



**The Law Society
of New South Wales**

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LJ08/1324

9 July 2008

Ms Merrin Thompson
Principal Council Officer
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Thompson

Ninth review of the exercise of the functions of the MAA and MAC
First review of the exercise of the functions of the LTCS Authority and LTCS Advisory
Council

I refer to your letter of 27 June 2008 enclosing a transcript of the evidence given by Scott Roulstone and me to the Standing Committee on Law and Justice on Friday 20 June 2008 and the questions taken on notice.

Neither I nor Mr Roulstone wish to make any correction to the transcript of evidence.

I am pleased to enclose the Law Society's answers to the questions on notice, and trust the responses will assist the Standing Committee.

The Law Society greatly appreciates the opportunity that the Law and Justice Committee's annual review provides to bring the views and concerns of legal practitioners to the attention of Committee members. It was a pleasure to appear before the Committee.

Yours sincerely

Hugh Macken
President



The Law Society of
New South Wales is a
constituent body of the
Law Council
of Australia

Law Council
OF AUSTRALIA

THE LAW SOCIETY OF NEW SOUTH WALES

ANSWERS TO QUESTIONS ON NOTICE

LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

2008 EXERCISE OF FUNCTIONS REVIEWS:

- **Motor Accidents Authority and Motor Accidents Council (Ninth review)**
- **Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council (First review)**

Motor Accidents Authority/Motor Accidents Council (Ninth review)

Question 1 – NSW Bar Association submission re CARS

The Law Society does not regard the CARS process as either too bureaucratic or overly complex.

CARS can readily accommodate complex matters – issues can be addressed in written submission with any necessary clarification provided by the claimant. In fact, complex matters where injuries are catastrophic can be easier to deal with at CARS in many respects.

With respect to any perceived decline in discretionary exemptions, the Law Society fully endorses the CARS process as being the premier example of a dispute resolution process. The Society suggests the real issue of concern is entitlement to non economic loss. The Society would prefer assessment on the worth of a claim, subject to an indexed ceiling.

The Society stresses its confidence in the system. What once were seen as difficult matters because of the number of heads of damage that would be too laborious and too difficult to run, now are seen as being able to be managed more simply and easier with good expert reports and comprehensive evidence from witness by way of witnesses statements. There are exceptions, of course, in relation to matters affecting juveniles and where there are issues of capacity.

With respect to reduction in claims resolution times v. time taken in case preparation, the time needed for stabilisation of injuries or for medical assessments in MAS should be addressed.

Question 2 – ICA submission that CARS process results in higher compensation

There are two reasons for this to occur:

- The CARS process deals with more serious and catastrophic injuries,
- Claimants go to CARS when they do not settle for the amount offered by the insurer, on the basis that they have an expectation that the CARS process will give them a higher amount.

The Law Society's view is that the CARS process is completely transparent. All information is exchanged and parties must attempt to come to a resolution. All parties can seek specific orders and directions, and where parties require medical information etc it can be obtained. The Society comments on the particular submissions made by the ICA as follows:

- The assertion that the process allows individual assessors to make determinations without providing evidenced-based reasons is disputed. An enormous amount of work is done in bringing CARS assessors up to speed. The high calibre of CARS assessors is what makes the system work as well as it does.
- With respect to the greater use of treatment reports and records, it should be noted that the reports of treating doctors are crucial and always have been. In this way, their use in the system is no different to that of courts.
- Increased publication of reports and data is a matter for CARS.

It should be remembered that the ICA membership has a statutory obligation to reduce the size of claims and to reduce the amount of compensation paid to insured people, together with a duty to shareholders. The ICA submission reflects that duty.

Question 3 – insurers' communications with self-represented claimants

The only way lawyers come into contact with claimants is when they seek legal advice. Given that approximately 43% of claims are finalised without the assistance of lawyers (source MAA Annual Reports 1999-2006), there is concern that certain claimants may be disadvantaged in dealing directly with insurers. The Law Society is particularly concerned about unrepresented claimants who are commercially inexperienced, vulnerable or where there is some indication that capacity may be an issue.

In November 2007, the Society wrote to all CTP insurers asking for information about their policies in dealing with such claimants. None of the insurers has responded and the Society considers that this issue needs some momentum. The review that the MAA proposes in its response to Question 34 is supported (see answer to Question 5 below).

Question 4 – Decrease in number of claims

This issue was raised during the 8th review by the NSW Bar Association, when it was suggested that CTP insurers were enjoying profits arising from a fall in claim numbers due, in part, to improved car safety and tighter regulation. In common with the Taylor Fry 2008 unpublished report, the Law Society does not know whether the decrease in claim frequency is either as a consequence of, or simultaneous with, decreasing traffic casualty frequency.

The Bar Association suggested that what it termed "the road safety dividend" has benefited:

- Insurers by the fact that claims payments are well down on actuarial projections, and
- Motorists by the fall in premiums.

The Bar Association's submission, and it remains valid, was that injured claimants should also be granted some advantage from the road safety dividend and that benefits should be increased.

Question 5 – Insurers’ communications with represented claimants

Some material provided by insurers to potential claimants is selective in the information it provides about heads of damage, entitlements, resolving disputes and the availability and cost of obtaining legal advice. The Law Society has attempted to address a number of concerns raised by legal practitioners. Firstly, concerns about the generic information provided by GIO to claimants were referred to the MAA Compliance Department. After consultation with the MAA, GIO revised its Personal Injury Claim Information Pack. (GIO provided the Law Society with the new Pack in December 2007, however the Society notes that the revised Personal Injury Claim Pack has not yet been placed on the GIO website.) The Law Society also engaged directly with the NRMA to assist in a review of that insurer’s information letters.

However, it is the Law Society’s view that industry-wide pro forma documents, developed in consultation between the MAA, insurers and legal representatives would assist in providing claimants with consistent information about their entitlements and rights. The Society will be very pleased to participate in the review that the MAA proposes, and suggests that the MAAS Reference Group is an appropriate forum for this project.

Question 6 – Ongoing inconsistency in Whole Person Impairment assessments

The Law Society is of the view that the government response does not address the essence of the Law and Justice Committee’s recommendation. Additional work is required in relation to Whole Person Impairment generally.

Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council (First review)

Question 7 - Inability to opt-out of the LTCS Scheme

The relevant provision of the Motor Accidents (Lifetime Care and Support) Act 2006 is set out below.

8 Application for participation in the Scheme

- (1) An application for a person to become a participant in the Scheme in respect of a motor accident injury is to be made to the Authority and can only be made by or on behalf of the person or by the insurer of a claim made by the person in respect of the injury.
- (2) An application by an insurer does not require the consent of the person.
- (3) The MAA may direct the insurer of a claim made by a person in respect of an injury to make an application for the person to become a participant in the Scheme, and the insurer must comply with such a direction.

Section 8 provides insurers with the power to bring injured people within the Scheme without their consent, and the MAA with the power to direct an insurer to bring people within the Scheme.

The LTCS Authority’s response to Question 36 is only relevant to self-managed care and does not address the fundamental issue of a claimant being able to opt-out of the Scheme in its entirety. The strong view of the Law Society remains that injured people with the relevant capacity should be able to opt-out of the Scheme. This has been the Law Society’s standing

submission since the Scheme was first proposed. It is as much a civil rights issue as anything else: people should have the right to accept personal responsibility for managing their own future.

Question 8 – Financing of the LTCS Scheme

The Cumpston Sarjeant Pty Ltd report is attached, together with copy of the MAA's letter in response to the report.

With respect to funding for the LTCS Scheme, there is always the concern that actuarial estimates will prove inadequate and that benefits will be cut so that budgets can be met. However, the Society has not done any recent modelling on the information currently available about the funding of the Scheme.

Questions 9 – LTCS appeals process

The Scheme as it relates to adults has been operating for less than 12 months and there are, as yet, no relevant examples as to inadequacies of the appeal process.

The Law Society's objection relates to the enabling legislation which does not allow for an adequate appeal process and, in particular, does not provide the right to retain legal representation in conducting an appeal to an independent authority from a decision of members of the LTCS Authority. The Law Society acknowledges that LTCS Authority is correct in its response to Question 31: many administrative decisions – involving variously medical, rehabilitation, care and support issues – will be made during a person's lifetime in the Scheme. It remains the Law Society's view that there must be an appropriate mechanism in place to accommodate those times when a person wishes to challenge a decision. This mechanism should extend to the availability of an external review.

The Society has not been specific in proposing what would be an appropriate external appeal from an administrative decision. As the legislation currently stands, all disputes are to be determined by assessors appointed by the Authority. Once those internal reviews have been exhausted, the only remedy available would be to seek a judicial review in the Supreme Court. An appropriate suggestion may be to provide an avenue of appeal to the Administrative Decisions Tribunal. This would require legislative amendment.

Also important is the need for flexibility in the LTCS in terms of allowances to participants. It is particularly important to consider the economic realities of the cost of care in other jurisdictions when people injured in New South Wales return to their homes overseas.



**The Law Society
of New South Wales**

ACN 000 000 699

Our Ref: JMcl:SRC:ICC2005(5474)

COPY

19 December 2005

Mr David Bowen
General Manager
Motor Accidents Authority
DX 1517
SYDNEY

Dear Mr Bowen

Re: Lifetime Care and Support Scheme

I refer to my letter of 23 August 2005 in which I notified you of the Law Society's opposition to the NSW Government's current proposals for a Lifetime Care and Support Scheme for people who suffer catastrophic injuries in motor accidents.

Having particular concerns about the lack of detail contained in the Government's proposals, and the financial viability of the Scheme in particular, the Law Society and the Australian Lawyers Alliance engaged Cumpston Sarjeant Pty Ltd, Consulting Actuaries, to comment on the Scheme's actuarial costings. That company's report is now enclosed for your information.

Despite discussions with the author of the Scheme's costings, Cumpston Sarjeant notes uncertainties in a number of areas. Most significantly, the report highlights difficulties in replicating the long-term care benefits estimated in the Scheme proposals.

The Law Society and the Australian Lawyers Alliance would appreciate your comments on the issues raised in the attached report. In the interests of ensuring that any Scheme put in place preserves the rights of the injured and ensures their future security, I would urge you to consult again with stakeholders, providing full details of the Government's proposals as well as draft legislation.

I look forward to hearing from you.

Yours sincerely


John McIntyre
President

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Cumpston Sarjeant Pty Ltd

Consulting Actuaries

**Law Society of New South Wales
Australian Lawyers Alliance**

Lifetime care and support

Richard Cumpston

14 December 2005

14 December 2005

Mark Richardson
Chief Executive Officer
Law Society of New South Wales
170 Phillip Street
Sydney NSW 2000

Fax 02 9231 5809

Dear Mr Richardson

Lifetime care and support

On 8/8/05 the Law Society and the Australian Lawyers Alliance asked me to comment on the actuarial costings for the proposed life time care and support for persons with catastrophic injuries from motor accidents in NSW. A draft of this report was supplied on 31/8/05.

I have been assisted by Peter Roche of the Tasmanian Motor Accidents Insurance Board, by Doug Kearsley, Alan Woodroffe and Ian Reed of the Victorian Transport Accident Commission, and by John Walsh, the author of the costings.

There are major uncertainties in Walsh's cost estimates for the proposed benefits (see 4.3). These include uncertainties about the numbers likely to be deemed eligible, their life expectancies, the hours of care required, life cycle adjustments, and future investment returns and inflation.

Walsh estimates that benefits and expenses will cost \$66 a vehicle, less \$46 of offsets and savings from the current scheme, giving a net cost of \$20 per vehicle. But there are considerable uncertainties in the offsets and savings, making the \$20 net cost very uncertain.

My attempt to replicate Walsh's estimate of long-term care benefits gave \$339m pa, compared with Walsh's estimate of \$241m (4.4). This requires investigation.

Walsh's gross estimate of \$66 per vehicle is higher than the \$45 estimated from Victorian data (5.1), and \$41 from Tasmanian data (5.2).

The proposed statutory trust may eventually grow to about \$8 billion in 30/6/05 values (6.).

Yours sincerely

Richard Cumpston



Lifetime care and support

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Lifetime care and support

1. Background

On 8/8/05 we were asked by the NSW Law Society and the Australian Lawyers Alliance to comment on the actuarial costings for the proposed life time care and support for persons with catastrophic injuries from motor accidents in NSW.

These costings are in a 17/6/05 report by John Walsh of PricewaterhouseCoopers, titled "NSW CTP - no-fault long term care costing study". Similar estimates for each state and territory are in a PricewaterhouseCoopers report of 21/3/05, titled "Long term care - actuarial analysis on long-term care for the catastrophically injured", by John Walsh, Anna Dayton, Chris Cuffe and Peter Martin (the Australian Government Actuary).

2. Data

My advice to the Society and the Alliance was to be based on meetings with the actuarial or statistical staff of the Victorian Transport Accident Commission (TAC) and the Tasmanian Motor Accidents Insurance Board (MAIB).

I have spoken with Peter Roche about the experience of the MAIB, who suggested I obtain from John Walsh the material about long term care supplied to him by the MAIB. I have been helped by Alan Woodroffe, Doug Kearsley and Ian Reed of the TAC. The annual reports of TAC and MAIB give some overall cost data for long term care.

I have spoken with John Walsh, who gave me valuable background about the costings for each Australian state and territory.

3. The NSW proposal

In June or July 2005 the NSW government published "Lifetime care and support for people with a catastrophic injury from a motor vehicle accident." Submissions were sought by 31/8/05, to the General Manager of the Motor Accidents Authority.

The foreword says

"For the first time, all people catastrophically injured will receive care and support for life, regardless of who caused the accident..."

"Lump sum payments for pain and suffering and economic loss will remain unchanged, but damages for medical and care components will be replaced by the Lifetime Care and Support Scheme..."

"The current arrangements for compensation or access to disability services will be replaced by a LTCS scheme providing lifetime care and support through a fully funded statutory trust."

Page 2 of the government paper defines eligibility

"The LTCS scheme will cover all people who sustain a catastrophic injury in a motor vehicle accident that occurs in NSW."

The paper quotes John Walsh's estimates that each year there will be about 124 people eligible to enter the LTCS scheme

- 37 with a spinal cord injury
- 84 with a traumatic brain injury
- three with other injuries such as bilateral amputees, major internal injuries, and severe burns.

Page 7 notes that

"It should be possible to assess whether a person with a spinal cord injury is eligible for the LTCS scheme within months of the injury, based on the person having a persistent spinal cord neurological deficit."

Pages 7 and 8 describe the proposed assessment process for adults with traumatic brain injury

".. The person must score five or less on any of the items assessed using the Functional Independence Measure (FIM) ... The FIM assesses ... self care, sphincter control, mobility, locomotion, communication, social interaction and cognitive function. The person is rated from 1 (... require total assistance), to 7 (... completely independent). A rating of 5 or less indicates the person requires some supervision to perform the tasks."

"A person is eligible if they score 5 or less on any of the items assessed using the FIM two years after their injury."

4. John Walsh's costing of the NSW proposal

4.1 Care costs

Section 4.3 of Walsh's report gives the following care estimates

Category	Number persons pa	Cost in 31/12/05 values \$m	Cost with inflation, interest & expenses \$m	Cost per person \$m
spinal cord injury	37.3	76.261	50.743	1.360
brain injury	83.6	277.236	184.503	2.207
all other	3.0	8.837	5.881	1.960
Total	123.9	362.334	241.127	1.946

4.2 Other costs and offsets

Section 4.4 gives the following other costs and offsets

Cost or offset	Cost for 05-06 \$m	Cost per vehicle \$
Care in no-fault scheme (see above)	241.127	56
Post-acute medical & hospital	11.000	3
Acute inpatient	4.000	1
Remaining hospital and medical	30.689	7
Total gross cost for no-fault scheme	286.816	66
Offsets from current scheme	155.969	36
Possible savings on cost of capital & reinsurance	43.378	10
Total offsets	199.347	46
Net cost of no-fault scheme	87.469	20

Walsh notes that there are about 4.34m vehicles registered in NSW. Dividing the net cost by this number of vehicles gives about \$20 a vehicle (or about \$23 per class 1 metropolitan vehicle).

4.3 Uncertainties in Walsh estimates

Some of the major uncertainties in Walsh's estimates are

- most of the assumptions are based on inferences, rather than on the experience of similar schemes already operating
- there is large uncertainty about the likely numbers of persons deemed eligible, and pages 17-18 of Walsh's report mention six different forms of testing which may be used to determine eligibility

- there is particular uncertainty about the numbers deemed eligible as a result of brain injury, and the proposed acceptance criteria (pages 8-9) seem generous
- there is considerable uncertainty about the life expectancies of the injured, particularly those with brain injuries (pages 8-9 for spinal cord injuries, 12-13 for brain injuries)
- the numbers of hours of personal care and services seem speculative, particularly for persons with brain injuries (pages 9-10 for spinal cord injuries, and page 13 for brain injuries)
- it may not be feasible to exclude the elderly, as proposed on pages 13-14
- the life cycle adjustments for utilisation intensities in 2.5 are uncertain (pages 14-15)
- investment returns and wage inflation over the next 50 years are uncertain (page 16)
- no explicit allowance has been made for superimposed inflation, the tendency for expenses to inflate faster than wages (pages 17-18)
- offsets from the current CTP scheme, and possible savings on the cost of capital and reinsurance, are uncertain and poorly documented (pages 21-22).

4.4 Difficulty in reconciling Walsh estimates

On page 21, Walsh gives the following estimates for the projected cost of all long-term care benefits

in 31/12/05 values (\$m)	362.335
inflated at 4% pa, discounted at 6% (\$m)	229.644
inflated & discounted values, as proportion	0.6338

These estimates suggest that long-term care benefits will on average be paid for about 50 years.

From the tables on pages 10 and 15 of Walsh's reports, long term care costs are estimated as

Type	No	Average cost pa	Cost pa \$m
SCI	84	63571	5.34
Brain	37	123055	4.55
Other	3	93313	0.28
Total	124		10.17

No average cost is given for "other" injuries, and I have assumed the average for spinal cord and brain injuries.

Multiplying the total annual cost by the value of an annuity of \$1 for 50 years at 2%, and allowing for expenses, gives

annual cost of long term care (\$m)	10.17
times value if \$1 pa for 50 years at 2%	31.74
<u>times factor to allow for 5% expenses</u>	<u>1.05</u>
projected cost of care for 05-06 injuries (\$m)	339

This estimate of \$339m is about 41% higher than Walsh's estimate of \$241m (page 22). The reason for this discrepancy needs investigation.

5. Cost estimates for Victoria and Tasmania

5.1 Victorian Transport Accident Commission

Year to June	Long-term care \$m	Growth in year
2000	26.5	
2001	33.8	28%
2002	38.3	13%
2003	41.1	7%
2004	46.1	12%

The above payments for long-term care are from page 17 of TAC's 2004 annual report. On 8/9/05 I met with Doug Kearsley, Alan Woodroffe and Ian Reed of the Victorian Transport Accident Commission, to discuss these figures, and the estimates for the proposed NSW scheme.

The TAC began operations in 1986, but also provides care to persons injured in road accidents from 1980 to 1985, who were not able to make a common law claim, or chose not to make a claim. They thought that TAC payments for long-term care are a little less than 50% of those that might be expected in a fully mature scheme.

Their "long-term care payments" of \$46.1m in 03-04 are for attendant care and substitutable services such as supported accommodation. They also include home and vehicle modifications. Excluded are medical and paramedical services, equipment and acute care. These exclusions may add about 20% to 30%.

The TAC figures make no allowance for administration costs, while Walsh's figures include 5% administration costs.

NSW fatalities per vehicle are apparently about 20% higher than Victoria's. It is likely that the numbers of catastrophically injured per vehicle will also be higher in NSW.

This suggests that the cost per vehicle in 05-06 for the proposed NSW benefits will be about

Victorian payments in 03-4 (4m)	46.1
divided by number of registered vehicles (m)	3.83
divided by .45 to allow for plateau level	0.45
times factor to allow for two years of inflation	1.08
times factor to allow for benefits not in Victorian payments	1.25
times factor to allow for higher NSW fatality level	1.2
times factor to allow for administration	1.05
estimated cost per NSW vehicle in 05-06	45

Doug said they had compared Walsh's estimates with their own experience, and thought "they were in the same ballpark".

None of this suggests that Walsh's gross estimate of \$66 per vehicle for NSW is too high. Victorian experience provides no guide to his estimated offsets of \$44 per

vehicle.

Alan commented that some brain injuries took longer than 2 years to resolve. Delayed assessments of "catastrophically injured" may cause difficulties with private insurers.

TAC will need to negotiate a joint agreement with NSW to avoid double coverage. Drivers and occupants of Victorian-registered vehicles receive no-fault benefits if they crash anywhere in Australia, while the NSW scheme is only proposed for accidents in NSW.

If the NSW proposal goes ahead, the ACT will probably have to introduce its own long term care scheme.

5.2 Tasmanian Motor Accidents Insurance Board

Year to June	Future care payments		Growth in year
	\$m		
2000	7.1		
2001	8.1	14%	
2002	7.9	-2%	
2003	8.2	4%	
2004	9.0	10%	

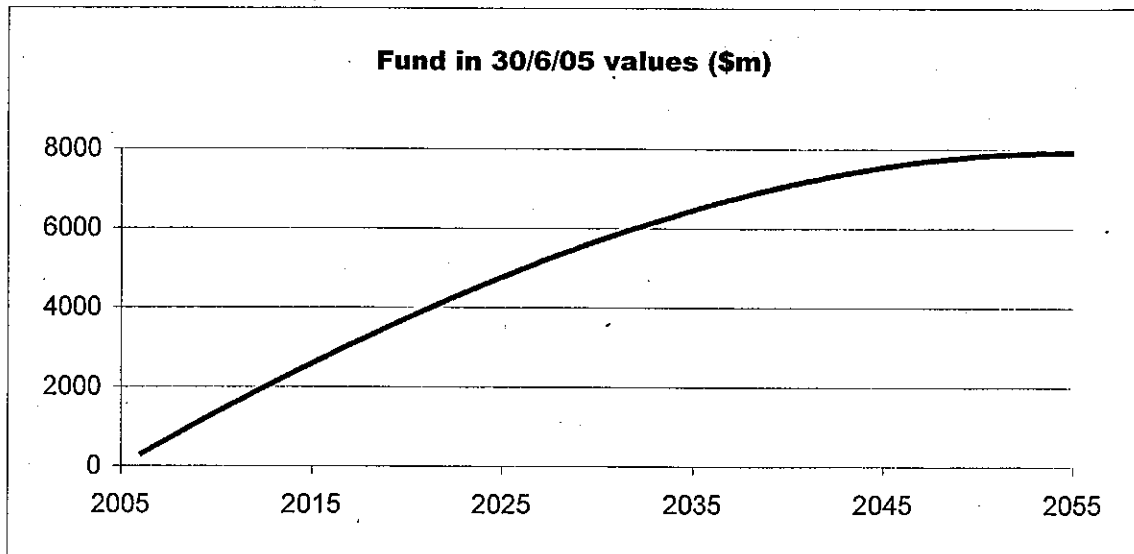
The above payments for future care are from page 23 of MAIB's 2004 annual report. The MAIB was established in 1974, and long-term care benefits may be at about 60% of the levels in a mature scheme. This suggests a long-term cost of about \$16m in 05-06 values, or about \$41 for each of 0.395m registered vehicles.

Page 6 of the MAIB 2004 report notes

"The provision of purpose built accommodation in both Hobart and Launceston is central to the success of the scheme ... Supported accommodation is also available to those who have recovered sufficiently to live independently. While several people reside in their own home, the provisions of these facilities provides a real choice."

6. Eventual size of statutory trust

The projections in appendix A suggest that a fund of about \$8 billion in 30/6/05 values may eventually build up. These projections are approximate, as they assume that level benefits are paid to each injured person for 50 years.



Appendix A : Buildup of statutory fund

Year to 30 June	Fund at start	Levies to fund	Benefits and expenses	Interest	Fund at end	Fund at end in 30/6/05 values
	\$m	\$m	\$m	\$m	\$m	\$m
2006	0.0	286.8	8.8	8.3	286.3	275.3
2007	286.3	298.3	18.3	25.6	591.9	547.2
2008	591.9	310.2	28.6	44.0	917.5	815.6
2009	917.5	322.6	39.6	63.5	1264.0	1080.5
2010	1264.0	335.5	51.5	84.4	1632.4	1341.7
2011	1632.4	349.0	64.3	106.5	2023.5	1599.2
2012	2023.5	362.9	78.0	130.0	2438.3	1852.9
2013	2438.3	377.4	92.8	154.8	2877.8	2102.8
2014	2877.8	392.5	108.5	181.2	3343.0	2348.7
2015	3343.0	408.2	125.4	209.1	3834.9	2590.7
2016	3834.9	424.6	143.5	238.5	4354.5	2828.6
2017	4354.5	441.5	162.8	269.6	4902.9	3062.3
2018	4902.9	459.2	183.4	302.4	5481.2	3291.9
2019	5481.2	477.6	205.4	337.0	6090.4	3517.0
2020	6090.4	496.7	228.9	373.5	6731.6	3737.8
2021	6731.6	516.5	253.9	411.8	7406.1	3954.2
2022	7406.1	537.2	280.5	452.1	8114.8	4165.9
2023	8114.8	558.7	308.9	494.4	8858.9	4373.0
2024	8858.9	581.0	339.1	538.8	9639.6	4575.4
2025	9639.6	604.3	371.3	585.4	10458.0	4772.9
2026	10458.0	628.4	405.4	634.2	11315.2	4965.5
2027	11315.2	653.6	441.7	685.3	12212.3	5153.1
2028	12212.3	679.7	480.3	738.7	13150.5	5335.5
2029	13150.5	706.9	521.2	794.6	14130.8	5512.7
2030	14130.8	735.2	564.6	853.0	15154.4	5684.7
2031	15154.4	764.6	610.7	913.9	16222.1	5851.2
2032	16222.1	795.2	659.6	977.4	17335.2	6012.1
2033	17335.2	827.0	711.3	1043.6	18494.4	6167.5
2034	18494.4	860.1	766.2	1112.5	19700.7	6317.1
2035	19700.7	894.5	824.4	1184.1	20955.0	6460.8
2036	20955.0	930.3	885.9	1258.6	22258.0	6598.6
2037	22258.0	967.5	951.1	1336.0	23610.4	6730.3
2038	23610.4	1006.2	1020.0	1416.2	25012.7	6855.8
2039	25012.7	1046.4	1093.0	1499.4	26465.5	6975.0
2040	26465.5	1088.3	1170.1	1585.5	27969.2	7087.8
2041	27969.2	1131.8	1251.7	1674.6	29523.9	7194.0
2042	29523.9	1177.1	1337.9	1766.6	31129.6	7293.6
2043	31129.6	1224.2	1429.0	1861.6	32786.4	7386.3
2044	32786.4	1273.1	1525.3	1959.6	34493.8	7472.1
2045	34493.8	1324.0	1627.0	2060.5	36251.4	7550.8
2046	36251.4	1377.0	1734.4	2164.4	38058.4	7622.3
2047	38058.4	1432.1	1847.7	2271.0	39913.8	7686.4
2048	39913.8	1489.4	1967.4	2380.5	41816.2	7743.0

2049	41816.2	1548.9	2093.7	2492.6	43764.1	7792.0
2050	43764.1	1610.9	2226.9	2607.4	45755.5	7833.3
2051	45755.5	1675.3	2367.5	2724.6	47787.9	7866.6
2052	47787.9	1742.4	2515.7	2844.1	49858.7	7891.8
2053	49858.7	1812.1	2672.0	2965.7	51964.5	7908.7
2054	51964.5	1884.5	2836.8	3089.3	54101.6	7917.3
2055	54101.6	1959.9	3010.4	3214.6	56265.6	7917.3

Assumptions used in the above projections

Benefit inflation pa	4%
Investment earning rate	6%

The levies to the fund in the first year are Walsh's estimate of the total gross cost of the no-fault scheme (page 22 of his report). Levies are assumed to increase in line with benefit inflation.

Injured persons are assumed to receive the same benefits each year for 50 years, increasing in line with inflation.

Benefits and expenses in the first year are those that, if paid for 50 years and increasing in line with benefit inflation, would just exhaust the levies paid in the first year.

Interest is assumed earned on the fund at the start of the year, plus half the levies less half the benefits and expenses.

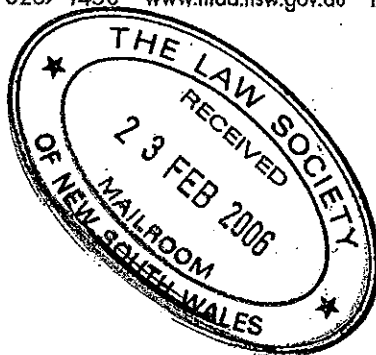
Motor Accidents Authority of NSW

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MAA file ref: 05/132

21 February 2006

Ms June McPhie
President
The Law Society of NSW
DX 362 Sydney



CEO daily

120 RECEIVED S.C.
28 FEB 2006 *Nohy*
PRACTICE DEPT

Dear Ms McPhie

Life time care and support scheme

I refer to the letter from your predecessor dated 19 December 2005 about the proposed life time care and support (LTCS) scheme. Attached to your letter was a report dated 14 December 2005 by Cumpston Sarjeant Pty Ltd, Consulting Actuaries, engaged by the Law Society and the Australian Lawyers Alliance to comment on the scheme's actuarial costings. I have asked John Walsh of PricewaterhouseCoopers (PwC) to review the report and this letter is based on his advice.

In broad terms, the main issues identified in the Cumpston Sarjeant report are:

- Major uncertainties in the costing of the LTCS scheme, particularly in the areas of numbers deemed eligible, their life expectancies, the hours of care required, life cycle adjustments and future investment returns and inflation;
- Considerable uncertainties in the offsets and savings, and hence the resulting net cost;
- Inability to replicate the PwC estimated \$241 million annual funding required for the attendant care component of the costing;
- An observation that a costing derived from the existing Victorian TAC and Tasmanian MAIB schemes would be considerably lower than the PwC estimates; and
- An observation that the fund will grow to a significant level.

Uncertainty in costing

In section 4.3 of the Cumpston Sarjeant report, a number of suggested uncertainties in the PwC estimates are identified. It is not true that "most of the assumptions are based on inferences, rather than on the experiences of similar schemes already operating", as suggested in the first dot point of section 4.3. The PwC costings arose out of a major NSW and national consultancy in which PwC gathered a very wide and comprehensive range of data from a variety of sources which included:

- All existing compensation schemes, and particularly those in Victoria and Tasmania where similar schemes operate;
- Medical and hospital professionals in all jurisdictions;
- Government departments of disability and home care in all jurisdictions; and
- National data on injury, disease and disability.

Moreover, the PwC costings have been peer reviewed in detail by a number of the schemes and their actuaries, including Victorian TAC. As noted in the Cumpston Sarjeant report if comparable data from other compensation schemes was used to determine the cost base it would be considerably lower than allowed in the Government White Paper and would undoubtedly be subject to criticism from the legal profession that it would provide inadequate level of care.

Difficulty in reconciling estimates

Cumpston Sarjeant has sought to develop a high level reconciliation of the PwC costing results in two ways:

1. A top down approach, taking broad indicators and averages to achieve an approximate result; and
2. A 'comparable schemes' method, where high level data from other schemes was used and adjusted to the NSW context.

John Walsh has advised me that he regards these approaches as a sound way to obtain a rough idea of the required cost. He notes that his estimate of \$241 million (\$66 per vehicle) falls almost exactly halfway between the two estimates.

Method 1

The first Cumpston Sarjeant method derives an annual cost of long term care [\$10.17 per annum], derives an average 2% annuity for a term of 50 years [31.74] and then loads the product of these amounts by 5% for expenses, to give a projected fully funded cost of care for 2005-2006 injuries of \$339 million. This equates to about \$78 per vehicle for care costs only, or about \$98 if medical and other treatment costs are included. While this method gives a rough idea of the cost, it suffers from lack of granularity especially in the following areas:

- Recognition that the start-off care costs are projected to be lower than the base annual cost, and to increase as the claimant ages, with the base annual cost meant to be an average over a normal lifespan. It is assumed that in the early years there will be a heavier loading of rehabilitation and therapy expenses.
- Recognition of the significantly different mortality between severely injured people and people less severely injured, which means that the most expensive annual costs will not last as long and the base annual cost reduces over time notwithstanding its age loading on an individual person basis.

For these reasons, the method produces an over estimate of the required care cost.

Method 2

The second Cumpston Sarjeant method takes recent long term care payments in the Victorian TAC scheme adjusted to current values, grosses up these payments to a plateau level and then further grosses up the amount to include medical and other services and to apply to NSW conditions. The resulting cost is \$45 per vehicle.

John Walsh considers that this method is also suitable as an indicator of a base cost for the LTCS scheme. However, as the scheme is starting from scratch in NSW, it is prudent to adopt the PwC estimate of \$66 per vehicle.

Off-sets from the current scheme

Cumpston Sarjeant suggest that there is considerable uncertainty as to the net cost of the proposal because of uncertainty as to the level of the off-sets from the current scheme. At the time of the release of the government paper I convened a working party of actuaries with experience with the NSW CTP scheme to document and quantify the savings from introducing the LTCS scheme. The main savings are:

- Transfer of the catastrophic care component of the risk premium from the private insurers to the LTCS scheme and resulting reduction in the risk premium;
- Reduction in the premium volume of insurers, and hence a reduction in the cost of capital, that is profit; and
- Removal of the major claims requiring reinsurance, and hence a reduction in the net cost of reinsurance.

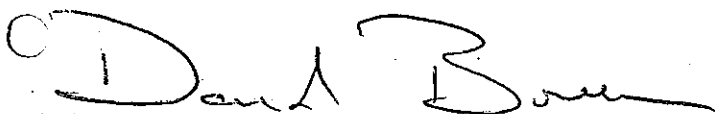
C The level of savings was considered independently by Taylor Fry, PWC and Finity and each firm provided an estimate of the savings due to LTCS – there was at most a \$6 variation between the consulting actuaries as to the level of savings due to the reduced risk premium.

Having regard to the current industry risk premium these opinions support the view that the LTCS scheme can be introduced at an average net increase of \$20.

Size of the fund

Cumpston Sarjeant's final comments relate to the fact that the scheme will grow to \$8 billion over time and hence warrants strong prudential governance. The MAA agrees that strong prudential governance is required.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Bowen', with a large, stylized 'D' and a long, sweeping horizontal stroke at the end.

David Bowen
General Manager