JOINT SUBMISSION

The New South Wales Bar Association
The Law Society of New South Wales
and
The Australian Lawyers Alliance

AN ALTERNATIVE PROPOSAL TO REFORM THE NSW CTP SCHEME

New South Wales Bar Association

THE LAW SOCIETY OF NEW SOUTH WALES

Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

1. EXECUTIVE SUMMARY

The legal profession recognises and supports the government's objectives in seeking to reform the CTP scheme:

(i) Reducing premium costs.

(ii) Faster resolution of claims, especially small claims.

(iii) Reducing levels of disputation.

(iv) Directing benefits to the more seriously injured.

(v) Maintaining private underwriting.

However we believe that these objectives can be achieved more quickly and with greater certainty by modifying the existing scheme than by embarking on a wholesale re-design of CTP insurance in NSW. This proposal by the NSW legal profession focuses on the development of an alternative reform model focussed on streamlining scheme benefits and reducing disputation.

The impact of these reforms has been costed by Deloitte Actuaries & Consultants Limited ("Deloitte") and is expected to deliver a premium that comes back below $500.

At the outset, it is important to acknowledge that the CTP scheme is more complex than workers' compensation – more complex injuries, fewer small claims, more complex financial circumstances for claimants (not just the employed but the self-employed, unemployed, students and children). Given the complexity of these reforms, they should not be rushed. Nor should they be implemented until the proposal is properly costed. The broad costings done by Ernst & Young have not been released or reviewed.

The legal profession believes that moving to a comprehensive no fault scheme will give rise to a range of risks and disadvantages for motorists and therefore the NSW community at large. Specifically:

1. The proposed premium savings may not be delivered due to the 7,000 extra claims for at fault drivers; higher claims handling costs (more claims); and insurers requiring higher prudential margins due to uncertainty about the new scheme's operation.

2. The proposition that accident victims should surrender benefits to provide payments to the drivers who caused their injuries raises genuine issues of fairness.

3. It is doubtful that motorists will be financially better off when all circumstances are taken into account. If victims cannot recover the full measure of their lost earnings, many people will need private income protection insurance to protect their family home and quality of life in the event of a car accident. This additional cost will more than offset any CTP premium savings.

4. The Victorian Transport Accident Commission scheme is not a good model for NSW to follow as it is in deficit and government underwritten. A Victorian TAC-style scheme will not work in NSW with private underwriting and the intrinsic need for insurers to make profits. Victorian CTP premiums would possibly be higher than NSW if they had private underwriting.

5. There is no working model of a privately underwritten no-fault CTP scheme anywhere in the world. The Government's draft model is not a copy of Victoria (a government

underwritten scheme). It is therefore untested and risky, and alternatives should be considered.

6. Removing lawyers from the CTP scheme will see insurers (and their in-house lawyers) ride roughshod over the rights of accident victims.

7. The unreleased Ernst and Young costing for the proposed changes needs careful review, given that cost efficiency/savings is at the heart of the intended reform objectives.

The legal profession's proposal – as costed by Deloitte (copy attached) – could, by October 2013, deliver premiums under $500 and faster resolution of claims. By contrast a new comprehensive no fault scheme is likely to take between 12-18 months to be implemented and may ultimately not deliver premium savings and other desired benefits.

The key features of the legal profession's alternative proposal include:

- Capping past and future wage loss payments on the basis that those on high incomes can have private income protection insurance. Compensate the full wage loss of lower income earners.

- Substantially restrict payments for voluntary and paid care.

- A variety of measures to reduce disputation within the scheme including:

  - Better exchange of liability information
  - Removing arbitrary late claim disputes
  - Prescription of answers for common contributory negligence disputes
  - Streamlining the Medical Assessment Service (MAS) and Claims Assessment and Resolution Service (CARS)
  - Improving the hardship payment system so that more benefits are paid out more quickly.
  - Better regulation of the legal profession for the protection of the public
  - Better regulation of insurers to ensure both sides in a dispute engage in the early resolution of claims.
  - Better regulation of premiums so that insurers cannot remove 30% of premium collected as profits.
  - Restricting the recovery of costs in small cases and providing for quick resolution of disputes with paper assessments.

All these measures could be delivered within the existing fault-based system. If the NSW Government believes that no-fault benefits should be expanded then we recommend this be done through the existing ANF scheme (where the effects on premium are predictable and containable) rather than by the broad adoption of a full no-fault scheme.



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2. INTRODUCTION AND OBJECTIVE

The discussion paper *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme* presents a radical overhaul of the NSW Green Slip Scheme. At the core of the proposal is an expansion of benefits to cover not only those injured by negligent driving, but also the negligent driver. This will bring upwards of 7,000 extra claims per year into the system.

This expansion of coverage would be funded by substantial cuts to the current level of benefits paid to the innocent victims of motor accidents.

The discussion paper proposes termination of all benefits (including treatment expenses and wage loss) after an as-yet-undefined period (possibly 3 to 5 years) for 90 per cent of accident victims. Only about 600 people per year who get over the 10 per cent whole person impairment (WPI) threshold would have their future treatment expenses and wage losses paid.

The legal profession recognises that there is significant scope for reducing premium prices and improving the efficiency of the current CTP scheme. The Government's reform objectives are supported to the extent of:

(i) Reducing and stabilising premium cost.

(ii) Faster resolution of claims, especially small claims.

(iii) Reducing levels of disputation.

(iv) Directing benefits to the more seriously injured.

(v) Maintaining private underwriting.

It is submitted that these goals can be achieved within the framework of the existing scheme rather than the more radical, untested and unfair scheme re-design which the discussion paper puts forward.

This submission sets out an alternative proposal for the improved efficiency of the current scheme. This proposal has been costed by Deloitte Actuaries & Consultants Limited ("Deloitte") and is expected to deliver a premium that comes back below $500.

This submission also sets out concerns regarding the discussion paper proposal, including the substantial benefits cuts, the inevitable increase in insurer claims handling costs, potential reduction in competition (as insurers vacate the market) and possible increases in premium as insurers seek larger prudential margins to underwrite an untested no-fault scheme.

Significantly, there is no model for a privately underwritten, no fault scheme anywhere in the world. The government-run no fault accident compensation scheme in New Zealand has delivered massive deficits (currently $2.6 billion for the motor accident component of their scheme), whilst paying lower benefits than enjoyed by NSW accident victims. Last year, Victoria's government underwritten no fault CTP scheme (TAC) was $1.4 billion in deficit.

The discussion paper states that Victorian premiums are on average $362 before GST and input tax credit (ITC) loadings. This figure is questioned. A CTP newsletter published by Finity in August 2012 reported that average Victorian premiums at that time were $522.50 inclusive of GST. Victorian premiums are over $500 in a not for profit, government underwritten scheme. If acquisition and expense cost incurred by private underwriters in NSW were to apply in the Victorian scheme, and the premium was increased in response to

the recent deficit in that scheme, it is possible that the premium in Victoria would exceed $600. This would be more expensive than NSW.

The Government has had costings for the scheme proposed in the discussion paper prepared by Ernst & Young, however these figures have not been released or scrutinised.

The current NSW CTP scheme operates at no cost to government. With our proposed reforms, the scheme would operate more efficiently, more effectively and deliver affordable benefits to the most seriously injured.

3. CURRENT SCHEME COST AND PRINCIPLES OF REFORM

To understand the current scheme it is necessary to understand where the current premium goes. Insurer filings are not publicly released, but on the available data the average premium looks something like the following:[1]

MCIS (LTCS and MAA operating expenses)		$122
Benefits		$237
NEL	$36	
Economic loss	$95	
Treatment	$49	
Care	$45	
Other	$12	
Acquisition and claims handling costs (15%)		$65
Legal and Investigative		$49
Profit to insurer		$45
GST		$41
TOTAL		**$559**

The legal profession contends that there are four key areas that could be addressed to improve scheme performance:

1. Better targeted damages;
2. Improved scheme efficiency;
3. Regulating insurer conduct; and
4. Containing legal costs.

[1] Deloitte's report attached.

4. ALTERNATIVE REFORM MODEL – DETAILED PROPOSALS

The NSW legal profession has developed the following suite of alternative reform proposals for consideration and believes these will achieve the core objectives of reducing premiums to under $500 and improving the efficiency of the scheme (while preserving its fairness). The costing of these proposals has been undertaken by Deloitte Actuaries & Consultants Limited ("Deloitte")...

1. Better targeted damages

The following initiatives are proposed that will remove significant cost from the system while preserving some key principles of fairness:

a. Preserve current benefits for pain and suffering (for those who get over 10% WPI), past treatment expenses and future treatment expenses.

b. Preserve payments for future treatment expenses and future loss of earnings for all innocent victims of motor vehicle accidents. Do not cut off wage loss payments after an arbitrary 3 or 5 years.

c. Cap past and future economic loss at $2,000 net per week on the basis that those on higher incomes can and should take out personal income protection insurance.

d. Cap future loss of earnings to the retirement age (currently age 67).

e. Restrict access to past and future voluntary care payments to those who exceed the 10% WPI threshold. (We note that payments for voluntary care have been the primary driver in claims costs growth over the past decade and have also seen a substantial growth in the value of small claims and the delay in the resolution of those claims). This proposal not only significantly reduces access to this head of damage, but will also significantly improve the speed of resolution of small claims.

f. Restrict access to payments for past and future paid care to those who are over 10% WPI.

2. Improve scheme efficiency

We believe there are a range of reform measures that will reduce disputation and facilitate more timely outcomes for claimants:

a. <u>Cut late claim disputes</u>

Over 80% of claims are lodged within six months. Access to payments for treatment and lost wages is incentive enough to get claim forms lodged promptly. Insurers currently lose 90% of late claim disputes which are a disproportionately expensive drag on claims resolution. Remove the right for insurers to reject claims lodged within 3 years.

b. <u>Make Section 81 work</u>

Section 81 of the *Motor Accidents Compensation Act 1999* requires insurers to give a determination on liability within three months. This part of the current system is not operating properly, with technical disputes over distinctions

between *"liability", "fault"* and "*breach of duty of care".* If this Section was clarified needless disputes would be avoided.

c. Share liability information

Insurers are currently required to hand over a copy of the police report, but no other material in relation to liability or contributory negligence. If the insurer wants to dispute liability or allege contributory negligence then they should hand over all relevant materials including their driver's statement, witness statements and accident investigations. If this information is provided to the claimant then disputes will be reduced. This requirement is part of the reason the Queensland scheme currently works more efficiently than the New South Wales scheme.

The same obligation to disclose liability information should be placed on claimants.

d. Prescribe some common contributory negligence deductions

Currently there is unnecessary disputation due to insurers making allegations of contributory negligence. Allegations of 100% contributory negligence are commonly made, but never proven. The discussion paper proposes trying to prescribe some fixed levels of contributory negligence. Subject to maintaining a requirement that the contributory negligence causally relate to the circumstances of accident and injuries, this proposal is supported.

For example, UK courts have traditionally held that where a failure to wear a seatbelt is involved, there is no contributory negligence if the failure did not contribute to injuries, 15% reduction if the failure partially contributed to injuries and 30% reduction if injuries were entirely caused by the failure to wear a seatbelt. Disputation in this area can be significantly reduced if fixed percentages along these lines are introduced.

e. Make the current hardship payments system work

Currently the *Motor Accidents Compensation Act 1999* provides for insurers to make advance payments pending final resolution of a claim. On some occasions, insurers do so willingly. In other cases, there are extensive and expensive disputes over modest advance payments. Provided the amount being sought by way of hardship payment does not exceed the total value of the claim, insurers should not object to making an interim payment. The only reason for an insurer to oppose an interim payment would be to keep an accident victim in difficult financial circumstances, in the hope that they would then settle their claim more cheaply.

The current hardship payment system does not work because the process is bureaucratic and insurers are allowed to generate needless disputes over what should be straightforward interim payments.

Efficiency can be improved by:

- Reversing the onus so as the insurer has to show why an interim payment should not be made; and
- Legislating for a presumption in favour of quarterly interim payments for those with loss of earnings as a consequence of an accident. (Quarterly payments avoid the tax complications that the weekly payment regime proposed by the discussion paper would involve).

f. Repeal Section 89A-E

Insurers and claimants want to settle cases without overly elaborate preparation for what should be a straightforward process. These legislative provisions require extensive preparations, add to costs, and create delay.

g. Improve the efficiency of the Medical Assessment Service

The Medical Assessment Service (MAS) and the 10% WPI threshold are at the heart of most claims delays. Unnecessary MAS assessments and repeated MAS assessments are the bane of the current system and must be a key target of reform. The efficiency of MAS can be streamlined by:

(i) Requiring claimants to apply to MAS for assessment of WPI within two years of the accident.

(ii) Prevent claimants from applying to MAS unless they have substantive evidence that injuries will be over the 10% WPI threshold.

(iii) Not permitting insurers to dispute the 10% WPI threshold where they hold evidence that injuries are over that threshold.

(iv) Allowing insurers and claimants to agree the nature and extent of injuries that are not in dispute and their percentage WPI, so that only injuries where there is a dispute are assessed at MAS (currently MAS assesses all injuries, even those about which the parties agree).

(v) Restrict reviews and further assessments to only looking at injuries in dispute, not re-assessing all injuries.

(vi) Limit further assessments at MAS by only permitting each side to apply for one such assessment (whilst maintaining the current requirement that there can only be a further assessment if the Proper Officer says there has been a material change in circumstances). There would still be the safety valve of a court or CARS having the capacity to refer again if an appropriate circumstance arose in a particular case.

h. Expand the role, and improve the efficiency, of CARS

(i) Reduce exemptions from CARS. The CARS system is a form of alternative dispute resolution that is cheaper and more efficient than court proceedings. Currently cases where greater than 25% contributory negligence is alleged are exempted from the CARS process. This should be changed so that CARS has the capacity to assess all cases involving contributory negligence allegations (subject to the safety valve of a discretionary exemption for clearly unsuitable cases). An exception should remain for infants and persons requiring tutors, where the courts should retain a supervisory jurisdiction.

(ii) Increase use of paper assessments and telephone conferences for small claims. Restrict costs in small claims to encourage rapid resolution.

(iii) Impose a limitation period for CARS. Currently delays are caused by the fact that there is no time restriction on applying to CARS for assessment of

the claim. We propose the same three year limitation period that applies in relation to court proceedings.

(iv) Restrict CARS re-hearings. The re-design of the current system in 1999 had two dominant features:

- Excluding pain and suffering payments for 90% of accident victims (the 10% WPI threshold); and

- Compelling insurers to accept the result of a CARS assessors' award.

The latter part of the system is not functioning properly. The current disincentives to claimants pursuing re-hearings are working. The legislation should be amended to prevent all insurer re-hearings of CARS assessors' awards. Currently insurers are not bound by CARS assessments of late claims and other special assessments.

i. Streamline workers compensation paybacks

Currently there is the anomalous situation where an injured accident victim's substantive rights will be determined in a CARS assessment whilst there is a simultaneous litigated court dispute between a workers compensation insurer seeking recovery of payments and a CTP insurer defending that action. These claims under s 151Z of the *Workers Compensation Act* involve unnecessary disputation and should be resolved by a bulk billing agreement between the workers compensation and CTP insurers. Such an agreement has been talked about for a decade. Implementation is overdue and will result in a significant scheme benefit.

j. Review the Lifetime Care and Support (LTCS) scheme and the Medical Care and Injury Services (MCIS) Levy

Over 20% of the CTP premium currently goes to support the LTCS scheme, which cares for the most catastrophically injured. Every motorist pays over $100 per year in premium to fund care and treatment for less than 200 people per year. Whilst recognising the need to provide proper care for the most catastrophically injured, there are serious concerns about the efficiency of the LTCS scheme. It appears to be collecting far more in premium than the level of benefits being paid out would justify, so a comprehensive review of the scheme is warranted.

3. Regulating Insurer conduct

There is significant scope for scheme savings on the Insurer side:

a. Reduce acquisition costs

Currently about 15% of the premium goes to cover insurer claims handling and acquisition costs. This is the case even though there is minimal price-based advertising in CTP, and insurers only use generic advertising that barely mentions CTP. It is generally conceded that this advertising is really targeted at the comprehensive insurance market. We contend that the green slip is a compulsory insurance for vehicle owners who should not be subsidising the costs of generic advertising and corporate sponsorship. The only allowance that should be permitted in the premium cost for insurer advertising is where such advertising makes specific reference to CTP price.

b. Set resolution targets and publish results

The MAA sets no targets for the resolution of claims and publishes no data on the relative performance of insurers in speed of resolution. Setting targets and publishing the results (identifying individual insurers) would create a positive incentive for insurers to push the rapid resolution of claims.

c. Pointless disputes ascribed to profit rather than operating costs

The discussion paper proposes that costs associated with unnecessary disputes should come from the profit component of the premium rather than operating costs. This is supported.

d. Add-ons to premium to be separately priced

Some insurers currently offer "*driver at fault*" insurance as part of the CTP premium. This makes comparison of price problematic. If an insurer wants to offer additional benefits then they should be separately costed as an add-on to premium, rather than inflating the base premium price.

e. Tighter regulation of premiums

For the past decade, premiums have been set on the basis that insurers should ultimately keep 8% of the premium written as profit. They have in fact averaged 19%. There is currently no capacity to claw back the 'super profits'. The Government should introduce and enforce a super profit levy such as 50% on all the realised profits over 12% of premium written.

The nature of the scheme means that these super profits would not be known and recoverable until some years post-premium collection, but if the levies were paid to the MAA, then over time, such payments could be used to reduce the MCIS Levy and cover the MAA's operating expenses. If there were consistent super profits then the income stream would ultimately be paid back to motorists through a reduction in the MCIS Levy and reduced premiums.

4. Legal fees and lawyers

The vast majority of lawyers acting for the injured do so honestly, ethically, and reasonably. Few accident victims could afford legal representation if they had to pay for it upfront. The current system only works because lawyers are prepared to take cases on a speculative basis.

There has been legitimate public criticism of the charging practices of one, now defunct, law firm. That firm's practices were not typical of the profession. Overcharging is abhorred by honest practitioners and condemned by the Law Society, the Bar and the ALA.

The MAA's own study (an FMRC Report) showed that lawyers in the CTP scheme charge conservatively and reasonably. Nonetheless, recognising that there have been rogues, and the need for protection of the public, the following suggestions are made:

a. Abolish referral fees

Doctors and agents should not be recovering spotter's fees for referrals.

b. MAA oversight of costs

Give the MAA power to review solicitor/client bills and, in suspected cases of overcharging, make referrals to the Legal Services Commissioner.

c. Introduce the claimant as primary beneficiary rule

In the vast majority of cases, the claimant receives the bulk of the settlement. However, to prevent any abuse, introduce a rule in similar terms to section 347 of the Queensland *Legal Profession Act*.

d. Costs in small claims

To further improve efficiency and speed of resolution, remove party/party legal costs for settlements or awards under $20,000 and restrict the recovery of solicitor/client legal fees to a maximum of $2,000 for any settlement or award under $20,000. Combine this with increased use of simplified paper assessments for small claims.

5. EXPANDING NO FAULT BENEFITS

One further proposal that could be considered in revising scheme design would be to expand the current Accident Notification Form system and expand no fault benefits.

The legal profession has significant concerns about expanding the no fault element of the scheme:

(i) The propensity to claim increases.

(ii) Claims handling expenses increases as claims numbers increase.

(iii) The incidence of fraud increases.

(iv) Pure no fault schemes reduce incentives to make roads, motor vehicles and drivers safer.

(v) The risk grows of insurers leaving the scheme and decreasing competition, leading to increased premiums.

However, if there is to be an expansion in no fault benefits then it is suggested that this be done in a much more restricted fashion than the comprehensive model set out in the discussion paper. For example, the current no fault ANF could be expanded from $5,000 up to $20,000 on the basis that this would reduce disputation and speed up the resolution of small claims. No costs are payable by the insurer on ANF only claims, so expanding the ANF does significantly increase the claims resolution rate and drive down costs in small claims.

Deloitte estimate that expanding the ANF to $20,000 on a no fault basis would produce a net saving to the scheme of $4 per premium. (The extra benefits paid are more than offset by reduction in overall claims costs, reduced payments for legal fees, and quicker resolution of small claims.)

6. CRITIQUE OF PROPOSALS IN THE DISCUSSION PAPER

As a preliminary contextual point, it is important to acknowledge that while it is true that NSW does have higher premiums than some other Australian jurisdictions, there are a number of reasons for this. Firstly and most importantly, better benefits are paid in NSW. NSW provides lifetime care on a no-fault basis (unlike Queensland) which adds over $50 to NSW premiums. (South Australia has just introduced a Lifetime Care Scheme which is projected to add $60 to premiums). NSW has various other no-fault benefits.

Second, the risk in the NSW scheme is privately underwritten. This add costs. The Victorian government scheme is currently running at a $1.4 billion deficit. If acquisition costs incurred by private underwriters in NSW were to apply in the Victorian scheme and the premium was increased in response to the recent deficit in that scheme it is possible the premium in the Victorian Scheme would exceed $600.

Unlike the MAA, Queensland's *Motor Accident Insurance Commission* has controlled premiums and restricted insurer profits. If the MAA did the same, NSW would have cheaper premiums too. (Queensland also does not have an LTCS scheme paying for catastrophic injury on a no-fault basis. If the LTCS levy was added to the Queensland premium then their prices would be much closer to NSW.)

The NSW legal profession believes that there are serious risks and weaknesses associated with the reforms proposed in the discussion paper.

1. The proposed premium savings are uncertain

Implementing a completely new scheme involves considerable price risks including:

- The strong likelihood that insurers will be allowed a high prudential margin in premiums in initial years. This will force prices up rather than down.
- The possibility that some insurers will drop out of the market, reducing price competitiveness and placing upward pressure on premiums.
- Increased insurer administration costs (to handle 7,000 more claims per year and deal with time-consuming weekly payments), reduces any saving that could otherwise be achieved.
- Propensity to claim will increase from under 50% to over 100%.

The proposals outlined in our submissions would result in a conservative estimate of approximately $60 in savings to current premiums. These savings could be delivered immediately.

Conversely, given the large increase in staff numbers and new computer systems required by the proposal embodied in the discussion paper, we understand that CTP insurers will not be able to operate a new system for another 12-18 months. Clearly any premium cuts would not be achieved until the system was up and running. There are legitimate concerns this scheme would increase rather than cut premiums.

Because our proposals involve modifying an existing scheme, rather than creating a completely new one, it is easier to identify the savings that could be achieved, and there is more likelihood that premium price would remain stable into the future.

The two inflationary drivers (small claims and care payments) have been directly and permanently addressed by the legal profession's alternative proposal.

The discussion paper proposals are not fully costed. Given that significant details are missing (such as when benefits are cut off for most claimants), the claimed savings from scheme reform are speculative and uncertain.

2. Victims punished in order to pay the driver at fault

Innocent motor accident victims are substantially disadvantaged under the proposed changes:

(i) No loss of wages after 3-5 years for those who are not over 10% WPI (which is 90% of accident victims). The government has not announced its intention in relation to the cut-off point for benefits.

(ii) Injured children may not be compensated for their future inability to work or restriction in work capacity (if not over 10%).

(iii) Reduced wage payments for everyone.

Although the reform proposals may deliver earlier payments (TAC style), the injured would still be at risk of losing their homes if those payments are insufficient to cover the mortgage and living expenses (which in many cases they will be). They would certainly lose their home after 3-5 years when they are on the unemployment scrapheap.

3. Motorists will lose financially

The costs savings being offered on the model in the discussion paper are in the order of $50-$75, however the financial modelling for this scheme has not been released. Assuming these savings did materialise, they would be more than offset by the need for all drivers and passengers who work to have income protection insurance because the Motor Accidents scheme no longer protects them by covering their permanent wage loss. The cost of the required income protection insurance substantially outweighs the saving. For the many who cannot afford income protection insurance, the changes will simply mean they will be under-insured in the event of a motor vehicle accident, putting them at severe financial risk should they be unable to continue working.

4. Insurers will win, claimants will lose

The anticipated reduction in legal representation means that accident victims will have no-one to assist them in dealing with insurance companies. The Claims Advisory Service is not a substitute for proper legal advice and advocacy. The available evidence shows that those who were unrepresented get vastly lesser settlements for comparable injuries than those who are represented.

5. The Victorian Scheme is a poor model for NSW

The TAC scheme is not an attractive model to copy. It is a government underwritten scheme. It is currently in deficit to the extent of $1.4 billion.

A privately underwritten scheme cannot run at a deficit. With private underwriting there must be a profit to insurers. If acquisition costs incurred by private underwriters in NSW were to apply in the Victorian scheme and the premium was increased in response to the recent deficit in that scheme it is possible the premium in the Victorian Scheme would exceed $600.

6. Lawyers add value

Legal fees within the scheme are not excessive. On the data in the MAA's own discussion paper, total legal and investigative fees are 12 percent of premium collected, with claimant legal fees at around 6 per cent. Total payments for legal fees have not increased over the last 4 years.

The legal profession value adds to scheme performance and assists all other scheme stakeholders:

(a) The legal profession helps the claimant by ensuring people are informed of their rights and providing a check and balance against the otherwise unrestrained power of the insurers. With independent advice, claimants are reassured they obtain a "fair" result.

(b) The legal profession helps the insurers by helping educate claimants about their rights and avoiding unnecessary disputes. The insurers and CARS Assessors report that it is far more difficult to deal with unrepresented claimants than it is to deal with professional and experienced advocates.

(c) The legal profession helps the MAA as an industry regulator. By and large regulatory control of the insurers is out-sourced to the legal profession – they are the ones who identify, protest about and prevent heavy-handed insurer conduct. Without the legal profession performing this role, the MAA would be required to be a far larger and far better industry regulator than it is currently set up to be. The only other alternative is to give the insurers untrammelled power within the system.