

Standing Committee on Law and Justice

First review of the Compulsory Third Party insurance scheme

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Table of contents

| | | |
|------------------|---------------------------------------------------------------------------------------------------------------|-------------|
| | Terms of reference | v |
| | Committee details | vi |
| | Chair’s foreword | vii |
| | Recommendations | viii |
| | Conduct of review | ix |
| Chapter 1 | Overview | 1 |
| | Oversight role of the committee | 1 |
| | Overview of the CTP insurance scheme | 1 |
| | Role of SIRA | 3 |
| | Insurance providers | 4 |
| | Recent moves to reform the scheme | 4 |
| | Motor Accidents Injuries Amendment Bill 2013 | 4 |
| | Motor Accidents Compensation Regulation 2015 | 5 |
| | 2016 options paper | 6 |
| Chapter 2 | Scheme performance | 9 |
| | Key performance measures | 9 |
| | Affordability | 9 |
| | Efficiency | 12 |
| | Insurer profitability | 14 |
| | Claims experience | 19 |
| | Injury prevention and management | 23 |
| Chapter 3 | Recommendations from the previous scheme review | 27 |
| | Recommendations from the 12th review of the exercise of the functions of the Motor Accidents Authority | 27 |
| | Recommendation 1: Motor Accidents Advisory Committee | 27 |
| | Recommendation 2: Motorcycle CTP premiums report | 29 |
| | Recommendation 3: Exemption of cases from Claims Assessment Resolution Service | 30 |
| | Recommendation 4: Scheme efficiency data | 32 |
| | Recommendation 5: Insurer profit review | 33 |
| | Recommendation 6: Competition between insurers | 33 |
| | Recommendation 7: Scheme performance report | 34 |
| | Recommendation 8: Superimposed inflation | 35 |
| | Recommendation 9: Motor Accidents Compensation Regulation 2005 | 36 |
| | Recommendation 10: Physiotherapy review forms | 37 |

| | | |
|-------------------|---------------------------------------------------|-----------|
| | Recommendation 11: Information for carers | 39 |
| | Recommendation 12: Damages for non-economic loss | 40 |
| | Recommendation 13: Legal causation | 42 |
| | Recommendation 14: Settlement conferences | 43 |
| | Recommendation 15: Late claims | 44 |
| | Recommendation 16: Accident Notification Form | 46 |
| Chapter 4 | Fraud, exaggeration and claims harvesting | 49 |
| | Fraudulent and exaggerated claims | 49 |
| | Claims harvesting | 53 |
| | Measures to address the issues | 54 |
| | Stakeholder suggestions | 54 |
| | Government initiatives | 56 |
| Chapter 5 | Future design of the scheme | 59 |
| | New South Wales Government reform plans | 59 |
| | Journey claims and worker protections | 61 |
| | Motorcycle classes | 63 |
| | Non-motorised vehicles and dirt bikes | 64 |
| | Premium setting for ride-sharing operators | 66 |
| Appendix 1 | Submission list | 69 |
| Appendix 2 | Witnesses at hearings | 70 |
| Appendix 3 | Minutes | 71 |
| Appendix 4 | Dissenting statement | 83 |

Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.

2. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have the authority to investigate a particular compensation claim, and
 - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.¹

¹ *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

Committee details

Committee members

| | | |
|-----------------------------------|------------------------|---------------------|
| The Hon Shayne Mallard MLC | Liberal Party | <i>Chair</i> |
| The Hon Lynda Voltz MLC | Australian Labor Party | <i>Deputy Chair</i> |
| The Hon David Clarke MLC | Liberal Party | |
| The Hon Daniel Mookhey MLC | Australian Labor Party | |
| Mr David Shoebridge MLC | The Greens | |
| The Hon Trevor Khan MLC | The Nationals | |

* The Hon Trevor Khan substituted for the Hon Bronnie Taylor for the duration of the review.

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Chair's foreword

For the past 17 years this committee has had an oversight role in regard to the Compulsory Third Party (CTP) insurance scheme. Between 1999 to 2014 the committee conducted 12 reviews of the implementation of the scheme by the former Motor Accidents Authority (MAA). Following legislative reforms to the state's insurance and compensation schemes in 2015, the MAA was abolished and its role assumed by a newly established organisation – the State Insurance Regulatory Authority (SIRA). This is the committee's first review of the scheme since those changes

A major theme in this review was the emerging trend of fraud, exaggeration and claims harvesting, resulting in a significant increase in minor severity legally represented claims – including nervous shock claims for child accident victims – which has in turn contributed to rising CTP premiums. The committee was pleased to see that the government has implemented a range of measures and initiatives to address these issues, including through the establishment of a CTP fraud task force.

Other new issues concerned the implications for the CTP scheme on the recent advent of ride-sharing operations such as Uber, and the impact of the 2012 changes to the New South Wales workers compensation scheme. The committee has made recommendations to address these issues.

It is prudent to note that at the commencement of this review the New South Wales Government had already announced a major review of the scheme aimed at creating a fairer and more affordable system for road users. The government had published an options paper containing four scheme design proposals, and had invited submissions and feedback from stakeholders on those options. The government subsequently released significant reform plans based on its preferred option for the scheme on 29 June 2016, however this announcement occurred after the committee had gathered its evidence for this review. We therefore look forward to monitoring the progress of the government's planned reforms in our next review.

On behalf of the committee I would like to thank all stakeholders who participated in this review for their investment of time and expertise. I would also like to extend my appreciation to my committee colleagues for their support and sharing of their intellect and insights which have enabled a considered and robust examination of the evidence. Finally, I would like to thank the committee secretariat for their hard work and support.



Hon Shayne Mallard MLC
Committee Chair

Recommendations

- Recommendation 1** **33**
That the State Insurance Regulatory Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.
- Recommendation 2** **38**
That the State Insurance Regulatory Authority finalise the new forms for requesting allied health services and case manager or rehabilitation provider services, as soon as practicable.
- Recommendation 3** **44**
That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.
- Recommendation 4** **45**
That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a claim can be made without explanation from six to 12 months.
- Recommendation 5** **58**
That the NSW Government urgently reform the costs regulation to deter exaggerated and fraudulent claims, especially in regards to low severity injuries to both minors and adults.
- Recommendation 6** **63**
That the NSW Government consider how journey claims are treated under any CTP scheme.
- Recommendation 7** **64**
That the State Insurance Regulatory Authority consult with the Motorcycle Council of NSW to consider consolidating the current five classifications of motorcycles in New South Wales into the following two classes: Learner Approved Motorcycle Scheme (LAMS) and non-LAMS.
- Recommendation 8** **67**
That the NSW Government establish a fair and equitable CTP premium for all vehicles used in commercial ride share operations.

Conduct of review

The committee commenced this review on 4 April 2016.

The committee received 12 submissions and held one public hearing.

Prior to the hearing, the committee forwarded written questions on notice to the State Insurance Regulatory Authority based on the Motor Accidents Authority annual reports for the 2013/14 and 2014/15 financial years, scheme performance reports and issues raised by stakeholders in their submissions. The committee also requested an update on the government's response to the recommendations made by the committee in its report on the *Twelfth review of the exercise of the functions of the Motor Accidents Authority*.

Inquiry related documents are available on the committee's website, including submissions, transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter provides a brief overview of the New South Wales Compulsory Third Party insurance scheme, including the committee's role in relation to overseeing the scheme. It also outlines recent moves to reform the scheme.

Overview of the committee

- 1.1 Under s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Compulsory Third Party (CTP) insurance scheme ('the scheme'), being one of the insurance and compensation schemes established under New South Wales motor accidents legislation, are required to be supervised by a committee of the Legislative Council.
- 1.2 The Standing Committee on Law and Justice has been designated as the committee to perform this oversight role. The resolution appointing the committee requires the committee to report to the Legislative Council in relation to the scheme at least once every two years. The same resolution also requires the committee to supervise the operation of other insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, including the Workers' Compensation scheme, Workers' Compensation (Dust Diseases) scheme and the Motor Accidents (Lifetime Care and Support) scheme.² Those schemes will be subject to separate reviews.
- 1.3 Although this report is entitled the *First review of the Compulsory Third Party insurance scheme*, the committee has been monitoring and reviewing the implementation of the scheme by the former Motor Accidents Authority (MAA) since 1999 – initially through the *Motor Accidents Compensation Act 1999*,³ then through the *Safety, Return to Work and Support Board Act 2012*.⁴
- 1.4 Following legislative reforms to the state's insurance and compensation schemes in 2015, the MAA was abolished and its regulatory role assumed by the newly established State Insurance Regulatory Authority (SIRA). This will be the committee's first review since those reforms.
- 1.5 Information on the committee's previous reviews of the implementation of the scheme by the former MAA, including reports, can be found on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Overview of the CTP insurance scheme

- 1.6 The CTP insurance scheme provides compensation for people injured in motor vehicle accidents in New South Wales that are the fault of another vehicle owner or driver. Compensation payments through the scheme are financed from CTP insurance policies (known as Green Slips) that must be taken out when registering a motor vehicle in New South Wales.

² *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

³ s 210.

⁴ s 11.

- 1.7** CTP insurance compensation payments provide accident related treatment including medical, pharmaceutical, hospital and rehabilitation costs. Claims can also be made for lost income for the period an injured person is unable to work due to their accident. For serious injuries, compensation may also be provided for other support such as help at home and future loss of income.⁵
- 1.8** There are two ways that people who are injured by a motor vehicle accident can claim benefits under the scheme. The first is by submitting an Accident Notification Form. Regardless of fault, anyone injured in a motor vehicle accident in New South Wales can access up to \$5,000 for medical and treatment expenses and lost earnings through the form which allows early notification and quick payments within the first six months of an accident.⁶ Originally limited to \$500, the Accident Notification Form threshold was increased to \$5,000 on 1 April 2010.⁷
- 1.9** The second way to access benefits is through a Personal Injury Claim form. For expenses greater than \$5,000, or for expected recovery times of greater than six months, personal injury claims can be submitted within six months⁸ from the time of the accident. These claims can be made for ongoing treatment and care costs, for loss of future income and for non-economic loss (pain and suffering) for accidents where:
- the injuries were the fault or part fault of another driver or vehicle owner
 - the accident was 'blameless', for example, due to mechanical failure or driver illness
 - at the time of the accident the injured person was under the age of 16 years and a New South Wales resident (regardless of who was at fault).⁹
- 1.10** A driver completely at fault may not be eligible to make a Personal Injury Claim.
- 1.11** Section 40 of the *Motor Accidents Compensation Act 1999* also establishes a Nominal Defendant Fund, which provides compensation benefits to people injured in a motor vehicle accident where the driver at fault is not insured or is unidentified. The fund provides the same benefits as those available to people injured by a vehicle that is covered by a valid Green Slip.¹⁰
- 1.12** Green Slip premiums also include a Medical Care and Injury Service (MCIS) levy, which is used to fund ambulance and initial public hospital treatment for anyone injured in a New South Wales motor vehicle accident, care for the seriously injured (through the Lifetime Care

⁵ NSW Government, SIRA, *What you can claim*, <http://www.maa.nsw.gov.au/if-youve-been-injured/making-a-claim/what-you-can-claim>.

⁶ NSW Government, SIRA, *Guide for people injured in a motor vehicle accident*, <http://www.maa.nsw.gov.au/media/documents/guide-for-people-injured-in-a-motor-vehicle-accident>.

⁷ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 22.

⁸ A claim may be able to be lodged more than six months after the accident if a satisfactory reason is provided for the delay.

⁹ NSW Government, SIRA, *How to claim*, <http://www.maa.nsw.gov.au/if-youve-been-injured/making-a-claim/how-to-claim>.

¹⁰ SIRA, 'Compulsory Third Party 2014 Scheme Performance Report', November 2015, p 9. The Nominal Defendant Fund is established under s 40 of the *Motor Accidents Compensation Act 1999*.

and Support scheme – see below), and costs of administration of the regulatory and assessment services of SIRA and the Roads and Maritime Services.¹¹

- 1.13** The Lifetime Care and Support scheme provides lifelong treatment, rehabilitation and care for people severely injured in a motor vehicle accident in New South Wales, regardless who was at fault. Injuries can include spinal cord injury, moderate to severe brain injury, multiple amputations, severe burns or permanent blindness.¹² As noted at paragraph 1.2, the Lifetime Care and Support scheme is subject to a separate review by this committee.

Role of SIRA

- 1.14** SIRA is the statutory body responsible for regulating the CTP scheme. It is responsible for, among other things, regulating the scheme's insurers to ensure that Green Slip premiums are affordable and competitive and that benefits provided to people injured in a motor accident are delivered fairly and in a timely manner.¹³
- 1.15** SIRA also operates an independent assessment and dispute resolution service for claims and medical disputes between injured people and insurers via the Claims Assessment and Resolution Service (CARS) and the Medical Assessment Service (MAS).
- 1.16** CARS is a free service that provides an alternative to court for people who do not agree with an insurer's claim decision. Disputes are assessed by independent lawyers who are experienced in compensation assessment and resolution of motor vehicle accident claims.¹⁴
- 1.17** Decisions about claims made through CARS are usually made within five to six months from the time of application and assessments about the amount of compensation to be paid can be binding on the insurer if there is no dispute regarding liability and the applicant accepts the decision.¹⁵
- 1.18** MAS uses independent medical and health professionals to resolve disputes about medical treatment, including disputes about whether treatment is reasonable and necessary, the degree of a person's permanent impairment or the need for further medical assessment or review. Disputes filed with this service are usually resolved within three to six months.¹⁶

¹¹ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 12; SIRA, NSW Government, *Medical Care and Injury Services Levy*, <http://www.maa.nsw.gov.au/green-slips/how-green-slip-prices-are-set/medical-care-and-injury-services-levy>.

¹² Lifetime Care and Support Authority, 'Annual Report 2014/15', p 6.

¹³ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 3.

¹⁴ NSW Government, SIRA, *Claims and compensation disputes*, <http://www.maa.nsw.gov.au/if-youve-been-injured/if-you-cant-agree-with-the-insurer/claims-and-compensation-disputes>.

¹⁵ NSW Government, SIRA, *Claims and compensation disputes*, <http://www.maa.nsw.gov.au/if-youve-been-injured/if-you-cant-agree-with-the-insurer/claims-and-compensation-disputes>.

¹⁶ NSW Government, SIRA, *Medical disputes*, <http://www.maa.nsw.gov.au/if-youve-been-injured/if-you-cant-agree-with-the-insurer/medical-disputes>.

Insurance providers

- 1.19** The CTP scheme is underwritten by private insurance companies. The scheme is split into two market segments: retail and non-retail.¹⁷ Insurers must be licensed by SIRA and comply with statutory guidelines which provide a framework for the scrutiny of their premium filings.¹⁸
- 1.20** There are currently six licenses to sell Green Slip insurance in New South Wales operated by four entities – Suncorp (which holds the AAMI and GIO licences), Allianz (Allianz and CIC-Allianz licences), NRMA and QBE, with Zurich having exited the market on 1 March 2016.¹⁹
- 1.21** AAMI, GIO and NRMA primarily compete in the retail segment of the market, whereas CIC-Allianz competes in the non-retail segment. QBE and Allianz operate in both segments.²⁰
- 1.22** The price of premiums are determined by each insurer, based on actual and forecast claims experience for the mix of vehicles and rating districts for the period in which the premium is filed. All proposed premiums must be filed with SIRA which can reject a premium on the grounds that: it will not fully fund the present and expected future claims liability; it is excessive; it does not conform to the Premiums Determination Guidelines; or it is calculated in contravention of the maximum commission allowed to be paid to insurer's agents.²¹

Recent moves to reform the scheme

- 1.23** There have been a number of moves to reform the CTP scheme over recent years. These are outlined in the following sections.

Motor Accidents Injuries Amendment Bill 2013

- 1.24** In 2012 the New South Wales Government directed the now abolished MAA to undertake a review of the scheme and prepare a CTP pricing strategy that outlined potential reform to the scheme to ensure it remained affordable and sustainable into the future.²²
- 1.25** In February 2013 the MAA published a report proposing a number of reforms, including that the scheme be changed to a first party, no-fault system with defined statutory benefits. The MAA anticipated that the proposed reforms would provide benefits to an additional 7,000

¹⁷ SIRA, 'NSW Motor Accidents CTP Scheme Quarterly Report', December 2015, p 3.

¹⁸ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 5.

¹⁹ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, pp 10-11; Zurich, *CTP Green slips*, http://www.zurich.com.au/content/zurich_au/business/commercial-insurance/ctp-greenslips-insurance.html.

²⁰ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 10.

²¹ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 12.

²² Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), p 12.

people which would be offset by a reduction of costs in relation to legal disputes over fault, liability and contributory negligence.²³

- 1.26** The report proposed retaining common law entitlements for injured people whose whole person impairment was greater than 10 per cent.²⁴ Those injured as a result of an accident but who were assessed as having 10 per cent whole person impairment or less would lose all of their common law benefits. Examples of such injuries are given later in this report at paragraphs 3.79-3.80.
- 1.27** On 9 May 2013 the government introduced the Motor Accidents Injuries Amendment Bill 2013 into Parliament with a view to amending the *Motor Accidents Compensation Act* to implement the MAA's proposed reforms. The bill, which was intended to facilitate 'simpler, easier to access, no-fault compensation scheme that is fair, effective and affordable',²⁵ passed the Legislative Assembly on 22 May 2013²⁶ and was read a first time in the Legislative Council but not debated.
- 1.28** Due to stakeholder concerns regarding the bill, the government subsequently convened a Green Slip roundtable in July 2013 to hear the various views about the proposed reforms. A report summarising the roundtable was published in August 2013 highlighting fundamental tensions regarding the scheme design and deeming that more consultation was desirable.²⁷
- 1.29** Following the 2013 roundtable the government withdrew the bill as a result of stakeholder feedback and after failing to garner sufficient support for its passage through the Upper House.²⁸

Motor Accidents Compensation Regulation 2015

- 1.30** On 1 April 2015, the New South Wales Government introduced the Motor Accidents Regulation 2015, which repealed and replaces the Motor Accidents Compensation Regulation 2005.
- 1.31** The new regulation seeks to contain legal fees and claim times in the scheme by setting out the maximum costs for legal fees, medico-legal services and expert evidence, and regulating claims assessment times by stipulating the period in which an insurer must pay assessed damages to a claimant.
- 1.32** It also includes a provision that requires plaintiff legal practitioners to disclose information about claims costs and entitlements on finalised claims to SIRA, in order to enable SIRA to better analyse scheme efficiency.²⁹

²³ MAA, 'Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme', February 2013, p 9.

²⁴ MAA, 'Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme', February 2013, p, 10.

²⁵ NSW Government, 'CTP issues paper: NSW Government Roundtable', 25 July 2013, p 1.

²⁶ *Votes and Proceedings*, NSW Legislative Assembly, 22 May 2013, pp 1618-1623.

²⁷ Paul McClintock AO, 'NSW Government CTP Roundtable', 19 August 2013, p 11.

²⁸ Media release, Hon Andrew Constance MP, Minister for Finance and Services, 'CTP legislation withdrawn as Labor and the Greens back higher Green Slip prices', 19 August 2013.

2016 options paper

- 1.33** In March 2016 the government announced a new review of the scheme aimed at creating a fairer and more affordable system for road users. The Minister for Innovation and Better Regulation, the Hon Victor Dominello MP, noted that premiums had increased by 70 per cent since 2008, with the result being that the scheme is now the least affordable in the country. He stated that only 45 cents in every premium dollar was being returned in benefits to injured road users, with the rest being absorbed by scheme costs and provider fees, and that without reform premiums were expected to increase by a further 10 to 20 per cent over the coming year.³⁰
- 1.34** The measures of scheme efficiency used by the Minister relate only to the CTP scheme and do not include the Lifetime Care and Support scheme. This issue is discussed in more detail in chapter 2 at 2.19-2.29.
- 1.35** The government published an options paper entitled *On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW*, and invited submissions from the community and CTP stakeholders.³¹ The paper presented a number of options and targeted questions for consideration, focusing on the following four key objectives:
- increasing the proportion of benefits provided to the most seriously injured road users
 - reducing the time it takes to resolve a claim
 - reducing opportunities for claims fraud and exaggeration
 - reducing the cost of Green Slip premiums.³²
- 1.36** The options proposed in the paper included:
- retaining the current common law, fault-based scheme with process improvements (with or without adjustments to benefit levels)
 - moving to a hybrid no-fault, defined benefits scheme while retaining common law benefits for the most seriously injured
 - moving to a fully no-fault system with defined capped benefits, thresholds and no common law.³³

²⁹ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 6.

³⁰ Media release, Hon Victor Dominello MP, Minister for Innovation and Better Regulation, 'NSW CTP Green Slip scheme under review', 11 March 2016.

³¹ NSW Government, Have your say, *Motor accidents CTP insurance reforms* (11 March 2016), <http://www.haveyoursay.nsw.gov.au/consultations/motor-accidents-ctp-insurance-reforms/>.

³² NSW Government, 'On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW', March 2016, p 3.

³³ NSW Government, 'On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW', March 2016, p 16.

- 1.37** Following the consultation process, on 29 June 2016 Minister Dominello announced plans to overhaul the scheme by moving to a no-fault scheme with defined benefits for low severity injuries and lump sum compensation for the most seriously injured. Subject to the Parliament's approval, the planned changes could come into effect from July 2017.³⁴
- 1.38** The government's proposed reforms to the scheme will be considered in more detail in chapter 5.

³⁴ Media release, Hon Victor Dominello MP, Minister for Innovation and Better Regulation, 'NSW Motorists to benefit from CTP reforms', 29 June 2016.

Chapter 2 Scheme performance

This chapter examines the performance of the CTP scheme since this committee's 12th review of the MAA. It also briefly considers the scheme's injury prevention and management initiatives.

Key performance measures

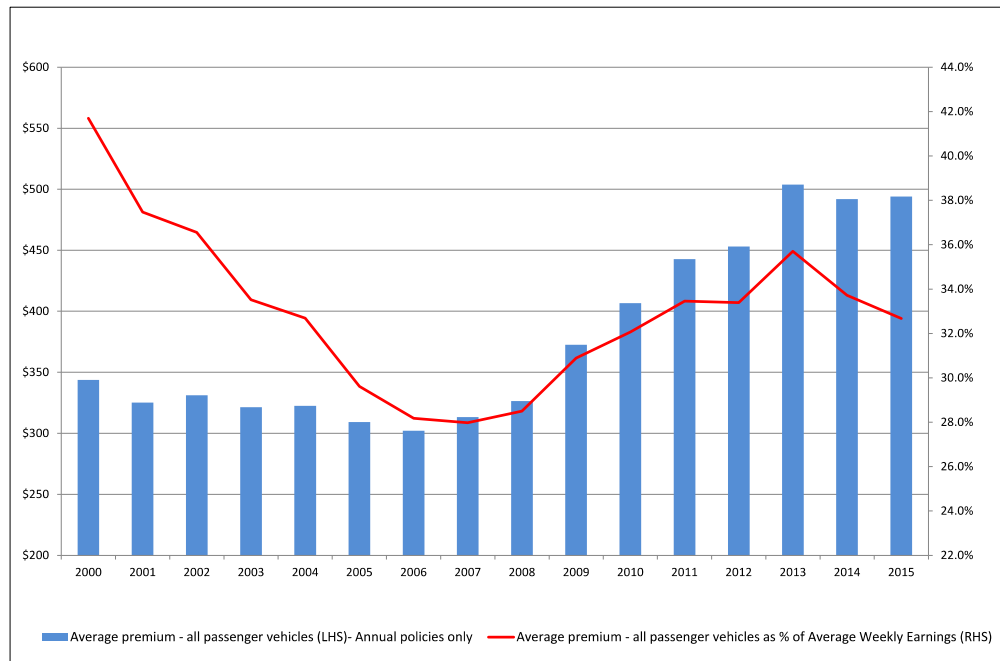
- 2.1 Previous reviews of the MAA by this committee have considered the performance of the CTP scheme using the four key indicators that were reported on annually by the MAA: affordability, efficiency, insurer profitability and claims experience.
- 2.2 Since the committee's 12th and final review of the MAA,³⁵ the MAA published two annual reports – for 2013/14 and 2014/15. While the MAA reported on the four indicators in its 2013/14 report, it did not continue this practice in 2014/15. The reason for this is not known to the committee.
- 2.3 SIRA is now responsible for regulating the CTP scheme; however, as it was only established in September 2015 it has not yet released an annual report, therefore it is not yet known which indicators it will report on.
- 2.4 In the interim, the committee has decided to continue its previous practice of considering the performance of the scheme based on the four key indicators that were traditionally reported on by the MAA.

Affordability

- 2.5 Affordable premiums are a primary objective of the scheme. SIRA measures affordability by comparing the average Green Slip price with the average New South Wales weekly earnings. The lower the premium as a proportion of average weekly earnings (AWE), the more affordable the premium is considered.³⁶
- 2.6 Premiums as a percentage of AWE became significantly more affordable between 2013 and 2015, falling from 36 per cent of AWE to under 33 per cent of AWE (as seen in Figure 1). In any scheme that fairly compensates people for lost earnings, as overall earnings in the community rise, so will premiums if benefits are to meet increased costs of compensating people on those higher wage levels. This is why the best measure of affordability is not the bare price of the premiums, but rather the price of the average premium as a proportion of AWE.

³⁵ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014).

³⁶ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 16.

Figure 1 Premiums as a proportion of New South Wales average weekly earnings³⁷

Note : These premiums are as at 30th June for annual policies and exclude GST

2.7 Premiums provide for the cost of claims, the Medical Care and Injury Services (MCIS) levy, GST, an insurer profit margin, insurer expenses and an insurer risk premium.³⁸

2.8 The average price of a Green Slip in New South Wales as at 30 June 2015 was:

- \$614 for Sydney car owners
- \$542 for all New South Wales passenger vehicles
- \$575 for all vehicles in New South Wales.³⁹

2.9 SIRA advised that since 30 June 2015 average prices for a Sydney passenger vehicle have already increased by seven per cent (or \$43), and that price is expected to increase to 11.3 per cent (or close to \$70) by 1 July 2016.⁴⁰

³⁷ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 16.

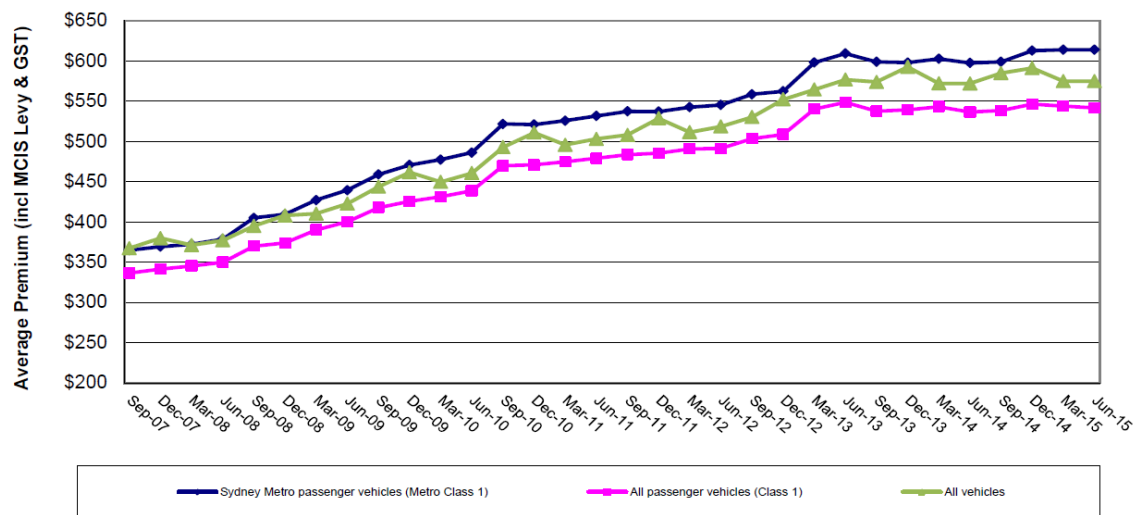
³⁸ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, pp 12-13.

³⁹ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 15.

⁴⁰ Answers to pre-hearing questions on notice, SIRA, 14 June 2016, p 1.

- 2.10 There has been an upward trend in the cost of premium prices since 2007, illustrated by the graph below which shows the cost of Green Slips for Sydney Metro passenger vehicles and Country passenger vehicles.

Figure 2 Average premium prices (inclusive of MCIS levy and GST)⁴¹



- 2.11 Contributing factors to the trend of rising premiums include an increasing frequency of claims and propensity to claim, a significant increase in the number of small claims with legal representation (which will be examined in more detail in chapter 4), rising claim costs, low Commonwealth Government bond yields which have had a negative impact on insurer investment returns, and inflation.⁴²
- 2.12 The affordability of premiums is also impacted by fraudulent and exaggerated claims (also examined in chapter 4), which the government has estimated cost the scheme an additional \$400 million per year.⁴³
- 2.13 Fraud can also result in scheme ‘leakage’, which refers to insurers paying more than appropriate or necessary under the terms of a policy or statute. Leakage can also occur due to other factors such as claims management inefficiencies, inadequate staff training or supervision, manual systems and processes and poor negotiation or settlement practices. A common form of leakage is where insurers pay out small claims when the cost of fighting the claim is expected to outweigh the cost of settling it. While this may be a sensible business approach for individual claims, it is not financially sustainable over the long term.⁴⁴

⁴¹ SIRA, ‘NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report’, May 2016, p 16.

⁴² Answers to pre-hearing questions on notice, SIRA, p 1.

⁴³ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP Insurance Scheme’, p 5.

⁴⁴ Answers to pre-hearing question on notice, SIRA, p 3; SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 5.

- 2.14** Although the price of Green Slips has continued to rise, premiums have declined in real terms in recent years which has contributed to some stability in affordability over the last few years.⁴⁵
- 2.15** Nonetheless, the committee is always concerned about the affordability of New South Wales Green Slips, especially when compared with other jurisdictions. However, SIRA has pointed out that the benefits provided under the New South Wales scheme are more generous than those in other states.⁴⁶
- 2.16** This point was also raised in the 12th review of the MAA, which noted the difficulty in comparing benefits payable in other jurisdictions as New South Wales provides a 'suite of benefits for those injured in motor accidents ranging from the Lifetime Care and Support (LTCS) Scheme, Accident Notification Form and significant common law entitlements that provide some of the best protection in the country.'⁴⁷
- 2.17** Despite affordability improving since 2013, SIRA advised that without reform, premiums are expected to increase by more than the inflation rate each year due to the deterioration in yield rates and a marked increase in claims frequency.⁴⁸
- 2.18** SIRA advised that it is currently undertaking a full review of the current premium system, which is examining the use of incentives for risk selection behaviours, the operation of cross-subsidies and vehicle classification, the recommendations of the 2015 *Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme* (hereafter referred to as the '*Insurer profit review report*', which will be discussed in more detail later in this chapter), and the possibility of risk pooling to deliver better affordability. The review is due to be completed shortly.⁴⁹

Efficiency

- 2.19** Scheme efficiency is determined by the proportion of each dollar paid in premiums directly returned to injured persons as benefits, such as payments for loss of earnings, general damages and medical and related costs paid on the injured person's behalf.⁵⁰ The higher the proportion of premiums paid as claim benefits (rather than as service delivery costs or insurer profits), the greater the efficiency of the scheme.⁵¹ This measurement does not include the benefits paid out on claims through the Lifetime Care and Support (LTCS) scheme, nor does it take into account 'contracted-out' legal costs, which are legal costs over and above the regulated amount charged to claimants directly from their lawyers.⁵²

⁴⁵ Trevor Matthews, 'Report of the Independent Review of Insurer Profit in the Compulsory Third Party Scheme', October 2015, p 9.

⁴⁶ SIRA, 'Compulsory Third Party 2014 Scheme Performance Report', November 2015, p 20.

⁴⁷ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), p 19.

⁴⁸ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 7.

⁴⁹ Answers to pre-hearing questions on notice, SIRA, p 4.

⁵⁰ SIRA, 'Compulsory Third Party 2014 Scheme Performance Report', November 2015, p 40.

⁵¹ Ernst & Young, 'State Insurance Regulatory Authority: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 6.

⁵² MAA, 'Annual Report 2013/14', October 2014, p 46.

- 2.20** Factors that affect scheme efficiency include insurer profits, acquisition costs, legal and investigative costs, and other claims handling related expenses.⁵³
- 2.21** As at 30 June 2015, claimants were receiving 45 per cent of premiums paid to insurers.⁵⁴ Between 2007 and 2014 the proportion of premiums received by injured people in benefits averaged between 50 and 60 per cent.⁵⁵
- 2.22** The MAA previously noted that CTP scheme efficiency in New South Wales is low compared to other accident compensation schemes, which reach levels of around 65 per cent.⁵⁶
- 2.23** There has been some criticism by stakeholders during previous reviews of the MAA by this committee as to the veracity of this method of calculating efficiency. It has been argued that LTCS data should be included as it is the most efficient part of the scheme, which would make the scheme more comparable to other jurisdictions which do include such data.⁵⁷ For example, the average combined efficiency of the CTP and LTCS schemes between the premium filing periods 2007/08 and 2011/12 was 64.4 per cent.⁵⁸
- 2.24** Given that catastrophic injuries receive the largest compensation payments by far and have a commensurately much lower proportion of transaction and administration costs, the effect of only reporting CTP data is that it skews the efficiency figures for New South Wales. Including the LTCS scheme data in a combined efficiency measure gives a much more accurate overall assessment of the states' motor accident compensation scheme.
- 2.25** This matter was dealt with in some detail in the 2015 *Insurer profit review* report which noted:

2.1.3 Efficiency

Scheme efficiency measures the proportion of each dollar paid in Green Slip premiums that is directly returned to injured people as benefits. A higher proportion of premiums paid as benefits reflects a more efficient Scheme. The MAA calculates this measure excluding the benefits paid out on claims against the LTCS Scheme, which is separately regulated. Based on this measure, across the underwriting years 2000 and 2013, the efficiency of the NSW CTP Scheme averaged 51.5%.⁵⁹

⁵³ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p 11.

⁵⁴ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 29.

⁵⁵ SIRA, 'Compulsory Third Party 2014 Scheme Performance Report', November 2015, p 40.

⁵⁶ MAA, 'Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme', February 2013, p 6.

⁵⁷ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), p 24.

⁵⁸ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p 12.

⁵⁹ It should be noted, however, that a scheme with a higher proportion of premiums paid as direct claimant benefits might not outperform a scheme with a lower corresponding proportion. For example, expenditures on claims handling can both improve the operation of the overall scheme and reduce the proportion of premiums paid as direct benefits. Similarly, the impact of higher superimposed inflation on benefits will increase the measured efficiency of the scheme without increasing the actual efficiency.

A number of factors have an impact on this measure:

- profit margins (being higher than expected);
- acquisition expenses;
- legal and investigation expenses; and
- other claims handling expenses.

The MAA noted that efficiency in the Scheme is low compared to other accident compensation schemes, which reach levels of around 65%. However, cross-scheme comparisons are complicated by the fact that the benefits payable under each scheme differ. In particular, some stakeholders have noted that combining the efficiency measure of the CTP Scheme and the LTCS Scheme would make this more comparable to the third-party insurance schemes in other states. Between the premium filing periods 2007-08 and 2011-12, the MAA reported that the combined measure of efficiency of the NSW CTP Scheme and LTCS Schemes averaged 64.4%.⁶⁰

2.26 The benefit of including LTCS scheme data was highlighted again during this review by Dr Andrew Morrison, Senior Counsel and spokesperson, Australian Lawyers Alliance, who told the committee:

We already have a hybrid scheme so when scheme efficiency is said to be 45 per cent, that fails to take into account multiple no fault elements; specifically, lifetime care, blameless accidents, special provision for children and the ANF [Accident Notification Form], that is, the first \$5,000 is no fault. Those are the things which take the scheme to 64.4 per cent scheme efficiency and ... that is comparable with other schemes or indeed better than most.⁶¹

2.27 However, the government has maintained that LTCS data cannot be adopted as a combined efficiency ratio due to differentiations in structure, cash flows and operation of the CTP and LTCS schemes.⁶² Nevertheless, the overall efficiency measure has been able to be provided for the period from 2008 to 2012, as set out in paragraph 2.25 above.

2.28 In the 12th review of the MAA, the committee made a recommendation to include the data for combined CTP and LTCS scheme efficiency in annual reports. The government's response to that recommendation and the currency of the committee's view on the matter is discussed in chapter 3.

2.29 Another factor impacting scheme efficiency has been a significant increase in the number of small claims – particularly legally represented small claims. This issue will be examined in chapter 4.

Insurer profitability

2.30 As receivers of public money that is compulsorily levied, s 5(2)(d) of the *Motor Accidents Compensation Act 1999* requires CTP insurers to account for their actual profit margins. Section

⁶⁰ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, pp 11-12.

⁶¹ Evidence, Dr Andrew Morrison, Senior Counsel and Spokesperson, Australian Lawyers Alliance, 17 June 2016, p 49.

⁶² SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 29.

28(1) of the Act requires insurers to disclose ‘the profit margin on which a premium is based and the actuarial basis for calculating that profit margin’.

- 2.31** Insurers are required to report to the government regulator (formerly the MAA, now SIRA) on two types of profits: prospective and realised. Prospective profit refers to the amount the insurer expects to receive at the time of filing a premium, given assumptions about the number of claims it expects to pay out, investment returns and premium income. Realised profit is what the insurer actually makes in profit in a given year once all costs and income have been accounted for.
- 2.32** Due to the ‘long tail’ nature of the scheme (i.e. the length of time from notification of a motor accident claim to finalisation of that claim) it may take up to six years before the realised profit on a policy can be determined with any certainty.⁶³ Although the number of accidents/claims may be known in a year, superimposed inflation will not be known until claims are finalised.⁶⁴
- 2.33** The extent to which projected profit margins align with the actual profits made by insurers depends on the extent to which the assumptions in insurers’ premium filings are realised.⁶⁵ The long delay between the time claims are reported and the time claim payments are finalised means that there is significant inherent uncertainty regarding the ultimate costs of claims. Insurers typically allow for this uncertainty in the form of higher premiums.⁶⁶
- 2.34** As in each of the 12 reviews of the former MAA by this committee, the issue of insurer profits has continued to be a key concern of stakeholders.
- 2.35** As in each review by this committee the regulator has asserted that measures are in place to address insurer profits. As figure 3 on the following page makes clear, none of the measures to date has proven effective. It is therefore incumbent on the government and this committee to retain close oversight of the effectiveness of any measures announced by the regulator to see if they have a measurable impact on the unacceptably high level of insurer profits in the scheme.

⁶³ MAA, ‘Annual Report 2013/14’, October 2014, p 21.

⁶⁴ Trevor Matthews, ‘Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme’, October 2015, p 22.

⁶⁵ MAA, ‘Annual Report 2014/15’, November 2015, p 20.

⁶⁶ Trevor Matthews, ‘Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme’, October 2015, p i.

Figure 3 Comparison of profit by accident year (ending 30 June)⁶⁷

| Accident year | Profit by accident year using June 2014 data | | Profit by accident year using June 2015 data | |
|-----------------------------|----------------------------------------------|---------------|----------------------------------------------|---------------|
| | Profit | Profit margin | Profit | Profit margin |
| | (\$m) | (%) | (\$m) | (%) |
| 2000 | 461 | 31 | 459 | 31 |
| 2001 | 378 | 29 | 376 | 28 |
| 2002 | 362 | 27 | 357 | 27 |
| 2003 | 412 | 30 | 411 | 30 |
| 2004 | 305 | 21 | 301 | 21 |
| 2005 | 378 | 26 | 378 | 26 |
| 2006 | 281 | 19 | 286 | 20 |
| 2007 | 316 | 23 | 317 | 23 |
| 2008 | 144 | 12 | 154 | 13 |
| 2009 | 44 | 4 | 66 | 5 |
| 2010 | 125 | 9 | 156 | 11 |
| 2011 | 269 | 17 | 298 | 19 |
| 2012 | 253 | 15 | 314 | 18 |
| 2013 | 214 | 12 | 351 | 19 |
| 2014 | 166 | 8 | 408 | 20 |
| 2015 | | | 281 | 13 |
| Total | 4,108 | 19 | 4,911 | 20 |
| Total excluding 2015 | 4,108 | 19 | 4,630 | 21 |

2.36 It is important to note that since its seventh review in 2006 up to its 12th and final review of the MAA in 2014, the committee has stated that its responsibility was to oversee the performance of the MAA in the exercise of its functions under the *Motor Accidents Compensation Act*, and that the committee does not have a role to act as an actuary in examining the issue of insurer profits.⁶⁸ During this review the committee has continued to choose not to take an actuarial role, however, this does not preclude the committee undertaking this role in the future.

Level of insurer profits

2.37 Between 2000 to 2015, actual profits realised by CTP insurers exceeded the expected profits reported to the MAA in all but one year. The expected profits filed by insurers averaged around eight per cent, while the actual level of profits realised averaged 19 per cent – reaching a total of \$2.91 billion over the period.⁶⁹

⁶⁷ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 26.

⁶⁸ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), p 25.

⁶⁹ Answers to questions on notice, SIRA, 14 July 2016, p 5.

- 2.38** Factors identified by stakeholders in the 12th review of the MAA (and earlier reviews of the MAA by this committee) considered to have contributed to the disparity between prospective and realised profits include large prudential margins, lower than expected claims frequency, lower than forecast superimposed inflation and a lack of competition between insurers in the marketplace.⁷⁰
- 2.39** Lower than forecast superimposed inflation⁷¹ has continued to contribute to insurer profits, as noted by the MAA in its 2014/15 Annual Report which stated that these levels of superimposed inflation in the scheme over the past five years had contributed to higher than anticipated insurer profit margins.⁷²
- 2.40** The report stated that the long term superimposed inflation average of the scheme is 2.8 per cent; however, unusually, there had been no superimposed inflation in recent years.⁷³
- 2.41** The MAA advised that it had responded to these benign levels by ‘driving down the allowable estimates of superimposed inflation in premiums filings and introducing revised Premiums Determination Guidelines.’⁷⁴
- 2.42** The new Premiums Determination Guidelines, implemented on 1 November 2014, provide ‘a more robust framework for the scrutiny of insurer filings’. The guidelines require insurers to provide more detailed information on the assumptions underlying their projections in order to determine whether their proposed premiums are appropriately priced.⁷⁵
- 2.43** In addition, the revised Guidelines Practice Note imposes an affordability ceiling on CTP premium prices by stipulating that the average maximum payable for a passenger vehicle (excluding GST) must be within 50 per cent of the average weekly earnings for New South Wales workers.⁷⁶
- 2.44** In regard to competition in the marketplace, the number of insurers has decreased since the committee’s 12th review of the MAA, with Zurich having exited the market on 1 March 2016.⁷⁷ As noted in chapter 1, there are now six insurers in the CTP scheme, which are owned by four insurance groups. No new insurers have entered the scheme for over 18 years.⁷⁸

⁷⁰ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), pp 28 - 30.

⁷¹ Superimposed inflation refers to increases in claims costs over and above normal inflation. It is a regular feature of compensation type schemes.

⁷² MAA, ‘Annual Report 2014/15’, November 2015, p 21.

⁷³ MAA, ‘Annual Report 2014/15’, November 2015, p 21.

⁷⁴ MAA, ‘Annual Report 2014/15’, November 2015, p 21.

⁷⁵ MAA, ‘Annual Report 2014/15’, November 2015, p 18.

⁷⁶ MAA, ‘Annual Report 2014/15’, November 2015, p 22.

⁷⁷ SIRA, *NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report*, May 2016, pp 10-11; Zurich, *CTP Green slips*, http://www.zurich.com.au/content/zurich_au/business/commercial-insurance/ctp-greenslips-insurance.html.

⁷⁸ Trevor Matthews, ‘Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme’, October 2015, p vi.

- 2.45** The committee recommended in the 12th review that the New South Wales Government consult with stakeholders during its review of the *Motor Accidents Compensation Act* to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability. The government's response to that recommendation is discussed in chapter 3.
- 2.46** Measures to improve competition between insurers were also addressed in an independent review of insurer profits, which is discussed below.

Review of insurer profits

- 2.47** Due to the significant and ongoing disparity between prospective and realised profits, which has continuously landed in favour of insurers, the committee recommended in its 12th review of the MAA that there be a prompt review into the high level of insurer profits.⁷⁹
- 2.48** The government agreed to this recommendation, and commissioned a review conducted by an independent Chair, Mr Trevor Matthews, and Deloitte. The review examined scheme design and market competition issues, and identified opportunities for improving scheme regulation.⁸⁰
- 2.49** The 2015 *Insurer profit review* report concluded that broadly the scheme is meeting its original policy goals of affordability, sustainability and efficiency; however, that structural factors within the scheme could be addressed to simplify the premium system and introduce greater transparency.⁸¹ The review made 21 recommendations around simplifying the system, encouraging insurers to compete for the majority of risks and addressing the scheme's cross-subsidies in a more effective and transparent way.⁸²
- 2.50** The review recommended two key reforms – to introduce free rating for the majority of risks and to pool the most underfunded policies. The intent of these recommendations is to promote competition among insurers (including by opening up the system to new entrants who are currently deterred by the existing cross-subsidies)⁸³ and maintain affordability for poor risks.⁸⁴ The government advised that both recommendations, which would involve a significant change to scheme design and take several years to implement,⁸⁵ are being considered within the context of the current premium system review (mentioned earlier at 2.18).⁸⁶

⁷⁹ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the Motor Accidents Authority* (2014), p 38.

⁸⁰ MAA, 'Annual Report 2014/15', November 2015, p 20.

⁸¹ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, pp i-ii.

⁸² Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p viii-ix.

⁸³ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p iii.

⁸⁴ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p ix.

⁸⁵ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p viii.

⁸⁶ Answers to questions on notice, SIRA, p 18.

- 2.51** The remaining recommendations⁸⁷ involve an interim set of reforms to refine the current scheme to improve competition between insurers and increase transparency and accountability.⁸⁸
- 2.52** The committee was informed that SIRA is in the process of implementing the review's recommendations, with 10 recommendations having been introduced or commencing later this year, two being incorporated into the new premium scheme design currently under development, six currently being investigated or considered within the premium system review (which includes the two key reform recommendations mentioned in 2.50), two requiring legislative change, and one (involving a review of the changes) due to be undertaken in 2018.⁸⁹

Claims experience

- 2.53** Claims experience reflects the usage of the scheme including the number of claims and notifications.
- 2.54** As seen in the table on the next page, as at the end of June 2014, a total of 186,203 notifications had been received by the MAA in relation to accidents since 5 October 1999. Of those notifications, 69 per cent were full claims, 20 per cent were Accident Notification Forms (ANFs) (see chapter 1 for explanation of ANFs) and 11 per cent were workers compensation recovery claims.⁹⁰

⁸⁷ With the exception of recommendation 21 which involves a subsequent review to examine the impact of changes implemented.

⁸⁸ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, pp ix-xi.

⁸⁹ Answers to questions on notice, SIRA, received 14 July 2016 - Attachment 1, 'Profit Report Recommendations', p 1.

⁹⁰ MAA, 'Annual Report 2013/14', October 2014, p 51.

Figure 4 Number of claims and notifications⁹¹

| Accident year ¹ | ANFs | | | Workers compensation recoveries (\$151z) | Full claims | | | Total notifications ² | IBNR ³ estimates | Estimated ultimate notifications |
|----------------------------|--------------|-------------------|---------------|------------------------------------------|----------------|--------------------|-------------------|----------------------------------|-----------------------------|----------------------------------|
| | At-fault ANF | Not at-fault ANFs | Total ANFs | | Converted ANFs | Direct full claims | Total full claims | | | |
| 1999-00 | 0 | 2,662 | 2,662 | 1,891 | 3,154 | 9,075 | 12,229 | 16,782 | 0 | 16,782 |
| 2000-01 | 0 | 2,897 | 2,897 | 1,829 | 3,402 | 7,207 | 10,609 | 15,335 | 0 | 15,335 |
| 2001-02 | 0 | 2,698 | 2,698 | 1,682 | 2,924 | 6,429 | 9,353 | 13,733 | 0 | 13,733 |
| 2002-03 | 0 | 2,528 | 2,528 | 1,608 | 2,870 | 5,454 | 8,324 | 12,460 | 0 | 12,460 |
| 2003-04 | 0 | 2,264 | 2,264 | 1,567 | 2,871 | 5,590 | 8,461 | 12,292 | 0 | 12,292 |
| 2004-05 | 0 | 2,033 | 2,033 | 1,649 | 2,675 | 5,404 | 8,079 | 11,761 | 0 | 11,761 |
| 2005-06 | 0 | 1,900 | 1,900 | 1,547 | 2,495 | 5,248 | 7,743 | 11,190 | 0 | 11,190 |
| 2006-07 | 0 | 1,650 | 1,650 | 1,442 | 2,121 | 5,525 | 7,646 | 10,738 | 2 | 10,740 |
| 2007-08 | 0 | 1,282 | 1,282 | 1,344 | 1,896 | 5,727 | 7,623 | 10,249 | 16 | 10,265 |
| 2008-09 | 0 | 2,099 | 2,099 | 1,407 | 2,410 | 5,717 | 8,127 | 11,633 | 48 | 11,681 |
| 2009-10 | 253 | 2,085 | 2,338 | 1,322 | 2,583 | 5,883 | 8,466 | 12,126 | 97 | 12,223 |
| 2010-11 | 695 | 2,240 | 2,935 | 1,315 | 2,970 | 5,923 | 8,893 | 13,143 | 193 | 13,336 |
| 2011-12 | 883 | 2,425 | 3,308 | 993 | 3,198 | 5,963 | 9,161 | 13,462 | 343 | 13,805 |
| 2012-13 | 998 | 2,616 | 3,614 | 269 | 3,192 | 6,242 | 9,434 | 13,317 | 584 | 13,901 |
| 2013-14 | 647 | 2,675 | 3,322 | 43 | 1,326 | 3,291 | 4,617 | 7,982 | 2,910 | 10,892 |
| Total | 3,476 | 34,054 | 37,530 | 19,908 | 40,087 | 88,678 | 128,765 | 186,203 | 4,195 | 190,398 |

Note

1. Accident years run from 1 October to 30 September. 2013/14 has only 9 months of exposure as at June 2014

2. Total Notifications = Total ANFs + Workers Compensation Recoveries + Total Full Claims

3. IBNR - Incurred But Not Reported claims, are estimated from actuarial models.

4. CTP Claims data as at Jun 14

5. Full claims as defined in Section 74 of MACA 1999.

6. ANFs as defined in Section 49 of MACA 1999

7. Workers compensation recoveries (\$151z) have been shown as a separate category, so that underlying scheme trends as from 2010/11 are not distorted by the change to the Workers Compensation legislation which has narrowed the definition of journey claims.

2.55 The number of total notifications received (originally by the MAA but now by SIRA) as at the end of May 2016 was 218,559.⁹²

2.56 Casualty numbers have continued to fall in recent years (from around 25,000 in 2008 to around 20,500 in 2015); however, the number of full claims (excluding workers compensation recovery claims) has increased over the same period (from around 7,500 to around 12,500) – largely due to an increase in the propensity to claim over the last seven years from 30 per cent to a little over 60 per cent.⁹³

2.57 There was a general decline in the ultimate number of workers compensation recovery claims between 2001 to 2012, which was consistent with the reduction in casualty numbers over the same period. This was followed by a substantial 79 per cent reduction in workers compensation recovery claim numbers from 2012 to 2015 (which translates to 270 fewer recovery claims each quarter),⁹⁴ reflecting legislative changes in 2012 to New South Wales workers compensation journey claims which prevented people injured in a journey to or from work from being able to make a claim under workers compensation.⁹⁵ This is illustrated in the graph on the next page (the grey line indicates the scheme actuary's predicted figures in 2014, the yellow line shows actual figures to 2015).

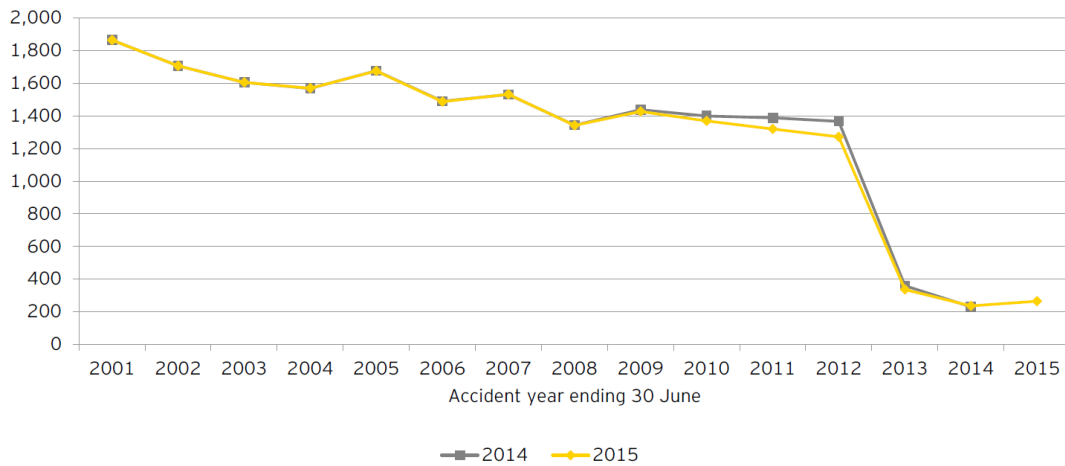
⁹¹ MAA, 'Annual Report 2013/14', October 2014, p 51.

⁹² Answers to questions on notice, SIRA, p 9.

⁹³ Ernst & Young, 'State Insurance Regulatory Authority: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 2.

⁹⁴ Evidence, Mr Anthony Lean, Chief Executive, SIRA, Deputy Secretary, Better Regulation, 17 June 2016, p 77.

⁹⁵ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 16.

Figure 5 Ultimate number of claims for workers compensation recoveries⁹⁶

- 2.58** Concerns regarding the removal of journey claims from the workers compensation scheme and the protection of injured workers will be considered in chapter 5.
- 2.59** In regard to ANFs, the ultimate number of not at-fault ANFs reduced between 2001 and 2008, but subsequently increased after the maximum benefit was raised from \$500 to \$5,000. Overall, ANF claim numbers increased by 79 per cent from 2008 to 2015, although the rate of increase has slowed significantly in the last three years.⁹⁷
- 2.60** The ultimate number of at-fault ANFs has been increasing since they were introduced in 2010, although the rate of increase has slowed in the last three years. However, Ernst & Young expect the number of at-fault ANFs to continue increasing as more people become aware of this benefit.⁹⁸

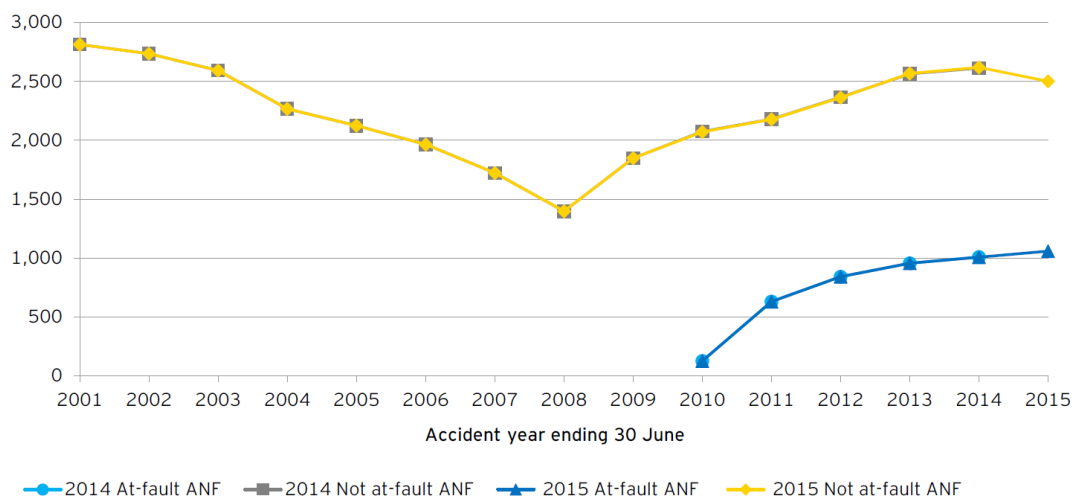
⁹⁶ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 16.

⁹⁷ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 16.

⁹⁸ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 16.

2.61 The graph below illustrates the ultimate number of at-fault and not at-fault ANFs. The 2014 lines show the scheme actuary's predicted figures at that time, whereas the 2015 lines show the actual figures.

Figure 6 Ultimate number of claims for ANFs⁹⁹



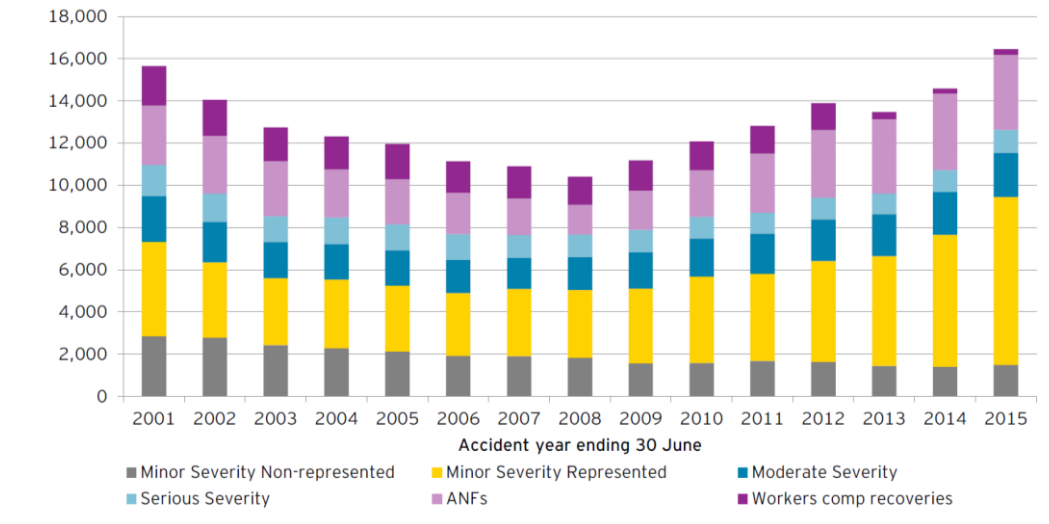
2.62 The total number of claims (including workers compensation recovery claims and ANFs) decreased between 2001 and 2008, and has been increasing since. While the overall number of claims appears to have reduced in 2013, it was due to the changes to workers compensation journey claims. Since 2014 the increase in claim numbers has resumed due to an increase in claims for legally represented minor severity injuries and moderate severity injuries, which reach an historic high in 2015. Overall there was a 58 per cent increase of claims between 2008 and 2015.¹⁰⁰

2.63 Issues with the increase of legally represented minor severity injury claims will be examined in chapter 4.

2.64 The graph on the following page illustrates combined claim numbers from various injury severities and claim types between 2001 and 2015.

⁹⁹ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 16.

¹⁰⁰ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 17.

Figure 7 Ultimate number of full claims and ANFs¹⁰¹

Injury prevention and management

- 2.65** SIRA has responsibility for injury prevention initiatives under s 206(2)(f) of the *Motor Accidents Compensation Act*. Under the Act, SIRA is required to provide funding for measures to prevent or minimise injuries from motor accidents, and for safety education.
- 2.66** SIRA advised that following its establishment in September last year it is currently reviewing the research, grants, funding and sponsorship provided by the government in relation to the scheme. It advised that it will not enter into any new program funding arrangements until it completes its review later in 2016, although acknowledged its commitment to continuing the investment initiated by the former MAA in injury prevention and injury management, including the establishment of the John Walsh Centre for Rehabilitation Research which focuses on research and education in rehabilitation and injury-related disability.¹⁰²
- 2.67** During this committee's current review a concern was raised about delays in claims settlement times and the impact on injury management. Dr Mary Langcake, NSW Trauma Chair of the Australasian College of Surgeons explained that:

The wait times for finalisation of claims, particularly in terms of those most seriously injured, places an impact not just on the patient but the families. The impact is not just physical but financial and emotional and it impacts their ability to recover. We know that the earlier folk can access good rehabilitation the more likely they are to return to day-to-day activities, work activities and be functioning members of society.¹⁰³

¹⁰¹ Ernst & Young, 'SIRA: Review of selected performance indicators of the NSW CTP Scheme 2015', May 2016, p 17.

¹⁰² Answers to pre-hearing questions on notice, SIRA, p 7.

¹⁰³ Evidence, Dr Mary Langcake, NSW Trauma Chair, Royal Australasian College of Surgeons, 17 June 2016, p 14.

2.68 Concern was also expressed by Dr Langcake that inadequate data regarding road traffic incident data was impeding the government's ability to implement strategies for preventing road trauma:

... prevention of road trauma is obviously going to be one of the ways of reducing what needs to be paid out, and to be able to look at strategies for prevention we obviously need good data ... we could hypothecate some of the fees that CTP garners towards supporting a trauma registry because without data to be able to look at patterns of road traffic incidents, black spots, et cetera and implement schemes that might reduce road trauma, and to see if they are working, then we are looking at increasing rates of injury. We know already that deaths in this State have gone up from road trauma, which is really disappointing, and we can extrapolate from that that as deaths have gone up so have serious injuries.¹⁰⁴

2.69 At 30 June 2014 there were 307 reported road fatalities in New South Wales for the year with 20,681 people having been injured.¹⁰⁵ There have already been 235 reported deaths for 2016 (as at 4 August 2016), up from 198 at the same time last year.¹⁰⁶

Committee comment

2.70 The committee notes the upward trend of Green Slip prices since 2007, which has been a continuing trend throughout our previous reviews of the former MAA, and that the factors contributing to this trend include an increasing frequency and propensity to claim, rising claims costs and low government bond yields. We note that affordability and efficiency of premiums have also been impacted by a significant increase in legally represented small claims and fraudulent and exaggerated claims, and will address this issue in chapter 4.

2.71 The committee acknowledges that SIRA plans to address the issue of affordability through premium reform and is currently undertaking a full review of the premium system which is due to be completed shortly. We look forward to seeing the outcome of that review.

2.72 In regard to insurer profitability, the committee commends the government for implementing our recommendation from the 12th review of the MAA to commission an independent review of insurer profits. We also commend the government's progress on implementing the reform recommendations of that insurer profit report. The committee will be closely reviewing these measures to see if they have any meaningful impact on reducing the unacceptably high levels of insurer profits in the scheme.

2.73 The committee acknowledges that the government has responded to the issue of superimposed inflation, which is considered to be a key contributing factor to higher than expected insurer profits, by revising the Premium Determination Guidelines to provide a more robust framework for the assessment of insurer filings. We support this measure.

2.74 The committee also notes the concerns expressed by the Australasian College of Surgeons regarding the impact of delays in claims settlement times on injury management and the need

¹⁰⁴ Evidence, Dr Langcake, 17 June 2016, p 14.

¹⁰⁵ NSW Government, 'Road traffic crashes in New South Wales: Statistical statement for the year ended 31 December 2014', p 6.

¹⁰⁶ NSW Government, Transport for NSW, Centre for Road Safety, *Statistics* (21 July 2016), <http://roadsafety.transport.nsw.gov.au/statistics/>.

for better data regarding road traffic incidents to inform road trauma prevention strategies. We encourage the government to consider these issues, including by a review of the overall data on delays, as part of its review of its current injury prevention and management commitments, and look forward to hearing the outcomes from SIRA. The committee will keep a watching brief in this area.

Chapter 3 Recommendations from the previous scheme review

This chapter examines the response to each of the recommendations made by the committee's previous review into the CTP scheme, when it was under the jurisdiction of the former MAA.

Recommendations from the 12th review of the exercise of the functions of the Motor Accidents Authority

- 3.1** This section examines in turn the response by the government¹⁰⁷ to each of the recommendations made in the committee's 12th review of the exercise of the functions of the MAA, and assesses any further actions since that response was tabled.¹⁰⁸
- 3.2** In considering these recommendations it is important to acknowledge that the MAA has since been abolished and the *Safety, Return to Work and Support Board Act 2012* repealed, and that they have been replaced with SIRA and the *State Insurance and Care Governance Act 2015* respectively. Nevertheless, the CTP scheme and many of the issues raised by stakeholders regarding its operation have remained the same.

Recommendation 1: Motor Accidents Advisory Committee

MAA 12th review recommendation 1: That the Minister for Finance and Services establish a Motor Accidents Advisory Committee under section 10 of the *Safety, Return to Work and Support Board Act 2012* that is comprised of members from the legal, insurance, health and community sectors.

- 3.3** The former *Safety, Return to Work and Support Board Act* made provision for the Minister for Finance and Services to establish advisory committees at his or her discretion. The functions of these committees were also at the discretion of the Minister, but could include investigating and reporting on matters relating to the exercise of the MAA's functions.
- 3.4** Concern was expressed in the committee's 12th review of the MAA by the New South Wales Bar Association that no advisory committees had been appointed under this provision. The association considered that a formal advisory committee would facilitate better stakeholder interaction with the government.¹⁰⁹
- 3.5** The government's response stated that the MAA would establish an advisory committee with representatives of the customers of the scheme and expert advisors, but that it did not intend at that time to establish the advisory committee under s 10 of the *Safety, Return to Work and Support Board Act*. It added that the MAA had existing arrangements for seeking input from

¹⁰⁷ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁰⁸ Standing Committee on Law and Justice, NSW Legislative Council, *Twelfth review of the exercise of the functions of the Motor Accidents Authority* (2014).

¹⁰⁹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 8-9.

members of the legal, insurance and health sectors, and was seeking to get more input from injured people and vehicle owners through the establishment of an advisory committee structure that facilitated input from these direct scheme stakeholders.¹¹⁰

3.6 Following the abolishment of the MAA in 2015, SIRA commenced new consultations with key stakeholders on the most effective way to engage on issues affecting the scheme.¹¹¹

3.7 SIRA subsequently advised the committee during this review that it did not plan to establish a customer advisory committee, preferring instead to utilise a range of consultation mechanisms on issues as they arose.¹¹²

3.8 Mr Anthony Lean, Chief Executive, SIRA and Deputy Secretary Better Regulation reiterated SIRA's intention for an open consultative approach going forward:

Over our first 10 months you will have seen in practice the way we intend to operate, which is in an open and transparent manner, and by being genuinely engaged in consultation. Shortly we will be releasing a formal stakeholder engagement strategy, which outlines how we will continue to engage with our stakeholders across the schemes we regulate.¹¹³

3.9 During the current review, stakeholders commended the Minister for Innovation and Better Regulation, the Hon Victor Dominello MP, for his open and collaborative approach to consultation on the scheme. For example, Mr Andrew Stone SC, Barrister, New South Wales Bar Association said that the association had been 'engaged in extensive discussions' with SIRA and the government over the last six months regarding the operation of the scheme, including claims and fraud problems and scheme reform. Mr Stone expressed appreciation for the Minister's open approach, although suggested there was still room for improvement:

[The current reform] process has been done in a dramatically different way to the experience we had in 2013 when there was a much more crash-through approach. This has been very different and we would like to acknowledge the Minister's role in that. Things have been done frankly, openly, honestly and with a high degree of consultation. It is to the credit of the Minister that that is the way this has occurred and we very much appreciate it. Having said that, we think there is still further scope for improvement in the consultative process.¹¹⁴

3.10 Likewise, Dr Andrew Morrison, Senior Counsel and spokesperson, Australian Lawyers Alliance, who attended consultation discussions as a Bar representative, stated: '[T]he Minister has been very open and helpful and has listened and engaged with us. We have really appreciated that'.¹¹⁵

¹¹⁰ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015, p 1.

¹¹¹ Answers to pre-hearing questions on notice, SIRA, 14 June 2016, Attachment 1, p 1.

¹¹² Answers to questions on notice, SIRA, received 14 July 2016 - Attachment 1, 'Profit Report Recommendations', p 1.

¹¹³ Evidence, Mr Anthony Lean, Chief Executive, SIRA and Deputy Secretary, Better Regulation, 17 June 2016, p 68.

¹¹⁴ Evidence, Mr Andrew Stone SC, Barrister, New South Wales Bar Association, 17 June 2016, p 2.

¹¹⁵ Evidence, Dr Andrew Morrison SC, Senior Counsel and Spokesperson, Australian Lawyers Alliance, 17 June 2016, p 55.

- 3.11 Mr Tim Concannon, Member, Injury Compensation Committee, Law Society of New South Wales similarly commented, '[t]he society also wishes to express its appreciation for the open and collaborative approach the Government has adopted in respect of the reform process'.¹¹⁶

Committee comment

- 3.12 The committee notes that a number of stakeholders commended Minister Dominello's approach to the recent consultations on scheme reform and the government's endeavors to provide an inclusive and wide ranging consultative practice. We too commend the Minister and the government for their open approach to consultation and look forward to reviewing SIRA's formal stakeholder engagement strategy, due for release shortly.

Recommendation 2: Motorcycle CTP premiums report

MAA 12th review recommendation 2: That the Motor Accidents Authority publish the Ernst & Young report into motorcycle CTP premiums as soon as it has been completed and provide it to the committee.

- 3.13 The committee's 12th review report noted concerns from the Motorcycle Council of New South Wales that the MAA had failed to provide it with requested information on repeat occasions, or had provided it in forms that were difficult to interpret – including in particular an Ernst & Young report commissioned in 2010 on motorcycle CTP premiums.¹¹⁷
- 3.14 The MAA responded that at the time of the Motorcycle Council's request a PowerPoint presentation was all that had been available in regard to the Ernst & Young report, but that once the report was finalised it would be provided to the government and it would then be up to the government to determine what to do with it.¹¹⁸
- 3.15 The committee recommended that the MAA publish the report as soon as it had been completed and provide it to the committee.¹¹⁹
- 3.16 The government supported this recommendation and in March 2016 published the report by Ernst & Young entitled *Review of Green Slip Premium Setting for Motorcycles 2000-2014* and provided it to the committee.¹²⁰

¹¹⁶ Evidence, Mr Tim Concannon, Member, Injury Compensation Committee, The Law Society of New South Wales, 17 June 2016, p 58.

¹¹⁷ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 10-11.

¹¹⁸ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 11-12.

¹¹⁹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 12.

¹²⁰ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 2.

- 3.17** During the current review the Motorcycle Council expressed further concerns that it was still not receiving requested information.¹²¹ Mr Guy Stanford, Member, CTP Committee, Motorcycle Council of New South Wales said that the council has been trying to obtain certain data for eight years now, declaring '[w]e have been here before asking for these very figures'.¹²²
- 3.18** In response, Mr Lean stated that SIRA believed that it had provided most of the data requested, and that it was willing to meet with the Motorcycle Council 'to work out exactly where the gap is from their perspective'.¹²³
- 3.19** The committee was informed that Mr Lean subsequently wrote to and met with the Chairman of the Motorcycle Council regarding the availability of data and provided copies of some of the information requested.¹²⁴

Committee comment

- 3.20** The committee notes that the Motorcycle Council has been raising concerns about requests for data not being adequately met by the former MAA (and now SIRA) for the past eight years.
- 3.21** We also note that the MAA and SIRA have been of the view that they have adequately provided the information requested, and acknowledge the actions of SIRA's Chief Executive, Mr Lean, to try to cooperate with the council's requests.
- 3.22** It is not clear to the committee, however, if SIRA has fully satisfied the requests for information from the Motorcycle Council since Mr Lean's last meeting with the Chairman of the council. If not, for the purposes of transparency we urge SIRA to continue working with the council to address this issue.

Recommendation 3: Exemption of cases from Claims Assessment Resolution Service

MAA 12th review recommendation 3: That the Motor Accidents Authority, in consultation with stakeholders, address the issue of insurers denying liability under section 95 of *Motor Accidents Compensation Act 1999* to exempt cases from the Claims Assessment Resolution Service.

- 3.23** An issue was raised during the 12th review regarding the impact of the case of *Smalley v Motor Accident Authority of New South Wales*¹²⁵ on s 95 of the *Motor Accidents Compensation Act 1999*

¹²¹ Evidence, Mr Guy Stanford, Member, CTP Committee, Motorcycle Council of New South Wales, 17 June 2016, p 21; Evidence, Mr Brian Wood, Secretary, CTP Committee, Motorcycle Council of New South Wales, 17 June 2016, pp 23-24.

¹²² Evidence, Mr Guy Stanford, 17 June 2016, p 23.

¹²³ Evidence, Mr Anthony Lean, 17 June 2016, p 86.

¹²⁴ Answers to questions on notice, SIRA, p 13.

¹²⁵ [2013] NSWCA 318.

(information about the *Smalley* case is available in the 12th review report at paragraphs 2.47-2.63).¹²⁶

- 3.24** Section 95(1) of the Act provides that an assessment of ‘the issue of liability for a claim is not binding on any party to the assessment’.¹²⁷
- 3.25** During the 12th review, concern was expressed that following *Smalley* insurers would be encouraged to deny liability in order to exempt cases from the Claims Assessment Resolution Service (CARS), which would in turn increase costs to the scheme. The committee recommended that the MAA liaise with stakeholders to find the most suitable method to address the issue.¹²⁸
- 3.26** In its response the government advised that it had amended the MAA Claims Handling Guidelines and Claims Assessment Guidelines to enable CARS to conduct assessments of contributory negligence, and that the MAA had provided new liability templates for use by insurers to increase transparency of decision making and better inform claimants as to the process being undertaken. The government advised that the MAA would monitor the impacts and compliance of the templates and the frequency of allegations of contributory negligence by CTP insurers.¹²⁹
- 3.27** During the current review SIRA advised that following a review of the templates, which included an independent audit of liability determinations, it has made further improvements and continues to monitor insurer compliance and performance in this area. It also advised that following the changes to the Claims Handling Guidelines, the number of claims with a liability status of ‘partial liability – contributory negligence’ has reduced by 12.5 per cent.¹³⁰

Committee comment

- 3.28** The committee commends the government’s progress in relation to addressing the issue of insurers denying liability to exempt cases from CARS with its amendments to the Claims Handling Guidelines and Claims Assessment Guidelines, and the introduction of new liability templates. The committee supports SIRA’s continued monitoring and review of the issue, and is pleased to see the reduction in these types of claims.

¹²⁶ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 15-17.

¹²⁷ *Motor Accidents Compensation Act 1999*, s 95.

¹²⁸ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 16-17.

¹²⁹ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹³⁰ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, ‘Profit Report Recommendations’, pp 2-3.

Recommendation 4: Scheme efficiency data

MAA 12th review recommendation 4: That the Motor Accidents Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.

- 3.29** It was argued during the 12th review that Lifetime Care and Support (LTCS) data should be included in efficiency measures of the CTP scheme as it is the most efficient part of the scheme, and would make it more comparable to other jurisdictions which do include such data.
- 3.30** As noted in chapter 2, the MAA acknowledged the suggestion but responded that it was not meaningful to combine the data with the CTP scheme data as it would not be a reliable comparison due to differences in the schemes. Nonetheless, the MAA did include combined scheme efficiency data in its 2011/12 Annual Report (although not in subsequent annual reports).
- 3.31** The committee recommended that the combined figures for CTP and LTCS scheme efficiency be included in the MAA's annual reports.
- 3.32** The government stated in its response that it supported the MAA and Lifetime Care and Support Authority working with their respective actuaries to consider options for showing scheme efficiency.¹³¹
- 3.33** Since then, SIRA has advised that the review of the CTP and LTCS schemes resulted in both scheme actuaries recommending against the use of a combined efficiency ratio.¹³²
- 3.34** During the current review, the method of calculating efficiency was again questioned, with the Australian Lawyers Alliance submitting that combined efficiency enabled the scheme to be more comparable with other jurisdictions (see chapter 2 at paragraph 2.26).

Committee comment

- 3.35** The committee acknowledges the differences between the CTP and LTCS schemes, however, maintains the view that combined scheme efficiency figures are valuable to enable adequate accountability and scrutiny of the CTP scheme.
- 3.36** As noted at the start of chapter 2, SIRA has not yet released an annual report, therefore we do not know which key performance indicators it will report on. We recommend that when it does produce an annual report that it include data for CTP scheme efficiency, in addition to combined CTP and LTCS scheme efficiency.

¹³¹ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹³² NSW Government, 'On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW', March 2016.

Recommendation 1

That the State Insurance Regulatory Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.

Recommendation 5: Insurer profit review

MAA 12th review recommendation 5: That the Minister for Finance and Services ensure there is a prompt review of the high level of insurer profits, and that all relevant stakeholders are consulted.

- 3.37** In response to ongoing concerns about insurer profits during all of the committee's reviews of the MAA, the committee recommended in its 12th review report that there be a prompt review into the high level of these profits.
- 3.38** As noted in chapter 2, the government agreed to this recommendation, and commissioned a review conducted by Mr Trevor Matthews and Deloitte. For more detail about the outcomes of that review, see chapter 2 at paragraphs 2.48-2.52.

Committee comment

- 3.39** Insurer profits is undoubtedly one of the primary issues regarding the CTP scheme. The committee therefore commends the government for commissioning the independent insurer profit review. As noted in chapter 2, we also commend the government for progressing the recommendations of that review.

Recommendation 6: Competition between insurers

MAA 12th review recommendation 6: That in its review of the *Motor Accidents Compensation Act 1999*, the NSW Government consult with stakeholders to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.

- 3.40** A related issue to insurer profits raised by the MAA during the 12th review was the lack of competition between CTP insurers, which was exacerbated by the declining number of insurers and possible barriers of entry to the marketplace.¹³³ This issue was also noted in chapter 2 of this report.

¹³³ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 38.

- 3.41** The committee recommended that the government, in its review of the *Motor Accidents Compensation Act*, consult with stakeholders on these issues to identify barriers to new entrants and encourage greater competition between insurers in the scheme.¹³⁴
- 3.42** The government supported this recommendation and advised that the independent review of insurer profits would include examination of opportunities to better address competition in the scheme.¹³⁵
- 3.43** As noted in chapter 2, the independent review of insurer profits made a number of recommendations to address competition issues, including the introduction of risk pooling, and the government advised that it is considering the recommendations within the context of the current premium system review (see 2.50-2.52).
- 3.44** During the current review SIRA also advised that it regularly publishes scheme data, information on Green Slip prices and premium, market share and claims data which is available to any potential new entrants.¹³⁶

Committee comment

- 3.45** The committee is pleased that the independent review of insurer profits examined opportunities and made recommendations to improve competition in the CTP marketplace. We acknowledge that the government is considering these recommendations as part of the premium system review and look forward to seeing the outcome of that process.

Recommendation 7: Scheme performance report

MAA 12th review recommendation 7: That the Motor Accidents Authority provide a report annually to the committee by 30 April that includes a comprehensive review of scheme performance in the most recent accident year, including an analysis of the drivers of high levels of insurer profits.

- 3.46** Under s 28 of the *Motor Accidents Compensation Act* the MAA had a statutory obligation (which now rests with SIRA) to assess insurers profit margins and the actuarial basis for calculating those margins, and to include a report on these assessments in its annual reports.¹³⁷
- 3.47** During its 11th review report the committee considered the MAA was not adequately fulfilling its statutory obligation to report annually on scheme performance in its annual reports.¹³⁸
- 3.48** In the 12th review the committee met with representatives from the MAA to discuss the reporting requirements under s 28. During the meeting the MAA representatives advised that

¹³⁴ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 38.

¹³⁵ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹³⁶ Answers to questions on notice, SIRA, p 4.

¹³⁷ *Motor Accidents Compensation Act 1999*, s 28.

¹³⁸ Standing Committee on Law and Justice, NSW Legislative Council, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* (2002), p 41.

it was difficult to provide more detailed, up-to-date information on scheme performance in the annual reports due to the timing the report was required to be presented to the Minister. It suggested that the annual report may not be the most appropriate vehicle for providing detailed analysis of scheme performance.¹³⁹

- 3.49** The committee therefore recommended that the MAA produce a separate report containing a more comprehensive analysis of scheme performance, including the drivers for insurer profits, profit margin premiums and the actuarial basis for calculating those margins, and that this report be provided to the committee by the end of April each year.¹⁴⁰
- 3.50** The government agreed to this recommendation, and SIRA has since provided the committee with 2014 and 2015 CTP scheme performance reports.¹⁴¹ The MAA also undertook to provide high level scheme metrics and an overview of the performance of the MAA in its annual report.¹⁴²

Committee comment

- 3.51** The committee commends the government for agreeing to this recommendation, and SIRA for providing the comprehensive scheme performance reports. The reports provide valuable information and transparency for stakeholders, and the committee is now satisfied that the reporting requirements under s 28 of the *Motor Accidents Compensation Act* are being adequately met.

Recommendation 8: Superimposed inflation

MAA 12th review recommendation 8: That the Motor Accidents Authority proactively consult with stakeholders and report twice yearly (once in the annual report and once in the April report (see recommendation 7) on superimposed inflation risks and strategies to address them.

- 3.52** In order to ensure that the scheme is affordable and equitable, the committee in its 12th review considered there was merit in proactively considering any potential sources of superimposed inflation as and when they become apparent. The committee therefore recommended that the MAA consult with stakeholders and report biannually on superimposed inflation risks and strategies to address them.¹⁴³

¹³⁹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 45.

¹⁴⁰ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 45.

¹⁴¹ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 3.

¹⁴² Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁴³ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 45-46.

- 3.53** The government supported this recommendation,¹⁴⁴ and in the current review SIRA confirmed that it has conducted discussions with CTP insurers and legal professionals in relation to superimposed inflation, and that both the 2014 and 2015 CTP scheme performance reports and the MAA's 2014/15 Annual Report contain analysis of the issue.¹⁴⁵
- 3.54** The insurer profit review also provides an analysis of the issue. It noted that superimposed inflation was a key source of uncertainty in the scheme and recommended that the government review 'the causes of superimposed inflation and consider measures to address this source of uncertainty, with the aim of helping to close the gap between filed and ultimate profits'.¹⁴⁶

Committee comment

- 3.55** The issue of superimposed inflation and its effect on insurer profits was discussed in chapter 2 at 2.39-2.41.
- 3.56** The committee is pleased that the government supported its recommendation to consult with stakeholders and report on the issue twice yearly, and acknowledge that it has done so through SIRA's CTP scheme performance reports and the last MAA Annual Report. We trust that superimposed inflation risks and strategies to address them will be reported in SIRA's annual reports once they are produced.

Recommendation 9: Motor Accidents Compensation Regulation 2005

MAA 12th review recommendation 9: That the Minister for Finance and Services ensure the Motor Accidents Compensation Regulation 2005 is remade by no later than 1 September 2014, and that it provide for realistic and fair levels of legal costs in motor accident matters.

- 3.57** The Motor Accidents Compensation Regulation 2005 governed, among other things, the maximum costs recoverable by legal practitioners for services provided to a claimant or an insurer in any motor accident matter. Since the committee's 6th review of the MAA¹⁴⁷ stakeholders had repeatedly expressed concerns that the costs stipulated in the regulation did not adequately provide for the costs recoverable and as such could leave claimants unfairly disadvantaged.¹⁴⁸

¹⁴⁴ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁴⁵ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 4.

¹⁴⁶ Trevor Matthews, 'Report of the Independent Review of Insurer profit in the Compulsory Third Party Scheme', October 2015, p 47.

¹⁴⁷ Standing Committee on Law and Justice, NSW Legislative Council, *Sixth review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* (2005).

¹⁴⁸ Standing Committee on Law and Justice, NSW Legislative Council, *Tenth review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* (2010), p 48.

- 3.58** During the committee's 10th and 11th reviews the committee made recommendations to review and remake the Motor Accidents Compensation Regulation, before a set deadline.¹⁴⁹
- 3.59** The committee expressed concern in its 12th review report that the regulation had still not been revised and instead had been repeatedly extended. The MAA advised that the remaking of the regulation had been delayed due to the pricing strategy and was further delayed due to the aligning of the regulation with the Motor Accident Injuries Amendment Bill 2013, which was later discharged.¹⁵⁰
- 3.60** The MAA stated that the regulation would be remade before it expired in September 2014, and the committee accordingly recommended that this occur.¹⁵¹
- 3.61** In its response the government advised that it was consulting with scheme stakeholders and that the timeframe for remaking the regulation was being extended to 1 September 2015 to allow sufficient time for adequate consultation.¹⁵²
- 3.62** As discussed in chapter 2 the regulation was repealed and replaced on 1 April 2015 by the Motor Accidents Compensation Regulation 2015.

Committee comment

- 3.63** The committee is satisfied that this recommendation has now been addressed, although note with concern the length of time it took to do so and the potential disadvantage this may have had on claimants.

Recommendation 10: Physiotherapy review forms

MAA 12th review recommendation 10: That the Motor Accidents Authority finalise the review of the Physiotherapy Notice of Commencement and Physiotherapy Review Forms in consultation with stakeholders, and in doing so, include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.

- 3.64** In the 11th review report the committee heard concerns from the Australian Physiotherapy Association that physiotherapists are paid at a lower rate than their normal fees, despite the additional time and expertise they provide in relation to motor vehicle accidents under the scheme. Physiotherapist fees were not regulated by the MAA and the *Motor Accidents*

¹⁴⁹ Standing Committee on Law and Justice, *Tenth review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, p 55; Standing Committee on Law and Justice, NSW Legislative Council, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* (2011), p 48.

¹⁵⁰ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 48.

¹⁵¹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 48-49.

¹⁵² Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

Compensation Act provides that insurers are to make ‘reasonable and necessary’ payments on an ‘as incurred basis’, once liability for the claim has been admitted.¹⁵³

- 3.65** The committee recommended in its 11th review report that the MAA review the documents required to be submitted to insurers by physiotherapists, namely the Physiotherapy Notice of Commencement and Physiotherapy Review forms, to assist insurers in their consideration of reasonable remuneration.¹⁵⁴
- 3.66** In the 12th review report, the MAA advised that a Service Provider Guides working group had been formed to streamline communications between providers and insurers, and was revising the forms. The committee recommended that the MAA finalise the review of the forms, and that the forms include the physiotherapist type and level of expertise so an appropriate level of remuneration could be provided.¹⁵⁵
- 3.67** In its response, the government reiterated the work the MAA had been doing through the Service Provider Guides Working Group and provided the following update:

The Working Group has been involved in the development of a draft form for requesting all allied health services, which is currently being piloted by WorkCover. Work is also underway on an additional form to request case manager or rehabilitation provider services. It is anticipated that the new forms will be available for use by allied health professionals involved in the CTP scheme in 2015.¹⁵⁶

- 3.68** SIRA subsequently advised that it is continuing the project with an expected completion date of mid-2016.¹⁵⁷

Committee comment

- 3.69** At the time of writing, the forms for allied health professionals had still not been revised. The committee therefore recommends that they be completed and made available as soon as practicable. The committee notes that it should not take over two years for any government agency to effectively and efficiently review two administrative forms.

Recommendation 2

That the State Insurance Regulatory Authority finalise the new forms for requesting allied health services and case manager or rehabilitation provider services, as soon as practicable.

¹⁵³ Standing Committee on Law and Justice, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, pp 49-51.

¹⁵⁴ Standing Committee on Law and Justice, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, pp 49-51.

¹⁵⁵ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 51-52.

¹⁵⁶ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁵⁷ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, ‘Profit Report Recommendations’, p 4.

Recommendation 11: Information for carers

MAA 12th review recommendation 11: That the Motor Accidents Authority work with Carers NSW to produce and publish an online fact sheet containing information to assist carers, including links to other appropriate services and support.

- 3.70** During the 10th and 11th reviews of the MAA, Carers NSW expressed concerns (and the committee made recommendations) about the adequacy of information provided by the MAA about its support services for carers.¹⁵⁸
- 3.71** In response to further concerns from Carers NSW during the 12th review about the adequacy of information, the committee recommended that the MAA work with Carers NSW to produce and publish information on its website specifically designed to assist carers, including links to other appropriate services and an online fact sheet.¹⁵⁹
- 3.72** The government supported the recommendation and advised that the MAA had reviewed its website content and determined that the most appropriate location for information to assist carers of people who have been severely injured in a motor vehicle accident was on the Lifetime Care and Support Authority website. The government stated that a link to that authority's website would be placed on the MAA's website.¹⁶⁰
- 3.73** SIRA has since advised that it is updating its website to include a link to the icare website (icare being the new organisation that has taken over responsibility of the LTCS scheme since the abolishment of the Lifetime Care and Support Authority in 2015). In addition, it noted that the former MAA wrote to Carers NSW in May 2015 to invite a representative to meet with the MAA to discuss any other scheme issues that it may have identified.¹⁶¹

Committee comment

- 3.74** The committee acknowledges the view that the most appropriate location for information to assist carers of people severely injured in motor vehicle accidents is on the website of the organisation that administers the Lifetime Care and Support Scheme, and note that SIRA has therefore provided a link to the icare website on its site. We trust that the icare link is not only easy to find on SIRA's website, but that it links directly to the relevant information required by carers.
- 3.75** We note that the issue of access to information for carers was not raised during the current review.

¹⁵⁸ Standing Committee on Law and Justice, *Tenth review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, pp 68-70.

¹⁵⁹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 53-54.

¹⁶⁰ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁶¹ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 4.

Recommendation 12: Damages for non-economic loss

MAA 12th review recommendation 12: That the Motor Accidents Authority conduct a review and publish a discussion paper on the issues relating to access to non-economic loss damages, and that these be considered in any legislative review. The discussion paper should include an actuarial analysis of the ramifications to the scheme, claimants, CTP pricing and insurers of:

- changing the threshold to access non-economic damages to that of section 16 of the *Civil Liability Act 2002*
- lowering the ten per cent whole person impairment threshold
- allowing both physical and psychological injuries to be aggregated to determine the whole person impairment threshold.

- 3.76** In each of the committee's reviews since the 8th review report in 2007,¹⁶² stakeholders have expressed ongoing concerns (and the committee has made recommendations) about the 10 per cent whole person impairment threshold that must be reached for a person injured in a motor vehicle accident to access damages for non-economic loss.
- 3.77** The committee's 12th review report recommended that the MAA conduct a review and publish a discussion paper relating to access to non-economic loss damages, including consideration of changes to the threshold, and that the findings be considered in any legislative review.¹⁶³
- 3.78** The government did not support the recommendation and stated that it had no intention of changing the 10 per cent whole person impairment [WPI] threshold at that time. It maintained that the threshold ensures that the highest proportion of CTP scheme benefits goes to those who are most seriously injured, and that any lowering of the threshold would increase the cost of the scheme and significantly increase Green Slip prices.¹⁶⁴
- 3.79** Stakeholders continued to express concern about the threshold during the current review. For example, the New South Wales Bar Association urged the government to 'avoid scheme reform that uses arbitrary and unjust WPI numbers to exclude from the recovery of economic loss those who suffer genuine injury with a genuine impact upon earning capacity', insisting that 'it does not take an 11% WPI injury for that injury to have a catastrophic effect upon earning capacity.'¹⁶⁵ It stated, for example, that:

In economic terms, a foot fusion (4% WPI) may be more severe for a bricklayer's labourer than a foot amputation (28% WPI) for a deskbound computer programmer or corporate executive.¹⁶⁶

¹⁶² Standing Committee on Law and Justice, NSW Legislative Council, *Eighth review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* (2007).

¹⁶³ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 57.

¹⁶⁴ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁶⁵ Submission 4, New South Wales Bar Association, p 4.

¹⁶⁶ Submission 4, New South Wales Bar Association, p 5.

- 3.80** Mr Stone emphasised that '[i]njuries under 10 per cent whole person impairment are economically disabling for labourers, nurses and for people who rely upon their physical strength for their job.'¹⁶⁷
- 3.81** Dr Morrison from the Australian Lawyers Alliance expressed the view that if there must be a threshold that it should be aligned with the *Civil Liberty Act 2002* threshold, which is 15 per cent of a most extreme case as determined by a court. Mr Morrison submitted that the latter threshold had more merit and was flexible to take into account those whose injury may not presently be determined as serious but who may suffer greater effects than others in relation to non-economic loss.¹⁶⁸
- 3.82** There was also some discussion around alternatives to the WPI threshold. For example, in response to questioning from the committee regarding an alternative narrative test, Ms Elizabeth Welsh, Barrister, New South Wales Bar Association noted that Victoria has a serious injury test, but expressed the view that its definition is 'restrictive and would not necessarily suit our purposes.'¹⁶⁹ Ms Welsh then commented on the potential merit of another alternative being a monetary threshold, as exists in the UK and Queensland:
- There is no reason in principle why it could not simply be a monetary threshold. The beauty of that, we see, is that it accommodates all possible factual scenarios, so it should operate equally fairly for all people, depending on the need. Whether there should be something further restrictive on the entitlement to claim future economic loss if, for example, you have never worked or something like that, they are things that the common law does take into account. But that will probably be the subject of some further discussion.¹⁷⁰
- 3.83** The New South Wales Government canvassed the 10 per cent WPI threshold in its 2016 options paper (outlined in chapter 1) and subsequently announced that it intends to retain the threshold in its planned reforms of the scheme. In its CTP reform position paper released in June 2016 it proposed that 'the threshold for access to (modified) common law will be where an injured person is assessed as having greater than 10% WPI and where the injury was caused by the fault of another vehicle'.¹⁷¹
- 3.84** The government also announced its following plans for medical and care expenses:
- a. The injured person's reasonable and necessary medical, treatment and rehabilitation costs will be payable until five years post-injury if the person's injuries have resulted in a WPI 10% or less, as assessed under Impairment Guidelines. Certain costs will continue to be paid beyond this, as necessary.
 - b. Reasonable medical, treatment, care and rehabilitation costs will continue to be paid if the person's WPI is more than 10%, irrespective of fault.

¹⁶⁷ Evidence, Mr Stone SC, 17 June 2016, p 2.

¹⁶⁸ Evidence, Dr Morrison SC, Senior Counsel and Spokesperson, p 52.

¹⁶⁹ Evidence, Ms Elizabeth Welsh, Barrister and Senior Counsel, New South Wales Bar Association, 17 June 2016, p 7.

¹⁷⁰ Evidence, Ms Welsh, 17 June 2016, p 7.

¹⁷¹ NSW Government, 'On the road to a better CTP scheme: CTP reform position paper', 29 June 2016, p 9.

c. The injured person's reasonable care costs (commercial care service – not gratuitous care provided informally by family or friends) will be payable up to two years post-injury if the person's WPI is 10% or less, and on an ongoing basis if the person's WPI is greater than 10%.¹⁷²

Committee comment

3.85 The committee notes that the government did not support its recommendation to conduct a review and publish a discussion paper on the issues relating to access to non-economic loss damages, however, note that it did canvass the threshold in its 2016 options paper.

Recommendation 13: Legal causation

MAA 12th review recommendation 13: That the Minister for Finance and Services ensure that a review of causation is undertaken, and that the report and recommendations be published.

- 3.86** Causation refers to whether the treatment provided to an injured person relates to the injury caused by the motor vehicle accident.¹⁷³ Issues regarding assessments about causation were raised during the 11th and 12th reviews of the MAA.¹⁷⁴ In particular, concerns were expressed that MAS Assessors were not applying the test for causation correctly which was resulting in lengthy judicial reviews of the assessments.¹⁷⁵
- 3.87** The committee recommended in its 11th review that the (now former) Motor Accidents Council form a sub-committee to review, analyse and recommend a course of action to the MAA on the issue of legal causation.¹⁷⁶ A sub-committee subsequently did explore the issue; however, it did not have the opportunity to make any recommendations prior to the abolishment of the Council.¹⁷⁷
- 3.88** In its 12th review the committee again recommended that a review of causation be undertaken,¹⁷⁸ however, the government did not support this recommendation. It stated that causation is a matter of specialist medical opinion 'which should be addressed by appropriately qualified medical and allied health specialists'; that the MAA appointed suitably qualified

¹⁷² NSW Government, 'On the road to a better CTP scheme: CTP reform position paper', 29 June 2016, p 8.

¹⁷³ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 57.

¹⁷⁴ Standing Committee on Law and Justice, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, pp 70-72.

¹⁷⁵ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 58-59.

¹⁷⁶ Standing Committee on Law and Justice, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, p 72.

¹⁷⁷ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 57-59.

¹⁷⁸ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 59.

persons as medical assessors with the appropriate expertise, independence and credibility; and that these assessors were ‘more than capable’ of addressing causation issues.¹⁷⁹

Committee comment

- 3.89** The issue of legal causation was not raised during the current review, presumably due to the bigger picture reforms to the scheme underway. Given that the government did not support the committee’s recommendation for a review of causation, and no changes to the system have been made, we will be interested to see whether stakeholders raise the issue again in a future review by the committee.

Recommendation 14: Settlement conferences

MAA 12th review recommendation 14: That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.

- 3.90** Section 89A of the *Motor Accidents Compensation Act* stipulates that parties to a claim for damages must participate in a settlement conference before a claim is referred to CARS.¹⁸⁰
- 3.91** During the 11th review evidence was received about considerable costs stakeholders faced when trying to comply with s 89A. Given these concerns, the committee recommended that the MAA meet with stakeholders to find a solution to the issue.¹⁸¹ Regular meetings with the Law Society and Bar Association were subsequently held to consider the matter.¹⁸²
- 3.92** In the committee’s 12th review report the MAA noted that the proposed Motor Accident Injuries Amendment Bill 2013 included the removal of s 89A. Following the discharge of the bill, the MAA advised that it would attempt to streamline the process under the existing legislation, in consultation with relevant stakeholders. Review participants stated that the removal of ss 89A and 89E are key amendments to the scheme that should be made a priority.¹⁸³
- 3.93** The government’s response stated that it agreed the provisions were problematic and that it would continue to consider concerns raised by stakeholders in relation to the operational requirements of the settlement conference process.¹⁸⁴
- 3.94** SIRA advised that the issues surrounding the settlement conference process will be considered again as part of the current review of the CTP scheme.¹⁸⁵

¹⁷⁹ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁸⁰ *Motor Accidents Compensation Act 1999*, s 89A.

¹⁸¹ Standing Committee on Law and Justice, *Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*, pp 75-77.

¹⁸² Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 60.

¹⁸³ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 60-61.

¹⁸⁴ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

Committee comment

- 3.95** The committee did not receive any evidence from stakeholders during this review regarding issues with the settlement conference process, even though the issues presumably still remain through the ongoing existence of ss 89A and 89E.
- 3.96** We note that the settlement conference process is being considered as part of the government's current review of the scheme and look forward to seeing the outcome. We reiterate the committee's previous concerns as to this matter and, to ensure it is addressed in the current review of the scheme, restate the recommendation in this report.

Recommendation 3

That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.

Recommendation 15: Late claims

MAA 12th review recommendation 15: That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a claim can be made without explanation from six to 12 months.

- 3.97** The *Motor Accidents Compensation Act* provides that a claim must be made within six months after the date of a motor accident.¹⁸⁶ Should a claimant wish to make a claim after that period, s 73 of the Act states that the claimant must provide a full and satisfactory explanation to the insurer.¹⁸⁷ If an insurer challenges the validity of this explanation for a late claim it can be reviewed by a CARS assessor.¹⁸⁸
- 3.98** Concerns about this process being too onerous were raised during the 10th and 11th reviews, with a call for reform in the area.
- 3.99** The committee's 12th review report recommended that the basic MAA claims form be shortened and simplified and the periods and obligations regarding claims lodgement be revised, including by extending the period from six to 12 months for late claims to be made without explanation.¹⁸⁹

¹⁸⁵ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations' p 7.

¹⁸⁶ *Motor Accidents Compensation Act 1999*, s 72.

¹⁸⁷ *Motor Accidents Compensation Act 1999*, s 73.

¹⁸⁸ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, p 61.

¹⁸⁹ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 62-63.

- 3.100** The government advised that it had intended to extend the period in which a claim can be made without explanation to 12 months under the discharged Motor Accident Injuries Amendment Bill 2013; however, given the bill was not supported, the MAA intended to work with stakeholders to consider the options for improving the late claims process, including as part of the review of the Claims Handling Guidelines.¹⁹⁰
- 3.101** In the current review Dr Morrison from the Australian Lawyers Alliance expressed support for extending the period to lodge claims, stating:
- ... an awful lot of people do not realise that what they were involved in was a motor accident and litigation over whether or not something falls within the definition of a "motor accident" and justifies an extension of time is simply a waste of everyone's money. The overwhelming bulk of claims for an extension of time are granted but they cost time, they cost money and they cost the insurers. That would be an area of simplification that would be well justified.¹⁹¹
- 3.102** The issue of late claims was also raised by the Law Society of New South Wales, which argued that the late claims dispute process should be abolished, or at the very least the time in which a claimant is required to submit a claim should be extended to 12 months, as this would significantly reduce the number of late claims made which would result in reduced legal and administrative costs to the scheme.¹⁹²
- 3.103** SIRA advised that the review of the Claims Handling Guidelines is underway and that it 'specifically addresses the late claims process by clarifying expectations in relation to insurers' management of late claims'. The late claims process will also be considered as part of the current review of the CTP scheme.¹⁹³

Committee comment

- 3.104** The committee acknowledges that the current reviews of the Claims Handling Guidelines and the broader CTP scheme are considering the late claims process. We maintain our view that the period for submitting claims without explanation should be extended from six to 12 months and recommend that this occur.

Recommendation 4

That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a claim can be made without explanation from six to 12 months.

¹⁹⁰ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁹¹ Evidence, Dr Morrison SC, 17 June 2016, p 51.

¹⁹² Submission 7, The Law Society of New South Wales, p 17.

¹⁹³ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 7.

Recommendation 16: Accident Notification Form

MAA 12th review recommendation 16: That the NSW Government ensure that the review of the operation of the Accident Notification Form is conducted by the Motor Accidents Advisory Committee (see recommendation 1), or, if that committee is not established, that stakeholders are widely consulted in the review.

- 3.105** In the 12th review, the New South Wales Bar Association and the Australian Lawyers Alliance advocated for a previous proposal, made with the Law Society of New South Wales, to expand the coverage of the Accident Notification Form (ANF) system from \$5,000 to \$20,000. The proposal aimed to improve the efficiency of the scheme, particularly in relation to smaller claims.¹⁹⁴
- 3.106** As discussed in chapter 1 the ANF currently provides early payments of up to \$5,000 for medical and treatment expenses and lost earnings. It was originally capped at \$500 and later extended to \$5,000 in 2008. The system was further expanded to a no-fault basis in 2010.¹⁹⁵
- 3.107** The MAA commissioned Ernst & Young to conduct a high level review of the proposal. The review determined that it would not result in any material savings, with only five per cent of claims falling within the \$5,000 to \$20,000 bracket. Further, Ernst & Young concluded that the proposal would increase scheme costs by around \$10 per Green Slip. As a result, the MAA did not support the proposal but did however undertake to commence a review of the operation of the ANF and invite stakeholder input. The committee recommended that this review be conducted by the newly established advisory committee (recommended in recommendation 1 of the 12th review report), or if that committee was not established, that stakeholders be widely consulted in the review.¹⁹⁶
- 3.108** The government supported the recommendation and stated that the MAA would undertake a review of the operation of the ANF as part of its improvement program, and include an examination of the efficiency and effectiveness of the form as well as options for simplifying its operation.¹⁹⁷
- 3.109** During the current review the Law Society of New South Wales advocated an even greater expansion of current ANF to \$25,000, asserting that it would improve the timeliness of benefits and reduce small claims costs:

... it may be desirable for some limited benefits to cover early medical treatment and loss of income to be available to all road users irrespective of fault for a limited period. This would improve the timeliness of benefits. As no costs are payable by insurers on "ANF only" claims, the claims resolution rate would be increased and costs in small claims would be driven down.¹⁹⁸

¹⁹⁴ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 65-66.

¹⁹⁵ SIRA, 'NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report', May 2016, p 22.

¹⁹⁶ Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, pp 66-67.

¹⁹⁷ Correspondence from the NSW Government to the Clerk of the Parliaments, 12 January 2015.

¹⁹⁸ Submission 7, The Law Society of New South Wales, p 5-6.

- 3.110** The Australian Lawyers Alliance supported the Law Society's suggestion, submitting that the initial cost of increasing the ANF would be offset by other cost savings to the scheme, although suggested that the financial cap should be determined by scheme actuaries:

Although increasing the no fault element is an initial cost there are offsetting savings in respect of eliminating legal costs for those who get on to the ANF and it takes business away from the claims harvesters. There is a point at which increasing the ANF is beneficial and is still a viable part of a hybrid no fault and fault scheme. We see some real benefit in that ... The actuaries have to determine the point at which the benefits of an ANF start to be an excessive expense upon the insurers. But at the lower levels, maybe \$25,000 or maybe even a bit more, clearly there are major savings to be made which offset the no-fault element.¹⁹⁹

- 3.111** SIRA subsequently advised that a review of the maximum amount payable under the ANF had been completed and that it determined that the maximum total of \$5,000 remained appropriate. It stated that further consideration of this issue will be included in the current review of the CTP scheme.²⁰⁰

Committee comment

- 3.112** The committee acknowledges that there has been a review of the ANF and that the review determined that the \$5,000 limit remains appropriate. The committee's recommendation, however, was centred on stakeholder involvement in the review, and it is not apparent whether or not that occurred.
- 3.113** We note that further consideration of this issue will be included in the current review of the CTP scheme, which does involve wide stakeholder consultation. As part of that process the committee encourages SIRA to re-consider the requests from the legal associations to increase the ANF limit above \$5,000.

¹⁹⁹ Evidence, Dr Morrison SC, 17 June 2016, p 50 and 53.

²⁰⁰ Answers to pre-hearing questions on notice, SIRA, received 14 June 2016 - Attachment 1, 'Profit Report Recommendations', p 8.

Chapter 4 Fraud, exaggeration and claims harvesting

Since the 12th review of the MAA, there has been a considerable increase in the growth of minor severity legally represented claims, including nervous shock claims for child accident victims. Closely related to this increase has been the emerging issues of fraudulent and exaggerated claims and ‘claims harvesting’. This chapter examines those issues.

Fraudulent and exaggerated claims

- 4.1** One of the objectives of the *Motor Accidents Compensation Act 1999* is to deter CTP insurance fraud. Under s 116 of the Act, insurers have an obligation to take all reasonable steps to deter and prevent fraudulent claims. Section 117 sets out penalties (a maximum of \$5,500 or imprisonment for 12 months) for persons who commit an offence for knowingly making false or misleading claims.
- 4.2** As noted in chapter 2, the government estimates that fraud and exaggerated claims are costing the scheme \$400 million per year.²⁰¹
- 4.3** There are two categories of insurance fraud, both of which are used within the CTP scheme to gain financial benefit:
- Hard fraud – involving bogus claims, such as an accident that did not happen or an injury that was never sustained
 - Soft fraud – involving claims for genuine injuries resulting from a motor vehicle accident that contain deliberately exaggerated elements.²⁰²
- 4.4** In a recent report entitled *Deterring fraudulent and exaggerated claims in the NSW CTP insurance scheme* (hereafter referred to as the ‘*Fraudulent and exaggerated claims report*’), SIRA provided the following suspected examples of such claims:
- claims for future lost income and significant future expenses for young children involved in low speed accidents with no demonstrable physical injury
 - claims for young children, some under 12 months of age, from minor accidents seeking compensation for psychological injuries evidenced by behaviour ordinarily considered developmental, such as crying and bed wetting
 - low speed collisions where the extent of injuries claimed far exceeded what would be expected considering the damage to the vehicle
 - people claiming to be passengers in vehicles involved in motor vehicle accidents, where further investigation shows they were not in the vehicle at the time
 - staged accidents involving multiple vehicles
 - claims for injuries not caused by the accident.²⁰³

²⁰¹ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 5.

²⁰² SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 3.

²⁰³ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 5.

4.5 Anecdotal examples of such claims were also shared by other stakeholders during the inquiry, particularly in regard to alleged motor vehicle accidents involving large families where law firms submit separate psychological injury claims for the children, run them all as separate claims and get separate heads of damages for each claim. For instance, Mr Andrew Stone, Barrister and Senior Council, New South Wales Bar Association, told the committee:

At the most extreme end you have got the parents not just deliberately reversing into a car to create this; they get out, have a look at the damage, get back in the car and reverse in again just to put a bigger ding in the car to try and make this persuasive.²⁰⁴

4.6 Children's claims are exempt from the Claims Assessment and Resolution Service (discussed in chapter 1) as they are eligible for benefits regardless of fault and therefore their claims can be automatically dealt with within the court system.

The number of legally represented minor injury claims for children has increased by 126 per cent since 2012, compared to a 75 per cent increase in the number of full claims for children over the same period, as demonstrated by the table below.

Figure 8 Full and minor severity represented claims by calendar year²⁰⁵

| Full Claims | 2012 | 2013 | 2014 | 2015 | % Increase from 2012 |
|--------------|--------------|---------------|---------------|---------------|----------------------|
| Children | 950 | 1,151 | 1,467 | 1,659 | 75% |
| Adult | 8,458 | 8,950 | 9,662 | 11,338 | 34% |
| Total | 9,408 | 10,101 | 11,129 | 12,997 | 38% |

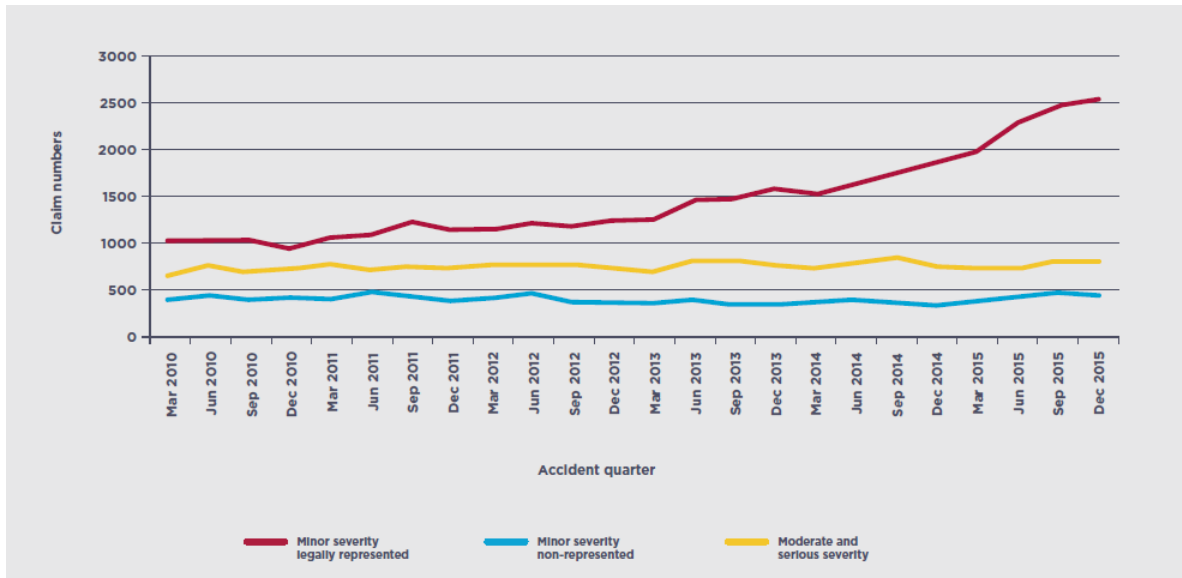
| Minor Severity Represented Claims | 2012 | 2013 | 2014 | 2015 | % Increase from 2012 |
|-----------------------------------|--------------|--------------|--------------|--------------|----------------------|
| Children | 600 | 827 | 1,128 | 1,358 | 126% |
| Adult | 4,112 | 4,695 | 5,545 | 7,750 | 88% |
| Total | 4,712 | 5,522 | 6,673 | 9,108 | 93% |

4.7 The *Fraudulent and exaggerated claims report* identified a considerable increase in the growth of minor severity legally represented claims in the system in recent years (20 per cent in both 2013 and 2014 and nearly 40 per cent in 2015), even though the number of people recorded as injured in motor vehicle accidents had reduced over the same period.²⁰⁶ The claims frequency for minor severity non-represented claims and moderate and serious severity claims over the same period, on the other hand, has remained stable, as illustrated by the graph on the next page.

²⁰⁴ Evidence, Mr Andrew Stone SC, Barrister, New South Wales Bar Association, 17 June 2016, p 8.

²⁰⁵ Answers to questions on notice, SIRA, 14 July 2016, p 4.

²⁰⁶ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 5.

Figure 9 Claim numbers by severity and legal representation²⁰⁷

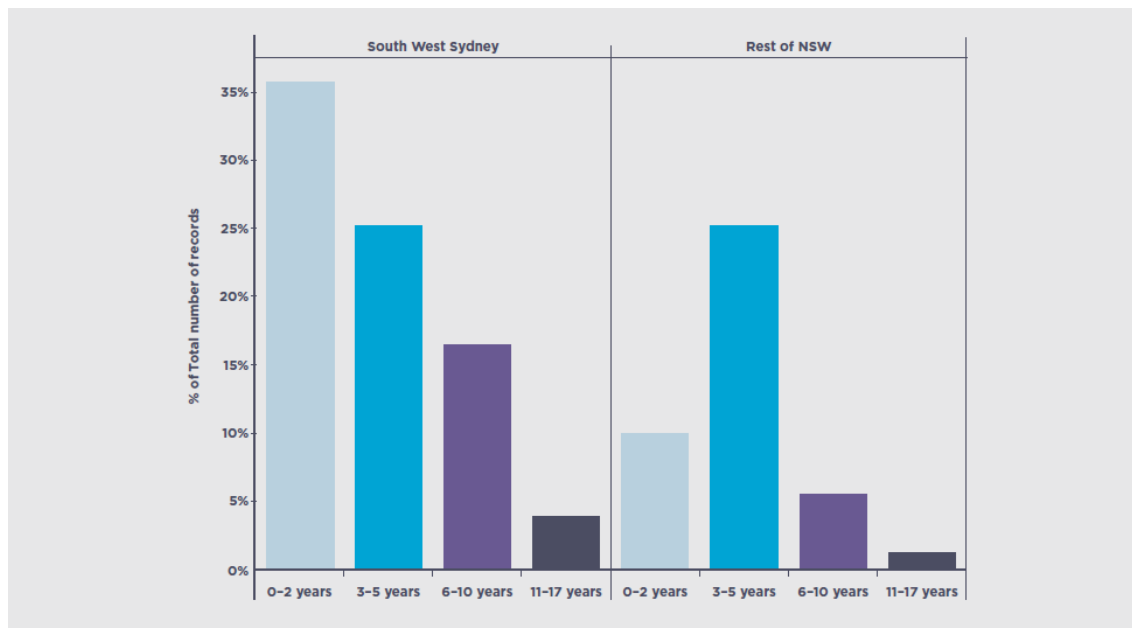
- 4.8** The *Fraudulent and exaggerated claims report* highlighted that the concerning increase in minor severity legally represented claims has primarily emanated from South West Sydney, which represents approximately 20 per cent of the state's population and number of vehicles, yet now accounts for nearly half of these types of claims across New South Wales. Since 2008 the number of legally represented minor injury claims in South West Sydney has increased from 255 to 355 per cent, and there is evidence that the practice is spreading to other parts of Sydney and across New South Wales.²⁰⁸
- 4.9** The spike in claims in South West Sydney includes a higher number of claims per accident, higher proportion of child claimants and unemployed claimants, and a higher proportion of claimants who do not attend hospital, when compared to the state average.²⁰⁹
- 4.10** In regard to the claims in this region involving children, there has been high growth in the number of claims where the psychological symptom of acute stress is the only injury. SIRA observed that these claimants 'are often not referred for any medical follow-up or the condition is not confirmed by a medical practitioner at the time of the accident. Typically the child is upset about the accident, may lose some sleep for a few nights, but then the symptoms disappear.'²¹⁰
- 4.11** The graph on the next page shows the number of acute stress only injuries by age groups under 18.

²⁰⁷ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 9.

²⁰⁸ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 10.

²⁰⁹ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 14.

²¹⁰ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 16.

Figure 10 Minor injury legally represented claims – acute stress only by age group

4.12 Adult claimants in South West Sydney typically display different types of injuries to children, involving soft tissue injuries such as stiffness, bruising, minor whiplash, and concussion without loss of consciousness. These claimants also tend to not be referred for medical follow-up or their condition remains unconfirmed by a medical practitioner with symptoms disappearing after a few days.²¹¹

4.13 The committee was informed that most of these claims appear to come from newly established law firms in the area, and many appear to involve a small number of medical providers.²¹² The suspiciousness of these trends was highlighted by SIRA:

... one legal service provider has represented claimants in more than 400 claims in the past few years, while one medical provider was the treating doctor in more than 200 of these claims. That medical provider was the treating doctor for other claimants on less than 10 occasions.

Given the number of GPs in NSW and the number of minor claims, in any year a GP would expect to see on average two new CTP claimants. The fact that some GPs are seeing hundreds of claims over three years is unusual.²¹³

4.14 Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA, suggested that these types of claims have particularly become an issue following changes to legislation which no longer require people to report accidents to the police prior to lodging a claim.²¹⁴

²¹¹ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 17.

²¹² SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 14.

²¹³ SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 14.

²¹⁴ Evidence, Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA, 17 June 2016, p 69.

- 4.15** The significant increase in the number of small claims with legal representation has contributed to rising CTP premiums. Such claims average between \$95,000 and \$110,000 each, resulting in around \$213 of every premium in New South Wales going towards these claims, compared to \$96 in 2008 (an increase of 121 per cent).²¹⁵
- 4.16** The increasing number of these types of claims has also led to higher insurer claims handling expenses. According to SIRA, if these trends continue, CTP premiums would be expected to increase by at least 10 per cent per annum over the next few years.²¹⁶
- 4.17** Measures to address the issue of fraudulent and exaggerated claims will be considered at the end of this chapter.

Claims harvesting

- 4.18** A number of stakeholders expressed concerns during the review in relation to the recent emergence of ‘claims harvesting’ or ‘claims farming’ which has caused a major increase in the incidence of small claims, particularly legally represented small claims.
- 4.19** Claims harvesting refers to unsolicited approaches from companies (usually overseas call centres) calling people to see if they have been in a motor vehicle accident, and where they have been, encouraging the person to make a compensation claim for motor accident injuries. The client details are then sold to lawyers, who pay a commission in return.²¹⁷
- 4.20** Claims harvesting was widespread in the UK for around a decade, until the UK Government introduced reforms in 2012 to ban the practice.²¹⁸ The committee heard that following the UK reforms, the overseas call centres involved in the practice turned to Australia for market opportunities.²¹⁹
- 4.21** The impact of the practice was highlighted by Mr Stone from the New South Wales Bar Association, who used the following ‘ballpark figures’ to explain to the committee:

... you might have 8,000 motor vehicle accident potential claims a year – in 2,000 of those people do not bring a claim at all; in 2,000 of those people bring a claim, do not use a lawyer and settle for next to nothing; and in 4,000 of those people bring a lawyer and get a more substantial settlement. What has changed in the last two years is this claims harvesting practice where almost everybody in New South Wales has now received a phone call saying, "Have you been involved in a motor accident?"²²⁰

- 4.22** Mr Stone stated that the practice has had the effect of ‘drag[ging] back into the scheme the 2,000 who were never going to make a claim’ on the promise of getting them compensation money, while lawyers gain from the legal costs. Mr Stone added: ‘It has also meant that the

²¹⁵ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 12.

²¹⁶ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 12.

²¹⁷ Evidence, Mr Stone SC, 17 June 2016, p 5; SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 8.

²¹⁸ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 5.

²¹⁹ Evidence, Mr Stone SC, 17 June 2016, p 9 and 12.

²²⁰ Evidence, Mr Stone SC, 17 June 2016, p 5.

2,000 who previously acted for themselves without being represented are now much more likely to be represented, and with representation they get better value out of their claim.²²¹

4.23 The financial benefit for claims harvesters and the law firms involved in the practice was illustrated in detail by the Bar Association:

Contacting individuals who would not otherwise make a claim, offering them 'free money' and getting the insurer to throw \$30,000 or \$40,000 at a settlement are the basic elements of the business model. The solicitor will take \$20,000 out of the \$40,000, some will go back to Medicare and Centrelink and the claimant might get \$10,000 or \$15,000 net in hand. For someone who was not going to claim and for someone of modest means, that is still an acceptable return. The claims harvester has delivered on the 'free money' promise. The claimant is none too concerned that the lawyer who got them the \$40,000 total settlement is taking \$20,000 of it.²²²

4.24 Ms Vicki Mullen, General Manager Consumer Relations and Market Development, Insurance Council of Australia, asserted that the increase in legally represented minor claims 'would undoubtedly be inspired by claims farming behaviours', and that 'if a claim has been farmed it is only a heartbeat away from that claim actually being exaggerated as well, which may actually constitute a fraud.'²²³

4.25 Measures to address the issue of claims harvesting will be considered in the following sections.

Measures to address the issues

4.26 The following sections discuss stakeholder suggestions and government initiatives to address the increasing amount of legally represented small claims.

Stakeholder suggestions

4.27 A number of suggestions were made to address the issues of increasing small claims, fraudulent or exaggerated claims and claims harvesting.

4.28 One suggestion, from the New South Wales Bar Association, was for insurers to 'toughen up' their approach to claims handling. It submitted that poor claims handling practices have been one of the biggest factors contributing to the small claims blowout. Such practices include the pay out of small claims by insurers if the apparent cost of disputing the claim outweighs the cost of settling the claim (a common form of scheme leakage). The association declared:

If insurers are prepared to throw undue amounts of 'go away' money at claims, then it is hardly surprising that a claims culture follows.²²⁴

²²¹ Evidence, Mr Stone SC, 17 June 2016, p 5.

²²² Submission 4, New South Wales Bar Association, Attachment 1, p 12.

²²³ Evidence, Ms Vicki Mullen, General Manager Consumer Relations and Market Development, Insurance Council of Australia, 17 June 2016, p 29.

²²⁴ Submission 4, New South Wales Bar Association, Attachment 1, p 10.

- 4.29** In addressing this issue, however, both the Bar Association and SIRA acknowledged the challenge in finding the right balance between dealing with fraud while supporting genuine claimants.²²⁵
- 4.30** In regard to the significant increase in legally represented small claim numbers involving children, the Law Society of New South Wales, New South Wales Bar Association and Australian Lawyers Alliance joined together to formulate a written proposal designed to address fraudulent claims involving children, and the increase in legally represented minor claims, by removing the economic incentive for the legal profession to engage with such claimants. The proposal was submitted to the Minister for Innovation and Better Regulation in March 2016.²²⁶
- 4.31** The first part of the legal associations' proposal is to cap costs for smaller value children's claims, on the basis that it is 'disproportionate to have a \$5,000 to \$10,000 settlement incurring \$10,000 to \$15,000 in unregulated legal costs.'²²⁷ Their proposal is to amend the Motor Accidents Compensation Regulation 2015 to read as follows:

Children's claims

(a) Where a claim is exempted solely on the basis of a lack of capacity related to the age of a claimant and where the ultimate settlement or judgment in the matter is \$25,000 or less, then:

(i) The maximum recoverable as party/party professional costs shall not be more than \$5,500 inclusive of GST; and

(ii) No additional professional fees may be charged on a contracted out basis

unless the court otherwise orders.

(a) Where a claim is exempted solely on the basis of lack of capacity related to the age of a claimant and where the ultimate settlement or judgment in the matter is less than \$50,000, but greater than \$25,000 then:

(i) The maximum recoverable as party/party professional costs shall not be more than \$11,000 inclusive of GST; and

(ii) No additional professional fees may be charged on a contracted out basis unless the court otherwise orders.

Where a claim to which (a) or (b) above applies is the second or other subsequent claim brought on behalf of an occupant of the same vehicle involved in an accident, then the maximum recoverable as party/party professional costs shall not be more than \$5,500 inclusive of GST and no additional professional fees may be charged on a contracted out basis, unless the court otherwise orders.²²⁸

²²⁵ Submission 4, New South Wales Bar Association, Attachment 1, p 10; SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 7.

²²⁶ Submission 5, Australian Lawyers Alliance, p 5.

²²⁷ Submission 4, New South Wales Bar Association, Attachment 1, p 11.

²²⁸ Submission 7, Law Society of New South Wales, Attachment 1, pp 4-5.

- 4.32** The Bar Association explained that the \$25,000 threshold figure was chosen to capture the vast majority of children's claims at the lower end, particularly those suspected of being fraudulent or exaggerated, which typically settle for \$10,000 to \$15,000. The additional level of costs restrictions between \$25,000 and \$50,000 was designed as a safety net to reduce any incentive to build up or boost claims over the \$25,000 threshold.²²⁹
- 4.33** The committee was informed that Ernst & Young has done some preliminary work on the proposal and expressed some concerns regarding the proposed financial thresholds. The premise of these concerns have been strongly rejected by the legal associations.²³⁰
- 4.34** The legal associations also proposed a short term measure to contain the legal fees payable in small claims, which would involve amending the 2015 regulation to provide a stipulation whereby the regulated legal fees in relation to professional costs could not be contracted out on matters where the total amount of damages recovered by way of settlement, award or judgment is less than \$50,000.²³¹
- 4.35** The Law Society of New South Wales advised that the intent of this proposed amendment is that for claims settled or awards made over \$50,000, scheduled costs would only be available for the first \$50,000, and solicitor/client costs could only be charged to sums above this figure (and only then on the portion of the damages above \$50,000).²³²
- 4.36** Both proposals are designed deter legal professionals from 'pushing small claims' and to 'take business away from the claims harvesters'.²³³
- 4.37** SIRA advised that the government is currently considering the proposals as part of its review of the CTP scheme.²³⁴

Government initiatives

- 4.38** The New South Wales Government has recently implemented a range of measures and initiatives to address the issues of claims fraud and exaggeration and claims harvesting.
- 4.39** A key initiative has been the establishment of a CTP Fraud Taskforce to address claims fraud. The taskforce includes representatives from SIRA, the NSW Police, Fair Trading, peak legal and medical bodies, CTP insurers and the Insurance Council of Australia.²³⁵
- 4.40** The taskforce has proposed a number of initiatives to investigate and manage suspicious claims and increase public awareness about the impacts and penalties associated with CTP

²²⁹ Submission 4, New South Wales Bar Association, Attachment 1, p 11.

²³⁰ Submission 4, New South Wales Bar Association, Attachment 1, p 11.

²³¹ Submission 7, The Law Society of New South Wales, Attachment 1, p 5.

²³² Submission 7, The Law Society of New South Wales, Attachment 1, p 5.

²³³ Evidence, Dr Andrew Morrison, Senior Counsel and spokesperson, Australian Lawyers Alliance, 17 June 2016, p 50.

²³⁴ Answers to pre-hearing questions on notice, SIRA, 14 June 2016, p 13.

²³⁵ Answers to pre-hearing questions on notice, SIRA, p 5; SIRA, 'Deterring fraudulent and exaggerated claims in the CTP insurance scheme', p 6.

insurance fraud.²³⁶ Mr Nicholls advised that the taskforce is in the process of finalising a report which will set out key performance indicators and timeframes to assess whether the measures are working and whether new measures need to be considered.²³⁷

- 4.41** SIRA advised that it is working on tactical initiatives designed to address ‘unusual patterns of behaviour involving claimants and networks of legal and medical providers’.²³⁸ It is also revising its Claims Handling Guidelines to improve claims management processes to better counter fraud²³⁹ and developing a dedicated SIRA webpage on fraud.²⁴⁰
- 4.42** The committee was informed that SIRA has been allocated an additional \$1.2 million in this year’s state budget ‘to build an internal fraud capability including staff and an improved database’, and that the government has signaled an intention to provide the regulator with greater investigative and prosecution powers, together with increased penalties for fraud.²⁴¹
- 4.43** In response to the issue of claims harvesting, the New South Wales Government amended the Motor Accidents Compensation Regulation 2015 to ban referral fees for CTP claims, preventing law firms from paying for the referral of clients.²⁴² However, SIRA acknowledged that enforcement is challenging given that many claim harvesting companies operate from overseas, and to date there does not appear to have been any reduction in the number of legally represented minor claims.²⁴³

Committee comment

- 4.44** The committee is significantly concerned about the growth in fraudulent and exaggerated claims which appears to have led to the substantial increase in legally represented small claims. Not only are we concerned about the morality of this issue, but we are particularly concerned about the associated impacts on Green Slip prices.
- 4.45** The committee notes that the government has implemented a range of measures and initiatives to address these issues, such as the CTP fraud taskforce, and we commend these efforts. While it is too soon to determine how effective these initiatives are, we look forward to seeing their progress in our next review of the scheme.
- 4.46** We note that another factor contributing to the increase in legally represented small claims is the recent emergence of claims harvesting – another trend with which we are very concerned about. The committee supports the government’s ban of referral fees through the Motor Accidents Compensation Regulation 2015; however, note the challenge in enforcing this ban due to jurisdictional issues. We also note that there has not yet been any apparent reduction in these claims. The committee acknowledges that the government is endeavouring to address this issue and again look forward to seeing the progress of that in our next review.

²³⁶ Answers to pre-hearing questions on notice, SIRA, p 5.

²³⁷ Evidence, Mr Nicholls, 17 June 2016, p 71.

²³⁸ Answers to pre-hearing questions on notice, SIRA, p 5.

²³⁹ Answers to pre-hearing questions on notice, SIRA, p 5.

²⁴⁰ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 6.

²⁴¹ Answers to questions on notice, SIRA, p 2.

²⁴² Answers to questions on notice, SIRA, p 16.

²⁴³ SIRA, ‘Deterring fraudulent and exaggerated claims in the CTP insurance scheme’, p 8.

- 4.47** In regard to the proposals from the Law Society of New South Wales, New South Wales Bar Association and Australian Lawyers Alliance to address fraudulent claims involving children and the increase in legally represented minor claims by removing the economic incentive for the legal profession to engage with such claimants, we believe that the proposals have merit. We support the government considering the implementation of these proposals, and acknowledge that it is doing so as part of its current scheme review.
- 4.48** However, we believe that given the severity of the issue, urgent action is required to address it. The considered proposals of the various legal groups who appeared before the committee are an excellent starting point for reform of the costs regulations.

Recommendation 5

That the NSW Government urgently reform the costs regulation to deter exaggerated and fraudulent claims, especially in regards to low severity injuries to both minors and adults.

Chapter 5 Future design of the scheme

This chapter considers the future of design of the CTP scheme.

At the time of gathering evidence for this review the New South Wales Government had released its 2016 options paper (outlined in chapter 1) but not yet concluded its consultation process. It is therefore important to note that nearly all of the views of stakeholders in this chapter were received before the government released its significant reform plans for the scheme on 29 June 2016.

The chapter begins by discussing the government's plans, before considering issues regarding journey claims, motorcycle classes, non-motorised vehicles and ride sharing.

New South Wales Government reform plans

- 5.1 As noted in chapter 1, in March 2016 the government published an options paper entitled *On the road to a better CTP scheme: Options for reforming Green slip insurance in NSW*.
- 5.2 The paper invited submissions and feedback from stakeholders on the following four scheme design options.

Figure 11 Potential reform options outlined in the Government's discussion paper²⁴⁴

| | | | | |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Potential Reform Options | Option 1 – Retain the current common law, fault-based scheme with process improvements (no change in benefits) | Option 2 – Retain the current common law, fault-based scheme with adjustments to benefit levels as well as process improvements | Option 3 – Move to a hybrid no-fault, defined benefits scheme with common law benefits retained in parallel | Option 4 – Move to a fully no-fault, defined benefits scheme with caps, thresholds and no common law |
| Scheme type | Primarily fault-based, common law, lump sum settlements. | Primarily fault-based, common law, lump sum settlements. | No-fault, defined benefits, lump sum for the most seriously injured. | No-fault, defined benefits, no common law. |
| Defining features | This option proposes retaining the current primarily fault-based, common law CTP scheme with process improvements such as changes to dispute services, premium system and insurer regulation. | This option proposes retaining the current primarily fault-based, common law CTP scheme with process improvements as per Option 1 and revised caps and benefits. | This option proposes introducing defined statutory benefits for anyone injured in a motor vehicle accident, regardless of fault, with the retention of common law benefits for the most seriously injured. | This option proposes introducing a fully no-fault scheme which would provide defined, statutory benefits for anyone injured in a motor vehicle accident, regardless of fault, with no access to common law. |
| Where else this scheme operates | NSW ACT | Queensland South Australia Western Australia | Victoria Tasmania | New Zealand Northern Territory |

²⁴⁴ NSW Government, 'On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW', March 2016, p 16.

- 5.3** Following the consultation, on 29 June 2016 the Minister for Innovation and Better Regulation, the Hon Victor Dominello MP, announced the government's plan to overhaul the CTP scheme to make it fairer and more affordable.
- 5.4** The government's reform agenda for the scheme is a version of 'Option 3' in Figure 11. It proposes to introduce a hybrid scheme which provides defined benefits to all people injured in a motor vehicle accident, regardless of fault, and modified common law damages (which are fault based) for the more seriously injured.²⁴⁵
- 5.5** For those seriously injured (who exceed a 10 per cent whole person impairment threshold) due to the fault of another, access to the common law system for additional compensation would remain, including lump sum compensation for non-economic loss (i.e. pain and suffering) and loss of earning capacity, with ongoing payments made for medical and attendant care services.²⁴⁶
- 5.6** The proposed changes are expected to extend protection to an additional 7,000 road users per year and provide the majority of injured road users with access to benefits in a more timely manner.²⁴⁷ The government considers that the planned reforms will result in reduced Green Slip premiums, return a higher proportion of benefits to the most seriously injured road users, reduce the time it takes to resolve claims, and reduce opportunities for claims fraud and exaggeration.²⁴⁸
- 5.7** The government announced that it plans to introduce legislation into Parliament later this year, and that subject to Parliament's approval the changes could come into effect from July 2017.²⁴⁹
- 5.8** The New South Wales Bar Association expressed concerns about moving to a no-fault, defined benefits system on the basis that although it would provide benefits to some people not currently eligible, it would remove benefits from others:

To pay a defined benefit, to move to a no fault element of giving everybody something irrespective of fault for a period of time, is expensive. It brings in 7,000-plus new claims a year and the money for that has got to come from somewhere. It will not come just out of efficiencies in the current scheme; you have to take benefits away from people who are currently receiving them to pay for it. That is our really big concern.²⁵⁰

²⁴⁵ NSW Government, 'On the road to a better CTP scheme: CTP reform position paper', 29 June 2016, p 4.

²⁴⁶ NSW Government, Green slip CTP reforms, *Overview*, <http://greenslipreforms.nsw.gov.au/overview/>.

²⁴⁷ Media release, Hon Victor Dominello MP, Minister for Innovation and Better Regulation, 'NSW motorists to benefit from CTP reforms', 29 June 2016.

²⁴⁸ NSW Government, 'On the road to a better CTP scheme: CTP reform position paper', 29 June 2016, p 4.

²⁴⁹ Media release, Hon Victor Dominello MP, Minister for Innovation and Better Regulation, 'NSW motorists to benefit from CTP reforms', 29 June 2016.

²⁵⁰ Evidence, Mr Andrew Stone SC, Barrister, New South Wales Bar Association, 17 June 2016, p 2.

5.9 This view was shared by the Law Society of New South Wales:

The money for newly covered injured road users must come from somewhere and this inevitably will mean a reduction in compensation available ... The Law Society maintains it is not fair that accident victims should surrender benefits to subsidise payments to the negligent drivers who caused their injuries. Notions of personal responsibility must have some relevance here.²⁵¹

5.10 The Australian Lawyers Alliance argued that fault remains the ‘best and fairest “rationing mechanism” for allocation of compensation in the scheme.’²⁵²

5.11 Other stakeholders, however, supported the move to a no-fault, defined benefits system. For example, the Insurance Council of Australia considered that it would speed up claims processing, reduce administration, legal and medical costs, and eliminate the delays and expense caused by needing to determine fault for each claim.²⁵³

5.12 Dr Mary Langcake, NSW Trauma Chair of the Australasian College of Surgeons commented that a no-fault scheme would improve the recovery times of injured people as it would speed up the process of finalising claims and provide earlier access to funds for medical treatment.²⁵⁴

Journey claims and worker protections

5.13 Concern was raised during the current review by Unions NSW regarding the impact of changes to the New South Wales workers compensation scheme on journey claims and worker protections.

5.14 Prior to the 2012 changes to the *Workers Compensation Act 1987*, the workers compensation scheme provided a no-fault system that covered workers travelling to or from work and their place of abode. Following the changes, workers that have an at fault accident on the way to or from work no longer have any insurance coverage. Unions NSW expressed significant concern about this gap in coverage, estimating that it has affected approximately 3,000 to 3,500 New South Wales workers. It noted the significant decrease in workers compensation recovery claims since the legislative changes and recommended that the CTP scheme be extended to cover all at fault claims for workers driving to and from their workplace.²⁵⁵

5.15 Under the 2012 legislative changes, workers injured in a motor vehicle accident going to or from work and home who are *not* at fault are now covered by the CTP scheme. However, Unions NSW advised that these workers are not covered by the same employment protections that apply to workers injured *at* work.²⁵⁶ Under s 248 of the *Workers Compensation Act*,

²⁵¹ Submission 7, Law Society of New South Wales, Attachment 1, p 18.

²⁵² Submission 5, Australian Lawyers Alliance, Attachment 1, p 3.

²⁵³ Media release, Insurance Council of Australia, ‘Insurance Council backs NSW Government’s CTP reform plan’, 29 June 2016.

²⁵⁴ Evidence, Dr Mary Langcake, NSW Trauma Chair, Royal Australasian College of Surgeons, 17 June 2016, p 16.

²⁵⁵ Submission 10, Unions NSW, pp 3-5.

²⁵⁶ Submission 10, Unions NSW, p 5.

employers are prohibited from terminating an employee injured at work within six months of the injury if the worker is ‘not fit for employment as a result of the injury’.

5.16 Unions NSW pointed out that there is no such protection for workers injured in a not at fault motor vehicle accident on the way to or from work, apart from those specified in discrimination legislation. It stated that the discrimination legislation does not, however, prohibit such terminations, and rarely results in a reinstatement.²⁵⁷

5.17 The union expressed several concerns about this gap in protection, including that:

- if injured workers are terminated within this period, their ability to return to work is inhibited given that they have better chances of returning to sustainable work if they can return to their own job (even if it requires some adjustment)
- if injured workers do not return to work for an extended period of time, the cost of current and future income loss components to the scheme will increase
- costs have been transferred from employers to the general populace through increased Green Slip prices and costs to the public health and social security systems.²⁵⁸

5.18 Ms Emma Maiden, Assistant Secretary, Unions NSW elaborated on the matter during evidence to the committee:

Under the workers comp scheme if you are injured at work, but obviously not with a journey claim, then you cannot be terminated as a consequence of that injury for six months. So that is the provision that exist in the workers compensation scheme. But by moving all those journeys out into the CTP scheme and not providing a similar provision in relation to protection from dismissal you really leave that person at the mercy of their employer to do the right thing. In our experience it is so much better to actually give that person some protection and give them a chance to get back to work. We should not just risk their financial security.²⁵⁹

5.19 In order to address the issue, Unions NSW recommended that the *Motor Accident Compensation Act 1999* and *Industrial Relations Act 1996* be amended to protect all workers from termination for the same period as available under the *Workers Compensation Act* if making a claim under the *Motor Accident Compensation Act*.

Committee comment

5.20 The committee acknowledges the issue presented by Unions NSW regarding the gap in insurance coverage for workers that have an at fault accident on the way to or from work as a result of the removal of journey claims from the workers compensation scheme.

5.21 We also acknowledge the issue of workers injured in a not at fault motor vehicle accident on the way to or from work not having adequate protection from employment termination. The committee notes the recommendation from Unions NSW that the *Motor Accidents Compensation Act* and *Industrial Relations Act* be amended to address this issue. The committee did not have any submissions from employer groups addressing this issue.

²⁵⁷ Submission 10, Unions NSW, p 5.

²⁵⁸ Submission 10, Unions NSW, p 5.

²⁵⁹ Evidence, Ms Emma Maiden, Assistant Secretary, Unions NSW, 17 June 2016, p 41.

Recommendation 6

That the NSW Government consider how journey claims are treated under any CTP scheme.

Motorcycle classes

5.22 An issue regarding the number of motorcycle classes in the scheme and its impact on motorcycle Green Slips was discussed during the review.

5.23 Following consultation with the Motorcycle Council of NSW, the former MAA reclassified motorcycles from three to five classes based on motorcycle engine capacity in July 2010. However, the change resulted in a decrease in premium prices for some motorcycle owners, but an increase (some substantially) for others.²⁶⁰

5.24 The Motorcycle Council expressed concern that an excessive number of motorcycle sub-categories or classes in the scheme has resulted in increased volatility from a small number of third party claims and subsequent exposure to risk by insurers, which have responded by increasing premium prices. The council stated:

There are only 216,000 registered bikes in NSW which gives an average of 1,440 motorcycle policies in each of the 150 possible sub groups. This then means that one group with a large claim against it has a price rise and/or the cohort is too small to be able to complete comprehensive modelling in order to price the policies accordingly.²⁶¹

5.25 Mr Guy Stanford, CTP Committee, Motorcycle Council of NSW further elaborated on the issue during evidence to the committee:

... the actual population risk for people in New South Wales appears to be vastly higher than it really is simply because you keep breaking it up into smaller and smaller divisions. The more divisions you break motorcycles up into—and at the moment, as you know, we have some 35-odd divisions—there is a multiplying effect that says we are being perceived as being a vastly higher risk than perhaps the actual risk really is.²⁶²

5.26 The Motorcycle Council called for a consolidation of classifications from five to two classes: Learner Approved Motorcycle Scheme (LAMS) and non-LAMS. It said this would reduce the possible number of sub-categories from 150 to 60, thereby significantly increasing the average number of policies within those groups and decreasing volatility and Green Slip prices.²⁶³

²⁶⁰ Ernst & Young, 'Review of Green Slip Premium Setting for Motorcycles 2000-2014: State Insurance Regulatory Authority', 19 February 2016, p 18.

²⁶¹ Submission 11, Motorcycle Council of New South Wales, p 8.

²⁶² Evidence, Mr Guy Stanford, Member, CTP Committee, Motorcycle Council of New South Wales, 17 June 2016, p 21.

²⁶³ Submission 11, Motorcycle Council of New South Wales, p 9.

Committee comment

- 5.27** The committee acknowledges the concerns of the Motorcycle Council of NSW regarding the excessive number of motorcycle sub-categories or classes and the corresponding impact on motorcycle premiums.
- 5.28** The committee notes the council's suggestion to consolidate the classifications from five to two classes: Learner Approved Motorcycle Scheme (LAMS) and non-LAMS. We believe this option is worth considering and recommend that SIRA do so, in consultation with the Motorcycle Council.

Recommendation 7

That the State Insurance Regulatory Authority consult with the Motorcycle Council of NSW to consider consolidating the current five classifications of motorcycles in New South Wales into the following two classes: Learner Approved Motorcycle Scheme (LAMS) and non-LAMS.

Non-motorised vehicles and dirt bikes

- 5.29** During the review there was some discussion as to whether people injured on the roads by non-motorised vehicles, such as bicycles and skateboards, should be covered under the CTP scheme, which currently only covers injuries from motor accidents. There was also some discussion about the lack of scheme coverage for dirt bikes which do not require registration for off-road use.
- 5.30** In regard to non-motorised vehicles, the committee was informed that the matter was discussed at a New South Wales CTP Bicycle Compensation Working Party in September 2015, commissioned by the Minister for Roads, Transport and Maritime Services, and was also an issue identified in the government's 2016 options paper.²⁶⁴
- 5.31** Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, SIRA advised that it is estimated that during the period 2005 to 2013 there were 123 serious injuries²⁶⁵ involving a pedestrian injured by a bicycle, which equates to 1.9 per cent of all pedestrian claims currently in the scheme.²⁶⁶ In the same period there were approximately 446 serious injuries recorded where a bicycle rider injured another bicycle rider, and an average of 350 claims per annum where a bicyclist has been injured by a motor vehicle. Mr Nicholls acknowledged that this was a small number and that if non-motorised vehicles were to be included in the scheme it would only have a marginal impact ('probably a dollar') on premiums, however that ultimately it was a policy decision for the government.²⁶⁷

²⁶⁴ Evidence, Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, 17 June 2016, p 87.

²⁶⁵ Defined as people admitted to hospital.

²⁶⁶ Answers to questions on notice, SIRA, 14 July 2016, p 16.

²⁶⁷ Evidence, Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, 17 June 2016, p 87.

- 5.32** The New South Wales Bar Association expressed the view that now may not be the most opportune time to expand the scheme to non-motorised vehicles given the current issues in relation to increasing claims numbers and small claims.²⁶⁸
- 5.33** The Law Society of New South Wales suggested that the finite resources of the scheme should be directed toward compensating people who had been injured in motor vehicle accidents, as per the original intent of the scheme, particularly given the likelihood of the scheme now being extended to no-fault coverage.²⁶⁹
- 5.34** Similarly the Australian Lawyers Alliance did not support expansion of the scheme to injuries caused by vehicles that are not part of the current scheme due to the government's reform objectives and the issues concerning small claims.²⁷⁰
- 5.35** Following the consultation process from the recent 2016 options paper, the New South Wales Government announced that it does propose to extend coverage under the scheme for 'pedestrians injured by bicycle riders who cannot access alternative appropriate liability insurance'. The government stated that some limited rights of recovery against bicycle riders will be allowed.²⁷¹
- 5.36** In regard to dirt bikes, the Motorcycle Council of NSW advised that it has been working with the government for some time to initiate a recreational vehicle registration for dirt bikes and associated Green Slip product, as riders will often need to cross or use public roads to access their off-road travels. During the committee's 12th review of the MAA, the Motorcycle Council also noted that although dirt bike riders may be unregistered and uninsured, should they crash and become seriously injured they would qualify for assistance under the Lifetime Care and Support Scheme.²⁷²
- 5.37** The Motorcycle Council stated that providing the option of a recreational dirt bike vehicle registration with the associated CTP insurance requirement would be a financially attractive option for dirt bike riders (compared to full registration) and could extend vehicle registrations to approximately 80,000 currently unregistered dirt bike vehicles, thereby increasing revenue to the scheme.²⁷³
- 5.38** The Council advised that it has been working on a draft proposal with the Centre for Road Safety that is currently under review, and that '[e]arly indications are it looks promising.'²⁷⁴

Committee comment

- 5.39** The committee notes that the government has recently announced that it proposes to extend coverage under the CTP scheme for pedestrians injured by bicycle riders who cannot access

²⁶⁸ Submission 4, New South Wales Bar Association, p 7.

²⁶⁹ Submission 7, The Law Society of New South Wales, p 21.

²⁷⁰ Submission 5, Australian Lawyers Alliance, Attachment 1, p 4.

²⁷¹ NSW Government, 'On the road to a better CTP scheme: CTP reform position paper', 29 June 2016, p 9.

²⁷² Standing Committee on Law and Justice, *Twelfth review of the exercise of the functions of the Motor Accidents Authority*, Transcript, 17 March 2014, p 3.

²⁷³ Answers to questions on notice, Motorcycle Council of NSW, 17 July 2016, p 1.

²⁷⁴ Answers to questions on notice, Motorcycle Council of NSW, p 1.

other liability insurance. We support the extension of the scheme to these pedestrians, noting the evidence that the expected cost to the scheme would be marginal. However there was no evidence before the committee that would allow us to support the proposal that there be some form of recovery of any benefits paid from at fault cyclists. This has never been an element of the scheme for any other class of at fault driver and there is no identified rationale presented to treat cyclists in a substantially different manner.

- 5.40** We also support the introduction of recreational dirt bike vehicle registration and an associated Green Slip product, and note that there is a draft proposal from the Motorcycle Council of NSW and Centre for Road Safety currently being considered. The committee looks forward to seeing the outcome of that process.

Premium setting for ride-sharing operators

- 5.41** The advent of ride-sharing operations (such as Uber) in New South Wales and subsequent legalisation through amendments to the Passenger Transport Regulation 2007 was discussed by stakeholders during the review in terms of implications for classifying the particular nature of motor vehicle use under the scheme.

- 5.42** The New South Wales Bar Association noted that ride-sharing operators would have a high risk profile given the large amount of time they spend on the road, although their status of vehicle registration (being for ‘private use’) would not reflect this, and so would effectively cause a cross-subsidy in the scheme:

At the moment they are, in effect, being cross-subsidised. Taxis pay an extraordinarily high CTP premium ... if you are going to be on the road much more frequently—in effect, using your vehicle as a commercial vehicle, but you can register it privately, you are taking a cross-subsidy for the amount of risk, the amount of time you are off the road ... and you are escaping paying the commercial rate that you would have to pay if you were either a taxi, which might take you up to, I think, \$6,000, or if you were a commercial van, which might take you up to something above the \$600 that you are paying. So Uber drivers are being cross-subsidised by everybody else in as much as the increased time they are on the road increases their accident risk profile.²⁷⁵

- 5.43** The committee was informed that SIRA recently undertook a review of CTP insurance for point-to-point vehicles. The review, launched by Minister Dominello on 10 March 2016 with a discussion paper and call for submissions, was finalised following a roundtable on 26 April 2016 with the government announcing wider CTP reform and the introduction of a new pricing system for taxis and ride-sharing services.²⁷⁶

- 5.44** Minister Dominello subsequently announced new CTP premium arrangements for point-to-point vehicles under the government’s proposed reforms. Taxi and rideshare owners will pay a base premium, plus an additional component based on their vehicle usage, to ensure CTP insurance accurately reflects a motor vehicle’s risk and usage. It is proposed that vehicle usage data will be collected through in-vehicle technologies, such as telematics, to allow SIRA

²⁷⁵ Evidence, Mr Stone SC, 17 June 2016, p 9.

²⁷⁶ NSW Government, SIRA, *Review of CTP Green Slip insurance for point-to-point transport vehicles*, <http://www.sira.nsw.gov.au/about-us/have-your-say/point-to-point>.

to record how often a driver is on the road, at what time of the day and how safely they drive. This will enable insurers to offer more flexible CTP insurance to the industry.²⁷⁷

Committee comment

- 5.45** The committee commends the government for its prompt attention to the emergence of ride sharing operations in New South Wales and implications for the CTP scheme. We support the proposal for taxi and rideshare owners to pay Green Slip premiums based on a motor vehicle's risk and usage, and look forward to seeing the progress of this in our next review. This is a genuine issue and requires prompt attention from the government and the regulator.

Recommendation 8

That the NSW Government establish a fair and equitable CTP premium for all vehicles used in commercial ride share operations.

²⁷⁷ NSW Government, Transport for NSW, *Point to point industry* (3 August 2016), <http://www.transport.nsw.gov.au/pointtopoint/industry>.

Appendix 1 Submission list

| No | Author |
|----|----------------------------------------|
| 1 | Name suppressed |
| 2 | Australian Trucking Association |
| 3 | Carers NSW |
| 4 | New South Wales Bar Association |
| 5 | Australian Lawyers Alliance |
| 6 | IAG |
| 7 | The Law Society of New South Wales |
| 8 | Insurance Council of Australia |
| 9 | Suncorp |
| 10 | Unions NSW |
| 11 | Motorcycle Council of NSW |
| 12 | Royal Australasian College of Surgeons |

Appendix 2 Witnesses at hearings

| Date | Name | Position and Organisation |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 17 June 2016 Jubilee Room Parliament House | Mr Andrew Stone SC | Barrister, New South Wales Bar Association |
| | Ms Elizabeth Welsh | Barrister, New South Wales Bar Association |
| | Dr Mary Langcake | NSW Trauma Chair, Royal Australasian College of Surgeons |
| | Mr Brian Wood | Secretary, Motorcycle Council of NSW |
| | Mr Guy Stanford | Member, CTP Committee, Motorcycle Council of NSW |
| | Mr Rob Whelan | Executive Director and Chief Executive Officer, Insurance Council of Australia |
| | Ms Vicki Mullen | General Manager Consumer Relations and Market Development, Insurance Council of Australia |
| | Ms Emma Maiden | Assistant Secretary, Unions NSW |
| | Mr Shay Deguara | Industrial Officer, Unions NSW |
| | Dr Andrew Morrison SC | Senior Counsel and spokesperson, Australian Lawyers Alliance |
| | Mr Tim Concannon | Member, Injury Compensation Committee, The Law Society of New South Wales |
| | Mr Andrew Nicholls | Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority |
| Mr Anthony Lean | Deputy Secretary Better Regulation, Chief Executive, State Insurance Regulatory Authority | |

Appendix 3 Minutes

Minutes no. 12

Wednesday 4 May 2016
Standing Committee on Law and Justice
Members Lounge, Parliament House, at 1.01pm

1. Members present

Mrs Maclaren-Jones (*Chair*)
Mr Clarke
Mr Mookhey

2. Apologies

Mr Shoebridge
Mrs Taylor
Ms Voltz

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 11 be confirmed.

4. Correspondence

The committee noted the following item of correspondence:

Received

- 26 April 2016 – Email from Linh Phan, Consul, Consulate General of Vietnam, Sydney to the committee requesting a meeting with a delegation from Vietnam National Assembly.

5. First review of the Compulsory Third Party insurance scheme

Resolved, on the motion of Mr Clarke: That the committee adopt the following timeline for the administration of the review:

- Monday 4 April – Call for submissions via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales
- Friday 13 May – submission closing date
- Tuesday 17 May – send questions on notice to SIRA
- Tuesday 14 June – answers to questions on notice from SIRA due
- Friday 17 June – one day hearing
- Friday 12 August – report deliberative.

6. Adjournment

The committee adjourned at 1.02pm until Friday 17 June in Jubilee Room (CTP hearing).

Teresa McMichael

Clerk to the Committee

Minutes no. 13

Friday 17 June 2016
Standing Committee on Law and Justice
Jubilee Room, Parliament House, Sydney, 8.56 am

1. Members present

Mr Mallard, *Chair*
Ms Voltz, *Deputy Chair*
Mr Clarke (until 3.15 pm)
Mr Khan (substituting for Mrs Taylor for the duration of the inquiry)
Mr Mookhey (from 9.13 am)
Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 12 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 14 June 2016 – Letter from Hon Victor Dominello MP, Minister for Innovation and Better Regulation, to Committee Chair, advising of witnesses to appear at hearing
- 14 June 2016 – Letter from Hon Victor Dominello MP, Minister for Innovation and Better Regulation, to Committee Chair, attaching answers to pre-hearing questions on notice from the State Insurance Regulatory Authority
- 10 June 2016 – Letter from Australian Lawyers Alliances to the State Insurance Regulatory Authority cc Hon Victor Dominello, seeking information about First Party At Fault driver insurance
- 26 May 2016 – Letter from Hon Victor Dominello MP, Minister for Innovation and Better Regulation to Chair, providing June 2015 CTP Scheme Performance Report and 2015 Ernst & Young review of selected performance indicators of NSW CTP scheme
- 26 May 2016 – Letter from Karl Sullivan, Acting CEO, Insurance Council of Australia to committee, providing response to the NSW Government's consultation on options for reforming Green Slip insurance in NSW
- 25 May 2016 – Letter from Anthony Justice, Chief Executive, Australian Consumer Division, IAG, providing IAG's response to the NSW Government's consultation on options for reforming Green Slip insurance in NSW.

Sent

- 17 May 2016 - Letter from Chair to Hon Victor Dominello MP, Minister for Innovation and Better Regulation, attaching pre-hearing questions on notice for SIRA.

4. First review of the Compulsory Third Party insurance scheme**4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos 2-6 and 7-12.

4.2 Partially confidential submission

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: name of author of submission no. 1.

4.3 Answers to pre-hearing questions on notice

The committee noted that the following answers to pre-hearing questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice by the State Insurance Regulatory Authority, received from Hon Victor Dominello MP, Minister for Innovation and Better Regulation, 14 June 2016.

4.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Andrew Stone SC, Barrister, New South Wales Bar Association
- Ms Elizabeth Welsh, Barrister, New South Wales Bar Association.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Mary Langcake, NSW Trauma Chair, Royal Australasian College of Surgeons.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Guy Stanford, Member, CTP Committee, Motorcycle Council of New South Wales
- Mr Brian Wood, Secretary and Member, CTP Committee, Motorcycle Council of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Vicki Mullen, General Manager Consumer Relations and Market Development, Insurance Council of Australia
- Mr Rob Whelan, Executive Director & Chief Executive Officer, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Emma Maiden, Assistant Secretary, Unions New South Wales
- Mr Shay Deguara, Industrial Officer, Unions New South Wales.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Andrew Morrison SC, Australian Lawyers Alliance.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tim Concannon, Member, Injury Compensation Committee, Law Society of New South Wales.

Mr Clarke left the meeting at 3.15 pm.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Anthony Lean, Chief Executive, State Insurance Regulatory Authority, Deputy Secretary Better Regulation
- Mr Andrew Nicholls, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

4.5 Tendered documents

Resolved, on the motion of Mr Khan: That the committee accept the following public documents tendered during the hearing:

- Letter to the Hon Mike Baird dated 9 December 2015, tendered by Dr Mary Langcake, NSW Trauma Chair, Royal Australasian College of Surgeons
- Pages i, 46 and 47 from *Annual Report 2015 Accident Compensation Corporation*, tendered by Dr Mary Langcake, NSW Trauma Chair, Royal Australasian College of Surgeons
- *Detering fraudulent and exaggerated claims in the NSW CTP insurance scheme*, tendered by Mr Anthony Lean, Chief Executive, State Insurance Regulatory Authority, Deputy Secretary Better Regulation.

5. Other business

5.1 Inquiry into racial vilification law in NSW – government response

Resolved, on the motion of Mr Shoebridge: That the committee write to the Attorney General requesting an update on the government response to the 2013 inquiry into racial vilification law in NSW.

6. Adjournment

The committee adjourned at 5.15 pm until Friday 12 August 2016 (*report deliberative, first review of the Compulsory Third Party insurance scheme*).

Teresa McMichael
Clerk to the Committee

Draft minutes no. 14

Friday 12 August 2016

Standing Committee on Law and Justice

Room 814/815, Parliament House, Sydney 9.41 am

1. Members present

Mr Mallard, *Chair*
Ms Voltz, *Deputy Chair*
Mr Clarke
Mr Khan
Mr Mookhey
Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 13 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 27 July 2016 – Letter from Hon Gabrielle Upton, Attorney General, providing an update to the New South Wales Government’s response to the recommendations of the racial vilification law inquiry
- 18 July 2016 – Letter from Minister for Innovation and Better Regulation, Hon Victor Dominello to Chair, dated 3 March 2016, announcing the publication of a report on the Review of Green Slip Premium Setting for Motorcycles by Ernst & Young.

Sent

- 1 July 2016 – Letter from Chair to Hon Gabrielle Upton, Attorney General, requesting an update to the New South Wales Government’s response to the recommendations of the racial vilification law inquiry.

Resolved, on the motion of Ms Voltz: That the committee publish the letter from the Attorney General providing an update to the New South Wales Government’s response to the recommendations of the racial vilification law inquiry.

4. First review of the Compulsory Third Party insurance scheme

4.1 Answers to questions on notice

The committee noted that answers to questions on notice from the following witnesses were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Shay Deguara and Ms Emma Maiden, Unions NSW, received 7 July 2016
- Mr Rob Whelan and Ms Vicki Mullen, Insurance Council of Australia, received 12 July 2016
- Mr Tim Concanon, Law Society of New South Wales, received 14 July 2016
- Dr Mary Langcake, Australasian College of Surgeons, received 14 July 2016
- Mr Anthony Lean and Mr Andrew Nicholls, State Insurance Regulatory Authority, received 14 July 2016
- Mr Guy Stanford and Mr Brian Wood, Motorcycle Council of NSW, received 17 July 2016
- Mr Andrew Stone and Ms Elizabeth Welsh, Bar Association of NSW, received 28 July 2016.

4.2 Consideration of Chair’s draft report

The Chair submitted his draft report entitled *First review of the Compulsory Third Party insurance scheme*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.12:

‘The Lifetime Care and Support scheme provides lifelong treatment, rehabilitation and care for people severely injured in a motor vehicle accident in New South Wales, regardless who was at fault. Injuries can include spinal cord injury, moderate to severe brain injury, multiple amputations, severe burns or permanent blindness. As noted at paragraph 1.2, the Lifetime Care and Support scheme is subject to a separate review by this committee’.

Mr Shoebridge moved: That paragraph 1.25 be amended by inserting at the end:

‘Those injured as a result of an accident but who were assessed as having 10 per cent whole person impairment or less would lose all of their common law benefits. Especially for people who require a fit and healthy body to earn their income such as tradespeople, building workers, shop assistants, nurses and the like, this would see them losing very significant economic loss benefits if they suffered a disabling injury that was not assessed at greater than 10% wpi. Examples of such injuries are given later in this report at paragraphs [insert]’.

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting:

‘Especially for people who require a fit and healthy body to earn their income such as tradespeople, building workers, shop assistants, nurses and the like, this would see them losing very significant economic loss benefits if they suffered a disabling injury that was not assessed at greater than 10% wpi’.

Amendment of Mr Khan put and passed.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.28 be amended by inserting ‘as a result of stakeholder feedback and’ after ‘the government withdrew the bill’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.32:

‘The measures of scheme efficiency used by the Minister relate only to the CTP scheme and do not include the Lifetime Care and Support scheme. This issue is discussed in more detail in chapter 2 at [insert]’.

Chapter 2

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.5:

‘Premiums as a percentage of AWE became significantly more affordable between 2013 and 2015, falling from 36 per cent of AWE to under 33 per cent of AWE. In any scheme that fairly compensates people for lost earnings, as overall earnings in the community rise, so will premiums if benefits are to meet increased costs of compensating people on those higher wage levels. This is why the best measure of affordability is not the bare price of the premiums, but rather the price of the average premium as a proportion of AWE’.

Resolved, on the motion of Mr Shoebridge: That Figure 2 ‘Premiums as a proportion of New South Wales average weekly earnings’ be moved to appear after paragraph 2.5.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.13 be omitted: ‘The increase in premium prices since 2008 led to a corresponding deterioration in the affordability of premiums, as illustrated in the graph below which shows the level of affordability since 2000. Nonetheless, premiums are more affordable now than they were in the first half of the last decade, and affordability has improved slightly since the committee’s 12th review of the MAA, with the average cost of a New South Wales Green Slip as at 30 June 2015 representing 33 per cent of average weekly earnings,⁴³ compared to 36 per cent in June 2013’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.14 be amended by omitting ‘Further, the price’ and inserting instead ‘Although the price’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.15 be amended by omitting ‘Nonetheless, CTP policy holders have expressed ongoing concerns’ and inserting instead ‘Nonetheless, the committee is always concerned’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraphs be inserted after paragraph 2.23:

‘Given that catastrophic injuries receive the largest compensation payments by far and have a commensurately much lower proportion of transaction and administration costs, the effect of only reporting CTP data is that it skews the efficiency figures for New South Wales. Including the LTCS scheme data in a combined efficiency measure gives a much more accurate overall assessment of the states’ motor accident compensation scheme.

This matter was dealt with in some detail in the 2015 *Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme* which noted:

“2.1.3 Efficiency

Scheme efficiency measures the proportion of each dollar paid in Green Slip premiums that is directly returned to injured people as benefits. A higher proportion of premiums paid as benefits reflects a more efficient Scheme. The MAA calculates this measure excluding the benefits paid out on claims against the LTCS Scheme, which is separately regulated. Based on this measure, across the underwriting years 2000 and 2013, the efficiency of the NSW CTP Scheme averaged 51.5%. [FOOTNOTE: It should be noted, however, that a scheme with a higher proportion of premiums paid as direct claimant benefits might not outperform a scheme with a lower corresponding proportion. For example, expenditures on claims handling can both improve the operation of the overall scheme and reduce the proportion of premiums paid as direct benefits. Similarly, the impact of higher superimposed inflation on benefits will increase the measured efficiency of the scheme without increasing the actual efficiency.]

A number of factors have an impact on this measure:

- profit margins (being higher than expected);
- acquisition expenses;
- legal and investigation expenses; and
- other claims handling expenses.

The MAA noted that efficiency in the Scheme is low compared to other accident compensation schemes, which reach levels of around 65%. However, cross-scheme comparisons are complicated by the fact that the benefits payable under each scheme differ. In particular, some stakeholders have noted that combining the efficiency measure of the CTP Scheme and the LTCS Scheme would make this more comparable to the third-party insurance schemes in other states. Between the premium filing periods 2007-08 and 2011-12, the MAA reported that the combined measure of efficiency of the NSW CTP Scheme and LTCS Schemes averaged 64.4%.” [FOOTNOTE: Trevor Matthews, ‘Report of the Independent Review of Insurer Profit in the Compulsory Third Party Scheme’, October 2015, pp 11-12.]

Resolved, on the motion of Mr Shoebridge: That paragraph 2.25 be amended by inserting at the end:

‘Nevertheless, the overall efficiency measure has been able to be provided for the period from 2008 to 2012, as set out in paragraph XX above.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and graph be inserted after paragraph 2.32:

‘As in each review by this committee the regulator has asserted that measures are in place to address insurer profits. As the graph below makes clear, none of the measures to date has proven effective. It is therefore incumbent on the government and this committee to retain close oversight of the effectiveness of any measures announced by the regulator to see if they have a measurable impact on the unacceptably high level of insurer profits in the scheme.’

Figure X Comparison of profit by accident year (ending 30 June) [FOOTNOTE: SIRA, ‘NSW Motor Accidents CTP Scheme: 2015 Scheme Performance Report’, May 2016, p 26.]

| Accident year | Profit by accident year using June 2014 data | | Profit by accident year using June 2015 data | |
|-----------------------------|----------------------------------------------|---------------|----------------------------------------------|---------------|
| | Profit | Profit margin | Profit | Profit margin |
| | (\$m) | (%) | (\$m) | (%) |
| 2000 | 461 | 31 | 459 | 31 |
| 2001 | 378 | 29 | 376 | 28 |
| 2002 | 362 | 27 | 357 | 27 |
| 2003 | 412 | 30 | 411 | 30 |
| 2004 | 305 | 21 | 301 | 21 |
| 2005 | 378 | 26 | 378 | 26 |
| 2006 | 281 | 19 | 286 | 20 |
| 2007 | 316 | 23 | 317 | 23 |
| 2008 | 144 | 12 | 154 | 13 |
| 2009 | 44 | 4 | 66 | 5 |
| 2010 | 125 | 9 | 156 | 11 |
| 2011 | 269 | 17 | 298 | 19 |
| 2012 | 253 | 15 | 314 | 18 |
| 2013 | 214 | 12 | 351 | 19 |
| 2014 | 166 | 8 | 408 | 20 |
| 2015 | | | 281 | 13 |
| Total | 4,108 | 19 | 4,911 | 20 |
| Total excluding 2015 | 4,108 | 19 | 4,630 | 21 |

Resolved, on the motion of Mr Mookhey: That paragraph 2.33 be amended by omitting ‘the committee has maintained the position that it does not have an actuarial role to examine insurer profits’ and inserting instead ‘the committee has continued to choose not to take an actuarial role, however, this does not preclude the committee undertaking this role in the future.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.35 be amended by omitting ‘superimposed inflation’ and inserting instead ‘lower than forecast superimposed inflation’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.36 be amended by:

- a) omitting ‘Superimposed inflation has continued to contribute to insurer profits’ and inserting instead ‘Lower than forecast superimposed inflation’
- b) omitting ‘benign levels of superimposed inflation’ and inserting instead ‘these levels of superimposed inflation’.

Resolved, on the motion of Mr Mookhey: That paragraph 2.36 be amended by inserting the following new footnote after ‘superimposed inflation’: ‘Superimposed inflation refers to increases in claims costs over and above normal inflation. It is a regular feature of compensation type schemes.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.51 be omitted: ‘As at the end of June 2014, a total of 186,203 notifications had been received by the MAA in relation to accidents since 5 October 1999, representing an increase of eight per cent since the end of June 2013. Of those notifications, 69 per cent were full claims and 20 per cent were Accident Notification Forms (ANFs) (see chapter 1 for explanation of ANFs)’, and the following new paragraph and table inserted instead:

‘As seen in the table below, at the end of June 2014, a total of 186,203 notifications had been received by the MAA in relation to accidents since 5 October 1999. Of those notifications, 69 per cent were full claims, 20 per cent were Accident Notification Forms (ANFs) (see chapter 1 for explanation of ANFs) and 11 per cent were workers compensation recovery claims.

Figure X Number of claims and notifications [FOOTNOTE: MAA, ‘Annual Report 2013/14’, October 2014, p 51.]

| Accident year ¹ | ANFs | | | Workers compensation recoveries (\$151z) | Full claims | | | Total notifications ² | Total IBNR ³ estimates | Estimated ultimate notifications |
|----------------------------|--------------|-------------------|---------------|------------------------------------------|----------------|--------------------|-------------------|----------------------------------|-----------------------------------|----------------------------------|
| | At-fault ANF | Not at-fault ANFs | Total ANFs | | Converted ANFs | Direct full claims | Total full claims | | | |
| 1999-00 | 0 | 2,662 | 2,662 | 1,891 | 3,154 | 9,075 | 12,229 | 16,782 | 0 | 16,782 |
| 2000-01 | 0 | 2,897 | 2,897 | 1,829 | 3,402 | 7,207 | 10,609 | 15,335 | 0 | 15,335 |
| 2001-02 | 0 | 2,698 | 2,698 | 1,682 | 2,924 | 6,429 | 9,353 | 13,733 | 0 | 13,733 |
| 2002-03 | 0 | 2,528 | 2,528 | 1,608 | 2,870 | 5,454 | 8,324 | 12,460 | 0 | 12,460 |
| 2003-04 | 0 | 2,264 | 2,264 | 1,567 | 2,871 | 5,590 | 8,461 | 12,292 | 0 | 12,292 |
| 2004-05 | 0 | 2,033 | 2,033 | 1,649 | 2,675 | 5,404 | 8,079 | 11,761 | 0 | 11,761 |
| 2005-06 | 0 | 1,900 | 1,900 | 1,547 | 2,495 | 5,248 | 7,743 | 11,190 | 0 | 11,190 |
| 2006-07 | 0 | 1,650 | 1,650 | 1,442 | 2,121 | 5,525 | 7,646 | 10,738 | 2 | 10,740 |
| 2007-08 | 0 | 1,282 | 1,282 | 1,344 | 1,896 | 5,727 | 7,623 | 10,249 | 16 | 10,265 |
| 2008-09 | 0 | 2,099 | 2,099 | 1,407 | 2,410 | 5,717 | 8,127 | 11,633 | 48 | 11,681 |
| 2009-10 | 253 | 2,085 | 2,338 | 1,322 | 2,583 | 5,883 | 8,466 | 12,126 | 97 | 12,223 |
| 2010-11 | 695 | 2,240 | 2,935 | 1,315 | 2,970 | 5,923 | 8,893 | 13,143 | 193 | 13,336 |
| 2011-12 | 883 | 2,425 | 3,308 | 993 | 3,198 | 5,963 | 9,161 | 13,462 | 343 | 13,805 |
| 2012-13 | 998 | 2,616 | 3,614 | 269 | 3,192 | 6,242 | 9,434 | 13,317 | 584 | 13,901 |
| 2013-14 | 647 | 2,675 | 3,322 | 43 | 1,326 | 3,291 | 4,617 | 7,982 | 2,910 | 10,892 |
| Total | 3,476 | 34,054 | 37,530 | 19,908 | 40,087 | 88,678 | 128,765 | 186,203 | 4,195 | 190,398 |

Note

1. Accident years run from 1 October to 30 September. 2013/14 has only 9 months of exposure as at June 2014

2. Total Notifications = Total ANFs + Workers Compensation Recoveries + Total Full Claims

3. IBNR - Incurred But Not Reported claims, are estimated from actuarial models.

4. CTP Claims data as at Jun 14

5. Full claims as defined in Section 74 of MACA 1999.

6. ANFs as defined in Section 49 of MACA 1999

7. Workers compensation recoveries (\$151z) have been shown as a separate category, so that underlying scheme trends as from 2010/11 are not distorted by the change to the Workers Compensation legislation which has narrowed the definition of journey claims.

Mr Shoebridge moved: That paragraph 2.67 be amended by inserting at the beginning: ‘The committee welcomes the increase in affordability in green slip prices between 2013 and 2015 measured against the key affordability indicator of the proportion of AWE required to pay for the average green slip’.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.69 be amended by inserting at the end: ‘The committee will be closely reviewing these measures to see if they have any meaningful impact on reducing the unacceptably high levels of insurer profits in the scheme.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.71 be amended by omitting ‘We encourage the government to consider these issues as part of its current review’, and inserting instead ‘We encourage the government to consider these issues, including by a review of the overall data on delays, as part of its current review’.

Chapter 3

Resolved, on the motion of Mr Shoebridge: That paragraph 3.69 be amended by inserting at the end: ‘The committee notes that it should not take over two years for any government agency to effectively and efficiently review two administrative forms.’

Resolved, on the motion of Mr Shoebridge: That paragraph 3.86 be omitted: ‘We acknowledge that after taking stakeholder views into account during that consultation process, the government has decided to maintain the 10 per cent whole person impairment threshold for access to the common law where the injury was caused by the fault of another vehicle’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted at the end of paragraph 3.97:

‘We reiterate the committee’s previous concerns as to this matter and, to ensure it is addressed in the current review of the scheme, restate the recommendation in this report:

Recommendation X

That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process’.

Mr Shoebridge moved: That paragraph 3.114 be amended by inserting at the end: ‘We see significant benefit to those injured on the roads in expanding the ANF as a simple, universal and quick method of making compensation available. Clearly any such expansion must address both affordability and any potential fraud concerns that may arise’.

Question put and negatived.

Chapter 4

Resolved, on the motion of Mr Shoebridge: That paragraph 4.2 be amended by omitting ‘an additional’ before ‘\$400 million per year’.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.3 be amended by inserting ‘deliberately’ before ‘exaggerated elements’.

Resolved, on the motion of Mr Mookhey: That paragraphs 4.6 and 4.7 be omitted:

‘Mr Robert Whelan, Executive Director and Chief Executive Officer, Insurance Council of Australia, contended that people have been bringing claims when they were not actually injured or even in the car:

... they will literally stage them [accidents]. They will set up a car and another car, usually somewhere late at night, and they will ram into each other. Then, all of a sudden, the car that is hit has a large number of people in it – often children’.

According to Mr Whelan, ‘[t]he nature of the accidents are suspicious in the sense that the level of damage to the motor vehicle is very slight and the level of injury, that is casualty injury, is very high. There is also a high proportion of very young children, babies and so on, in the casualty lists’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted after paragraph 4.49:

‘However, we believe that given the severity of the issue, urgent action is required to address it. The considered proposals of the various legal groups who appeared before the committee are an excellent starting point for reform of the costs regulations.’

Recommendation X

That the NSW Government urgently reform the costs regulation to deter exaggerated and fraudulent claims, especially in regards to low severity injuries to both minors and adults.’

Chapter 5

Mr Shoebridge moved: That paragraph 5.6 be amended by inserting '(not amount)' after 'higher proportion'.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That paragraph 5.13 be omitted: 'The government stated that the majority of individuals and organisations which had contributed to the consultation, and the views obtained from the broader community, support its preferred model'.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 5.13:

'There is very real merit in the submissions made to this committee that highlight how an injury that may obtain only a modest WPI of 10% or less can nevertheless be extremely disabling and cause substantial economic harm especially to people who rely on having a fit and healthy body to earn their income. This is a factor that will have to be closely considered by the Parliament when it considers any reform package brought to the Parliament that proposes to remove access to common law benefits for this class of injured person'.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That the following sentence and new recommendation be inserted at the end of paragraph 5.47:

'This is a genuine issue and requires prompt attention from the government and the regulator.'

Recommendation X

That the NSW Government establish a fair and equitable CTP premium for all vehicles used in commercial ride share operations.'

Resolved, on the motion of Mr Shoebridge: That paragraph 5.41 be amended by inserting at the end: 'However there was no evidence before the committee that would allow us to support the proposal that there be some form of recovery of any benefits paid from at fault cyclists. This has never been an element of the scheme for any other class of at fault driver and there is no identified rationale presented to treat cyclists in a substantially different manner.'

Resolved, on the motion of Mr Khan: That paragraph 5.22 be amended by inserting at the end: 'The committee did not have any submissions from employer groups addressing this issue.'

Resolved, on the motion of Mr Khan: That paragraph 5.23 be omitted: 'The committee is of the view that both issues warrant serious consideration by the government, and supports the suggestions by Unions NSW to address these gaps.'

Mr Khan moved: That recommendations 4 and 5 be omitted:

'Recommendation 4

That the NSW Government consider extending the CTP scheme to cover all at fault claims for workers driving to and from their work and place of abode.

Recommendation 5

That the NSW Government consider amending the *Motor Accidents Compensation Act 1999* and *Industrial Relations Act 1996* to protect workers making a claim under the provisions of the *Motor Accidents Compensation Act* from termination for the same period as provided under s 10 of the *Workers Compensation Act 1987*.'

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Khan, Mr Mallard.

Noes: Mr Mookhey, Mr Shoebridge, Ms Voltz.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Khan: That the following new recommendation be inserted after paragraph 5.23:

‘Recommendation X

That the NSW Government consider how journey claims are treated under any CTP scheme’.

Resolved, on the motion of Mr Shoebridge: That:

- a) the draft report, as amended, be the report of the committee and that the committee present the report to the House
- b) the transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be tabled in the House with the report
- c) upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- d) upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the review be published by the committee, except for those documents kept confidential by resolution of the committee
- e) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- f) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- g) dissenting statements be provided to the secretariat by 12pm Wednesday 17 August 2016
- h) that the report be tabled on Friday 19 August 2016.

5. First review of the Workers Compensation Scheme

On 29 March 2016 the committee resolved to conduct its first review of the Workers Compensation Scheme between August 2016 to February 2017.

5.1 Call for submissions

Resolved, on the motion of Mr Khan: That the call for submissions be made on Monday 15 August 2016 via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, with a closing date of Sunday 25 September 2016.

5.2 Stakeholder list

Resolved, on the motion of Mr Khan: That members have until 5.00 pm Wednesday 17 August 2016 to nominate additional stakeholders to the stakeholder list.

5.3 Hearing dates

That the committee set aside three days for hearings (two hearing days and one reserve date) in October and/or November, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 11.46 am, *sine die*.

Teresa McMichael
Clerk to the Committee

Appendix 4 Dissenting statement

FROM THE HON DANIEL MOOKHEY MLC

Unions NSW alerted the inquiry to a spike in journey claims in the CTP scheme; they nominate the 2012 changes to the Workers Compensation System as the reason. SIRA did not refute their claim.

This is a serious concern. It is freighted with implications. The most troubling is the moral hazards. Journey claims which are recovered from the CTP scheme means CTP premium holders cover an injured worker's costs. Employers are allowed to eschew their responsibilities.

Workers suffer other detriments. They have no protections against termination during their claim period, or during their recovery period. Nor do they have the right to ask for employer cooperation to facilitate their return to work. They have those rights, and those protections, in the worker's compensations scheme.

The Committee could have recommended the incorporation of these principles into the CTP scheme. It was asked to. It didn't. It should have.