



Minister for Education and Training  
Minister for Industrial Relations  
Minister for the Central Coast  
Minister Assisting the Minister for Finance

Refs: 06/697, A54631

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

23 AUG 2007

Dear Ms Robertson,

*Christine*

**Eighth Review of the Motor Accidents Authority and the Motor Accidents Council**

I refer to your letter concerning the above Review and the Standing Committee's questions on notice for response in advance of the public hearing.

I note that many of the questions (questions 1-15) relate to the recommendations of the Committee's Seventh Review report. Issues relating to the recommendations of the Seventh Review report are dealt with in the Government's response to that report. The Motor Accidents Authority (the Authority) is not at this time in a position to provide any further information on those issues.

A copy of the Authority's responses to the additional questions (questions 16-24) forwarded on 13 July 2007 is attached.

Yours sincerely,

John Della Bosca MLC

**STANDING COMMITTEE ON LAW AND JUSTICE**  
Review of the Motor Accidents Authority and the Motor Accidents Council -  
Eighth Review

Questions on notice to the Motor Accidents Authority

**16. Limit on payment of (early) treatment expenses**

The Committee understands the current limit for payment of treatment expenses under Part 3.2 of the Act is \$500. It is further noted that under section 51 (2) of the Act the MAA is required to review this amount annually and may vary that amount to take account of inflation or other matters.

*Question:* Can the MAA provide information on how the most recent review was undertaken and the basis for the MAA's conclusion with respect to the ANF amount?

**Response:**

**The Motor Accidents Authority closely monitors and actively reviews Accident Notification Form data recorded by insurers on the claim's register database. The data provides the Motor Accidents Authority with information about claim and Accident Notification Form frequency and payments. The Motor Accidents Authority includes an overview of this information in its annual report as part of the Motor Accidents Authority's assessment of scheme performance and emerging trends.**

**The average payment on an Accident Notification Form remains well below \$500. Coupled with the discretion available to an insurer to manage an Accident Notification Form beyond the \$500 cap, the Motor Accidents Authority remains of the view that the \$500 Accident Notification Form limit is appropriate for existing arrangements for early payment of treatment expenses. The Motor Accidents Authority has, however, recently provided information to the Motor Accidents Council on the potential to expand the Accident Notification Form process.**

**17. Insurer profits**

During the 7th review at the public hearing on 31 March 2006, Mr Grellman indicated that, at the time, he suspected that it was likely that he would eventually come to the conclusion that insurer profits should be reduced, but that he did not have enough facts yet to be sure (p 23 Committee report).

At page 5 of the MAA Annual Report 2005-2006 the message from the Chairman and General Manager notes that: The MAA is confident that the market is delivering a proper balance between the need to ensure the scheme is fully

funded to meet the reasonable cost of claims of injured people while providing an appropriate but not excessive return on capital to the licensed insurers.

**Questions:**

17.1 What is the MAA's current position with respect to the scope for a reduction in insurer profits?

**Response:**

The projected (weighted) insurer profit reported as at June 2006 was 8.7 per cent. Insurer filings are now within the appropriate range for adequate return on capital. Also premium affordability, as measured by, best price as a percentage of Average weekly earnings, was 27.5 per cent as at March 2007 compared to 28.4 per cent as at June 2006. Affordability of premiums over the past year has been at historically good levels. More detail will be provided in the 2006-2007 annual report.

17.2 Have new data or facts emerged since the time of the Committee's last review that influenced the MAA's current view? If so, could the MAA provide an overview of these to the Committee?

**Response:**

The Motor Accidents Authority expects that, with the introduction of the Lifetime Care and Support Scheme, insurers will require less capital to underwrite Compulsory Third Party, as a significant portion of the risk will be included in the Lifetime Care and Support Scheme fund and therefore insurers will require a lower amount of profit from Compulsory Third Party. As at April 2007, the projected industry weighted insurer profit was 6.7 per cent of premiums. This compares with 8.7 per cent reported as at June 2006. More detail will be provided in the 2006-2007 annual report.

**18. Estimates of realised profits for underwriting years**

During the 7th review the MAA provided the Committee with information on the estimates for realised profits for the underwriting years 1999/2000 to 2002/2003 (p 26 Committee report). The 2005-2006 MAA Annual Report at page 89 provides the estimates for the years 1999/2000 to 2003/2004. The Committee notes in particular the change in the estimate figures for the year 2002/2003 from 18.9% and \$264 million down to 9.7% and \$135 million.

*Question:* Can the MAA provide the Committee with comment on this decrease and on what, if any, implications it may hold for the scheme?

**Response:**

The Motor Accidents Authority commissioned Taylor Fry Actuaries to examine the changes in the estimates of profitability. The actuaries concluded that the changes were due to increases in their estimates of ultimate claim costs, given a further year's development of 2002/2003 claims. Briefly, the actuaries noted the following changes to components of the estimate of ultimate claim costs:

- Actual claim payments during the year ending 30 June 2006 were more than those projected at 30 June 2005.
- Actual reported incurred costs (claims paid + estimates) as at 30 June 2006 were more than the projected incurred costs at 30 June 2005.
- The rate of future super-imposed inflation of average claims costs assumed for the projections was increased from 3 per cent per annum to 4 per cent per annum. This was based on claims experience up to 30 June 2006.
- The rate of future earnings-related inflation of average claims costs were increased from 4 per cent per annum to 5 per cent per annum.

#### **19. Debate on what constitutes adequate return on capital**

During the Committee's 7th review the MAA advised the Committee that the debate between insurers and the MAA regarding an adequate return on capital has been running for the last four years (p18 Committee report). The MAA 2005-2006 Annual Report at page 87 notes that discussions between the MAA and insurers on this issue are on-going.

*Questions:*

19.1 Can the MAA advise if the relative position, with regard to the adequacy of the Taylor Fry methodology, of either the MAA or insurers has changed in any respect in recent times?

**Response:**

The Motor Accidents Authority and the insurers have not had any further discussions on this issue. However, during its annual meeting with Australian Prudential Regulation Authority, the Motor Accidents Authority reiterated that there should be consideration of line of business capital

**allocation and consideration of factors in the Compulsory Third Party product line which make it different to other long tail classes.**

19.2 Has either party advanced new argument or fact in support of their position?

**Response:**

**Given the current competition in the market place, insurer current filings are now within the appropriate range for adequate return on capital identified by the Taylor Fry methodology. Affordability of premiums over the past year has been at historically good levels. More detail will be provided in the 2006-2007 annual report.**

**20. Percentage of full claims settled without reference to a dispute resolution service**

The 2005-2006 MAA Annual Report at page 92 notes that the 1999 legislation sought to streamline the claims process to make it less adversarial and court based. It is noted that the Annual Report provides data on the number of claims lodged and on the number of applications to both the MAS and the CARS.

*Questions:*

20.1 Can the MAA provide the Committee with figures and advice on the percentage of full claims (direct full claims and converted ANFs) that are settled without being referred to either dispute resolution service?

**Response:**

**Approximately 72 per cent of full claims are settled without being referred to Medical Assessment Service or Claims Assessment Resolution Service.**

**Comparing the old and new schemes at a similar stage of development, the proportion of full claims with litigation has dropped from 20 per cent to 5 per cent.**

20.2 Does the MAA consider this figure (percentage of claims settled without dispute) to be a relevant indicator of scheme effectiveness? If so, does the MAA have a target figure?

**Response:**

**The Motor Accidents Authority is currently reviewing the measures of scheme effectiveness and agrees to consider the value of this figure as a measure.**

20.3 In what ways can the MAA seek to affect or influence a decrease in the number of claim disputes?

**Response:**

**The Motor Accidents Assessment Service Reform Agenda (the Reforms) is intended to address this issue. The Reforms are being implemented in two stages. The first stage being the implementation of the revised Medical Assessment Guidelines and Claims Assessment Guidelines which commenced in May 2006.**

**Around the same period, the Whole Person Impairment Awareness project came into effect. This project is intended to improve understanding of the method for assessing Whole Person Impairment by parties to disputes, their legal representatives if engaged, Medical Assessors and Claims Assessors. It is anticipated that improved understanding and awareness of Whole Person Impairment methodology will assist parties to better identify claims that are likely (or unlikely) to exceed the Whole Person Impairment threshold. For example, there may not be any need to refer the claim to the Medical Assessment Service, and those borderline disputes that clearly do need to be referred to Medical Assessment Service for assessment will be better identified. The Motor Accidents Authority will report in detail on the decrease of in the number of claims disputes in its 2006-2007 annual report.**

**The second stage of legislative reforms did not commence in this reporting period and they are anticipated to commence in the next reporting period, subject to the Government's legislative program.**

#### **21. Percentage of ANFs converted to full claims**

**The 2005-2006 MAA Annual Report at page 92 notes that ANFs may convert to full claims if treatment expenses exceed the ANF limit or if claimants wish to claim for other heads of damages. Since the start of the scheme in October 1999, 55 per cent of ANFs have converted to full claims.**

*Question:* Can the MAA provide the Committee with data and an analysis of the reasons leading to ANFs being converted to full claims?

**Response:**

**Where an Accident Notification Form is lodged, the claimant's entitlement to recover treatment expenses is limited to a \$500 cap and a six-month time limit. Where the claimant's treatment goes beyond six months of the accident or exceeds \$500, he or she must lodge a full claim in order to be compensated. The claimant will also have to convert his or her Accident**

**Notification Form into a full claim where, in addition to treatment expenses, there is also a potential claim for other heads of damage such as non-economic loss, loss of earning capacity or gratuitous care.**

**In some cases an Accident Notification Form may be converted into a full claim when the insurer notifies the claimant that either the six-month time limit or the \$500 cap is approaching. In other cases, the claimant may decide to lodge a full claim.**

**Of the Accident Notification Forms that were converted to full claims, 81 per cent of those claims (including both open and closed claims) have received treatment payments in excess of \$500. Of the remaining 19 per cent which received treatment payments under \$500, 85 per cent received payment for heads of damage other than treatment, which requires conversion to a full claim.**

## **22. Breakdown of number of disputes per CTP insurer**

The 2005-2006 MAA Annual Report at page 14 provides details on the market share percentage for each licensed CTP insurer.

### *Questions:*

**22.1 Does the MAA maintain comparative data on the number of claim disputes for each CTP insurer?**

### **Response:**

**Yes, the Motor Accidents Authority does maintain comparative data on the number of claim disputes for each Compulsory Third Party insurer.**

**22.2 Would such data provide a valid tool by which to assess insurer performance and compliance?**

### **Response:**

**Comparative data, such as the proportion of disputes in relation to the number of claims handled by each insurer, may be used as a broad indicator to enable the Motor Accidents Authority to detect variation across the industry which may warrant further analysis. However, such data on its own would not be an adequate indicator of insurer performance because the insurers do not have completely comparable customer populations or risk profiles. Furthermore, the dispute rates may also need to be interpreted in the context of dispute outcomes.**

### **23. Treatment dispute outcomes - reasonable and necessary (R&N)**

Page 99 of the 2005-2006 MAA Annual Report notes: "The finding of *treatment not reasonable and necessary* continued to increase to 45% of assessments, however, this may be somewhat misleading. As assessors must make their determinations on the dispute *as described by the parties*, unless the treatment described by the parties is exactly what the assessor determines is R&N, the assessor must find against the described treatment. The assessor will usually then list the level/frequency etc of the listed treatment that is/was R&N, and this may be quite similar to that sought in the application."

#### *Questions:*

23.1 In the situation described above, is the claimant disadvantaged by the finding against the described treatment? What is the effect on the claim process when such a finding is made?

#### **Response:**

**Section 83 of the Motor Accidents Compensation Act 1999 requires an insurer (who has admitted liability for a claim) to pay hospital, medical pharmaceutical and rehabilitation expenses of the claimant to the extent those expenses are - *reasonable and necessary* in the circumstances, properly verified and relate to the motor accident injury. Where a medical assessor determines a finding of *treatment not reasonable and necessary* the insurer is not required to meet the expenses concerned.**

23.2 With respect to the scenario described above, has the MAA investigated whether this is a widespread anomaly, or whether there is any means by which such occurrences may be reduced?

#### **Response:**

**The Motor Accidents Authority considers good progress has been made in this area. In general treatment disputes referred to Medical Assessment Service in recent years, reflect more experienced claims management both by claimant's representatives and insurers and the increased experience gained by all scheme participants from assessments over time of a large number of treatment disputes by Medical Assessment Service.**

**The number of treatment disputes lodged has continued to fall, reducing by 33 per cent this year from 369 in the 2005/6 year to 285 applications in 2006/7. Applications made by the injured person or their representative in the 2006/7 year represented 59 per cent of all applications, compared to 64 per cent in the 2005/07 year.**



Although the proportion of findings of '*treatment not reasonable and necessary*' has increased from 45 per cent to 50 per cent of assessments during the same period, it is important to note that there has in fact been a reduction in the actual number of disputes assessed as '*treatment not reasonable and necessary*' from 166 such decisions in 2005/6 to 142 in 2006/7.

The decrease in the lodgement of treatment disputes tends to indicate that Compulsory Third Party insurers are managing these issues better, and that it is now generally only the complex or contentious treatment disputes that are coming to Medical Assessment Service for assessment, and in smaller numbers.

Accordingly it would be reasonable to expect an approximately 50:50 ratio in the findings of *treatment not reasonable and necessary*, given the nature of the treatment disputes now being assessed and the reduced volume.

#### **24. Medical assessment and dispute resolution process**

As part of its Eighth Review of the NIAA and the MAC the Committee intends to particularly examine issues relating to the medical assessment and dispute resolution process for motor accident claimants.

*Question:* Can the MAA provide to the Committee details on any recent enhancements to the system that contribute to making the medical assessment and MAS dispute resolution process a more claimant friendly environment?

#### **RESPONSE:**

Since the revised Medical Assessment Service Guidelines commenced in May 2006, the dispute resolution process has become more efficient. In addition, the Medical Assessor Code of Conduct, reinforced by regular bi-monthly Medical Assessment Service Assessors forums and newsletters have assisted in making the process more user friendly. The Motor Accidents Authority will report in its 2006-2007 annual report the lifecycle of Medical Assessment Service disputes.