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REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

TENTH REVIEW OF THE MOTOR ACCIDENTS AUTHORITY AND MOTOR ACCIDENTS COUNCIL AND THIRD REVIEW OF THE LIFETIME CARE AND SUPPORT AUTHORITY AND LIFETIME CARE AND SUPPORT ADVISORY COUNCIL

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At Sydney on Friday 11 June 2010

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. J. G. Ajaka
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
The Hon. L. Voltz

CHAIR: Welcome to the public hearing of the Standing Committee on Law and Justice's Tenth Review of the Motor Accidents Authority and Motor Accidents Advisory Council, and the Third Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. This is the first review that we have had since the Committee made a decision to do biannual reviews of the Motor Accidents Authority, so we will be very interested to see how that has been operating. As well as that, during the last two parliamentary terms, working with legislation that has set the terms of reference for the reviews of the annual reports of both those organisations has been a very successful evaluating process.

It has not in any way been a confrontational process, although sometimes our questions may appear to be a bit confrontational. The intended outcome always has been to add value. It is not set up to attack a specific program. It is not set up to attack the Government on any specific issue. Due to a fairly radical change to the Motor Accidents Authority scheme before any of us were elected to Parliament, Reverend the Hon. Fred Nile set up this process to ensure that there would be an ongoing structure for community input into this process.

Today we will be hearing witnesses from the Motor Accidents Authority [MAA] and the Motor Accidents Advisory Council [MAC], and the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. We will also be hearing from representatives of the Law Society of New South Wales, the New South Wales Bar Association, the Australian Lawyers Alliance, the Insurance Council of Australia, and the Motorcycle Council of New South Wales.

The Standing Committee on Law and Justice has resolved to conduct the MAA, the MAC, the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council reviews concurrently. However, because the reviews relate to different bodies and separate pieces of legislation, two reports will be released, one for each review. During today's hearing, witnesses will be questioned separately, according to each review, to ensure the distinct issues of both reviews are given adequate attention and are dealt with independently. Before we commence, I would like to comment about some aspects of the hearing.

Broadcasting guidelines are set out in full in a document that is available on the table by the door. The Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the *Guidelines Governing Broadcast of Proceedings* are available from the table by the door. In accordance with the guidelines, a member of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish and the interpretation they place on anything that is said before the Committee.

Witnesses, members and staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of the Committee or any other person, unless of course they are public documents in the first place.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals, unless it is absolutely essential to address the terms of reference. Anyone who has a mobile phone should ensure that it is on silent mode and kept well away from any recording mechanisms. They are picked up by the Hansard machinery and actually destroy the recording.

I welcome our witnesses this morning. We have received a formal apology from Ms Lisa Hunt, who is the chief executive officer of the Compensation Authorities Staff Division of the Motor Accidents Authority, and who is unable to attend this morning. I welcome Ms Carmel Donnelly and Ms Geniere Aplin.

CARMEL MARY DONNELLY, General Manager, Motor Accidents Authority of New South Wales, and

GENIERE MARY APLIN, Chairperson, Motor Accidents Authority Board and Motor Accidents Council, affirmed and examined:

CHAIR: If you consider at any stage certain evidence you wish to give or documents you wish to tender may be seen or heard only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice we would appreciate replies within 21 days. If that is not possible, please confer with the secretariat about an appropriate time for response. Would either or both of you like to make an opening statement?

Ms APLIN: I would, Chair. Members of the Committee, I would like to make some brief comments on the work of the Motor Accidents Authority since the Committee's last review. If I could introduce the representatives who are here, Carmel Donnelly was appointed late last year as the General Manager of the Motor Accidents Authority [MAA]. Carmel is best placed to answer the operational questions, as she manages the day-to-day operation of the scheme. I was appointed late last year to the chair position. In the ninth review in 2008 by the Law and Justice Committee, this Committee made 16 recommendations in respect of the MAA. The Government supported all the Committee's recommendations bar one. Actions on nine recommendations are now complete. Actions on two recommendations will be completed within weeks. Action on the remaining recommendations are expected to be completed by the end of this year.

I want to talk to you a little about our priorities. The key priorities of the MAA since the last review have included affordability of green slips, consultation to continue refinement of the scheme, consultation on the extension of benefits under the scheme, improvement of social and health outcomes for injured people, and responding to the impact of the global financial crisis. To talk a little bit about our achievements, the Motor Accidents Scheme in New South Wales has been characterised by an active program of consultation, refinement and improvement of benefits to motorists and people injured in motor accidents. Key reforms since the Committee's last review are improvements to the dispute resolution process to encourage early settlement of claims, which was implemented in October 2008, and the introduction of a financial hardship payments provision in October 2008. This new provision requires an insurer to make an advance payment of economic loss of entitlement in cases of financial hardship. The key reforms also include an increase in the accident notification form benefits from $500 to $5,000 to cover treatment, rehabilitation and care costs and to reimburse an injured person for lost wages. This resulted in an increase of 68 per cent in A and F forms lodged in 2008-09.

The 1999 restriction, which excluded recovery for the first five days of lost wages or earnings and past economic loss, was repealed from October 2008. From 1 July 2009 coverage under the Public Hospital and Ambulance Bulk Billing Agreement was extended to cover expenses for all persons injured, regardless of fault or negligence. From April 2010 the $5,000 accident notification form benefit was extended to cover all persons injured for up to $5,000 into treatment, rehabilitation and care costs and lost wages, regardless of fault. I also want to speak a little on consultation. The MAA has a number of consultative review processes in process, which are expected to lead to further refinements of the Motor Accidents Scheme. They include a competition review, which is being conducted by the independent economist, Doctor Peter Absolom. It is to identify improvements to green slip regulation that would enhance affordability and fairness of green slip pricing by making the scheme more robust to economic cycles.

Also as part of the review process, a review of the Motor Accidents Compensation Regulation 2005 covers the maximum fees recoverable from insurers of the cost of legal services. The MAA has convened a working group, which includes representatives of the Law Society and the Insurance Council, to provide recommendations on the way forward for a new version of this regulation. This has been a well-supported and constructive process and we are appreciative of the work by the members of the working party. The MAA is pleased with the working party's suggestion that plaintiff lawyers disclose to the MAA the net settlement amounts received by claimants. Greater transparency would enable better monitoring of the efficiency of the scheme and the proportion of premium return to claimants in benefits. The MAA also is consulting with the Bar Association and will seek input from the Australian Lawyers Alliance and the Australian Medical Association and others as this review progresses. The MAA will soon initiate a review of the claims assessment and resolution service. This service has now been in operation for a decade and the MAA's consultation with stakeholders has identified the potential need for refinements.

The issues that were impacting upon the scheme over the last year include a 15 per cent increase in the number of claims and the cost of treating and supporting people has increased with inflation. The global financial crisis, no doubt, has impacted on the community and business generally and no doubt the Insurance Council will be in a position to confirm that the impact of the global financial crisis on the insurance industry. That said, it should be noted that the impact of the global financial crisis on compulsory third party insurance is quite unique. CTP claims can be paid many years after an accident, in contrast to home and contents insurance where claims are made the same year as premiums are collected. To ensure that insurers have adequate funds to cover the payments well into the future, they invest the premiums and collect to ensure that they have sufficient funds to meet future claims liabilities.

With the global financial crisis we are all aware that investment returns dropped dramatically. As a result the insurers increased premiums to fully fund future claims costs. While interest rates have begun to increase again, investment returns are still not back to 2007 levels. The MAA has utilised independent actuarial and economic advisers throughout the global financial crisis in its role of monitoring green slip prices for adequacy to fully fund liabilities and requiring sound justification by CTP insurers to justify a premium pricing.

CHAIR: We have had very detailed information over the years about your process of evaluation. We understand from that information the differences as a result of the crisis.

Ms APLIN: To sum up, the MAA is committed to an approach of closely monitoring the performance of the scheme and actively progressing refinements of extension of benefits through a complicated process with key stakeholders.

Ms DONNELLY: I would like to table a report that we will put on our website next week, for the information of the Committee. It is called a "Relativities Review". It is an important part of the premium determination guidelines. It aims to minimise cost subsidisation in green slip prices between people with different sorts of vehicles and in different parts of the State. We regularly review the relative cost of claims for those different categories of vehicles in different parts of the State, based on actual data for claims. It is part of the guidance to insurers in setting the premium prices. I thought the Committee might be interested in seeing that. We have brought that up to date.

We do from time to time special reviews of different classes of vehicles where there may be a need to look more closely. That report and the previous one reflect a lot of work that has been going on in collaboration with the Motorcycle Council of New South Wales to look at ways of minimising cross-subsidisation between different categories of motorcycles.

CHAIR: Thank you. Before we start on questions, I recognise that we will need to speak with you at a later date. We have not allowed enough time for this process. Although the Committee has not discussed this matter, we could list you again at the end of the next hearing day, Monday, 21 June 2010. The Committee will discuss this and formal contact will be made with you. The MAA response to pre-hearing questions on notice stated that its "Results Logic" has been published in the last annual report. Would you explain what "Results Logic" means? How does it differ from the performance reporting approach used in previous annual reports? Where is the difference evidence in the latest annual report? It is a heavy question.

Ms DONNELLY: It is a heavy question and I will do my best. We gave an answer in the questions on notice. Results Logic is a methodology that is required for all government agencies. There are guidelines on how to apply that managed by NSW Treasury. Firstly, it is part of a whole-of-government approach to better define the objectives and measures that are relevant to the work of any agency with relation to the results to the community. It forces a discipline on government agencies to think about what is in it? What are you going to do for the people of New South Wales and how to express those results? In the annual report—I have not a copy with me—we have a table that outlines our Results Logic. You will see it reflects not so much a change in our responsibilities under the Act but a way of conveying what we are trying to achieve, expressed as results for the community. It is on page nine of the annual report. It shows the key result, intermediate results and then the sorts of services that relate to delivering those results.

The Hon. DAVID CLARKE: The Results Logic approach is something that came from the Government to you that you are to comply with?

Ms DONNELLY: Yes.

The Hon. DAVID CLARKE: For how long has Result Logic been existence? Is it something recent or has it been there for some years?

Ms DONNELLY: It has been there for a number of years. Certainly the information is on Treasury's website but I have been at the MAA for three years, and I assisted in implementing in the agency in which I was working before that. So I am guessing five or six years.

The Hon. DAVID CLARKE: Is it something unique to New South Wales?

Ms DONNELLY: This is basically my personal knowledge from working in management, it is quite similar to models of outcome hierarchies and there are different words used. It is quite a similar model being used in management around the Western World.

The Hon. DAVID CLARKE: We are aware that the Motor Accidents Council has not met for approximately 16 months but that its new membership will take effect on 1 June. Will you tell us about the new membership and how will the council go about determining its strategy for the coming three years?

Ms DONNELLY: Ms Aplin may want to speak as the Chair.

Ms APLIN: Our first meeting is scheduled for 15 June. We acknowledge that there has been a period obviously where this council has not met.

The Hon. DAVID CLARKE: Any reasons that it has not met for 16 months?

Ms APLIN: The members were not appointed. They were appointed on May 2010 with their appointment to take effect from 1 June 2010.

The Hon. DAVID CLARKE: What happened prior to that?

Ms APLIN: That would be a matter for government I believe. The first meeting we intend to talk to the members in a consultative way about what needs to be on the agenda, but the purpose of the council is very much for matters to be referred to it by the board, or from the Minister, to then establish the strategy. At the first meeting we will be talking about matters that have not been discussed obviously in that 16 months and understand whether there are any issues that the members have that they would like us to discuss moving forward.

The Hon. DAVID CLARKE: We have heard from the Bar Association that there has been a significant breakdown in stakeholder consultation with the MAA due to the delay in appointing the new council. Will you comment on those concerns and how they might be addressed by the new Motor Accidents Council? Do you agree that there has been a breakdown in stakeholder consultation?

Ms APLIN: No. There have been other forums for stakeholders consultation which I might ask Ms Donnelly to speak about because obviously I, as chairperson, have not been involved. But ultimately there have been other forums for consultation.

Ms DONNELLY: The approach that I have taken as general manager and also as deputy general manager has to be very clear to stakeholders that there is an open door. There are a number of other formal forum where we consult with the Bar Association the Law Society, the Insurance Council but I am always ready to meet. I think that through other approaches—

The Hon. DAVID CLARKE: Why has this particular forum not been used? It is there to be used, why has it not been used? It is something on which the Bar Association comments.

Ms DONNELLY: I think the answer is the appointments of the previous council lapsed, and making new appointments is a matter for Government.

The Hon. JOHN AJAKA: I refer to the Zotti case which obviously created a problem as raised by both the Law Society and the Bar Association. What is occurring from the perspective of the MAA in relation to that case and the problems that have clearly been shown?

Ms DONNELLY: The Zotti case concerned a person who was injured when he lost control of a bicycle that he was riding and he claimed there was an oil slick on the road.

The Hon. JOHN AJAKA: From a previous car accident.

Ms DONNELLY: Yes. We are very aware of that case. We have put a proposal to the Minister that he supported to propose some legislation and we are working very hard on that and are quite close to completing legislation.

The Hon. JOHN AJAKA: When did you send your proposal to the Minister?

Ms DONNELLY: I cannot recall.

The Hon. JOHN AJAKA: Will you take that question on notice?

Ms DONNELLY: I am happy to take that on notice.

The Hon. JOHN AJAKA: The case has been talked about for sometime now in 2009 and I want to ensure that there is a gap and victims are suffering because of it. Will there be a thought of the legislation being retrospective? Are you aware of any submissions in that regard?

Ms DONNELLY: I cannot be definitive but I think that is certainly being considered.

The Hon. JOHN AJAKA: What is occurring in relation to *Doumit v Jabbs Excavations Pty Ltd* which is clearly a different problem but deals with a gap in the legislation.

Ms DONNELLY: Yes, we watch very closely these precedents that occur in the courts that create some ambiguity or perhaps potential gaps that depart from the intention of the scheme. For this one I know that the RTA is considering an amendment to the definition of "vehicle" in the Road Transport Act and it is a matter for it to address any gap that might have arisen from that court decision.

CHAIR: So it is the other department?

Ms DONNELLY: Yes. I know that the Zotti case is returning to be considered by the High Court in July as well but, nevertheless, we are proceeding with proposed legislative amendment.

The Hon. JOHN AJAKA: Have there been situations where, for example, if we go back to Doumit's case, green slip premiums were required to be paid on these types of conveyances and insurers are now saying that, notwithstanding that the green slip was paid, it does not come within the ambit of the legislation, therefore they are not liable?

Ms DONNELLY: I am certainly not aware of any cases where denial of liability has occurred on that matter and I would go further and say that in that case, where particularly the intention would be to remedy it, I would be having discussions with the insurer about the appropriateness of taking a position that is likely to be overtaken by legislative amendment.

The Hon. JOHN AJAKA: Going back to what was said earlier about affordability of green slips, I understand that concept, but one of my concerns has always been that there must be an appropriate balance. We cannot be obsessed with the concept of trying to reduce green slips by one or two dollars, so to speak, when at the same time there is the argument that insurers are still reaping in profits, and all of a sudden there really is a reduction in the amount payable or damages awarded or payments made to those injured. Where is the priority? Is the priority, from your organisation's point of view, the affordability of green slips or really sufficient funds and appropriate compensation for those injured?

Ms DONNELLY: I think it is a balancing act between the two. From my perspective, the scheme and the Motor Accidents Authority [MAA] exist so that when a driver goes on to the road they know that, if they do injure someone, that person will be looked after and looked after so that they can get on with their life as best as possible, but also looked after without that driver or owner having to bear the financial consequences or face being sued. Obviously there is an important group of stakeholders, who are the motorists who are owners of

vehicles, who are purchasing green slips and affordability is very important, but also there needs to be full funding, and I think that is the monitoring work that the Motor Accidents Authority, as a watchdog, undertakes to improve the outcomes for injured people and also protect and maintain affordability.

The Hon. JOHN AJAKA: If you look at the Australian Lawyers Alliance suggestion, they say that the level of insurer profits over the lifetime of the scheme indicates a capacity to pay higher benefits to injured persons than have actually been paid so far. Do you have a view on that?

Ms DONNELLY: I have a few points that I would like to make on that. I know that the Committee is likely to hear diverse views on insurer profit and they are probably going to range from that the profit is too high to that, if profit is not high enough, insurers will leave the market. Our role is to monitor and take a balanced view. We do it with expert advice and also based on evidence and data analysis. It is certainly a valid point that insurer profits should not be too high, and I would probably add there any more than the costs associated with other service providers, so that is one of the reasons why I welcome the recent suggestion from the legal costs working party that in the future plaintiff lawyers would, with a remade regulation, disclose to the Motor Accidents Authority in confidence information about the final settlement amount that claimants have received so that we would be able to more transparently say, "Here is the percentage that is going to claimants", and look at all of the different costs to the scheme, including insurer profit, but other services as well.

To assist the Committee, looking at the Bar Association submission and that from the Australian Lawyers Alliance, I requested our scheme actuaries to have a look at the issues and concerns raised and to provide us with some information, and they have agreed that I could table that with the Committee, if that would assist. That advice does explain the difficulty in accurately forecasting profit in a long-tail compensation scheme. It also outlines one area of misinterpretation in one of those submissions and it explains that, due to some refinement in the reporting of profit estimates by the Motor Accidents Authority, the estimates published in annual reports from 2007 are less likely to change as dramatically as we have seen in previous years.

That said, I understand the concerns that monitoring profit is an important part of our role and certainly somewhat of a balancing act and I am very pleased to report that, as part of the competition review and early discussions with the director of that review, we have commissioned some additional financial modelling that would assist us in our regulatory matters in that regard. The other point that I would make is that there has been considerable extension of benefits. Ms Aplin referred to some of them in her opening remarks and I will not go to them, but also there is the children's benefit and the removal of the blameless accident defence, so there has been over that period since 2005 considerable extension of benefits while maintaining affordability, so I think getting the balance right is what we are focusing on and what we have been doing.

The Hon. LYNDA VOLTZ: Ms Aplin, you said you were recently appointed as the chair. What is your background? Were you on the previous committee?

Ms APLIN: No, so my background is predominantly that I was a practising personal injury lawyer before entering financial services and then I worked within insurance predominantly, long-tail insurance, so CTP and also workers' compensation, and then banking.

The Hon. GREG DONNELLY: Some of this may have been covered in your responses to questions on notice, but I would like you to go over it again in a little more detail, if possible. There have been some comments from the New South Wales Farmers Association about, from their point of view, uncertainty in terms of the interaction of the Motor Accidents Compensation Act 1999 and the Workers Compensation Act 1987, particularly in relation to accidents involving unregistered motor vehicles, including agricultural plant used exclusively on private property. Can you elucidate on that a little and explain that issue?

Ms DONNELLY: Seeing the submission is the first time I have become aware of that issue, so I am sure that there is more that I can find out about it and I suppose the bottom line for me in looking at that submission and a number of the others is that we would be quite willing to meet with the parties that have prepared the submissions and make sure that we understand the issues, but my understanding is that it may require looking at a few different compensation schemes and a number of different Acts, not just ours, so I would propose that what we would do next is get in contact with them and try to understand the issue and try to work to be, if you like, a shopfront with Government to work out what are the other Acts and agencies that need to consider the matter.

The Hon. GREG DONNELLY: As far as you know, have they been in contact with you before about this matter?

Ms DONNELLY: As far as I know, no, but I have not laboriously checked that we have had not had any correspondence or something, but it has not come to my attention before this and I am very happy to explore the issue and see if there are some improvements that can be looked at.

The Hon. GREG DONNELLY: The next matter I want to raise is the frequency and propensity of claims, which was question No. 9, and in your response you noted that the frequency and propensity of claims observed from 2003-04 to 2008-09 were due in part to a reduction in the rate at which people injured in road crashes were lodging claims. Can you explain how the rate referred to is different from the notion of frequency and propensity of claims? Are we talking about different issues?

Ms DONNELLY: There is a rate of claims, which is simply how many do we get a year, claims in the CTP scheme. The propensity is another calculation, which is looking at the number of claims over the number of reported injuries, the people who are injured. It is, if you like, the tendency of people who are injured to lodge a claim. That goes more to issues of whether people are informed of the scheme and behavioural choices they might make about whether or not they lodge a claim. We have seen an increase in claims in the last 12 to 18 months. In particular, in 2007-08 there were 10,200 claims and in 2008-09 there were 11,900. We have not yet been able to get the final injuries data—it does take a little while to become available—in order to calculate the propensity of claims, but it may be that that has changed.

We have a couple of key hypotheses as to why we are seeing that increase in claims. Two of them go to behaviour perhaps changing and one is the extension of the benefits under the accident notification form—the extension of the maximum amount people can claim, and also the introduction of the no-fault accident notification form benefit. There has been quite a lot of publicity, particularly to general practitioners and people who often provide advice to people who are injured, and hospitals, so it may be that there is more information. We hope there is more information and that it is easier for people to notify that they have had a road crash injury.

The other thing that can occur in changes in economic cycles is that with more economic uncertainty people with more minor injuries may make a claim whereas in rosier times they perhaps would not have bothered. There may be some of that effect as well. We will be monitoring once we have the final injuries data for last year and re-examining the propensity for claims to see whether there has been some improvement that reflects awareness of the scheme and use of the scheme.

The Hon. GREG DONNELLY: What is the lag time in getting the information you need to do these calculations? Are you talking about many months or six months?

Ms DONNELLY: This particular set of data is produced by the RTA. They produce very responsive monthly data on casualties but there can be a need to wait and we usually wait until there has been a whole lot of editing and validation and perhaps some late notification of information so that we do the analysis when we have—

The Hon. GREG DONNELLY: Who does all that editing and refining?

CHAIR: The RTA.

The Hon. GREG DONNELLY: In other words you wait for the more refined information to come out of the RTA as opposed to relying on the monthly data?

Ms DONNELLY: Rather than doing it on a monthly basis, yes.

CHAIR: The issue of the council not meeting for 16 months is somewhat concerning to the Committee, recognising the incredibly important role the council has played in the past and also recognising that the processes in the MAA have been very effective with small group consultations on specific issues. Part of the process of review has been to review the work of the council. Several of our inquiries have reported that that is incredibly important, not just to the stakeholders but also to the functioning and operation of the MAA and the MAC in its own right. I realise you are saying that it is a matter for Government, but can you tell me what action

you took to get this issue resolved? We discussed this issue for some time a couple of years ago when it happened previously. I am interested to know how that played out within your organisation.

Ms DONNELLY: There have been a number of occasions on which we have raised it with Government and sought nominees for the council and provided information about the need to make appointments.

The Hon. DAVID CLARKE: Can you give us details of those occasions when you approached the Government? Can you take that on notice and give us a response?

Ms DONNELLY: I will take that on notice.

The Hon. JOHN AJAKA: I want to understand this because it was one of my main concerns. There was a council previously but it disbanded—if that is the correct term—or ceased to function. What happened?

CHAIR: Their term finished.

The Hon. JOHN AJAKA: You are saying it is really the Government that needed to appoint new members to the council and it has taken 16 months to do that despite your recommendations and suggestions of who should be on it and when it should convene. Is that the picture?

Ms DONNELLY: I do not really have anything to add to that.

The Hon. DAVID CLARKE: But that is the picture?

CHAIR: I would like to add that this is about long-term functioning and making sure a process is well and truly in place, no matter what Government is in power, for this organisation and the legislation. It is an issue that we need to take on as a Committee. The information that Mr Ajaka has requested will assist us to make a decision about what sort of recommendation we make about the council. The Committee understands just as much as the stakeholders and you people how important the council has been in making sure the scheme functions properly.

The Hon. JOHN AJAKA: And the information Mr Clarke requested.

CHAIR: Yes, the two pieces of information will be very important.

The Hon. DAVID CLARKE: The fact is you say, Ms Donnelly, that you have been agitating for these positions to be filled and a period of 16 months went by before they were filled. Is that a summary of the situation?

Ms DONNELLY: I did not use the word "agitating", but, yes, I have been taking action.

CHAIR: And it is on the agenda now.

The Hon. DAVID CLARKE: I am sorry, I did not hear Ms Donnelly's last few words.

Ms DONNELLY: I have taken action—

CHAIR: To encourage them.

Ms DONNELLY: Yes.

CHAIR: It is also interesting to learn through this process that the Government is somehow integrating compensation schemes. Recognising that Ms Lisa Hunt is not here because she is unwell, I would like your perceptions of the structure of the compensation authority and how those processes, which are incredibly diverse, are integrating.

Ms DONNELLY: I will make some comments but it may be that we will need to take some aspects on notice. Certainly the formation of the compensation authority's staffing division as the employing authority and setting up the role of the CEO for that staffing division as the statutory head for the authority have occurred.

CHAIR: It is a human services issue.

Ms DONNELLY: So far the discussions have been around working more efficiently in terms of support services. Integration of compensation schemes has not been, as I have seen it, a driver for this.

The Hon. DAVID CLARKE: Ms Aplin, in your opening comments you said there had been improvements to the disputes resolution process to encourage settlement. Could you elaborate on what those improvements have been?

Ms DONNELLY: If I might answer that, these improvements arose out of our observation that there were people who applied for their case to be considered at the claims assessment and resolution service, for instance, and the matter would be settled just before the hearing. The requirements have been changed so that insurers and claimants need to exchange information earlier and offers need to be made, and more efforts need to be made to settle a claim before an application process is heard.

The Hon. DAVID CLARKE: That is a summary of the improvements you were referring to?
Ms DONNELLY: Yes.

The Hon. GREG DONNELLY: Looking at one of the pre-hearing questions about the role—to the extent there is still a role left in developing injury prevention strategies—I note that instead of a lead role in determining strategies you now have more of a supportive role for the Centre for Road Safety within the RTA. What is the nature of the role that is now left to you to do?

Ms DONNELLY: Yes, you are correct. With the establishment of the Centre for Road Safety, as part of the Roads and Traffic Authority and as the lead agency for road safety it has been important for the MAA not to go off and run its own race. I think it has created opportunities for us to work in a team approach on road safety across government. We continue to work closely with the Centre for Road Safety. We jointly fund a risk management research centre. We have a number of projects that we jointly fund and support. I think we have achieved some benefits. Rather than the MAA looking at what experience it has in its compensation scheme, it is looking at what injuries are occurring and it is then working to try to address and develop prevention and mitigation strategies on its own.

We now have a high degree of coordination and we can provide and share information with the Roads and Traffic Authority and have a more coordinated strategy. We look at the lessons that can be learned from pulling together all the data. We still have particular areas on which we will be focusing. We are continuing to work on the issue of motorcyclists. The Roads and Traffic Authority is involved, but we are taking the lead on some projects and we are working with the Motorcycle Council, people from other jurisdictions and the NRMA to undertake a feasibility study for testing and community consumer information around protective clothing for motorcyclists. It is more a matter of working together and then saying, "There might be some additional work that we can sponsor that is related to the injuries that we are seeing in our scheme but ensuring that we are taking a coordinated approach."

CHAIR: I thank both Ms Donnelly and Ms Aplin for their evidence today. After a quick discussion it has been perceived that it would be useful for you to come back at the end of these two days of hearings. You have taken some questions on notice. If we have further questions we will send them to you. The secretariat will be discussing those issues with you. Thank you very much for your evidence today.

Ms DONNELLY: You are welcome.

(**The witnesses withdrew.**)

CHAIR: I welcome our next witnesses. I will not go through all the preliminary issues because most people have well and truly heard about our broadcasting and other guidelines. This is the tenth review of the Standing Committee on Law and Justice of the Motor Accidents Authority and Motor Accidents Advisory Council, and the third review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council. Over the last two parliamentary terms this has been a successful evaluating process. For most people this is only the third time that they have attended these hearings. However, I remind all participants that our aim is to work through the legislated terms of reference. This is not a confrontational process and we are not here to attack anyone; rather, we are here to value add. The inquiry has been legislated for that purpose. I am grateful that you could spend some time with us today.

DOUGLAS HERD, Chairperson, Lifetime Care and Support Advisory Council,

NICHOLAS RICHARD WHITLAM, Chair, Lifetime Care and Support Authority,

DAVID BOWEN, Executive Director, Lifetime Care and Support Authority, affirmed, and

NEIL JAMES MACKINNON, Acting Director, Service Delivery, Lifetime Care and Support Authority, sworn and examined:

CHAIR: We have received an apology from Ms Lisa Hunt, Chief Executive Officer of the Staff Division of the Compensation Authority. Would one of you or all of you like to start with an opening statement?

Mr WHITLAM: I will, with your indulgence, Madam Chair.

CHAIR: We have recognised that we have not left enough time for this section of the process. Without consultation—so it is not yet confirmed—at the conclusion of the second hearing day we will be asking you to return.

Mr WHITLAM: In opening I acknowledge that this year the Committee is recognising 15 years of operation as the Standing Committee on Law and Justice—a significant product by way of reviews and reports. I have been reminded that the Lifetime Care and Support Scheme was one of the early matters considered by the Committee in its 1997 review of the operation of the Motor Accidents Scheme. The Committee took evidence from Mr John Walsh on a proposal for a long-term care scheme for catastrophic injury and that became a recommendation of the Committee. In now reporting on the operation of the scheme in the Committee's third review, I note that Mr Walsh remains the scheme's actuary and his expertise has recently again been recognised in being made a commissioner with the Productivity Commission, examining the feasibility of establishing a national disability insurance scheme.

I thank the Committee for the opportunity to present today and for the continued support of the Committee for the Lifetime Care and Support Scheme. This is, as noted, the third review by the Committee. I understand that the first two reviews were useful in bringing to light issues of concern and addressing them in an orderly fashion. I have served on the board since its inception and as chairman since last year. This is, therefore, the first time I have appeared before you. Accordingly, although I would expect much of this review to involve responses from our Executive Director, Mr David Bowen, it might be opportune for me to identify a number of high-level matters in the first instance.

The board recently reviewed the actuarial assumptions underlying the scheme funding. It is pleasing to note that these have been remarkably robust. In terms of the injury profile, the number of people entering the scheme has been within the range predicted by the actuaries. There has been a slightly higher severity level of injury, in part attributable to continued improvements in retrieval and emergency care, which is improving the survivability of motor vehicle accidents. The higher severity injuries, not surprisingly, have a higher cost per participant, which pushes up scheme costs. This has been set off by an older average age of participants than expected. The number of children entering the scheme has gone up slightly compared to earlier years, but remains well below the number expected at the time the scheme was introduced. So this is good news.

A surprising number of older people have been entering the scheme. Just on 10 per cent of scheme participants are over 60 years of age at the time of injury. This trend will continue with our ageing population remaining active road users. Seventy per cent of scheme participants are male, and men are significantly overrepresented in the group that causes their own injuries. The most overrepresented group of road users

remains motorcyclists. This remains a critical road safety issue, which continues to be addressed by the Motor Accidents Authority. In terms of services, the board has monitored closely the arrangements with hospitals and rehabilitation units. The board is aware of the concerns of the paperwork required, but also is aware that the senior officers of the authority have worked closely with providers to minimise this while maintaining a level of approval of expenditure consistent with good financial management practice.

The authority recently commissioned an audit of hospital services, which is currently out for tender. However, with the majority of scheme participants now in the community, the focus is on care and support services. Attendant care is the single largest cost for the scheme and accounts for 80 per cent of the scheme liability valuation. Therefore, it creates the greatest risk to the scheme. The board uses Access Economics as independent consultants to monitor long-range economic forecasts, including expected changes in weekly earnings for this sector. This sector is low paid, has an older work force and is likely to experience growing demands from our ageing population.

In addition, there is a latent wage growth expected to come to fruition over the next 12 months. For that reason, the scheme has accepted a recommendation from the scheme actuaries to increase the liability for care. The authority is looking closely also at initiatives to provide support to people to return to employment or meaningful community activity. There is a clear correlation between high levels of participation and care utilisation that makes this economically sensible as well as desirable in individual outcomes for participants. Accommodation for participants with high needs remains a critical issue. The board has approved the purchase of three properties to provide supported accommodation based on a straightforward return on the investment analysis, and set aside a further budget to improve disability infrastructure.

The other main risk for the scheme is to meet its investment target. The target has the fund growing at 2 per cent above scheme inflation. To date this target has been met. The board took a decision to take a conservative approach to investment during start-up and this has helped the authority weather the global financial crisis as scheme investments remained in bonds and cash. In the last year the board took the decision to start a growth portfolio and moved $100 million into this fund. A further report has been sought from the board asset consultant to inform further decisions in this area, that is, in strategic asset allocation.

Finally, the board is pleased to note that the New South Wales Lifetime Care and Support Scheme is a working model of social insurance that will assist and inform the Productivity Commission in its review of the feasibility of establishing a national disability insurance scheme to ensure that all people with significant disabilities receive the care and support they need to participate in our society.

CHAIR: Our time is short and we will have to many send questions on notice to you. However, the committee has some specific questions at this time. I picked up the housing access issue from a couple of submissions. What sort of relationship does the authority have with the State housing bodies, particularly in relation to the current State-Federal housing program for the increase of social stock?

Mr MACKINNON: We had lengthy discussions with the Department of Housing early on in the process of setting up the scheme, but we actually found that the most responsible group to deal with are community housing associations. We are actually working quite closely now with one of those groups. They are very much in touch with the Commonwealth money for development of affordable housing for people. They are great to partner with. They are very interested in creating places for people to live and responding to our requirements. That is where we see the future for us. By having partnerships with housing associations, we can directly put people in touch with a housing provider where we are the partner who provides the care and support for the person and they are the manager of the property. They help identify and modify the property, collect the rent, maintain it—the whole extent—and we provide the care and support to really maintain a suitable tenancy arrangement for the housing provider.

CHAIR: It is not our role to address side issues that might create more problems, but has any consideration been given to including the housing people on the council process?

Mr MACKINNON: I am not aware of that.

CHAIR: It is such an integral role.

Mr BOWEN: I think the scheme started with the assumption that we still try to fulfil that. Wherever possible, people should be able to return home. In most cases that is achievable. There are some difficulties with

home modifications where the person does not own their own property and we have to have lengthy arrangements with landlords. But still, the bulk of our participants return home. It is for people with very high needs and 24-hour care needs whose families often are unable to accommodate them. It is in that area particularly that we are looking for supported housing options. When we were set up we had approaches from a number of providers that suggested to us that if we were funding care, they would be able to make housing available. Unfortunately, their businesses were hit by the global financial crisis and as our need came on line we were unable to get it met from the existing sector, which is why the board is determined to purchase some properties. They have proven to be very successful. As Mr Mackinnon indicated—

CHAIR: Are these the group housing proposals?

Mr BOWEN: Yes. We have two group houses already up and running. In each case there are two people with very high needs who are co-located. They are co-located only after a lot of consultation with their families to make sure they will be compatible. It provides a benefit to the authority in that we reduce our total care needs. So, there is a saving, which makes the investment easy on economic returns. And it provides a good option for the person in that there is some social interaction; they are not locked up at home.

The Hon. GREG DONNELLY: In the introductory comments Mr Whitlam made the comment about increasing liability for care. Could you explain what that actually means?

Mr WHITLAM: I will refer to David Bowen for the specifics, but essentially wage rates are going up—there has been a recent award; and there is our experience.

Mr BOWEN: The bulk of the authority's funds are held against the cost of the person who is a participant in the scheme to meet their care needs over life. We talk about a present value of a lifetime cost. The assumption behind the scheme is that those costs will increase with average weekly earnings because the bulk of the services are the provision of employed labour. With care costs, we already had a concern that because the sector was so significantly underpaid compared to similarly qualified areas and because there was likely to be increasing demand from the aged care sector, which is the same work, that inflation would be above that.

In addition, at the moment the first gender equity case is going before Fair Work Australia for community service workers. Obviously we do not have a particular understanding of what will happen out of that, but we recognise that there is likely to be an increase that is well above weekly earnings over a certain number of years, and we have thought it prudent to make provision for that at the moment; otherwise, we will be caught with it in a big hit down the track.

The Hon. GREG DONNELLY: In terms of the $100 million, which I understand from your description has been moved into an increased balance portfolio, if you have the detail readily available, could you please explain that $100 million as a percentage of the overall fund?

Mr WHITLAM: The fund is approximately $1 billion, and that is about 10 per cent therefore.

The Hon. GREG DONNELLY: My next question is a general one and is directed to Mr Bowen. Will you give us a general overview of the last 12 months—activities, works, achievements and outcomes? I know it is a very broad question, but I will let you go.

Mr BOWEN: I think the emphasis has very much moved for the authority from the acute care rehabilitation stage, and discharge. As the Committee would know, that was a source of a lot of working through in the first three years of the scheme to a focus on getting people back into the community. Initially that involved establishing appropriate housing and home modifications, but increasingly our focus has been upon providing people with support to improve their level of participation commensurate with their own ambitions and intentions.

In that respect the most notable piece of work that we have under way is the development of an employment support program. We have been looking at international models to provide support for people with high-level disabilities to return to work. We believe that the great bulk of people with spinal chord injury are capable of returning to work, certainly those below the age of 60, and it is a matter of us providing support, vocational training and retraining where needed, workplace modifications and the like, to enable them to achieve that goal. I have hopes that that will prove to be very successful.

Otherwise, the other focus of the scheme has been upon how we measure how well we assist people. During the last year we finished our first survey of participants to find out how they thought we were going. There was some very rich information that came out of that. We have programs under way to build upon the information we got out of that. I always welcome criticism because, if you do not get it, you do not know where you can improve. That gave us some indication of priority areas. We are also looking at measuring outcomes, not only in health terms but also in terms of social outcomes and participation terms.

There is no real particularly good measure in this area. We are doing some work with similar schemes in New Zealand and Victoria. We have initiated a discussion about having a common set of outcome criteria and participation measures so that we can jointly understand, when we put an intervention initiative in place, whether it has actually assisted people. We can always ask them, but we also like to know if there is something in it that we can objectively validate that shows whether or not it is providing benefits to the person. That will be a significant piece of our work going forward.

Within the authority itself we have reached a point at which we now have coordinators focusing upon support for people in the community. We are restructuring the way in which we provide our coordination services. Under Mr Mackinnon's guidance, we have moved to have our coordinators working in teams. We set up a regional office in Newcastle and we are about to open an office in Parramatta. We are having a look at what is the best long-term arrangement to provide coordinated support for people, particularly in rural and regional areas. They have a case manager in the area, but it depends upon the level of contact they need with a coordinator whether we place people out there or whether we contract people in the local area to provide that type of service. That is an important change in the last 12 months.

The Hon. LYNDA VOLTZ: You raised the point about a pay equity case coming, and you acknowledge that. Why are you waiting for a case to come forward? If there is a pay equity issue, should you not have fixed it?

Mr BOWEN: We pay the care agencies. We do not contract carers directly. We have 14 accredited care agencies. We pay the agencies a fee based on the fact that they will pay award rates. We require them to pay award rates and an administrative loading, and indeed some other loadings for training and the like on top of that. We are recognising that the area is underpaid. There is a case pending. These matters now are dealt with at a national level through the new Fair Work Australia system, and that is the best forum in which that issue can be resolved.

The Hon. LYNDA VOLTZ: What proportion of the workforce is female?

Mr BOWEN: The proportion? I do not know, but it is predominantly female.

The Hon. LYNDA VOLTZ: How many women are there on your board?

Mr BOWEN: Three.

The Hon. LYNDA VOLTZ: Three out of how many?

Mr BOWEN: Three out of 7.

Mr WHITLAM: You are moving too quickly for me.

The Hon. LYNDA VOLTZ: That it is a predominantly female workforce.

Mr BOWEN: Yes.

CHAIR: They do not actually manage the workforce.

The Hon. LYNDA VOLTZ: They pay the workforce.

The Hon. GREG DONNELLY: Through a third party.

The Hon. LYNDA VOLTZ: Yes, through a third party.

CHAIR: I totally accept that.

Mr WHITLAM: That is the liability.

The Hon. LYNDA VOLTZ: What proportion of women are in your senior management?

Mr BOWEN: My deputy is a woman and the chief executive officer of the authority is a woman.

The Hon. LYNDA VOLTZ: But as a proportion?

Mr BOWEN: Two out of the four senior officers of the senior executive service [SES] are women. Two out of three.

The Hon. LYNDA VOLTZ: And yourself.

Mr BOWEN: I am one of the three.

The Hon. LYNDA VOLTZ: With the wheelchair accessibility in the new community housing, which is where all the stimulus package funding is going, what proportion of that, which currently is through the community sector, do you know will be wheelchair accessible? You have raised the issue of 10 per cent of any new stock being wheelchair accessible. All the new stock is going through the community housing sector. I am wondering if you are having discussions with them. What proportion of that is going to be wheelchair accessible?

Mr MACKINNON: I am not sure what they are planning. I guess when we approach them, it is about meeting individual need rather than addressing the proportion of the whole stock.

The Hon. LYNDA VOLTZ: So a proportion has come forward as 10 per cent. Is that based on addressing the need?

Mr BOWEN: I am not sure what the 10 per cent is referring to.

Mr HERD: I could probably give you a little bit of information about that, as a consequence of some other work I am doing. The short answer to your question about the social housing niche of the Federal Government's stimulus package, on my understanding, is that the Department of Families, Housing, Community Services and Indigenous Affairs [FaHSCIA], which is responsible for it, is working on the basis that all of the housing should comply with an agreed standard of universal access. That was a requirement put in place by Parliamentary Secretary Shorten in his conversation with his housing colleagues. The performance will be evaluated against the universal housing standard, and that has been agreed during its development currently the housing industry and sector. It will not be all the houses, but it will be a very high proportion of them. I think the 10 per cent that is referred to in the evidence is a suggestion from Spinal Cord Injuries Australia.

The Hon. LYNDA VOLTZ: From Spinal Cord Injuries Australia, yes.

Mr HERD: The suggestion was that 10 per cent of the housing stock should be developed to the wheelchair housing standard. That may indeed happen, but I could not tell you off the top of my head.

The Hon. LYNDA VOLTZ: So you do not know how the 10 per cent compares with the universal standard?

Mr HERD: It is an area that is full of interest for people who are interested in tiny detail, which I am afraid makes my head goes spinning around at times. But there is a variety of different gradations of access. One of the highest and most accessible is the wheelchair accessible housing standard defined by Australian Standards, and 10 per cent of houses is what the Spinal Cord Injuries Australia is suggesting should be built to that standard. The rest will be built to a lower level of the stat of accessibility because they are not required to be fully wheelchair accessible which is often described as either visitable or universally accessible.

The Hon. LYNDA VOLTZ: Mr Whitlam, you mentioned the single high proportion of male victims in motor vehicle accidents. Is that on vehicle-on-vehicle accident or single-vehicle accident? Do you have any figures on cyclists in terms of injuries?

Mr WHITLAM: It includes self caused accidents. The actual statistics I will leave to David. By the way, I think we are three out of six men and women on the board.

The Hon. LYNDA VOLTZ: I ask everyone the same question: I did not save it specially for you.

Mr WHITLAM: I have just been doing the numbers, if you do not mind the expression. For the statistics on cyclists and the like, I will leave that for David.

The Hon. LYNDA VOLTZ: And where do they sit in a range?

Mr BOWEN: A range?

The Hon. LYNDA VOLTZ: Motor cyclists were very high, is that a low proportion?

Mr WHITLAM: We follow this very closely.

Mr BOWEN: We have regular reports upon the role of people in accidents, the injuries, gender and age. I am happy to table that report. It might be the easiest way because it runs to a quite a few pages.

The Hon. LYNDA VOLTZ: Yes. Will that show whether they are vehicle-on-vehicle or single-vehicle accidents?

Mr BOWEN: Yes. We show whether it is a single-vehicle accident. We show the participants' roles in the accident, whether they were a driver, passenger, pedestrian, cyclist, motor cyclist.

The Hon. LYNDA VOLTZ: Will it show if a cyclist has been at fault?

Mr BOWEN: If a cyclist? A push cyclist or a motor cyclist?

The Hon. LYNDA VOLTZ: A push cyclist as opposed to a motor cyclist.

Mr BOWEN: A push cyclist who injures someone, neither the push cyclist nor the person they injure is covered by this scheme. This scheme covers motor vehicle accidents.

The Hon. LYNDA VOLTZ: What about cyclist who are hit by cars?

Mr BOWEN: Yes, it will show cyclists who have been hit by cars.

The Hon. LYNDA VOLTZ: Sometime a cyclist is at fault in such accidents?

Mr BOWEN: Yes, they may be.

CHAIR: Prove it!

The Hon. LYNDA VOLTZ: Yes, that is what I am saying.

Mr MACKINNON: It is more that the driver is not at fault because it is a motor accident and the police report on the registered motor vehicle.

The Hon. LYNDA VOLTZ: If the motor vehicle is not at fault then the other participant is more likely to be at fault?

Mr MACKINNON: Quite possibly, yes.

The Hon. JOHN AJAKA: You said it was more community organisation than public housing, for the record are you able to indicate which community organisation has shown an interest and has attempted?

Mr MACKINNON: Affordable Community Housing, one of the larger providers in the Sydney region.

The Hon. JOHN AJAKA: I am not criticising public housing, is there sufficient participation by public housing? Is it not sufficient? Is it something that we need to be looking at? One would have assumed the nature of your scheme public housing would be at the forefront of this to assist you. I was concerned to hear that it is more community based than public based.

Mr MACKINNON: Many of our participants are in public housing and tenants with the housing department. It is where you have an urgent need so you go everywhere to find the solution. It is often the flexibility of the housing association that you may get some action in some situations.

CHAIR: For the collection of evidence, we will obtain the housing policy which now relates to most housing being managed by community housing models.

The Hon. JOHN AJAKA: I understand that.

Mr MACKINNON: It is a mix across the State really. Again it is about finding individual solutions for people.

The Hon. JOHN AJAKA: In relation to carers, apparently a participant has a carer team who has been trained and is well aware of their charge. When the participant is admitted to hospital, is the carers' team disbanded and moved on to another person? When the participant is discharged from hospital do you put together a new carer team for that person or do you try to maintain the old team?

Mr MACKINNON: Where it is a planned admission it is actually at that time that carer team is given leave or might be reassigned. As far as possible people are brought back. For someone who has been having a very high level care their time might be 10 or 12 people who care for a number of people rather than spending every day of their working week with a person. We are prepared to be flexible about these arrangements when things are put to us. If a person is in hospital for a very short time there is generally no disruption to their care program. If it is a prolonged period that is perhaps more likely, and I do not know that we have actually encountered that as yet. I think the thing is that carers are a casual workforce so if they are not working they are not getting paid so they will go and seek other work as well. I know it has been raised, and it has probably only been of significance in maybe on instance of which I am aware of.

The Hon. JOHN AJAKA: In relation to disputes about medical and clinical decision, will you indicate what options exist for participants who want to dispute a decision about a medical or clinical issue made by the LTCSA? What is the procedure involved?

Mr MACKINNON: I am very happy to provide information to the committee in the brochures et cetera that we provide to people.

The Hon. JOHN AJAKA: I am happy for you to take these questions on notice.

Mr MACKINNON: That would be great.

The Hon. JOHN AJAKA: I usually call them appeals, so in these appeals in relation to disputes do you have an indication of how many are successful compared to those that are unsuccessful?

Mr MACKINNON: I take that on notice.

The Hon. JOHN AJAKA: If a participant is successful in their appeal are their legal costs fully recoverable? Is there a provision for costs?

Mr MACKINNON: There are no legal costs involved in an appeal about treatment.

The Hon. JOHN AJAKA: If a participant wants to instruct lawyers to assist, he or she must meet their own costs?

Mr MACKINNON: Yes, if they did want to do that, that is right. That may happen also when they also have a CTP claim and a lawyer is involved. The bulk of people are not in that situation.

The Hon. DAVID CLARKE: Are there circumstances where they may require legal assistance because of the complexity of the appeal?

Mr MACKINNON: The appeal is a treatment issue. Our people who review that appeal are people who are current clinicians, not caring for that person. The issues discussed in that are more around the medical need rather than a legal entitlement, if you like.

The Hon. DAVID CLARKE: But many conflicts take place in courts that involve a great deal of argument on both sides regarding medical treatment and approaches and outcomes.

Mr MACKINNON: Yes. The disputes to date have not involved lawyers. People have been able to raise their own disputes with a treatment decision. A particular person in the authority has no other dealings other than dealing with people who raise disputes, meets with them, takes them through the process and a panel is convened to review the decision.

The Hon. DAVID CLARKE: When you say they have not involved lawyers to the present time, that is because they cannot involve lawyers as the process does not provide for them being involved. Is that right?

Mr MACKINNON: That is right. We do not pay for those legal fees.

The Hon. DAVID CLARKE: The satisfaction survey of scheme participants raised the issue of delays in approval for services by the authority, and the authority's response to pre-hearing questions on notice explained that the authority has a policy of responding to requests within 10 days and that the reported delays may be from service providers and misattributed to the authority. Does the response given by the authority within 10 days always include approval or disapproval of the request?

Mr MACKINNON: That is right. The 10 day timeframe is certainly our target. We aim to try to get it under that. The complication with that timeframe is where we are seeking further information from whoever has made the request and that may stretch it out at times beyond the 10 days. The complication is for the participant, I think, who sees that overall timeframe of when the therapist says, "I'm going to do a request for x" to when it actually arrives involves a supply chain as well as our decision chain.

The Hon. DAVID CLARKE: So that 10-day period is not merely a timeframe for acknowledgement, it is a 10-day period for—

Mr MACKINNON: A decision.

Mr BOWEN: And there is a mechanism for a three-day decision in urgent matters, very urgent matters.

Mr MACKINNON: Three days, on the spot.

CHAIR: Mr Herd, would you please tell us how the council has been going over the past 12 months? There were a lot of questions about representation on the council and how it was working. Would you be able to tell us how that has come together? I think we recommended last time that there be some service providers or carers and persons receiving service in the council process. Can you let us know how that has been working?

Mr HERD: Sure. We have all just been reappointed, or there has just been a completion of reappointment of council members following the first three years. Those decisions were announced quite recently. From my recollection, I think there were eight members of the council—four of them are women and four of them are men. The council is made up of clinicians, non-government organisation representatives and myself. They come from spinal cord injury and brain injury background. There has been a commitment on our part to move towards a position in which participants would join in the council at some stage. That has not happened at this stage, and I believe that is principally because we are still fairly early in the scheme. We have 402 participants, if I understand it correctly, and two years of adult intervention, which means that the participants at the very most are 24 months from having a catastrophic injury, and I think we are only just beginning to get to a period—this is a personal opinion—where that participant base is becoming mature enough in their journey through spinal cord injury or acquired brain injury to begin to express a desire to participate in the oversight of the agency, so I would expect next year or some time soon in the life of the agency you would expect to see a participant as a member of the advisory council.

CHAIR: So the process is going forward; it is not being obstructed in any way?

Mr HERD: Yes.

Mr BOWEN: If I could add to that, the Minister has accepted the recommendation from the committee to appoint a participant representative to the council and has indicated that that will occur the next time that the Act is amended.

CHAIR: Because it was delineated in the Act?

Mr BOWEN: Yes, the membership of council is set out in the Act. We do have the process of organising some participant forums, which I think we have scheduled for July, so that is coming up in the near future.

The Hon. JOHN AJAKA: The last time we met there were issues relating to first notification—the accident occurs, the hospital is involved, the family is trying to deal with it, and doctors suggest a call be made to the appropriate person. What has occurred in the last 12 months in relation to the area of notification?

Mr MACKINNON: My line on that is that it has changed slightly now in that we have been to most of the major hospitals many times and I think there is a role for hospitals to carry on that information themselves, to include it in their systems, and they have done that in a number of the big teaching hospitals, so that social work departments know, "This is what we do", and they are not depending on someone to remember or somebody else who will call lifetime care, so generally the flow of information to us about new accidents is brisk and we are getting information and we have that conversation about when is the time to come and talk to the family, what are the needs right now, what are the priorities, so I think it is actually working quite well.

The Hon. JOHN AJAKA: It is fair to say it is improving?

Mr BOWEN: Absolutely.

Mr MACKINNON: And the general knowledge that this is the process and this is what to do.

CHAIR: Do you think that has been a result of your increased educative processes?

Mr MACKINNON: I think it is just ongoing familiarity and use.

Mr BOWEN: We are now part of the environment.

CHAIR: Another issue that arose last year was buy-ins, which is still a bit of an issue, and also an issue in relation to compensation being utilised in divorce settlements.

Mr BOWEN: On the second one, that was referred to the Attorney General, who I understand has replied to the committee indicating that he has referred it on to the Standing Committee of Attorneys General, so it has gone into that particular process now. In terms of buy-in, we have issued a guideline for buy-in. We have circulated it and we have had some very good comment back, particularly from the Bar Association as always, and modified it. That I think has only just been—

Mr MACKINNON: The draft is still out for comment I think.

Mr BOWEN: Yes, the draft is out for comment. All the guidelines have to go through the council, so it will be going through the next council meeting and then put out. We did some file reviews of settled matters to see whether people who had obtained a verdict would be able to buy in. I think that was a concern raised by the Bar, and that showed that there was not always a strong correlation between the level of injury and the amount that the person got awarded for future medical and care, so the result ended up being that of the four cases where there was sufficient information in the verdict to split up the heads of damage, the two people with spinal cord injury certainly had sufficient damages to be able to buy into the scheme and, of the two people with brain injury, one certainly would not have received enough damages to buy into the scheme, which probably reflects the fact that courts grapple with the difficulty of assessing care needs associated with cognitive and behavioural disabilities, and the other person was probably borderline on it. But those guidelines are out there and we have

accepted the vast comments and we really are waiting now for applications, or once the guidelines have been through the council.

The Hon. GREG DONNELLY: In terms generally of being able to find suitable carers across a State as diverse as New South Wales, in that we have the city and we have areas outside the city in some quite remote places, do you have a bit of a struggle on your hands trying to find suitable carers around the State to meet the needs that you have?

Mr BOWEN: In rural areas people who are in proximity to a major town are fine. Once they start to get away from that it becomes very much an individual issue, and there are areas of Sydney where it is difficult to get carers, such as the northern beaches, because there is not a group of residents there who are looking to do this sort of work. It becomes an issue for the individual participants to balance up as to where they want to live. If you have a significant disability and there is simply no-one available to do the care, to some extent it does not matter whether or not the authority is there, there is just no carer available—and we have one or two participants who have made that choice anyway.

Mr HERD: I think you have identified what is probably the most critically important challenge that the authority will face over the next five to ten years because the whole of the community care industry is struggling with workforce development issues and the figures for children, but not just for children, the figures for adults also suggest that as we become much more skilful in retrieving people at the point of injury, bringing them back and rehabilitating them, we create an additional set of problems for the care industry to deal with.

Some of the folk that we are talking about in the Lifetime Care and Support Authority's client group will be profoundly injured. Put simply, five to 10 years ago they would have died either at the scene or on the way back to the hospital, and they will live for decades with very complex injuries at a time when we know the real challenge of service providers in the government and non-government sectors is how they can possibly compete with McDonald's and Target when they are allocating jobs. At the moment people are paid more if they serve burgers than if they help a C4 quadriplegic get out of bed in the morning. That is what the ASU's case is about. Unless we solve that problem we really will have a challenge.

Thanks to John Walsh's work we can predict the cost and the numbers of people, which will grow every year, who will rely on the support the authority provides. The one thing we cannot predict is who is going to get those people out of bed in the morning 22 years from now.

CHAIR: We have further questions to ask. I have an interesting one about people living on floodplains not being allowed to modify their houses, which might not be your issue, but there are country towns right across New South Wales that are built on floodplains. That is an interesting equity issue. We will put those questions on notice for you and ask that you respond within 21 days, but you can consult the secretariat if there is a problem with the time frame. Thank you for speaking to us. I apologise that we will be calling you again but it will be very valuable to have you answer some of the queries that are raised during the inquiry.

(The witnesses withdrew)

(Short adjournment)

MARY JOSEPHINE MACKEN, President, Law Society of New South Wales, and

TIMOTHY JOHN CONCANNON, member, Personal Injury Compensation Committee, Law Society of New South Wales, sworn and examined.

CHAIR: Welcome. It is important for the Committee to hear all points of view and we are grateful to witnesses for putting in the work that goes to ensuring we have good information on which to make our recommendations for the future. During the last two parliamentary terms this inquiry has been a very successful value-adding process. The aim is to work through the legislated terms of reference. It is not a confrontational process and we are not here to attack but to add value to the process for the future. We perceive we have been doing that for some time. At this point I declare a conflict of interest in that Mr Macken has represented me in an MAA-type issue in the past. Would either of you like to make an opening statement?

Ms MACKEN: Madam Chair, I might commence with an opening statement and leave the specifics and most of the questions to Mr Concannon. At the outset the Law Society thanks the Committee for providing it with an opportunity to give evidence today. We have only two broad-brush comments. First, the Law Society of New South Wales supports the Motor Accidents Compensation Scheme. It is one of the cheapest, quickest, finest and most expertly operated personal injury compensation systems in operation anywhere. We reiterate that we are supporters of it. Some things can be tweaked around the edges, in particular as they relate to the assessment of whole person impairment. However, such tweaking ought not to detract from the fact that it is a very good system.

Two years ago the system was described by my predecessor in the Law Society as the "ant's pants". That was true then and it remains true today. That was our first overall position. Our second position relates to the Lifetime Care and Support Scheme. This is one in which some serious concerns remain. Questions about its effectiveness include the way in which the Lifetime Care and Support Scheme adequately deals with catastrophically injured people who are cared for voluntarily by their families and for whom those families do not receive compensation. It is not a fair choice to suggest to those people that either they get commercial care living in their home with their families or they go without. Our position on lifetime care is that there should be an opt-out position for those people who can demonstrate capacity.

We have concerns about people who are catastrophically injured and who reside in remote areas or overseas. The Law Society raised those concerns earlier and they continue to exist today. We reiterate that those persons should be given an opportunity to opt out of the Lifetime Care and Support Scheme in circumstances where they have capacity. Issues do crop up in relation to privacy concerns and the capacity and rights of people to manage their own futures. It is our submission that people who have the capacity should be able to take their money and manage it themselves. They should try to manage their own future and they should be given the opportunity to do that.

Once again, we suggest an opt-out clause for the Lifetime Care and Support Scheme where people have, firstly, turned 18 and, secondly, have the mental capacity to manage their own affairs. That concludes our two overall strategic points. The third point I would like to make is that the Law Society of New South Wales has a very good relationship with the MAA and it appreciates the opportunity it has been afforded to participate in numerous committees and working parties.

CHAIR: As a Committee we are concerned about the fact that the Motor Accidents Council is not functioning at the moment. Has that made any difference to you, or have you been participating in the informal processes?

Mr CONCANNON: We have been participating in the informal processes. But certainly the MAC endorses what the bar says about it needing to be reinstituted. The society would appreciate an opportunity to assist with the MAC.

CHAIR: You have representation, do you not?

Mr CONCANNON: I think we do. I think it is Ms Everett.

Ms MACKEN: Yes.

CHAIR: The MAA's annual report notes a steady decline from 2003-04 to 2008-09 in the frequency and propensity of claimants to claim. What is your view of this decline and what disincentives do you perceive there to be for claims within the scheme?

Mr CONCANNON: I should preface any answers that I give to these questions by saying that apart from being the representative of the Personal Injury Compensation Committee I am also a practitioner in personal injury and I have been since 1989.

CHAIR: So you are declaring an interest.

Mr CONCANNON: I am also a Claims Assessment and Resolution Service [CARS] assessor, so obviously I have internal knowledge of that system. I suppose that, technically, in a way I am a contractor for the Motor Accidents Authority. There are a number of factors in your question. First, the increased impact of the harsher advertising provisions have played a part, as there is less of an ability to be able to advertise the specialty, for instance, of being an accredited specialist Law Society practitioner.

CHAIR: Legal advertising?

Mr CONCANNON: Yes.

The Hon. JOHN AJAKA: Are you saying that there should be more leniency to allow such advertising?

Mr CONCANNON: Yes, that is right. Second, I think there is a growing public awareness of some of the restrictions that are in place under the system, in particular, the assessment of whole person impairment. The general community is now aware—to some extent, if not wholly—that it is very difficult to recover money for pain and suffering in a motor accident. I think there is also an increasing awareness amongst the community that it is more difficult to make other claims, for instance, for care than it would have been under the old system as it existed prior to 1999. I think the real difficulty with that is that people are not seeing solicitors in the first place. They may well get misleading information from lawyers who perhaps are not as specialised in the area of personal injury and think that it is not worthwhile to bring a claim.

From the Law Society's view that would pose real problems for access to justice in marginal claims, for instance, because many claimants who come along do not think it is worth getting legal advice. I think there is also a perception that costs are a problem. "If I go to see a lawyer then to what extent will I be able to recover my costs from the insurer?" I have to say that to me that is a valid concern under the current cost regulation, because in my view the current cost regulation does not provide adequate recovery on a party-party basis for legal costs.

CHAIR: Last year one of the questions that was asked related to disproportionate cost distribution. Has there been any move forward?

Mr CONCANNON: On behalf of the Law Society I was on the cost working party that I think was mentioned when I was briefly here earlier. At the moment it has only reached the stages of recommendations and I think it will have to go to Parliamentary Counsel. But my understanding of what was discussed there is that it will take it some way. I do not think it will take it far enough on the basis that the recommendations roughly accord with what the regulation becomes. That will have to come in before 1 September because that is when the regulation automatically ceases to have effect.

CHAIR: Is it due for review?

Mr CONCANNON: Yes. It automatically stops to have effect as of 1 September. There will need to be a regulation in place. I had a meeting as recently as this week with the actuaries who are assessing the viability and the costs to the scheme of whatever increases are involved.

The Hon. DAVID CLARKE: Basically, the Law Society represents those who are injured in motor accidents?

Mr CONCANNON: Yes.

The Hon. DAVID CLARKE: It is the voice, more or less, of those who are injured, in a sense?

Mr CONCANNON: I think we are, as well as being the voice of solicitors. Primarily we are the representatives of solicitors.

Ms MACKEN: Is it possible for me to interject?

The Hon. JOHN AJAKA: Yes.

Ms MACKEN: Quite a number of our members also represent insurers.

The Hon. DAVID CLARKE: Yes, but what I am saying is that those who are injured look to lawyers to represent them?

Ms MACKEN: Yes.

Mr CONCANNON: Yes.

The Hon. DAVID CLARKE: One way you are able to represent those who are injured is by being a member of the Motor Accident Council, is it not?

Mr CONCANNON: Yes.

The Hon. DAVID CLARKE: We understand that the Motor Accident Council has not met for 16 months?

Mr CONCANNON: Yes.

The Hon. DAVID CLARKE: The reason it has not met for 16 months is that it has no members because the Government has not appointed any members. Ms Macken, you referred to the need for some tweaking?

Ms MACKEN: Yes.

The Hon. DAVID CLARKE: The scheme may have been referred to as the ant's pants, but things in it need to be tweaked. In effect, the Law Society, or any of the parties, has not had an appropriate channel to do that for 16 months? That is the situation, is it not, unless you do it informally?

Ms MACKEN: We are looking forward to the council being constituted. We have a nominated Law Society representative ready to go on that council, yes.

The Hon. DAVID CLARKE: I want to make this clear. The Law Society always has been ready, willing and able to have a representative available to be on the Motor Accident Council, but you just have not had that opportunity made available to you?

Ms MACKEN: Yes.

The Hon. DAVID CLARKE: The Law Society submission raised a number of concerns about the binding nature of a medical assessor's assessment. Can you explain the Law Society's view that leaving the determination of care disputes in the hands of medical assessors represents a denial of natural justice for the injured person because this scheme is supposed to be about justice?

Mr CONCANNON: I understand. Treatment is something that traditionally under the Motor Accidents Scheme MAS assessors have had the right to determine on a binding basis by their medical determinations. The rights as they are now of the MAS assessor to provide binding determinations extends to care disputes because the definition of what is medical treatment includes care. In my experience, that has not been used in the past by claimants or insurers seeking binding determinations of care disputes. But my recent experience has been that care disputes have increasingly been forwarded to MAS for determination. The real issue I have with that is that by necessity the issue of both causation and the reasonableness for care do, I admit,

involve medical issues. But I think they also probably more substantially involve legal issues. Over the past one to two years there has been an enormous amount of legal decisions with the question of causation and how that should be assessed. The recent decision of the Court of Appeal of *Ackling* that we have mentioned at some point in our submissions refers to the difficulties a number of MAS assessors have had with assessing issues of causation. Over 20 or 30 years causation has received extensive examination by the High Court.

CHAIR: Is this working through whether the injury was there before or definitely arose from the incident?

Mr CONCANNON: That is part of the usual causation. Basically, it is determining whether there is a link between the accident and the injury or disability of which the claimant complains.

The Hon. JOHN AJAKA: As at the day you are making the determination?

Mr CONCANNON: That is right, yes.

The Hon. DAVID CLARKE: The bottom line to all that is that medical issues often can involve disputes?

Mr CONCANNON: Yes.

The Hon. DAVID CLARKE: The situation is that an injured party, in effect, is bound by one person's or the assessor's assessment?

Mr CONCANNON: Yes, in the absence of any proper and rigorous opportunity to test that assessment.

The Hon. DAVID CLARKE: That is why you say there is a denial of natural justice to these injured persons who do not have the opportunity to test or dispute an assessment given in these areas?

Mr CONCANNON: That is correct. I must say, as opposed to the situation that I as CARS assessor often have an opportunity not only to assess all the medical reports, which an MAS assessor would have, but I would have the opportunity to ask questions of the claimant, ask questions of any carers. I am provided with statements of the carers. I am provided with the totality of the evidence and there are submissions that can be made for me.

CHAIR: Is that why the CARS system is so successful?

Mr CONCANNON: I think that is right. I would endorse Ms Macken's views on the viability and efficiency of the CARS system. It is a very efficient system. The only things we are looking at are finetuning what is fundamentally a good system.

The Hon. DAVID CLARKE: In this case it is a bit more than finetuning; it is that people be given representation so that these issues can be dealt with fairly?

Mr CONCANNON: That is correct.

The Hon. DAVID CLARKE: It is very serious that injured parties do not have this right at the moment?

Mr CONCANNON: That is correct.

The Hon. JOHN AJAKA: Can we deviate a little and refer to Zotti's case?

Mr CONCANNON: Yes.

The Hon. JOHN AJAKA: Clearly, a gap, if I can call it that, has arisen as a result of the problem from this case. What are your views on what this Committee should recommend immediately? How do we overcome the problems of Zotti's case?

Mr CONCANNON: Clearly, it is a problem of there being a number of people out on the roads who are not insured for third party purposes, unknowingly to themselves. There has to be a legislative amendment, in my view, otherwise there are just people who are driving around uninsured and they just do not know about it at this point.

The Hon. JOHN AJAKA: I might be wrong, but I thought Zotti's case was in relation to an accident that occurred. Perhaps you are referring to Doumit's case?

Mr CONCANNON: No. *Zotti* was the case involving the oil spilling on the road and then two hours later a cyclist—

The Hon. JOHN AJAKA: Exactly. The gap in the period of time is the problem, is it not?

Mr CONCANNON: Yes. But the problem, as I understand, is the definition of what is a motor accident? That is what I was getting at.

CHAIR: That is the Roads and Traffic Authority.

The Hon. JOHN AJAKA: Thank you.

Mr CONCANNON: I think it is still a legislative issue that has to be fixed in terms of the definition of what is a motor accident. I have only come into this, this morning, I am afraid. I have only had the opportunity to see the questions this morning. I have not had the opportunity to look at what—

The Hon. DAVID CLARKE: I am happy for you to take this question on notice.

Mr CONCANNON: Yes, I would like to take that part of the question at least on notice.

The Hon. JOHN AJAKA: The same with Doumit's case. Obviously, there is a problem there also?

Mr CONCANNON: Yes.

The Hon. JOHN AJAKA: How you see this Committee making recommendations to the Government to try to resolve these issues would be of great assistance.

Mr CONCANNON: Again, I would have to take that question on notice, but I would have thought that amendment would be relatively straightforward in that it would just involve a definition of what is a motor vehicle, and including treads as well as wheels.

CHAIR: Ms Macken, please feel free to participate when you wish. We are not a court. We do not have the same rules at all.

Ms MACKEN: Yes, we would like to take those two questions on notice, but I will make just a general overall remark. With Zotti's case, ultimately it will be our submission that even if the temporal connection is not close, one should still be able to bring a claim in certain circumstances. It is a reinvestigation of the temporal or closeness issue. With the Doumit issue, it is the Law Society's position that it is in everybody's interest that even bulldozers be registered. Many farm vehicles should be registered because they will ultimately be driven on public roads, even if for short periods. We will be pressing for a legislative amendment just to the definition of "motor-vehicle" to include those unusual types of vehicles.

The Hon. JOHN AJAKA: Going back to Zotti's case, it really comes down to the ultimate causation: who really did cause the accident? You are driving a car, you cause an accident, oil leaks out of your car, you then get carried away, and 10 minutes later, an hour later or even five hours later, someone else comes along and skids on that road. Ultimately logic would say that the person who was negligent and who caused that accident also created the oil spill. There must be some nexus. Is that a good summary of it?

Mr CONCANNON: Yes, that is right.

The Hon. JOHN AJAKA: Let us go back to the issue of legal costs. We are always faced with counter arguments and we try to balance them. On the one hand you have the particular insurance companies saying that

legal fees are too high, you are claiming too much, and the reason the poor client is suddenly faced with a gap between costs being granted and the actual solicitor-client costs is that lawyers are greedy.

CHAIR: You do not want a debate here today, do you?

The Hon. JOHN AJAKA: I am taking both sides here. I am being very fair, straight down the middle. On the other hand, lawyers say that the amount of costs being awarded is just not high enough for the work being done and therefore the client is being left with that position. What is the Law Society's position on this? What is the Law Society recommending?

Mr CONCANNON: The Law Society's view is that it is really not a question of the lawyers benefiting from any increases in costs under this system: it is the injured plaintiff or claimant. I say that because, under the current system, I think the Committee would be well aware of an investigation that was done in 2008 by an organisation known as FMRC Legal into the reasonableness or otherwise of costs in terms of the gap that exists between solicitor-client and party-party costs.

In that case, although the files that were available were limited, I think the general view was that somewhere between 30 per cent to 35 per cent of the total legal costs that a law firm was charging were recoverable under the existing cost regulation. As a plaintiff solicitor I have always operated on the rule of thumb that you can expect to recover on a party-party basis against the defendant roughly around 60 per cent to 65 per cent. We have a huge gap there.

We say that has happened because there really has not been effective, substantive amendment to the costs regulation since the system commenced in 1999. The person who bears the brunt of that discrepancy is the claimant. Any proposed increased regulation of the legal costs on a solicitor-client basis would not be amended. The only thing that would be changed is that that gap would become less to the claimant.

The Hon. JOHN AJAKA: You are saying that the party-party costs need to be increased.

Mr CONCANNON: That is right.

The Hon. JOHN AJAKA: The party-party costs being paid by the insurer need to more closely reflect what is the ever-growing solicitor-client cost?

Mr CONCANNON: Correct, and it is to accord with, not just CPI, but increases in the general cost of running claims these days. Over the last three or four years the authority has instituted a number of amendments, many of which are positive, but they do involve a substantially increased level of workload earlier in the system.

The Hon. JOHN AJAKA: What year did you say it has not changed from?

Mr CONCANNON: It was 2006-07.

The Hon. JOHN AJAKA: That it has not changed?

Mr CONCANNON: That it has changed. That obligation has become more onerous to provide information and prepare work in advance.

The Hon. JOHN AJAKA: The plaintiff is being disadvantaged in that ultimately the person who suffers is the plaintive in that they receive less of a net gain in their hand because of the continuing increase or the difference between party-party and solicitor and client costs.

Mr CONCANNON: Correct.

The Hon. JOHN AJAKA: So a plaintiff today is disadvantaged compared to a plaintiff 10 years ago?

Mr CONCANNON: Yes. And you have another problem as well. Assuming that the correct proportion of what a claimant can recover of his or her cost is, say, 30 per cent to 35 per cent, to bring in up to 60 per cent to 65 per cent, you really have to double or triple what the existing allowance is. Obviously it becomes politically difficult to increase costs to that sort of level.

The Hon. LYNDA VOLTZ: I am new to this Committee. I just want to go back to the Zotti case again. I want to be clear in my mind that it is only in regards to where there is oil from a vehicle when there has been a motor vehicle accident. It does not relate to other issues in regards to motor vehicles, which are fairly common, particularly after you have had a long dry period and you get a wet period.

Mr CONCANNON: There has to be a fault on the part of the owner or driver. Effectively there would have to have been a fault, or an accident that occurred that involved some fault on the part of an owner or driver.

The Hon. LYNDA VOLTZ: It will not go to the servicing issues of vehicles?

Mr CONCANNON: Not to my knowledge. Again, that is probably a question that I will have to check on notice because I have not had the opportunity to review Zotti's case.

The Hon. LYNDA VOLTZ: It will make a significant difference, will it not, in regards to a motor vehicle accident as opposed to an issue in regards to damage caused to a road from a vehicle?

Mr CONCANNON: I do not think that would be so much of a problem because that is a separate issue. That is not a case under the Motor Accident Compensation Act. It is a case under the general law, if you are suing a repairer or a road authority.

The Hon. LYNDA VOLTZ: No. I am saying that you own the vehicle. Say you have a semitrailer. It is at a set of lights. It has a leaking pipe. It leaks oil over the road. A cyclist comes through after the semitrailer. That is not a motor vehicle accident?

Mr CONCANNON: No, I do not think so—certainly not under the Zotti definition.

The Hon. LYNDA VOLTZ: But the oil on the road can be directly related to the semitrailer.

Mr CONCANNON: Yes. I see what you mean.

The Hon. LYNDA VOLTZ: Which would cause the bike coming through later to have the accident.

Mr CONCANNON: Yes. I would have to have a look at the definition of "motor accident". That is something I would need to take as a question on notice.

The Hon. LYNDA VOLTZ: I am wondering, when you are talking about a legislative requirement, how would a definition separate the two? When you are asking for a legislative change, how does it define the two different types?

Mr CONCANNON: Again, as I say, that is a question that I will have to take on notice. I had these questions posted to me at 10 a.m. today.

The Hon. LYNDA VOLTZ: That one is not posted to you. I asked it extempore.

Mr CONCANNON: I understand, but I have not even had the opportunity to review Zotti to any great extent.

The Hon. LYNDA VOLTZ: When you are talking about legal costs and the increase in fees, that will be an impost on the scheme, will it not?

Mr CONCANNON: Yes. We concede that. I think that that is why there is an actuarial analysis under way.

The Hon. LYNDA VOLTZ: So it would significantly change the compulsory third party [CTP] premiums that are paid?

Mr CONCANNON: It could well pose an increased cost in terms of green slip costs, yes.

The Hon. LYNDA VOLTZ: When the scheme originally was deregulated, legal costs were a significant argument at the time, were they not?

Mr CONCANNON: Yes, I think they were.

The Hon. LYNDA VOLTZ: With third party compensation and talking about registration of things such as bulldozers and farm equipment, do you have a view about bicycles as well?

Ms MACKEN: I would have to take it on notice.

The Hon. LYNDA VOLTZ: That is fine.

Ms MACKEN: I would like to comment on whether there is necessarily a nexus between the increase in legal costs and an increase in green slips cost. We are not sure that that is the case. We are not sure that there is not a very prudential margin being kept in respect of green slips that is sufficiently generous not to need an increase in green slips premium cost, if there was an increase in legal costs.

The Hon. LYNDA VOLTZ: So you are implying that the insurance companies will hand that back? Is that what you mean?

Ms MACKEN: Yes. I am saying that there may well be sufficient reserves. The reserves kept may be very, very prudential. You can see that the 8.1 per cent profit was the same as it was, notwithstanding the GST, so there may well be a capacity not to increase a green slips premiums.

The Hon. LYNDA VOLTZ: And the insurance companies may accommodate you, but they may not.

Ms MACKEN: Yes.

The Hon. DAVID CLARKE: Have insurance profits remained at the same proportion throughout the period of the scheme, more or less?

Ms MACKEN: Just using the information available to me from your committee, correct me if I am wrong, but it looks like the insurance profit for last year was 8.1 per cent. The prospective insurance profit, at paragraph nine, as reported to an average of 8.1 per cent in 2008-09. The committee's material suggests that that is a slight increase. It is said it is not regarded as unusual. The average of the five years 2000 to 2005 is at a similar level. The range was 7.9 per cent in 2000-01, 8.7 per cent in 2005, and it is 8.1 per cent for 2008-09, that is notwithstanding the global financial crisis.

The Hon. DAVID CLARKE: They do not appear to be getting squeezed.

The Hon. GREG DONNELLY: That is a statement, not a question. The MAA has noted that a working party, including the Law Society, has considered the issue of insurer-initiated court proceedings in the context of a review of the Motor Accidents Compensation Regulation 2005. Will you explain the significance of the issue of insurer initiated court proceedings and outline the society's position on the matter?

Mr CONCANNON: Yes, the real problem there is an anomaly in the regulation and in the Act itself in that ordinarily claimants who have a CARS decision determine his or her rights, and then go to court, are still restricted by schedule 1 of the regulation to regulate to a highly regulated rate. That would not apply, for instance, if there is an automatic exemption from the CARS system. The anomaly is this that if the matter goes through CARS and there is an allegation, for instance, of contributory negligence of up to 25 per cent as a result of Supreme Court decisions effectively the insurer is not bound by the finding either of the assessment of the level of contributory negligence or in terms of the findings of damages. If the insurer then says "We want to take it to court" the claimant, somewhat bizarrely, is still restricted to the cost regulations which he or she would not be, for instance, if the case had been completely exempted in the first place.

The Hon. JOHN AJAKA: And has gone to court in the first place?

Mr CONCANNON: Yes, exactly. I have to say that is something that has been raised during the course of the working party deliberations, and it is something that I hope will receive some address in the new regulation.

The Hon. GREG DONNELLY: Do you seek to make a submission in that regard? In your response to questions on notice you may want to detail the society's position.

Mr CONCANNON: We would say quite simply that the insurer should not have the benefit of that cost protection in cases where the insurer takes the case to court in those circumstances. It is not the claimant's action, it is the insurer's decision.

CHAIR: This issue has been alive for the past two years. Has there been no resolution?

Mr CONCANNON: There has not been thus far but it would have to be dealt with in the regulation itself.

CHAIR: The process of investigating the issue is still underway?

Mr CONCANNON: It is but it is at a fairly advanced stage. As I have indicated the regulation will have to be formally amended before 1 September.

CHAIR: It is not flat?

Mr CONCANNON: No. I would have to say the Law Society has received some positive feedback from Motor Accidents on that issue and we hope to fix that problem.

CHAIR: This particular field of legal expertise is definitely specialised?

Mr CONCANNON: Yes, increasingly so.

CHAIR: It is increasing?

Mr CONCANNON: Yes, it is. The matter becomes more complex with more regulations, more legislative amendments and the more guidelines put in place.

CHAIR: I am from country New South Wales. Recognising that the legal profession plays a very important role in the process is it excluding a whole section of the community?

Mr CONCANNON: I think does have the potential.

CHAIR: We have to have generalists in order to survive.

Mr CONCANNON: I agree. My background is also as a country lawyer for four or five years in Tamworth before I came down to the city.

The Hon. LYNDA VOLTZ: Never a committee goes by without the name "Tamworth" mentioned.

The Hon. JOHN AJAKA: You would know the Hon. Trevor Khan very well.

Mr CONCANNON: I do. I know Trevor.

CHAIR: I am from Tamworth, just for the record, for a lot longer than Trevor Khan.

The Hon. LYNDA VOLTZ: Would you like to elucidate on Trevor Khan.

Mr CONCANNON: No. There is something about saying anything personal about someone that you try to avoid saying, so I did hear that part of the preliminary discussions this morning. I think that is true, there is a danger the more specialised it becomes that you will only have a limited number of firms in the city that are able to provide that specialised legal advice. Compared to the situation when I was practising in Tamworth between 1989 and 1993, the situation since then has just become so much more complex that if I did not practise in this area every day I would have real difficulties properly advising clients. I think that is what a country practitioner would face unfortunately.

CHAIR: The thought of regulations would give feelings of horror, but the health system has had to deal with that. It has had to create specialty units in order to ensure that top brass service in individual specialties are available. In doing so it has had to create the most complex referral system to make sure that everybody has access to it. It is all about being independent persons in law, is it not? I also think about equity.

Mr CONCANNON: There is certainly an access to justice concern there. I think there are law firms that do try to service country communities. I certainly for my part regularly travel into the country, and I think other large firms who practise regularly in this area do. However, obviously it is not as good as having direct access to a lawyer every day in your local town who will be able to give you specialised legal advice.

CHAIR: Even if you do not have the person in your town, because you are all such private individuals I do not know how you address knowing the person you are going to actually understand the speciality process.

Mr CONCANNON: Yes. I cannot provide an answer to that one I am afraid.

The Hon. JOHN AJAKA: When this scheme was introduced years ago was meant to make it simpler and better for participant plaintiffs, less expensive, less argument, less requirement for lawyers, but it is developing the other way, is it not?

Mr CONCANNON: I think it is. The more guidelines and legislation the less able plaintiff claimants are able to represent their own interests, I would have thought.

CHAIR: I do not think structure was to be exclusive of lawyers.

The Hon. JOHN AJAKA: No, that is not what I meant.

Mr CONCANNON: I can say that even more so now because even in order to file a CARS application under the current system you have to have been exchanged and advance all statements on which you rely, legal submissions, all your medical reports: it is not just something a claimant could realistically ever do.

The Hon. JOHN AJAKA: Not a chance. You said earlier, unfortunately, some solicitors who are not specialising in this area are even falling—

Mr CONCANNON: Yes, I agree. I think that is a real issue in terms of time limits passing because there is still a three-year time line that you have to take a case to court. In terms of all these preliminary requirements there is a real issue if non-specialised practitioners even are providing legal advice in this area.

CHAIR: You have taken questions on notice, copies of which will be given you, and further questions may be provided. Would you return the answers within 21 days for our deliberations.

(The witnesses withdrew)

(Luncheon adjournment)

CHAIR: Welcome and thank you for appearing before the Standing Committee on Law and Justice to give evidence. In the minds of Committee members, organisations and recipients, the outcome of the legislation requiring the Committee to review this process has been very useful. In the main that is because of the input of people such as you, for which I thank you. Mr Stone and Mr McConnachie, you are both from the New South Wales Bar Association. I remind you both of the guidelines relating to broadcasting and to the delivery of messages, which will be handled by the Committee secretariat. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. I ask all attendees to turn off their mobile phones.

ANDREW STONE, Member, Motor Accident Council, as nominated by the New South Wales Bar Association; member, Common Law Committee of the New South Wales Bar Association, and

ALASTAIR JOHN McCONNACHIE, Acting Executive Director, New South Wales Bar Association, Selborne Chambers, affirmed and examined:

CHAIR: If you take any questions on notice would you return the answers to those questions within 21 days? The secretariat will contact you if Committee members have any additional questions. Of course, you can negotiate if you are not ready to forward those answers within that 21-day period.

Mr STONE: Thank you.

CHAIR: You refer in your submission to the communications issue?

Mr STONE: Yes.

CHAIR: You are registering a breakdown in communication, an issue about which we received some information this morning. What do you perceive as being the impact of the problems relating to the Motor Accidents Council?

Mr STONE: Let me try to do so fairly by addressing the positives and the negatives. There are two positives. First, there continues to be a consultative forum, which is the Motor Accidents Assessment Service Reference Group, or MAAS. That group, which meets over at Oxford Street, deals largely with functional day-to-day issues. It is a very useful forum, although you have seen our criticism that it has a breakdown between it and policy. I can say that it does from having been to enough of its meetings. The second positive is that, when you ask it to, the MAA will meet with you. When there have been serious issues we have rung, it has been prepared to have meetings, and it has listened to us.

Where the breakdown comes is that nothing happens after that. That is what the Motor Accident Council does. If something is on the council agenda and we raise a concern, it appears in the minutes, we meet again two months later and I at least get a chance to ask, "What has happened since?" I keep saying every two months, "What has happened since?" I know that down at the MAA they all go into a huddle and have meetings, before the Motor Accidents Council meeting, to check what they have done since so that they can report back on having done something since. It makes things happen.

For example, I would have thought that in relation to the Zotti and Doumit issues, as well as writing directly to the MAA, which is what we did, we would also have put it on the agenda at the council. That would have meant that, two months later I would get to ask, "What is happening?" To be frank, I get to ask, "What is happening?" in a way that does not allow the sorts of brush-off answers that you were given in the responses on notice. I get to ask it again two months after that and two months after that. That is why the council is important. At the very least it makes it think about the issues regularly. I offer this suggestion: If there was a concern about the period for which the council did not meet—

CHAIR: It is not the first time this has happened.

Mr STONE:—and the dependency upon ministerial activity to make it happen, the simple legislative solution would be to have the current council serve until replaced rather than to have it automatically lapse and then be dependent upon reappointment. I understand that that is not an uncommon legislative provision. It seems to be a practical solution.

The Hon. DAVID CLARKE: The other practical solution is for the Minister to do his job, as he is required to do.

CHAIR: That is enough.

Mr STONE: There has been more than one Minister over the period.

The Hon. DAVID CLARK: I will ask that question now. You said that one solution to this problem of the Motor Accident Council being dysfunctional in not meeting for 16 months is that there be amendments to allow it to continue. The other solution is for the Minister to do his job and to appoint members to the council, as he is required to do under the process. You said that you had a reference group and that you had informal contacts and so forth. However, the Motor Accidents Council is a body that was set up specifically to bring stakeholders together and to play an important role in this whole process. For 16 months the Motor Accidents Council has not been functioning. The Minister appoints the members to that council.

Mr STONE: Under the Act, yes.

The Hon. DAVID CLARKE: Is the Bar Association one of the bodies represented on that council?

Mr STONE: Yes. The Act sets out a number of groups that have to be represented and there have to be two lawyers. For example, they do not have to be one from the Bar and one from the Law Society. It traditionally has been done that way. Ultimately, it is at the Minister's pleasure. The process that was followed was that the Motor Accidents Authority wrote to the Bar and asked it to put forward nominees. We said, "Can we put forward one?" They said, "No, the Minister wants a choice." So we put forward three. We then wrote to the Motor Accidents Authority asking, "What's happening with the appointment?"

The Hon. DAVID CLARKE: The Bar Association always has been ready, willing and able to participate in the Motor Accident Council by having one of its members represented there?

Mr STONE: Yes, absolutely.

The Hon. DAVID CLARKE: The situation is, as I think you said, Mr Stone, that you have been reappointed, is that the case?

Mr STONE: Yes, recently.

The Hon. DAVID CLARKE: Recently appointed, and if the council was to operate, that appointment should have taken place 16 months earlier?

Mr STONE: Ideally, if you have legislation providing for appointments to lapse, you would hope that a replacement council would be nominated and in place to be, in effect, up and running from the time the old appointments lapse. That would be how things would properly operate, yes.

The Hon. DAVID CLARKE: The only communication has been informal—a telephone call through this reference group, and that is basically it?

Mr STONE: I do not want to understate. They are both useful means of communication. The reference group meets every two months. It has a weighty agenda and discusses a lot of issues on a day-to-day practical level. It does not tend to deal with broader policy scheme issues.

The Hon. DAVID CLARKE: The Motor Accident Council is the formal way to accomplish that?

Mr STONE: Correct. It has various obligations under the legislation to provide advice to the board and to the Minister as to the operation of the scheme.

The Hon. DAVID CLARKE: In response to issues the Bar Association raised about insurer profits, the MAA has stated, "Independent actuarial advice is that the projected margins from insurers are currently regarded as reasonable, given current market conditions." What is your response to that statement? Have the margins continued at the same rate or have they been squeezed in recent times?

Mr STONE: I hand the committee a document and ask you to have it in front of you as I answer the question. It is annexed to our submission, so it is not new but, hopefully, it will help me explain.

The Hon. JOHN AJAKA: That will help.

Mr STONE: It is important to separate apples from oranges here. There are two very separate issues. There are the budge projections. Each year the insurers have to nominate or file for a premium in that they have to say, based on what we anticipate happening over the next 12 months, the number of accidents, the size of the payouts over the life of it, we anticipate that we will need to collect X amount of premium in order to pay out on everything, meet our expenses and make a profit. They are not allowed to file a premium that projects that they will make a profit of between more than about 8 per cent and 10 per cent, in that sort of range. Of course, every year they get that right in that their budget accurately comes in at between 8 per cent and 10 per cent because they are not allowed to have a budget of more than 8 per cent or 10 per cent. That is apples. Now compare it with oranges, which is what actually happens once that money has been collected and it comes time to paying out. Do they in fact meet their budget?

The Hon. JOHN AJAKA: And the year period is over?

Mr STONE: And the year period is over, and over the many years that follow they pay out on claims. This table basically is an aggregation of the Motor Accidents Authority's annual reports over a number of years. If we start at the first year on it, the year 2000, they collected $1.3 billion in premiums. If they were keeping 10 per cent, they should have had about $130 million in profit from that year. In fact, the MAA's projections by 2003-04 was that they were keeping 23 per cent of the premium and with almost all of the claims paid out in the 2008-09 year they ended up keeping almost 30 per cent of the profit. So, when we come to the second last column and say "Surplus profits" that is our calculation as to everything over the 10 per cent they were budgeted to make. For that year they have made an extra $265 million above and beyond that 10 per cent budgeted return.

Moving down to the next year, they are going to keep about 28 per cent of the profit on projections. That year is almost fully paid out. You can pretty much lock that in. Again, above the 10 per cent they were meant to keep they got an extra $238 million. For 2002 they are keeping 31 per cent and that is an extra $281 million, being 20 per cent above the 10 per cent. Am I making that clear?

The Hon. DAVID CLARKE: Certainly. It seems incredible. That seems to be an enormous gap.

The Hon. JOHN AJAKA: You may have a typo. I want to make sure it is. In the eighth column I assume it is meant to read "08-09"?

Mr STONE: Yes, I apologise. It is a typo. Where is says "03-09" it should be "08-09". I apologise. This is how we say that if you look at the first five years, the profit above and beyond the 10 per cent per year they should have been keeping—they have pretty much booked all of this now—is about $1.5 billion. That is the surplus profit. Putting it another way, and we address this in our submissions, it has now been about 10 years since this scheme was introduced. They should have been making about $130 million a year out of it—10 per cent of the premium written each year. In fact, some years they have been making 30 per cent, some years 25 per cent. If they did not make a single cent in profits for the next 10 years, they would still be on par to make their average 10 per cent over the 20-year span. You would have to take away every cent of profit for the next 10 years to bring them back to the reasonable profit they ought to have made.

The Hon. DAVID CLARKE: How does the insurance industry explain this? This is an enormous gap.

Mr STONE: In part it is reducing accident numbers. Of course, when they set that budget, if they count on having to pay out on 10,000 accidents and there are only 9,000 accidents, that is basically a thousand accidents' worth of payouts that they add straight to the bottom line. Falling accident numbers certainly have had a roll to play in this. Similarly, the effectiveness in the scheme in reducing benefits to claimants and the disincentives for people to claim also have had their role. When it comes time to hear from them this afternoon—they are nice people and some of them are my friends—they have had a very, very, very good run.

The Hon. DAVID CLARKE: Particularly as we heard figures earlier today that the proportion of costs that solicitors receive seems to be diminishing in regard to party-party costs?

Mr STONE: These profits in part have been driven by the cross-subsidy of the injured of the scheme. I think we sent you some correspondence we had with the Motor Accidents Authority about costs in which we expressed in what I would like to think is our usual blunt and forthright terms, "This is wrong."

The Hon. JOHN AJAKA: You might have been present earlier when it was suggested that if the party-party costs are to be increased to come close and reflect with the solicitor-client costs, possibly the green slip premiums would need to increase. If I take what you say is correct—I have no doubt it is—the reality is that there is enough fat in what has already been collected, to use that analogy, to at least not consider increasing green slips but to allow these costs so that claimants are not out of pocket?

Mr STONE: You would like to think so, but I suspect you will be told to the contrary by others. The argument will come to this: if you can look back to the chart I showed you, and come up to the year 2008, the project there is that they are not going to make any money out of this year and things are dreadfully tight, and there is no longer this spare money. The spare money is all in past years, and that has all been booked and there is nothing you can do to touch it.

Things are tight now, so increase the fees for lawyers and you will be passing that straight onto motorists because this year they have the budget right. In fact they are behind the budget. That is the problem. Every year they come back and say that the budget is right, which is the Motor Accidents Authority talking about apples, yet history shows that they are never right. There is always this massive profit somewhere further down the track.

The Hon. JOHN AJAKA: At this stage, when they talk about 2008, 2009, 2010 and 2011 in the future, we are still only talking about projections. The reality is that we do not actually have the figures to compare apples to oranges. Is that not correct?

Mr STONE: And you want it to about three years after the event. The Motor Accidents Authority is coming in and saying, "But we got the budget right", and they do. "Well done, chaps. You get the budget right every year." But to keep them to the projection of 8 per cent to 10 per cent, that just does not match with what is then the subsequent experience of the profits that have been made.

The Hon. DAVID CLARKE: The surplus profits appear to be the elephant in the room.

Mr STONE: Yes.

The Hon. JOHN AJAKA: Unfortunately we always have limited time. In relation to Zotti's case and Doumit's case, in a quick rounding up, is there anything with which you disagree in what already has been said, or is there anything you would suggest in relation to it?

Mr STONE: Let me give you a brief explanation of why Zotti should have received much more urgent action than it did. If any of you are driving home tonight and you lose control of your vehicle and run over a pedestrian, the pedestrian will sue you and you will be protected by your CTP policy.

The Hon. JOHN AJAKA: Correct.

Mr STONE: If you run off the road and into a telegraph pole, and the telegraph pole falls over and hits a pedestrian, the pedestrian will sue you and you will be protected by your CTP policy.

The Hon. JOHN AJAKA: Correct.

Mr STONE: If you run off the road and run into a telegraph pole, you are carted off to hospital, your car is towed away, and two hours later the telegraph pole falls over and hits a pedestrian, you have still been negligent, you have still caused a telegraph pole to fall over, you will be sued, and following Zotti, you will not be protected by your CTP policy.

The Hon. JOHN AJAKA: Because there is no indemnity from their insurance.

Mr STONE: Exactly. They apply the temporal link test between the accident and the injury whereas the reality is that accidents happen and injuries may take a little while to come out, in these relatively rare cases. There is a straightforward fix. We have suggested to the MAA the legislative amendment that is required. It is

annexed to our submission, but out of abundant caution I tender correspondence to the Motor Accidents Authority of 18 November 2009 in relation to Zotti, and that has the proposed amendment to section 3B.

The Hon. JOHN AJAKA: What you are trying to do in plain English is bring in what was the real cause—the causation aspect of it. The causation is that I hit a telegraph pole, the car gets towed away, and three hours later the telegraph pole falls. Assuming that no-one else went near the telegraph pole and no-one hit the telegraph pole, and the tow truck driver did not think he was being clever by doing something with the telegraph pole, ultimately I am the cause of the accident.

Mr STONE: Yes. We are taking out the requirement of the temporal connection between the accident and injury because the Court of Appeal has taken a fairly narrow reading of that, which has had an unfortunate consequence.

The Hon. JOHN AJAKA: That is Zotti?

Mr STONE: Yes.

The Hon. JOHN AJAKA: Doumit?

Mr STONE: For Doumit, you require an amendment to the regulation. Again we have suggested the appropriate amendment that could be made. I tender correspondence to the Motor Accidents Authority dated 17 November 2009.

The Hon. JOHN AJAKA: Taking it a little bit further, are we seriously looking at a guy who has an excavator that normally is towed from the site to site, and it happens to be on the road for five minutes? Are we talking about the excavator having a green slip?

Mr STONE: If you are working with an excavator that you can drive from place to place and it runs into something, or a tractor that drives from place to place that is tracked, yes it should have a CTP. Indeed the RTA currently makes it register and makes it get a green slip, and the green slip is your answer. You can fix that by a relatively straightforward amendment to guidelines. This ought not have taken as long as it has taken.

The Hon. JOHN AJAKA: There is some mention about the issue of the assessors and their being medically qualified as opposed to legally qualified. You may have heard the Law Society's views on that. Is it as serious a problem as I was getting from the Law Society?

Mr STONE: Yes. There is dispute in a very significant number of cases as to both whether the injury was caused by the accident, and the extent to which the injury was caused by the accident. Causation is partly a medical question, but it is also partly a legal question that the doctors are regularly getting wrong. Given the doctors' exclusive jurisdiction over that question, while you can argue whether or not they are getting the medical part of it right, they are quite frequently getting the legal part of it wrong.

Ackling's case, to which Tim referred earlier, is a terrific example. In that case it was a psychiatric injury that did not develop until some years after the accident, but for which the groundwork had been laid by the accident. The original Medical Assessment Service [MAS] said there was no causal connection, and the insurer said, "That's not right. We concede to a review." A panel of three said that there was no causal connection. That was then taken on administrative appeal. You had four doctors saying there was no causal connection when the insurer was not seeking to argue an absence of causal connection.

The Hon. JOHN AJAKA: It was an unusual situation with the insurer actually saying, "I think you have got it wrong."

Mr STONE: Yes. The insurer basically conceded that the Medical Assessment Service got it wrong, twice.

The Hon. JOHN AJAKA: What is the answer? There is the counter argument that if you suddenly have lawyers making these determinations, and they become more medical than causation, the reverse may occur. Is it the answer that when there is an assessment by a panel of three, at least one should be a lawyer?

Mr STONE: I do not think you will find that an easy mix to make. I think the answer is that you make it not binding on the question of causation. Leave it up to them to decide whether it is over 10 per cent or not. Let them express an opinion on causation, but then subsequently have the Claims Assessment and Resolution Service [CARS] assessor or the judge consider that they have guidance on the medical question of causation, now let them add their legal expertise on causation and reach a final conclusion.

As it is at the moment, with the Claims Assessment and Resolution Service assessor or the judge, you have a bizarre situation in which a judge might say, "I find, legally speaking, that the back injury that somebody has is caused by the accident. I find it is causing them economic loss. I find it is causing them a need for care and treatment, but I cannot award them any pain and suffering for that back injury because the MAS and assessor has made a binding decision to the contrary." That just makes the system look silly.

The Hon. JOHN AJAKA: Your recommendation is that the decision should not be binding, full stop.

Mr STONE: The assessment of the whole-person impairment has to be binding, although there are other bigger picture issues on that. But to fix the causation problem, you take causation away from being binding.

The Hon. GREG DONNELLY: Looking at your Annexure A, which has been circulated, these surplus profits—dare I use the term "super profits"—dropped slightly starting in 2000, and then in 2002 to $81 million, and then we see it move down and up again. In 2006, there is a $43 million surplus. I think you said that it is only with hindsight over about three years that you can establish the actual amount of profit. Can we say that that $43 million is probably about right for that year? I am just thinking that in 2007 and 2008—we cannot speak about 2009, obviously, and clearly not 2010—I am just wondering about the negative 61 and negative 106. I am trying to get some meaning behind those.

Mr STONE: If you look, for example, at 2007, the projection in the 2007-08 report was that they would keep 3 per cent of the premium as profit. In other words, rather than get their 8 per cent to 10 per cent, they would be 7 percentage points short. Last year that was revised up so that they would get 5 per cent. I will bet London to a brick that it is not going to finish at 5 per cent. I think we will be back here next year or in two years time and it will be up 7, 8, 10, and 13 per cent, just as happened the year before. If you look at 2006, the first projection was 5 per cent, the second projection was 9 per cent, and the third projection was 13 per cent. I do not think it is done at 13 per cent yet, either.

They are years that they have not paid out perhaps 40 per cent, 50 per cent or 60 per cent of the claims, but they are trending in the right direction, for them. It is exactly the same trend you have seen in every other year. If you look, with the one instance being in 2003, for the 2005-06 projections—which happened to coincide with something by way of a State election in 2005-06, but that could just be the cynic in me—these figures have trended up on every single occasion across the board.

The Hon. GREG DONNELLY: Without appearing to sound naïve, I will ask the question anyway: how do you think that the veracity of this argument can be prosecuted that says that these are very significant profits and they do need to be looked at? This table may have been produced before and I have not looked at it closely enough. Clearly with that evidence, if I can use that word, how do you prosecute the argument that this whole issue needs to be looked at?

Mr McCONNACHIE: It is very difficult because the MAA comes back and says "But this year we are setting them a 10 per cent budget and we are doing the right thing." The response of the MAA every time is "But we are setting the budgets right. There is nothing more we can do". It requires you to ask: are they really setting the budgets right if it is being this consistently wrong, why? It would help if they at least came down here and explained. We ask the questions and the responses we get are, "But we are setting the budgets right". They keep talking about their apples and refuse to talk about our oranges which is these figures. They just will not acknowledge—it would be lovely to hear one of them say, "All right. We are setting the budgets right. We are doing the best we can but you have got to confess these people have made a motzas" and that is what you see here. Unintended, unfortunate—

CHAIR: Who is "these people"?

Mr McCONNACHIE: The MAA. Sorry, these people in that context the insurers. They are the ones who have made the money. I mean that nicely, Mary.

The Hon. GREG DONNELLY: In terms of putting that argument forward that you have obviously prosecuted with them before and effectively the arguments do not intersect, they run parallel because you are using very different assumptions, is there any acknowledgement from them that at least what is you are saying, which is in black and white here, is the case about the history of all of this? Or is it a case of putting the argument forward, "We are doing our best in terms of setting the budget." Is there any acknowledgement at all?

Mr McCONNACHIE: I do not think we have ever actually got them so far as to say—these are figures drawn from their annual reports. There is not magical or actuarial applied to this. This is lifted straight from the annual reports, collated year by year by year. This is never a comparative table they put in the annual report. In the annual report they always say, "We set good budgets, and the budgets are right." They do set good budgets but in the long run the budgets are never right, or at least have not been to date.

The Hon. GREG DONNELLY: Clearly if we accept your position for the moment the construction of the budget on their part to make it more realistic would have to involve a changing of assumptions that they are using in terms of the development of their budget. You may have not turned your mind to this question and will take it on notice, but what would be the key assumptions that they would have to refine and amend to be able to produce a budget which created a greater alignment with the reality of things?

Mr McCONNACHIE: In fairness, accident numbers is a large part of it. A large part of this is that if accident numbers keep falling then that is straight line to the insurers. They are at risk if accident numbers go up, they have set their budget and they have got to meet those out of their budget as well, it has just not happened over this period of time. You have had accidents drop by about 1,000 per year for a six or seven year sustained run. Being fair it is very hard to set an accurate budget as against that and if accident numbers have now levelled out then you will not see this sort of trend continuing, but who knows. But there is no clawback mechanism that if there is no version of the super profits tax year. The risk is all theirs and the profit is all theirs and they will tell you "We take the risk so we get to keep the profit." It just turns out not to have been much of a risk recently and an awful lot of profit.

The Hon. LYNDA VOLTZ: In regard to the Zotti decision of the Court of Appeal that does not prevent Mr Zotti from suing for negligence, how is it different if a person is left at a car accident, in terms of negligence and getting away from the CTP scheme, to say, a semitrailer that leaks oil onto the road?

Mr McCONNACHIE: It does not, and there have been cases brought both as against the Nominal Defendant and as against actual vehicles that if they leak oil on to the road or if things bounce off their load and fall on to the road, and somebody subsequently comes along and has an accident, that in the past has been held to be an accident with the scope of the Motor Accidents Scheme. There is no doubt that if you do not tie your load down properly you have been negligent. If you do not put your fuel cap back on properly and petrol leaks on to the road behind you, you have been negligent, the question is, is that picked up by the CTP scheme?

The Hon. LYNDA VOLTZ: There would have been incidents in the past when it has not been as a result of a collision or an accident but it has been the result of bad servicing such as oil linking from a semitrailer at a stop light.

Mr McCONNACHIE: Indeed, this is one of the issues that came up in the spilt petrol cases was whether it was the failure of the driver or owner of the vehicle to put the petrol cap back on properly or whether it might have been some driveway service petrol station where the attendant failed to put the petrol cap on. Recently one failed on that ground because they had filled up in the eastern suburbs where there is one of the few driveway service petrol stations in Sydney. On the other hand there is another example involving a North Coast country town where the plaintiff's solicitors assiduously went to every petrol station in town to prove that there was no driveway service and, therefore, it must have been the driver who had failed to put the petrol cap back on properly.

The Hon. LYNDA VOLTZ: What about if a car is parked, someone has broken into it, the window is broken, the glass is left on the roadside, and a driver then drives away?

Mr McCONNACHIE: This is like a torts exam. That would not be a motor accident because the negligence there in leaving the glass was not on the part of the owner or driver, and the thief, although they subsequently became the driver when they got behind the wheel, probably was not the driver at the time the glass was broken.

The Hon. LYNDA VOLTZ: But the driver then knowing the glass has come from their vehicle does not have a responsibility to remove it?

Mr McCONNACHIE: I will take it on notice.

The Hon. LYNDA VOLTZ: My point in this disconnect is I wonder if where will the line be drawn?

CHAIR: And the legislative change?

The Hon. LYNDA VOLTZ: With the legislative change. While the Zotti case is a specific case of a specific accident in my mind it opens up all these other scenarios that in roads exist. Then you start getting to potholes and someone doing something on a bridge and a whole range of matters.

Mr McCONNACHIE: You have a number of other breaking mechanisms upon the scope of the policy. It has got to be the use or operation of the vehicle, it has got to be negligence by the owner or driver and not somebody else, and it has got to be negligence in the driving of the vehicle, a collision with the vehicle or the vehicle running out of control. If it does not fit within those then it does not get up. Zotti has created this additional issue of the injury having to occur during the accident. I think the Chief Justice in his judgement extended it and, with the very greatest of respect to him, this is a fairly arbitrary line, he had the CTP policy running until the vehicle was towed away.

In fact, if you follow the Chief Justice's advice, if you are involved in an accident that might leave oil on the road or a telegraph pole to fall over, as you are being carted off to hospital you should be screaming out to police as you go "leave my car here, leave my car here" because the longer the car is there, the more protection you have got from the CTP policy. Once the car has gone you are personally liable, without the CTP policy for the oil on the road or the telegraph pole that falls over. That is random, that is capricious, that is not any system of justice as I know it.

The Hon. LYNDA VOLTZ: Was the point the word "during"? Is that because that is the way it is written?

Mr McCONNACHIE: Yes, that is what the Act says. It has to be during the accident.

The Hon. LYNDA VOLTZ: The Act is implying that it has to be during?

Mr McCONNACHIE: The fact is that people who have motor car accidents cause injury, sometimes not immediately but a little later, such as the oil they have left on the road or the telegraph pole that they have weakened that falls over, or if you drive off the road into a kindergarten, it is not just the people you hit immediately but the fact that 20 minutes later the kindergarten catches fire and spreads to the building next door and burns it down with people in it as well. They are all the things that I think can be fairly brought home to the CTP policy because the driving started it all. Zotti has now said, "No, it is only those who were injured. In effect, once the vehicle's wheels stop spinning we are going to stop the insurance policy."

The Hon. LYNDA VOLTZ: What about illness or injury that may not have been caused at the time of the collision but as a result later on?

Mr McCONNACHIE: That is an interesting one.

CHAIR: That is the one we dealt with with the psychiatric illness.

Mr McCONNACHIE: Yes, that is an interesting one.

The Hon. LYNDA VOLTZ: Or a miscarriage or a stress-related illness, a heart attack.

The Hon. JOHN AJAKA: That comes back to causation.

Mr STONE: Yes, that comes back to causation, but also whether the illness or injury was seeded or planted at the time or is a subsequent development. There are some interesting questions on that.

The Hon. LYNDA VOLTZ: Yes, how long is a piece of string.

Mr STONE: These are not the vast majority of cases. We are really just trying to do some tidying up around the edges, but if you are driving home tonight and knock over that telegraph pole two hours later it is pretty important to you because the plaintiff's lawyer will still be suing you, your CTP insurer will not be defending you, and it is your house on the line.

The Hon. LYNDA VOLTZ: You quite often see things like warnings to motorcyclists about grooved roads and other things that are not necessarily caused by roadwork, but there is obviously an impact. The conditions of the road are the conditions of the road, and the Roads and Traffic Act says you must drive to the conditions of the road.

Mr STONE: Yes, and if it is a pillion passenger on the motorcycle you would sue the cyclist who has lost control for failing to drive to the conditions and you would give some consideration as to whether you also ought to join the road authority if they failed to put up adequate warnings or whatever else. If you are the driver of the motorcycle then the only person left to sue is the road authority, and that is not a motor accident because you are not suing the owner or driver of a vehicle.

The Hon. LYNDA VOLTZ: What about where the Act requires you to drive to the conditions of the road?

Mr STONE: People should, and torts law requires you to do the same.

The Hon. LYNDA VOLTZ: Going back to the figures on profitability, because I possibly missed something, the minus $106 million in surplus profits—that is a negative, so that is less profit?

Mr STONE: Yes. If I could run from the start, in 2008 they collected just under $1.2 billion in premiums. If they are keeping 10 per cent of the premium as profit, they should make, by the time they have paid everybody out in many years time, $120 million out of this year. If they only get to keep one per cent of the premium in profit then they are not making 120, they are making 14-odd, so they are in fact short 106 on where they should be if they make their 10 per cent, so they are well short on current projections of getting their 10 per cent this year.

The Hon. LYNDA VOLTZ: That is the insurance companies?

Mr STONE: That is the insurance companies collectively.

The Hon. LYNDA VOLTZ: The previous witnesses from the Law Society had an impression that there were surplus profits. What you are saying is that there were not surplus profits?

Mr STONE: There are massive surplus profits in the previous year. What I am saying is that on current projections for the current year they are going to make a loss, but given history you would be incredibly optimistic to believe that that negative one per cent is going to be there in a few years time.

The Hon. JOHN AJAKA: Minus 106 could end up being 200-plus—we just do not know.

Mr STONE: We just do not know.

The Hon. LYNDA VOLTZ: Why are they down? More cars are being registered, are they not?

Mr STONE: These are not my projections. I am not the actuary who did it.

The Hon. JOHN AJAKA: These are projections, so they may not be the real figures.

Mr STONE: These are the Motor Accidents Authority's projections from the annual reports.

CHAIR: We have received an explanation for the drop in recent years and we will again ask the Motor Accidents Authority to provide that advice as part of the evidence for this inquiry.

The Hon. LYNDA VOLTZ: Perhaps we could also ask for the motor vehicle registration figures, if we do not have those.

CHAIR: In relation to the profit margins, CTP prices consistently went down during higher levels, and quite drastically a couple of years ago from memory—I am not using fact here—but they recently went up during the global economic crisis, for which we were given full explanation. We have had quite considerable briefings on these particular issues, and profit margins and how they are set. One of our major questions has always been how have you set the CTP prices.

Mr STONE: I am not the actuary, but I will do my best to answer. Taking a step back, insurers make two types of profits. They make underwriting profits, which is that 10 per cent we have been budgeting on writing the product, and they make investment returns because they get given $1.4 billion a year collectively between them, a lot of which they will not have to pay out for three, four or five years, so they have all that money to play with on the stock market, and when the stock market is doing very well, they do exceptionally well, and when the stock market goes backwards, they immediately start complaining about the underwriting.

The Hon. LYNDA VOLTZ: So they will be in trouble.

Mr STONE: That, of course, is not taken into account by the Motor Accidents Authority because the Motor Accidents Authority says to them, "If you want to, in effect, gamble with the money on the stock market, that is up to you. We will force you to do your profit projections and filings on the basis that you put it into government bonds and secure investments." The only way in which the financial crisis, as I understand it, impacts upon them—and those behind me will be able to answer this better than I can—is that government bond rates do not fluctuate anywhere near as wildly as the stock market. The reality is that, because they want to make money for their shareholders, they do put it on the stock market and they do not put it into government bonds, so they do hurt much more when the stock market drops than the Motor Accidents Authority allows for, but the global financial crisis does not have anywhere near as big an impact on them because all they are really suffering from is fairly modest drops in government bond rates, not the wild fluctuations of the stock market. The rest is then choosing to take risk.

The Hon. JOHN AJAKA: In one of your answers you talked about a clawback mechanism. Putting it in simple terms, if they project $100 million profit and three years later we discover it is $300 million profit, they have taken an extra $200 million, you say maybe we should consider a clawback mechanism. I understand that, but what clawback mechanism? How do you suddenly knock on their door and say, "Give me $200 million", unless it is going to go to consolidated revenue or some allocated program or a reduction in green slips?

Mr STONE: That is a question you have to ask the Motor Accidents Authority, that is an actuary's question, not mine, and in fairness I should say that the moment you say that to them the insurer's response will be, "That is fine, as long as you protect us from not losing more than $200 million". "If you want us to underwrite the full extent of the risk, you let us take the full extent of the profits" would be their argument—and it has got something to it. If you want to not let them have the full rein of the profit, you have to be prepared to cap them or protect them on the risk. These are complex questions, but they are really good questions for the Motor Accidents Authority and I encourage you to ask them rather than let them just keep telling you, "We got the budget right". They get the budget right every year; it is what happens later that is a better discussion to have.

CHAIR: Thank you very much for coming to speak to us today. There will be questions on notice and the secretariat will be in contact with you. Mr McConnachie, did you want to tell us something?

Mr McCONNACHIE: No, I think Andrew has covered everything more than adequately. I was ready to step in at any given point, but I did not see any need, thank you.

Mr STONE: I always do well when I leave with my shins intact having sat next to Alastair—it is my usual warning that I have gone too far.

(The witnesses withdrew)

ANDREW STEWART MORRISON, Senior Counsel, and

JNANA GUMBERT, Director, Stacks Goudkamp Solicitors, Sydney, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

Dr MORRISON: I am Senior Counsel at the Bar, I am a former member of the board of the Motor Accidents Authority, and I am here on behalf of Australian Lawyers Alliance as a member of the State Committee.

Ms GUMBERT: I am here in my capacity as New South Wales Branch President of the Australian Lawyers Alliance.

CHAIR: Would either of you like to make an opening statement?

Ms GUMBERT: I will make a brief statement. The Australian Lawyers Alliance is a national association of lawyers who primarily practise in the area of personal injury law. The alliance started out in 1994 as the Australian Plaintiff Lawyers Association. Our aim is to protect and promote justice, freedom and the rights of the individual.

Dr MORRISON: If I could add briefly to that. Nearly five years ago I gave evidence on behalf of the Bar to the Legislative Council all party General Purpose Standing Committee No. 1 inquiry into personal injury compensation. That committee unanimously recommended that the use of the Australian Medical Association guides, the 10 per cent-plus whole person impairment threshold and the use of the Medical Assessment Service [MAS] be discontinued—and it did so for very good reason. The 10 per cent-plus is capricious, it is unfair, it denies compensation for pain and suffering to something in the order of 90 per cent of those injured in motor accidents, it leads to a great deal of money and time being spent on fighting over whether a particular event is a motor accident, a work accident with yet another set of thresholds and compensation scheme—even more pitiful compensation there—or whether it falls under the Civil Liability Act.

The committee recommended that as the Ipp inquiry had originally recommended it should be a single scheme built around the Civil Liability Act that was the sensible approach. MAS is the problem. You have doctors, as was said a little earlier, making decisions which are decisions effectively in law and they get it consistently wrong. The fact that there are a modest number of appeals that go to the Supreme Court is not the test. The fact of the matter is that most people cannot afford the risk of going to the Supreme Court to defend their rights because they know they will recover very little in the way of legal costs for doing so. It is simply capricious, unjust and, as Andrew Stone has amply demonstrated, there is capacity within the scheme to offer proper compensation.

The Hon. LYNDA VOLTZ: I am new to this committee and I apologise for my lack of knowledge on MAS decisions. Is that process similar to that of the Commonwealth immigration scheme where a person attends for assessment by a doctor?

Dr MORRISON: Yes.

The Hon. LYNDA VOLTZ: So quite often it rests around medical questions as to whether the injury or illness was caused by the accident?

Dr MORRISON: Quite often. You cannot recover damages for pain and suffering unless you get a finding by a doctor who was appointed under the MAS scheme that you have a greater than 10 per cent-plus permanent impairment under the American Medical Association scales. Those were scales that expressly on their face say they are not intended to be compensation for personal injury and, as we set out in our submissions, they produce bizarre results. They produce bizarre results because, for example, if a person has through pain an inability to use a limb—which means they cannot walk, for example—because they have the theoretical physical ability they are assessed at nil under the scale. If they have a 15-year severe depression, which is the prognosis for the future, that cannot be combined with a physical injury. You have to either get over 10 per cent on the psychiatric or over 10 percent on the physical; you cannot aggregate the two together. Generally on the psychiatric it has to be a gross injury to recover because for most psychiatric injuries the prognosis is not for

impairment. You may be unable to work for the next 10 years but because that is not a permanent impairment you will be assessed at nil on the permanent impairment scale. There is a difficult methodology of working it out.

I come back to your other question as to causation. Causation, as has already been pointed out by previous witnesses to you, involves both medical and legal questions. The doctors consistently do not apply legal standards. They tend to apply the test of what is "the" cause of the injury, not "a" cause of the injury, which is the legal test. They have been chastised severely in the Supreme Court in a number of cases—and Ackling is one—but they consistently continue to do it. It is a problem. When you ask doctors who are not trained lawyers they will consistently apply their own experience and their own standards, and it results in clear injustice.

The Hon. LYNDA VOLTZ: Do you ever get conflicts where a doctor recommends that an injury could be less if a person undertook a certain type of medical procedure that they were resistant to? For instance, if a person had back surgery, there was a 50 per cent chance their back could be made better but it also carries risk. Do you ever get those sorts of conflicts?

Dr MORRISON: They are not so much of a problem.

Ms GUMBERT: You do sometimes have a situation where there is a suggestion that a certain course of treatment or surgery may result in relief of some of the symptoms. It would then be up to the claimant to decide whether or not to pursue that. The doctor who is assessing the claimant for the Medical Assessment Service has to assess them as they are at the time they are seen. If the claimant, however, failed to undertake that course of treatment there could be a failure to mitigate argument in some circumstances.

The Hon. LYNDA VOLTZ: That clears up that question in my mind. Thank you.

The Hon. GREG DONNELLY: Insurer profits—I am reading a question you may have received on notice but I want to elucidate it. Your submission includes a report by Cumpston Sarjeant Consulting Actuaries, which estimates ultimate profit for insurers from 2004 to 2009 as ranging from 27 per cent to 11 per cent. The Medical Assessment Service's 2008-09 annual report identifies prospective profit for insurers over the same period of between 8.7 per cent and 6 per cent. What is the difference between the "ultimate" profit and the "prospective profit" as you understand it?

Dr MORRISON: In Andrew Stone's terms, its apples and oranges.

The Hon. GREG DONNELLY: It is the same issue that he—

Dr MORRISON: It is exactly the same issue that he has very clearly articulated. The only thing that I could add to assist would be that the best proof of the consistent underestimating of insurer profits—that is, that their estimates are almost always underestimates—is the fact that year by year as the payouts are brought to book and are found to be much less than they have conservatively set aside for it, the level of profitability for a given year in the MAA records, and which are in the table that has been provided to you, consistently increase. So that if you take a single year, say 2003, you will find that the estimate for profitability in 2005 is much less than the estimate that is given for 2003 the next year, and less again the year after and the year after, because what the insurers are doing—not necessarily deliberately but in practise—is disguising the full extent of their profits by giving excessive estimates as to their future liability. Now one can understand them being conservative about their risks, but they are so conservative that the effect is that in a scheme that was designed to provide a 8 per cent for insurers, they have over a very long period of time grossly exceeded that at a very modest risk to themselves.

The Hon. GREG DONNELLY: Would you agree essentially with the thrust of Mr Stone's argument that it goes to the issue of the assumptions that are being made by the MAA? The assumptions being made in terms of their budget really need to be looked at to try and discern how it can be more accurate?

Dr MORRISON: As Mr Stone said, they are properly questions for the MAA. The MAA has said in its response to this Committee that they relied upon independent actuarial advice. That is nice, but they have not produced that advice for anyone to examine. You have independent actuarial advice from Cumpston Sarjeant, which was provided to a committee of the Legislative Council in 2005 and updated by ALA going back to them this year, which says that the profits are clearly excessive and likely to continue to be excessive. The MAA

really needs to examine its processes because if those profits have been consistently excessive over a very long time—this is now a mature scheme in actuarial terms—then they are profits that ought to be going into the pockets of the injured and not into the pockets of shareholders.

The Hon. DAVID CLARKE: Dr Morrison, this is our Committee's tenth review of the Motor Accidents Authority and Motor Accidents Council and you will be aware that the council did not function for some 16 months. You represent lawyers who basically are there to speak on behalf of those who are the reason for this scheme—injured members of the community. If all the parts are not operating effectively this system is in some ways quite dysfunctional, is it not? It is a dysfunctional situation when the Motor Accidents Council has not been operating for 16 months because there have been no members of that council. They simply have not been appointed. Do you have some comments on that?

Ms GUMBERT: I can probably answer that. The ALA has never occupied a position itself on the Motor Accidents Council. We obviously believe that it is necessary for the council to function effectively for the scheme to operate properly. The ALA has been able to have informal meetings with the Motor Accidents Authority, which have been useful, but we believe a more formal process such as the Motor Accidents Council and more structured meetings will result in better outcomes.

The Hon. DAVID CLARKE: In fact, everybody agrees there should be a formal process. That is why the Motor Accidents Council was established by the Government in the first place.

Ms GUMBERT: That is correct.

The Hon. DAVID CLARKE: There was obviously a need for it and it has not been functioning simply because there have been no members of the council.

Ms GUMBERT: That is correct.

The Hon. DAVID CLARKE: Those members have not been appointed by the relevant Minister at the time.

Ms GUMBERT: That is correct.

The Hon. DAVID CLARKE: That has had a terrible impact because some of these issues could have been discussed in a formal, official way rather than in an informal way, which is the process you have had to resort to, to assist the scheme to operate as it should.

Ms GUMBERT: That is correct. It would be more effective, I believe, to have a more formal process in place that operates as it is supposed to.

Dr MORRISON: It is no coincidence that the council's reappointment occurred something like 16 days before this Committee started sitting, so this Committee is obviously serving a function in terms of putting pressure on the MAA and the Minister to do what should have been done a long time ago.

The Hon. DAVID CLARKE: Your submission suggests that it is uneconomic for injured persons to sue due to the fact that for claims up to $100,000 the injured person can recover only 20 per cent. In response, the MAA noted that the information you rely upon appears to apply to section 338 of the Legal Profession Act 2004 and not claims made under the Motor Accidents Compensation Act. Can you provide more details about your concerns about recoverable costs, and what is your response to the MAA's statement?

Ms GUMBERT: The MAA's statement is correct. That is an area that we withdraw from our submissions. It relates to claims made under the Civil Liability Act, which is an area we have also been making submissions about. Regardless of that, we still believe that there are serious problems in relation to costs in the Motor Accidents Scheme, which we have covered in our submissions.

The Hon. DAVID CLARKE: Some of that evidence came out here earlier today.

Ms GUMBERT: That is exactly right.

The Hon. DAVID CLARKE: The situation appears to be that as the years go by the proportion of costs that lawyers effectively recover is dropping; it is being squeezed as each year goes by. Is that the trend?

Ms GUMBERT: It is. At the moment the situation especially within the Claims Assessment and Resolution Service [CARS] system is quite drastic. The costs that are able to be recovered are usually less than half of the total costs—and quite often less than that. I believe earlier today there was reference to the FMRC report, which indicates that on average costs are 250 per cent greater than the recoverable costs and, furthermore, that that is work that is justified and not the fault of the lawyer, if that makes sense. There is a very significant gap and what is happening now is that claimants are subsidising the system through legal costs.

CHAIR: Have you participated in the current review?

Ms GUMBERT: The FMRC review? I believe my firm was one of the firms that were sampled for the FMRC review.

The Hon. DAVID CLARKE: People have spoken about apples and oranges today. The apples are the lawyers and over the operation of this scheme their proportion of costs has been dropping and the proportion of profits of the oranges, the insurers, has been growing. Is that a broadly correct analysis?

Ms GUMBERT: The point is that lawyers are still charging for their proper costs, it is just that the claimants have to pay a higher proportion of those costs than they would have had to pay if they were not in this scheme.

The Hon. DAVID CLARKE: I will correct my statement. The apples are not the solicitors, it is actually the injured parties who are being squeezed more while the profits of the insurance companies, according to these figures, have been growing.

Ms GUMBERT: It is the accident victims that are feeling this, not the lawyers.

Dr MORRISON: It is very easy to paint any increase in scheduled legal costs as being simply money for lawyers. The reality is that it is not. The lawyers will still be entitled to their reasonable costs. The difference is that the insurers get a subsidy from the injured people because the difference between party-and-party costs and solicitor-client costs comes directly out of their damages and will effectively make it uneconomic to sue in some claims. That is even more of a problem under the Civil Liability Act, but it is a problem under motor accident claims as well. Whilst the Law Society submission said that the expectation was a recovery of 60 to 65 per cent of the true cost, we should not accept that as being either fair or proper. It is something that has grown up gradually. Back in the 1970s, when I started practising, you recovered 80 or 90 per cent of your legal costs. Governments over the years have found it convenient to say that they are keeping legal costs down, but they do not. All they do is subsidise the insurers' position out of the moneys of the injured people. In England you recover 100 per cent of proper legal costs. That is, there is no excess to be borne by the injured person. That is what should occur here.

The Hon. DAVID CLARKE: The truth of the matter is that we talk about the financial success of this scheme but it has been achieved as a result of slashing compensation and damages receivable by injured parties. That is basically the bottom line, isn't it?

Ms GUMBERT: That is exactly right. The most significant area in which you see that is in awards for pain and suffering because it is through the introduction of the threshold of greater than 10 per cent whole-person impairment that we have seen massive reductions in the amounts that have been paid out. Most people are no longer entitled to receive anything for their pain and suffering.

The Hon. JOHN AJAKA: We have raised previously the aspect of not being able to aggregate the 10 per cent—not being able to aggregate the psychological with the physical. Is it your view that the system should be changed to allow aggregation?

Dr MORRISON: No, our view is that the whole process of MAS assessment should be done away with and that the civil liability threshold should be the threshold for all accidents in this State, whether that is in employment—

CHAIR: Going back to the old system.

Dr MORRISON: Yes, because the Civil Liability Act system is what we used to have under the Motor Accidents Act. The cries by insurers that they were going to go broke if the system was not changed were shown to be incorrect by the figures that came out immediately after the change and before the change had had effect. They were not unprofitable. They were profitable under the Motor Accidents Act and they have been even more profitable now that they have reduced their payouts for pain and suffering. That just cannot be justified. What is worse is the fact that we as lawyers spend so much time in court arguing about what sort of accident it was instead of how much the person is entitled to. That is where the money ought to be going—not in lawyers' fees, not on wasted appeals and submissions on technical issues between insurers and plaintiffs' lawyers, but rather on compensating victims.

Ms GUMBERT: Could I add to that in answer to your question? I agree with Andrew, our primary submission is definitely that the whole person impairment threshold should be removed. However, if that is not going to happen—

The Hon. JOHN AJAKA: Your default position?

Ms GUMBERT: The default position would be that you should get rid of the difference between psychological and physical impairment so that you can combine the two. At the moment you do have situations where you can have someone with 10 per cent physical impairment, which is a very serious impairment, 10 per cent psychological impairment, which is very serious also, and yet that does not combine to be 20 per cent. It combines to be effectively nothing.

The Hon. JOHN AJAKA: Or worse, you could have 9 per cent and 9 per cent.

Ms GUMBERT: Actually 10 per cent and 10 per cent is the worst because it has to be greater than 10 per cent. You could equally have 9 per cent and 9 per cent, it would be the same problem.

The Hon. JOHN AJAKA: As a further fall back, assuming one and two do not occur, should the 10 per cent threshold be reduced?

Ms GUMBERT: Yes. One of the problems with the 10 per cent threshold is that there are many, many injuries that, under the guidelines, equal exactly 10 per cent rather than being over 10 per cent. We find that there are a lot of injured people in the 7, 8, 9 and 10 per cent categories.

The Hon. JOHN AJAKA: If you had a 5 per cent threshold, far more would be covered?

Ms GUMBERT: Yes. The aim of this threshold was only ever to exclude minor injuries.

The Hon. JOHN AJAKA: The old whiplash injury.

Ms GUMBERT: It is not doing that; it is excluding a huge range of injuries, including very serious injuries. If it is not going to be abolished altogether, which is our primary submission, then reducing it to a lower threshold would make it a lot better.

Dr MORRISON: The Motor Accidents Scheme [MAS] also costs a lot of money. It produces a great deal of delay in recovery because if the injuries have not settled, then a MAS assessment cannot be completed. It is open to insurers to ask for a review of MAS assessments on multiple occasions. I have seen it up to six times. So that years can go by while this process occurs. They have got a decision they do not like, so they keep going back and saying, "We have a new report. Have a look at this. Surely that will change your opinion." If eventually they find a MAS assessor who agrees with them, bingo, they are in business. It is very expensive and difficult for a claimant to deal with it.

The Hon. JOHN AJAKA: If they continue to fail and keep going back, as you say, for a review, they are not penalised by way of cost orders. So, in effect, they have nothing to lose?

Dr MORRISON: That is true.

The Hon. JOHN AJAKA: Looking at the aspect of Supreme Court appeals, if a party were to lose considerably, whether that party was the claimant or the insurer, the costs should reflect that. It should not be a

situation where, to be fair, neither an insurer nor a claimant should be so out of pocket if they have obtained a costs order. Do you agree with that initial position?

Dr MORRISON: Yes.

The Hon. JOHN AJAKA: Looking at what is fair for a claimant, if a claimant is succeeding in their Supreme Court appeals, is it your contention that should be closer to the court ordering solicitor-client costs as opposed to party costs, which are around 60 to 65 per cent?

Dr MORRISON: Yes.

The Hon. JOHN AJAKA: In relation to Zotti's case, do you agree with the view of the Bar Association that an amendment is needed and needed urgently?

Dr MORRISON: We would agree with the submission that has been made by the Bar Association. Mr Stone handed up earlier a proposed amendment that seems to us to meet the case, for the reasons he set out.

The Hon. JOHN AJAKA: So you do agree with that proposition?

Dr MORRISON: Yes. Zotti, of course, is on appeal to the High Court. We have not got the judgement yet, but it is an unacceptable situation.

The Hon. JOHN AJAKA: That we wait for the High Court to make a decision rather than act on it immediately?

Dr MORRISON: I have spoken to senior counsel for the plaintiff in Zotti. That case is actually proceeding against a person who is now an uninsured driver and their house is at risk. That is an unacceptable situation; it is an unexpected situation. The insurer took a premium expecting to have to pay out in exactly that situation. It is unacceptable that because of the constant narrowing of the third party policy there are now large areas of insurance that no longer give us the universal third party insurance scheme that this Parliament brought in in New South Wales in 1942. That is a wholly unacceptable outcome that has been produced by insurers constantly rewriting the definition of "motor accident" in order to narrow their liability.

The Hon. JOHN AJAKA: Would the same view be held in relation to Doumit's case?

Dr MORRISON: Yes. I appeared in Doumit in the Court of Appeal where I lost two-one. I was unable to get special leave, unlike in Zotti in the High Court. What you need is to picture this: You decide you will go skiing at Charlotte Pass this year. You catch the over-snow transport from Perisher to Charlotte Pass, which is a bus on tracks. The driver of the vehicle does not have to have a licence. He is driving on a public road but there is no requirement for a licence. That vehicle does not have to have registration or insurance. In fact, of course, the driver does have a licence and the vehicle is registered and insured. But if through that driver's negligence you are injured, you will not be covered by the third party scheme.

Although the Roads and Traffic Authority has taken its money and the insurer has taken its money, there will be no payout because it does not fall under the cover of the scheme. You have no protection. There are going to be tens of thousands of people put at risk this winter on a public road between Perisher and Charlotte Pass in respect of over-snow vehicles where there is currently no provision requiring a third party insurance payout because it is deemed not a motor accident. That requires urgent attention. It has not received the urgent attention it requires. The Bar Association proposal is a simple legislative solution and we strongly support it.

The Hon. GREG DONNELLY: Would you comment on the working relationship between you and the Motor Accidents Authority and the Lifetime Care and Support Authority?

Ms GUMBERT: We do have a good informal working relationship with both the Motor Accidents Authority and the Lifetime Care and Support Authority, probably based largely around personal relationships and the open-door policy that, I believe, Ms Donnelly mentioned this morning. It has been good in the sense that we are able to meet with them. In terms of actually achieving results I think it is less effective than if there were a more structured procedure in place. There is no trouble with arranging to talk to them. It is more just ensuring that there is an outcome that comes from that.

The Hon. GREG DONNELLY: Are the meetings structured? Do you meet at predetermined times and use an agenda, or is it a case of just ringing up and meeting?

Ms GUMBERT: To date we have called the meetings. We have requested them and set the agenda for them. That has been the case both with the Motor Accidents Authority and the Lifetime Care and Support Authority.

The Hon. LYNDA VOLTZ: You have raised the issue of fees for legal costs. The Lifetime Care and Support Authority earlier today raised the issue that it had to put money aside for a proposed pay equity case. Whilst there is the issue of the amount paid in legal costs, do you have a view whether in these industries the bulk of carers are some of the worst paid people within the State? Do you believe there is a pay equity issue that is not being addressed throughout the industry?

Dr MORRISON: That is not a matter we have entered into. You might be right about that, but it is not really a legal question and it is not really a question that falls within our area. To answer the first part of your question, in respect of the legal costs under the lifetime care scheme, it is of very grave concern that only in respect of the definition of "motor accident" are costs recoverable. There are other legal questions that arise. Although the authority says that they are medical questions, the fact of the matter is that the Act states it is reasonable and necessary, and that is the test of care. Guidelines are then provided which, for example, state that if a child requires a modified motor vehicle—and the child, unsurprisingly, does not own a motor vehicle—they will not pay for the provision of a motor vehicle for a quadriplegic child; they will pay only for its alteration.

They will not pay to provide a house for a child who needs a wheelchair accessible house; they will pay only for the modification of the house. That child does not own a house and after the injury will probably never own a house. There is no provision for that. Those are not purely questions of medical opinion; those are guidelines that we would say are inconsistent with the Act, but there is no-one to speak for that child. The only appeal from decisions is to a tribunal appointed by the authority itself. They say that it is an external independent tribunal but that is rubbish. They appoint the tribunal and they pay the tribunal. It has no proper independence. There is no right of review unless you take a case to the Supreme Court.

Even in respect of a review under the legislation, it has to be undertaken within 28 days and no extension of time is provided. If you have a person who is in a coma or you have a small child whose parents are illiterate or who do not speak English, who will take that action within 28 days? If no extension of time is provided where is the justice in that? There are no legal fees for that person if he or she instructs lawyers to take action on his or her behalf in the Supreme Court. It is a gross injustice.

I should say in deference to the scheme that those running the scheme at the moment do make a real effort to look after those injured people that they are caring for—and that should be recognised—and they bend over backwards to take a generous interpretation of their own guidelines. But that may not always be the case. It is appropriate that those people who have legal rights under the Act have some means of enforcing those rights. I am afraid that that means having proper access to legal advice and not being reliant upon those who, in effect, are in the employ of the authority.

CHAIR: So that is the modification of the current system that you would advise?

Dr MORRISON: Yes. There should be a right of independent review, access to lawyers, and proper costs in appropriate cases.

CHAIR: Earlier I asked a question relating to the legal specialty that exists, for obvious reasons, relating to this issue and to access for rural people. Do you have any ideas?

Dr MORRISON: If you get rid of the MAS, because that would get rid of a vast part of the technicality of the scheme, the Motor Accidents Compensation Act then would become the same as the Civil Liability Act, and lawyers who act, in effect, as general practitioners will again be able to do the motor accident cases. You will give much better access throughout New South Wales because it will no longer be as technical an issue requiring great skill and care to comply with the technical requirements of motor accidents compensation claims.

CHAIR: I have no intention of implementing an evaluation of past processes to work through the distribution of big wins. From my recollection of the world and life, very few wins went to country people.

However, many country people become permanently incapacitated from motor vehicle accidents. Is it possible that there has always been an equity issue?

Dr MORRISON: If I may say so, I am not sure whether that is an equity issue. What happens generally speaking is if that a country person suffers a catastrophic injury, it is not necessarily a motor accident claim. They need lawyers who have considerable experience and deep pockets. For, say, a quadriplegic claim you might well have to spend $50,000, $60,000, $70,000 or $80,000 in disbursements to get the expert reports—the engineering, technical and medical reports—in order to get it to trial.

Only solicitors with deep pockets will be able to fund that. Civil legal aid virtually ceased to exist in New South Wales other than for Aboriginals, so it is the lawyers who are providing legal aid on a no-win, no-pay basis, and the lawyers are funding these sorts of actions. I am afraid that very few country firms of solicitors can do that. Their overdrafts would not bear it and the consequence is that the big and difficult claims inevitably go to city lawyers. I do my share of those sorts of major claims. In general, when a country lawyer has started such a case that country lawyer will refer the case on to a city firm because you need deep pockets to run such cases.

The Hon. JOHN AJAKA: On that issue the same principle could apply to many of the city suburban firms. If they do not have deep pockets they will not be able to fund one claim for $40,000. Are we creating an environment in which we are compelling claimants to go to the large firms that put on the 1,000 or 2,000 cases and—if I can use the word—churn them?

Dr MORRISON: I do not like the word "churn" because good large firms vary. There are those that do not do a good job and there are those that do a very good job.

The Hon. JOHN AJAKA: I meant churning from the deep pocket funding point of view.

Dr MORRISON: The fact of the matter is that, sadly, you need deep pockets to run major cases.

Ms GUMBERT: I could add to that, although I might take that question on notice. I believe that arrangements are currently in place for certain organisations that fund disbursements to be set up so that it is credited by the Law Society. Essentially they can fund smaller practitioners and smaller firms who have the expertise to do this sort of work, but perhaps not the deep pockets.

The Hon. JOHN AJAKA: You then go back into the litigation lending concept. There is always a cost to litigation lending, no matter how wonderful its sounds. At the end of the day there is an ultimate cost. They are not doing it for nothing.

Ms GUMBERT: That is the case. I will take that question on notice so that I can provide you with a proper answer. However, I believe that part of the process with the Law Society is to ensure that it is done properly.

The Hon. JOHN AJAKA: I was not trying to be critical of law firms; I wanted to establish whether the system should be looking more at the insurer providing money upfront to meet some of these disbursements. That is where I was ultimately heading. In other words, why should either the claimant or the law firm have to meet those disbursements? Why are the insurers not providing an upfront disbursement allowance?

Ms GUMBERT: That is an excellent point. In the current system there are already severe deficiencies in the upfront payments that are being made. Generally, claimants are not entitled to receive any of their lost income until their claim is finalised, which can take many years. Obviously, that places huge financial pressure on them. At present the only area in which the insurer is obliged to make upfront payments is in relation to medical expenses. It is something that we will probably need to take on notice in order to provide a proper response.

The Hon. JOHN AJAKA: I would appreciate that. I have not done a third party claim in about 15 years. I remember some of the disbursement costs 15 years ago, and I can only imagine what some of those disbursement costs would be today.

Dr MORRISON: I might be an able to answer the question more directly. In a non-motor accident claim there is provision for interim damages. Therefore, in an appropriate case you can obtain money that will

allow that person to continue without being dependent upon Centrelink payments. Unfortunately, that does not apply under the Motor Accidents Compensation Act. If we got rid of those elements of the Motor Accidents Compensation Act and left the general right to interim damages—something for which lawyers have been arguing, to my knowledge, for the past 20 years—many people would not be at risk of losing their houses because they have suffered an accident, and there would be a lot less marital break up because those who are traumatically injured are struggling to keep their families together.

CHAIR: Thank you for giving evidence today. It is possible that Committee members will have more questions for you. If you receive any question on notice you have 21 days within which to return the answers to the Committee. Thank you for giving us your perspective this afternoon.

Dr MORRISON: Thank you.

(**The witnesses withdrew**.)

MARY MAINI, Member, Motor Accident Insurance Policy Committee and Chair, CTP Claims Managers Committee, Insurance Council of Australia, sworn and examined:

ANTHONY ERIC MOBBS, Member, Motor Accident Insurance Policy Committee, Insurance Council of Australia, affirmed and examined:

CHAIR: Thank you very much for coming today. Do either or both of you wish to make a short statement?

Mr MOBBS: Thank you for the opportunity to give evidence to this committee. As we have mentioned, we appear today as members of the Insurance Council of Australia and the committee that we have for CTP. Mary is also the chair of the Claims Managers Committee. Together we will do our best to answer the questions and address some of the issues that have arisen earlier today. I start by saying that we think that the scheme is, on the whole, performing pretty well. There are areas of enhancement, as with any scheme. We believe that the scheme is largely achieving the objectives of the 1999 reforms: the scheme is fully funded, motorists have choice of insurer, their compensation dollar is meeting the needs of injured people, the time to resolve claims is generally conclusive, and there are good processes in place to enhance the scheme as time goes by.

Profit levels has been a topical area for the day. I am sure this will come up in more detail later on, but CTP is a very long-tailed scheme. We pay claims anywhere up to 20 years from when we write the policy and the assumptions that we make have to be valid for those 20 years. Almost all claims cannot be paid out immediately. There are many reasons—medical and causation issues—that affect how the claim will run and how long it takes to work out what to pay. The Motor Accidents Authority [MAA] ensures that the scheme is fully funded from year to year and that there will always be enough money to pay on the life of those claims up to and including those claims we pay in 20 years.

There are areas we have looked at today as well, superimposed inflation being one of them. If we look at the average size of claims and the analysis we do, there are increasing awards for future economic loss and future care, and this has been particularly evident since 2005. We welcome the review into the CARS process, which the MAA is expected to commence shortly, and we would expect this review to examine all the trends and identify solutions.

Accident notification forms has been a recent change to the scheme. Although it is only very early days since it was increased from $500 to $5,000, in that short time we have already seen evidence of an increase in applications. We have also seen corresponding increases in section 74 claims and we have also seen evidence that they are now converting to full claims. If these trends continue they will undoubtedly impact upon the costs of the scheme.

In conclusion, the scheme is made up of many stakeholders, and we acknowledge the contribution of all to the health and effectiveness of the scheme. We value our relationship with the MAA and the Lifetime Care and Support Authority and the free exchange of information and assistance on all aspects of the scheme with those authorities. The Insurance Council believes that the motor accidents scheme in New South Wales is meeting the public's expectations in terms of affordable premiums and compensation to injured parties. I think Mary also has a statement.

Ms MAINI: When some of the other members were giving evidence I was shaking my head in the background. I just wanted to make the point that there will be some things that we will probably take on notice and expand on further in our submission. Also, I think the Australian Lawyers Alliance raised that there is no ability for interim damages. I want to correct that to say that anybody who is injured in a motor vehicle accident can make a request for payment of their loss of earnings. These introductions to the scheme have been put in place to facilitate any defects that people may have had in accessing damages.

The other thing in relation to disbursements, and we will probably cover that more, is that with most of the insurers, if not all the insurers, if there is anyone who is out of pocket we will reimburse. It is almost like general principles. We can expand on that further on but I just wanted to clarify those points.

CHAIR: I will start with a question that is not on your warning of questions. Can you tell us what effect it has had on you people as a group in the long-term of having some organisation like the Motor Accidents Authority operating as a regulator or delivering an oversight on the way that you operate? What effect has that had on you and what do you think about it? Is it useful? Is it a nuisance? Where do you perceive it fits?

Ms MAINI: That is a very good question. I will probably answer it from the claims manager's perspective and Tony can probably answer it from a product perspective. If we take a whole-of-scheme approach it is quite beneficial in that at least you know that there is regulatory oversight so that you do not end up repeating an HIH. If you take a community approach, the fact that you have regulatory oversight is always a positive.

CHAIR: Yes, housing keeps coming into my head as an example.

Ms MAINI: That is a broad view. The best way that I can describe the relationship is, in a way, having two lots of employers. I know that strictly that is not correct, but insurers have three entities that they report to. One will be they have to serve the interests of their stakeholders and their shareholders, the other one is their employing entity and the third one is you have oversight through the regulatory environment that we sit within. Given that sort of level of interaction, I think it is quite healthy. There are times when we as insurers believe that there might be too much regulation, and if there is we will probably speak up. Other times we might suggest more regulation. At the moment it is a healthy tension and a healthy balance.

Mr MOBBS: I support some of those sentiments. All the insurers realise that we not only have our shareholders to look after, but also we have the social obligations that are set out in the Act. We are cognisant of that as we go about our duties of setting our premiums and administering the scheme from our perspective. We hold that really in the forefront of our mind at most times. The other benefit of the Motor Accidents Authority in particular is that there are scheme issues that cannot be addressed by one insurer alone. Because of the long-tail nature, which I am sure we will come to in just a moment. There are many issues we get a sense of today that will not become real issues for several years. Unless the industry, including the regulator and the lawyers involved, all move together to address problems, there really can be much bigger problems down the line. We really support the operation of the authority.

The Hon. DAVID CLARKE: This inquiry is the tenth review of the Motor Accidents Authority and Motor Accidents Council. The Insurance Council is a member or sends a representative to the Motor Accidents Council. I am disturbed that the council has not functioned for some 16 months. As far as the Insurance Council is concerned, it has always been ready, willing and able to participate, if invited to do so, is that the situation?

Ms MAINI: Yes, that is correct. I have been appointed as a member of the Motor Accidents Council.

The Hon. JOHN AJAKA: Is this the new appointments?

Ms MAINI: The new appointment. The first meeting is scheduled for next week.

The Hon. DAVID CLARKE: A comment was made by Mr Mobbs that by working together with the lawyers and the other parties you get good outcomes and so forth?

Ms MAINI: Yes.

The Hon. DAVID CLARKE: The Motor Accidents Council is the best way of doing this, would you agree?

Mr MOBBS: It is certainly one of the mechanisms.

The Hon. DAVID CLARKE: It is a formal mechanism in which to do that. There are informal and other approaches, but that is one part of the process that helps the scheme operate?

Mr MOBBS: It is one part of the process, yes.

The Hon. DAVID CLARKE: You probably heard some of the earlier discussion from the representatives of the Law Society and the Bar Association on this question of insurer profitability projections. Would you like to respond to that and put your point of view on it?

Mr MOBBS: Of course. We have not had the benefit of receiving the chart that was distributed earlier, except for about five minutes ago. I have not had an opportunity to familiarise myself with it.

The Hon. JOHN AJAKA: We are happy for you to take the question on notice.

The Hon. DAVID CLARKE: Yes.

Mr MOBBS: Of course, but what I have is this. I brought my own graphic, which I am happy to table. I have copies for the Committee and I have a larger one here to which I can talk. To talk about the nature of the payments we make, this is a chart showing payments we make and the time period in which we make them. You will see on your own copy that on the bottom axis we have the number of years in which we make the payments. You can see that we make payments up to 20 years after we write the policy itself. You can see that the first 5 per cent of payments we make are within the first two years. We do not pay the last 5 per cent for anywhere from 10 to 20 years after we write the policy.

This really gets to the issue of the assumptions we make when we set our premiums and the period for which we have to make those assumptions valid. It is even a little more complex because when we set the premiums, the regulatory approach we follow requires us to look at the historical claims over many years, and that is a very involved process and can take us several months to perform that analysis. That all has to be completed prior to our lodgement of the premiums with the authority. It then can take up to three months before those premiums are accepted. We have a tremendously long period after we set the parameters for when we collect the money and then the payments are well and truly after that.

I think you heard earlier today that within three years we booked our profit and it is all over and we know what the situation is. That is just incorrect. Within three years we have paid out less than 20 per cent of our total claims. There is still a whole lot more to run on the claims. There can be legislation that affects our future profitability. There can be changes in regulatory approaches. There can be superimposed inflation. There can be all manner of things that might affect—even media storms—our future payments. It is several years before you can accurately assess our profitability.

The Hon. JOHN AJAKA: Do you have any idea of the number of years?

Mr MOBBS: On the chart you can see that by about the fifth year we have paid about 50 per cent of our claims. At that point we are firming up our view as to where that year will round out.

The Hon. DAVID CLARKE: Are you saying that the surplus profit on here in later years is falling and then going into minus is related to this underwriting?

Mr MOBBS: I must admit that I cannot comment on annexure A provided earlier, but I can say that it is several years before you can form any accurate view as to our profitability for any one underwriting year.

The Hon. GREG DONNELLY: How long is "several"?

Mr MOBBS: By the end of the fifth year we have settled 50 per cent of payments, so we are coming to a view at that point. It is not until you get to about 10 years before you can accurately say where that year will end up. With the premiums we collected in 2000, we are coming to a pretty reasonable view as to where that will end up.

The Hon. DAVID CLARKE: It might be a good idea to take this question on notice and then provide a considered response. You can do your own investigations and then perhaps come back with some response to the implications of what they suggest in this document.

Mr MOBBS: We will do that.

The Hon. DAVID CLARKE: That will give you the opportunity to respond fully.

Mr MOBBS: We are happy to do that.

The Hon. JOHN AJAKA: Thank you for that. I note that you have heard a quite a bit of the evidence. It appears that given what we have heard so far the system is working, but it needs some tweaking. However, according to others it needs a lot more tweaking. There still seem to be a number of areas of real concern. I will give you those collectively because we may run out of time. If you could take my question on notice I would be grateful.

Ms MAINI: Sure.

The Hon. JOHN AJAKA: One of the main areas of real concern is the MAS scenario, which is continually raised as causing huge problems. CARS seems okay, but MAS is a disaster. The evidence so far suggests that it should be completely abolish or at least very well tweaked.

CHAIR: Did you hear those words?

The Hon. JOHN AJAKA: Yes. The 10 per cent threshold is continually raised. In that respect, should it be abolished completely, should it be reduced to 5 per cent or should it the threshold be combined for psychological and physical? Another area that has attracted serious concern is legal costs. That has two components: whether the party-party costs are sufficient when compared to solicitor-client costs. The other issue is whether when an appeal to the Supreme Court is successful the claim is fairly dealt with in relation to costs. The final issue is the recent cases of Zotti and Doumit. Do you agree with those views? Do you believe that some substantial tweaking still needs to be done to maintain the current system and to allow it to continue? On the other hand, is tweaking unnecessary and are we suddenly going to see green slips go through the roof?

Ms MAINI: That is a good question. We will take most of those questions on notice. It has been an evolutionary scheme rather than a revolutionary scheme. That is one of the hallmarks of the success of the scheme in New South Wales. It depends on whether the community is ready for a structural overhaul or whether as a community we are happy to keep evolving. I believe that the Insurance Council would say that generally MAS does work. It is a medically based scheme and that is one of the elements of the Motor Accidents Act. If you accept that then you have medical assessors making medical decisions. If you move away from that and towards a legal scheme, that means a complete rewrite. We would then be into a revolutionary scheme design rather than an evolutionary scheme design.

The Insurance Council would submit that the MAS system works. We can always tweak and improve. That is one of the reasons we have the MAS reference group. That group involves participation by the ALA, the Law Society, the Bar Association, the Insurance Council, MAS assessors and CARS assessors. That is overseen by MAS. The functions of the MAS reference group improve that scheme. The Motor Accident Council comes into play when we are looking at legislative change. The MAS reference group looks at operational efficiency, whereas the council will look at legislation.

CHAIR: Policy.

Ms MAINI: I just want to clarify how we operate within the framework. The insurance industry is really looking forward to the CARS review. We are seeing awards increase, but when we read some of the assessments we cannot see why. When we look at it over the cohort, we cannot understand why it is going up. We hope that the CARS review and everybody participating in it will be able to contribute and we will have healthy tweaking.

We will take the question on legal costs on notice. I heard some of the evidence presented today. If you take a very simplistic view, the Bar Association is saying there are profits from insurers and 8 per to 10 per cent is too much. However, you could ask whether 35 per cent is too much. If we are saying that insurers are making too much profit then is 35 per cent potential profit too much for legal costs for a consumer who has made a personal injury claim?

The Hon. JOHN AJAKA: I do not understand. Do you mean the shortfall between party-party and the client-solicitor costs?

Ms MAINI: Yes. Is that too much?

The Hon. LYNDA VOLTZ: Do you mean are lawyers charging too much?

The Hon. JOHN AJAKA: That is what I was trying to get to. Are you saying that lawyers are charging too much?

Ms MAINI: Potentially. Of course, everyone would assume that we would say that because we represent the Insurance Council. That is not where I am coming from. If you are a consumer, what is reasonable? We will take that question on notice. We would like to show the committee some of the scales. For example, if you end up with a settlement of about $10,000, the regulated fee that the insurers would pay is about $1,300. Is that too little? That is assuming that there are no liability issues and nothing contentious. We would also pay for disbursements, treating medicals and so on. They are the types of things we would like to take on notice and respond to.

The Hon. JOHN AJAKA: Will you also take on notice the question about interim disbursement and costs?

Ms MAINI: Yes, we will. We will also take on notice the question about Zotti and Doumit.

The Hon. GREG DONNELLY: One of the questions we asked you to turn your mind to relates to profit. The question states:

> Does the consistent trend over the life of the scheme of annually revising estimated profits upwards for each underwriting year indicate that the original profit estimates are incorporating unrealistically high estimates of future compensation payouts into the premiums? If so, at what point do you consider the method of making these estimates should be reviewed?

Mr MOBBS: We would probably disagree to some extent that there is a consistent revision upwards.

The Hon. GREG DONNELLY: Why would you disagree?

Mr MOBBS: That is based on some of the evidence that might have been presented by the Bar Association or one of the other legal associations. The report was not provided to us in their submission. Does that make sense? I think they referred to a Cumpston Sarjeant report when making that suggestion. However, we have not seen the report or the other financial information to which they refer. It is probably best for us to obtain that information from whomever.

CHAIR: That is on the web.

Mr MOBBS: It was not available three or four days ago.

CHAIR: It is an attachment to the Australian Lawyers Alliance submission.

Mr MOBBS: It is not on the web.

CHAIR: We will remedy that immediately.

Mr MOBBS: We are happy to respond once we have seen it. One of the key assumptions that has changed a since the premiums were set 10 years ago is that claim frequency as dropped by about 30 per cent over that period. That has happened for reasons that are largely unexplained. It could be improved road safety, it could be improved cars, and it could be a number of other reasons. When we set the premiums in the early days of the scheme, we assumed one level of claim frequency. It is now substantially below that. That has been to the insurer's advantage.

The Hon. GREG DONNELLY: I will be cheeky enough to ask you how long you think that advantage will play out before the fundamental assumptions are revised.

Mr MOBBS: To some extent, that has already occurred. In 2008 the claims frequency had been dropping until 2008 and it has now climbed by about 10 per cent from the year 2008. We set our claims frequency based on the assumptions of prior frequencies.

The Hon. GREG DONNELLY: You are saying that it jumped 10 per cent from that figure? That actually had declined from the original figure?

Mr MOBBS: That is correct. It went down to a frequency of about two per thousand vehicles. It has now gone up by about 10 per cent.

The Hon. GREG DONNELLY: Do you know what the original assumption was?

Mr MOBBS: The claims frequency was roughly three per thousand vehicles in 2002. It went down to two per thousand in 2007 and it has now gone up to getting close to being about 2.5 per thousand. That is an assumption we made. We made the assumption that it would be two per thousand when we set the premiums for that year, and it is now 10 per cent higher. We bear the risk of that situation occurring. Obviously our future premiums will be struck on the basis of a higher claims frequency. But in the same way that we had the benefit of a reducing claim frequency, we also take the risk and we bear the consequences of an increase in claims frequency.

The Hon. DAVID CLARKE: But you can increase premiums. You can increase the cost of green slips.

Mr MOBBS: That is correct. This year, we can increase our premiums. But in 2008, when we struck our premiums, we were receiving a lower claims frequency and were unable to recover any additional premium to cover that situation.

The Hon. GREG DONNELLY: That explanation of the decline and now rising again to 2.5 per thousand, the insurance industry does a great deal of forensic research into trends and why things do and do not happen. Surely you must have some understanding of what is behind those numbers.

Mr MOBBS: I will have to take that on notice. Our primary focus is on meeting our financial obligations. It is perhaps the role of other organisations, such as the Roads and Traffic Authority, to examine. Indeed, they are actively trying to improve road safety, as one of its ambits of responsibility. We might need assistance from such an organisation as the Roads and Traffic Authority to answer that question in detail. We are interested in trends; perhaps a little less interested, but there is no primary focus as to why that is the case.

The Hon. GREG DONNELLY: But surely trends are pretty important.

Mr MOBBS: They are very important—fundamental, in fact, to our whole process.

The Hon. DAVID CLARKE: Your submission asserts that the current system does not adequately provided a mechanism for treatment reports and records of treatment providers to be provided to the Medical Assessment Service [MAS] or Claims Assessment & Resolution Service [CARS] and, as a result, these relevant records are often not available for consideration by MAS or CARS. Can you describe the extent of this problem and how it impacts on the assessment of claims?

Ms MAINI: I probably will expand on that in our submission as well, but essentially it is not a requirement to provide treatment reports. Some of this has been cured by the introduction of legislation which allows CARS assessors to request from the treating doctor or a hospital, or whoever it is, the treatment records. But our problem with that is that the request is made during the CARS assessment. So what would be great news is if we could actually accelerate that and have access to treatment records earlier, so that we could reduce the cost of having to make an assessment on which to base an application to get records.

The reason for that is, as insurers, we believe that the treating clinician is the best person to provide those records or materials. If we get access to early treatment records or early treatment material from the treating doctor, it will stop a lot of the adversarial approach in relation to having the injured person get an independent medico-legal. That is the reasoning behind asking for early treatment records.

The Hon. JOHN AJAKA: Is it not a problem with the early treatment records—as I said earlier, it has been about 15 years since I practised in this area—that sometimes, especially with general practitioners, the early treatment records are, with all due respect to them, not properly taken, they have not considered everything, and they are completed in a short period of time? Of course, another factor is that the condition changes a little bit over time. The reality is that you can get a very misleading picture by just looking at the first early treatment records. Is that not a risk to a claimant—an unfair risk?

Ms MAINI: It is, but I would doubt if any insurer took just one record and relied on that. As an insurer, it is more about the current clinical picture.

The Hon. JOHN AJAKA: Does the insurer produce every single medical document they have in their possession?

Ms MAINI: Yes.

The Hon. JOHN AJAKA: Is that the current system today?

Ms MAINI: Yes, it is.

The Hon. JOHN AJAKA: So the insurer is no longer permitted to simply have two or three medico-legal opinions, and produce only the one medico-legal opinion?

Ms MAINI: No. It is an all-cards-on-the-table disclosure. That is the difference. That is one of the reasons why we can actually reduce disbursements.

CHAIR: Even though we have done a full inquiry on this difficult process in the past, it interests me how medical assessors actually deliver what they have to do without full medical records. Have you come across this problem? The medical assessors are actually assessing what is there today, right now, having read and absorbed the past medical history. What happens when they do not have access to medical records? Sometimes it is very difficult.

Ms MAINI: I would like to take that on notice.

CHAIR: I know it is complicated.

Ms MAINI: It is complicated, and I do not want to mislead anyone. I would really need to liaise with the motor accidents assessment service as well, to get that material as well.

CHAIR: I should have asked that question two years ago.

Ms MAINI: We will take it on notice, and get our practice as well as the Motor Accidents Authority's practice.

The Hon. JOHN AJAKA: I asked this earlier. One of my concerns is that it is wonderful to be able to keep the green slip premium down. That is fantastic.

Ms MAINI: Yes.

The Hon. JOHN AJAKA: But at the same time, I would hate to think that claimants are being denied fair compensation simply to save one or two dollars, if I may use that expression. From the Insurance Council's perspective, do you believe we have the right balance, or is there room to seriously consider possibly an additional premium, if we are not awarding fair and reasonable compensation to claimants?

Mr MOBBS: I do not know.

The Hon. JOHN AJAKA: It is a catch-22 question.

Ms MAINI: It is.

Mr MOBBS: I think it is really a question of government policy. Our perspective is that it would be close to being a good balance now.

The Hon. JOHN AJAKA: The reason I am asking about government policy is that, ultimately, at the end of the day, you have the actuaries, you are putting up the premiums, you are collecting the moneys, and you are making the payment. We do not actually know that, whether we are in opposition or in government. You really are the person to be able to say whether perhaps you have become focused on reducing the premiums for the goodwill exercise, competition, et cetera. Again, are the segments receiving a fair entitlement or have we

gone too far in trying to reduce the premiums? That is why I was more interested in getting your perspective as opposed to a government perspective. I am happy for you to take it on notice if you need to think it through.

Mr MOBBS: We would need to.

CHAIR: Can you outline for us not necessarily the actual premiums but the process that you go through to work out what you take to the MAA to say when you require a change to the CTP costings? I know you have done it before for us but it is not on the agenda of this inquiry.

Ms MAINI: So at a high level it is going through the premium determination guidelines with just any supplementary material that the insurer needs to provide.

CHAIR: To the MAA.

Ms MAINI: To the MAA.

CHAIR: And they make the decision.

Ms MAINI: Yes.

Mr MOBBS: The premium determination guidelines are extensive and set out a detailed process which we have to follow, and it involves an examination of our own claims data, the industry's claim data. We look at that and work out what the trends are. We have several qualified actuaries internally who prepare that analysis for us. The schedules that we put together in accordance with our premium determination guidelines are then assessed by our external actuaries—an independent external actuary—and they help us prepare the final document. The final submission is in excess of 100 pages long so there are a multitude of disclosures and examination of all of the assumptions, including average weekly earnings rates and inflation rates, yields on bonds, et cetera. Once we put that submission together we then submit that with our set of premiums to the Motor Accidents Authority for examination. They have their own external actuary look at it and I understand that they have an extensive process of examination as well. So it is a very complex and I would like to say robust process as well that we go through involving many different parties.

The Hon. JOHN AJAKA: On that aspect of it—obviously competition is a wonderful thing—I see the advertisements all the time on television. You still have the various insurance companies advertising that their premium is lower than someone else's premium, et cetera. So there is still a nice healthy competition as well to give a balance to the marketplace as far as premiums are concerned. So insurers are not bound by what those processes go through to come up with exactly the same figure—

CHAIR: But they cannot go above it.

The Hon. JOHN AJAKA: I know they cannot go above it, but they still need the competition side of it to allow them to go to a lower premium.

Mr MOBBS: We are certainly bound by the process, and there are limits both high and low—

The Hon. JOHN AJAKA: I did not realise there was a low limit.

Mr MOBBS: Absolutely, and that is called a fully funded test. There is some flexibility within the full-funding test but the limit is that we are required to generate a rate of return acceptable to our shareholders. What is acceptable and what we take from year to year and perhaps some of the reasons for the variation in price is that each of the insurers follows a different distribution strategy. We are targeting different segments of the market, maybe trying to offer deals to not just the CTP but wrap it up with a broader picture to reduce costs, which explains some of that variation in price.

The Hon. JOHN AJAKA: Are you able to tell me roughly the difference between the low mark and the high mark? Are you talking $10, $5, $100? I am happy to take it on notice.

Mr MOBBS: At the moment from 1 July it will be about a $30 difference between the high and the low. It is generally a lot less and what you will find is after a compulsory rate filing there is quite a large

divergence and when we see the prices of our competitors we go "whoops" and we rectify that or we refine the position.

The Hon. JOHN AJAKA: But for the insurance companies the difference will be only from zero to $30.

Mr MOBBS: It will almost never be zero. That has never happened. I think $30 is probably too big a difference.

The Hon. JOHN AJAKA: When I mean zero, they might be both the same premium or there might be $1 less or up to $30 but there will only be a difference of up to $30.

Mr MOBBS: Correct.

CHAIR: Your submission notes in relation to the CARS process "there are pockets of superimposed inflation in the areas of future economic loss and care in particular". Can you explain the situation to the Committee, including the recommendation you propose to address it?

Ms MAINI: One of the things that we have observed is that—and this is one of the submissions that we have made to the Motor Accidents Authority and this is covered in the authority's terms of reference—is to actually look at some of the assessments, because one of the areas that we are concerned about is care and that there are increasing awards or assessments for care where there is just no medical or there is no evidence in support.

CHAIR: You are not getting information back to define exactly what is required and why, is that what you are saying?

Ms MAINI: In a way. Our claims costs are increasing and then when we analyse them we see that if a matter has gone to a CARS assessment there has been an assessment for future care and then when we review the files there is no medical evidence. There is nothing to suggest that the person actually required or sought care and assessments have included that component of care in them.

The Hon. LYNDA VOLTZ: Because they may be required in the future?

Ms MAINI: We do not know and that is our concern—and this is one of the healthy tensions of the scheme. When I was saying if we want evolution or revolution, do we want a medically based scheme or are we comfortable in working within the two forms?

CHAIR: So you want more medical information and you are not getting it?

Ms MAINI: No. What we are saying is that in some cases we have no medical information and a CARS assessor will make an assessment for care where there is no evidence, whether it be medical or any evidence. So in a way that is increasing—

CHAIR: Or social.

Ms MAINI: —the assessment and increasing the costs. That is to the point made by Hon. John Ajaka about the balance.

The Hon. JOHN AJAKA: Is there an argument for—and please feel free to tell me absolutely not—for example, that you do not have a situation of the one medical assessor but you look more at a panel of assessors as the initial assessor, for example, one being a lawyer, one being a doctor and one being a member of the public, almost similar to some of the consumer tribunal set-ups or are we looking at such an escalating cost that we could never justify it?

Ms MAINI: I would like to take that on notice because when you asked the question previously I thought, "Good question. Could we do that? How would that work?" In a way you are saying let us combine the medical. There is a system called MEDARB in alternate dispute resolution processes where you start off in mediation and you end up—in a way it would not be dissimilar to that. I do not know whether all we are doing is just increasing more costs.

The Hon. JOHN AJAKA: The concern is that if you have a mass assessment that is so binding, almost encased in concrete once it is made, and a substantial error has been made by that assessor, leaving you the option of Supreme Court, which we know there is the limit there, is it better to not have that problem by having a panel or do you simply remove the qualification that it is binding and allow that to maybe resolve the problem?

Ms MAINI: It is something we would like to take on notice because as insurers the CARS assessments are binding for us.

The Hon. JOHN AJAKA: And I understand that. It works both ways. The assessment could be dreadful from an insurer. That is why I am trying to do it as a balance, not always that it works against a plaintiff. It could well and truly work against the insurer as well.

Ms MAINI: I would like to take that on notice. The other point I just wanted to make with the superimposed inflation, what we are seeing is some increases in assessments, and one of the areas that we are concerned about is that if you have low severity claims, for example, low whiplash claims, and there has been an escalation in future economic loss assessments. So that is one other area that, if you are saying—

CHAIR: For prediction. It is a problem for prediction.

Ms MAINI: It is a problem for prediction; it is a problem for premium setting and it is a problem then for saying, "Well, is the majority of the compensation dollar designed to go to the more seriously injured or are we then distributing compensation to everyone?"

The Hon. JOHN AJAKA: Are you saying that the CARS assessors are about awarding too much money in relation to future economic loss for a whiplash?

Ms MAINI: We do not know that. That is what we are looking at.

Mr MOBBS: I think we might have some evidence, which is that the actual average amount awarded is fairly much the same yet for the percentage of cases presented, the award has been given. So there is a higher frequency of award being given rather than an increase in the actual amount.

CHAIR: So this is a discussion that would be very helpfully done at the Motor Accidents Advisory Council?

Ms MAINI: No, this is part of the material that the insurers will be presenting at the CARS review that is being commissioned by the Motor Accidents Authority.

CHAIR: Which will be debated at the Motor Accidents Advisory Council?

Ms MAINI: That is right.

Mr MOBBS: Quite possibly.

Ms MAINI: That was a long-winded way of answering.

The Hon. JOHN AJAKA: I am looking forward to receiving your answers on notice.

CHAIR: You have lots of answers on notice.

Ms MAINI: We do.

CHAIR: You have 21 days and the secretariat will be conversing with you on that. Your information has been very valuable. Thank you for your evidence.

(The witnesses withdrew)

CHAIR: Thank you for appearing before the Committee today and for the two submissions you have sent to the Committee. Although we did not speak to you directly we asked other participants a lot of questions about the issues of concern to you. We acknowledge those and would very much like to hear what you have to say. This is the Committee's tenth review of the Motor Accidents Authority and the Motor Accidents Advisory Council. Last year the Committee resolved to do a review every two years instead of every year. There are broadcasting guidelines that the parliamentary press understand and rules on the way in which the press should operate during inquiries. If you have anything that you would like to give us, please inform the secretariat. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. Protection afforded to Committee witnesses under parliamentary privilege should not be abused during the hearing. Therefore, I request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

GUY JOHN STANFORD, Former Chairman and member, Motorcycle Council of New South Wales, affirmed and examined:

CHAIR: Would you like to make an opening statement?

Mr STANFORD: I would just like to let you know what the Motorcycle Council is about. We are the people on the other side of the equation. We are the ones who are actually buying green slip insurance every year.

CHAIR: For the benefit of the Committee, would you outline what happened to you the year before last with respect to CTP slips?

Mr STANFORD: With the introduction of the life time care and support [LTCS], what we saw was the reduction in the CTP component because that risk was then moved across to the LTCS so there was an expected drop in the CTP, but the dramatic increase in the overall price for motorcycles was obviously contributed to by the introduction of the LTCS. We have a number of concerns in this because we cannot tell what we are paying for. What we have experienced over the year with CTP is that each year it is a kind of, "Oh, whose turn is it this year to offer the cheap CTP?" It has always been variable. It moves from company to company to company through the years.

Even though you can have the same motorcycle at the same address with the same rider, you can find widely different prices across the different companies, but each year it comes out that one of them seems to be cheaper than all the others and so everybody rushes over to that one. It has been a rather peculiar situation considering that this is a compulsory purchase for each year. We have to get our motorcycles pink-slip inspected by the RTA; it is a flat cost to do that. It might cost you some money to get it passed or whatever, but it is a statutory cost, which is a fixed cost. The buying of the green slip, of course, is such a variable thing and it just does not seem to make a lot of sense to most riders.

What we eventually concluded is that CTP is actually priced on the individual company's experience not actually on the overall risk of injury and so this seems to us a rather bizarre way of pricing CTP in the first place. People are not silly; they note these things, but they all get confused when two people who are living next-door to each other, who own the same type of motorcycle, can end up paying such widely differing premiums. It is called competition but it seems to be some sort of game where the insurers seem to be attempting to insure those people who are the lowest possible risk and not wanting to ensure anybody else and then somewhere down the end of the chain, the people who probably most need to get insurance are virtually being priced out of the market or it gets so expensive they do not even bother so they ride unregistered.

There seems to be some anomalies just in the CTP pricing. Again I will emphasise the point that the CTP pricing does not appear to be done on the overall risk of an injury or riding a particular class of vehicle, but on the individual insurance company or participant insurance company's experience with motorcycles over the past year. I am hardly surprised to hear that the insurance people do not seem to have much of an idea about the numbers when it comes to talking about the real risk because it would seem that they are dealing with the finances of it alone and it appears to be as much as anything a marketing game. That leads on to the points that we made about the lack of transparency in the medical care and injury services [MCIS] levy because the LTCS component is calculated as a percentage of whatever this CTP figure works out to be.

CHAIR: So it is not a flat price; it is a percentage of the overall price?

Mr STANFORD: Yes, and this is one of our big concerns. How much money is going into the LTCS Scheme? Does anybody know that? I cannot tell what component I have paid or any of my other members have paid individually as a component for the LTCS. It is all bundled into the MCIS levies. We are told that in the MCIS levies we have got a component in there for ambulance and a bit for emergency rooms and then the rest for the lifetime care and support. How much is that? I cannot tell us what it is for an Aprilia Falco or a Honda Goldwing or for GSXR Suzuki. We have no idea because it is all based on what seems to us slightly artificial pricing of the CTP. How that CTP pricing is agreed to? I know there are all the rules of the game that are established there in the Act and the regulations under the MAA but to a consumer it does not appear to make any sense at all. It is a pig in a poke. You go in, you punch the numbers into the website and you end buying the cheapest thing that is there.

That is the way we are driven to do it, to go to the lowest price alone. There is no question about whether you are selecting for the quality of the product with your buying. You have to make the assumption that it is all the same product and yet the advertising from the difference insurance companies will tell us that it is different; that theirs is better for one reason or another. In fact, some companies have been advertising that the at-fault driver or rider is covered as well until a crash occurs and then they say "Oh, but you are on a motor cycle. We didn't tell you about that motor cycles are excluded". So we know situations where the riders have had their premiums returned and no claim has been made. There is bit of confusion when it comes to the marketing of these products that confuses people. They do not know what they are buying.

CHAIR: We have had discussion about the breakdown of the CTP before. It is a good question.

Mr STANFORD: The underlying problem with LTCS pricing is the CTP pricing itself. I am talking about lack of transparency and that is what I am talking about. We do not know what we are buying. I doubt that anybody does really. When you look at cars—most of us owns cars as well—you find that cars have a very narrow price band but when you look at motor cycles it is widely differing band where you can have a $600 variation on the same motor cycle at the same address ridden by the same person whereas cars do not have that variation.

The Hon. JOHN AJAKA: Are you saying a $600 variation from one motor cycle to another?

Mr STANFORD: No, on the same motor cycle between different companies. That is the first point. I am working off a list of questions as an agenda.

CHAIR: That is very useful and we have extra questions we want to ask.

The Hon. LYNDA VOLTZ: You have a problem with relativity with motor cycles and the different classes and the way it is modelled?

Mr STANFORD: No. It is the fact that the pricing for the CTP, which leverages on to the costing for the MCIS, seems to be based on the individual insurance company's experience of who they got as their customers the previous year rather than the overall risk of injury of riding a motor cycle at that time. So what we are confused about, and what does confuse riders, is what is the real risk of injury of riding a motor cycle and how should that be priced?

The Hon. LYNDA VOLTZ: Is that not what the relativity value is for motor cyclists?

Mr STANFORD: The assumptions in the relativity variation, we are told we are 105 per cent the risk of a car in Sydney. We do not know whether that is true because whatever that variation is is trivial in comparison to the marketing differences.

The Hon. LYNDA VOLTZ: If one drives a car Sydney it has a relativity of 100?

Mr STANFORD: Yes.

The Hon. LYNDA VOLTZ: If one is in, say, Wollongong on a motor cycle the relativity will be 233—100 being the point around which everyone works, and one can either go up or below. So 233 is pushing it high?

Mr STANFORD: That is nearly 2½ times higher.

The Hon. LYNDA VOLTZ: Yes, but it is nowhere near the top of the relativities. Omnibuses have a relativity of 1,000.

Mr STANFORD: Yes, but they carry a lot more people. You crash one bus and you can hurt a lot of people.

The Hon. LYNDA VOLTZ: If we look at the figures what is the difference between buses and motor cycles in terms of injuries?

Mr STANFORD: I could not tell you that off the top of my head, no.

CHAIR: He was not talking about the increased price as he has dealt with that, he is talking about the differentials between different companies and not defining exactly—

The Hon. LYNDA VOLTZ: But he is asking how it is modelled.

Mr STANFORD: I understand the difference in the relativities. It is meant to reflect the risk across the entire population of vehicles but it would appear that the relative risk is, in fact, based on the experience of the individual company rather than the overall risk.

The Hon. LYNDA VOLTZ: Are you building into that age difference, types of motor bike, experience, previous accidents—

Mr STANFORD: That is exactly what we are querying.

The Hon. LYNDA VOLTZ: Would insurance companies make assumptions on that basis?

Mr STANFORD: That is fine for the CTP component. I go back to page 3 of our submission it says that CTP insurance takes into account your accident record, the age of the driver, the age of the vehicle, the type of vehicle, comprehensive or third party property insurance. Why should a comprehensive or third party property insurance affect the injury risk? In fact, for a motor cycle why should the age of a vehicle affect the risk if it is a road worthy vehicle? The type of vehicle, yes I think there is some argument for that.

The Hon. LYNDA VOLTZ: Why would it be any less of an issue for a motor bike as opposed to any other kind of vehicle?

Mr STANFORD: That is true because what you are looking at there is the propensity of that vehicle to cause an injury to another but in the LTCS that is the risk pretty much to the person who is operating the machine.

The Hon. LYNDA VOLTZ: Do you not think there is a greater risk—

Mr STANFORD: I do not think they are immediately related to each other. You can calculate on CTP and you get a figure which is there for CTP but that is not necessarily the same calculation for LTCS. I will come to the bigger aspect of the LTCS in a moment. The problem we have with understanding how this works as a buyer of these products is, because there is such a variation in the pricing, that whenever we ask the question of, how to arrive there, it is the individual insurance company's experience that sets the premium that the MAA approves. It is not based on the overall risk of a claim arising across the whole population.

The Hon. LYNDA VOLTZ: Has the MAA assessment on this CTPs for motor cycles got a huge variation in it?

Mr STANFORD: Oh yes.

CHAIR: That is why insurance companies are able to pay higher—

Mr STANFORD: Yes, and they work the whole range of it. That is where great opportunities for marketing are presented to the insurance companies through that mechanism.

The Hon. LYNDA VOLTZ: Whilst they might be offering some cheaper premiums they would also be rejecting some?

Mr STANFORD: Oh yes, and I think therein lies part of the problem in that if the process is to ensure that everybody is paying something into the CTP scheme for coverage we find in many cases those people who can well afford to it are paying less than those people who can ill-afford to it are paying more.

The Hon. LYNDA VOLTZ: You could make that argument on a socioeconomic basis across all of society. That is particularly when you are talking about risk of insurance. If you live in a very safe suburb you pay less house insurance than someone who lives in a suburb where there is a greater risk. Therein lies the nature of it.

Mr STANFORD: Yes, but this is a statutory scheme so we should vary the price of petrol, we should vary the cost of car inspections for pink slips each year.

The Hon. LYNDA VOLTZ: Yes, but even though it is a statutory scheme, it is statutory scheme that even for motor bikes, certain types of vehicles, certain different types of drivers has great differentiation. A 17-year-old driver is not going to be insured at the same rate as a 40-year-old.

Mr STANFORD: I am not disputing that at all. The dilemma is that, when we get to the LTCS component—which really is a risk that the whole community needs to bear—it results in the LTCS calculation that is based on the CTP component; it is leveraged. So we cannot see that the risk is being evenly spread across the community.

The Hon. LYNDA VOLTZ: Would not that risk with regard to motorbikes be that the statistics would show that there is a greater risk of injury for motorbike riders? Is that not the reality?

Mr STANFORD: That is correct, if you were to take motorcycles in isolation as the entire fleet of motorcyclists being those who are paying into the scheme.

The Hon. LYNDA VOLTZ: If you are looking at the risk element with that scheme, there is a greater risk within motorcyclists, as opposed to some other vehicles?

Mr STANFORD: That is true—the same as there is a higher risk involved in rock fishing.

The Hon. LYNDA VOLTZ: We do not insure rock fishermen?

Mr STANFORD: No. But motorcyclists are defined as vulnerable road users because they are not contained within a cage which has airbags and so on, so they are exposed to the vagaries of the environment in which they have their crash, such as roadside furniture, trees, culverts, other vehicles, and people who get driven over. So, yes, there is a higher degree of risk to the motorcycle rider.

What we have a problem with is that in New South Wales there are about 165,000 registered motorcycles, there are about another 100,000 unregistered off-road-capable motorcycles, and there are probably about another 120,000 kids' mini bikes, or pit bikes. Those small motorcycles, pit bikes or kids' mini bikes are generally held by responsible parents, but—

The Hon. LYNDA VOLTZ: Not the ones I have seen.

Mr STANFORD: That is correct.

CHAIR: None of those are included within the scheme, or within the assessments, because they do not qualify for the Lifetime Care and Support Scheme.

Mr STANFORD: When they end up having a crash on the road because there is nowhere to ride them—

CHAIR: Still they are not covered, unless another vehicle has crashed into them. Then the owner of the other vehicle ends of being guilty. They are not covered because the RTA makes the definitions, and that is by registration. If they are not registered, they are not covered by the scheme.

Mr STANFORD: We know of one case where a kid was mucking about in the front yard. He went out of control on an unregistered motorcycle, and he travelled across the road and crashed into the rockery of a house across the road. He is an entrant to the LTCS scheme because during the process of the crash he travelled across the road. Because it is in a road-related area, he has been included in the scheme.

CHAIR: No, he would not have qualified. We will check on that.

The Hon. LYNDA VOLTZ: If you would like to give us the information, we will check on that.

Mr STANFORD: I think the MAA could provide you with that information, simply from their listings. We do have some difficulties obtaining all of that information because of the private nature of it. So we have got Buckley's of getting it; you have a far better chance than we have.

The Hon. LYNDA VOLTZ: We can ask for that information. If people bring an issue before a committee and say, "We know that this has happened", the obvious question for us is, "Give us the time, date and place." Otherwise, we are getting a lot of hearsay.

Mr STANFORD: In that case, we do not have much to talk about.

The Hon. LYNDA VOLTZ: You brought a specific case that we believe is outside the—

Mr STANFORD: Okay. In that case, I will say we do not have much to talk about.

The Hon. GREG DONNELLY: Could you give the Committee an overview of the activities of the council and essentially what the council does as an organisation?

Mr STANFORD: We represent about 40,000-odd members in New South Wales through their club affiliations. We have been long-term players in trying to improve motorcycle safety in New South Wales. There is a gaunt want with motorcycles, because they are generally not included. Motorcycles fail to make an inclusion in transport planning or transport policy, or roads policy or roads management. As a consequence, motorcycles are pretty much handed over as an enforcement issue for police. Yet, there are a number of things which can be done to improve motorcycle safety. We have lobbied for motorcycle awareness, and we have run Motorcycle Awareness Week continuously since the late 1980s. We finally got some funding in the late 1990s; that remains at about $20,000 a year from the RCA. That is the sum total of our funding.

The Motor Accidents Authority has been extremely useful and very professional, and they have provided some funding. We produced a road safety strategic plan, with funding from the MAA. We produced the first version in June 2002, and following the publication of that we then saw the Motor Accidents Authority put up some money, which the RTA then matched, to run the motorcycle awareness programs here in New South Wales. Those programs have been very effective. Since that time there has been almost a doubling in the number of motorcycles on the road, and yet the total number of crashes has only risen very marginally.

CHAIR: You do not think that is because all the old blokes—?

Mr STANFORD: Oddly enough, there is a very large increase in the over-40s riders. The average age of riders in New South Wales is 42 years.

The Hon. GREG DONNELLY: That doubling in the number of motorcycles on the road is over what period of time, roughly?

Mr STANFORD: Within the last 10 years. That was quite a big advance in motorcycle safety, to see the motorcycle awareness advertising. That was the first motorcycle safety work which has been done in New South Wales, virtually in my lifetime. We make reference to the previous Staysafe motorcycle inquiry back in 1986, which had looked back 10 years and could not find any money spent on motorcycle safety, and that situation has remained.

Roadside furniture and road surfaces remain two of the big problems for motorcycles. Any vertical post is a hazard to a motorcycle rider. Uneven road surfaces, particularly in curves, present a black spot to a motorcycle. Motorcycles are utterly reliant on the grip of the tyre to the road, particularly as they are a single-track vehicle. The slipping of one wheel causes the vehicle to change direction dramatically, as opposed to what happens with a car. Crashes in curves as a result of road surface issues are a significant issue. These crashes, of course, are all classified as speeding by the RTA when they re-handle data from the police into their own database.

To get back to the original question, our work has been in the promotion of safety to riders. As I said, the Motor Accidents Authority has provided some assistance with that. We are currently executing a project with the Motor Accidents Authority in making some training-type videos, just three-minute videos for distribution, to bring particular safety points to the attention of riders. We are a volunteer organisation; we do not have anybody paid in a full-time position who works in the organisation. So things do tend to start and stop bit as time becomes available.

The Hon. GREG DONNELLY: You may not be able to answer this question and you may wish to take it on notice. In other jurisdictions around the world, on the whole issue of motorcycle safety, is there an example of where it is done very well in terms of the way in which it is generally promoted, where there is education, et cetera?

Mr STANFORD: Yes. The best example I have been able to identify is in Sweden. The Swedish Motorcycle Association has a partnering arrangement with the Swedish Government whereby they provide quite a degree of availability of after-licence training. We have had a compulsory rider training scheme in New South Wales only since the 1990s. People of my age got their licence by being able to ride around the block, and come back and fill out the form. There are different types of people who ride, some of whom are great consumers of after-market training, and others who really do not think that anything is necessary.

One of the things we try to do is to bring to people's attention the need for finding out some of these things, and that is our video project that we are currently running with the MAA. We are just doing the best we can under what are, I must say, extremely limited circumstances and—I would not say full opposition from the RTA, but certainly no real assistance. The Roads and Traffic Authority is a big organisation, there are some great people in different parts of that organisation doing tremendous jobs, but motorcycles just do not get included. The RTA appears to manage motorcycles as light vehicles. In other words, they are assumed to be small cars, so when the RTA says, "Well, light vehicles are getting plenty of funding", motorcycles do not rate. The only time we come to the attention of people is because of injuries.

The Hon. GREG DONNELLY: If you had additional resources available to you as an organisation, what would be your priority in deploying those in terms of motorcycle riders in the State? Is it education or is there something else that you would like to elaborate on?

Mr STANFORD: I think the first thing is to start handing out responsibility to a few government departments, which seem to be doing their best to avoid them.

CHAIR: You will have to be more precise than that.

Mr STANFORD: Okay, I will. We have had a succession of ministers for roads. Each time we get a new Minister for Roads, he wipes the slate clean, cleans the desk—"It's a new day, and whatever happened before is not my problem. Start all over again." The net result of that is that with a volunteer organisation such as ours it has brought people virtually to the point of burnout and anger.

CHAIR: Because each time there is a new Minister you have to put forward your issues again?

Mr STANFORD: You have to start all over again, so it did not matter how far down the track you got with developing solutions to problems, they were just swept off the desk and it was, "Start all over again", and there were greater political pressures of the day. It has been an extremely frustrating exercise.

CHAIR: Can you give some examples of the issues?

Mr STANFORD: To come to specifics, one thing is that we must have motorcycles included as a separate class for roads management, for transport policy and for roads policy. That is an absolute essential.

Without that, we are not going anywhere and all the fine detail of what happens at the lower level cannot be fixed because it is impossible under the present structure, or it appears to be impossible, to integrate motorcycle safety into the overall roads management system of the Roads and Traffic Authority. I would direct you to the RTA annual report. Do a search for the words "bicycle", "motorcycle" and "pedestrian" to compare vulnerable road users. When you look at vehicles in general you will find scant mention of any engineering specifics that motorcycles require because of their single-track nature.

CHAIR: You want them considered in relation to road construction.

Mr STANFORD: Road construction, road maintenance, road planning, transport planning, transport facilities. We have been the unseen and unknown, and each time that we come to the surface and start demanding something we find that there will be other pressures, like demonisation, which occurred last year with the CCOC laws. That had a huge negative safety effect on the roads and of course made bringing any issues about motorcycle safety—it was "Who cares about you?" That attitude problem has persisted over a long period of time and it is always dragged out of the bottom drawer and thrown on the table when somebody decides that it is too difficult, "We don't want to do that."

The Hon. LYNDA VOLTZ: There are different road regulations for different users. Is that the implication you are referring to for bikes?

Mr STANFORD: We get some pretty silly road rules, which are suddenly dreamt up and thrown on motorcycles. We have had that through the years. Some of you may remember the exhaust law label or the sticker tax, as it was referred to, that was eventually turned over through a motion in the upper House. We have just had another one arrive, which is meant to be an RTA improvement in safety by defining the sticker on the outside of your helmet, but which in fact creates a commercial cartel of a group of companies who belong to a commercial organisation elsewhere, and it is almost impossible to determine whether your helmet complies with the new law or not. It is still legal to buy the helmet through the product safety system, but it is illegal to use it.

CHAIR: Is this a safety component for helmets?

Mr STANFORD: No, it is a sticker.

CHAIR: You will have to explain that.

Mr STANFORD: On 5 February this year a change to the road rules definitions for the meaning of an approved helmet was put through. We thought that this was just a tightening up to give meaning to the word "approved" to define AS 1698, which is the Australian Standard for helmets, but in fact it now demands that that helmet must have been checked by a third party accreditation body who is an accredited member of an organisation called JAS-ANZ.

CHAIR: It is like electricity safety, they have to do a check on an individual helmet. Is that right?

Mr STANFORD: It is actually quite a complex story, but it has left all riders totally confused as to whether their helmets are legal to wear or not. This is just another little thing that has happened to riders. This type of thing, which has been going for a long time—this is well outside the scope of what we are meant to be talking about here—

CHAIR: That is alright.

Mr STANFORD: But it goes to the credibility of messages from Government and the inclusion of motorcycles in safety programs, which are standard for all other vehicles, but not for motorcycles.

CHAIR: It is not really outside because it is about safety.

Mr STANFORD: It sure is. It is inherently connected, but it is not necessarily within this frame.

The Hon. JOHN AJAKA: I am only raising this from a safety point of view, but there has been some discussion on e-tags for bikes. The argument is that it causes accidents and that would be one of the reasons for premiums going up.

Mr STANFORD: Prior to the first PPP roadway arriving, which was the Sydney Harbour Tunnel, motorcycles traditionally paid one-quarter of the rate for cars. As traffic becomes congested, motorcycles disappear in passenger car unit measures; they disappear in congested traffic. With the amount of weight and road space they take, it has always been seen as a fair rate, but with PPP contracts and tolls, all of a sudden, that disappeared—light vehicles, "You can pay the same as a car". This grates heavily upon riders and there is, I would say, nothing short of seething anger about continuing to have to pay the same rate as a car. I mean a car driver does not expect to pay the same rate as a semi-trailer does.

The Hon. JOHN AJAKA: How do you use an e-tag?

Mr STANFORD: Well, you don't.

The Hon. JOHN AJAKA: Do you just pull up and pay cash?

Mr STANFORD: No, because you can't pay cash.

CHAIR: My son carries one in his pocket.

The Hon. JOHN AJAKA: So you carry one in your pocket, you stop and take it out and you drive with one hand?

The Hon. LYNDA VOLTZ: You cannot stop.

Mr STANFORD: They used to require that if you did not get a beep you would get fined and so on, so the whole trick was people would be running at toll gates at traffic speeds, pulling an e-tag out and then waving it above their head, and you cannot hear it beep, nor can you see the little thing flash in bright daylight, so you have no idea as you are going through. That is all right on the way through, but on the way out, when all the traffic lanes merge, you are still in the process of putting the thing back in your pocket—absolutely ridiculously dangerous.

The Hon. JOHN AJAKA: You have talked about premiums and green slips, but I have never owned a bike, so I have no concept of what is paid. What do you pay in third party insurance?

Mr STANFORD: It is cheaper for me to insure a Toyota Land Cruiser four-wheel drive than to insure my motorcycle.

The Hon. JOHN AJAKA: I am trying to get an understanding of actual dollars. What amount per annum do you pay on your third party premium, on average?

Mr STANFORD: I was going to bring in the whole file that showed that through the years and I did not bring it with me. Would you like me to take that on notice?

The Hon. JOHN AJAKA: I am happy for you to take it on notice. When I asked an earlier witness what is the difference between insurers and third party slips, the minimum and maximum, I got the impression that there was a $30 difference.

Mr STANFORD: No, we are talking about hundreds of dollars difference.

The Hon. JOHN AJAKA: Will you take that on notice so I can understand what it is on average you are paying. If you have got an example of the situation, for example, that you checked with three companies and this company was $300 and this one was $1,000, I would like to know those actual specifics?

Mr STANFORD: Yes.

CHAIR: We do not really need the companies.

The Hon. JOHN AJAKA: I do not need the names. I am happy for you to give me specifics. I did not understand your submission when you said "Effective infrastructure shortcoming—no consideration is given to road design or roadside furniture when building or maintaining roads in New South Wales. This is critical for the motorcyclist and rate of accident severity …" Will you please explain that to me?

Mr STANFORD: For example, we all understand the need for a median divider, which prevents head-on crashes between cars. That is the fence that you see—

The Hon. JOHN AJAKA: I understand that.

Mr STANFORD: That is fine on big, straight, long sections of road but once the road starts to curve you start to have other problems because motorcycles lean over in curves. So our problem there is the placement and the selection of the type of barrier. There is no question that Armco, which is the W-beam that is on big solid posts, it is like a continuous rail—the old term was Armco but the classification is W-beam—or there is the wire rope system with lots of posts with wire running through them, when those are placed very close to the road and a vehicle does not have enough room to recover, to get back on, there are big issues when motorcycles hit those. The effect of hitting those is that the motorcycle is temporarily arrested and the rider is thrown from the motorcycle and tends to roll along the top of the fence. So with Armco-type fencing you tend to get severing of arms, legs, heads, whereas with the multiple posts of the wire rope type they tend to just get shredded by the tops of the little posts. With concrete it presents a smooth surface so the bike tends to slide along, and people have been known to recover and continue on their way after that.

If the motorcycle has already fallen and the rider is sliding on the road, the concrete once again provides a smooth sliding surface. But as you reduce the diameter of anything that a rider hits when they are sliding the rate of injury goes up dramatically—that is the graph that is included in there that shows that any vertical post is a motorcyclist's enemy. The Armco posts are absolutely solid and they do not move. With the wire rope posts, there is more post to wire rope per length of fence than any other type of fence, and the rider's body tends to be flung from post to post to post, and that is what causes the severe injuries there.

The Hon. JOHN AJAKA: Have any studies been done in relation to the fact that these posts are required for the safety of a motor vehicle being utilised? I do not want to be saying that a motor vehicle is more important than a bike rider, obviously not, but at the end of the day when one looks at the users on the road—

Mr STANFORD: That is right. That is what we might call a political mandate. There are more cars so therefore everybody else can—

The Hon. JOHN AJAKA: You are not aware of a system that would be as good for cars as it would be full bikes?

Mr STANFORD: There are systems, which are employed in Europe. The Spanish and the Portuguese both have standards for these systems. There has been a lot of work done in Austria and Germany on this. France has introduced underrun barriers. We can see underrun barriers in use in Victoria and in Queensland; only in one place in New South Wales, very begrudgingly added by the Roads and Traffic Authority on the old Pacific Highway. There are a number of studies around. The Centre for Road Safety is currently undertaking a study in this area, and we are not quite sure where that is up to or what the approach is. The number of motorcyclists who are actually killed by these fences is relatively low but what we do not know is the exact number of people who have been injured by them because it is often not recorded.

CHAIR: The Committee put some questions on notice to the Motor Accident Authority in relation to your issues, particularly about the breakdowns of the CTP process, and we will be following that up. From your original submission a couple of years ago we started this question. So we had a recommendation from the last inquiry in relation to breakdowns from the CTP, and we will certainly be following up that issue. Is there anything else you wanted to tell the Committee?

Mr STANFORD: The main thing is that for the ordinary consumer there is a lot of confusion about how the system operates and about what they are actually paying for. So anything that contributes to explaining that more clearly to individuals rather than keeping it behind this blind of foggy definitions. So if instead of having "MCIS levies" it has got "ambulance, hospital, LTCS, this amount". What we find confusing is that LTSCS is something that the whole community needs to be bearing and not be focused into one group. Riders under the very distinct impression that they are paying for a lot of other people other than just responsible registered riders and that there are a lot of irresponsible unregistered riders who are taking advantage of the scheme because their bike might be capable of registration but unregistered.

CHAIR: I think the rules about that are a bit tighter. Only recently not registered—I cannot remember the definition but it is not just someone who does not register their bike.

Mr STANFORD: Yes. So there is that big question of who is actually covered and what does it cover? It requires considerable clarification.

CHAIR: Has the Motor Accident Authority been helpful in providing any information to you when you have been discussing issues with them?

Mr STANFORD: As far as they have been able to. I believe the MAA has been very professional in its dealings but they just seem to lack the information. There seems to be an inadequate information flow from the insurance companies up to the MAA itself. I do not know whether that is because of legislative limitations on what is required of them or whether it is not seen to be particularly interesting.

CHAIR: So the Committee may not be able to resolve your multitudinous issues but you have certainly given us enough information to take these questions on.

Mr STANFORD: I am very pleased we have had the opportunity. I commend the Committee on its inquiry and I wish all members well. I hope that we all get to the bottom of it for a system that works well for everybody.

(The witnesses withdrew)

(The Committee adjourned at 4.16 p.m.)