

# **Update on Government Responses to the Standing Committee on Law and Justice's Recommendations in relation to the 11<sup>th</sup> Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council**

## **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 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.

### **Update:**

The Authority has completed the pilot project trialling the collection of health outcomes measures by CTP insurers, with four of the seven CTP insurers participating in the project. The participating insurers interviewed claimants on health related quality of life issues and return to employment at lodgement of their claim and 12 months after the motor vehicle crash. Interviews were conducted by claims staff by telephone, with arrangements in place to provide written translations of the questionnaire to claimants in Arabic, Chinese, Vietnamese, Greek and Italian. The results of the study were analysed by Professor Ian Cameron, Professor of Rehabilitation Medicine at the University of Sydney.

The collection of health outcomes information was successfully implemented and sustained by only one of the four CTP insurers. The majority of insurers experienced difficulties collecting the data due to difficulties in contacting claimants and gaining their agreement to answer questions as well as in dedicating resources to administer the project.

The MAA's Claims Handling Guidelines for insurers are now currently being reviewed to establish better practice and to reinforce that insurers must act proactively to optimise the recovery of injured people, and their compliance with these Guidelines will be monitored. The Authority remains committed to developing health outcomes measures for the CTP scheme and is currently working with the University of Sydney to determine an alternative approach to collecting health outcomes information.

## **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.

**Update:**

The MAA continues to liaise and consult with Transport for NSW and NSW Police on crash reporting options. In addition, work is underway to link the relevant databases relating to accidents and to CTP claims, to better inform this work. In the meantime the MAA is continuing to work with insurers to simplify the claim notification process and provide more support to people seeking to lodge a CTP claim.

Transport for NSW, as lead agency for crash data integration, is not currently considering an online accident reporting option, due to concerns about consumer access and data reliability. However the ability of Police to report on telephone reports of accidents has recently been enhanced. The MAA will continue to pursue opportunities to simplify and improve the timeliness of the claim notification process in collaboration with Transport for NSW and NSW Police.

**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 the Motor Accidents Authority's financial statements from 2011/2012 onwards.

**Update:**

Since 2011/12, the MAA has included a separate line item for road safety grants and sponsorships in the financial statements contained in its Annual Reports. (See page 43 of the MAA's *Annual Report 2011/2012* and page 58 of the MAA's *Annual Report 2012/2013*).

**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.

**Update:**

A briefing with Committee members is currently being arranged. The MAA is committed to open and transparent reporting of the scheme and to assist the Committee in its understanding of scheme performance.

## **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 price strategy. The Terms of Reference are available on the Authority's website. The Motor Accidents will undertake a consultative process during the development of the strategy and regularly publish information as it is available.

### **Update:**

The Authority released a range of information about the proposed CTP reforms, which was made available on the MAA website. This included the MAA's Issues Paper - *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, CTP Pricing Strategy Terms of Reference, *Estimated Cost Per Policy of the Proposed NSW Green Slip Scheme* by Ernst and Young, *Premium System Transition for the Proposed NSW Green Slip Scheme* by Ernst and Young, *Peer Review of Actuarial Costings and Related Advice provided by Ernst and Young* by Taylor Fry, publicly available submissions and the *Final CTP Roundtable Report* by Paul McClintock AO, Chair of the Steering Committee for the CTP Reform Consultation.

## **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.

### **Update:**

The remaking of the *Motor Accidents Compensation Regulation 2005* was delayed in 2012 and 2013 pending the outcome of the CTP pricing review and the *Motor Accident Injuries Amendment Bill 2013*. The MAA has commenced work on the remaking of the Regulation, within the constraints of the current *Motor Accidents Compensation Act 1999* and consultation with key stakeholders will commence in the near future.

## **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.

**Update:**

It is anticipated that the review of the *Motor Accidents Compensation Regulation 2005* will consider an assessment of possible options for monitoring legal costs in motor accident matters.

**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.

**Update:**

The MAA has progressed the review of communications and guidance documents for all service providers, including physiotherapists, by way of a service provider guides working group. A nominee from the Australian Physiotherapy Association is a member of this group. The working group meets regularly and is working towards developing revised forms by the end of 2014.

**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 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.

### **Update:**

Previous Committee recommendations in relation to the information produced for carers, have been implemented. The Authority is currently in the process of updating relevant publications and documents to ensure consistency with the Lifetime Care and Support Authority and has sought a meeting with Carers NSW to identify any additional appropriate information and website links.

### **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.

### **Update:**

The NSW Government did not seek to change the whole person impairment threshold or methodology for assessing whole person impairment in proposing the now withdrawn *Motor Accident Injuries Amendment Bill 2013*.

Any amendment of the current threshold would require legislative amendment and any lowering of the threshold would likely have an impact on CTP premiums. This would ultimately be a matter for the NSW Government and Parliament.

In view of the proposed Bill being withdrawn, the Government has approved a program of priority work to improve the scheme within the current legislative constraints. These agreed priorities include a review of the Permanent Impairment Guidelines, scheduled for 2015, to address anomalies, provide greater clarity and improve the consistency of impairment assessments. The MAA will consult with stakeholders in undertaking this review.

### **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.

#### **Update:**

Questions of reasonable and necessary treatment, causation and the degree of permanent impairment of injuries are matters which are assessed by medical assessors appointed to the Motor Accidents Medical Assessment Service, as prescribed in the *Motor Accidents Compensation Act 1999*. The Government did not seek to change this principle in proposing the now withdrawn *Motor Accident Injuries Amendment Bill 2013* and the principles in the current Act remain in force.

Since the abolition of the Motor Accidents Council, the MAA holds a quarterly forum with representatives of the Law Society, NSW Bar Association and the Australian Lawyers Alliance to discuss any issues and concerns. The issue of legal causation has not been raised to date, however the MAA will seek to understand any concerns and whether there are residual issues which require further work, and will report back to government if further action is recommended.

However any amendment of the principles in the Act will be a matter for Government and Parliament.

### **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.

**Update:**

The MAA has established a legal services stakeholder group comprising representatives from the NSW Bar Association, Law Society and Australian Lawyers Alliance to provide a forum for discussing legal issues relating to the *Motor Accidents Compensation Act 1999*, including the issue of pre-settlement conferences. The group continues to meet regularly.

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.

Following the withdrawal of the *Motor Accident Injuries Amendment Bill 2013*, 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. Concerns raised by stakeholders about the operational requirements of this section will also be taken into account in the redraft of the Costs Regulation.