you said that there are smaller payments because there has been quicker treatment, or it may have been Ms Rizzo who said that. Would you agree with that statement that one of the reasons that there are smaller payments is because there is quicker treatment?

Mr BOWEN: Was that in relation to my opening comments?

The Hon. ERIC ROOZENDAAL: I think you said that in regard to treatment for whiplash.

The Hon. DAVID CLARKE: In relation to whiplash.

Mr BOWEN: That was in fact in the context of indicating that the focus on improving health outcomes can actually not only make people better but can also reduce the cost when they are no

longer going for continuing lengthy periods of what is unnecessary therapy. But it is not a broad conclusion in relation to the scheme.

The Hon. DAVID CLARKE: Rather, in relation to whiplash, smaller payments resulting because of quicker treatment. Could it not be the other way around? Could it not be that smaller payments have meant quicker treatment because injured parties have not really found it worthwhile in pursuing some of these claims because of the cut in benefits?

Mr BOWEN: The quicker treatment really is measured through the access to treatment—through the accident compensation form—and the date to payment by the insurer. I regard both of those as being quite positive. The access through the accident notification form has significantly reduced the time to the payment for treatment and we are well aware that for those people with small injuries whether or not they were going to get a payment for it was quite relevant to their decision as to whether they undertook treatment. Now that there is the knowledge that they will get the first $500 paid for, they can get access particularly to those things like physiotherapy, which they would not have otherwise been able to claim through Medicare. So the outcomes here seem to be that people are accessing the system quicker through the ANFs and that is resulting in quicker treatment.

The Hon. DAVID CLARKE: With motor accident claims is it the case that insurance company profits have gone up or down under the new scheme, as a percentage of premiums written?

Mr BOWEN: On the insurer's filings, that is when they file with us, there has been a slight increase in the profit level that we have allowed from 7.5 to over 8. That is a result primarily of higher capital adequacy requirements imposed by APRA and it is not really significant. The level of profit which insurers may ultimately realise is certainly higher than anticipated, and we have discussed that. In terms of profit taking out of the scheme, while there have been releases of capital from CTP they would be in relation to reserves held against old scheme claims. So there has not actually yet been any profit taken out of the new scheme, but we anticipate that insurers would start to release capital from new scheme monies as they pay out their liabilities, probably in the current financial year. Bearing in mind not all insurers operate on the same financial year.

The Hon. DAVID CLARKE: So would it be a fair assessment to say that profits are up for insurance companies partially because claim payments are down, or payments allowed under the new scheme?

Mr BOWEN: Profits are likely to be up under the new scheme because claimed payments are down, partly as a result of the scheme changes and partly, in fact quite significantly, as a result of a change in casualty and claiming rates.

The Hon. DAVID CLARKE: So there is a direct correlation between the two?

Mr BOWEN: Absolutely.

The Hon. DAVID CLARKE: Profit up, payments down. Would that be a very quick summary?

Mr BOWEN: That is correct.

The Hon. DAVID CLARKE: You made reference to barristers conducting these assessments, and I think you said that some assessors had stated that some of these barristers are trying to impress their clients. This was significant enough for you to raise here today. Is it not the case, on the other hand, that they are actually trying to get the best deal for their injured client rather than trying to impress?

Mr BOWEN: I think the problem is that there are practitioners who come to this thinking that the best outcome for their client is to fight a matter all the way, and whose only interest is in maximising the level of compensation. They erroneously believe that the only way they can do that is to fight it all the way and, therefore, there is a reluctance to engage in settlement discussions and earlier point in time; there is a reluctance to make use of the informal procedures to resolve claims and a belief that it will be better for the claimant to go through the litigation mill. I really wish sometimes

they would ask claimants what they would like out of it because the great bulk of claimants would like the matter to be over and done with earlier. But these matters under the new scheme are starting to drop back into similar sorts of delay patterns that we experienced over the aisles scheme, and that is going to take away a lot of the benefits of the scheme changes and a lot of benefits of having informal and quite flexible procedures.

I very heavily qualified my statements by saying that this was certainly not universal and certainly not amongst the majority of the users. We have many legal practitioners, with whom we are in regular communication, who recognise that this new scheme offers a wonderful opportunity to get a fair result. The decision makers at CARS are not bureaucrats; they are senior accredited specialist practitioners with coalface experience, who have the respect of all their colleagues. Their services should be utilised to resolve these matters rather than by way of adversarial proceeding.

The Hon. DAVID CLARKE: What is your anecdotal evidence to suggest that there is a reasonable proportion, at least sufficient for you to feel it necessary to mention here today, that barristers are there trying to impress the clients?

Mr BOWEN: I was relaying an example by way of a comment I had received from a CARS assessor. I was using that example to support a principle that some practitioners are losing their focus on what should be the important element of resolving the claim for the purpose of continuing and adversarial mindset. I know that that is lawyers' basic training but the legal profession over the past 10 years in a whole range of areas, certainly not only motor accidents, has, I think, started to come to grips with the fact that litigation is not the best way to solve disputes and has actively embraced alternative means. In my opinion, those practitioners who do so get far better results for the clients, because they get a quicker result as well.

The Hon. DAVID CLARKE: Is your view on the attitude of some barristers—you qualified it by saying "some barristers"—based on this comment by one assessor, or is it based on general feedback that you get?

Mr BOWEN: It is based, also, really on a question as to why barristers are needed at CARS assessments at all. CARS was intended not to replace court proceedings. We have a mechanism for those matters involving significant liability issues or where there are really complex legal issues. In that instance the parties can get an exemption from the CARS process and take those matters off to court, where they rightly belong and where they will be properly argued. This is a forum in which the parties should be sitting down and working out exactly what is in dispute and where they differ, and come to an agreement; and, if they cannot come to an agreement, have an assessor make a determination.

The fact is for those people who use the system well have great bulk of the matter is finalised at a preliminary conference stage where the assessor sits down with the parties, usually the solicitor and the insurance representative. They go through all of that and suddenly realise there is not that much there, and they go away and finalise it. The finalisation rate on matters after preliminary conferences is astounding and it is really because the party's lawyer and the insurers are finally turning their mind to it. The fact that they can only do this two-and-a-half, three or three-and-a-half years down the track is, I think, the most sustainable reason to criticise the way in which they are participating in this scheme. They should both be turning their minds to how they could resolve the matter after 12 or 18 months, and they should make that a continual process.

The Hon. DAVID CLARKE: Are you suggesting or is it your view that barristers are not really necessary at assessments?

Mr BOWEN: I have that view. I think an experienced solicitor could easily look after the client's interests.

The Hon. DAVID CLARKE: Should that be the subject of legislation, in your view?

Mr BOWEN: No, there will be circumstances in which, because of his or her location, a solicitor cannot attend a conference, or they may have little experience in that area and would want to

brief it out, but I really do not see the need for the great majority of these matters to have an instructing solicitor and counsel attending a CARS assessment.

The Hon. DAVID CLARKE: But you are not suggesting that that be legislated for?

Mr BOWEN: No.

The Hon. DAVID CLARKE: You said that, in your view, there needed to be minimum standards for legal practitioners. You felt there was a need to impose minimum standards. Do you have any reports, data or suggestions in that regard?

Mr BOWEN: The matters I would be looking at are certainly not to the sorts of levels of obligations we put upon the insurance industry, but it would be about timely response to matters that have come from insurance companies, in the same way that insurers have standards for timely response to matters that are raised by the claimant or the claimant's legal representatives. It is one of the unfortunate causes of delay is that matters can sit in a solicitor's in-tray or be put onto the file and be chased up on multiple occasions—in some instances. Certainly not the majority. The majority get it in and get it out, and they make it work.

The Hon. DAVID CLARKE: Are you specifically suggesting that further standards should be imposed on lawyers in respect to claims brought under the legislation?

Mr BOWEN: I certainly think that there should be a full and frank discussion between the authority and the legal profession, solicitors and barristers involved in this area of work, about such standards. I believe that the great majority would comply with what I would think I necessary minimum standards anyway.

The Hon. DAVID CLARKE: Have you instituted any such discussion?

Mr BOWEN: We have not at this stage, because we have been getting our own house in order through the review of the assessment services. We have identified the need to take out matters that are coming unnecessarily to those services so that the finalisation of matters is not dependent upon a date being set for a CARS hearing or upon a date being sent for a medical assessment. Rather that those matters are identified early in the piece so that if there is a legitimate dispute there is an appropriate forum, but that we are not triggering matters coming there and it is only after there has been that trigger that the parties are turning their minds to whether or not there is a real dispute.

The Hon. DAVID CLARKE: Thank you. Mr Grellman, just one question: you said one of the purposes of the Motor Accidents Council is to deal with concerned parties. Who are some of these "parties" you spoke about and what are some of their concerns?

Mr GRELLMAN: Most of the information that comes to the council would come through legal representatives who sit on the council. They may, for example, have a client or become aware of a claim where a head of damage, which is not caught by the legislation but might be worthy of consideration for inclusion through scheme amendment, ought to be discussed. Those will from time to time be brought to the council for discussion and consideration. The council does not have any decision-making authority so it is really a forum for dialogue. In the event that there is a suggestion, to perhaps consider amending the legislation, thenthat would ultimately be considered by management and discussed by the board, and then forwarded it to the Minister for consideration if it was thought to be appropriate.

The Hon. DAVID CLARKE: A supplementary question to that: you have said that there may, for instance, be an application or proposal that the being new heads of damage. In other words, have there been specific requests for new heads of damage? What has been the result of that request for new heads of damage?

Mr GRELLMAN: David might have to help me, but I do not think that at this point we have been overly inclined to open up new heads of damage—for the primary reason that, as has been made clear already this morning, the scheme is still developing and until we have some greater certainty as to the functionality of the scheme, we consider that it would be inappropriate to introduce new heads

of damage. But we do not have a closed mind on the issue. If a case worthy of consideration were to be put forward we would have an open mind. So far it has been "no". I think that is right.

Mr BOWEN: I can in fact correct the chairman on that. There was, over 12 months ago, a lengthy discussion in council about the potential for including a death benefit for parents of a child killed in a motor vehicle accident. That was dealt with at the last Committee hearing. The deliberations of council were reported to the Committee at its last hearing, at least by way of answer to a question.

Ms LEE RHIANNON: My question is about premiums and four-wheel drive vehicles. In its last report the Committee recommended that the Minister consider whether the cost of claims involving four-wheel drive vehicles is higher than claims for other sedans, and whether a premium adjustment is necessary. The Government's response states that the Motor Accidents Authority [MAA] is undertaking a review of four-wheel drive vehicle claims experience, to be finished by the first quarter of 2005, at which point the MAA will provide advice to the Minister. Will you describe the nature of the review, please?

Mr BOWEN: Ms Rizzo might need to fill in the technical details of this review, but essentially we have data-matched claims by type of vehicle with the Roads and Traffic Authority [RTA] database to look at whether the experience of four-wheel drive vehicles is different to that of sedans. We have yet to deliver that report to the Minister. We are probably about two or three weeks away from doing so. We want to conduct some integrity checks on it. Our suspicion is that it will not show any significant difference in claims experience for four-wheel drive vehicles compared with sedans, but that does not mean that I do not think four-wheel drive vehicles continued oppose a road safety problem.

There may well be reasons to explain the claim pattern to date, and they would have to do with two things: firstly, four-wheel drive vehicles may well be safer for the passengers in them, compared to the passengers and other road users who might be involved in an accident with them. Secondly, the big four-wheel drive vehicles, which are probably the most significant problem at the moment, are still quite expensive and a real upsurge in use of them is only really up to a five-year phenomenon. Speaking with my road safety hat on, I have a considerable concern about what problems they may pose 10 years down the track when our high-risk young drivers are buying very large, powerful four-wheel drive vehicles. The combination of a big vehicle and a risk-taking driver may really pose a significant road safety problem.

The other element that is likely to come out in our analysis is that there is a significant difference between big four-wheel drives and small four-wheel drives, but that may simply mirror a difference that there is inexperience between big sedans and small sedans. We were working frantically to try to have it ready by this date, but it has been a tremendously difficult data-matching exercise. We have had to go back and identify each four-wheel drive vehicle because it is not recorded on the face of the RTA's drives database.

The Hon. AMANDA FAZIO: Will the report you are doing differentiate between four-wheel drives that have collided with other vehicles and four-wheel drives that have collided with pedestrians, and then do the comparative costings against sedan crashes and sedans that have collided with pedestrians?

Mr BOWEN: It is looking at the cost of injury caused by four-wheel drives compared with the cost of injury caused by sedans. So it is whether that vehicle was at fault, not whether that vehicle was involved, and it will differentiate by the nature of the person who was injured as well as by the vehicle.

CHAIR: Would the Committee be able to have a copy of that report when it is completed?

Mr BOWEN: You will need to ask the Minister for that; our role is to deliver it to the Minister.

(Short Adjournment)

CHAIR: The Committee, following the first review it put together, asked questions about the process and whether it was the best process. Each year we invite the stakeholders to participate in the review of the MAA and the MAC by nominating issues and specific questions for the Committee to consider putting to the MAA as questions on notice prior to the hearing. Would any of you care to comment on the productiveness of this method of involving stakeholders in the review?

Mr BOWEN: We find that the process is extremely useful. We obviously attempt to balance a fully and comprehensive report in our annual report with not providing an unnecessary amount of information that simply serves to screen the important issues. The process of stakeholder questioning allows that to be filled out in a way that is of particular interest.

I suppose my only concern with it is that to date the main and virtually all the questions have come from the legal profession, which is quite legitimate; they have a big interest in this scheme. But it perhaps tends to distort a full picture of the scheme when you are focusing entirely upon the matters that are of interest to the legal profession.

I understand that you do invite submissions from a broader group, but perhaps there might be some way of encouraging them to put forward their views on how it is working. I would be particularly urging you, if it is not done by way of submission, to invite some of the senior medical people involved in this scheme along, some of the people whom we have appointed as medical assessors who could provide, I think, quite a different view on the operation of the scheme from the point of view of the matter I raised in my opening comments about health outcomes and the like.

Obviously, the insurance industry is invited. They probably feel that they have provided enough material to the MAA already, but I think it would be good if they were encouraged to give their views on the operation of the scheme and perhaps be answerable themselves on some of the matters that are of interest to the Committee. It is entirely up to you, if it is not done by way of submission, whether you would wish to invite witnesses on those sorts of areas.

Ms LEE RHIANNON: Page 15 of the annual report states that the compliance branch received 84 complaints relating to the way CTP insurers managed claims, relating mainly to non-compliance with the claims handling guidelines. Can you describe the complaints process, including the kind of outcomes that are achieved through the process?

Mr BOWEN: Yes, we certainly can, but we have a document that may be of more assistance to you. We have set out the process in a reasonably brief factual document, which I do not imagine we have with us. The document sets out a flow chart for how a complaint is dealt with. Our approach is to send it initially to the insurer for an internal review, and if that does not succeed in solving the matter it is then investigated within the MAA's compliance branch. We obviously stream those investigations, depending upon the level of seriousness and the level of potential breach. The document sets out the enforcement options that are available to the MAA, the circumstances in which they would be used, and the responses from the insurers that could mitigate or lessen the enforcement penalty.

So this particular report, for example, you will see—not here, I think it is set out in an answer to a question. There were 11 matters in which we issued breach notices to insurers this year. They related to what we regard as quite serious matters and late changes in liability decisions. We view those as potentially prejudicial to the claimant. Had it not been for the two insurers involved, making significant changes to their procedures so it would not happen again, the penalty would have been far more severe than a breach notice. It is a fairly escalating enforcement procedure.

Ms LEE RHIANNON: If you could provide that document it would be useful.

Mr BOWEN: Yes.

Ms LEE RHIANNON: The annual report states, "an additional six complaints relating to the cost of CP premiums". What were those complaints about?

Mr BOWEN: We would have to come back to you on that. Generally, those matters will be where a person has had a change in their premium price which has not been explained to them. I will

take that on notice to give you a full answer. It probably relates to that occurring prior to 1 September last year. From 1 September last year we adopted some guidelines that had, in fact, been developed by the Australian Competition and Consumer Commission [ACCC] requiring insurers to give better information to their insured if there were significant price variations. Our current guideline is where the price changes by more than 10 per cent the insurer has to explain why. There will be legitimate occasions where that occurs. For example, some insurers will rate on the age of the vehicle. Once the vehicle goes over 10 years the price will increase. Some will rate on the basis of the age of the youngest driver. So if a person declares that they have a young person at home who suddenly has got their licence, then that will pop the price up.

There will be variations in price. The point we think is important is for insurers to communicate the reasons for that back to their client. The ones that are most difficult are where the insurer—and we have had I think two or three of these—has initially issued renewal notices based on a misunderstanding of the vehicle classification and then they have realised it was wrongly classified. This happens around the area of whether or not a vehicle is a sedan or a smallgoods vehicle. There is a bit of a grey line there. It can significantly impact upon the premium price. At the end of the day the rules on the classifications are reasonably clear but it is a matter for the insurers to get those right on the renewals. We say once the insurer has collected the premium on the basis of their own renewal, if they have made a mistake in doing it then that is tough. They wear it for the full year and then fix it up the next year.

The Hon. AMANDA FAZIO: Mr Bowen, I want to ask you questions about issues you raised in your opening statement. You talked about appropriate treatment, treatment options and treatment guidelines that you had in place for the scheme. You were mainly talking about physiotherapy and other types of treatment. Acupuncture has almost become an accepted therapy that is allowable in many workers compensation claims. Under your scheme do you allow other alternative therapy that people may want to use? There are issues about people of Asian background wanting to use other therapies, such as cupping, to try to reduce pain. Do you allow for those types of treatments or other alternative therapy treatments under your scheme?

Mr BOWEN: I may not be able to answer that as well as you like because the answer is I am not sure. Our scheme allows for reasonable and necessary treatment. If there was a dispute about whether or not treatment was appropriate, the matter is sent for medical assessment and determined by medical assessors. If it was a physiotherapy dispute, for example, the assessor would be a senior physiotherapist. Perhaps the best way I can answer that is I am not aware of any disputes about alternative treatments. It may be a matter that has been resolved at the moment. I can make inquiries and find out for you.

The Hon. AMANDA FAZIO: It is not so much about disputes; it is about the range. When you talk about treatment options, are alternative therapies included in the range of treatment options you think are appropriate or that insurers approve?

Mr BOWEN: We produce treatment guidelines under the Motor Accidents Authority Scheme, not for all injuries or every injury but for those which are high volume matters, like whiplash or lower back pain, or involve regular therapies like physiotherapy, or are a high cost for the scheme, such as spinal cord and brain injuries. There is a whole range of injuries where there will be an enormous variation in the treatment options. It is really a matter to sort out between the parties, with access to medical assessment if there is a dispute. I can make inquiries to find out whether we have had any of those matters dealt with in recent years.

CHAIR: That is a question on notice.

Mr BOWEN: Yes.

The Hon. AMANDA FAZIO: Last year I raised with you casual workers and establishing their loss of income. In our fifth report the Committee recommended that you work with the CTP insurers to examine the experiences of casual workers to identify whether they face any difficulties in establishing loss of income for claims purposes. The Government response stated that the MAA has requested the Motor Accident Insurers Standing Committee to report on issue and it is anticipated that the report will be available for the Committee's next public hearing. Is that report available yet?

Mr BOWEN: No. It is a matter we have to chase up the insurers. We did write to them and we have raised it a couple of times at the Motor Accident Insurers Standing Committee meetings that we have with them, but I will take some responsibility for not having pushed them hard enough for that, and I will ensure that we get that within a reasonably tight time frame. Will give ourselves a six- to eight-week deadline to turn that around now. My apologies that we did not press them hard enough.

The Hon. AMANDA FAZIO: That is all right, but that raises another issue. What is the Motor Accident Insurers Standing Committee, and who are its members?

Mr BOWEN: The standing committee is the CTP managers for each of the licensed insurers. They meet as a group and we have had regular meetings with them the to discuss a range of operational issues concerning the scheme. It is a consultative forum primarily.

The Hon. AMANDA FAZIO: I also wanted to get back to non-economic loss. I know that Mr Pearce asked you about this before, but I also had a few more questions about it. The Minister has stated previously that the legislative intention of limiting access to claims for non-economic loss to claimants with a whole person impairment greater than 10 per cent was to allow recovery of non-economic loss to the 10 per cent of claimants who were the most seriously injured. There was a stated intention at the time of introducing the Motor Accidents Compensation Act to reduce payments for non-economic loss for approximately $250 million per claims year to $150 million per claims year. Is the new scheme costed on 10 per cent of payments per year, which is approximately 1,500 receiving compensation for non-economic loss?

Mr BOWEN: While Ms Rizzo is getting the answer to that, could I just add that it is important to note that restrictions to non-economic loss were imposed by the 1999 Act and build upon restrictions to non-economic loss that were already in place under the 1988 Act. Back in 1988 when the Motor Accidents Scheme was introduced it was recognised that there needed to be a balance between the amount that motorists are paid and the amount that was allowable in damages so that green slips remained affordable and that was best achieved by limiting non-economic loss to serious injury. The problem, I suppose, that arose was that over the period of operation of the 1988 scheme the thresholds that were put into the 1988 Act deteriorated and more and more people got access to non-economic loss. As was pointed out in here, at the end of the old scheme 60 per cent of claimants were achieving it. I do not know how you define "serious injury", but if it is set at a 60 per cent level then it raises issues about affordability. The merits of where threshold for non-economic loss may sit, or should sit, may well be debated, but there has been general acceptance over the course now of 17 years that there should be some restrictions to non-economic loss to the most seriously injured.

Ms RIZZO: In relation to year one, the number of full claims is just over 13,000. The proportion of those claims that are finalised is 86 per cent and 6 per cent of those have a payment for non-economic loss. But if we look at all of the claims for accident year one we know that insurers have either paid non-economic loss or incurred a cost, which means that they have annotated that claim on our database to say that they have set aside a head of damage for non-economic loss. They have done that for a total of 1,328 year one claims, either open or finalised, and they represent 10 per cent of full claims.

The Hon. AMANDA FAZIO: Are you undertaking any work at present, or are you undertaking any work in relation to the 10 per cent whole person impairment threshold for access to non-economic loss, for example to review the suitability of the 10 per cent threshold and the AMA guides for the gatekeeper role that they play in the scheme?

Mr BOWEN: We regularly review the impairment guidelines, which are a tool to measure whole person impairment and, indeed, draft amendments to the guidelines are being submitted to the Motor Accident Council this afternoon. The 10 per cent threshold is established in the legislation. It was dealt with as part of the Minister's review of the Motor Accident Scheme as required by the legislation and in his report on that review that was tabled round about 18 months to two years ago and so it really is not a matter which the Motor Accident Authority would be further reviewing.

The Hon. AMANDA FAZIO: In our last report the Committee recommended that the Minister and the Attorney General consider amending the Supreme Court Act 1970 and the District

Court Act 1973 to allow awards of interim damages in motor accident cases, and the Government's response to the Committee stated that the recommendations are under consideration. Can you tell us what is happening with that at the moment?

Mr BOWEN: A range of matters relating to procedural amendments and some others like that, which have been the subject of consideration and advice to the Minister and further questions on that would now need to be directed to the Minister.

The Hon. ERIC ROOZENDAAL: I noted this morning some news reports in relation to pedestrian accidents and the presence of alcohol. I want to ask you about the October/November 2003 public education campaign and pedestrian safety campaign that you funded jointly with the RTA. Can you comment on how successful or otherwise the campaign has been and whether any success has been evaluated?

Mr BOWEN: I am aware of it, but I am not well enough aware of it to comment in any detail. I can certainly provide you with a precis setting out the background to it and purpose of it. There has been an evaluation—

The Hon. ERIC ROOZENDAAL: So you will take that on notice?

Mr BOWEN: Yes, I will come back to you with more detail on that.

The Hon. ERIC ROOZENDAAL: In your annual report you talk about four additional Alive festivals that were held in 2004 in Campbelltown, Wollongong, Newcastle and Wagga Wagga. Can you give us your view on how successful these festivals are in promoting the Arrive Alive message?

Mr BOWEN: It is actually a really good question. Under the Arrive Alive Program, which is a youth road safety program—we talked about this a bit last year—we have been looking at innovative ways of delivering messages to young people about fairly straightforward and simple messages about risk-taking behaviour, speed and alcohol. We understand very well that the message is only taken in depending upon the medium through which it is delivered and we embarked on a strategy of broadening the delivery options through our sporting sponsorship and the use of sportsmen and women to deliver messages directed to small groups through providing funding directly to young people for delivering messages in the community through the medium of film or local advertising. The Alive festivals were an attempt to build upon this to establish a link back to the MAA to get people to come to our Arrive Alive web site.

In the years prior to these festivals we have done that in a targeted way through music, through sponsorship of Homebake and the Big Day Out and through promotional activities on our Arrive Alive web site, which got an enormous response. For our Big Day Out sponsorship we had tens of thousands of entrants who had to make up a road safety message around the mascots for the Big Day Out that year, which were Drunky, Speedy and Sleepy, or something like that. It was just about making young people think about the purpose of it. The Alive festival was an attempt to take that out of those big events and make it more community based. In terms of expenditure on road safety it was very low cost. We are evaluating that whole program at the moment. Originally it was a three-year program and we extended it out to five.

It will run out at the end of 2007. We will then have to go back and look at it as a collective group of events and activities. It is extremely hard to measure the success of programs that are aimed at changing attitudes. It is very easy to measure in economic terms whether you get a reduction in accidents from enforcement, better road building or a better car design. But when you are trying to target someone's changing attitude you really have no great base other than their own recall of the message. There is no way to indicate whether it has led to a change in behaviour, but in terms of message recall, in terms of these events driving people to our web site where they pick up other messages. They evaluated very well, particularly well compared, for example, with more generic advertising.

CHAIR: What sort of indicators are you using to evaluate on-site festivals and how did you choose the Wollongong, Newcastle, Wagga Wagga and Campbelltown sites?

Mr BOWEN: We had this over two years. The first year we had Newcastle, Central Coast and Wollongong, and we were planning one for Redfern, but could not get co-operation from the local council. We were just trying to get a broad spread. It was not targeted in any other way. But with, if you like, the community identity and the purpose of it being to attract a local community from which you could deliver messages pertinent to that community. For example, although these festivals had some headline acts it was quite important to us that they engaged and used local bands. Rather than do something generically in Sydney we picked what we regarded as being identifiable areas that we could go into whether people in those areas identified themselves as being part of that community. The evaluation was through exit interviews of people leaving and also through what were the changes in accessing our web site immediately post the event. We can give you that information.

The Hon. ERIC ROOZENDAAL: In terms of that evaluation, you did exit research as people left.

Mr BOWEN: Yes.

The Hon. ERIC ROOZENDAAL: Have you done any other qualitative or quantitative research as to whether the "arrive alive" message penetrates into the broader youth community?

Mr BOWEN: We have not done it in market research terms. We have relied very much on evaluation of particular events and then some targeted research in relation to message recall following, if you like, intervention. For example, where we have sent South Sydney footballers to Dubbo and into local schools, we will follow that up with requests through the schools six months later to see whether they think in hindsight and talking to the students who participated it was a useful medium for delivering the message.

The Hon. ERIC ROOZENDAAL: I will not make any comment about South Sydney, except you are lucky you did not use Newcastle players. In terms of the country road safety summit—I know there is another one due soon—what were the outcomes of the summit in May 2004?

Mr BOWEN: The primary agency responsible for that is the RTA, not the Motor Accidents Authority. I believe there was a report from that summit that would have been tabled in Parliament with a list of recommendations. I do not have that to hand, but certainly quite an extensive number of matters were dealt with at that summit.

The Hon. ERIC ROOZENDAAL: I am interested in the competitiveness of the CTP insurance market. Can you give us your view on the current state of the CTP insurance market and if there has been any significant change in the last financial year? Do you see any movement in the number of insurers over the next 12 months?

Mr BOWEN: No. In fact I think the market, from our point of view, has stabilised well and truly following a period of turmoil that was reflected across the whole general insurance industry. The chairman has better knowledge than I and may wish to add to that. For some years we had a concern about the extent of the commitment of some of the insurers both for this particular market and perhaps more importantly for general insurance in Australia, which is in national terms quite a peripheral market. We have two big international companies and one Australian company, QBE, which is virtually an international insurance company. We regularly talk to their senior executives about that and we have a great level of comfort that they are here and will be staying in the market into the foreseeable future. However, that is about as predictable as the next insurance crisis and what might happen as a result of that.

The level of competition has been moving substantially over the past 12 months. We started to notice it about 18 months ago, with increased competition in some particular areas, particularly for fleet vehicles, small goods vehicles and the like. What we have noticed over the past six to 12 months is increased competition at what I call the consumer end of the market, the mums and dads with the sedan, where, while there have been competitive rates, there certainly has not been the level of competition for some years. The main insurers that target that area are IAG, which is the NRMA, QBE in some particular areas, AAMI and GIO. AAMI and GIO had best prices that left them a little

out of the cutting edge of the competition, but in January of this year they refiled for significant reductions and took themselves into market leadership.

At the same time AAMI initiated an advertising campaign for CTP which we have not seen in New South Wales for probably—I am not sure whether we have seen it before; it would certainly be back in the early 1990s. We have yet to see the effect of that in terms of market share but we understand that it would be putting significant pressure on the level of competition because this is an extremely price sensitive product.

The Hon. ERIC ROOZENDAAL: Who runs the phone line to ring in to get information?

Mr BOWEN: The MAA runs that.

The Hon. ERIC ROOZENDAAL: Can you give us an idea of the number of calls that that line deals with?

Mr BOWEN: Sure. It is in the annual report; I will just try to find it. It is on page 97 of the report. In the year ended June 2004 there were just on 152,000 calls to the green slip help line and 343,000 visits to the web site. That is the green slip web site so that is for the price information. We obviously have other web sites as well. We said that that represents about 27 per cent so it is close to one-third of our target audience, our target audience being those people who are buying a car as individuals—they are not corporations and fleets—and it is targeted to sedans, which is class A 80 per cent, motor cycles and small goods vehicles. So there is certainly scope to increase our penetration into the consumer information in that area. You might have noticed that we are running advertisements for that help line and the web site at the moment. It is coming to the end of a two-week run, and it would appear that they have close to doubled the inquiries that we are getting over that period.

The Hon. ERIC ROOZENDAAL: That is on both the web site and the help line?

Mr BOWEN: On both.

The Hon. ERIC ROOZENDAAL: Do you think that has been quite successful?

Mr BOWEN: It seems to have been. We have not conducted market research on this. It is interesting, I think, that because of the nature of this product, very few people have a recall of the help line or the web site or where they got information on their green slip. For example, we issue a brochure through the RTA with motor vehicle registrations. No-one can recall it when you quiz them about market research, yet when we had, I think 18 months ago, a period where for a whole host of technical reasons it did not go out for a fortnight the calls and the hits on our web site dropped dramatically. So obviously people are taking it in and using the services but it has been the case with those that advertising has been effective.

CHAIR: Nothing like an accidental control.

The Hon. GREG PEARCE: In an answer to an earlier question from the Hon. David Clarke you referred to delays which were, I think your words were, "approaching back to the old scheme level". Can you expand on what you were referring to? In your answers to the written questions on page 20 a fairly glowing picture is painted of reductions in average time taken and so on. The only thing it seems to say is that there was an increase in the number of matters deferred by parties between June and December of 2004. Other than that, it is all fairly glowing and saying that there are not any delays.

Mr BOWEN: I might deal with a couple of elements of that separately. First, there is the finalisation rate for all matters and that shows on average a dramatic improvement in the rate. My concern—and this is one of those areas where there is no statistical evidence as yet to back it up so we are trying to predict trends by knowing the nature of matters going through at the moment—is that matters that involve an issue about impairment assessment are being delayed. They are not the small matters; they are getting into where there is perhaps a need for a medical assessment to assess impairment because the MEL threshold is coming into play. There was certainly a long period where

matters did not go to the claims assessment service because of delays in getting medical assessments and I believe because no-one wanted to be first through the door for a new assessment area; everyone wanted to see what would happen. We have perhaps reached the point where that has stabilised and is a little more predictable. But if you were to ask me the area of most concern where a delay issue could arise, it is around that area.

I think the really big matters will work to their own timetables, because there are a whole lot of issues about injuries stabilising before they can be finalised, and there are no significant differences in the operation of the scheme, old to new. For all the small matters, it is working very well in getting early finalisation. It is the areas around the threshold that I would identify as being the ones that warrant the most closest monitoring going forward. It had been compounded by delays in the motor accidents assessment service and that is what the answer there is dealing with. At this stage last year we had what I regarded as unacceptable delay levels in getting matters through that service. We have worked extremely hard to get them down closer to optimum. There are still delays but they are now the ones that are out of our control.

So it is not the service creating the delay; it is the parties not being ready to go there or matters filed and there is significant delay in getting a reply. This is working both ways, rather than delays in getting appointments for assessors and getting the clinical examination and then getting the reports written and finalised, which is where the delays were previously. So our answer is that it is addressing our role in it but the whole issue of finalisation of those sorts of matters is the one that we will monitor the closest over the next 12 months.

The Hon. GREG PEARCE: So when I re-read the transcript I will not take an inference that your earlier comment was directed at those few barristers whom you seem to have a difficulty with. Perhaps a more tempered answer there in relation to the complexity of some of the claims and the process of getting medical reports and dealing with them is to be expected.

Mr BOWEN: Yes, but I still think it takes longer than it should. There will be matters where you cannot do an impairment assessment until the injury has stabilised and the ones around the threshold where a person has had, for example, an orthopaedic injury and it will take 18 months or two years for that to be stabilised before you can do a medical assessment. The time taken for those and for others where there are no complexities is far too long where the threshold is an issue.

The Hon. GREG PEARCE: The anecdotal comments I get are that the forms that are supposed to be simple are very complex and the time taken to complete them is quite difficult. Page 3 of your written answers refers to more complex and time-consuming full claim forms. I note that 60 per cent of notifications are lodged as full claims without an ANF, and in addition more than half of the cases when the claimant initially lodges an ANF claim subsequently lodges a full claim. There is a lot of concern about what I understand practitioners and injured parties find to be very complex forms and bureaucratic procedures that are in place in what was supposed to be a very simple system. Would you like to comment on that?

Mr BOWEN: Firstly, in relation to the claim form, it is a balance between all the information that the insurer needs to make an offer, or having a simpler form, but then a process of getting more information over time. The claim form is regularly reviewed. We review it in consultation with the insurers and legal practitioners. It represents something of a compromise. In terms of the bureaucratic nature of the assessment services, we have been working hard to make that simpler and easier to access. The forms are a key part of that. For people who are unrepresented, our claims advisory service provides a great deal of assistance to them.

In fact, the only group of participants at medical assessment for which there is no delay is the group of direct claimants, because they get assistance from the claims advisory service and are getting their matters within procedural time frames. Those claim forms were reviewed as part of the Hannaford process. We would like to review them again. I believe they probably reflect a reasonable balance at the moment; certainly for the main users of the scheme it should not impose any onerous obligations or complexity.

CHAIR: Is there much conflict between medical clinicians in making these assessments?

Mr BOWEN: Occasionally there is, as with any medical decision. The area of dispute over treatment is decreasing and I believe that is primarily because they are enough matters through there around some key treatment issues that decisions are starting to act as precedent value. They are not precedents but they provide information to users about what is reasonable and necessary on a range of usual therapies. In relation to impairment assessment, there will be differences between assessors about the correct application of guides to a particular injury. We have been working extremely hard with the assessors as a collegiate body to identify those areas in which there may be differences in interpretation or application of the guides and to get them to collectively come to a decision.

For example, over the past 12 months there have been regular meetings of small panels of assessors who have a particular area of expertise in which we have identified potential inconsistency issues. We ask them to resolve it. The whole philosophy behind this is that those types of medical issues should be determined by the experienced medical practitioners. We abide by that methodology and from the assessors' level of participation and acceptance of that process and the fact that they are deriving outcomes from it, it seems to be working quite well. However, I would not want to overstep the consistency concern. It has been suggested in some submissions to the Committee that that is a big, significant problem. The matters cited represent a very limited number of a much larger number of assessments that have gone through without there being any problems at all or any significant differences.

There is, and will continue to be, differences between what medical assessors determine as an appropriate assessment of impairment and what medico-legal experts reports provide to insurers and lawyers to be determined. Mostly that is caused by the lack of understanding by the medico-legal experts of the impairment guidelines. We recognise that and have quite a large education program to get out information about the impairment guidelines and their correct use. There continues to be matters coming to medical assessment with attached medico-legal reports suggesting impairment levels that are not in keeping with what is being found by the medical assessors.

The Hon. GREG PEARCE: In that response you referred to the Catsicas matter and the reviews in relation to MAS staff basically assisting in medical reports. I refer to page 29 of the questions on notice. That is the basis on which you are saying that there is no real inconsistency between the assessors' decisions.

Mr BOWEN: I was dealing with a more general issue. This is a specific issue about communication between staff and assessors. Sorry, the answer is dealing with a more specific issue as to whether communication between the MAS staff and an assessor raises an issue of procedural fairness. There is a particular case that is going to the Court of Appeal, and we will wait to see what happens with that. It was my view that whatever the position in law may be—and we will find that out in due course—it is important for the integrity of this service that it not only operates fairly by the saying to operate fairly. For that reason we engaged Mr Zipser from council, who I did not previously know. He was recommended to me as being a person who would do a scrupulous and fair job. He has had a look at a number of files. His report will go to the Motor Accidents Council this afternoon, and overlapping timetable. I am happy to provide it to the Committee at that stage.

The Hon. GREG PEARCE: Thank you, the Committee would like to see that report. He reviewed only 34 files. When we see the report we will find out his rationale.

Mr BOWEN: Yes, he reviewed a selection of files in which there had been communication. There have been a huge number of files in which there has been no communication at all, so it was not a relevant issue in those. Ms Rizzo may wish to comment on that. I am told that statistically they would—

The Hon. GREG PEARCE: Statistically valid, so that is 4 per cent. You saying that there are several hundred instances? What is the total number that were identified?

Mr BOWEN: I will find out and let you know.

The Hon. GREG PEARCE: Certainly if I were injured and found there was some concern about this agreement between the assessors and some communication in which the MAS assisted the assessor to come to a conclusion that I was not over the 10 per cent limit, I might be very concerned.

What have you done to satisfy yourself that there is no issue other than this review? Is that what you have done?

Mr BOWEN: This review is the primary way of having a look at the level of communication and the type of matters that are raised in communication. We hold the view that there is nothing at all inappropriate in the MAS staff asking assessors to turn their minds to a particular element of their report or the reasoning underlying the report. It is of assistance to get those matters clarified at that level rather than letting matters go out that have, perhaps, patent errors in them that would lead to a significant increase in matters coming on for review.

The Hon. GREG PEARCE: Should you be looking at an independent way of dealing with that? I do not know how long the Court of Appeal will take, but if it comes back with a decision that says it is inappropriate, what will happen to those instances on the way through?

Mr BOWEN: If the Court of Appeal prescribes the manner of communication—and it is not communication which says you should change your report, it is communication that invites assessors to consider whether they have referred to all of the matters—we simply abide by it and issue the report.

The Hon. GREG PEARCE: I am concerned about the period between now and the decision by the Court of Appeal. Should there be some independent check? If the Court of Appeal finds that there is a problem, will there be a whole bunch of assessments that are subject to challenge for that reason?

Mr BOWEN: For what reason?

The Hon. GREG PEARCE: If several hundred have taken place where there have been all sorts of communications.

Mr BOWEN: If that is the case we will provide the parties with all of the correspondence between the medical assessment service and the assessor and they can consider their position. Based on Mr Zipser's sample there will be a limited number in which the communication could be said to be other than appropriate. Even the ones that he identified where the questions went perhaps beyond just technical issues, they were really matters which made no difference to the outcome. The nature of the question was not seeking to make a difference to the outcome but was seeking to gather more information.

The Hon. GREG PEARCE: I hear what you say. However, I remain concerned that if there is a problem with what is happening, people's rights and determinations could be prejudiced. If you are going to leave it to them to try to fix it later on through some appeal process, I really do not think that is a completely responsible way to do it. Will you take it on notice to look at that, as to whether there is some sort of process that should be put in place now, between now and the court decision.

Mr BOWEN: Yes, that is a fair point. I am quite happy to accept that.

The Hon. GREG PEARCE: I turn now to adequacy of damages for the seriously brain injured and some other serious issues. You commented at page 32 about the damages awarded in these areas. You said that the damages are adequate to meet long-term needs but you observed that for a variety of reasons the awards often have not lasted a person's lifetime. I find that a very disturbing comment. Could you expand on that and tell us what the MAA is doing to raise that issue and address it? I know it is dealt with in some other questions on notice, but I would like to hear from you.

Mr BOWEN: The MAA has had a long-term interest in the issue of the care needs of people with catastrophic injury. It was a predecessor to this Committee that put the issue very much on the agenda as part of the 1997-98 review of the Motor Accidents Scheme. The process of gathering information for that review identified the fact that for a variety of reasons awards made to people under this scheme, and more generally in personal injury, lasted on average 17 years.

When we put that against the profile for serious and catastrophic injury under the scheme—which is predominantly people under 30, and in fact the majority under 25 are predominantly young

men—you realise that at a point where their care needs are going to start to escalate, which is from their forties, as the ageing effect increases their level of disability, on average they are running out of their money and they are falling back on to the welfare system for both income and care support needs.

The comment about the adequacy of damages there is really to note that there has been no change in the basis of assessing damages for catastrophically injured from old scheme to new scheme. We made an attempt last year to look at this in the context of spinal cord injury. We identified 48 matters where a person with a spinal cord injury had received an award exceeding $1 million pre-1996, so that we wanted to come at them at a point in time where there had been some years elapsed and we could have a look at how they were going and how they thought they were going. Unfortunately, we just were not able to get enough contact. There was a surprisingly high death rate; about eight of those 48 had died and we were unable to contact another 20-odd. Of the 24 or 22 we finally contacted, only six consented to participate. So we did in fact interview all of those, but it does not provide a basis for really drawing very many conclusions.

It would be ideal to try to repeat that in the area of brain injury, but you would appreciate brain injury is even more compounding because quite often you cannot go and interview the person yourself, you have to try and talk to their carers, particularly if it is severe or high-level, they are not going to be in a position to provide you with adequate responses to that. We know even those matters that are managed by the Protective Commissioner if there has been any sort of reduction at all for contributory negligence the money will run out well before the person's lifetime. So there are other ways to try and come and look at this, but we have got to investigate that further.

The Hon. GREG PEARCE: In relation to the $500 that is available for medical expenses under an ANF claim, we are now five years into the scheme; that figure has not been reviewed, has it? I would have thought most of the things have been subject to a constant 3 per cent compounding—

Mr BOWEN: It has been reviewed. We have not increased it for two reasons: one, the average payment on the ANF is still well below that, I think it is round about between the $250 and $300 mark. It is reported in here somewhere. The practice of the insurers has been very much if they believe the matter will finalise they should increase it. It probably should be increased to act as an incentive to fit more and more matters under the ANFs. We would like to do some more work over the next four months to increase the use of the ANFs. Following this committee's recommendation last year, we have now got those forms into accident and emergency wards. We know we have close to half a million of them out there in circulation. We have set up a trial on the Central Coast with GPs there, in which we are directly in contact with the practice managers rather than the general practitioners themselves, in the knowledge that when a person needs a form it will be the practice manager rather than a doctor who probably knows where it is and could get hold of it.

We would like to see whether that intervention directly with the practice managers in a targeted area like the Central Coast will lead to increased use of ANFs in that area compared with statewide, and if that proves to be the case we will try and roll that out broadly across the State

The Hon. GREG PEARCE: Has there been any review of the other fixed elements of the scheme, for example, the scheduled legal fees?

Mr BOWEN: No. The legal fees will be up for review this year. We do adjust the medical fees annually. The legal fees have only a few fixed components such as the $500 fee for filling in a claim form and a 1200 form for those. The great bulk of the legal fees, certainly on anything exceeding a minimum level claim, is an ad valorem rate, so as the level of awards increase the level of the remuneration will increase as well. So they are somewhat fixed to inflation already. We would not only review the level of the fixed rates this year, we will need to do a comprehensive review of the legal cost regulation.

All of the others are adjusted annually, for example, for fees for legal reports or medico-legal reports we adopt a Law Society AMA scale and for treatment fees we adopt the AMA scale.

The Hon. GREG PEARCE: I was going to ask you a question about the catastrophic damages, and it was a technical question you avoided answering in questions on notice in relation to

the discount rate for calculating damages. I think it is 2.5 per cent or 5 per cent in the UK, or something. You took the Sir Humphrey route and said that was in the last bill and that the Parliament did not change it. I would like your advice as to whether the Parliament should have changed it, using your best qualifications and experience to form a view.

Mr BOWEN: Let me take that one on notice. I will come back to you on that.

The Hon. GREG PEARCE: You are virtually the only person in a position to really be able to give us a view on that, and it is an important issue.

Mr BOWEN: I may not be in a position to give a good view on that for reasons that are apparent when we do that spinal cord examination. You really do not know the effect of these sorts of things unless you can access a claim and well down the track, and with our common law it is a lump sum final payment; we do not at the moment track claimants. When we have tried to we have not had a lot of success in seeing how they are faring.

The Hon. GREG PEARCE: The issue I think you need to address is that earlier on you were very direct and repeatedly put the view that AMA thought that the damages were adequate but that they keep running out. There is a slight conflict in that. It could be because of mismanagement, which is maybe what is suggested, but if it is because they are not adequate then that is an issue that ought to be addressed.

Mr BOWEN: Yes, I agree.

The Hon. AMANDA FAZIO: Can I ask you a question to follow on from that? As you are aware, the MAA has a function under section 206 (2) (a) of the Motor Accidents Compensation Act to conduct research and collect statistics or other information on the level of damages awarded by the courts. In the fifth report the Committee recommended that the MAA collect statistics on the damages awarded by the New South Wales courts for personal injuries suffered as a result of motor vehicle accidents, and that you analyse those statistics from emerging trends. The Government's response to the Committee said that the Chief Justice of the District Court advised that it is not always possible for the court to provide information about the damages awarded under the Act as the court does not separately record motor accident cases, and that few of the judgments are electronically recorded or available in hard copy.

Can the difficulties in recording award amounts be overcome by adjustments to the data collection procedures and software used by the District Court Registry, and would it be possible for the MAA to work with the District Court to examine the feasibility of such an option?

Mr BOWEN: The answer is yes, it could be done by changes to the data set. In 1999 I offered to pay for the enhancement of the District Court's recording system so that could be recorded, and that offer was not accepted.

The Hon. AMANDA FAZIO: Have you repeated the offer since then?

Mr BOWEN: We have got to a point now where time will take care of it in that with the motor accidents list at that stage it was important to distinguish within the motor accidents list between matters proceeding through court under the old scheme and matters under the new scheme. Time will take care of that as the matters predominately going through the court will increasingly be new scheme matters. We do on our own data base report the level of awards and now heads of damage, but it is a very small subset of finalised matters because even for those matters that are commenced at court the great bulk of those will still settle.

The Hon. AMANDA FAZIO: Out of court?

Mr BOWEN: Yes, or on the doorstep.

The Hon. AMANDA FAZIO: If you cannot get the starter collection to be improved then how are you going to comply with your statutory obligations set out in section 209?

Mr BOWEN: We can do it from the analysis of our own database, which is filled in by the insurers.

The Hon. AMANDA FAZIO: I want to go back to one of my favourite topics—the nominal defendant. We put a few questions on notice to you about the nominal defendant, but there are also a few other issues that we are interested in. On page 18 of your annual report you stated that the nominal defendant allocated 541 claims in the last financial year and returned 221 claims to claimants, claimants' solicitors or insurers, mainly due to the vehicle not being insured or the accident not occurring on a road. Can you explain what these figures mean and whether they are comparable to previous years' figures?

Mr BOWEN: The second part of that question I will have to take on notice and come back to you because I do not have the previous years' figures here, although I would say that I do not believe there have been any significant changes in the trends of the ratio of nominal defendant claims to total claims. The returned matters really will relate primarily to accidents that occur in circumstances where the nominal defendant does not cover them. Not all motor vehicle accidents are caught by a CTP policy or a nominal defendant claim. If the vehicle is insured and has CTP then it covers that for injury caused to anyone anywhere in Australia. So if you have got a registered and insured vehicle and you are driving along a beach, for example, and you hit someone, then your CTP policy will cover that.

For nominal defendant vehicles, that is where it is uninsured or in some process where it is an unidentified vehicle, it only covers accidents that occur on a road or road-related area. The bulk of these disputes will be generated by differences as to what constitutes a road or road-related area. There is a huge amount of case law on that, but it unfortunately continues to be a very grey area in the scheme, one which we have had discussions with a number of legal practitioners about trying to fix up and I do not believe you will ever create a circumstance where it is absolutely clear-cut in each and every case, but we believe we could get more clarity in it.

The nature of these types of matters—unregistered trail bikes on private properties is a classic, whether through the constant use of that private property—falls into the definition of road and road-related areas; unregistered forklifts in the area of a factory that may be open to the public and then the issue is whether or not that is a nominal defendant claim and falls under the scheme or whether it is a workplace injury claim, or if a third party is injured it is a public liability claim. They are the sorts of grey areas—right up to the novel one, such as a person hit by a boat as it was unloaded from a trailer into the water and whether that constitutes use and operation of a motor vehicle. There are lots of cases around the use of machinery on vehicles. That is quite a complex area. We would like to tidy it up as much as we can.

The Hon. AMANDA FAZIO: In the answers to questions that were put on notice you said that the examination of the issue of injuries suffered as a result of the negligent driving of unregistered motor vehicles is a policy issue, and a matter upon which the Minister would need to make comment. Acknowledging that, the Committee is still interested in the facts and the role that the MAA has played in examining this issue and exercising its functions under the Motor Accidents (Compensation) Act. You referred to forklifts and such issues. What was the outcome of the examination? For example, is it the case that the amendment to the definition of "motor vehicle" in the Act has had a wider effect than merely excluding vehicles that are clearly outside the registration scheme and not permitted to be on the road, such as go-karts and forklifts? Is it the case that a pedestrian who is hit by the driver of an unregistered vehicle that requires more than the repair of minor defects to make it suitable for registration would not be able to access the nominal defendant fund?

Mr BOWEN: The answer is that we have provided advice on that to the Minister and the question as to whether that will lead to legislative amendments is a matter that would need to be addressed to the Minister. It certainly is the case that there will be incidents of people hit by vehicles who will not be covered by the nominal defendant scheme. Amendments to the Act will fix up some aspects of that, but it will never fix all them. For example, the little scooters that people are now getting around on are not registrable.

The Hon. AMANDA FAZIO: Do you mean the two-wheel scooters?

Mr BOWEN: The two-wheel scooters.

The Hon. ERIC ROOZENDAAL: The motorised scooters.

Mr BOWEN: Yes. It is illegal to use them on the road or a road-related area. If they hit and injure someone on a footpath there will be no CTP or nominal defendant claim.

The Hon. AMANDA FAZIO: What about the pensioners who get around on those shopping carts?

Mr BOWEN: They are covered.

The Hon. AMANDA FAZIO: Some are registered. Do they all have to be registered?

Mr BOWEN: Some are exempt but therefore covered by insurance.

Mr GRELLMAN: The majority of them are, I believe.

Mr BOWEN: Yes. For what I call "motorised wheelchairs ", and a lot of these fall into that category, there is a CTP policy which can be purchased for I think about $10 per year to cover the cost of issue of them.

The Hon. AMANDA FAZIO: Was legislated reform identified as an option to the Minister? Are you able to tell the Committee that?

Mr BOWEN: Yes.

The Hon. AMANDA FAZIO: Did you, as part of your review, also look at the implications of this issue for the motor accidents scheme and for purchasers of CTP insurance?

Mr BOWEN: Yes.

The Hon. AMANDA FAZIO: I want to ask about this issue of compensation for people who are seriously injured. It is a bit different to the issues raised by Mr Pearce. In its last report the Committee noted that you had been working with other jurisdictions in relation to a proposed national catastrophic care scheme, which I think probably has the potential to overcome some of the issues that you have been talking about, in terms of people not being able to adequately manage the lump sum of that they receive in order to give them whole-of-life care. You able to update the Committee on your involvement in this proposal and outline the role you concede you might have to play in any ongoing development and implementation of such a proposal?

Mr BOWEN: Sure. The proposal is being developed at two levels, quite understandably one at a State level and the other as the national level. My involvement at a national level was on a lifetime care working party that was convened by a group called the Insurance Issues Working Group, which is a group of Treasury officials and which was report into the Heads of Treasury Group. The Commonwealth Finance Minister chairs that with the State Treasurers. The Experts Working Group really was convened for the purpose of developing some options the funding of which could then be costed by consulting actuaries. I understand the consulting actuaries are continuing to work on that to the Heads of Treasury Group. I am not in a position to say anything more about how far that is progressing at a national level. At State level the matter has progressed to the point where advice has been provided to government and that is under consideration within government at the moment.

The Hon. AMANDA FAZIO: But that was going to cover this catastrophic care scheme. Is it going to cover more than just people who had been involved in motor accidents? Would it cover people involved in public liability issues?

Mr BOWEN: It has the potential to. I believe one of the issues under consideration in government is the width of that scheme, yes. Let me say, however, that the great bulk of people with catastrophic injury actually come from motor vehicle accidents.

The Hon. ERIC ROOZENDAAL: In relation to the Australian Medical Association [AMA] guides within the motor accidents scheme has the MAA undertaken or does it intend to undertake any comprehensive review of the use of the AMA guides?

Mr BOWEN: Yes. We have just about finished a review of the guides, which identified some particular areas of application where there were potential differing interpretations. The guides that are used are a combination of the American Medical Association fourth edition, *Guides to Whole Person Impairment*, over which sits a Motor Accidents Authority guide to interpreting that and reference to which sections are to be used when alternative diagnostic tools are available. This was really around tightening up. Obviously, we cannot rewrite the AMA guides; this is really tidying up our interpretive tool that sits on the top.

We have done that in consultation with an expert committee. We can provide the Committee with the names of members of that committee and the draft guidelines. I think I indicated previously about going to the Motor Accidents Council meeting this afternoon. Depending on what happens there, they may be subject to some further consultation or at least some dialogue with the main users so that there is parity about how they will go forward. They have been developed by an expert medical panel and it is a matter of trying to digest that and get the effect of them understood by all users.

The Hon. ERIC ROOZENDAAL: understand that the Bar Association and the Plaintiff Lawyers have expressed some concerns about the objectivity consistency of the Medical Assessment Service's assessments. I understand there is at least one case where three separate assessments produced significantly different results. Without commenting on any specific case, what steps are you putting in place to ensure that there is some consistency in the way these assessments are done?

Mr BOWEN: For the past 12 months we have had different expert working groups on different body systems looking at the application of the guides. Those expert groups are made up of the assessors involved in that particular area or bringing a particular speciality to bear. I have in mind that I may have tabled or provided in answer to a question last year the timetable for those reviews and the membership of those review groups. But, if we did not, we will provide it again! It is that they were being initiated about the time of the hearing last year, so that some of them are well down the track and others are ongoing.

The Hon. AMANDA FAZIO: Could I ask a follow-up question about the use of the American assessment guides. I take it that you are aware that there is still a complaint from a lot of stakeholders—some stakeholders, I should say—that the use of the American Medical Association guides is leading to injustice in some cases. Do you think that this review will answer those criticisms?

Mr BOWEN: No, I do not, because it is a review to fix up, if you like, technical aspects of the operation of the guides. The criticisms would go to the fact that the application of the guides leads to some injuries being assessed at below 10 per cent. That is a function of their operation, not of the content.

The Hon. DAVID CLARKE: Following on from that. Do you believe that there have been instances of injustice arising from the use of the AMA guidelines?

Mr BOWEN: I think it needs to be looked at in the context of what was intended to be achieved, which was to replace a very imprecise verbal threshold for access to non-economic loss with an objective medical test based on a clinical examination. Certainly there are a lot of cases where people who previously would have got non-economic loss no longer get it. I think there are some areas that warrant further examination. It there seems to me to be quite a significant variation in the level of impairment assessment as between, say, upper limb and lower limb impairment which warrants a look.

Many of the concerns that are expressed relate to cases where a person has had quite bad injuries from which they have made a full recovery. Under these guides if a person has no lasting disability or significant impairment there is no access to non-economic loss. There will be some issues around some injuries, but that I suspect is probably the basis of more of the criticisms of the application of them.

Without wanting to put words into the Minister's mouth, I think the Minister would always be open—and certainly the MAA is—to look at alternative means to create an access regime for non-economic loss that meets the criteria which is objectively medically based. We are certainly not the only compensation scheme grappling with this issue. These medical guidelines are used all around Australia in both workers compensation and CTP jurisdictions, and the heads of CTP have raised with the heads of the workers compensation authorities the potential for us to collectively work with the medical profession to try to get some guidelines to impairment and disability. I would not want to underestimate the extent of that task. It is a five to eight year project to create something like that. One of the problems we see around the country is that everyone is using these guides but different editions are in play and different interpretive tools are used in relation to them and there are quite different outcomes. In that respect, impairment is no different to any other aspect of tort law where it seems to vary by definition and type of compensation.

The Hon. DAVID CLARKE: In other words, putting it in the context that you suggested it should be put in, do you think there have been injustices arising as a result of the use of the AMA guidelines?

The Hon. ERIC ROOZENDAAL: It sounds like the same question.

Mr BOWEN: I have answered as best I can. To answer that question fully I would need to look up particular cases. I do not get into that depth and I do not know whether what is said about the application of the guides in relation to a particular case bears scrutiny. I would need to take medical advice on it and really have to redo all the assessments to answer that.

The Hon. DAVID CLARKE: You are aware of the criticisms that have been made?

Mr BOWEN: Yes, very much so. We try to operate as the MAA out there in the world and talk to stakeholders about this all the time. At the end of the day, it is a tool that is used and it will always have some problems.

The Hon. DAVID CLARKE: Mr Grellman, is it a matter that has been raised with your council?

Mr GRELLMAN: Yes. I think there is an open debate about whether or not the whole body impairment threshold has the right percentage and whether it is the right gateway. For so long as the scheme exists, that will be a live and open debate.

The Hon. DAVID CLARKE: Has that debate been going on since the formation of your council?

Mr GRELLMAN: I think the answer would be yes.

The Hon. DAVID CLARKE: Has your council made any recommendations on that issue, in view of the complaints being raised with your committee?

Mr GRELLMAN: No conclusive recommendations. You must remember that the council consists of not only representatives of the Law Society and injured persons associations but also underwriters. So you may have a completely opposing point of view on whether an issue like this is pretty well right the way we have it or unacceptable the way we have it.

The Hon. DAVID CLARKE: Does your council have a view?

Mr GRELLMAN: As a group, no. They would have a difference of view. One of the mechanisms that I think is helpful in terms of having the deputy chair of the board and I also chairing and deputy chairing the council is that we have a direct link between the boardroom and the council room. So as these issues are aired and discussed with the council, the board is deemed to understand that there is a tension there and it is something that we are alert to.

CHAIR: The Committee would like to ask further questions particularly in relation to the Motor Accidents Council. The Committee Secretariat will go through the remainder of the questions and provide them to you on notice.

(The witnesses withdrew)

(The Committee adjourned at 12.33 p.m.)