

Tab A

NSW Government Response to the twelfth review of the Motor Accidents Authority by the Legislative Council Standing Committee on Law and Justice

Recommendation 1:

That the Minister for Finance and Services establish a Motor Accidents Advisory Committee under section 10 of the *Safety, Return to Work and Support Board Act 2012* that is comprised of members from the legal, insurance, health and community sectors.

Response:

Supported in part. The MAA will establish an advisory committee with representatives of the customers of the Scheme, that being vehicle owners and injured people, as well as expert advisors, rather than the proposed membership which reflects service providers in the Scheme. It is not intended at this time to establish the advisory committee under section 10 of the *Safety, Return to Work and Support Board Act 2012*.

The MAA has existing arrangements for seeking input from members of the legal, insurance and health sectors. The MAA meets regularly with key service providers to discuss policy opportunities and to resolve operational questions about the delivery of the scheme. Service providers and stakeholder groups are also given ample opportunity to advance their interests through the regular Law and Justice Committee review process.

However, the Government is concerned that the voice of stakeholders – vehicle owners, who fund the Scheme, and injured people, who need to rely on the Scheme for support – are not as well heard. The MAA is seeking to engage more directly with these two key stakeholder groups – injured people and vehicle owners, to get a more comprehensive understanding of consumer views, expectations and experiences of the CTP Scheme. The MAA is undertaking a claimant survey and piloting some broader focus groups including claimants and policy holders (vehicle owners).

The Government proposes an advisory committee structure that allows input from the direct scheme stakeholders. However the Government recognises that these user groups are somewhat fragmented and it may be difficult to find a representative membership.

Recommendation 2:

That the Motor Accidents Authority publish the Ernst & Young report into motorcycle CTP premiums as soon as it has been completed and provide it to the committee.

Response:

Supported. Ernst & Young is currently finalising its independent review of motorcycle CTP premiums and the Government will release it in due course. A copy will also be provided to the Committee once available.

Recommendation 3:

That the Motor Accidents Authority, in consultation with stakeholders, address the issue of insurers denying liability under section 95 of the *Motor Accidents Compensation Act 1999* to exempt cases from the Claims Assessment and Resolution Service.

Response:

Supported. The amendments to the MAA *Claims Handling Guidelines* and *Claims Assessment Guidelines*, which came into effect on 1 May 2014, provide for claims involving allegations of contributory negligence to be assessed by the Claims Assessment and Resolution Service (CARS).

The amendments aim to reduce Scheme costs and delays associated with litigation of these matters, and require clearer explanation by insurers of their liability decisions.

To support this, the MAA has issued new liability decision templates for use by insurers, developed in consultation with insurers and the legal profession, to provide greater transparency of decision making and better inform injured people of the status of their claim and next steps. The MAA is currently monitoring impacts and compliance with the new template, and has commissioned targeted audits of insurer liability decisions.

The MAA Motor Accidents Assessment Service Reference Group will monitor the frequency of allegations of contributory negligence by CTP insurers over the next twelve months.

Recommendation 4:

That the Motor Accidents Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual reports.

Response:

Supported in part. The CTP and Lifetime Care and Support Schemes are fundamentally different. These differences make it difficult and misleading to create a combined efficiency measure.

While the Government believes it is appropriate to hold the private insurance market and the Lifetime Care and Support Scheme to separate account for their performance, it has asked the Motor Accidents Authority and Lifetime Care and Support Authority to work with their respective actuaries to consider the options for showing efficiency.

Recommendation 5:

That the Minister for Finance and Services ensure there is a prompt review of the high level of insurer profits, and that all relevant stakeholders are consulted.

Response:

Supported. The Government remains concerned about the high level of insurer profits in the CTP Scheme. The issue of insurer super-profit has been an issue in the Scheme for more than a decade. The Government attempted to introduce reforms in 2013 which, among other things, would have helped address this issue. However, the New South Wales Upper House did not support the legislation.

The Government will ask the Safety, Return to Work and Support Board to commission a review of insurer profits in the CTP Scheme. It is anticipated that the review will include an examination of Scheme design and competition issues, as well as opportunities for improving the regulation of the scheme.

Recommendation 6:

That in its review of the *Motor Accidents Compensation Act 1999*, the NSW Government consult with stakeholders to identify barriers to new entrants and any means to encourage greater competition while maintaining long-term scheme sustainability.

Response:

Supported. The proposed review of insurer profits (see response to Recommendation 5 above) will also include an examination of opportunities to better address competition in the CTP Scheme, as these issues are inter-related.

Recommendation 7:

That the Motor Accidents Authority provide a report annually to the committee by 30 April that includes a comprehensive review of scheme performance in the most recent accident year, including an analysis of the drivers of high levels of insurer profits.

Response:

Supported. The MAA will provide a new scheme performance report annually to the Committee. This will include the reporting requirements regarding insurer profit that the MAA is required to provide the Committee.

It is proposed that the MAA Annual Report provide high level scheme metrics and an overview of the performance of the MAA, while the Scheme Performance report will provide detailed analysis of the scheme itself.

Recommendation 8:

That the Motor Accidents Authority proactively consult with stakeholders and report twice yearly, once in the annual report and once in the April report (see recommendation 7) on superimposed inflation risks and strategies to address them.

Response:

Supported. The New South Wales Government recognises that superimposed inflation (or its absence) is a factor that has contributed to higher than anticipated insurer profits in the CTP scheme and at times has been the significant driver of increases in claims costs and premiums. The Government agrees that there is merit in proactively considering any potential sources of superimposed inflation as and when they become apparent. The MAA will consult with relevant scheme stakeholders and include a discussion of superimposed inflation risks and strategies to address them in the new scheme performance report and annual report, where relevant and appropriate.

Recommendation 9:

That the Minister for Finance and Services ensure the *Motor Accidents Compensation Regulation 2005* is remade by no later than 1 September 2014, and that it provide for realistic and fair levels of legal costs in motor accident matters.

Response:

Supported in part. The MAA is currently in consultation with scheme stakeholders about potential changes to the *Motor Accidents Compensation Regulation 2005* within the constraints of the current *Motor Accidents Compensation Act 1999*. After taking stakeholder feedback into account, the Authority will make recommendations to the Government with a view to issuing a draft Regulation for formal consultation before any new Regulation is made. The timeframe for remaking the Regulation has been extended to 1 September 2015 to enable adequate consultation with scheme stakeholders.

Recommendation 10:

That the Motor Accidents Authority finalise the review of the Physiotherapy Notice of Commencement and Physiotherapy Review Forms in consultation with stakeholders, and in doing so, include the physiotherapist type and level of expertise so an appropriate level of remuneration can be provided.

Response:

Supported. The MAA is currently reviewing communications and guidance documents for all service providers, including physiotherapists, by way of a Service Provider Guides Working Group. The Working Group meets regularly and is currently working towards the following goals:

- simplifying the request and approval process to avoid treatment delays;
- incorporating the principles of the Clinical Framework into the process;
- highlighting the role of return to work in the CTP scheme; and
- emphasising the use of client's goals in treatment requests and when reporting on the outcome of services.

The Working Group has been involved in the development of a draft form for requesting all allied health services, which is currently being piloted by WorkCover. Work is also underway on an additional form to request case manager or rehabilitation provider services. It is anticipated that the new forms will be available for use by allied health professionals involved in the CTP scheme in 2015.

Recommendation 11:

That the Motor Accidents Authority work with Carers NSW to produce and publish an online fact sheet containing information to assist carers, including links to other appropriate services and support.

Response:

Supported. The New South Wales Government recognises the important role of carers in providing assistance and care to people with disabilities, including people who have been severely injured in motor vehicle accidents. The MAA has reviewed its website content as part of an upgrade and determined that the most appropriate location for information to assist carers of people who have been severely injured in motor vehicle accidents is the Lifetime Care and Support Authority website. The Lifetime Care and Support Authority's website contains information to assist carers and provides a link to the Carers NSW website. The MAA website will be amended to include a link to this information on the Lifetime Care and Support Authority's website.

Recommendation 12:

That the Motor Accidents Authority conduct a review and publish a discussion paper on the issues relating to access to non-economic loss damages, and that these be considered in any legislative review. The discussion paper should include an actuarial analysis of the ramifications to the scheme, claimants, CTP pricing and insurers of:

- changing the threshold to access non-economic loss damages to that of section 16 of the Civil Liability Act 2002
- lowering the ten per cent whole person impairment threshold
- allowing both physical and psychological injuries to be aggregated to determine whole person impairment threshold.

Response:

Not supported. The New South Wales Government does not intend to change the ten per cent whole person impairment threshold at this time.

The ten per cent whole person impairment threshold for determining access to non-economic loss damages has been successfully in place since 1999 in order to ensure that the highest proportion of CTP scheme benefits go to those people who are most seriously injured.

Any lowering of the threshold or aggregation of physical and psychological injuries will increase cost in the CTP scheme and the NSW Government does not support measures which will significantly increase Green Slip prices, especially at this time of relatively poor affordability. An estimate by the CTP scheme actuary indicates that:

- changing the threshold to access non-economic loss damages to that of section 16 of the *Civil Liability Act 2002* would increase the cost of a Green Slip by up to \$85 per policy;
- lowering the whole person impairment threshold from 10 per cent to five per cent would increase the cost of a Green Slip by up to \$75 per policy, and removing the threshold altogether would add up to \$130 per policy; and
- allowing both physical and psychological injuries to be aggregated to determine whole person impairment would increase the cost of a Green Slip by up to \$75 per policy.

Recommendation 13:

That the Minister for Finance and Services ensure that a review of causation is undertaken, and that the report and recommendations be published.

Response:

Not supported. Questions of reasonable and necessary treatment, causation and the degree of permanent impairment of injuries are matters of specialist medical opinion, which should be addressed by appropriately qualified medical and allied health specialists.

In accordance with the *Motor Accidents Compensation Act 1999*, the MAA appoints suitably qualified persons as medical assessors. In appointing medical assessors, the MAA considers their expertise, independence and credibility within their area of specialty. They are accredited to assess one or more different types of dispute and receive regular training and performance management in connection with their role in providing conclusive certificates in relation to medical assessment matters.

The New South Wales Government is of the view that medical professionals with the correct training are more than capable of addressing causation issues. There are sufficient checks and balances in the current system to ensure good decision making and that natural justice principles are upheld.

Recommendation 14:

That the NSW Government amend Division 1A of the *Motor Accidents Compensation Act 1999*, including through the removal of section 89A, to address concerns with the settlement conference process.

Response:

Supported in part. The Government agrees that this provision is problematic. The *Motor Accident Injuries Amendment Bill 2013* proposed significant reforms to Division 1A of Part 4.4 of the *Motor Accidents Compensation Act 1999* (sections 89A – 89E), including removing section 89A. However the legislation was not supported by the opposition and minor parties in the Legislative Council and consequently the Bill was withdrawn from Parliament in August 2013.

Following the withdrawal of the Bill, the Authority is working with stakeholders, including the NSW Bar Association, to review procedures and guidelines with a view to streamlining claims and dispute resolution processes within the constraints of the current legislation.

The Government will consider the concerns raised by stakeholders in relation to the operational requirements of Division 1A. However, the decision to change an Act is ultimately a matter for the Parliament.

Recommendation 15:

That the NSW Government amend the late claims process under section 73 of the *Motor Accidents Compensation Act 1999* by extending the period in which a late claim can be made without explanation from six to 12 months.

Response:

Supported in part. The reforms proposed in the withdrawn *Motor Accident Injuries Amendment Bill 2013* were intended to better address late claims by extending the period in which a claim could be made without explanation (up to a year), but reducing the insurer's obligations to make initial back-payments (thereby encouraging early lodgment).

The Government considers that the late claim system needs improving, but that there should still be an incentive for early lodgment to enable treatment and support to be provided as early as possible. The MAA will review the range of options for improving the late claims process. The MAA will work with insurers and lawyers as part of the review of *MAA Claims Handling Guidelines* to ensure clearer and more appropriate protocols for dealing with late claims are put in place, acknowledging the extent to which late claims, for the most part, are often ultimately accepted.

Recommendation 16:

That the NSW Government ensure that the review of the operation of the Accident Notification Form is conducted by the Motor Accidents Advisory Committee (see recommendation 1), or, if that committee is not established, that stakeholders are widely consulted in the review.

Response:

Supported. The MAA will undertake a review of the operation of the ANF as part of its current improvement program and will welcome the input of stakeholders with a range of views about how it might operate more effectively. It is anticipated that the review may include an examination of the efficiency and effectiveness of the ANF as well as options for simplifying its operation.