

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND JUSTICE**

**INQUIRY INTO THE TWELFTH REVIEW OF THE MOTOR  
ACCIDENTS AUTHORITY AND THE FIFTH REVIEW OF THE  
LIFETIME CARE AND SUPPORT AUTHORITY**

*CORRECTED PROOF*

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**At Sydney on Monday 17 March 2014**

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**The Committee met at 9.00 a.m.**

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**PRESENT**

The Hon. D. Clarke (Chair)

Mr. S. MacDonald

The Hon. S. Mitchell

The Hon. S. Moselmane

The Hon. P. T. Primrose

Mr D. M. Shoebridge

**CHAIR:** Ladies and gentlemen, I welcome you to the inquiry into the twelfth review of the exercise and functions of the Motor Accidents Authority [MAA], and the fifth review of the exercise and functions of the Lifetime Care and Support Authority. This is the second day of two-day hearings. The review is being conducted according to section 11 of the Safety, Return to Work and Support Board Act 2012, which designated the Committee to supervisor the exercise of the functions of the authorities. Before I commence, I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would like to pay respect to the elders, past and present, of the Eora nation and extend that respect to other Aboriginals present. We will hear today from the Motorcycle Council of NSW, the Motor Accident Authority and the Lifetime Care and Support Authority.

I will make a few comments as to the procedures today. First of all with regard to broadcasting guidelines, in accordance with those guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I would also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing and so I urge witnesses to be careful about any comments that you may make to the media or to others after you complete your evidence, as such comments would not be protected by parliamentary privilege if another person decided to take any action for defamation. In any event, the guidelines for the broadcast of proceedings are available from the secretariat, and you can approach them if you wish to do so.

Questions on notice. There may be questions that a witness could only answer if they had more time, or with certain documents to hand and, in those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Delivery of messages and documents tendered to the Committee. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff, who are seated to my left. Finally, would you please turn off mobile phones for the duration of the hearing.

**GUY STANFORD**, Member, Motorcycle Council of NSW, and

**CHRISTOPHER BURNS**, Spokesman, Motorcycle Council of NSW, affirmed and examined:

**CHAIR:** Thank you very much for being with us today. Would either of you like to start by making a short opening statement?

**Mr STANFORD:** First, thank you very much for allowing us to contribute to the review. The Motorcycle Council of NSW [MCC] is a representative of group of riders. We represent around 40,000 riders throughout New South Wales through club affiliations. The MCC has worked with the Motor Accident Authority [MAA] over time to reduce injury claims through improving motorcycle safety. The MAA funded a world first for motorcycling in a strategic plan for motorcycle safety that informed riders and road authorities. That was in 2002 and again in 2010, and we are seeing some good work coming from that. As well as that, MAA has also funded a series of instructional videos called "Rider Risk". The full title is "A good rider is a good risk manager", which shows ways in which riders can manage their risk downwards.

To get to the bottom of how we go about doing that, we need to have good data on how crashes occur and the responsible party in most cases. This has been one of the difficulties that we have had in the past. Whilst we have had great cooperation in trying to do things going forward, trying to get the data on who is responsible for crashes, how they are occur, what the cost of those accident claims were over time has proven to be quite problematic. We can get generalised data. It is quite clear with the lifetime care and support scheme, which we now have, which is broadly based across the whole community, in our view, it should be just a single charge across all road users, because it is something that the community has put in place, and not singling out and making responsible the registered responsible riders, if you like. When it comes to looking at the overall risk of the scheme, we have an overall risk that can be seen for the entire population of road users, and then we have got individual risks, which seem to be taken on by different companies. This seems to be leading to some disparity in pricing and that is what we would like to get to the bottom of.

**CHAIR:** Thank you very much.

**Mr DAVID SHOEBRIDGE:** This question is directed to either Mr Stanford or Mr Burns. A number of points are made in your submission about the failure of the MAA to provide the material requested. In particular, the failure to provide total premiums for what motorcycles have paid in certain financial years and the failure to provide information about what was paid out. Is that an ongoing frustration or has it improved?

**Mr STANFORD:** I will do the first part. Chris can follow that up. In essence, what we have tried to do is establish the very simple sum of how much money is paid out by motorcycle riders and how much money is paid out in benefits.

**Mr DAVID SHOEBRIDGE:** It does not seem like it would be rocket science.

**Mr STANFORD:** It does not.

**Mr DAVID SHOEBRIDGE:** What has happened when you have made that request?

**Mr STANFORD:** We get all sorts of muddled data, which does not provide any opportunity for an analysis of that simple sum.

**Mr BURNS:** We have been provided data from 2000 to 2009, which covered average premiums payouts, which was approximately \$116 million, including estimated liabilities. That was handed to us some time ago. We have made requests for similar information for the financial years 2010, 2011, 2012. To date, the information we have received is in different formats, and it is rather difficult to interpret. What we do know from the Roads and Maritime Services data is that the crash rate per 10,000 registrations has dropped by 38 per cent in the past 10 years. There is anecdotal evidence where, at a cursory glance, it shows that super profits in the area of motorcycle riders are even higher than they are for the general public. We wish to get that information and get to the bottom of it.

**Mr DAVID SHOEBRIDGE:** You have got some useful data from 2002 to 2009. Is that right?

**Mr STANFORD:** Correct.

**Mr DAVID SHOEBRIDGE:** And then you wanted the extension of that data up to 2012?

**Mr BURNS:** That is correct.

**Mr DAVID SHOEBRIDGE:** When you got the muddled data, you went back to the MAA. What response did you get from the MAA?

**Mr BURNS:** We have had some information passed to us, but it is in formats that you cannot compare apples with apples. On that, Ernst and Young were commissioned to carry out an audit in late 2010 of the motorcycle green slip premium system. We have not seen that information, despite putting in a Government information request—public access request. We were shown a 10-page PowerPoint presentation, which was supposed to be the response, but we have not received anything other than that. That was commissioned by the Labor Government as an audit on the motorcycle system three, four years ago.

**Mr DAVID SHOEBRIDGE:** When you asked if the PowerPoint presentation was the totality of the information from Ernst and Young, what were you told by the MAA?

**Mr BURNS:** Yes.

**Mr DAVID SHOEBRIDGE:** Who told you that?

**Mr BURNS:** Andrew Nicholls.

**Mr DAVID SHOEBRIDGE:** You also were asking some questions about this recreational registration component, and this is a way of particularly roping dirt bike riders into the scheme so it actually covers some of their risks.

**Mr BURNS:** Yes.

**Mr DAVID SHOEBRIDGE:** What was the story there with the MAA?

**Mr BURNS:** There was a working party put together that was referred to the Hunter Illegal Trail Riding Working Group, specifically targeting illegal trail bike riding in the Hunter region. They commissioned Inspector Robinson to go down to Victoria and come up with a recommendation. He came back with a very comprehensive report, and, according to him, it was signed off by all departments.

**Mr DAVID SHOEBRIDGE:** Did you speak to him directly?

**Mr BURNS:** That is correct. Since then, I have been in several meetings with the MAA. I was told on one particular occasion that police have stalled it, State forests have stalled, the Department of Premier and Cabinet is stalling it.

**Mr DAVID SHOEBRIDGE:** Who told you this, Mr Burns?

**Mr BURNS:** Again, this was Andrew Nicholls. Again, the information I have to hand is that this was signed off by every single department, and this has been gathering dust. As background for this, out of the top 10 selling motorcycles in Australia, seven of them are dirt bikes. A lot of people just do not even pay into the system. They ride illegally. If they have a crash unregistered, uninsured and are catastrophically injured, they are entitled to lifetime care and support.

**Mr DAVID SHOEBRIDGE:** And they have not contributed because they have not paid registration?

**Mr BURNS:** That is correct.

**Mr DAVID SHOEBRIDGE:** Also, when you go into State forests you see lots of signs about illegal dirt bike riding but it is obviously an ongoing phenomenon. Did you ask for any figures from the MAA?

**Mr BURNS:** The MAA has been asked to price it on a couple of occasions but the response to that was there was one pricing set out. We made a second request, given the fact that the police were a little bit curious as to where they could ride and where they could not ride, and New South Wales introduced the alphanumeric numbering system into New South Wales—

**Mr STANFORD:** For roads.

**Mr BURNS:** For roads, so that you could then designate which roads they would be able to ride on and which roads they would not be able to ride on, which is exactly the same as the Victorian scheme. We have not seen any pricing since then.

**The Hon. SARAH MITCHELL:** I have two questions that relate to the recommendations that you made on page 5 of your submission. The first is that you recommend that we implement a two category motorcycle scheme in New South Wales as opposed to the five categories that exist now. Can you talk us through why you made that recommendation?

**Mr STANFORD:** I will make some initial comments and Chris can follow these up. In a broad sense, what we found is that this goes back to the question of the distinction between the overall risk for the entire population of motorcycle riders, the likelihood of compulsory third party claims arising as a result of a crash. That overall risk of the population is reflected, basically, as a subset of the crashes that we would find in the Roads and Maritime Services data.

When you introduce a number of different private insurers all running their own separate schemes, who then have to run their own prudential requirements or actuarial risk factors against those, the risk within each of those groups seems to blow out of all proportion so we end up with riders paying based on how many times you can divide this particular population up. At the moment we have 35-odd categories with five different categories of motorcycle. By reducing the number of categories in which it is broken into and getting the actual premium cost to be more reflective of the actual overall risk is what we are aiming to do rather than leaving it to playing games with numbers.

**The Hon. SARAH MITCHELL:** Would you like to add anything, Mr Burns?

**Mr BURNS:** I would like to highlight that some of the motorcycle groups are so small. One category, 10G, has 17,000 registered motorcycles in it. It only takes two CTP claims against the motorcyclist's insurance to blow out those figures. That was borne out recently by some very good information supplied by the Motor Accidents Authority [MAA] that showed the relativities for the 10G category were too high and they should be coming down. Because these groups are so small, one single incident is going to blow their figures through the roof and this group can pay up to \$1,000 for their green slip per year.

**Mr DAVID SHOEBRIDGE:** What is that group?

**Mr BURNS:** 10G, it is engine capacity 1126 to 1325, which includes some of the safest bikes on the road at the moment, which are BMWs that have full ABS traction control, with all the bells and whistles on them. If we made these groups larger, the volatility would be reduced. As an example, Roads and Maritime Services has designated that learner approved motorcycles [LAMs] are safe for learner riders to use and we could quite easily go to a two-category system, LAMs and non-LAMs. RMS has all the data on which bikes are LAM-approved; they are printed on the registration papers so the data is very easy to get.

When we went from the initial two-category to the five-category system costs went through the roof on some areas. There was an overall reduction supposedly for 30 per cent of riders but some received a reduction of \$10; some were hit with 85 per cent increases. After those five categories were introduced, there was a market correction on the price and the price of green slips was reduced 17 per cent the following year. That was because they had the model for the figures. There is not enough data on the figures. We are talking 200,000 registered motorbikes and in the past 10 years we have had approximately 1,030 claims—I do not have the latest data for the last 12 months—against motorcycle CTPs, so we are talking a couple a year in each class.

**Mr STANFORD:** There is also another complicating factor, that is, if we look at the data over a longer period of time and go back to 2001, there were 88,000 motorcycles registered in New South Wales. Today there are about 200,000 so we have seen a marked increase in the number of motorcycles on the road. If we talk about increases we need to be careful about whether we are talking about absolute numbers or the actual rates because

when we look at it in terms of rates, the rates of crashes and the rates of claims have actually dropped markedly even though the gross totals may have risen very slightly. This is one of the great outcomes—the number of crashes and injuries has remained largely stable. There has been only a very slight increase over the last 10 years, despite this marked increase in numbers of motorcycles.

**Mr BURNS:** And as I mentioned the RMS figures for the past 10 years show the crash rate per 10,000 registrations for motorcycles has dropped 38 per cent.

**Mr STANFORD:** In fact motorcycling has never been safer.

**The Hon. SARAH MITCHELL:** My question relates to data collection. Is that why you recommend that we look at doing the crash reporting scheme similar to the one in Western Australia?

**Mr STANFORD:** Yes.

**Mr BURNS:** Correct.

**The Hon. SHAOQUETT MOSELMANE:** Following up on that and your opening statement in relation to the difficulty in obtaining data, can you elaborate on that difficulty? What is the obstacle?

**Mr STANFORD:** As we understand it, the MAA does not require insurers to submit details of crashes in any form which could be useful in terms of injury reduction. Our role as a volunteer organisation is really to try to help people not become part of the system; we want to keep them out. What we are trying to do is to identify where the risks are for the ordinary rider and what can be done about that—whether it is additional training or whether we need to look at some form of intervention. When we look at the CTP claims that are made, we have been trying to say, "Where did those crashes occur?" What we do know is that when cars throw U-turns off the side of the road into motorcycles the outcomes are not good, but we cannot get confirmed whether this relates to specific economic factors.

**The Hon. SHAOQUETT MOSELMANE:** Should the MAA recommend to its insurers to make that data available?

**Mr STANFORD:** We would certainly love to have that information available because it contributes to being able to determine how you can stop, reduce or address in some way—

**The Hon. SHAOQUETT MOSELMANE:** Why does the MAA not ask insurers to provide that information?

**Mr STANFORD:** For the life of me I have no idea. It would certainly be of great benefit.

**Mr DAVID SHOEBRIDGE:** It is the Western Australian model?

**Mr STANFORD:** It is not just the Western Australia model. Western Australia is one of the few States which actually complies with a Council of Australian Governments agreement on the collection of data and submission of that, and it does it in a good manner. New South Wales is partway down the track with that but that has nothing to do with the MAA or the insurance system. What we have is a complete mishmash. We have two completely isolated silos that do not seem to talk to each other or have any way of being able to reconcile one set of data to another. That is why we are chasing this other information.

**The Hon. SHAOQUETT MOSELMANE:** In the submission of the Lifetime Care and Support Authority and in your submission you make the point that insurers must only be allowed to charge for third-party insurance and nothing else "because it distorts the costs to the system". Can you elaborate on that?

**Mr BURNS:** Four of the seven insurers offer first-party insurance to everybody except motorcycle riders, taxidivers and trucks. I am of the understanding that is being paid for out of the CTP scheme. It should be either one in, all in or not there at all. There are other issues as well where people have been given discounts for roadside assistance on their CTP. That should not come into it. This is a statutory requirement.

**The Hon. SHAOQUETT MOSELMANE:** Is this for motorcycle riders?

**Mr BURNS:** Yes, this is for all. This is a statutory requirement so that if I have a failing in my ability as an operator of a vehicle and injure someone else, they are covered by insurance. There should be not be discounts or artificially induced market competition in it. It should be set at the best price for every single member of the New South Wales public, allowing for a reasonable profit for the insurers. But, as I have stated earlier, I believe that the profit margin on motorcycles far and away exceeds what it is for cars, but we need to get those figures. We would appreciate those figures.

**Mr STANFORD:** If you could obtain that data we would certainly be standing up applauding because we have been unable to get that information for years.

**The Hon. SHAOQUETT MOSELMANE:** Do you suggest we make some sort of recommendation in that direction?

**Mr BURNS:** Yes, please.

**Mr STANFORD:** Yes, please.

**The Hon. SHAOQUETT MOSELMANE:** On page 2 of your submission you make the point about implementing a system of victim impact statements specifically for third-party injuries. Has that not already happened?

**Mr BURNS:** No.

**The Hon. SHAOQUETT MOSELMANE:** What is the problem? Why has that not happened if it is so important?

**Mr BURNS:** That I do not know. There are various stories floating around. One chap was hit at an intersection and it was \$150,000 to repatriate him. It was not his fault; someone ran through a stop sign and cleaned him up. The person who hit him copped a minor fine and did not even have to fill out a form. They just walked away.

**Mr STANFORD:** That is the last they ever hear about it. If they were at fault they get charged by the police; they cop a fine.

**Mr BURNS:** Now this chap is still having trouble four years later and the person who caused the injury has absolutely no idea what they caused, what happened or the difficulties. If a victim impact system was implemented and people knew what effect they had through their own negligence, word of mouth would spread and I believe this would substantially reduce the collision rate.

**Mr STANFORD:** People would understand the responsibility they have taken.

**The Hon. SHAOQUETT MOSELMANE:** Following on from Mr Shoebridge's question, in your submission you refer a number of times to failures. Do you have good communication with the MAA?

**Mr BURNS:** We meet on a quarterly basis. Some things work well and some things do not. We have two presentations here; one says we are cross-subsided, one says we are not.

**CHAIR:** You say in your submission that you have these quarterly meetings but progress and change is extremely slow. What do you put that down to?

**Mr BURNS:** I cannot answer that. I have been involved since 2010.

**CHAIR:** When you say progress is slow, do you mean slow from the point of view of what you want being adopted. Is that what you mean by progress?

**Mr BURNS:** And for changes, yes, that is what I mean. Looking through my notes here to the various meetings with the MAA since 2010, there are items here that just keep going round and round in circles.

**CHAIR:** You put a proposition but you are getting a response to that proposition, are you not?

**Mr BURNS:** Some.

**Mr STANFORD:** I might add something in here.

**CHAIR:** When you say "some", are you saying some of them are being stonewalled and you are not getting any response at all?

**Mr BURNS:** It would appear that way. I have got half the information that we have requested and then when I have asked for further information, for instance, the Ernst and Young report, we get a 10-page PowerPoint presentation. Ernst and Young do not do that without a report behind them. We have asked for cash in, cash out on motorcycle green slips. We have got it from 2000 and 2009 in a report but we have requested it several times but we have not been furnished with the information for the financial years 2010, 2011 and 2012.

**CHAIR:** You talk about the PowerPoint presentation. Did you ask for something more than the PowerPoint presentation?

**Mr BURNS:** We did. I put in a Government Information (Public Access) Act request for the Ernst and Young audit into motorcycle green slips that was commissioned at the end of 2010.

**CHAIR:** And what was the response to that specific request?

**Mr BURNS:** There is no report. Here is the PowerPoint presentation.

**CHAIR:** So there was no report.

**Mr BURNS:** That is what I have been told.

**CHAIR:** Who told you that?

**Mr BURNS:** Andrew Nicholls.

**CHAIR:** You do not accept that to be the case?

**Mr BURNS:** That is correct.

**CHAIR:** You believe that there was a full report?

**Mr BURNS:** That is correct.

**CHAIR:** You believe that when you were told there was no report that that is not correct?

**Mr BURNS:** That is correct.

**CHAIR:** But you have no evidence for that, do you?

**Mr STANFORD:** No.

**Mr BURNS:** Only that it was commissioned and anecdotal evidence that it was sitting on Minister Pearce's desk and it has not been released.

**CHAIR:** Anecdotal evidence.

**Mr STANFORD:** If I could just add that I think one of the difficulties we have been having from the early days of Motorcycle Council involvement with the MAA is the lack of detailed information. When we are looking for the data and if the MAA cannot produce the data at all or it is in a form that is very vague and unable to provide any decent meaning in terms of where we are going in making a decision, of course that is frustrating. Information should be there and, as Mr Shoebridge says, it is not rocket science. If that information is available then we have a basis on which we can make a decision otherwise we just feel like we are being duchessed into making a decision that is convenient for other pressures on the MAA. That is a problem.



**CHAIR:** Do you believe you are being stonewalled?

**Mr STANFORD:** I think that we could have been given a lot better information along the way.

**Mr DAVID SHOEBRIDGE:** Can we turn now to the Lifetime Care and Support Scheme, which is probably the area where there is a cross-subsidy in terms of motorcycles. Do you want to give your opinion about that scheme's operation for motorcycle users and any proposed recommendations in that regard?

**Mr STANFORD:** I think overall that the Lifetime Care and Support Scheme [LTCS] is a very good thing for a community, to look after those who are catastrophically injured, no matter the injury. In some cases you could say, "Well, we are going to put jet skis in there for when somebody runs their jet ski up a reef somewhere and smacks their head on a tree". I think we have exactly the same question with the inclusion of a lot of claims in the LTCS; they happen to be riding motorcycles but they could have been using any other piece of equipment. The way the rules work there are a number of motorcycles which are included in the scheme which have come from what we call non-contributors to the scheme. We look at that and we say, "If this is a community-based scheme, then the load on the LTCS needs to be borne by the whole community and not shovelled off on to a group who just happen to utilise a similar machine".

**Mr DAVID SHOEBRIDGE:** And this is in part what you are looking at with the dirt bike registration scheme?

**Mr STANFORD:** Correct.

**Mr BURNS:** That is correct; 21 per cent of people classified as motorcycle riders in the LTCS scheme are off unregistered bikes. The LTCS also covers pedestrians, pushbike riders, et cetera. There was a case recently where a quad bike rider was given lifetime care and support.

**Mr DAVID SHOEBRIDGE:** When it flipped. In terms of the scheme in Victoria, they have a registration fee and an insurance fee for their bike riders. Can you explain how that works as best you understand it?

**Mr BURNS:** The recreational registration scheme down in Victoria is a low-cost fee to entice people to pay registration for unregistered trail bikes to get them contributing to the system. It is a minimal cost; it is about \$75 per year for people who were not paying before. It gets them a registration plate, so they are easily trackable.

**Mr STANFORD:** It limits the number of days.

**Mr BURNS:** It limits where they can ride and limits the number of days.

**Mr DAVID SHOEBRIDGE:** So it works at both ends—it puts some money into the scheme and it also regulates an unregulated activity.

**Mr STANFORD:** Yes.

**Mr BURNS:** That is correct.

**Mr DAVID SHOEBRIDGE:** And have you had any reports from your equivalent body down in Victoria about how it works?

**Mr BURNS:** We do not have any reports from the Victorian Motorcycle Council [VMCC]. But there is a lot of information on the Transport Accident Commission [TAC] website as to exactly how the scheme works. We also have a very comprehensive report written by Inspector Dave Robinson covering the system and how it could be implemented in New South Wales.

**Mr DAVID SHOEBRIDGE:** Could you provide that to the Committee?

**Mr BURNS:** I certainly can.

**CHAIR:** Thank you very much for being with us here today. It is certainly important that we get the views of the Motorcycle Council of New South Wales and the evidence that you have given to us today will certainly help us in our deliberations. There may well be some questions on notice that come to you.

**Mr STANFORD:** We are happy to help in whatever way we can.

**Mr BURNS:** Thank you, we appreciate the opportunity of appearing before you today.

**(The witnesses withdrew)**

**CARMEL DONNELLY**, General Manager, Strategy and Performance, Safety, Return to Work and Support Division, and

**CAMERON PLAYER**, Director, Assessment Services, Motor Accidents Authority of New South Wales, affirmed and examined:

**ANDREW NICHOLLS**, General Manager, Motor Accidents Authority of New South Wales, sworn and examined:

**CHAIR:** I welcome witnesses from the Safety, Return to Work and Support Division: Ms Donnelly, Mr Nicholls and Mr Player. Thank you for being with us today. Would any of you like to make an opening statement?

**Mr NICHOLLS:** Yes, I will make an opening statement on behalf of all three of us. I have three documents that I would like to table during the course of my presentation so I will work through those as we go. I thank the Committee for the opportunity make a short statement on behalf of the Motor Accidents Authority. As the regulator of the privately-underwritten New South Wales Compulsory Third Party [CTP] Scheme, the Motor Accidents Authority [MAA] remains committed to helping injured people recover from motor accidents, through the operation of a sustainable scheme, in keeping with the legislative objectives. The scheme, with incremental changes, has now been in operation for almost 15 years.

Since the Committee's eleventh review there has been a lot of public discussion about the scheme and its performance. Scheme affordability continues to be under pressure. Insurer profit remains a matter of contention, along with other overheads such as insurer expenses and legal costs, meaning not enough of the premium collected is paid to injured people. The number of claims is growing, with an increased propensity to claim. There remains continued growth in the number of small, legally-represented claims. It takes too long for payments to be made to claimants and there are many disputes. More disputes continue to bypass alternative-to-court dispute resolution and commence expensive litigation. I am sure these performance measures will be familiar to the Committee from the Motor Accidents Authority annual report and submissions from stakeholders.

I am pleased to table for the Committee's consideration an outline of the current performance of the scheme from our scheme actuary, Ernst and Young, regarding some key matters of interest to this Committee. It includes analysis on profit; acquisition costs, including advertising; and scheme affordability, amongst other things. Consultation last year regarding the current challenges facing the scheme led to a general consensus about the need to make improvements, but there was a diverse range of views on how best to address these issues. Many of these issues involve legislative change and are ultimately matters for Government and Parliament.

The Motor Accident Authority's responsibility is to regulate the scheme as effectively as possible, within the confines of our regulatory powers and the constructs of legislation. There are areas where we can make improvements, within these constraints. Therefore I would like to briefly outline what the Motor Accidents Authority currently sees as priority issues, and make a few comments about what we are doing. Like all compensation schemes, the Compulsory Third Party Scheme needs to be tended carefully as it is important that it stays in balance, between the needs of people who own vehicles for affordable premiums and the needs of injured people for fair and expeditious payment of benefits delivered efficiently.

At the end of the day, it is these two groups of people, vehicle owners and injured people, and the overarching public interest in ensuring a viable and sustainable scheme, which guides our activities as a regulator. The Motor Accidents Authority's current priority focus is on claims, where our overarching objective relates to ensuring claims are resolved as justly and expeditiously as possible, reducing the time it takes to achieve settlement and improving the claimant experience by eliminating unnecessary delays and disputes. Our other priority is in the area of improving regulation of the market and premium systems to make improvements for vehicle owners.

The Motor Accident Authority has developed a program to improve the Compulsory Third Party Scheme within the current legislative framework. We have taken on board the input of stakeholders and we are working with our stakeholders on the improvements. We meet regularly with insurers, peak legal bodies and vehicle owner groups and we will build on these partnerships to find better ways of delivering the scheme.

Principally, our focus is on identifying key friction points and cost drivers through a review of the claiming processes, improving early notification processes and revising the legal costs regulation to incentivise early settlement. We are also exploring options for improving impairment assessment rules and approaches.

By way of current example, we have recently commenced a new process in which injured people are "handed over" to insurer claims managers when they make first contact with the Motor Accidents Authority, and the claims form is being refreshed to make it simpler and easier to navigate. Our initial feedback on the new handover process has been very positive. To support the Motor Accident Authority's work a refresh of a 2011 independent review of the alternative-to-court dispute resolution service has been finalised, with no changes to its recommendations, with a view to public release as part of these hearings. I am pleased to table the report today, in response to your request for it.

This independent review was commissioned by the Motor Accidents Authority in response to previous recommendations of this Committee to explore whether the Claims Assessment and Resolution Service [CARS] was meeting its legislated intent and to seek recommendations for improvement. The report finds that the Claims Assessment and Resolution Service is working well. Work on some of these recommendations is already in progress; others require legislative changes—some of which were included in last year's withdrawn legislative package.

The Motor Accident Authority is also proposing to Government some changes to guidelines and processes in response to a recent court decision, known as Smalley, which would have resulted in an even greater number of disputes avoiding alternative-to-court dispute resolution. I know this is of some interest to this Committee, and we are pleased that, following a constructive consultation process, we have addressed the key stakeholder issues and achieved a high level of consensus. The proposed amendments will improve the quality and consistency of insurer decisions on liability and ensure that suitable claims have the opportunity of assessment at the Claims Assessment and Resolution Service. It is this kind of collaborative approach that I believe will continue to guide our interactions on the range of issues in our immediate program of improvements.

We are also forging a new partnership with the Centre for Road Safety to ensure better-targeted road safety initiatives designed to minimise the incidence and severity of injuries on our roads. On the market and premium side, consultation on new guidelines will commence shortly. These guidelines seek to clarify and strengthen the requirements on insurers to justify price changes, as well as ensuring that a competitive market continues to operate with equality of access to green slips for all vehicle owners including those in high-risk groups. New premium guidelines will mean better regulation of insurer premium proposals, building on the progressive improvements of the past few years in this area.

In addition, transactional improvements are being developed to improve the ease and efficiency of green slip purchasing such as real-time integration of insurer and Roads and Maritime Services systems, a new look green slip and electronic green slip transactions. This builds on recent achievements such as the expansion of the green slip calculator to accommodate small business. The Motor Accidents Authority has also committed to reviewing the premium system this year, which will also look at concerns raised by some vehicle owner groups. In particular, you have heard concerns from the Motorcycle Council of New South Wales earlier today.

The Motor Accidents Authority has had an ongoing process of consultation with this group for some years. Motorcyclists are a high-priority group in our scheme and we meet with them both quarterly and when we need to. I am pleased to table a recent presentation from Finity, an actuarial firm. This was recently shown to motorcyclists. The report shows that motorcyclists are paying their own way in Compulsory Third Party, without cross-subsidising other road users, although they are themselves subsidised in the Lifetime Care and Support Scheme, and that premium increases for motorcyclists have been much less than for other users—for example, the premiums for Sydney passenger vehicles increased by 67 per cent between 2006 and 2013, while motorcycle premiums at March 2013 were only 10 per cent higher than they were in 2006.

The Motor Accidents Authority has also commenced development of a new internal operating model, including a thorough review of the regulatory and compliance approach and capability, moving towards a more risk-based and evidence-based approach and incorporating improved data analysis, benchmarking and reporting. This comes in addition to a new memorandum of understanding and partnership with the Australian Prudential Regulation Authority [APRA]. I am happy to elaborate on these issues further as I am sure these are matters of interest to the Committee.

**CHAIR:** Thank you, Mr Nicholls. I will start with the first question. Insurers are meant to keep 8 per cent of the premiums. That is one of the structural principles at the foundation of the entire scheme. Yet the returns have been something like 19 per cent or 20 per cent recently. Is that a matter that concerns you?

**Mr NICHOLLS:** The question of insurer profit does concern the Motor Accidents Authority of New South Wales. There are a number of reasons why over the years we have seen a difference between the realised profit margins compared to the filed profit margins. The Motor Accidents Authority of New South Wales does not set a specific rate that insurers must target; we see premium profit margins filed of anywhere between about 2 per cent and 10 per cent in any given filing. However history and the annual report of the Motor Accidents Authority of New South Wales show that there is a consistent pattern in which insurer premiums have exceeded the levels of filed premiums over the years.

There are a number of reasons for that. The technical reasons are outlined in the letter that I have just tabled. As a very high-level summary, the pattern from the year 2000 to about the year 2007-08 was a period when there was a significant reduction in claims frequency. Green slip prices during that period were falling in real terms. They were arguably not falling fast enough to keep up with the falling rate of frequency. What we have seen in the last three or four years in the scheme is a period of very benign superimposed inflation and the actuaries' advice in the report that you have just been provided outlines the reasons for that.

In general, although no superimposed inflation is a good thing in a scheme it is one of those things that moves around. If you look at the history of superimposed inflation in the scheme, you see that during its early period around the year 2000 it was up at about 5 per cent or 6 per cent, which is higher than the average. The average over time runs at about 3 per cent. So in periods of benign superimposed inflation you would expect that insurers' prudential margins will lead to higher levels of profit.

The particular challenge, I guess, in terms of looking at this scheme is that when you go back to the legislation it requires insurers to be fully funded. It requires them to have a high prudential margin applied to their premiums. We have prudential obligations on us as a regulator, as does the Australian Prudential Regulation Authority [APRA]. The Australian Prudential Regulation Authority places a number of constraints around the capital allocation that insurers must apply as well. When you look at the legislation that governs the Motor Accidents Authority of New South Wales it makes it very clear that the expectation is that there is a high degree of stability in the scheme, and that that stability will then allow insurers to have adequate returns for the risk that is taken—I think those are the words used in the legislation.

But given the metrics that we have seen that have moved around since 1999 on things like claims frequency, yield rates and superimposed inflation, some of those things are internal to the scheme and some of those are external factors that no-one can anticipate or control, the net effect being that the movements in costs and anticipated costs for insurers have varied from year to year from what was expected and, as a result, you get an additional profit margin. Am I concerned about that? Absolutely. We want this scheme to be operating efficiently. It is one of the overhead costs of this scheme that is contributing to the inefficiency of the scheme, which since 2000 to 2010 has been around a 50¢ in the dollar efficiency ratio, which from my point of view I do not think is an acceptable level of efficiency for the community.

**CHAIR:** The factors that you have mentioned, they are not out of the ordinary are they? There is nothing really out of the ordinary—unexpected—that has occurred since this scheme has been operating that would explain why instead of an 8 per cent return it is 19, 20 per cent. As you say, this high return is, to use your words, a consistent pattern, yet there are no out-of-the-ordinary factors to really explain. There are factors but nothing unusual. Would you agree with that?

**Mr NICHOLLS:** I do not know that I agree with that. Actuaries need to make assessments and assumptions about future behaviour. Largely they look at previous behaviour; so they will look at claims trends in the past, they will look at superimposed inflation in the past, they will look at yield rates in the past and they will attempt to extrapolate from that in order to make assessments about the future, because they do not have any other data, obviously, that they can use to do that. There are many different assumptions that flow into a scheme like this. Some of those assumptions, as I mentioned in my previous response, relate to intrinsic aspects of the scheme—the level of claims frequency, for example—but other factors are external, such as yield rates. If you look at what happened in 2008 with yield rates, there was a substantial impact that I do not think anybody could have anticipated at that time. Claims frequency, as I mentioned a moment ago, dropped far faster in the first part of the 2000s than anybody expected, and prices did the right thing, they followed; they went down in real terms.

**CHAIR:** But not profits; profits stayed—

**Mr NICHOLLS:** They were not going down fast enough in order to offset the profit effect, in essence. The story is different now; we are going through a period of benign superimposed inflation. Superimposed inflation is the additional inflation that is over and above the normal inflation, if I can explain it that way, where courts make decisions, assessors make decisions. Over time, precedents get established in the scheme that drive extra cost that is over and above the normal rate of inflation, and that is called superimposed inflation.

It has been a period of very benign superimposed inflation for the last three or four years and that was not expected in terms of one of those things that you would expect. The average over the life of the scheme is around 3 per cent superimposed inflation, and if you look in the early part of the 2000s, superimposed inflation was up around 5 to 6 per cent of the scheme costs. Superimposed inflation is one of those things that can suddenly reappear completely unexpectedly. So while a number of these parameters are things that you would expect to move around, they are all moving parts. It is a bit like a Swiss watch with a number of moving parts, and the actuary's job is to try and make an assumption across the whole range of those assumptions that are driving cost in this scheme and it only then results in several of these factors moving in an adverse direction to what was expected to have an impact on profit margins.

Having said all of that, the key point from the Motor Accidents Authority's point of view is to ensure prudentially sound prices are operating in this marketplace. We should not forget that just over 10 years ago we had the HIH royal commission and that scheme regulators in the early part of the 2000s were dealing with a period when the number of insurers in our marketplace was decreasing, including the withdrawal of HIH. So I think as a regulator we have to make sure that all of the reasonable factors are taken into account to ensure that prices are not going to leave the scheme in a situation where it cannot pay its way.

**CHAIR:** These consistently higher profits are coming out of someone's pocket and it is consistently higher—19 per cent, not 8 per cent. What do we do to address this issue, do you think?

**Mr NICHOLLS:** I think it is a combination of factors, and it is hard. The reason for super profit is threefold. There are some technical reasons why super profits occur; some of that is about how we can put some technical constraints, some better regulatory constraints around the sorts of assumptions that are being made in the scheme. A good example of that is that at the moment the MAA now proactively has our actuary engaging with each insurer about what we are seeing in the scheme, what the trends look like, and giving that information to insurers to help guide them in terms of making filings that fit with the actuarial projections that we think are happening in the scheme. However, by and large, the main factor in this scheme is the lack of certainty. All of those moving parts that I was mentioning a minute ago are resulting in a common law system, resulting in uncertain future payments that insurers have to make, and the uncertainty brings with it a prudential risk margin.

So if we want to address those factors we need to remove the levels of uncertainty. The legislation that governs the Motor Accidents Act requires a level of stability and I am not sure that we are seeing that stability in costs that have been driving this scheme since 1999—fluctuations upwards and downwards in a range of those factors. I think we need to look at those more structural issues around how the scheme is structured, how we design our guidelines and our legislation and regulations to give insurers a greater level of certainty. Putting it in simple terms, insurers invest their capital and there is an opportunity cost of that capital. If they can make the same profit somewhere else with that capital they will if there is less risk.

The second area that I wanted to highlight is the need to address the risks in the scheme, effectively find ways of derisking the scheme. The third area—I mentioned there were three—is the area of the structure of the scheme itself. We have only five insurers operating in this market at the moment. The other factor that in my opinion is influencing super profit taking is the relative lack of competition between five insurers in the marketplace compared to, say, the 14 insurers that were in the marketplace back in the later period of the 2000s. I think the other thing for us to look at is opportunities to promote competition in the marketplace. That is not only looking at other entrants to the market but it might also look at how we have the rules of engagement of the market practice rules that would allow us to drive greater levels of price competition and price sensitivity in the marketplace, how we can encourage vehicle owners to shop around and keep the insurers honest basically by going for the best price insurance. I think those three strategies together are ways that we could help address super profit taking.

**CHAIR:** What is the variance between the lowest price and the highest price for premiums? I am not talking about competition.

**Mr NICHOLLS:** It varies over time and I will take on notice—

**CHAIR:** Yes, take it on notice.

**Mr NICHOLLS:** I will take on notice the question of the explicit range of prices at the moment, but it varies over time and it is in the order of probably around \$50 for the best price in the marketplace. I think the reason I will take it on notice is because the prices vary by different types of vehicle, they vary by whether you are a 30-year-old or whether you are a 55-year-old. So the actual spread of prices is quite different for each individual. I would like to give you a technically correct response.

**CHAIR:** And compare apples with apples.

**Mr NICHOLLS:** That is right.

**Mr DAVID SHOEBRIDGE:** Mr Nicholls, you have come here hopefully to answer questions from an informed committee. Correct?

**Mr NICHOLLS:** Correct.

**Mr DAVID SHOEBRIDGE:** When did you get the Ernst and Young report that you just tabled?

**Mr NICHOLLS:** I got that yesterday.

**Mr DAVID SHOEBRIDGE:** Why did you not provide it to the committee before the start of the hearing today?

**Mr NICHOLLS:** I received it yesterday.

**Mr DAVID SHOEBRIDGE:** I find it extraordinary that you give us a 16-page detailed actuarial at the start of your evidence. How do you expect the committee to come to grips with a 16-page actuarial document and then ask you informed questions about it? Why did you not give it to us yesterday?

**Mr NICHOLLS:** I am providing you that as a resource as I go through my responses and I am very happy to take any questions on notice that may arise.

**Mr DAVID SHOEBRIDGE:** What about the 116-page CARS review that you gave to us this morning. When did you get that?

**Mr NICHOLLS:** I received that in final form late last week.

**Mr DAVID SHOEBRIDGE:** It is dated February 2014.

**Mr NICHOLLS:** That is correct.

**Mr DAVID SHOEBRIDGE:** Why did we not get that in advance?

**Mr NICHOLLS:** I am providing it to you today in the interests of providing you with the full information that the committee has requested.

**Mr DAVID SHOEBRIDGE:** As best as I can understand your very long and convoluted answer about insurance profits, and you said you made three points—to be honest, I listened to you carefully and for the life of me I cannot understand your answer and your three points—but as best as I can understand it, you said it is the unpredictability arising out of a common law scheme that is creating uncertainty. That was the only actual explanation that I heard you give about the uncertainty about profits. Is that right?

**Mr NICHOLLS:** I indicated that there were three things driving super profits.

**Mr DAVID SHOEBRIDGE:** Why do you not give them to me briefly and simply?

**Mr NICHOLLS:** The first factor is around regulation, the way we regulate our premium guidelines, the sort of information that we require and we share with insurers to ensure that we are trying to get, as best we can, a framework that deals with future uncertainty in this scheme.

**Mr DAVID SHOEBRIDGE:** What does that mean? You have just given me another convoluted answer that I do not understand at all.

**Mr NICHOLLS:** What I am saying is we are sharing—

**Mr DAVID SHOEBRIDGE:** Is it bad regulation? Is that what you are saying? Because I do not hear a single acknowledgement that you as the regulator have stuffed up repeatedly for more than a decade and delivered almost 20¢ in every dollar that is paid by motorists to insurers. Do you acknowledge failure?

**Mr NICHOLLS:** I do not acknowledge failure. The approach that you are presenting there suggests that the question of super profit taking is purely about regulation, whether it is insufficient regulation or whether it is successful regulation.

**Mr DAVID SHOEBRIDGE:** I was not suggesting that at all. I am asking about that aspect of it. You have given three aspects; I am asking you about the regulation aspect—it has failed to restrain super profits. Do you agree?

**Mr NICHOLLS:** I believe that what we need to do more of as a regulator is to provide better information proactively to insurers to guide them around future assumptions. Those future assumptions, though, actuarially, necessarily, still have uncertainty attached to them. Can I promise what is going to happen in four or five years? I am afraid I cannot; I do not have that level of omniscience.

**Mr DAVID SHOEBRIDGE:** In my brief perusal of this document that you have given, the 16-page actuarial document—have you got it there in front of you?

**Mr NICHOLLS:** I have.

**Mr DAVID SHOEBRIDGE:** Go to page 4 please. You have got there what is called the scheme efficiency, what the actuaries have said is the scheme efficiency from year to year. Have you got it there?

**Mr NICHOLLS:** Yes, I have.

**Mr DAVID SHOEBRIDGE:** The yellow bar marks claim payments and the mauve bar at the top represents profits. The other three bars are legal and investigative costs, MAA and RTA expenses and insurance costs. Those costs—legal and investigative, insurance and MAA and RTA expenses are reasonably constant; there are times where the RTA and the MAA costs have been bigger than others, but they are reasonably constant—if you had to say what is taking dollars away from insurers and from the claims payments you would have to say it is a direct relationship with the profits. Every time the profit goes up the payment to claimants goes down, and every time the profit goes down the payment to claimants goes up. The inefficiency in this market, as I am looking at it, is directly related to the insurance profits.

**Mr NICHOLLS:** I refer to my earlier response. I absolutely agree.

**Mr DAVID SHOEBRIDGE:** I am asking you about that. Do you agree when you look at that?

**Mr NICHOLLS:** Yes, I agree, absolutely. I agree that insurer profit is one of the key variables.

**Mr DAVID SHOEBRIDGE:** You say one of the key variables. Look at the graph—it is the variable. Where is there another variable that is in any way comparable to that in terms of spend inefficiency? Point to one.

**Mr NICHOLLS:** The profit margin is what the insurers take out of the scheme after all of their other expenses have gone out. So you are absolutely correct in pointing out that when the other costs move up and down over time the balance is profit.



**Mr DAVID SHOEBRIDGE:** No, I asked you a simple question. Point to another variable that in any way has anything like the effect on scheme efficiency as profits. Point to one.

**Mr NICHOLLS:** I said that I am not disagreeing with you, Mr Shoebridge, about the proposition.

**Mr DAVID SHOEBRIDGE:** I was not asking you to agree or disagree; I am asking you to point me to another driver.

**Mr NICHOLLS:** It is the primary variable each year, and you are correct in identifying that.

**Mr DAVID SHOEBRIDGE:** As the regulator you acknowledge no failure over the past decade about restraining this primary variable. You just simply say, "It is all too hard. APRA insists on a certain amount of capital, inflation can go up and down, courts can be wicked and we just happen to get it grossly wrong every year."

**Mr NICHOLLS:** What I am indicating is that in a common law system where there are many moving parts, where actuaries have to make assessments about future costs, we will see variability in these cost structures over time which will ultimately be a variability in profit. So in those years where the costs are high, in those years like 2008-09, what is left over for insurers is very small as you see in that graph. In the years where those costs ended up being a lot lower, the profit margins are much larger. However, in this scheme the period that it takes to settle claims is between four to six years in the cash flow in the scheme. It takes six years before 95 per cent of the payments have been made against those yellow bars.

**Mr DAVID SHOEBRIDGE:** Do you disagree with the information from the Insurance Council that said that the average period within which claims are settled has significantly reduced and is now about 4½ years?

**Mr NICHOLLS:** I am saying that over the life of the scheme since 1999—

**Mr DAVID SHOEBRIDGE:** Would you answer the question? Has it reduced and is the average time now about 4½ years?

**Mr NICHOLLS:** The average peak in cash flow is about 4½ years, that is correct.

**Mr DAVID SHOEBRIDGE:** Has it reduced? It is a simple question, Mr Nicholls. Has it reduced?

**Mr NICHOLLS:** I will take that on notice.

**Mr DAVID SHOEBRIDGE:** You do not know?

**Mr NICHOLLS:** I will take it on notice.

**Mr DAVID SHOEBRIDGE:** Yet it is one of the key variables, is it not, the amount of time that the claims are outstanding?

**Mr NICHOLLS:** It is one of the factors that influence.

**Mr DAVID SHOEBRIDGE:** Has it reduced?

**Mr NICHOLLS:** It is one of the factors that influence.

**Mr DAVID SHOEBRIDGE:** Has it reduced?

**Mr NICHOLLS:** I have said I will take the question on notice.

**Mr DAVID SHOEBRIDGE:** You also say that it is the common law system that creates the variability. Your own annual reports make it clear that claims frequency in large part was the major explanation for the super profits in the middle of the past decade.

**Mr NICHOLLS:** That was what I said in my earlier response; that is correct.

**Mr DAVID SHOEBRIDGE:** The only explanation you gave me when I asked you repeatedly was about the uncertainties in a common law system. Claims frequency has nothing to do with the uncertainties in a common law system, does it?

**Mr NICHOLLS:** I indicated that there were three factors—

**Mr DAVID SHOEBRIDGE:** Does it? Does it have anything to do with it?

**CHAIR:** Order! Let him answer the question.

**Mr NICHOLLS:** Excuse me, there were three factors that I referred to in my opening statement. The common law uncertainty is one of the factors in the design of this scheme. That was one of the comments that I made. The second comment that I made was that other factors that are intrinsic to this scheme, such as claims frequency, do also affect that future uncertainty. I have made both statements in my evidence, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** Does claims frequency have anything to do with the uncertainties in the common law system, Mr Nicholls, yes or no?

**Mr NICHOLLS:** No.

**Mr DAVID SHOEBRIDGE:** And that was the single biggest driver of uncertainty, was it not?

**Mr NICHOLLS:** Mr Shoebridge, I have not—

**Mr DAVID SHOEBRIDGE:** Yes or no?

**Mr NICHOLLS:** Mr Shoebridge, I have not linked the question of common law to claims frequency. The question that I answered in the opening statement was simply what were the factors driving super profit? I indicated uncertainty was one of those factors. I indicated that claims frequency was another of those factors. At no point have I tried to link those two. I am not sure the inference that you are trying to make here.

**Mr DAVID SHOEBRIDGE:** Mr Nicholls, you tell us in your most recent annual report that you expect the percentage of profits for the 2012 underwriting year to be 5 per cent. Is that right?

**Mr NICHOLLS:** That is correct. The central estimate is 5 per cent.

**Mr DAVID SHOEBRIDGE:** What do you think you will be telling us next year?

**Mr NICHOLLS:** I expect it will go higher.

**Mr DAVID SHOEBRIDGE:** You already expect it will go higher. On what possible basis in this year do you tell us with a straight face that it will be 5 per cent?

**Mr NICHOLLS:** Because we publish the central estimate of likely profit margins which does change over time.

**Mr DAVID SHOEBRIDGE:** In 2007 you told us that the 2006 profit projection would be 5 per cent, did you not?

**Mr NICHOLLS:** That may be correct. I would need to go back and check it.

**Mr DAVID SHOEBRIDGE:** I can tell you it is correct. Yet you tell us this year that that 2006 profit will be 22 per cent, not 5 per cent. Are you expecting a similar blowout for the 2012 underwriting year, or is it just who knows?

**Mr NICHOLLS:** I would be surprised if it reaches those levels. But what we are looking at is information that is historic; it is retrospective. The 2006 year does not adequately settle for about five years after

that time. That means that it is not until five years after the event that we can start to understand really what happened in that particular year.

**Mr DAVID SHOEBRIDGE:** Every time, five years after the event, the profits are substantially greater than what you say in the first year. Is the MAA not a learning animal? Are your actuaries not learning animals? Do you not take these kinds of historical factors into account when you make your estimates?

**Mr NICHOLLS:** When we look at the past we also have to consider what the trends are at the time when future premiums are being assessed. We also need to understand what the drivers are of those factors and they vary over time as well. So the claims frequency experience in that first period of the 2000s up to 2007 is not the experience at the moment. We understand we can diagnose what happened in that first period of 2000 to 2007, but is it what the actuaries believe is currently happening in the scheme? No, it is not.

**Mr DAVID SHOEBRIDGE:** You do not even believe what your actuaries have said. You do not even believe what is in your annual report. You expect that it will go up. How do you expect anyone in the community to believe you?

**Mr NICHOLLS:** I have published in our annual report a range of profit margins that I expect this premium to fall within.

**Mr DAVID SHOEBRIDGE:** You told me in an earlier answer that you do not expect it to be 5 per cent next year; you expect it to be higher. So you do not even believe your own annual report. How can you expect the Government or the people of New South Wales to have faith in your annual reports when you do not even believe them yourself?

**Mr NICHOLLS:** I believe it will fall within the estimate that we have indicated in our annual report.

**The Hon. PETER PRIMROSE:** I have two questions, one of which is on notice. What is your response to the suggestion that the MAA should have the power to impose a levy on insurer super profits if they rise above a certain level?

**Mr NICHOLLS:** I believe that that would be difficult to implement in practice, given the length of time it takes for accident years to emerge. I also believe that a large part of the answer to the question of super profit is not in regulatory power; it is in the way we design the scheme and the way we remove risks from the scheme and the way in which we can make the scheme operate much more efficiently and effectively. I am not confident that applying a tougher regulatory regime would ultimately result in those uncertainties being removed. As a result, I do not expect that we would suddenly see insurers in a better position to be able to address those future risks simply because of the prospect of a penalty being there.

**The Hon. PETER PRIMROSE:** I refer to the part that leads on from that and I also take account of some of your earlier responses. Will you take this question on notice and provide the Committee with the details of suggestions you have already made? You have already made a number of suggestions in relation to super profits on which I will not quiz you any further. However, it seems to me you are specifically saying—not the reasons as the Committee is exploring them here—what you recommend the Committee should be looking at as a way of overcoming this.

**Mr NICHOLLS:** Certainly I am happy to take that question on notice.

**Mr SCOT MacDONALD:** I am trying to understand your comments. It seems to me, and the graphs bear it out, that there are more small contested claims, if you like. Can you advise the Committee why you think that is the case? Is there ambulance chasing? What is behind this change? Are claimants making informed decisions? Are they aware of the potential delay, cost or impact on their final payout?

**Mr NICHOLLS:** Since 2008 we have seen a 40 per cent increase in the number of claims for low severity injuries where there is legal representation involved. We do not know exactly the reasons for that. I suspect that in part there has been an increase in advertising it would seem from plaintiff lawyer firms that are promoting the scheme better. We have expanded benefits in the scheme during that period which has resulted in some more advertising and promotion of the scheme that I think is then having the effect of more people knowing about our scheme. The simply reality, however, is that this scheme is complex to navigate and it is

becoming more complex as we have overlaid a number of different requirements on the scheme over time. As a result of that, people will often go and get a lawyer to help them with that process.

**Mr SCOT MacDONALD:** The job of the Committee is to make recommendations. Without impeding the rights of people to reach a fair payout or a fair claim, do you have any recommendations for the Committee about whether we can get better transparency? Can we get people making more informed decisions and can that mediated process be improved?

**Mr NICHOLLS:** Sure. I think absolutely there is an opportunity for us to look at the way in which we have early interaction with claimants through the process. We have around 2,000 to 3,000 claimants who will contact the Motor Accidents Authority directly needing to find out who their insurers are, where they need to go and how they navigate that system better. We have started to look at ways in which we can make that interaction much simpler and easier to navigate.

**Mr SCOT MacDONALD:** Like a Consumer, Trader and Tenancy Tribunal-type process?

**Mr NICHOLLS:** Yes. We have an alternative to court dispute resolution service now in the operation of the system. However, in recent years it has become more formal than it needs to be. We are seeing more claims being exempted from that alternative to court process and going to the court system. One of the areas on which we are particularly focused at the moment is how we can make the early navigation into the system easier for people and to enable the alternative to court dispute resolution service to do what it does well, which is resolve claims in a much simpler and less adversarial scenario, and perhaps reduce the need to have expensive disputes.

**Mr SCOT MacDONALD:** What is the attitude of the Bar Association, the Lawyers Alliance or those sorts of people? Are they on board with that or are they looking for business?

**Mr NICHOLLS:** I cannot comment for the Bar Association and the Law Society of New South Wales in terms of their outlook or their views for this Committee. I have to say I have a very constructive relationship with the Bar Association and the Law Society and the ALA. I meet with them formally on a quarterly basis. I meet with them more frequently than that when we need to on a range of issues. We have another committee that Mr Player manages for operational matters also with those groups. My general experience is that the legal profession is supportive of initiatives that will improve pathways for claimants. The professional people with whom we deal in those various associations—not that I can speak for them—certainly would reject any assertion that they support ambulance chasing or any of those kinds of activities. My experience is that they are very constructive in their approach on these matters. However, I do think that they would be concerned that while ever we are operating in a common law system people's rights are being preserved and protected.

**Mr SCOT MacDONALD:** You commented on stability. However, I will not go over that ground again as we have already had a discussion about it. One person's stability is another person's lack of competitive tension—a matter on which you have also touched—and we have gone from 14 to 5. You started to talk about improving barriers to entry to get more competition. Do you need regulatory changes to make that happen?

**Mr NICHOLLS:** If we can look at making the scheme less risky it will be more attractive for new insurers. Let us take a step back and look at what those barriers to entry are. One of the barriers to entry is the significant capital that an insurer has to invest to be in this market. They need to be in this market for the long term. They cannot just come and dabble in this market; they need to make a long-term commitment.

**Mr SCOT MacDONALD:** To manage that tail?

**Mr NICHOLLS:** To manage that tail and to look after injured people in the long run. That requires a significant investment in expertise. They need to have the rehabilitation and claims expertise that is unique to personal injury and they need to invest their capital significantly. The capital requirements are a product of the certainty and risks within the scheme. So the more we can do to address that, the more attractive it would be for a new player.

Secondly, we could do more to allow insurers to have more creative entry points, the opportunity to partner or to form consortia with other insurance companies and to address one of the other barriers to entry. It is a fact that you have to write the field when you enter the compulsory third party [CTP] market. So if you are an insurer—

**Mr SCOT MacDONALD:** So from the most expensive motorcycle—

**Mr NICHOLLS:** To everybody, yes.

**Mr SCOT MacDONALD:** To the 65-year-old safe driver?

**Mr NICHOLLS:** Correct. And in this market you have to be prepared to write all risks. There are good public policy reasons for that otherwise some markets would not be covered. But what that does is exclude some of the smaller boutique-type insurers that might enter the market. So there is a second opportunity there to look at how we can allow for niche marketing and partnering. The third opportunity is to look at our premium model. In my view, the premium model that we have at the moment runs the risk that any new entrant would become overweight with poor risks. In other words, the other insurers would adopt pricing strategies in order to shift risk onto that new entrant. I think that by looking at the premium model—which is one of the things the Motor Accidents Authority [MAA] wants to do in the second half of this year—we have the opportunity to look at how those barriers to entry operate in pricing so that a new entrant would see this market as being much more attractive.

**Mr DAVID SHOEBRIDGE:** Well, is part of that not in unbundling the products and prohibiting insurers from selling CTP together with first party insurance? Because they can find their good risks in first party insurance and then they can aggressively attach CTP policies to their good risks in their first party insurance.

**Mr SCOT MacDONALD:** When you say "first party", are you talking about comprehensive?

**Mr DAVID SHOEBRIDGE:** For their comprehensive insurance. Insurers can actively insure good risk and not insure bad risk. They then aggressively attach their CTP when they have a good risk.

**Mr SCOT MacDONALD:** I will let you answer that question and then you can come back to me.

**Mr DAVID SHOEBRIDGE:** What are you doing to unbundle that to reduce that annual fee?

**Mr NICHOLLS:** Each insurer adopts different strategies.

**Mr DAVID SHOEBRIDGE:** What are you doing?

**Mr NICHOLLS:** We do not govern comprehensive motor insurance so we do not have any ability to address any of these sorts of issues. It is a commercial, open market and different insurers have different strategies. So some of our insurers are not in the direct market; they are in the market of using agents, dealers and other people who operate as intermediaries in this system. So they have very different acquisition strategies and market strategies to other direct insurers. They each have their own strategies. The point that I am simply making in response to Mr MacDonald's question is that we need to look at all those things and unbundle them, to better understand how market competition is working so that a new entrant would not be explicitly disadvantaged by the sorts of things you are raising, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** That is a disincentive to new entrants because you have a very mature insurance company market which is bundling the products together and making it harder for a new entrant to come in. What are you doing to look at that uncompetitive element in the current market? What are you doing?

**Mr NICHOLLS:** We are managing our market practices within our existing powers.

**Mr SCOT MacDONALD:** I will finish on the superimposed information as it is obviously a big factor in this profitability, variability and risk. Are there any recommendations that you would make to this Committee—even if you think the Government would not like it or we would not like it—to take some of that volatility out of it, if you like?

**Mr NICHOLLS:** Obviously the Government is looking at its options following the withdrawal of the legislative package it put forward last year. It has put in place a steering committee to review that process. I do not think it is appropriate for me to comment on a process that is running through the normal processes of government around those broader reform issues. However, what I would say is that when we look at the

opportunities within our existing legislative framework, I think there are opportunities for making improvements. When I look at claims handling guidelines and at the way we manage the process of claimants from the point that they enter the system through to the claims handling process and through to the dispute and assessment process, I think there is a big opportunity for us to look at where the friction points exist in that scheme at the moment and to look at ways that we can give insurers more guidance around how to better manage claims and remove a lot of unnecessary costs from the system.

**The Hon. SHAOQUETT MOSELMANE:** I think Mr David Shoebridge asked a good sequence of questions that I hope drew out some answers. I have been on this Committee for the past three or four years and we seem to be going in circles all the time about this issue of super profits and insurer profitability. This is a point of complaint by many of the bodies that came before us. We are supposed to make recommendations on these issues. From what I am hearing from you, you are not helping us to find solutions or recommendations that we could come up with. If that is the case, where can we find the circuit breaker? What is the essential issue that we can really hone in on and say, "This is the issue that we must address to impact on this issue of profits"?

**Mr NICHOLLS:** The uncertainty in the scheme, in my view, is the biggest issue that we need to address. At the moment we have a scheme in which negotiation takes place. We need to look at more guidance around how settlements can be made. One of the reasons why the Government promoted a defined benefits scheme last year was that that removed a lot of the uncertainty from the scheme. In my view, addressing the reasons why those variabilities occur is a higher priority than looking at the immediate regulatory powers.

**The Hon. SHAOQUETT MOSELMANE:** Are you able to write down what those uncertainties are? We could then make recommendations as part of our final report to the Government.

**Mr NICHOLLS:** I am happy to take that question on notice.

**Ms DONNELLY:** I want to add to Mr Nicholls' comments and to pick up on something that was discussed a few minutes earlier. In reducing uncertainty one of the other angles to look at is whether we can have a scheme where we settle claims earlier. From the point of view of the injured person having the best possible experience after they have obviously had a terrible experience with a car accident, the delay is something that we could be bringing forward. It has another benefit in that it reduces the amount of time that that large amount of capital needs to be kept.

I put forward a thought relating to strategic options that the Committee might look at. The Committee was asking questions a few minutes ago about comprehensive insurance. That is related to property insurance which has a more favourable aspect to it for insurers because claims are settled in a shorter time and they do not need to hold the capital for so long. They are better able then to meet the requirements of the Australian Prudential Regulation Authority [APRA]. I just wonder whether there are questions that the Committee may want to ask of a number of witnesses about their experiences. It is my understanding that there is a greater amount of competition and lower barriers to entry in that market which is why a larger number of insurers in that comprehensive property market would find it unattractive to move into the CTP space. So there is uncertainty but there are also delays and the amount of time.

**The Hon. SHAOQUETT MOSELMANE:** In some of the comments that were made earlier and on other days there was a lack of communication with the MAA. The Motorcycle Council of NSW and other bodies would be your best allies in providing you with information as to what is happening with insurance claims and so forth. Yet as you heard this morning there has been a lack of communication. There is a failure, as they describe it. Do you not think that a better system should be in place where you can use those institutions or organisations to provide you with information on which you can build your analysis to provide better services to the people of New South Wales?

**Mr NICHOLLS:** I agree that the need to have good working relationships with stakeholders is absolutely paramount. Some of the evidence this morning implied that the MAA does not have a constructive relationship with motorcyclists. I just want to put on the record that that is not my experience. We have been meeting with the Motorcycle Council of NSW now for quite a number of years in a working party. We continue to meet in a working party and we continue to share information. Let me give you a practical example of what you are talking about. We sat down with the Motorcycle Council of NSW and we said, "We have a whole lot of vehicles in our claims database. We do not know what their power-to-weight ratio is, how they operate and so on, so let us work with the Motorcycle Council of NSW on going through our data to help us understand where

we might see some of those trends emerging. So we have been looking at ways of working with our stakeholders in those respects.

The particular challenge in our space, which we are now in the process of addressing, is better data linkage between the data that exists in quite a number of different parts of the motor accidents space. Motorcycle groups pointed to data that sits within insurers; there is data that sits within the MAA; there is data in the Lifetime Care Authority; but there is also data in the Centre for Road Safety and there is data in the health system. In fact, the most important data for us, we think, is in the health system to help us understand and link across to the data that is in the transport systems about this type of vehicle and this type of injury in order to look at patterns. As a result our number one priority at the moment in the area of this data and road safety is a data linkage project where we have committed several hundreds of thousands of dollars to start to link all those databases and to enable us to get one view of what is happening across the accident space and to work with our stakeholders on understanding that data better.

**Mr DAVID SHOEBRIDGE:** But you sat here and you heard a key stakeholder make three specific complaints about things. You have not addressed any of those three specific complaints. You must have heard the evidence. They said that you gave good data for motorcycles from 2002 to 2009, but they want it from 2010 to 2012 and you do not give it to them, or not in a form that they can use.

**The Hon. SHAOQUETT MOSELMANE:** They said something about a report.

**Mr DAVID SHOEBRIDGE:** They said they were after the Ernst and Young report and they got a 10-page PowerPoint presentation. They think there is more and they wonder what is happening. They basically said they thought you were withholding information. You now have an opportunity to answer that. They also said that you had been vastly less than helpful about registering recreational dirt bike riders. They are three specific complaints that you have had an opportunity to address. What is your answer?

**Mr NICHOLLS:** On the first question we have been sharing data with the Motorcycle Council of NSW on a regular basis. I am advised that we have given them data in March 2012, August 2012, November 2010 and March 2011. We provided them with the presentation we provided you with earlier today. We have had a very open relationship with the motorcyclists and so I was a little surprised and concerned that the motorcycle community was raising concerns today that they are not feeling that that is adequate. I can absolutely assure you that the MAA has been trying to deal with the information requests adequately. If that is not the case I am happy outside this process to continue that dialogue with the Motorcycle Council of NSW.

**CHAIR:** Was there any more information from Ernst and Young, for instance? They believe that there was more information that they could have been given and they were advised that there was not.

**Mr NICHOLLS:** At that time we had a presentation for Ernst and Young that was provided to them. That was the only information that we had to hand. Subsequent to that presentation I have indicated that now that we have gone through a stakeholder consultation process around that information, Ernst and Young should move to finalise that report and make a submission to government. But obviously, as a government commissioned report, it is a matter for government as to what it does next.

On the third issue about recreational registration I want to make it clear that the Motor Accidents Authority is not the lead policy agency in relation to recreational registration. There has been a working party chaired by the Department of Premier and Cabinet. The question ultimately of vehicles and vehicle classes that exist within the motor accidents space or the motor space is a matter for the Minister for Roads in determining what vehicles should be included in the registration system. All our role has been throughout this process is to simply cost each of the options that have come out of that working party. We have done that and we have provided the advice back to the working party and what happens next is a policy matter for Government. But at the end of the day, our role is simply to give advice; we are not a policy agency in this respect. I can assure the Committee that any decisions or any delay around recreational registration is not a matter for the Motor Accidents Authority.

**(Short adjournment)**

**The Hon. PETER PRIMROSE:** I was wondering whether you can see any opportunity to expand the use of accident notification forms [ANFs]?

**Mr NICHOLLS:** I think it is worth reviewing the ANF system, absolutely. But a few facts about the ANF: the ANF exists, as I am sure the Committee is aware, to provide early assistance to people who have been injured in an accident. It is a no-fault benefit so that the benefits and support to people flow quickly, enabling them not to have to establish fault or liability in order to get access to those benefits. There are some ideas that have been floated before this Committee about some specific aspects of the design but I think we need to look more broadly at how the ANF operates within the scheme as a whole as part of reviewing the ANF.

If we look at the average payment under an ANF, it runs at around \$1,700 at the moment. So the vast majority of people who are claiming an ANF do not expend the full \$5,000 that they are entitled to. In general they are doing one of two things. They are either dropping out of the system because they have been looked after and they are happy and they move on, which is a good outcome, that is what we want the ANF to do. The other group of people are people who have more significant injuries who for all the right reasons are deciding to move into making a full claim on the system. My concern is that before we get to the point of trying to prescribe what that threshold should be we need to understand the dynamics that are happening there. Simply raising the threshold on its own may not change that metric much because, to be frank, \$5,000 at the moment does not actually ever fully get expended for the vast majority of people. Raising that on its own may not change that behaviour.

We need to look at ways of incentivising people to move into the ANF system. We need to put in some good structure around the benefits within that system, some greater clarity around their entitlement so that they can move in, get those benefits quickly and, as has been suggested in the proposals by the law professions, look at how legal costs would interact with that. I think as a package it is certainly an area that we should look at. I would welcome the Committee's views on that, but I would be concerned at this stage to get to the point of actually prescribing what that should look like.

**The Hon. SARAH MITCHELL:** I will go back to the issue of stakeholder engagement. In the prehearing questions on notice we asked about the establishment of an advisory committee. You essentially said that is a matter for the Minister. In evidence we received the Bar Association was quite strong on wanting to see a similar committee re-established because they said it was a good forum for policy generation and ideas. Do you have any comment on that?

**Mr NICHOLLS:** The Motor Accidents Authority is very committed to stakeholder engagement with or without a formal process. The Motor Accidents Authority has a regular meeting with most of the major key stakeholder groups—the legal professions, the insurers, a number of vehicle groups—both at a policy level where I am involved personally as the General Manager of the authority in those discussions about some of those policy opportunities and we also have an operating committee that Mr Player manages that deals with a number of the operational questions within the scheme.

The question of whether a formal ministerial council ought to be established is obviously a matter for the Minister to respond to. I know that representations have been made to him by those groups. It is a matter for the Minister to respond to them in the way that he sees fit. From my point of view, we continue to meet with stakeholders. It is not that the absence of that advisory council is resulting in us not having the key interactions with the people that we need to. I would point to, for example, the very constructive approach that we have taken with the response to the Smalley matter. The Committee is probably aware of that particular matter so I will not go into the detail here. However, if you look at how it operates, that has been very much a hallmark for how I certainly think the approach to stakeholder consultation should work.

**Ms DONNELLY:** I have gone through the submissions and seen some of the comments about stakeholder engagement. Mr Nicholls is right: our focus is definitely on engaging with stakeholders around particular questions or issues and there are a number of groups that meet regularly. Whether or not there is a ministerial advisory council is ultimately a matter for the Minister. One of the things that I am doing, having looked at the submissions, is also thinking from my perspective across the four agencies for each of which the committee has an oversight role. I believe there is some work that we can do to acknowledge the fact that some of the stakeholders are quite common across them. We need to engage, we need to consult. We also need to have an eye to how much are we expecting of them to be giving up their time across four different agencies where in fact there are some of the same faces. We would say yes, as a group of agencies I am happy to look at what we can do to improve. The Committee might want to give some thought to the fact that there are some common stakeholders.



**Mr PLAYER:** I might just make a comment from the Assessment Services end of things. Obviously, as the Director of Assessment Services, we are focused on delivering the alternative to court independent dispute resolution services for the compulsory third party [CTP] scheme. We have a fantastic working relationship with the stakeholders involved in disputes in the CTP scheme, all designed around improving the experience for injured people, minimising disputation and ensuring that disputes can be resolved in the least adversarial way possible and early in the lifecycle of a claim to enable people to get on with resolving their claim and getting on with their lives.

I thought it might be useful just to mention the Motor Accidents Assessment Service [MAAS] reference group that we have. It meets roughly every six to eight weeks, so probably five or six or maybe seven times each year. We have representatives from the Bar Association, the Law Society, the Australian Lawyers Alliance, the medical assessor practice group, the claims assessor practice group, the Insurance Council of Australia and we also have a major user representative that rotates each year between an insurance-based legal representative to a claimant-based legal representative. That is very much an operational forum. It is not a committee, it is not a statutory forum; it is really an opportunity for us to get the intelligence gathering that I think David Shoebridge was referring to earlier from our stakeholders about what is happening at the coalface of the scheme so that we can make sure that the operations are dealing with those issues as they arrive. I think we found that a very useful forum. It was certainly very useful to have those relationships when we were dealing with something like a court decision that comes out, like the Smalley one that has been referred to.

**Mr DAVID SHOEBRIDGE:** A number of stakeholders said that was a good interaction with you and finally a reasonable consensus outcome. They spoke about that.

**Mr PLAYER:** Thank you. I am pleased to see that works. That is the sort of approach that I think Mr Nicholls is talking about that we want to take across the whole scheme.

**The Hon. SARAH MITCHELL:** I know that Mr Scot MacDonald asked a question about legal representation earlier, but in your answers that you provided prior to the hearing you said that this year you are going to be looking at why there is increased legal representation within the CTP scheme and you are surveying participants. Can you elaborate on that?

**Mr NICHOLLS:** The Motor Accidents Authority has commissioned a program of reviewing our activities end-to-end. I referred to that in a response to an earlier question. We are looking at the early claims process and we are looking at the insurers' processes for disputes. Central to this is ultimately about improving outcomes for claimants. We do not want to do all of this activity if it is not directed towards the thing that claimants are concerned about. Our overarching objective is to ensure that claimants get just and expeditious resolution of their claims and to ensure that, to the extent possible in a compensation system, their navigation through that system is as straightforward as possible.

We are initiating a regular process of claimant surveys. That claimant survey will initially allow us to understand current views and it will be supported by some work that we have commissioned through our research centre to look at particular cohorts of claimants and understand their experience. Drawing from that, what we aim to do is look at how we can improve each of the touch points in the scheme. Where we can improve things, which may be as simple as making the claim form easier to understand, as a good example. Where are the things when we ask our claimants what did you hate the most, what did you find the most difficult, where did you lack information, then responding to that by building that into our overarching program. It is not explicitly saying that we will be addressing the need to necessarily engage legal representation but nonetheless we will be looking at the way those processes work so that people feel more confident and comfortable in navigating those systems.

In alliance with that we are reviewing the legal cost regulations. That is something that the stakeholders, including the legal professions themselves, have indicated is perhaps no longer serving us as well as it might. There are opportunities that have been raised by a number of stakeholders about how we can build a legal cost regulation which will incentivise legal behaviour in the right places, which is usually early on in the process and adding value to claims that are complex and difficult and where lawyers absolutely are adding value to this scheme. In addition to looking at those process changes we are looking at the regulatory instruments and the guidelines that sit around those in order to ensure that we are driving behaviours in the areas in which we most want to change behaviour to meet claimant needs, which is why we want to do a survey.

**CHAIR:** How do motorists know that they are getting the best price for green slips? Does the authority play any part in giving good advice so that motorists can compare apples with apples, as it were?

**Mr NICHOLLS:** Yes, the Motor Accidents Authority [MAA] operates a service where we provide information to vehicle owners about best price in the marketplace. We have a calculator known as the green slip calculator that many people may have already used. It receives 2.1 million visits every year. It is up there amongst the most popular of New South Wales Government websites, so clearly there are many people in the community who are taking the opportunity to shop around and use our green slip calculator when they register their vehicle. In addition to the web-based calculator, we provide a telephone service. We have an automated telephone service that allows people who may not have access to computers, for example, or internet to dial in. We receive a bit over 20,000 calls every year. In addition, where people want to get more direct assistance to find the best price, we have a call centre that provides services to more than 4,000 people each year. Interestingly, 91 per cent of the people who contacted us through that call centre were able to find a better price by contacting the Motor Accidents Authority. We have a high degree of satisfaction.

**CHAIR:** How do you know that? Do you follow that up?

**Mr NICHOLLS:** We ask them at the time. We ask them a question as to whether they found a better deal and we ask them whether they want to use the service again next year. Ninety-one per cent to our call centre said they got a better deal and 98 per cent say they will use the service again next year. One of the initiatives we have undertaken since the Committee met last time was to expand the calculator to accommodate small business. Previously we were focused mainly on private vehicles. We have now expanded the calculator so that small businesses that have a trade vehicle, for example, can also use the calculator and find the best price, taking into account their GST and input tax benefits. Already since introducing that in 2012, we have had about 100,000 inquiries by business owners who are using the new service.

**The Hon. SHAOQUETT MOSELMANE:** The Motorcycle Council of NSW notes in its report that insurers must only be allowed to charge for third party insurance and nothing else. It should be permitted because it distorts the costs to the system. Will you respond to that?

**Mr NICHOLLS:** My recollection of the Motorcycle Council of NSW submission was that they were raising concerns that some insurers offer a first party add-on to policies mainly for motor vehicles. My recollection from hearing their evidence this morning was that their concern was that was not being made available to other types of vehicles. The Motor Accidents Authority does not directly regulate those kinds of add-on insurance type products. However, we allow insurers to have a range of marketing strategies in order to differentiate their product. As you would appreciate, the underlying green slip is essentially a vanilla-type product; it is the same kind of insurance cover, irrespective of which insurer you are using.

Different insurers use different marketing strategies to target particular risks and groups of users, and I believe it is four insurers—and I will confirm that is the number on notice—that also offer an add-on for no fault. It effectively operates with most of those insurers like a sort of table of maims type approach. So if you are at fault in a crash and you cannot make a full compulsory third party [CTP] claim, you can access that benefit up to a certain prescribed amount that the insurer determines. In general, it is a very small dollar component in respect of the overall cost for those insurers, but the actual operations of those arrangements are entirely a matter for them to manage as part of their own arrangements as commercial insurers.

**The Hon. SHAOQUETT MOSELMANE:** Have you considered whether to regulate those add-ons?

**Mr NICHOLLS:** We do not have legislative authority to do that, so at this point in time we regard that as marketing activities of insurers rather than something we have power to regulate.

**Mr DAVID SHOEBRIDGE:** But you could say, as the CTP insurer, "You cannot sell your CTP product in these circumstances." You cannot regulate the others, but you can regulate how they sell the CTP insurance, can you not?

**Ms DONNELLY:** The legislation, if I recall correctly, specifically allows insurers to add a first party add-on. At some point the Parliament has had an intent to encourage that, so that really becomes a legislative question.

**The Hon. SHAOQUETT MOSELMANE:** Also in the same report the MCC recommends a thorough review of insurance costs and MAA auditing practices. Why are they questioning the auditing practices?

**Mr NICHOLLS:** That is a question you would need to ask the Motorcycle Council of NSW, obviously. I would not like to speculate why they were raising those concerns.

**Mr SCOT MacDONALD:** I go back to the number of insurers, which was 14 and which is now down to five. I know it is difficult to answer, but do you sense any risk of any more exits? To follow on from that, what would be the consequences of a reduction to three, or something like that?

**Mr NICHOLLS:** Obviously I cannot speak for individual insurers and what their business strategies might be in relation to this market. Suffice to say that I have no intelligence that would suggest that that would be the case. We receive regular reports from Australian Prudential Regulation Authority [APRA]. The Motor Accidents Authority entered into a memorandum of understanding [MOU] with APRA last year. As a result of that MOU, we now have a data exchange protocol in place and an early warning protocol in place. That early warning protocol means that if APRA sees something that would concern them in respect of the viability of an insurer in our market, they would give us an early alert, and vice versa. If we see something in our market that we think would cause concern for APRA, we now have a protocol for sharing that information. We get quarterly information. So we can satisfy ourselves that the insurers are operating in a capital framework that we would not see as concerning. Therefore, any reason in this market to exit the market would be more for commercial business reasons rather than reasons of the particular approach on capital.

If I can just add, however, that in Queensland recently, by contrast, there was an exit of a major insurer—Insurance Australia Group, one of Australia's largest insurers trading under the NRMA brand. It exited that market and yet, by contrast, in the Australian Capital Territory where they have similar arrangements to us, recently Suncorp decided to enter that market in competition with the NRMA. It is certainly the case that from time to time there will be commercial decisions by insurers to enter and exit markets. I obviously cannot speculate on what insurers might be thinking in respect of those business strategies. But at this point in time I am not seeing any data that is suggesting that from a prudential point of view there would be a reason for an insurer to exit.

**Mr SCOT MacDONALD:** You jumped into a question I was going to ask about APRA and what sort of feedback there might be. If APRA came to you with a yellow flashing light about a company, not in respect of its business strategy but in respect of its viability, there are possibly implications for the State Government. How quickly would you pick up the phone to the Finance Minister and say, "We might have an issue here"?

**Mr NICHOLLS:** I suspect it would be pretty quickly. It would be the same day. The protocol that we have with APRA though is to take a coordinated approach. It would not be only us who would be likely to be seeing those concerns. It would be unlikely that it would be a CTP insurer just in CTP that would be having difficulties. It would be more likely that in a number of lines of business, including CTP arrangements in other States, this would be a more universal trend. The arrangement that we have in place with APRA is that we would have a coordinated approach to the response so that we would avoid any unusual market signalling in a way that would create issues. What I mean by that, for example, is that we have three listed companies in our market.

Obviously if we, as a CTP regulator, made some market announcement on our own that caused an issue, we would want to do that in concert with APRA and our fellow regulators around Australia. So the protocol that we have in place with APRA and the other State CTP regulators is part of their same protocol and we then have a coordinated approach to respond. That would necessarily include engagement with Treasury and the finance Minister, who is our portfolio Minister, because ultimately there is a risk for the State in relation to any claims and costs arising, as happened in the HIH case.

**Mr SCOT MacDONALD:** I finish with the minor severity legally represented people. Is there a cohort that we should be aware of? Are we going back to the Griffith days of whiplash and the like?

**Mr NICHOLLS:** I think we are seeing a shift to legal representation. We are seeing some increase in claims frequency as well, but I think what we are seeing is more of a trend away from not being represented to being represented rather than it being an unusual cohort.

**Mr SCOT MacDONALD:** Not demographic or class, country versus city, or age?

**Mr NICHOLLS:** I am happy to take that question on notice.

**Mr DAVID SHOEBRIDGE:** Mr Nicholls, do you know what were your actuaries' assumptions or your assumptions in respect of claims numbers when you were setting premiums for 2013? Are you expecting them to rise or fall?

**Mr NICHOLLS:** My recollection is that we were expecting them to increase, but I am happy to take that question on notice.

**Mr DAVID SHOEBRIDGE:** This report shows quite a significant decrease in claims, does it not?

**Mr NICHOLLS:** It does, although the thing that I might point you to in that report is that an important component of that reduction is the reduction in workers compensation recoveries in our system. I am presuming that you are referring to page 6 of that report?

**Mr DAVID SHOEBRIDGE:** Figure 3.

**Mr NICHOLLS:** Figure 3. If you look at that figure you will see that by and large the main difference between 2012 and 2013 is that crimson box on the top—

**Mr DAVID SHOEBRIDGE:** I can read the report. My question was: You were expecting an increase in claims and your pricing and your actuarial assumptions, I assume, were based on an assumption of an increase in claims. Yes or no?

**Mr NICHOLLS:** It is based on an increase in claims, yes.

**Mr DAVID SHOEBRIDGE:** And there has been a marked reduction in claims?

**Mr NICHOLLS:** The reduction is through workers compensation recoveries rather than—

**Mr DAVID SHOEBRIDGE:** It is a simple question. There has been a reduction in claims in the scheme.

**Mr NICHOLLS:** There has been a reduction in workers compensation recoveries in the scheme.

**Mr DAVID SHOEBRIDGE:** All right. Can we put those two pieces of information together? You were expecting claim numbers to go up and they actually went down. You set the prices on an assumption that there would be a certain number of claims. Should we expect an unhappy and unpleasant surprise in respect of insurer profits because of those two factors?

**Mr NICHOLLS:** The actuarial advice we received is that that short-term impact of workers compensation recoveries should be picked up when those come through as claims within the CTP system and they have not yet flowed through.

**Mr DAVID SHOEBRIDGE:** I am asking you: When we see the next year's profit reporting are those two factors likely to see a markedly increased profit percentage from what you have put in your latest annual report. Yes or no?

**Mr NICHOLLS:** I will take that question on notice.

**Mr DAVID SHOEBRIDGE:** Ms Donnelly, you are responsible for the four separate agencies? Is it four? Motor Accidents Authority, Lifetime Care and Support—

**Ms DONNELLY:** In respect of the services that I provide to them, yes.

**Mr DAVID SHOEBRIDGE:** A good many submissions have indicated that the kind of analysis that the MAA does about scheme efficiency is inherently flawed because it does not really look at the overall scheme for motor accidents in New South Wales, which particularly include lifetime care and support, and that if we could get a rational set of figures that looked at the efficiency of the MAA and the lifetime care and

support together, we would have a much better understanding about the value for money for motorists. That seems like something that your agency should be looking at and giving that kind of information to motorists and to this Committee. Can you do that?

**Ms DONNELLY:** I have seen the submissions and I am aware that that issue has been raised.

**Mr DAVID SHOEBRIDGE:** Well it is right, is it not?

**Ms DONNELLY:** I think that you can look at efficiency in a number of different ways. One of the opportunities we have—and I know the MAA is working on this—is to take that feedback on board and look at the best efficiency measure going forward. One of the other things the Committee might be interested in—

**Mr DAVID SHOEBRIDGE:** I was interested in an answer to my question, not you going off on a tangent.

**Ms DONNELLY:** I understand that.

**Mr DAVID SHOEBRIDGE:** Could you focus on the question? That would be a better measure for efficiency, yes or no?

**Ms DONNELLY:** I think it is an alternative measure for efficiency and it depends on what question you want to answer and what I was going on to say—

**Mr DAVID SHOEBRIDGE:** In terms of the amount of dollars that people pay for their green slip for those two schemes and the amount they get back in benefits?

**Ms DONNELLY:** There are two questions that you might want to answer and one is looking at the two schemes together that are aiming to do the best for people who have been injured in New South Wales: do we want a measure that combines them and does that answer some questions? I agree with you that it does.

**Mr DAVID SHOEBRIDGE:** Could you give us that?

**Ms DONNELLY:** I can take that on notice, but I would like to also say that if you want to measure the efficiency of the CTP scheme, which does have a different structure, then if it is always combined with the Lifetime Care and Support Scheme, you do not get a view on how the CTP scheme itself is performing.

**Mr DAVID SHOEBRIDGE:** In short, you actually need both sets of information to really understand it, do you not?

**Ms DONNELLY:** I would not disagree with you. There are two different questions.

**Mr DAVID SHOEBRIDGE:** So far we have only ever been given one part of it, so when will you be able to provide us with that second part of the information?

**Ms DONNELLY:** I have said I am happy to take it on notice.

**Mr NICHOLLS:** We have, in the MAA's annual report, historically included both pieces of information but it comes back to Ms Donnelly's point that there are different purposes that we are looking at with this information. From the MAA's point of view, we regulate private insurers. I think that we would be criticised by the community and by this Committee if we were seen to be distorting the true story and the CTP scheme by adding the highly efficient Lifetime Care and Support Scheme into the mix and then going out into the public domain and trying to say that somehow this scheme or the private insurers are performing better than they actually are. We do need both pieces of information and I agree with that. We have reported that but from my point of view I am concerned that the underlying CTP scheme is not efficient, so I think legitimately we should, as a community, have that information fully distilled out there so that people can draw their own conclusions.

**Mr DAVID SHOEBRIDGE:** Mr Nicholls, can you provide on notice whether you provided that information in your most recent annual report?

**Mr NICHOLLS:** I am happy to take that on notice. I am not sure that it was in the most recent annual report.

**Mr DAVID SHOEBRIDGE:** Can you provide on notice where you have provided that information?

**Mr NICHOLLS:** We have published it in the past.

**Mr DAVID SHOEBRIDGE:** You answered a question from Mr Moselmane or Mr Primrose about the accident notification form [ANF] and that expanding the accident notification form is something you should look at in the future. Is that a fair recollection of your answer?

**Mr NICHOLLS:** Yes.

**Mr DAVID SHOEBRIDGE:** You were given an actuarial report from the Bar Association a year ago that said you could expect a \$4 saving on premiums and substantial efficiency gains by expanding the ANF to \$20,000. Are we still in the "should" territory or have you actually looked at it?

**Mr NICHOLLS:** We have looked at it and our actuaries—and I am happy to provide you with a short report from our actuaries who are Ernst and Young—on their review on this report.

**Mr DAVID SHOEBRIDGE:** Why did you not give this in answer to Mr Primrose's question?

**Mr NICHOLLS:** Mr Primrose did not specifically ask me about the legal profession's—

**Mr DAVID SHOEBRIDGE:** We have to really drill down for an answer, do we not?

**Mr NICHOLLS:** Mr Primrose did not ask me about the legal profession's proposal; he simply asked me whether the ANF was something we should look at and I agreed with him. We have looked at the question of the proposal that has been put by the legal profession. The particular challenge in changing the ANF and not changing anything around it is twofold; I have mentioned one of the issues, which is that the average payment to somebody on a ANF is currently around \$1,700 not \$5,000 and it is not clear that increasing it will simply result in that behavioural issue changing. The other fact is that when people make full claims in our system, in general almost 95 per cent of all claimants who then make a full claim end up with a claim that is in excess of \$20,000.

The simple reality is that there are not many claims in the current system that fall between the \$5,000 threshold and the \$20,000 mark that is being proposed. It is therefore difficult to see where the savings are going to come from and to be fair to the Bar Association and Deloitte they did not have access to the same internal data within our scheme, but our actuaries assessment is that that proposal is not going to result in a net saving; it will end up costing slightly more on the green slip. That is why I say we should not be using this forum to get into detailed policy design about what it ought to look like—should it be a \$20,000 threshold or should it be something else? I am agreeing with the Committee that I think it is absolutely something to look at. I believe there are great opportunities to streamline early access and provide help to people early on in the process and there are some design options that we have commenced looking at but my suggestion is that we should not get into prescription about what that ought to look like because obviously there are actuarial considerations to take into account.

**Mr DAVID SHOEBRIDGE:** When I look at the graph, which is figure 3, the biggest increase is in what is called "minor rep", minor injuries with legal representation. What is the average payment for those "minor rep" claims?

**Mr NICHOLLS:** The average payment for a minor severity claim is in the order of \$120,000 or \$130,000 but I am happy to take that on notice in terms of providing an accurate response.

**Mr DAVID SHOEBRIDGE:** I am just wondering what your definition of "minor" is?

**Mr NICHOLLS:** We use the injury severity scale that is used typically in accident schemes, so it is a severity one injury.

**Mr DAVID SHOEBRIDGE:** How long is someone off work? Do they have a permanent injury? Do not just say "a severity one injury"; what kind of injuries that you call minor are we talking about?

**Mr NICHOLLS:** It could be whiplash or a hand injury; in general, not particularly severe injuries. I am happy to take on notice and give you guidance on what those injury types are.

**The Hon. SARAH MITCHELL:** You talk about minor, moderate and serious. Can you provide scope on all three for the Committee?

**Mr NICHOLLS:** Yes, we will. There is a six point sliding scale from the least injured through to the most severe form of injury which at its extreme is a fatality. We classify all of our injuries in that classification system. I am happy to take on notice and provide the Committee information about how that system works.

**Mr DAVID SHOEBRIDGE:** And for absolute clarity, you are going to provide to this Committee your actuarial workings and reports on the Bar Association's proposal about the ANF, including whether or not you have thought about any other threshold for the ANF, is that correct?

**Mr NICHOLLS:** I am happy to table today, if that is of assistance to the Committee, the analysis on the proposal. Would that be of assistance?

**Mr DAVID SHOEBRIDGE:** Table what you can and provide everything else you can on notice.

**Mr SCOT MacDONALD:** Can I also add a request for the typical legal costs, particularly for the minor severity injury with legal representation—is it 15 per cent, 20 per cent or whatever?

**Mr NICHOLLS:** I am happy to include that also.

**The Hon. SHAOQUETT MOSELMANE:** I want to raise the point that the Australian Lawyers Alliance raised and that the MAA could not do, and basically have the power to impose a levy on insurers super profits. Is that possible and what would be the impacts?

**Mr NICHOLLS:** It would certainly be a novel approach to regulating any industry in Australia.

**Mr DAVID SHOEBRIDGE:** What? Taxing profits?

**Mr NICHOLLS:** Applying a tax on what is seen to be super profits. I am not talking about the ordinary taxation system, Mr Shoebridge. There would be implications of doing that in terms of insurers Australian Prudential Regulation Authority requirements and requirements in terms of our Council of Australian Governments commitments about how we are allowed to apply new taxes. The insurance industry would also probably raise concerns about the likelihood or otherwise of government then seeking to underwrite them in periods when they have losses.

**The Hon. SHAOQUETT MOSELMANE:** I am sure they would, but that is one feasible approach, that you could address super profits?

**Mr NICHOLLS:** My concern is that it would be easier to do in a scheme where there was a greater level of certainty in the benefit payments where the amount of money paid by insurers was paid much more quickly and you could see in much more real time what the final level of profit was or was not. If you look at the transitional provisions in the bill that the Government brought forward last year, there was a provision there that allowed the MAA to apply for both harvesting, if you like, of excessive profits or allowing insurers to catch up in the instance that they get caught out. That was a specific transitional provision we had there. In my view that model worked well in a system where we would know very quickly what the final level of profit actually is. We could audit that within one or two years and then make some kind of assessment or adjustment. The challenge in this particular scheme is that once it goes five or six years before we are starting to see what is occurring in profit it creates challenges around how you sort of catch that up when the scheme is moving somewhat in slow motion.

**Mr DAVID SHOEBRIDGE:** What is the challenge? You just take a proportion of the profit once you know how it has crystallised five years later. What is the challenge? It is mysterious to me what the challenge is. You tell me what the challenge is. You know what the profit is, you know what the cost is five years down the track, what is the challenge?

**The Hon. SHAOQUETT MOSELMANE:** Can you take that on notice and come back with a brief response whether the issue of a levy is possible so that the Committee can then look at it?

**Mr NICHOLLS:** Yes, I am happy to take it on notice.

**Mr DAVID SHOEBRIDGE:** We know that in 2007 they made \$214 million profit. We know exactly what it is. What is the challenge in putting a levy on that \$214 million or the \$343 million profit they made in 2005? What is the challenge?

**Mr NICHOLLS:** The particular challenge is that firstly the information that is published in our annual report is based on our assessments of that profit margin. That is not the audited profit margin that has been submitted by that insurer back to their shareholders, et cetera. We would need to build an entire structure, a taxation and revenue collection system—

**Mr DAVID SHOEBRIDGE:** So are you saying your figures are inaccurate?

**Mr NICHOLLS:** No, what I am saying is that—

**Mr DAVID SHOEBRIDGE:** Well, if they are accurate what is the problem?

**Mr NICHOLLS:** What I am saying is that we would have to build a whole revenue collection system to go around that.

**Mr DAVID SHOEBRIDGE:** What is wrong with your current figures?

**Mr NICHOLLS:** And we deal with—

**Mr DAVID SHOEBRIDGE:** But what is wrong with your current figures?

**Mr NICHOLLS:** I am just answering your previous question, Mr Shoebridge—and the second particular challenge that we have is that it takes some time before these accident years settle. There are still claims in the system that are in operation from even the 1990s; even some going back to the 1980s, so it is very difficult in a common law system with protracted disputes where some of those disputes will take years and years and years. At what point does the regulator step in and say, "This is the year we will now address these things." There are practical considerations.

**Mr DAVID SHOEBRIDGE:** You look at your figures and you know that five years down you have 95 per cent certainty about the profit. The proportion does not change much after five years. You are the person in charge of this scheme, you must know that, so why would you not pick a point after five years when you will have a vastly better knowledge what the profits will be and just put a levy on super profits? Why not?

**Ms DONNELLY:** Mr Shoebridge, I do not want to ignore the question you have just asked but I would like to add something to the question before, if I might. Some information was provided to the Committee in the tenth review. I tabled that document and it should be available to you. It goes through quite a lot of detail about those figures, how they are estimates of profit by independent scheme actuaries, the difference between those and what an insurance company itself might have on its accounts and the way they are estimated. It also highlights some of the pitfalls in interpreting them, which we are very open about, particularly as there was some earlier discussion about early years in the last decade and in the figures before 2006 there was a different method, so there has been improvement in that estimation so there is some caution there.

I am just wondering whether perhaps, to assist the Committee, we could update that explanation. It does help to show that what the Motor Accidents Authority of New South Wales is doing is building transparency and publishing estimates. They are not necessarily the figures that are in the accounts of each individual insurance company so there is an additional challenge there.

**Mr DAVID SHOEBRIDGE:** Once you overcome that challenge I am deeply concerned that the information here might be an underestimation of insurance company profits. Could it well be an underestimation of the actual profits?

**Mr NICHOLLS:** It is based on the information that we have available to us.



**Mr DAVID SHOEBRIDGE:** My question is simple: Could this be an underestimation of the actual profits?

**Mr NICHOLLS:** It is based on the information we have. It is based on filings and the subsequent claims payments which are made.

**Mr DAVID SHOEBRIDGE:** The factors influencing social and health outcome after a land transport injury study [FISH], is that your answer? I am sure that you can come up with a system to exchange information with insurers to improve your figures. But after five years there is a very strong basis to have a solid grasp of what the actual profits are. What is the practical difficulty, apart from improving your information, of having a levy after five years? Could you explain it to us?

**Mr NICHOLLS:** We have indicated that we will take on notice what we believe are the opportunities and issues with that approach.

**CHAIR:** What is the authority doing to improve the management of injured people in the scheme?

**Mr NICHOLLS:** The Motor Accidents Authority of New South Wales has a number of services to assist people who are injured. We operate a claims advisory service where we provide support to nearly 10,000 claimants who contact us directly, as well as around 14,500 service-provider interactions. We have commenced a new process of what we call a "warm handover". This involves the claimants contacting us. We identify their insurer, immediately put them in touch with their claims officer and help them navigate seamlessly into the insurance system. We have surveyed those people. So far of the 300 people we have assisted 84 per cent have found this new system easy and 85 per cent have found it very helpful to have this early level of communication with both the regulator and their insurer.

We have undertaken a number of education opportunities with professionals who operate in our scheme. We have established a service-provider workshop. We have also established a service-provider guides group where we are working with key service providers, particularly allied health and other medical professionals, around how to build better practice for all of the people operating in the system. We are funding a number of research projects. We have a major funding commitment to the rehabilitation studies unit, including supporting a number of academic positions. We conduct a number of research activities across both major and minor small grant rounds.

For example, we have recently commissioned Professor Nicholas at the University of Sydney to work with videos to assist medical professionals in the way they interview people who have car crashes. We have Ms Leonard, from the Royal Prince Alfred Hospital, developing a trauma web application which will allow nursing staff operating in trauma hospitals to use modern technology to help them address immediately in real time the needs of people who have had a car crash. We are supporting memory devices for people with brain injury through the work of Ms Emma Calvert at the Illawarra Brain Injury Service. These important research and grant activities are not just done in isolation. We have now established a process of research seminars, which will operate half-yearly, in which all of these pieces of research are translated into practical guidance for professionals who operate in our scheme—whether they be health providers or claims officers.

We have been progressively reviewing our guidelines in areas such as neuropsychology and whiplash and we are developing new processes and procedures for claims management underpinned by the clinical framework for the delivery of health services. This has been fed into a process, which I mentioned earlier in response to questions, where we are looking at the end-to-end claims process and how we can build a better set of claims-handling guidelines, which we are aiming to issue before the end of the year.

**The Hon. SARAH MITCHELL:** I have two quick questions. First, would you support the implementation of a crash reporting scheme in New South Wales as suggested by the Motorcycle Council of NSW?

**Mr NICHOLLS:** Yes, we would. The Western Australian model works very effectively. It is a system that we have been looking at with Transport for New South Wales as the host of the Centre for Road Safety. We have had some discussions with a number of other key agencies, such as the police and the insurers themselves. The particular challenge in our scheme that is different to the Western Australian model is that in Western

Australia with a single insurance company it is easier for them to build an interface whereas we have five different insurance companies where there would be a need for an interface.

So what we are doing is a very staged approach. The first step of the process is data linkage. I mentioned in an earlier response our data linkage project. We are committing several hundred thousand dollars to that project. The aim is to get all of those systems talking to each other: police reports, health records, Roads and Maritime Services crash data, and our claims data. Once those data linkages are in place there will be more effective opportunities to share data, and introducing something like a crash link reporting system similar to Western Australia's is something we can certainly look at. We have a high degree of stakeholder support for that. They believe that is an objective worth working towards.

**The Hon. SARAH MITCHELL:** I just have one more question in relation to advertising, and this came up when we heard from the Insurance Council of Australia on the first day of hearings. I think it was actually the Hon Peter Primrose who asked the question. Essentially what he was proposing was that unless the advertising specifically referred to costings or differentiations between the companies for green slips then money that came from green slip premiums should not be spent on advertising, other than for compulsory third party scheme insurance. Do you have a view on that?

**Mr NICHOLLS:** The advertising component of the green slip scheme is a relatively small component of the overall costs. It is between about \$2 and \$8 on each premium. It represents a small portion of the activities of some insurers who are engaged particularly in direct retail selling. So these are companies like NRMA, AAMI and GIO, for example, who undertake more direct activities. I think there is a fruitful area that the Committee may want to look at—that is, the question of acquisition expenses more generally and how they operate. But we should look at that holistically—not only at the advertising component but also in particular at the operation of commissions.

Several insurers use intermediaries and they pay commissions to those intermediaries. The component of premiums that is paid to commissions is larger. It is around \$15 to \$30 per premium, in comparison to the \$2 to \$8 per premium spent on advertising. It is one of the areas that we are particularly looking at. I have commissioned Finity consulting to complete a review of acquisition expenses across all of the insurers. We are looking at how we can build into our new premium guidelines some opportunities to put some containment around exactly how those things are defined. I want to look at it across all of the areas of acquisition not just advertising, and in particular to pay attention to commissions because they are actually a much larger dollar component of the cost.

**Mr DAVID SHOEBRIDGE:** Could you provide that detailed information on acquisition costs to the Committee?

**Mr NICHOLLS:** Yes, we can. We publish our acquisition data in our annual report. I know that at the hearings Friday week ago there was some speculation that we do not publish that information but in fact we do. It is in our annual report. What we do not publish—

**Mr DAVID SHOEBRIDGE:** Is the breakdown.

**Mr NICHOLLS:** I think it is a fair comment. I am happy to take that on board and to take that breakdown into account for future reports so that you can understand what proportion of the acquisition expense is spent on advertising.

**CHAIR:** Mr Nicholls, in its submission to us the Law Society of New South Wales states that insurers currently lose 90 per cent of late claim disputes. Is that figure correct, as far as you are aware? If it is, have you had any discussion with insurers as to this issue? It must add a lot of costs, does it not? In fact could you tell us how much cost it does add to the system?

**Mr PLAYER:** I will start and move through the question, although the costs might be a bit difficult. Obviously one of the key objectives of the act is to encourage early and appropriate treatment and rehabilitation for injured people. That is obviously aimed at getting them back on their feet sooner. In support of that goal, any regime like this needs to have a line drawn in the sand with a time limit for when claims need to be lodged; and in this scheme it is currently set at six months. I think annual report data shows that we have over 10,000 claims lodged every year. In 2012-13 there were about 10,000 and I think there were about 60 disputes about late claims that were determined at the dispute services at our end of proceedings. That is an incredibly small

proportion. I saw there was some discussion in earlier evidence about whether that timeframe should be moved from six months to 12 months and what the difference might be.

**CHAIR:** But even of that small proportion 90 per cent of them are allowed back in.

**Mr PLAYER:** Of the 60 that were determined I think in 50 cases it was eventually found that the late claim was able to be made and in 10 cases it was found not able to be made. The important point to appreciate there is that that comes after a hearing has been held by the assessment service. So originally an insurer will make a decision based on the information available about whether or not to accept the late claim. If in dispute that will then proceed to a potential assessment. The assessment will be the opportunity for the claimant to provide further information or additional relevant information to potentially provide a full and satisfactory explanation for that late claim. It is at that point that the assessor makes the decision to either accept or reject that late claim. In many cases it is based on additional new relevant information that has been provided by the claimant specifically in response to the rejection of the claim by the insurer. So it is not always on the same information that the decision has been made. Does that make sense?

**CHAIR:** Yes, I understand what you are saying.

**Mr DAVID SHOEBRIDGE:** But this is not a one-year blip; it is consistent—90 per cent of them that are contested and go to a hearing are accepted. It is not a one-year blip.

**Mr PLAYER:** No, but probably the most encouraging thing is the volume of those we are talking about. In the 2012-13 year there were 60 disputes. As little as two years before that, I think it was in 2010-11 year, we were talking about nearly twice as many. It has reduced by nearly half in two years so that is quite encouraging.

**Mr DAVID SHOEBRIDGE:** The lawyers also said that there are a lot of costs every time you have to contest it. You have to get your statutory declarations together and pull all of this material together. There are delays. While the late claim is in play you have a delay of the finalisation. If 90 per cent of them are being resolved in favour of the claimant then what is the benefit of all of that for the system? Are there better ways for this to be done?

**Mr PLAYER:** I think there could be better ways. I think the question is how you provide a holistic approach to that issue, because if you are simply moving the timeframe then I am not sure that is going to solve your problem. I think you are right—you need to look at a suite of different ways. The Accident Notification Form is a good example. That has actually been very good at encouraging earlier lodgement of notifications, if you like, into the scheme, because if you have come in through an Accident Notification Scheme then the insurer will know about it very quickly. I think in anything we do around the Accident Notification Scheme that is another factor to consider around it—that it actually helps to promote earlier lodgement of claims and early notification of the insurer. I think there is a mix of approaches that could be taken.

Andrew mentioned earlier that we are doing some work around a "warm handover" of telephone calls from the Motor Accidents Authority of New South Wales straight to the insurer. That is an immediate notification. I think that is fantastic and will have the effect of reducing late claim disputes. The second is potential changes around the claim form. We have a long, complicated claim form at the moment and the Motor Accidents Authority of New South Wales is talking about doing some work to reduce the complexity of that form and make it simpler. That in itself will get the claims in quicker and earlier as well, which again will help to reduce the potential for late claim disputes.

I think the next branch of that is where you draw the line in the sand. To some extent, whether you have a three-month, six-month or 12-month time frame, I think you will still have a small cohort of people who will be late and will need to go through some kind of a process to determine whether or not the claim can be made. I think you need to do it as a package of things. It is definitely an admirable aim to seek to reduce that dispute rate but it has already come down by about half in the last two years.

**Mr DAVID SHOEBRIDGE:** A number of witnesses have said that the problem with it at the moment is that it is like a guillotine—you are either in or you are out. It is not really fair to absolutely guillotine the right of someone who has made a late claim. They have actually paid their premiums. Is the Motor Accidents Authority of New South Wales looking at a much fairer outcome than having an arbitrarily-applied guillotine that has been overturned 90 per cent of the time when it has been tested?

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**Mr NICHOLLS:** In the reforms last year there was a proposal around late claims, which would introduce a longer time frame for claims to be made, but effectively for there to be a penalty upfront in relation to payments so that that would still encourage earlier lodgement. From the MAA's point of view, earlier lodgement is better than later lodgement because that is about looking after injured people faster. We have had this discussion with stakeholders on a number of occasions and it is a vexed issue to try and design something that gets people in early and introduces the very challenges, Mr Shoebridge, about the penalties that apply when you apply a hard guillotine. If we allow a long time frame it creates other problems because we are not getting that early intervention of the people.

What we have committed with the program of works this year is that the late claims issue is one of the particular issues that we want to take up with our stakeholders—sit down with them and say, "I think we have all been over this issue for a number of years now. Let's work collaboratively on what the solutions might be", and it may be that there are some opportunities, for example, in better guidance to insurers about the sorts of things that we think would warrant consideration for a late claim and therefore removes them from that disputation.

**CHAIR:** That brings us to the end of this session. I thank you very much for being with us in a very rigorous part of the inquiry. Your input has certainly been of very great value to us. There may be some more questions on notice and we ask that you respond to those within 21 days of receipt of those questions. Once again, thank you very much for being with us.

**(The witnesses withdrew)**

**CARMEL DONNELLY**, General Manager, Strategy and Performance, Safety, Return to Work and Support, on former oath:

**DON FERGUSON**, General Manager, Lifetime Care and Support Authority, and

**SUZANNE LULHAM**, Director, Service Delivery, Lifetime Care and Support Authority, sworn and examined:

**CHAIR:** Would you like to make an opening statement?

**Mr FERGUSON:** Thank you very much, I would like to. I start by thanking the committee for the time that it has dedicated to consider the Lifetime Care and Support Scheme. I acknowledge that a number of the members of the committee have longstanding involvement in the review of the scheme and I am aware of the considerable value that has been derived from the recommendations of the committee in past years. I joined the Lifetime Care and Support Authority in April of last year. It is an exciting time to be here with the commencement of the National Disability Insurance Scheme and the National Injury Insurance Scheme, heralding a new era of greater improvement and support for people with a disability across our country.

Whilst I remain honoured to be able to contribute to these changes through my role at Lifetime Care, I have worked in the field of disability for over 20 years and came to this role from New South Wales Ageing, Disability and Home Care where I was actively involved in the move towards an individualised person-centred approach to services, driven by the New South Wales Stronger Together initiative and then, of course, by the NDIS. I have brought with me a passion and commitment to driving the same changes with the Lifetime Care and Support Authority. Of course, I have not joined at the beginning of this journey and the authority has been continuing to make improvements to become more responsive to the needs of participants, streamline its processes and strengthen communication with key partners such as the rehabilitation units.

I note that the committee has made recommendations on such matters that have been welcomed and aided improvements, particularly in the areas of the interphase between the Lifetime Care and Support Scheme and other parts of the service system, ultimately to improve the experience of participants. Following on from the previous inquiry, I would like to acknowledge the willingness and helpfulness of the brain and spinal cord injury rehabilitation units in working with us to better understand each other's needs and simplify our processes—something that we will continue to do. One such positive result of this close collaboration is the current review of equipment requests, with the aim of developing a much simpler process for the equipment prescribers to support safe and timely hospital discharge and early rehabilitation.

Since the last inquiry, the authority now has more lifetime participants than interim participants. This means there are now more people focused on getting on with life in the community than on their early recovery from severe injury. We have learned that we too need to shift our focus to support people with their changing priorities. We have heard the concerns about the restrictiveness of the administration of the scheme. Whilst I cannot apologise for the authority taking seriously its great responsibility for ensuring the long-term sustainability of this young and volatile long-term scheme, it is incumbent on us to continue to look for ways to be less intrusive in the lives of the people that we are here to support, which I imagine only becomes more apparent as time passes post injury.

A service challenge for us is aligning neatly with the disability reform agenda that is embodied in the introduction of the National Disability Insurance Scheme. With this in mind, we are about to undertake a comprehensive review of the scheme guidelines on which we will be consulting widely. We are also promoting greater involvement of participants in the running of the scheme through the recent establishment of a participant reference group that meets with me personally to provide feedback and input on issues and opportunities for improvement.

In recognising that much of the experience of participants comes through the support they receive from others, we are also overhauling our support planning approach to steer case managers and other service providers to maximise the choice and control of participants in setting their goals and focusing on their strengths and opportunities. We are also working with the attendant care industry association to continue to improve the standard of attendant care and to support this industry to move toward a more person-centred model of care in line with the NDIS and related changing community expectations. Lastly, we are undertaking a self-directed funding trial, as ultimately, within the bounds of the scheme, participants should have the right to elect to manage their own affairs and choose and engage their own service providers with only as much help as is

warranted. Thank you for the opportunity to share with you some initial comments. I look forward to discussing the Lifetime Care and Support Scheme with you this morning.

**CHAIR:** Thank you very much, Mr Ferguson. In pre-hearing answers to questions on notice you state that 32 per cent of participants have had a problem with a service provider in the last three months. Would you be able to elaborate on that statistic and advise us as to what is being done about that problem?

**Mr FERGUSON:** I will beg the committee's indulgence. I am going to refer to notes this morning and try to give you as much quantifiable information in my responses as possible. I am conscious that observations were made in relation to our annual report, so I would like to be able to provide you as much data in my responses as I can. So if you could bear with me. In relation to satisfaction with the services, there is a range from 85 per cent satisfaction to 99 per cent satisfaction in the services provided. For instance, case management satisfaction has risen from 83 per cent to 94 per cent.

Problems with service providers which have been identified: a proportion of participants that report no problems has increased from 68 to 78 per cent, and services with a lower satisfaction include home and vehicle modifications, which is 91 per cent satisfaction; 89 per cent satisfaction around equipment; 89 per cent around attendant care; and 85 per cent for vocational and educational. The most common problem was with equipment supply, and in particular this related to waiting for specialist equipment, such as special wheels for a wheelchair or a bench seat to do weights on at the right height, and also complaints in relation to no physio with paediatric brain injury experience in a rural area.

Examples with case management related to there being not enough contact. Examples of other problems included waiting for an ophthalmologist in a waiting room with a person who was difficult to sit still and a person assisting a participant at TAFE not wearing the right protective equipment. They were the nature of the issues that were raised. Thirty-five per cent of participants with a problem with service providers do not expect them to be sorted—this is what came back—which is 70 participants. Examples of the reasons related to breakdowns in relationships with doctors, a person ordering wheels from the United States and the parcel being lost in transit—it took five weeks and could not be tracked—and also general communication problems.

Problems with the authority as opposed to the service providers: 88 per cent of people noted that they did not have any problems with the authority, 11 per cent had problems with the authority and 1 per cent said that they did not know. This is a number that has been reducing over the years from 15 per cent last year and 23 per cent the year before. So in actual fact, the number of concerns has been reducing. But the types of problems that have been noted relate to delays in home modifications and reimbursements and also some individuals requesting for a change in their coordinator, and that has happened at times where relationships have become strained where an individual has, for example, not been happy with an outcome of a request and on those occasions has requested for a change in their coordinator.

Twelve participants said that they are not sure or do not think their problem will be sorted out, and most recommendations made by participants in terms of how we can improve the situation was in relation to more communication or contact with the authority. This is something that we take seriously. We are keen to have as comprehensive information from participants as possible about their experience within the scheme and the ways we can improve it, and a theme that has emerged is in relation to better communication.

**CHAIR:** And there is a multiplicity of different problems that are arising?

**Mr FERGUSON:** Yes, that is correct.

**CHAIR:** Do you believe that this greater emphasis on communication is having a positive effect on these statistics?

**Mr FERGUSON:** Yes, and I think it will continue to do so. But there are other things such as delays in equipment supply. There was one example of a person who had been recommended for a tilt bed and it was noted in one of the earlier submissions that the prescriber said, "But there is not one available presently". So a person has a need and we cannot supply it. That was in a care plan in December 2013. Instead of persevering with that prescriber we were able to locate an alternative table within that same month. So we will proactively try and resolve things such as equipment supplies where possible, but they can lead to frustrations for participants.

**The Hon. SARAH MITCHELL:** I wanted to touch on the issue of services for people in regional areas. You just mentioned in your answer that one of the concerns was a specialist physiotherapist that was not available at the time. In terms of the standard of services available between regional and metropolitan for the participants, how do you find that in general terms? Are the regional participants feeling like they are not quite getting the same level of service? Is that an issue?

**Mr FERGUSON:** It is an issue that is not unique across lifetime care. Access to services in rural and remote areas is a challenge. There are a range of things that the authority does in order to try to mitigate that issue for participants who live in regional and remote areas. One of the ways that is done is to incentivise providers to travel further in order to deliver services. Another is that we will support individual clinicians to fly to remote areas in order to ensure that services are provided. We would prefer not to but we will also support a participant to travel to see a specialist if that is the more appropriate way. I might ask Ms Lulham to expand on that in regard to any anecdotal references she might have relating to the experiences of participants.

**Ms LULHAM:** I think undoubtedly service provision in rural areas remains and continues to be a problem. As Mr Ferguson said, it is not unique to us. But I guess one of the things that we do have is perhaps a few more resources available to assist with that. One of the things we commonly do is fly specialist therapists down to a rural area to train up a local provider to provide ongoing services. They will then provide a mentoring program in the long run to that person. That is a very common model that we use for services like physiotherapy, occupational therapy and speech therapy.

There is, however, a shortage of rehabilitation physicians, in particular, in rural areas. We have a few rehabilitation physicians who are quite prepared to fly out to areas but there are long waits for that sort of thing so that is a problem. There are shortages around psychologists with the very special skills required to support people with behavioural problems and cognitive deficits. At the moment we are looking at a program to improve the capacity of that group in rural areas. We use a lot more online resources so we have actually paid for the development of online resources for rural providers to access in regard to the expertise from more expert providers. I do not know whether we will ever completely solve the problem.

**The Hon. SARAH MITCHELL:** Do you look at satisfaction surveys in geographical areas? Is there a way to determine whether or not those in regional areas are feeling a little more dissatisfied?

**Ms LULHAM:** It is quite interesting. Not this current survey but the survey the year before showed a greater satisfaction with services in rural areas rather than in metropolitan areas which we found quite interesting. One trend was perhaps access to services. That difference was not in this year's survey so we try to split rural and metropolitan as we do brain and spinal cord injury. I do not know whether we can draw a lot of conclusions from one year's worth of these things, but I can say that we have spent a lot of resources over the past two to three years to try to improve case management services in rural areas, to enable people to access local case managers and to provide mentoring services to local case managers. I think that perhaps solves some of the problems because a local person is more likely to know about local services and will be able to link them to the local services.

**The Hon. PETER PRIMROSE:** I have two quick questions. Are there any young people for whom the scheme is responsible in nursing homes who should not be?

**Mr FERGUSON:** The scheme does not have any people in nursing homes under the age of 65 years. So the answer to that is no.

**The Hon. PETER PRIMROSE:** Excellent.

**Mr DAVID SHOEBRIDGE:** And that is a good definition of young people.

**Mr FERGUSON:** I might also note that in discussions relating to this in the transcript concern was raised by some witnesses about what happens to people over the age of 65 years. This scheme does not have that age cut-off so I think that may have been a concern related to NDIS. The question was: Who is going to look after those people once they hit 65? That is not of relevance to us.

**The Hon. PETER PRIMROSE:** That is good news. Following earlier discussions are you involved at all in workforce planning issues? You mentioned anecdotally a couple of issues. The obvious concern is in relation to choice, particularly in regional areas. While people may have the right to have a choice they do not

really have the choice because they can have any colour car provided it is black. I know that a lot of work is going on. Could you talk about the role of the authority?

**Mr FERGUSON:** To be honest, like most of my responses I will give Ms Lulham an opportunity to contribute as well. Ms Lulham has been in the scheme since it commenced and I have been here since April 2013. If you are comfortable with that we will share the responses. One thing worth noting is that there is significant overlap between the services that are engaged by lifetime care as well as the broader disability system. Under the national disability services a large initiative is focused on trying to improve workforce capacity. Members may have seen the Care Careers advertisements on the television to try to attract more people to come into the caring professions. There is a knock-on benefit to providers who work within lifetime care or work for participants of lifetime care. There is an industry association that specifically supports the providers of attendant care who are contracted to provide services by lifetime care.

We have expectations on that body that it will be focused on trying to build the capacity of the system in regard to workforce supply because it will continue to be a challenge as more people become entitled or have access to services with the rollout of the big brother National Disability Insurance Scheme. We have an expectation that they will be looking at building workforce capacity across that part of the service system as well as trying to shape the method in the way services are made available as they move from a more nursing-oriented model to a more person-centred model, again aligned with those broader disability reforms. We will probably talk about case managerial approach in regard to workforce capacity.

**Ms LULHAM:** One comment I was going to make—and we all think we will have problems with capacity—is that there is one area where I think there will be an improvement. The shift in funding particularly through the ADHC programs from program funding to individual funding is freeing up some of those programs for us to purchase those services. In the past we have not had access to some of those excellent projects around the criminal justice system—severe behaviour type programs, some of the education programs, and school support programs—but with the change in the way that they are being delivered hopefully over time they will become more available to us. So that is a way I think we will have greater access to programs than we did in the past.

I think we are all expecting—but it has not happened yet—that there will be a shortage of attendant care workers. We have not noticed that yet but I guess we are planning for that into the future. I think all the agencies are considering ways of inducing people into that and making it a more attractive profession. But certainly the shortages that we have may not be quite so current because NDIS does not fund the therapies. But there are still big workforce capacity issues around some of the therapies and around case management. What we are doing with case management is taking groups of people who have been freed up through the ADHC-type funding approach, reskilling them and providing them with mentoring services for lifetime care. In some ways it has provided us with a greater opportunity rather than a reduction.

**Mr SCOT MacDONALD:** I touched on a question when we were at the Mitchell Library. Under the NDIS person-centred approach there seems to be a lot of emphasis on the choice of providers and services, and all that type of thing. As someone who is not in that industry and who knows that empowerment is great, I wonder whether someone in a stressed situation who is relatively new to his or her condition might have pressure from carers, families or whatever and might seek a cooling-off period in relation to this wonderful choice that he or she might have?

**Mr FERGUSON:** The approach we are taking is to speak to lifetime care planners based at the NDIS. We are in the process of piloting an approach to self-directed funding. The notion of person-centred approaches is fairly nebulous. One such element of that is the right to purchase your own service—it is an example of becoming a more person-centred approach. There are other ways that a service becomes more person-centred and that is in ensuring that case managers and providers are working to support individuals to amplify their wishes and desires through a planning process rather than from an expert perspective prescribing exactly on what they will be focusing over the next period. Some of it is about changing expectation and focus, but even for where we are seeking to provide people with greater autonomy or control it is only to the extent that an individual seeks that and has the capacity to do that. They are both difficult things to quantify and we are encouraging individuals to work with their support networks in regard to capacity. I am not talking about legal capacity around decision-making as much as empowering individuals to take as much control over those decisions as they can, but not without safeguards and safety nets.



**Mr SCOT MacDONALD:** In your view they will have all the necessary information for making possibly pretty profound decisions about their future care?

**Mr FERGUSON:** I guess you could say that there are macro decisions in relation to carers as well as micro decisions, or more day-to-day decisions. Recent changes to the standard for attendant care providers is largely targeted towards ensuring that people have much greater say over those day-to-day decisions. So it is about respecting the right of an individual. Unfortunately you need necessarily to articulate those things but it is the case. At that broader level around "I am choosing to purchase this type of service from this provider" we will provide those individuals within our scheme with both training and support in understanding the range of issues associated with making that decision as well as providing information around the range of services that are available for them to choose from. They will remain having somebody assigned from the authority who can provide whatever level of assistance might be required. It is not an either/or and it would also be something that would be regularly reviewed to ensure that people were receiving the support they needed. We are seeking to ensure people have that dignity of risk but at the same time have opportunity for support so they do not end up with unintended outcomes.

**The Hon. SHAOQUETT MOSELMANE:** In the first hearing of this review medical practitioners commented on the difficulties of transitioning people from hospital to suitable accommodation, including lengthy delays. What is your response? What is needed to make this transition smoother and quicker?

**Mr FERGUSON:** The issue of supporting people to be discharged from hospital in a timely way is an issue affecting community and services much more broadly than lifetime care, but it is a challenge for us. For example, having worked in the broader disability system the interface with the mental health system was an enormous challenge and how to support people to leave that system in a safe, supported and timely way. The Lifetime Care and Support Authority has in a small way invested in accommodation, but one of the challenges that we have encountered that has been discussed with the medical clinicians who sit on our reference group is that the importance of accommodation is that it is in the right place as well as being at the right time.

A small number of fixed assets are not always suitable. If a person comes from western New South Wales and we have capacity, whilst something in Ermington might provide some short relief to the rehabilitation unit it does not necessarily provide the appropriate outcome for persons at that point in their transition. So you end up with a competing priority around freeing up a bed versus what is the best next step for an individual. We have seen an increasing capacity in long-term accommodation. More community housing providers are providing appropriate accommodation and also not-for-profit and for-profit providers. But that is more focused on stable, long-term accommodation rather than transition.

There has been some increase recently. A facility called Ferguson Lodge provides potential for transition accommodation—again Sydney-based—but we have utilised that for participants and that has been of some effect. The other focus that we have is trying to minimise the delay. Without trying to avoid the specific challenge of transition accommodation, it is also worth thinking of it in relation to how you minimise the need for that by expediting somebody's safe return to his or her usual family home or what have you?

**The Hon. SHAOQUETT MOSELMANE:** So the transition not only relates to facilities but also relates to procedures and other aspects?

**Mr FERGUSON:** That is right. Some of the delays can be in relation to waiting for the right piece of equipment to arrive from overseas before somebody can safely be discharged home. At other times it may be that their home requires some level of modification which the authority will fund. To try to bridge that gap, if home modifications are required, we will fund interim housing arrangements for a person while that home modification is being undertaken. We have also looked at ways to try to streamline approvals and decisions around discharge to ensure that, if there are equipment needs, decisions can be taken quickly by the professionals, the experts around that equipment, without having to come to us for approval. We are continuing to expand the range of services that can be preapproved to allow for a much more timely and safe discharge.

There is an ongoing issue but it is hard to give you a clear vision around how to resolve it. We have some capacity—it is not full—and we can continue to provide support to individuals but it is not always where people require that service. So we need to continue to work in partnership with the other parts of the service system, such as the rehabilitation units which themselves have a transitional living arrangement that provides a part of the answer. Collectively, we need to look at how to do that better.

**The Hon. SHAOQUETT MOSELMANE:** What recommendations, if any, do you suggest we could incorporate into our final report?

**Mr FERGUSON:** There are two areas that I have touched on so far, based on your question. I think the issue of transition accommodation is one that the community has failed to resolve in a whole range of areas. We need to play a part in supporting that resolution, both in continuing to improve the efficiency of those decisions to get people home quicker, as well as on the occasions when people require that interim arrangement. How do we best provide that? I think there is a need to continue to work collaboratively to find resolution or to improve that circumstance.

The other focus is on the balance of managing risk and allowing flexibility to individuals to ensure that, if somebody ends up on the National Disability Insurance Scheme or the National Injury Insurance Scheme, their experience is comparable. We do not want people in one scheme saying, "I would like a bit of that. I think that would be a better option for me." But the expectation is that regardless of which scheme someone is in that experience—which empowers the individual and provides as much choice and control as possible—should be common. For us it is about balancing the risk between long-term sustainability and affording individuals as much choice and flexibility as we can provide.

**CHAIR:** On our first hearing day we heard from some medical practitioners who commented that the authority was fairly bureaucratic and that practitioners and carers had difficulty discussing the case with those who made the decision. What would be your response to that assertion?

**Mr FERGUSON:** I think that is a valid assertion. The authority has an assurance process that means that decisions are taken and approvals are given by a review officer. The review officer is not the person who has the relationship with the individual; that is the coordinator. At times that has proved frustrating for medical professionals, for example, saying, "Why can we not just sit down with that person and nut this out? It would be so much quicker." From my experience things get escalated to my level because the head of the Brain Injury Unit rings up and says, "Don, this one looks a little ridiculous. It does not pass the commonsense test. What do you think?" In those situations generally there is a commonsense way through it.

Staff members are very committed to the scheme and they are very committed to ensuring that it remains sustainable over time and they take that very seriously. So part of what we need to do is to better empower our front-line staff around decision-making and flexibility. But we need to do that, obviously, within the bounds of their delegations. One of the things that we are doing is ensuring that they have the right opportunities to have decisions made as close to those individuals as possible. So more decisions are being able to be made by front-line staff who have direct contact with people such as the rehabilitation units. Then something that I would like to continue to do is to look at how we can take a more risk-based approach to our decisions and only be having that other layer of review when there is particular complexity or a particular high cost. Coupled with that it is some way to ensure we have good communication between decision-makers and the busy medico staff who are asking, "We need this now and I cannot talk to the person who can help me to resolve this."

**CHAIR:** You are tweaking the system as you go along. As these issues arise you are trying to learn and adapt?

**Mr FERGUSON:** Having been here for a reasonably short time I would characterise the journey so far as follows. The organisation is in its infancy, the scheme is still young, but we need to be able to challenge ourselves to be as flexible as possible and to ensure long-term sustainability. I think that is a continuing journey but I think we can probably speed up the process of change at this point in time.

**CHAIR:** But it is something you are focused on doing?

**Mr FERGUSON:** Yes.

**Mr DAVID SHOEBRIDGE:** Most people support the scheme—in fact, I think every submission supports the scheme—and almost all of them point out that it does great and necessary work. But a number of submissions have addressed the lack of information in the annual report and have been deeply critical of it. When I went back and read it in light of that I thought that those concerns were almost all valid, particularly when we get further information about a lack of qualitative assessment of survey responses. On reflection, when

you look at the annual report do you think it is giving enough information? What are you going to do about the next one?

**Mr FERGUSON:** I think the annual report can be much stronger next time around in relation to performance information. I have heard the observations that have been made and I am comfortable with them. I would be comfortable in looking at how the annual report could provide some more qualitative information in relation to areas such as the survey, as well as looking at providing a greater range of performance data.

**Mr DAVID SHOEBRIDGE:** I suppose one of those things would be your key performance indicators. What do you think is an acceptable average delay for making those decisions about equipment or services, and what is the current delay? I know it is a pretty specific question but do you have any grasp of what the average delay is for these decisions or the classes of decisions?

**Ms LULHAM:** I know the answer to that because we have just done an audit as part of reviewing the processes of our equipment. The majority of equipment decisions are made within 10 days—well over 80 or 90 per cent. There were some equipment decisions that blew out to three to six months but they were around specific pieces of equipment and circumstances that arose. Just to follow on from Don's point, one of the things we are trying to do at the moment is to look at all the services we provide to different people at different times. We are looking at what sort of suite of services every newly brain injured person gets for the first six months? We are doing a big review of that at the moment. If they are basically all getting the same sorts of services, let us preapprove all of them.

**Mr DAVID SHOEBRIDGE:** Delegate the approvals now.

**Ms LULHAM:** That is the work we are doing at the moment and equipment forms a really big part of that. So yes, there have been a few substantial delays in equipment but the majority of them are done well within the 10 days.

**Mr DAVID SHOEBRIDGE:** What about services? Is that a whole separate area?

**Ms LULHAM:** In the starting of services?

**Mr DAVID SHOEBRIDGE:** The approval of services.

**Ms LULHAM:** Approvals are the same, although it is probably even more within the 10 days that we get that done. But some of the equipment ones have blown out a bit, I have to say.

**Mr DAVID SHOEBRIDGE:** Do you provide that audit report to the—

**Ms LULHAM:** The equipment one? Yes.

**Mr DAVID SHOEBRIDGE:** Well, whichever one you have?

**Ms LULHAM:** Yes.

**Mr DAVID SHOEBRIDGE:** It is a consistent concern. In fact, when you look at your own survey you find that 38 per cent of participants were agreeing with the statement that there were now long delays waiting for services to be approved by Lifetime Care and Support.

**Ms LULHAM:** Yes.

**Mr DAVID SHOEBRIDGE:** How do you explain 38 per cent agreeing with that statement? It would trouble me.

**Ms LULHAM:** Yes and it has troubled us. We discussed this at our reference group meeting only the other day and the doctors themselves were of the view that that has happened because lifetime care is the funder. We are bearing the responsibility for the delay even though many times it is not our responsibility. I am not saying it is not always our responsibility but certainly sometimes it is. However, the delays often come in working out what the piece of equipment needs to be. People are trialling equipment and from participants' point

of view they know they need a wheelchair but meanwhile they are trying out three or four and that might take a month. So it all adds up from their point of view.

**Mr DAVID SHOEBRIDGE:** That sort of qualitative information is essential to get your head around these answers and it probably needs to be in your annual report as well as some understanding of key performance indicators [KPIs]. Can we expect that in the next one?

**Mr FERGUSON:** I am comfortable with that. I know that sounds evasive. We have an annual report template and there are some issues of consistency around annual reporting across the agencies. But within the templates that are provided I am comfortable and happy to provide any of this information.

**Ms DONNELLY:** I will take some accountability here because—

**Mr DAVID SHOEBRIDGE:** You make the template?

**Mr FERGUSON:** I fill it in.

**Ms DONNELLY:** I have done in the past but I have noted the issues that have been raised and Mr Ferguson and I have had a brief discussion in the last week about that. I am also aware that the Committee is interested in seeing some improvements in the MAA annual report. We would need to have that discussion when we can have it. I am happy to be reviewing that and improving it.

**Mr DAVID SHOEBRIDGE:** There are some specific questions about the finances of the scheme to which I am interested in hearing your response. In the past financial year income from premiums is of the order of \$740 million; total assets are about \$2.5 billion; but the payment to the 796 participants was less than \$65 million. I know it is a long-tail scheme but you have \$740 million coming in and \$64 million going out. Can you just talk around those figures and explain them?

**Mr FERGUSON:** Yes. I might just start by noting that \$740 million is actually \$470 million, so it is reversed but I would similarly be concerned in relation to that.

**Mr DAVID SHOEBRIDGE:** It is still a discrepancy—\$470 million and \$65 or \$64 million.

**Mr FERGUSON:** Yes. As I go to the right page in my folder—

**Mr DAVID SHOEBRIDGE:** Take your time, Mr Ferguson.

**Mr FERGUSON:** The amount of money that is collected each year reflects the full cost of providing support for any cohort for the rest of their lives. The amount that you pay out in that year could never be commensurate with the amount you collect because that gets put aside for those individuals for the rest of their lives. That is a significant point relating to the difference there. The valuation has reduced from the annual report period—\$417 million down to \$404 million. That reduction is due to actuarial changes relating to mortality rates and also the numbers of interim participants. The current liability—would you like me to go through this?

**Mr DAVID SHOEBRIDGE:** By all means if you feel it is necessary to explain it, but it may be provided on notice.

**Mr FERGUSON:** Okay, yes.

**Mr DAVID SHOEBRIDGE:** Is that figure of \$64 million of expenditure right?

**Mr FERGUSON:** Yes.

**Mr DAVID SHOEBRIDGE:** If there are about 800 participants, \$64 million of expenditure means about \$80,000 per participant. These are all people with severe injuries of one form or another. I assume some of them have very severe spinal or brain injuries that require in the order of \$1 million a year to service. That must mean there are quite a number of people within the scheme who are getting paid almost nothing to make an \$80,000 average. How do we get our heads around the different classes of claimants?

**Mr FERGUSON:** In terms of people with the highest support need with brain injuries—I will not talk the technical language because I will trip myself up but they are known as Care and Needs Scale [CANS] 7—the average annual cost is \$270,000 but it goes up to \$550,000. That accounts for 16 per cent of individuals and that is at the high cost end. Still talking about people with a brain injury, at the very low cost end about 20 per cent of participants fit into those first two categories of that classification which is CANS 1 and 2—

**Mr DAVID SHOEBRIDGE:** You mean low in terms of lifetime care and support. They still have quite significant brain injuries.

**Mr FERGUSON:** Yes and Ms Lulham can characterise that for you if you would like to understand that more. They have an average spend of about \$15,000 presently. For the 2012-13 year people with a spinal cord injury, the most severe, the highest levels, have up to \$420,000 per year in attendant care and that accounts for about 5 per cent of the participants. The average cost per person is \$2.23 million over their life in the scheme but the range is \$500,000 to \$10 million over that whole life. We have people in the scheme as young as five months and we have someone in the scheme 100 years old. Obviously that cost over time is significantly different depending on how old you are.

Care ranges from well over 24 hours of care a day to some people that do presently have minimal care. This is part of the scheme design; people are initially accepted into the scheme as interim participants. On average, 30 participants per year will not become lifetime. At any time within the scheme there are about 60 participants—because you are interim for two years—that will not ultimately require the level of care that the scheme provides because their recovery over that two-year period means that they are no longer sufficiently severe. At any one time you have got about 60 people receiving a fairly low level of service. The usage rates for attendant care within that group included in the numbers is 54 per cent, but when you take those ones out the usage rate goes up to 72 per cent. That is 72 per cent of people who are receiving attendant care services at any one time.

The people who do have lower support needs, their needs are not static and they do change over time. These are particularly the individuals who are subsequently deemed lifetime. They are not focused on the 60 or so who are transitioning out but they do obviously affect those numbers. Their needs are not static and they do change over time as life circumstances change. A person with a brain injury, their family circumstances may change, their work circumstances may change and so therefore their care needs will fluctuate. At any time you will have people who are functioning well with a small amount of care but that will often fluctuate over time.

**Mr DAVID SHOEBRIDGE:** Ms Lulham, will you give us an idea of people at the lower end of the scale in terms of lifetime care and support? I had always understood that these are quite catastrophic injuries. Could you tell us what kind of injuries are at the lower end of physical injury? I am troubled by only \$5,000 or \$10,000 being spent on their care in any given year.

**Ms LULHAM:** In fact, probably the money is not being spent on their care; it would be spent on other services. This is a group of people with a brain injury who would have cognitive, psychological problems. They are the sort of people who, if they are well set up in the community within their family, will probably require very little support. Maybe every now and again their case manager or their coordinator will make sure things are going along, but then something will change. Maybe their work will change, maybe a family member will leave or something else in their will life change and they will need perhaps some intensive support maybe for a six or eight month period of time to settle that down. Then they will perhaps go on again. We will always have a reasonable proportion of people like that.

We also have a group of people with what you would call low-level spinal cord injuries, reasonably incomplete, who while they are young require few services apart from perhaps some equipment, and I am talking more around consumables. They may even be walking at that point in time but as they age we expect their needs to increase. The costings do actually allow for an increase in their costs as they age. It is that brain injury group who require some support. If they are not monitored they will often end up in the criminal justice system, mental health system and those sorts of things but they do not require support on a daily basis. The support they need is usually something around maybe some case management, some psychiatry, some psychological therapies and those sorts of things.

**Mr DAVID SHOEBRIDGE:** If they do end up in the criminal justice system or the mental health system what does that mean in terms of lifetime care and support assistance? Do they go off the books for a period and then come back on? What happens?

**Ms LULHAM:** It can vary. Certainly we have had a few participants in jail and they are usually in jail because of offences they committed prior to coming into the scheme or because of something to do with the motor accident at the time. We have not got anyone for whom we have actually paid for services while they are in jail apart from some medical appointments and things like that. When they leave jail then, yes, we would start supporting them again. Mental health is a much more complex environment. We might often have arrangements where they are paying some and we are paying some. They are paying the component that is perhaps due to their mental health and we are paying the component that perhaps their brain injury has exacerbated. They are quite complex, those sorts of ones.

**The Hon. SHAOQUETT MOSELMANE:** I understand that many family members also provide support and assistance. Can you advise us whether some of those tasks that family members undertake can be provided by the lifetime care schemes?

**Ms LULHAM:** If a person has a need related to their injury and it is around care or support, personal care, lifetime care is always willing to pay for a provider to provide those needs.

**The Hon. SHAOQUETT MOSELMANE:** You do not encourage family members to provide those services?

**Ms LULHAM:** We do not have an expectation for family members to do that; the expectation is that we will pay that. Undoubtedly some family members may decide that they want a combination of each. A very common situation is, for instance, where we might provide up to 18 hours of care a day but the family does not want an attendant care worker in the house overnight whose role is just to sleep in house in case something happens. A family may decide that they do not want that. But should, for instance, the family go away on holidays or something then we remain willing to put that carer in.

**The Hon. SHAOQUETT MOSELMANE:** My next question relates to quality nursing. I note that the New South Wales Bar Association has expressed concern that quality nursing agencies are not prepared to tender for available work in the scheme as they cannot provide quality staff for the advertised rates. What is your response to that?

**Mr FERGUSON:** The approved providers that we have within the scheme respond to a fixed price contract. We are not tendering on competition for price. We are not selecting providers who are the cheapest in the system. They need to be able to demonstrate their competency and their experience in providing services related to one or more of the participant groups that we have within the scheme. They also need to have accreditation to provide services through the attendant care industry standard. That is repeated. They need to be certified and recertified every three years.

**The Hon. SHAOQUETT MOSELMANE:** I think their point is that the salaries are not high enough to attract good quality nurses.

**Mr FERGUSON:** There is a range of experience. We have a wide range of providers who do provide services to the scheme who also provide services to other parts of the service system. We have some that do not want to provide services under the scheme because they are seeking higher rates. That is a constant balance for us in relation to the attendant care fees that we pay, but we do pay additional rates for registered nurses. Qualified registered nurses can be employed where there is a need and we will pay a different rate for those staff.

**Mr DAVID SHOEBRIDGE:** The same submissions said that there was a need for transparency about the training and qualification standards for the particular services provided by the Lifetime Care and Support Authority, which again is not in your annual report.

**Mr FERGUSON:** Yes.

**Mr DAVID SHOEBRIDGE:** Can you provide the Committee with information about the standards are whether they are mandatory?

**Mr FERGUSON:** We could provide to the Committee information on the attendant care industry standard, which is the standard that they must be certified to. We can provide that to the Committee.

**The Hon. SARAH MITCHELL:** The issue of what is deemed to be reasonable and necessary treatment came up on the first day of hearings the week before last. Essentially, no matter what level of care the participants are on whenever they need a piece of equipment or any sort of service they come to your authority to get it ticked off. Is that how the process works in simple terms?

**Mr FERGUSON:** In simple terms but the needs are identified within a support plan, a care plan, so that is reviewed on a periodic basis. There is a period of approval that would be given for services but there is also, of course, opportunity for ad hoc requests as well outside of that more formal process as needs arise.

**The Hon. SARAH MITCHELL:** When we heard from Greg Killeen from Spinal Cord Injury Australia he talked about the assessment prescription process and the cost-benefit analysis. He used the example of a trackball on a computer, which costs about \$100, but going through the process of having a therapist come to say the participant can have access to that trackball costs more than the piece of equipment. I assume he meant at the higher end of the scale, but he talked about having a nominal fee. I think he used \$2,000 to \$10,000 as an initial amount to set up those day-to-day basic pieces of equipment without having to go through the authority. I know you said earlier that you were looking at some self-directed funding and flexibility. In future could it be possible for a nominal amount to go initially to people for the everyday pieces of equipment that are quite common across the sphere?

**Mr FERGUSON:** I have not thought of it in terms of a discretionary sum. Yes, the self-directed funding is one part of that but for all of the participants, be it on that system in future or not, what we are challenging ourselves to do is expand the range of services and equipment that are pre-approved. Particularly where it is low cost and low risk we want to get out of the way: it is not a good use of our time and it is not appropriate for participants to be waiting. On a risk decision-making process wherever we feel that we can move to a system that allows for much more straightforward access to services or equipment that is what we are currently working on.

**The Hon. SARAH MITCHELL:** Is there a list of pre-approved equipment at the moment?

**Mr FERGUSON:** Yes, there is.

**The Hon. SARAH MITCHELL:** You are hoping to expand that?

**Mr FERGUSON:** Yes, in order to take into account higher costs and complexity where we can manage the risk. That was what Ms Lulham was referring to earlier around that review.

**Mr DAVID SHOEBRIDGE:** And address them to nine periods of care such as the first six months after a significant spinal injury and the first six months after a brain injury.

**Mr FERGUSON:** Yes.

**Mr DAVID SHOEBRIDGE:** These are ones you would almost inevitably expect would be required?

**Mr FERGUSON:** Yes.

**Ms LULHAM:** We do that now for the first three months. We have had that in place since the last review, but we are looking to expand that for a longer time. We are trying to get together what the services are because, if everyone gets it, there is not much point us being involved in it at that point in time.

**CHAIR:** Following the question asked by the Hon. Shaoquett Moselmane concerning the fees paid for nursing assistance, I do not know whether I clearly followed your response. I may be a bit confused. Are you saying that your advertised nursing rates are the accepted rates in industry for quality nursing staff and you are paying those rates?

**Mr FERGUSON:** Off the top of my head, I cannot give you the comparison between us and, say, the public health system. Suzanne may be able to; I cannot. I can say that when our rates are set and reviewed periodically, they take into account the relevant awards and the rates that are being paid by comparable industries.

**CHAIR:** Has this issue been raised with you at all by any groups, including the Bar Association?

**Mr FERGUSON:** It is an issue that has been raised directly by some service providers.

**CHAIR:** Yes. How do you respond when they raise it?

**Mr FERGUSON:** We have a mixed response in that some note—and this is also how I respond; I take the positive feedback—that the rates alone do not reflect the full arrangement between the provider and the authority. The rate that is provided to the staff person is set by the agency. We set the amount we give to the agency, so that includes their on-costs and so on. Obviously there is a clear relationship between those two things. Does that make sense? On top of it they have profits and other things that are built in.

**CHAIR:** Yes, but what percentage of nursing services used by you come through nursing agencies?

**Ms LULHAM:** I think there may be some confusion. I think perhaps people are using nursing when they actually mean attendant care. The fees that we set for nursing are on the nursing award. It would be fair to say that we do not get any complaints at all about our nursing fee. I think the issues are around the attendant care fee, which is the fee paid to the attendant care workers. Anyone who is on our panel must agree to pay award wages, so that is a minimum and the fee is set taking account of the award wages, profit, administrative costs and those sorts of things. We don't tender on fees. Every time we tender we are oversubscribed, so there are more people who want to be on our panel than do not want to be on our panel. They must meet the standards.

The other thing that Don is alluding to in respect of what our providers are saying is they can do it for our fees because we provide a lot of other support. What our participants get that they perhaps do not get from other providers are our case managers and coordinators who are also supporting participants. We pay quite a lot for travel for people. We pay a lot for training, so we provide extra training incentives. For our complex and big programs—and they are complex and big—we pay on top of that an extra fee for a nurse to coordinate the delivery of those programs. So there are other fees on top of the hourly rate fee.

**CHAIR:** So you are satisfied that there is an ample supply of quality nursing staff at the price you are prepared to pay?

**Ms LULHAM:** Nursing staff, definitely, and attendant care staff. At this stage the only shortages we have of attendant care workers are in very remote rural areas where it is not about the fee; it is about finding the people.

**CHAIR:** Thank you.

**Mr SCOT MacDONALD:** My question goes to the issue you just raised. Recommendation 6 of Carers NSW is that exceptions be considered to the non-payment of family members for participants from Aboriginal and Torres Strait Islander and culturally and linguistically diverse [CALD] backgrounds and those living in rural and remote areas. If you want to take it on notice, will you respond to that?

**Ms LULHAM:** We do have exceptions already in those places. The exceptions we have are rural and remote areas, but also a couple of exceptions where participants have severe mental health problems like paranoia and only a family member can do it. We insist in those circumstances that family members are employed by an attendant care agency so that they are properly trained.

**Mr SCOT MacDONALD:** So you do not have direct money—I can see the issue.

**Ms LULHAM:** No. So they are trained. Their workers compensation insurance, professional indemnity and all of that is covered. There are exceptions already where we pay family members to do that.

**Mr SCOT MacDONALD:** You need a Chinese wall, or you need a wall of proper governance around it.

**Ms LULHAM:** Also, if the family member gets sick there is some back-up from the attendant care agency to step in and provide further training.



**Mr DAVID SHOEBRIDGE:** At least one of the earlier witnesses was talking about the harsh demarcation line between the National Disability Insurance Scheme [NDIS] and lifetime care and support, and said that if you are in lifetime care and support you get no services under the NDIS. I think you said earlier you wanted people to have the same customer or participant expectations from each of the two schemes. Particularly in respect of leisure and things such as gym membership and being able to get to the gym, if someone has particular travel needs or particular high care needs, a couple of sessions in the gym may be approved under his or her care plan. But if they also just want to get to the gym as ordinary people do and it does not fall within reasonable and necessary treatment expenses, those costs are likely to be met by the NDIS but not by the Lifetime Care and Support Scheme, and there is a degree of frustration about that. Can you respond to that?

**Mr FERGUSON:** I think ultimately what is provided for under the NDIS is still being resolved. The focus on providing support to people within lifetime care, however, does involve providing assistance to that person to participate in whatever those activities might be if he or she requires assistance. We do not articulate recreation and leisure as a support focus under the needs; we support their attendant care needs. So if part of it is that they need assistance to participate, we fund that. I am not sure that the difference is as significant as it might appear.

**Mr DAVID SHOEBRIDGE:** Perhaps Ms Lulham can explain what the actual difference is. What is not being met under the lifetime care and support for which people are asking? You might be able to get an attendant to go but your own travel costs and additional costs are not being met, which seem to be the difficulty.

**Ms DONNELLY:** Mr Shoebridge, I am happy to pass back to Suzanne if my answer does not address it, but I think there is a larger setting around this that is part of my role, which is the design of the National Injury Insurance Scheme and our input into policy and design at a national level. The Committee might want to get a sense of where that is going. The National Disability Insurance Scheme and the National Injury Insurance Scheme, as you know, came out of the Productivity Commission report and they are intended to sit side by side. The lifetime care scheme fulfils the obligations of the New South Wales Government for a National Injury Insurance Scheme for motor vehicle accidents. I represent us in senior official discussions around the design of the National Injury Insurance Scheme. The intention is that in respect of care and supports—the sorts of access to supports that you are talking about—you would not see a difference down the track, but between whether someone is in NDIS or in lifetime care as part of the New South Wales National Injury Insurance Scheme there are some differences.

A key one is that the National Injury Insurance Scheme, like lifetime care, will continue to obviously provide a whole lot of medical treatment and rehabilitation services on top of NDIS. So the contrast goes the other way. If you are in lifetime care, as is our obligation as a State to the National Injury Insurance Scheme, you will have access to more than you would if you are in NDIS. Similarly, the age issue that the Committee raised earlier, the minimum benchmarks which New South Wales meets for the Motor Vehicle National Injury Insurance Scheme, through lifetime care, does not have a minimum benchmark if you are under 65 or under retiring age. Again, that is another example where the intent is that a participant in the National Injury Insurance Scheme will have access to more reasonable and necessary benefits than the other way around, but where it comes to supports or disability, the intention is that they would be the same.

**Mr DAVID SHOEBRIDGE:** Going back to that scenario, if someone does not need to go to the pool for their treatment plan, or it is not being suggested that they go as part of their treatment plan or medical treatment, but they want to go to the pool twice a week to participate in the pleasure of having a swim and getting out of the house, how is that covered by lifetime care and support?

**Ms LULHAM:** I think the issue comes about because we do not pay the cost of the leisure. It comes up a lot. For instance, we do not buy movie tickets. We do not pay for them to go to the movies. What we pay for is the attendant care worker to take them. We pay for the attendant care worker's time. If someone needs special equipment, we will pay for that. But the services we pay for at the moment are listed in the legislation, and they are fairly clearly defined. Things like those specific items of leisure are not there at the moment. In respect of one of the things that we would like to do, and this is what Mr Ferguson was talking about, increasing the flexibility in what we can offer is part of that. At the moment we are restrained, to some extent, by the parameters that are listed in our legislation.

**Mr DAVID SHOEBRIDGE:** But you would like to be able to pay for an annual pass to the pool or the gym as part of what you do, and you are a bit constrained at the moment.

**Ms LULHAM:** Yes, we are a bit. In fact, the annual pass to the gym, we usually can, because that is around fitness and health and maintenance, so we do pay for that in the long term. You do not need to have a rehabilitation goal to have those sorts of things. It is things like the movie tickets that we struggle with.

**Mr DAVID SHOEBRIDGE:** Is there any recommendation or any recent low-level changes that we can look at that might assist you in doing that, or do you want to take that on notice?

**Mr FERGUSON:** In general terms we agree. The issue for us is having the flexibility in order to support people to achieve their goals, but in how that would be phrased for the Committee, I would need to take that on notice.

**The Hon. SHAOQUETT MOSELMANE:** This matter was raised by the New South Wales Bar Association in which it said around 10 per cent of participants in the scheme do not know who their case manager is. Can you explain that?

**Mr FERGUSON:** About 75 per cent of the participants within the scheme have an acquired brain injury, so I think it is at least in part explained by issues relating to cognitive deficits. The survey that we undertake, we endeavour to hear directly from individuals as well as from their families and care providers. Some of that is then qualified by information that we receive from others, but that at least goes part way towards explaining that.

**The Hon. SHAOQUETT MOSELMANE:** You say the majority of that 10 per cent is related to brain injuries?

**Ms LULHAM:** I am not sure, but I think that submission may have said 10 per cent of people do not have a case manager.

**The Hon. SHAOQUETT MOSELMANE:** I will read what it says

There are concerns that 10 per cent of the scheme participants do not know who their case manager is.

Given the importance of case managers for these participants, what is the reason for this lack of knowledge?

**Ms LULHAM:** They may not have a case manager. Not all participants will have a case manager, particularly people with spinal cord injury. It would be our expectation that they would not all have case managers. They would contact directly their coordinator within lifetime care, so they would not have a case manager. As Mr Ferguson has alluded to, a number of our participants have severe cognitive deficits, so they may not know the name of their case manager, if they do have one.

**CHAIR:** There are no more questions. You have certainly been of great assistance, which will certainly help us in our deliberations. I have no doubt about that. If there are any questions on notice, I ask that you get a response back to us within 21 days. Thank you very much for being with us today.

**Mr FERGUSON:** Thank you for your time.

**(The witnesses withdrew)**

**The Committee adjourned at 1.00 p.m.**