

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

Comment:

The Government is pleased that the Standing Committee found that the Scheme, the Motor Accidents Authority and the Motor Accidents Council, continue to perform in an effective manner and that it acknowledged the Authority's efforts in providing information about the Scheme to stakeholders and the general public concerning their rights and responsibilities.

While the report of the Committee has been generally positive it did identify areas for review or improvement. This Government is committed to enhancing the operation of the Scheme which is why the Minister for Finance and Services instructed the Authority to develop a CTP Pricing Strategy taking into consideration the following issues:

- Insurer profits and costs;
- Transparency in legal costs to ensure that injured people get a fair level of their entitlement in their hand;
- Fair and affordable CTP green slip pricing; and
- The MAA's operating model to ensure the agency has optimal regulatory powers.

The work done by the Committee and the recommendations in the report will be beneficial to the development of the Pricing Strategy. The Government thanks the Committee for its hard work in undertaking the enquiry and its well considered and constructive recommendations.

Recommendation 1:

That the Motor Accidents Authority identifies the development of health outcomes performance measures as a priority work area.

Response:

The Government supports this recommendation.

The Motor Accidents Authority (MAA) is committed to the improving the health and social outcomes of injured people in the scheme as evidenced by the research funding that was previously reported to the Committee. This is a key plank of the Authority's Corporate Plan.

In particular, the MAA is piloting a project with Compulsory Third Party (CTP) insurers that involves trialling the collection of health outcome measures by their claims staff. The pilot will collect information about injured people at claim inception and 12 months post-injury. This information will inform claims management practices

at CTP insurers and can potentially be used by the MAA to measure claimant outcomes, provide a platform for informed policy change and steer research funding. The pilot has broad support from the industry and is expected to commence in the third quarter of 2012.

Recommendation 2:

That the Motor Accidents Authority publish the results of the scoping study that it commissioned into New South Wales adopting a similar crash reporting scheme as that in operation in West Australia. The Motor Accidents Authority should also publish the recommendations it made to government as a result of the scoping study in order to inform stakeholders, and provide a mechanism for stakeholder comment.

Response:

The Government supports the work of the Motor Accidents Authority in investigating this system in consultation with stakeholders.

The Authority is continuing to work with key stakeholders and potential partners, including Transport for NSW, NSW Police and the private CTP insurers to assess the feasibility and proof of concept of such a system.

Subject to the feasibility study and proof of concept, full stakeholder consultation will be undertaken.

Recommendation 3:

That the Motor Accidents Authority include in its Annual Reports a separate line item[s] for reporting 'Road safety grants and sponsorships'.

Response:

The Government supports this recommendation.

A separate line item for road safety grants and sponsorships will be included as a note in Motor Accidents Authority's financial statements from 2011/2012 onwards.

Recommendation 4:

That the Motor Accidents Authority present a report on its assessment of insurer profit margins and the actuarial basis for its calculation to the Committee, including an explanation for any material deviation on forecasted profit, on an annual basis in order to fulfil its statutory obligation under section 28 of the *Motor Accidents Compensation Act 1999*.

Response:

The Government supports this recommendation.

The Motor Accidents Authority will consult with the Committee on how best to address the Committee's reporting requirements.

Recommendation 5:

That the Motor Accidents Authority promptly publish information about the CTP pricing review, including its terms of reference and timeframe. In addition, the Motor Accidents Authority should publish a discussion paper on the issues covered in the review, consult widely including with stakeholders and the public, and publish its findings.

Response:

The Minister for Finance and Services has directed the MAA to develop a Green Slip pricing strategy. The Terms of Reference are available on the Authority's website. The Motor Accidents Authority will undertake a consultative process during the development of the strategy and regularly publish information as it is available.

Recommendation 6:

That the Minister expedite the remaking of the Motor Accidents Compensation Regulation 2005, rather than waiting until its expiry on 1 September 2012.

Response:

The Motor Accidents Authority will continue its work in remaking the *Motor Accidents Compensation Regulation 2005*, in consultation with stakeholders. The new regulation will also be subject to a formal public consultation period in accordance with the *Subordinate Legislation Act 1989*.

The extent, however, to which the Regulation will require amendment, is dependent on the outcome of the Pricing Strategy and whether changes will be required to accommodate the recommendations flowing from a revised model of operation for the Motor Accident Scheme.

The Minister for Finance and Services will take these matters into consideration in deciding the appropriate timing for any remake of the regulation.

Recommendation 7:

That the New South Wales Government pursue amendments to the *Motor Accidents Compensation Act 1999* to provide the Motor Accidents Authority with the authority to collect and disclose data on the amount of compensation a claimant receives once legal costs have been deducted.

Response:

The Government is committed to ensuring greater transparency regarding the amount of compensation claimants receive in their hand when legal costs and other deductions are made.

The Motor Accidents Authority will take the Committee's concerns on this issue into consideration in the development of the Green Slip pricing strategy.

Recommendation 8:

That the Motor Accidents Authority, in consultation with appropriate stakeholders, review the Physiotherapy Notice of Commencement and Physiotherapy Review Forms.

Response:

The Government supports this recommendation.

The Motor Accidents Authority (MAA) is currently considering a review of its communication guidelines between allied health practitioners and Compulsory Third Party (CTP) insurers. This is in response to work being led at a national level by the Transport Accidents Commission and Worksafe in Victoria. It is envisaged that there will be discussions with WorkCover NSW to develop a consistent approach, wherever possible. This process will include consideration of the Notice of Commencement and Review forms as these are used by a number of allied health providers within the CTP scheme. The MAA plans to commence discussions with relevant stakeholders in the near future to progress this work locally. The Australian Physiotherapy Association will be consulted as part of this process.

Recommendation 9:

That the Motor Accidents Authority produce and publish on its website information specifically directed to assist carers.

Response:

The Government supports this recommendation.

The Motor Accidents Authority (MAA) has sought a meeting with Carers NSW to identify appropriate information and links that are available to use on its website. The MAA will also liaise with the Lifetime Care and Support Authority to ensure there is consistency in published information, where applicable.

Recommendation 10:

That the New South Wales Government review the threshold for access to damages for non-economic loss under the Motor Accidents Scheme in order to achieve a better balance between Scheme efficiency and compensation.

That the Motor Accidents Authority publish a discussion paper outlining the issues relating to access to non-economic loss damages. This 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 damages to that of s.16 of the *Civil Liability Act*
- lowering the ten per cent whole person impairment threshold; and

- allowing both physical and psychological injuries to be aggregated to determine the whole person impairment threshold.

The Authority should make this review a priority, and publish the discussion paper, invite comment and pursue any subsequent legislative amendment during 2012.

Response:

The Motor Accidents Authority will take the Committee's concerns on this issue into consideration in the development of the Green Slip pricing strategy and to include these matters in public consultation processes.

It might also be noted that the Motor Accidents Council (MAC) has formed a sub-committee, comprising of members from the legal, insurance, allied health and medical industries. The sub-committee plans to review issues and options regarding permanent impairment which includes an assessment of the types of cases that fall close to the 10% threshold, consistent with the goals of the *Motor Accidents Compensation Act 1999*. The sub-committee will provide advice to the MAC and the Motor Accidents Authority on issues relating to the permanent impairment threshold.

Recommendation 11:

That the Motor Accidents Council form a sub-committee to review, analyse and recommend a course of action to the Motor Accidents Authority on the issue of legal causation.

Response:

The issue of causation will be considered in the development of the Pricing Strategy, and as a key stakeholder the Motor Accidents Council has been actively encouraged to participate and provide feedback. As the Pricing Strategy process is currently occurring, it is not considered necessary to form a sub-committee at this point, however, the Government supports the establishment of a sub-committee if required when the Strategy is finalised to consider and advise on any residual issues in relation to causation.

Recommendation 12:

That the Motor Accidents Authority meet with the New South Wales Bar Association and other stakeholders as soon as practicable with a view to finding a solution to the issue of pre-settlement conferences under section 89A of the *Motor Accidents Compensation Act 1999*.

Response:

The Motor Accidents Authority has commenced regular meetings with the Law Society and Bar Association and this topic has been discussed with an agreement to meet further on this issue. Input will also be invited from the Motor Accident Assessment Service so that all aspects that may be causing concerns are canvassed.

The Minister for Finance and Services has instructed the MAA to take the Committee's concerns on this issue into consideration in the development of the Green Slip pricing strategy.