LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011)

Members:

MS C LE COUTEUR (The Chair)
MR J HARGREAVES (The Deputy Chair)
MR B SMYTH

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 10 NOVEMBER 2011

Secretary to the committee:
Dr A Cullen (Ph: 6205 0142)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 9 August 2011

The committee met at 3.02 pm.

MAINI, MS MARY, National Manager, Long Tail Claims, NRMA Insurance

THE CHAIR: Good afternoon, everyone, and welcome to this public hearing of the Standing Committee on Public Accounts inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011. On behalf of the committee I would like to thank Ms Maini for appearing today on behalf of NRMA Insurance. I understand that you have read the privilege card.

Ms Maini: Yes.

THE CHAIR: Can you confirm that you understand the privileges implications?

Ms Maini: I understand.

THE CHAIR: Thank you very much. Before we start, can I just remind you that the proceedings are being recorded by Hansard for transcription purposes and are currently being webstreamed and broadcast. Before we proceed to questions from the committee would you like to make an opening statement?

Ms Maini: I would. Thank you, Madam Chair. NRMA Insurance welcomes the opportunity to appear before the committee. We have over 50 years of history in the ACT of offering insurance services as well as serving the community. We provide general insurance products across Australia and compulsory third-party insurance—as you know, commonly referred to as CTP—in three jurisdictions, the ACT, New South Wales and Queensland.

Our oldest CTP claim in the ACT dates back to 1961. Over the past five decades we have managed over 44,000 CTP claims in the ACT alone. In managing these claims we take an active approach in focusing on the latest evidence-based research to ensure better health outcomes, improve our customer satisfaction and reduce claims' duration.

Our health recovery strategy is to maximise the injured person's capacity to return to their pre-injury status, and to do so we focus on their recovery and wellbeing, seeking to move away from the more traditional adversarial model. We pride ourselves on ensuring that this strategy is realised through attracting highly dedicated and skilled injury and claims management professionals who work side by side in managing these outcomes.

Since 2004 we have contributed nearly $4 million back to the community through the NRMA ACT Road Safety Trust, matching motorists' contributions dollar for dollar. We have given a further $1 million through our community partnerships such as Kidsafe, the ACT home safety program, the State Emergency Service and our community grants program.

Our purpose in appearing before you today is to answer questions the committee members may have in relation to our submission on the Road Transport (Third-Party Insurance) Amendment Bill 2011. I appear before you in my capacity as the national

manager, long tail claims.

In relation to the legislation before the committee, we believe it is a matter for the community and ultimately members of the Legislative Assembly to determine the benefits and boundaries of the CTP scheme. Under the Road Transport (Third-Party Insurance) Act 2008 and commonwealth prudential regulations we are obliged to ensure enough premium is collected to cover the cost of claims over the longer term and to pay those claims. We carry the risk and the responsibility for paying these claims well into the future. The regulator reviews our recommendations to ensure sufficient premium is collected to fully fund the scheme. A claim may take up to 10 years or more to settle; therefore the long-term sustainability of the scheme and of the insurer is critical for those who make a claim.

There are other providers, such as the medical and legal professions, who also operate commercial business models within the scheme. It is not my intention to comment on their commercial practices. My focus is on early return to health and appropriate compensation for those who have suffered the misfortune of injury from a motor vehicle accident.

From our experience a good compulsory third-party insurance scheme has the following characteristics: firstly, it creates incentives for good behaviour by allowing insurers to risk grade for safer driving; currently in the ACT safer drivers are subsidising drivers who take more risk. Secondly, it is focused on early treatment and return to health; injured persons who are focused on getting better, rather than on the amount of compensation they may receive, generally have better health outcomes. Finally, it is a mechanism, other than premium adjustment, for reviewing the performance of the scheme against its design. Currently the only lever that can be adjusted as scheme costs increase is premium. For example, there is no ability to regulate increasing award payments.

Ultimately, the community and the Assembly will determine the benefits and the boundaries they want in their CTP scheme. A number of suggestions have been put forward to the committee in the hearings to date that I would like to briefly touch on. Firstly, in relation to the suggestion that a working party be established to consider scheme design in more detail, we believe that this is the role of the Assembly. If the committee wishes to establish such a working party we would be a willing contributor in this forum, drawing on our long history and experience in managing claims in the ACT.

In relation to the suggestion that a motor accident insurance commission be established, we do not believe that this is necessary, as this function is already fulfilled by the regulator within the ACT Treasury. There has been some commentary on financial matters that are commercially sensitive to NRMA Insurance and that I am not at liberty to discuss. We have an obligation to keep the regulator informed of our data, pricing factors and claims management, and we do so. However, commercial realities constrain us from public disclosure.

With respect to the 2008 reforms, we have seen a downwards trend in the time taken for injured people to make a claim, from an average of 113 days before the reforms to 73 days post reforms. The changes to encourage people to access medical treatment

earlier have allowed us to more than halve the time it takes to pay for this treatment. This means the changes made in 2008 have encouraged more people to access treatment earlier. What we have not seen, however, is people utilising the earlier treatment process in large enough numbers to have a significant impact on the operation of the scheme.

Since 2008 we have also seen an increase in the proportion of claims that have legal representation. It is too early to speculate on what this means. The scheme is, however, still in the early stages and, given the long tail nature of the scheme, there may be further trends that emerge in the future.

To conclude, NRMA Insurance is supportive of changes that will deliver better health outcomes for motorists. I thank you and I would be pleased to consider any questions you may have, but before I start, and for the record, the claim from 1961 has been closed.

MR HARGREAVES: How? Did he die?

Ms Maini: No. I have not checked. It was finalised a long time ago.

THE CHAIR: Thank you. On page 1 of your submission you talk about the predictability and stability of the scheme and the risks associated with forecasting what you being a lawyer call "heads of damage", which I assume basically means injuries and accidents. I am interested in how you forecast down into heads of damage and what this can tell us about how we can improve the scheme.

Ms Maini: "Heads of damage" is a phrase that we use throughout all compensation frameworks which really means the different components to a settlement. For example, in the ACT the heads of damage would be made up of payments for pain and suffering or non-economic loss; payments for medical expenses, past and future; payments for economic loss—again, past loss, future wage loss. There would also be components for care. What else would there be? All the components could make up the settlement and they may vary depending on someone's injuries. For example, somebody with less severe injuries might not have a claim for all the heads of damage but someone—

THE CHAIR: I understand. I actually had the wrong idea.

Ms Maini: So how do we break that down?

THE CHAIR: How do you break it down, particularly given that some of those types of costs could move in different directions from others?

Ms Maini: That is right. Post 2008 the legislative reforms have introduced the requirement for insurers—and that insurer also includes the nominal defendant, and those nominal defendant claims are managed by ACTIA—to break down all the payments in relation to various heads of damages. So we provide monthly data to the regulator and all of that can then get analysed to see what are the payments, against which head of damage they are being made, what we are paying and whether heads of damages are either increasing or decreasing.

THE CHAIR: So basically you are saying that because you are the insurer you know that, even though there have not been any court cases with court awards to my knowledge since 2008?

Ms Maini: Yes. From the 2008 scheme we have not had any legal decisions as yet. We have on what we would call interlocutory matters or matters of process, but no judgements.

THE CHAIR: No judgements. So you have knowledge on this one but the public does not—

Ms Maini: No. Even the public would not have it, because we have had no decisions.

THE CHAIR: Yes, that is what I am saying: you have knowledge, but the public does not?

Ms Maini: On this one—

THE CHAIR: Or are you saying you do not have knowledge?

Ms Maini: There is nothing, because we have had no judicial awards from the 2008 scheme.

THE CHAIR: So you have—

MR HARGREAVES: There is nothing to know.

THE CHAIR: You were talking there about different heads of damage. You have no idea in what direction these are going? I thought you earlier said you did have some idea about in what direction they are going because you have got—

Ms Maini: Not for the 2008. All we have is knowledge of the files that we have closed and have made payments against. So we know how much we have paid. But a lot of those accident years from 2008 reforms are still underdeveloped, so we do not have—or the claims that we were expecting to come in from the 2008 have not come in yet and we have not finalised all of them either.

THE CHAIR: So you are basically saying you have not got enough evidence even for yourself from 2008 onwards to have any sort of real idea in what direction these various components are going; you do not know—

Ms Maini: No. So just to make sure that I am not misleading you or misunderstanding the question that is being asked, all the claims that we have received from the 2008 reforms we have to ensure, especially as part of the regulatory coding, that they are all coded in a certain way, so we have to make sure that there is injury coding. We also ensure that all the payments are attributed to the correct heads of damages, and then we estimate or place reserves based on those heads of damage. So when a file closes, when we have actually resolved the matter and draw the cheque, we are in a position then to know that X amount was for medical expenses, Y

was for economic loss, and Z and so on, and we actually have a fair idea of what we have paid out against those heads of damages for closed files.

For open files, what we look at is how much have we paid and how much do we think we will pay for those heads of damages, if that makes sense.

THE CHAIR: Yes, it does make sense. You are saying you do not really have enough evidence from the closed ones post 2008 to have a view as to what change, if any, has been made to those various components or heads of damage.

Ms Maini: Yes.

THE CHAIR: You do not know what way it is going because not enough has happened.

Ms Maini: We do not have enough. What we are seeing is that, especially in relation to medical expenses, we are making payments for medical expenses earlier than what we have ever done. What we do not know until those claims finalise is whether that earlier payment of a medical expense actually benefitted the injured person. Did they actually get better faster? Did that reduce the claims duration? Did it improve their health outcomes? Are there other efficiencies in the scheme that we can look at to say, "By introducing this, we actually had other benefits." We do not know that, because we have not finalised enough files within the scheme to be able to tell. I hope that has answered it sufficiently.

THE CHAIR: I think it has answered it. On page 3 you say that this bill is a response to the increased costs arising from mitigation for non-economic losses for relatively minor matters. Do you have any figures that go around that? The second paragraph says it offers a response to increased costs arising from this. Can you elaborate on that paragraph?

Ms Maini: We are saying generally that the bill is offering a response to increasing heads of damages for relatively minor injuries. In the past we have had judgments where a relatively minor injury has received a judgment of or an award of over $1 million, and a number of those awards have been handed down. So this bill is really a response to looking at how you can curtail that and remove some of the volatility in relation to the smaller claims.

THE CHAIR: Do you have any commentary—I suppose you cannot—as to why the figures are so high for what you think are minor injuries?

Ms Maini: The commentary would probably be that it is a common law scheme. We are in a common law framework, and that is the situation you have when you have general common law.

THE CHAIR: Mr Hargreaves.

MR HARGREAVES: Thanks very much, Madam Chair. I was getting gradually older waiting for my turn, but we will move on. I am interested in your views on the nature of having different schemes or different approaches. It seems to me that one of

the hallmarks of this legislation is to take the scheme from a common law scheme into a capped scheme. The capped scheme system—the principal framework, call it what you will—is around the country, except here. New South Wales, where the main body of your clientele sits, are in the capped system. There are various facets to that—your crash record, your driving record, and all that sort of stuff—and you have got the 10 per cent threshold.

Ms Maini: Yes.

MR HARGREAVES: We do not have any of that. From an insurer's perspective, how do you feel about that? What is it like having to work within two systems? You have got people in Queanbeyan in one and people in Canberra in another. Is that a disincentive? Is it an incentive? What do you think are the merits of either?

Ms Maini: To answer each point at a time, I think the first point was around what we think about harmonisation of schemes, if I could paraphrase that.

MR HARGREAVES: That is it.

Ms Maini: I believe there is an inevitability that schemes are harmonising. At the end of the day, though, it is really a matter for the Legislative Assembly and for the community as to whether they want to adopt these schemes and how far you want to go in terms of harmonising.

The second question is what is it like to have claims and injury management advisers working across different schemes, and does that introduce complexity? It is not without its challenges, but our main approach is that, regardless of whichever jurisdiction we are in, we try and make sure that we focus on early rehab intervention, early identification of treatment needs and a real focus on health recovery. Where it is difficult is that there are different mechanisms within each scheme, and sometimes the culture of that environment will create difficulty. For example, we might have the best claims and injury management advisers and staff, but there is only so much that they can do to actually focus on health and wellbeing.

The third point is that where it becomes problematic is that people are getting injured all across Australia. That is where it becomes quite difficult—knowing which law applies in WA, for example, because we have a number of ACT residents that will have an incident interstate. In those cases, it does become problematic knowing every aspect of every scheme and all the nuances with all the schemes.

MR HARGREAVES: It has been suggested that if we embraced harmonisation it might encourage competition into the marketplace. Do you think that will have any effect on the notion of competition or not?

Ms Maini: Our position is that we welcome competition. It is really a matter for other insurers whether they come into this market or not. We have been part of the community for 50 years. We want to continue to be here. We have, I believe, the most highly skilled claims and injury management professionals, and we want to make sure that we can support the community. As to whether other insurers come in or not, it is a matter for them.

MR HARGREAVES: The last question from me for now is that New South Wales has got a 10 per cent threshold and other states have got thresholds. We are talking about 15 per cent. Given that the aim is to get people back as close to they were before the accident, is there a need for any threshold at all, any percentage? What is the value for people in recovery getting a cheque—not getting a medical service, but getting a cheque?

Ms Maini: The first question, paraphrasing—if I have understood it correctly—is: what impact will having someone go through the 10 per cent threshold have? Would that be right?

MR HARGREAVES: Yes, any threshold—10 per cent, 15 per cent.

Ms Maini: Any threshold. If you go back to the principal design of why thresholds were ever introduced, you will see it was to try and ensure that there was almost like a gateway so that people who were most seriously injured had access to the greater compensation dollar. Whether you have a whole person impairment threshold, whether you have a points system, at the end of the day, that is what it is designed to do. For the head of damage, that is described as pain and suffering or non-economic loss, the outcome is the same—that is, try and redirect funds so that those who are more seriously injured have access to pain and suffering.

What typically occurs when you have these thresholds is that the smaller claims—the smaller soft tissue or more minor injury claims—are actually either resolved early or do not enter the scheme. So two things occur. Our experience with the ones that are resolved early is that we believe those claims—I am talking about the minor, not the seriously injured claims—resolve faster and there is some evidence that suggests that they end up with better health outcomes.

THE CHAIR: Can you give us some citations for that evidence? We have asked a number of people about that, because it is clearly an important issue. If you could give us evidence for that statement, it would be really useful.

Ms Maini: Happy to. What I would like to do is also recommend to the committee a number—I do not want to offend anyone who is listening to this—of academics in this field. Most notable of the ones that we know of include an academic by the name of Professor Ian Cameron, who is the head of the department of rehab studies at Sydney university. He has conducted a number of evidence-based research pieces on health outcomes. As a result of some of the work that he and his team have done, that has led to a scheme redesign in New South Wales. That is one that I can recommend that Professor Cameron is someone you would like to talk to.

Another one closer to home is Professor Jim Butler, who is part of ANU. He is also involved in looking at health outcome studies.

MR HARGREAVES: Going back to my last question—

Ms Maini: I am not bypassing it.

MR HARGREAVES: So I get banged up and I get 15,000 bucks, what effect is that going to have on my long-term recovery?

Ms Maini: It really is a matter for that individual. Some people will say to you that the $15,000 helped them get on with their lives. Other people might say, "Well, it just depended on the length of time." If, at the end of the day, you have been through a legal framework in an adversarial model where you have had your claim open for four years and you are unable to get on with your life for that length of time, is that worth that $15,000? I cannot answer that. That is really a matter for each individual. I am not bypassing the question, either.

MR SMYTH: In the second last paragraph on page 1 you make the statement that CTP schemes need stability and predictability.

Ms Maini: Yes.

MR SMYTH: Does changing the act just three years after the 2008 changes give stability and predictability in the scheme?

Ms Maini: On the one hand you might say that that is premature but, on the other hand, you might answer that by saying it really depends on what legislative changes were introduced in 2008. If the 2008 reforms introduced mechanisms for earlier reporting on pre-litigation procedures and did nothing other than that then you would say that the environment is such that things might not change and it may not be premature. On the other hand, you could say that there are not enough claims that are finalised to be able to draw any conclusions, so in that case it is premature.

MR SMYTH: So which hand are we coming down on?

Ms Maini: What I am seeing is that even though the legislative frameworks have been introduced and we do have earlier reporting and we do have earlier payments being made, in some cases we have not seen a shift in the culture.

MR SMYTH: Is it too early to tell, though?

Ms Maini: It may well be if you are just looking at one year because the majority of files that have closed for us are in the 2008 year, and that is only 80 per cent of those files. If you can see from those that the environment has not changed at all and it is still quite adversarial—all we are doing is really delaying the advent of litigation because, ultimately, that is where we are going—then the reforms may not be too early.

MR SMYTH: So which is it? It sounds like it is unknown at this stage.

Ms Maini: It is. This is really a matter for the legislatures.

MR SMYTH: From the NRMA's perspective, are the effects of the 2008 reforms at this stage unknown?

Ms Maini: All aspects are unknown; that is right. Are we seeing a decrease in claims

costs? Not yet. Are we seeing a decrease in other factors that you would say are success factors of the scheme? No; we are seeing the same.

MR SMYTH: When would it be reasonable to see those effects?

Ms Maini: Whenever you introduce reforms you have a period where everyone is trying to work around—not work around the scheme, because that is not correct, but trying to understand the intent of the scheme and how we work within it. That is why it takes so long sometimes to set the right premium. Once you establish schemes, it takes about a good two to three years to see anything coming through, depending on how many files finalise during that period.

MR SMYTH: But we have not had a good two to three years yet, really, have we?

Ms Maini: No, not yet.

MR SMYTH: On page 2, under heading 1, your first sentence says:

> NRMA Insurance is supportive of the intent of the reforms made in 2008 through the Act.

Ms Maini: Yes.

MR SMYTH: It is interesting that on page 3, under section 2, the second paragraph, in regard to the current proposed bill it says:

> NRMA Insurance is not opposed to the Bill.

Why is it that you are not supportive of the bill as opposed to "not opposed to the bill"?

Ms Maini: The answer to that is that the bill as it stands is really a matter for the legislature and the community. We are not here today to say, "You actually need this in any scheme or you need something else in a scheme." It is really a matter for the community and the legislature. That is why we are saying we are not opposed.

MR SMYTH: All right. In the next paragraph it says:

> … it is probable that there would be some downward pressure on premiums if overall claims costs are lowered.

How do you lower overall claims costs?

Ms Maini: One way of lowering claims costs is by benefit redesign. The other way of lowering claims costs is by introducing mechanisms in schemes that, as I said earlier, redirect funds to those who are more seriously injured. The other way of reducing claims costs is by introducing more evidence-based treatment guidelines. For example—and this is just an extreme—if you end up prescribing an analgesic to someone and ask them to take it twice a day for the rest of their life, they may not end up with a great health outcome. You could actually introduce various protocols to

help people with recovery. You could say: "When you have these different injuries, here are the treatment paths. Here are the types of treatments you should have." That is one way that you can have a scheme that also focuses on recovery and wellbeing and reduces claims costs.

MR SMYTH: The next sentence in that paragraph goes on to say:

> These reforms may enhance the predictability of future liability …

How do you enhance the predictability? This is on page 3, section 2, the third paragraph, the second sentence.

Ms Maini: Your question was: how do we—

MR SMYTH: What do you look for to enhance the predictability of future liability? You say "may" there, which does not sound very positive. What are you looking for to enhance predictability?

Ms Maini: Whatever is introduced, we want to ensure that there is not any erosion over time. That is what we are saying by "may enhance the predictability of the liability". For example, in some schemes there was the introduction of what we would call a verbal threshold as a gateway for non-economic loss. It was independent of whole person impairment. Over time what we found was that that type of test was eroded. It actually removed that predictability and the stability in the scheme. From an insurer's perspective, especially when they are looking to price and making sure they can price for the long term, it is about having a scheme that offers consistency in the decision making and consistency in the treatment of those claims.

MR SMYTH: Section 3 is headed "Schemes in other states". Is there a scheme around Australia which you could recommend to the committee as the best scheme?

Ms Maini: Is this for a consulting role with the committee!

MR SMYTH: No. Well, you could, but it would be pro bono. We do not have funds for consulting. In the experience of the NRMA, is there one scheme that works better across the country than another?

MR HARGREAVES: Given that you have said on your page 2 that the aim is to promote the recovery of injured people.

Ms Maini: That is right.

MR HARGREAVES: We know how altruistic insurance companies are, so we are interested in your view.

Ms Maini: It is an interesting question in that if you would say, "Pick one scheme," it really depends. The schemes across Australia are so diverse. You have got publicly underwritten schemes and privately underwritten schemes. Especially now, with what is occurring across the national insurance—

THE CHAIR: The national disability—

Ms Maini: NIIS—that is adding another layer of scheme harmonisation, or potential for scheme harmonisation. If you were to say, "Is there a perfect scheme across Australia," the answer would probably be no. The reason for that is that, as with any scheme design, there is also a trade-off. If the trade-off is that you really want to ensure that you have a lump sum compensation scheme then how do you actually design it so that the most seriously injured are not disadvantaged?

MR SMYTH: The scheme proposed does not address the most seriously disadvantaged. Some other states, of course, have lifetime care systems.

Ms Maini: That is right.

MR SMYTH: Should we be looking to introduce that into the ACT?

Ms Maini: I cannot answer this. I am assuming that there is an inevitability that the ACT will look at an extension of the lifetime care and support scheme, given what is going on with the Productivity Commission and the establishment of NIIS. There may be an inevitability there. Whether the ACT Assembly wants to accelerate that is really a matter for the government.

MR SMYTH: Thank you.

THE CHAIR: Continuing on with the scheme, there is this comparison with New South Wales. We have seen some newspaper reports about very high profits in New South Wales. Do you have any comments on that—if the scheme did not quite make it from that point of view?

Ms Maini: Did the scheme—I am sorry?

THE CHAIR: Do you have any comments on the newspaper reports that the redesign in New South Wales has led to very high profits for the insurers?

Ms Maini: I am not at liberty to comment on the profits within New South Wales. What has occurred, though, in the New South Wales scheme is that over time benefits have actually increased. It is a scheme that has actually evolved over time. You have had evolution in relation to lifetime care. You have had the introduction of no fault for people who are injured, up to $5,000. I think there was an amendment to broaden scheme coverage for inevitable accidents. It is very difficult to say what has happened in New South Wales without looking at the complete context of all the reforms that have gone in at the same time.

THE CHAIR: Your submission talks about risk rating as something that should possibly be supported and other submitters have also talked about risk rating. If something like that were to happen, can you give us any idea of how it could practically be done and would there be any issues with it?

Ms Maini: I will talk to two issues. One is how you would actually introduce it. The way you could introduce it is to change the premium determination guidelines. So

every insurer in the ACT has to ensure that whatever premiums they establish are guided by the premium determination guidelines. So the mechanism is there. You could introduce risk rating factors. Drawing an analogy to New South Wales, you could look at age of driver, whether there are any at-fault accidents, over what period of time and vehicle design. It is not in New South Wales, but you could end cap rating. There are different ways in which you could introduce risk rating.

THE CHAIR: Kilometres driven?

Ms Maini: Kilometres driven? I would say, why not?

THE CHAIR: It would seem to have a fairly direct relationship probably to the number of accidents.

Ms Maini: Yes.

THE CHAIR: If those changes were made, then it would just flow through to insurance—

Ms Maini: That would actually be a direct flow-through to the community and the motorist. Rather than having one set price, depending on your risk rating factors, you would either have a discounted premium or you would probably pay a higher premium. What that percentage would be is really a matter for design in the future.

THE CHAIR: You also talk on page 3 about reducing accidents. One of the things that have been suggested to me—I am not saying that I agree with it—is that the reason we have slightly higher premiums in the ACT is that we are actually not very good drivers. Is that fair? Do we actually have more accidents per capita or per kilometre than in New South Wales?

Ms Maini: I would like to take that on notice, if I could, and not actually comment on whether the drivers are better or worse but just look at the accident rates and compare them.

THE CHAIR: Thank you; that would be very kind. You have also said that the NRMA are looking at lots of road safety initiatives. Are there any that you would particularly suggest to us?

Ms Maini: I would like to answer that in the context of the work that we do in supporting the NRMA-ACT Road Safety Trust, which also has a grants program on road safety. I would like to take that on notice and then put something to you that actually looks at what has occurred with the trust and, more generally, across the NRMA.

THE CHAIR: Thank you. Mr Smyth?

MR SMYTH: Your chart provides a nice summary of the discount rate. The ACT currently has the lowest rate of three per cent. What effect would any shift on the discount rate have?

Ms Maini: In relation to what?

MR SMYTH: In relation to your ability to service the ACT, in relation to payouts, in relation to costs of premiums?

Ms Maini: I will start with each one—in reverse, though. The cost of premiums—it would probably be one aspect that you would take into account in looking at whether you could reduce the cost of premiums by increasing the discount rate.

MR SMYTH: So increasing it should reduce premiums?

Ms Maini: It should be taken into account, yes. Can I also answer that in terms of the broader scheme design? If you move to adopting a lifetime care and support scheme then there are some issues in relation to the discount rate that you have, because a lot of the issues with the discount rate are to do with those who are more catastrophically injured. They will be covered by the lifetime care and support scheme. You really need to ensure that your pricing or your modelling takes that into account for the future.

THE CHAIR: Okay. At the bottom of page 1 and the top of page 2, you talk about the reform process. You end up saying that regular adjustments to the scheme may assist in achieving the objectives of the act.

Ms Maini: Yes. What do I mean?

THE CHAIR: Yes. What do you mean? In particular, with the proposed level of change here, is this in your mind a regular adjustment or is it a radical reform or something? Is this what you had in mind?

Ms Maini: Yes.

THE CHAIR: I am not really understanding exactly what you mean.

Ms Maini: Whenever you look at the viability and the longevity of schemes, one of the things that we have observed is that, in most cases, when you see adverse trends occurring the only mechanism to correct the adverse trend is premium. All we are suggesting is that there is an opportunity to look at how we can introduce a framework that says: "We are seeing an adverse trend. How do we actually stop that without reverting to premiums?"

One example might be this. I am just using an extreme example, and I would like to take some of this on notice and provide you with other suggestions. For example, say we are seeing an increase in the number of soft tissue claims that are being awarded over $1 million. How do we ensure that we have a mechanism in place that says, "Can we look at what is occurring in that judgement?" This is extreme, but the argument is that somebody is actually receiving treatment or the judgement is consisting of treatment that really is not fit for that injury type. So can we introduce some other evidence-based mechanisms to say that for these types of injuries, here is the kind of treatment path you need. That should give you more consistency and stability in the judgement without saying, "I need legislative reform." It is a long-term aspiration, but

if you could introduce that, that would be ideal in any scheme.

What tends to happen with schemes is that you have a period where there is stability and then, four years later or six years later, when you understand what is going on, you end up with a situation where either heads of damage increase or there are unintended consequences as a result of those reforms. Then we end up in a situation where we need to establish the evidence base. In the meantime, the only lever is premium. Then you end up in a committee reviewing the merits of proposed legislation.

MR HARGREAVES: And being very lucky in doing so.

Ms Maini: That is right.

THE CHAIR: On page 3 you have got a paragraph which Mr Smyth has already talked about somewhat. Your second-last paragraph says:

> … it is probable that there would be some downward pressure on premiums if overall claims costs are lowered.

I interpret that as saying that it is only probable that overall claims costs could be lowered without affecting premiums. You have got the word "probable".

Ms Maini: Yes, and the reason for that is that there may be other factors at the time of setting premiums that impact on the premium setting. They could offset. It may well be that you have got this legislative reform but it is being offset by other things that are going on in the environment—interest rates, yields or claims frequency. All of those factors go into setting premiums, and this alone may not.

THE CHAIR: What do you think the time frame would be in terms of passing on any changes to consumers, if there were changes—premium changes, I mean? If there are any, how long is it likely to take for them to be passed through?

Ms Maini: It would—

THE CHAIR: I guess, given your previous evidence that we are still not sure about the 2008 changes—

Ms Maini: That is right.

THE CHAIR: I think where we are coming to is that it is going to be quite a while—don't hold your breath.

Ms Maini: That is right.

THE CHAIR: It will be years.

Ms Maini: That is right. It is difficult to speculate and say that with this you will see an immediate reduction. The reason for that is, again, as I said, that there are other factors that go into premium determinations and premium setting that may offset that.

MR HARGREAVES: That means, then, that the accent has to be on getting people back to pre-accident health status and trying to lower the cost of paying for that risk of the consumer. Would it not make sense to get these reforms in earlier rather than later?

Ms Maini: Yes, but at the end we are a participant in the scheme and really this is a matter for the government.

MR HARGREAVES: I guess where I have come from is that it would seem to be bleedingly obvious from the consumer perspective that the sooner something is introduced to get those better outcomes, fine. From our perspective, that is why we are talking about it. It seems to me that it would also give certainty to the industry a bit more quickly, rather than delaying this stuff.

Ms Maini: That is a right assumption.

THE CHAIR: Following on from your question, Mr Hargreaves, is there anything that you see in the changes which would encourage better health outcomes?

Ms Maini: The foundations are there in terms of early intervention, early access to medicals. There are—

THE CHAIR: How are they changing from the previous scheme?

Ms Maini: There was not any legislative requirement to submit a claim form to notify the insurer. There were significant delays in receiving claims under the old scheme. By the time you received the claim form, you could not actually intervene.

THE CHAIR: We have asked this question of the government, and they did not have any suggestions as to what changes would improve the health outcomes. Forms in earlier?

Ms Maini: Which is part of the current legislation. The other thing—

THE CHAIR: If it is part of the current legislation, it is not a change. What I am asking is this: when you said "current", did you mean "proposed"?

Ms Maini: I meant 2008, not the bill.

THE CHAIR: Are there any changes in the proposed legislation that will improve health outcomes—not the current legislation but the proposed legislation?

Ms Maini: I think, from recollection, there are. Can I take that on notice?

THE CHAIR: Yes. As I said, the government has not managed to answer that one.

Ms Maini: I think there is one particular provision—I am making sure that I do not blur the provisions within jurisdiction and am not making up a provision in the proposed bill—that allows for the establishment of various treatment guidelines. A

direct example of that would be this. In New South Wales and Queensland, if you have whiplash, you have guidelines in the management of whiplash claims. Those would encourage best practice treatment that you could utilise and where you could say to the medical profession and the health profession, "This is one way of treating and providing clear clinical treatment pathways for people who have those types of injuries." That is what I am looking to—

THE CHAIR: That seems quite bizarre—having the insurance industry tell the medical profession the best way of treating.

Ms Maini: No; it is not the insurance industry establishing that. The treatment guidelines and various guidelines are actually established by the medical profession. In New South Wales, when they established the whiplash guidelines, it was a group of doctors that established those guidelines. It was not the insurance industry saying, "Here it is."

THE CHAIR: Why don't the doctors already work out how to treat things?

Ms Maini: They do, but with each profession you probably do training at a general level and not training at a specific level. All we are suggesting is that, over time, there has been a body of evidence and research that has been collated to say, "For this type of injury, this is the best way to treat." That may change over time, and that is what evidence-based research is all about.

MR HARGREAVES: As I understand it, what you said before was that if the regime encourages people to make their claims earlier, which was not the case pre 2008—

Ms Maini: That is right.

MR HARGREAVES: then the long-term effects of injury are reduced, the likelihood of long-term effects of injury are reduced, and the earlier you get the intervention.

Ms Maini: They should be.

MR HARGREAVES: You might need to take this on notice. I would be interested in whether you think that the proposed legislation will improve that approach from the client's perspective.

Ms Maini: I would like to take that on notice, because I would like to see whether, from the files that have finalised in the 2008 year, we can analyse whether we are seeing that at all.

MR HARGREAVES: And also whether you have any historical perspective in the NRMA from jurisdictions that have gone off common law and on to capped proposals—whether their experience was in that vein as well. One of the things that people are saying to us is that we are changing the regime from the common law to something else. But when it happened somewhere else, it worked. We want to know who said so. Without you going into commercial-in-confidence information, I would be particularly interested in hearing your thoughts on whether that is a valid assumption or not.

Ms Maini: I am happy to provide that, but I will take that on notice, if I may.

MR HARGREAVES: Sure; thank you.

THE CHAIR: Mr Smyth?

MR SMYTH: No.

THE CHAIR: We have heard some evidence about the Queensland act which suggested that it had some better mechanisms to ensure that people did access early health treatment. Do you have any views on that?

Ms Maini: I would probably take that on notice, because I would like to look at which act. Is it the workers compensation act? Which act is it in particular? If I can, I will take that on notice.

THE CHAIR: Yes. I think it was principally the workers comp act where they have made changes and people we heard were positive about it.

Ms Maini: If I could, I will take that on notice.

THE CHAIR: Some of the motivations for the proposed changes seem to be that some people think that people are trying to rort the system, not go back to work and not access health services et cetera. Apart from the people you talked about before, do you have any more evidence about rorting? That has certainly been very much suggested to us.

Ms Maini: I do not, but I will probably take part of the question on notice. The reason why I say I do not is that with any scheme—any scheme, regardless of whether it is workers comp, CTP, public liability, motor insurance or anything—you will have people who are opportunistic. I want to put that to one side and look at whether there is any indication that that is occurring across our scheme. I will say that when we talk about cultural change, we need to ensure that in the ACT we all embrace cultural change. For us, a big driver is around return to health, return to wellbeing. If you have a framework, we need to ensure that every stakeholder and every participant in the scheme embraces the same philosophy.

THE CHAIR: You have got one comment on page 3 about claims resolution—that we have managed to increase the speediness, decrease the average time. That seems positive. Are we still longer than other jurisdictions? Is there improvement?

Ms Maini: If I may, I will take that on notice—only because I would like to ask the permission of the regulators in New South Wales and Queensland to release that information. It should be public, but I would like to request that permission first.

THE CHAIR: Thank you very much. Our timing has been brilliant.

Ms Maini: Thank you.

THE CHAIR: I thank you for appearing today on behalf of NRMA Insurance. When it is available, a copy of the proof transcript will be forwarded to you to provide an opportunity to check the transcript and suggest any corrections.

The committee adjourned at 4.01 pm.