



10 March 2009

Ms Lynn Lovelock
Clerk of the Parliaments and
Clerk of the Legislative Council
Parliament House
SYDNEY

Dear Ms Lovelock

I table the attached responses to recommendations of the ninth report of the Legislative Council Standing Committee on Law and Justice's *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council*.

A large, stylized handwritten signature in black ink, appearing to read 'John Della Bosca'.

Hon John Della Bosca MLC
Leader of the Government
Legislative Council

Government Response to the Legislative Council Committee Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council

Recommendation 1

That the Legislative Council amend the resolution designating the Standing Committee on law and Justice with responsibility for supervising the Motor Accidents Authority and Motor Accidents Council, so that the Committee be required to report to the House in relation to the exercise of its functions under that resolution at least once every two years.

Response

This is a matter for the Legislative Council.

Recommendation 2

That the Motor Accidents Authority, by 30 June 2009, act on the recommendation of our Eighth Review to undertake a review of Whole Person Impairment assessments to establish the extent of inconsistencies and to identify, if necessary, additional quality control mechanisms to improve consistency.

Response:

The Government response to the eighth report of the Standing Committee indicated that the Medical Assessment Service has implemented a quality assurance program and assessor training and development program which addresses the issues raised in the recommendation.

The Medical Assessment Service has also introduced a number of additional quality control mechanisms for assessors. This includes:

- Bi-monthly forums which provide an opportunity for Assessors to discuss dispute resolution, contentious areas of assessment and participate in developing and refining internal policies. The Medical Assessment Service arranges for guest speakers to address assessors on specific topics of interest, usually with a focus on the assessment of permanent impairment.
- An annual conference designed to update assessors on dispute resolution. The 2008 conference focused on pre-assessment preparation. It is anticipated that timely and thorough pre-assessment preparation may circumvent many issues and promote consistency of assessments.
- A regular electronic newsletter for assessors which contains policy updates and highlights any areas of concern.
- An enquiries e-mail address for permanent impairment questions and queries. The online service is available to all stakeholders and provides guidance on specific questions relating to permanent impairment. A sample of the questions asked and answers provided is included in the quarterly Motor Accident Assessment Service bulletin. The enquiries e-mail seeks to ensure easy, quick and convenient access to

expert advice on issues relating to the assessment of permanent impairment by providing a response to stakeholders within 5 days.

The Medical Assessment Service is also in the process of finalising a number of permanent impairment case studies which will be available on the MAA website by 30 June 2009. The case studies seek to assist stakeholders to understand the assessment of permanent impairment and encourage consistency in approach and application of the impairment guidelines.

Recommendation 3

That the Motor Accidents Authority make its strategies to improve claimants' understanding of the Claims Assessment and Resolution Service a priority and allocate resources accordingly, and that it evaluate the effectiveness of those strategies by conducting a further study of claimants' perceptions of the Claims Assessment and Resolution Service.

Response

This recommendation is supported. The MAA is committed to developing awareness of the motor accidents scheme and the Claims Assessment and Resolution Service (CARS).

General information about CARS is currently available on the MAA website. This includes a 'Compliments and Complaints' section which enables claimants to provide feedback about the assessment service. The MAA also publishes an information guide for injured people entitled *A Guide for People Injured in a Motor Vehicle Accident*, which is available through the MAA's Claims Advisory Service and the MAA website. The guide contains information about making and managing a motor accident claim.

The MAA is developing a *Guide to CARS* information brochure which will be made available to claimants upon application to CARS for assessment. It is anticipated that the brochure will be publicly available by 30 December 2009.

The MAA will also be conducting a CARS user survey during 2009. The survey will build on previous benchmarking undertaken in relation to claimant and stakeholder participation in the motor accidents assessment services during 2004/05.

Recommendation 4

That the Motor Accidents Authority, in tandem with the Motor Accidents Assessment Service Reference Group, formally consider, by 30 June 2009, ways to achieve a greater recognition of the circumstances where the complexity of a matter lodged with the Claims Assessment and Resolution Service is such that the matter could benefit from a different form of assessment.

This should include consideration of:

- *potential triggers to identify complex cases;*
- *potential mechanisms for dealing with complex cases, including via expert individual Assessors, an Assessor panel, and referral to court via discretionary exemption; and*

- *whether any changes in practice or to the guidelines in relation to discretionary exemption are desirable or necessary.*

Response

This recommendation is supported. As the Standing Committee report notes, the Supreme Court has affirmed the capacity of CARS claims assessors to make the determination as to whether a matter lodged with CARS may or may not be suitable for assessment due to complex issues.

The MAA will refer this recommendation to the Motor Accidents Assessment Service Reference Group for consideration by 30 June 2009 of possible changes to the assessment process which may assist claims assessors in determining whether or not a matter should be exempted from assessment by CARS on the grounds of complexity.

Recommendation 5

That the Motor Accidents Authority, in undertaking the new PricewaterhouseCoopers study of Claims Assessment and Resolution Service assessments, including when the study's findings and implications are considered, continue to work collaboratively with all relevant stakeholders, and implement any necessary recommendations.

Response

This recommendation is supported. The MAA has engaged PricewaterhouseCoopers (PwC) to undertake a further superimposed inflation study in relation to the compulsory third party (CTP) scheme as a whole. CARS assessments form one part of the follow-up to this study. A previous study undertaken in 2006 did not find any evidence of superimposed inflation in CARS assessments. The MAA has conducted a workshop with insurers and actuaries at which PwC presented the draft findings of the 2008 study. The MAA has invited insurers and actuaries to identify any further areas for detailed analysis and suggested actions to mitigate any inflationary pressures within the CTP scheme. The MAA anticipates that the final report will be available by 30 June 2009.

Recommendation 6

That the Motor Accidents Authority, in order to enhance transparency within the Claims Assessment and Resolution Service, fulfil its commitment to:

- *investigate the potential to publish de-identified decisions in relation to individual CARS assessments;*
- *consider regular reporting on lead indicators of superimposed inflation to arise out of PricewaterhouseCoopers' new study of such inflation in CARS assessments; and*
- *consider an ongoing mechanism for qualitative feedback from insurers to CARS Assessors.*

Response

This recommendation is supported. The MAA has commenced preparations for the inclusion of de-identified decisions in relation to individual CARS assessments on the MAA website.

Recommendation 7

That the Motor Accidents Authority give consideration to publishing Claims Assessment and Resolution Service performance data on a quarterly basis, and to distributing this information at meetings of the Motor Accidents Assessment Service Reference Group.

Response

This recommendation is supported. The MAA already produces performance data for claims assessors every six months and the Motor Accidents Assessment Service Reference Group is provided with a de-identified version of this performance report. The MAA will prepare the performance report on a quarterly basis from the end of 2009.

Recommendation 8

That the Motor Accidents Authority, in conjunction with the Motor Accidents Assessment Service Reference Group, explore the possibility of allowing external stakeholders, including insurers and the legal profession, access to its practice manual for Claims Assessment and Resolution Service Assessors, along with information contained in periodic electronic Assessor newsletters, where these resources contain advice to Assessors about the evidence they should take into account in making and documenting their assessments.

Response

The MAA will refer the proposal to provide external stakeholders, including insurers and the legal profession, with access to the practice manual for CARS claims assessors to the Motor Accidents Assessment Service Reference Group by 30 June 2009.

There are 34 CARS claims assessors who work in different geographic locations across NSW and rarely get together as a group. The CARS electronic newsletter (CARS E-News) provides a forum for CARS claims assessors to consider and discuss issues and viewpoints relevant to their role. The MAA regularly publishes a Motor Accidents Assessment Service (MAAS) Bulletin which is available to all stakeholders. Material that is relevant to stakeholders is regularly extracted from CARS E-News and included in the MAAS Bulletin such as any 'advice to Assessors about the evidence they should take into account in making and documenting their assessments'. The MAA will continue to ensure that relevant extracts from CARS E-News are published in the MAAS Bulletin so that this material is accessible to all stakeholders involved in the motor accidents scheme.

Recommendation 9

That the Motor Accidents Authority, in liaison with the Law Society of NSW, continue to make the Study of the Impact of the Costs Regulation a high priority, with a view to having the revised Regulation in place by 1 October 2008.

Response

This recommendation is supported. The MAA has received the final report by FMRC Legal on the impact of the *Motor Accidents Compensation Regulation 2005* and legal costs on

Compulsory Third Party (CTP) insurance claimants and is currently considering the report's findings.

The MAA is continuing work on the revised costs schedule.

Recommendation 10

That the Motor Accidents Authority, in liaison with the Law Society of NSW, ensure that the Study of the Impact of the Cost Regulation, consider provisions for costs in insurer-initiated court proceedings so that claimants are not unfairly financially penalised for having to participate in such proceedings.

Response

Consideration of costs in insurer-initiated court proceedings is not within the scope of the legal costs study undertaken by FMRC Legal. In accordance with the *Subordinate Legislation Act 1989*, the MAA is required to undertake a further statutory review of the *Motor Accidents Compensation Regulation 2005* by 2010. The MAA will address this issue in the upcoming statutory review.

Recommendation 11

That the Motor Accidents Authority monitor trends in insurer claims of contributory negligence to determine whether legislative action is required to address any inappropriate incentives to have Claims Assessment and Resolution Service assessments reheard in court.

Response

This recommendation is supported. As the Standing Committee report notes, there has not been a substantial rise in the number or proportion of matters being reheard by a court following CARS assessment on the basis of allegations of contributory negligence by an insurer. Nevertheless, the MAA will continue to monitor trends in insurer initiated matters that proceed to a court hearing on the question of contributory negligence following CARS assessment.

Recommendation 12

That the Motor Accidents Authority, in consultation with relevant stakeholders including court administrators and the judiciary, consider the proposal that in matters where liability has been declined, only the matter of liability be determined by the District Court, with the broader matter then remitted to the Claims Assessment and Resolution Service for assessment.

Response

Further consideration is being given to this recommendation to determine if there is sufficient evidence of problems arising with the current practice and whether the proposal could result in duplication and delays in resolving matters.

Recommendation 13

That the Minister for Finance amend the legislation to give Claims Assessment and Resolution Service Assessors the power to assess claims and approve the terms of settlement for persons under legal incapacity, including children.

Response

This recommendation is not supported. The Attorney General has advised that the recommendation would remove the safeguard of court oversight of matters relating to people under a legal incapacity without adequate justification.

Recommendation 14

That the Motor Accidents Authority ensure that where an Assessor recognises that there will be a delay in a Claims Assessment and Resolution Service assessment, the claimant is advised of the processes involved and is made aware of the particular reasons for delay.

Response

This recommendation is supported and already operates. If a CARS assessment is delayed, the claims assessor will contact the parties and issue further directions as to when the next assessment conference will be held.

Recommendation 15

That the Motor Accidents Authority conduct its intended review of insurers' communication with self-represented claimants in tandem with the Motor Accidents Council, and that the review consider the need for the existing insurer guidelines to be reformulated and appropriate pro-forma letters developed.

Response

This recommendation is supported. CTP insurers have provided the MAA with copies of all current generic claim information that each CTP insurer provides to self-represented claimants. The MAA anticipates reporting back to the Motor Accidents Council on its analysis of the material provided by insurers and any proposals for change by 30 June 2009.

Recommendation 16

That the Motor Accidents Authority, in consultation with the Motor Accidents Council, consider by 30 June 2009 the advantages and feasibility of further itemisation of the Medical Care and Injury Services Levy on compulsory third party Green Slips.

Response

This recommendation is supported. An MAA/ Insurer working party has been established to consider the advantages and feasibility of further itemisation of the Medical Care and Injury Services (MCIS) Levy on CTP Green Slips. The working party will report back to the Motor Accidents Council by 30 June 2009.