



Special Minister of State
Minister for Commerce
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Assistant Treasurer
Vice President of the Executive Council

21 November 2005

The Hon Christine Robertson MLC
Committee Chair
Legislative Council
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Robertson

I refer to the sixth report on the *Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council* by the Legislative Council Standing Committee on Law and Justice.

I am pleased to advise that the Government response to the 14 recommendations contained in the Standing Committee's sixth report has now been finalised. A copy of the response is attached for your information.

I trust that the Government response will be of assistance to the Committee.

Yours sincerely,

John Della Bosca MLC

**Government response to the sixth report of the Legislative Council Standing
Committee on Law and Justice on the Review of the exercise of the functions of the
Motor Accidents Authority and the Motor Accidents Council**

Recommendation 1:

That the Minister provide the Committee with an update on the progress of the reforms for the Motor Accidents Assessment Scheme, in relation to any future amendments to the Act and details of the changes the MAA are planning to make to guidelines used under the Motor Accidents Assessment Scheme.

Response:

Between October 2003 and June 2004, the MAA held a series of consultation forums with key stakeholders to review the processes and procedures of the Motor Accident Assessment Service (MAAS) as they affect service users and participants. Representatives from the legal and insurance industries, medical assessors of the Medical Assessment Service (MAS), claims assessors of the Claims Assessment and Resolution Service (CARS) and members of the Motor Accidents Board and the Motor Accidents Council participated in the forums.

The initiatives arising from the consultation forums form the basis of the proposed MAAS reform agenda. The key themes and aims of the reform agenda include:

- **Improve the climate for dispute resolution** – including improved preparation of disputes prior to lodgement and encouraging parties to clearly identify the issues in dispute.
- **Focus dispute resolution priorities** – including improved processing of MAAS applications with greater efficiencies and more options for parties through technological innovation.
- **Continue to improve the quality and timeliness of assessments**

It is anticipated that legislation to give effect to the MAAS reform agenda will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

In the meantime, the MAAS continues to monitor and review its levels of efficiency and service delivery.

Recommendation 2:

That the MAA investigate methods, other than those used in the Justice Policy Research Centre research, to analyse the effects of costs regulation and review the legal costs scale.

Response:

The effect of the legal costs regulation is regularly reviewed by the MAA and details included in the MAA's Annual Report.

A more detailed review of the options for regulating legal costs in motor accident matters was recently undertaken by the MAA in the context of the development of the *Motor Accidents Compensation Regulation 2005*, which commenced on 1 September 2005. A copy of the Regulatory Impact Statement on the *Motor Accidents Compensation Regulation 2005* is attached.

Recommendation 3:

That the Minister provide a copy of the report on four wheel drive claims experience to the Committee for its information and consideration and that the Minister advise the Committee on any actions the MAA are to take in light of the information or recommendations in that report.

Response:

A review of the claims experience of four wheel drive vehicles compared to other passenger vehicles was undertaken by the MAA in 2004-2005. The review analysed the claims experience of four wheel drive vehicles compared to ordinary passenger vehicles over a five year period (5 October 1999 to 30 September 2004) using data obtained from the Roads and Traffic Authority's DRIVES database and the MAA's Claims Register. The review found that the cost of motor accident claims involving four wheel drive vehicles was not higher than for other passenger vehicles.

The MAA will continue to closely monitor and review the claims experience of four wheel drive vehicles.

Recommendation 4:

That in order for the MAA to satisfy the statutory obligation set out in section 28 of the Act, the MAA present a separate and specific report on insurer profits annually to the Committee. The report should contain:

- the MAA's assessment of the profit margins and the actuarial basis for its calculation in relation to each of the licensed insurers, and
- the data provided to it by the insurers pursuant to section 28(1) that forms the basis of their assessment.

Response:

The Government responses to both the fourth and fifth reports of the Standing Committee indicated that the MAA would include its statutory report on insurer profit in annual reports, commencing with the 2002-2003 Annual Report.

In addition, the Government's response to recommendation 7 of the fifth report included a detailed explanation of the objective criteria and methodology prepared by Taylor Fry Actuaries and adopted by the MAA for assessing the profit component of a premium. It was also noted that the MAA has consistently reported to the Committee on the adopted methodology for assessing profit in premiums as well as the results of these assessments.

The MAA is currently satisfying its statutory obligations set out under section 28(1) and 28(2) of the *Motor Accidents Compensation Act 1999* by including its assessment of insurer profits in annual reports.

The data provided by insurers to the MAA regarding profit margins is protected information pursuant to section 217 of the *Motor Accidents Compensation Act 1999*.

Recommendation 5:

That the Minister provide the Committee with further detail on what actions, if any, the MAA are required to take in light of receiving the legal advice on the issue of the gap between CTP insurance and public liability insurance for certain accidents involving motor vehicles.

Response:

The MAA previously advised the Standing Committee that the legal advice clarified the application of the *Motor Accidents Compensation Act 1999* to motor vehicle accidents involving a vehicle that is not covered by a CTP policy and where there is no right of action against the Nominal Defendant. It is anticipated that legislation dealing with the application of the Act will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

During the fifth review, the MAA advised the Standing Committee that the MAA has raised the issue of the gap in public liability cover with the Insurance Council of Australia. It was also noted that the Insurance Council of Australia issued a General Circular to insurers on 28 November 2002 inviting insurers to review their motor or personal liability cover under home contents to provide gap insurance.

The functions of the MAA set out under the *Motor Accidents Compensation Act 1999* relate to monitoring the operation of the motor accidents scheme. The MAA does not have a role with regard to the operation of public liability insurance.

Recommendation 6:

That following the MAA's advice to the Minister on the issue of amending section 33(5) of the Act, the Minister advise the Committee on whether legislative amendments are going to take place and provide the Committee with details of the proposed amendments in relation to claims against the Nominal Defendant for unregistered and unregistrable vehicles.

Response:

It is anticipated that legislation will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

Recommendation 7:

That the Minister provide a copy of the report on establishing loss of income by casual workers to the Committee as soon as it is finalised.

Response:

The Minister for Commerce provided a copy of the report on establishing loss of income by casual workers to the Committee Chair on 23 June 2005.

Recommendation 8:

That, in relation to the most recent figure of 18% of amendments to medical assessments involving changes to methodology and reasons for decisions, the MAA provide details to the Committee on what the amendments were to these assessments.

Response:

The MAA previously advised the Standing Committee that, since the beginning of the reformed motor accidents scheme, 25% of medical assessment reports by the Motor Accidents Assessment Service (MAAS) have involved an amendment request. The MAA further advised that an analysis of January 2005 matters indicated that 82% of amendment requests related to administrative errors while 18% involved methodology and/ or reasons for decisions.

The 18% of amendment requests concerning methodology and/ or reasons for decisions involved the following issues:

- The report did not provide required reasons for a decision (6%).
- The report did not include details of apportionment between accident related and other injuries (3%).
- The report did not include all issues or injuries referred for assessment (3%).
- The report did not include details of findings on examination in an impairment assessment (3%).
- The report contained an inconsistency between a finding and the assessment outcome (stabilisation and earning capacity disputes) (2%).
- The report did not follow the prescribed method for assessing whole person impairment (1%).

Whether or not a medical assessor decides to amend a draft medical report is a matter for their own discretion pursuant to clause 10.11 of the MAA *Medical Assessment Guidelines*.

Recommendation 9:

That, in the interests of both claimants and defendants, the MAA develop and implement a code of conduct for surveillance under the New South Wales Scheme, and that the code include when surveillance is appropriate and the manner in which surveillance should be conducted.

Response:

The MAA's Claims Handling Guidelines state under general principles that surveillance investigators should operate in a professional and ethical manner and should comply with applicable privacy legislation. The MAA did not receive any complaints in relation to surveillance in 2004-2005.

The Transport Accident Commission (TAC), which administers Victoria's compulsory third party (CTP) transport accident compensation scheme, has introduced guidelines on the conduct of surveillance. In February 2005, the MAA recommended that licensed CTP insurers in NSW adopt the following TAC principles in relation to surveillance:

- Surveillance should be "passive" observation in places regarded as "public".
- Surveillance should not involve any inducement, entrapment or trespass.
- Surveillance should only be used when:
 - a. other less intrusive methods of investigation are considered ineffective or inadequate or have been tried and found inconclusive;
 - b. the claim is of such a nature to warrant the use of covert surveillance and where there is adequate evidence to suggest that the claimant may be misrepresenting his/her disability, or claiming excessive disabilities, or malingering, or involved in the commission of a fraud;
 - c. the benefits arising from obtaining relevant information by covert surveillance are considered to outweigh the intrusion on the privacy.
- All requests for surveillance and all surveillance reports should be vetted by quality assurance officers to ensure that there is no breach of any law or guideline or ethical impropriety.

The MAA supports the inclusion of the above principles in the MAA Claims Handling Guidelines. As required by section 68(3) of the *Motor Accidents Compensation Act 1999*, the MAA will consult with the Insurance Council of Australia, Council of the Bar Association and Council of the Law Society regarding the proposal to include surveillance principles in the MAA Claims Handling Guidelines.

Recommendation 10:

That the results of the review of the MAA Guidelines for the Assessment of Permanent Impairment be provided to the Committee as soon as possible for consideration as part of its next review.

Response:

The revised MAA *Guidelines for the assessment of the degree of permanent impairment* were developed following a review by a working group comprising representatives from various medical fields and the MAA. The aim of the review was to provide greater clarity and guidance for medical assessors when interpreting and applying the Guidelines.

The draft Guidelines were circulated for comment to all impairment assessors of the Medical Assessment Service (MAS), medical colleges, the Australian Medical Association (AMA), Law Society of NSW and compulsory third party insurers. The draft revised Guidelines were also considered by the Motor Accidents Council.

The revised Guidelines were finalised in July 2005 and published in Government Gazette No 29 of 22 July 2005 at page 3857. The Minister for Commerce provided a copy of the revised Guidelines to the Committee Chair on 5 August 2005.

Recommendation 11:

That the Minister provide the Committee with an update on consideration of Recommendation 16 in the Fifth Report where the Committee recommended the Minister and the Attorney General consider amending the Supreme Court Act 1970 and the District Court Act 1937 to allow awards of interim damages in motor accident cases.

Response:

It is anticipated that legislation will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

Recommendation 12:

That the MAA's further research into the issue of damages lasting the lifetime of those catastrophically injured in motor accidents include investigations into:

- the basis of assessing damages for catastrophically injured, considering that this has not changed from the old Scheme and
- the possible benefits for implementing structured damages for the catastrophically injured.

Response:

On 20 June 2005, the Government released the proposed Lifetime Care and Support (LTCS) Plan to assist people catastrophically injured in motor vehicle accidents in NSW. Under the LTCS Plan, all people catastrophically injured in motor vehicle accidents in

NSW will receive medical care and support services for life, regardless of who was at fault in the accident.

The Government is currently considering the issues raised during the public consultation period on the LTCS Plan. It is anticipated that legislation to provide for the LTCS scheme will be introduced into Parliament in 2005-2006, subject to the parliamentary program.

Recommendation 13:

That the MAA conduct analysis from their own databases on the level of damages awarded by the New South Wales courts in relation to personal injury suffered as a result of motor vehicle accidents since the 1999 amendments to the Scheme, in order to fulfil their obligation under section 206(2)(a) of the Act. Also, that once collected, this information be publicly accessible and updated annually.

Response:

The MAA will conduct an analysis from its own databases on the level of damages awarded by NSW courts in relation to CTP claims since the introduction of the *Motor Accidents Compensation Act 1999*. This analysis will be finalised in 2006 and the results included in the MAA's 2005-2006 Annual Report.

Recommendation 14:

That the MAA provide the Committee with a copy of the 3-5 year strategy for road safety and rehabilitation programs and make this strategy publicly available.

Response:

An independent review of the MAA Grants Program in 2004 examined the operations and outcomes of a range of projects funded by the MAA from 1999 to 2003. The review made a number of recommendations to improve the overall strategic direction of the program as well as evaluation measures, reviews and management processes.

In the light of the recommendations made by the independent review, the MAA is currently developing a three-year strategic plan and evaluation framework. The development of the plan involves:

- reviewing the MAA's current role in road safety and rehabilitation;
- reviewing the MAA's current priorities and programs; and
- identifying new areas, activities and priorities.

The three-year plan will focus on injury issues that impact on the motor accidents scheme and apply a more rigorous, outcome-oriented approach to the allocation of MAA project funding.

It is anticipated that the plan will be finalised by the end of 2005 and will be publicly available.