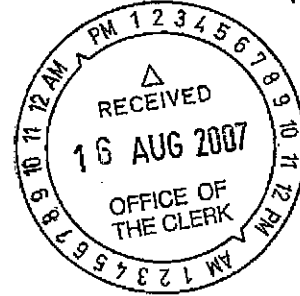




Minister for Education and Training  
Minister for Industrial Relations  
Minister for the Central Coast  
Minister Assisting the Minister for Finance

16 AUG 2007

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



Dear Ms Robertson

*Christine*

I refer to the Inquiry which was undertaken by 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*.

Enclosed is the New South Wales Government's response to the seventh report.

Yours sincerely

John Della Bosca MLC

*Received by me Thursday 16 August 2007*

*Lynn Lovelock  
Clerk of the Parliaments*

**Government response to the seventh 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 Motor Accidents Authority consider and report on possible scheme changes, including possible legislative changes, to further increase the percentage of premiums ultimately paid to claimants.

**Response:**

The Motor Accidents Authority will continue to monitor the motor accidents scheme with a view to reducing transaction costs associated with motor accident claims, including the possibility of legislative change, if required.

The recent expansion of the motor accidents scheme to include the new children's benefit is anticipated to reduce transaction costs as there should be less litigation over entitlement to claim. This is because it is no longer necessary for children aged up to 16 years who are injured in motor vehicle accidents to prove fault in order to access medical treatment, rehabilitation and care expenses. In addition, these expenses are no longer subject to any reduction for contributory negligence in all children's claims and this should further reduce the likelihood of litigation.

**Recommendation 2:**

That the Motor Accidents Authority provide the Committee with a separate and specific annual report on insurer profits, as required by section 28 of the *Motor Accidents Compensation Act 1999* (NSW), as soon as possible after the data and other information required to prepare the report are collected, and where possible, prior to the Committee's future hearings with senior officers of the Motor Accidents Authority and the Motor Accidents Council.

**Response:**

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

The Government response to the sixth report also noted that the Motor Accidents Authority is currently satisfying the 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.

**Recommendation 3:**

That the Motor Accidents Authority maintain its position against insurer requests for increased profit margins on NSW compulsory third party premiums.

**Response:**

This recommendation is supported. As is stated in the Motor Accidents Authority 2005-2006 Annual Report (p 87):

"Over the last six years, profit margins ranged from 7.5 to 10 per cent for individual insurers, with an industry average between 7.7 and 8.7 per cent. The Motor Accidents Authority considers this range of profit margins to be reasonable although the Motor Accidents Authority has ongoing discussions with the compulsory third party insurers who believe that the level of profit derived from the Taylor Fry methodology is not adequate".

**Recommendation 4:**

That the Motor Accidents Authority prepare a report on the impact of the 1999 reforms, including procedural reforms initiated by the Motor Accidents Authority in respect of legal costs, on the propensity to claim, and the impact of the fall in the propensity to claim on the profitability of the licensed insurers, and that the Motor Accidents Authority provide a copy of the report to the Committee.

**Response:**

The Motor Accidents Authority has commissioned Taylor Fry Actuaries to examine the fall in the frequency of motor accident claims and identify the types of injuries associated with the decline in the propensity to make a motor accident claim. The Taylor Fry report is anticipated to be finalised by the end of this year. The Motor Accidents Authority will consider the Committee's recommendation further in the light of the Taylor Fry analysis, and a copy will be provided to the committee.

As the drop in the frequency of motor accident claims is an Australia-wide trend, the Motor Accidents Authority is also participating in discussions with other States and Territories through the Heads of Compulsory Third Party Committee about this issue.

**Recommendation 5:**

That the Motor Accidents Authority continue to regularly review and, where necessary, update, the various guidelines issued by it in respect of the market behaviour of insurers, including the *Market Practice Guidelines*, *Claims Handling Guidelines* and *Treatment, Rehabilitation and Attendant Care Guidelines*.

**Response:**

The Motor Accidents Authority regularly reviews the *Market Practice Guidelines*, *Claims Handling Guidelines* and *Treatment, Rehabilitation and Attendant Care Guidelines*. The *Claims Handling Guidelines* were reviewed in July 2004 and July 2006 and reviews will continue to be conducted at least every two years. The *Market Practice Guidelines* were most recently reviewed in August 2006 and will continue to be reviewed every two years. The *Treatment, Rehabilitation and Attendant Care Guidelines* have been reviewed five times since their introduction in 1998, with the most recent reviews taking place in May 2004 and September 2006. The Motor Accidents Authority will continue to review the *Treatment, Rehabilitation and Attendant Care Guidelines* every two years.

**Recommendation 6:**

That the Motor Accidents Authority closely monitor insurer compliance with the *Treatment, Rehabilitation and Attendant Care Guidelines* to ensure that the medical needs of claimants are not prejudiced by commercial relationships between insurers and service providers.

**Response:**

The Motor Accidents Authority will continue to monitor insurer compliance with the *Treatment, Rehabilitation and Attendant Care Guidelines*.

It is noted that the *Treatment, Rehabilitation and Attendant Care Guidelines* (September 2006) expressly state under 'General Principles' that (p 2):

"The selection of a service provider should be determined by the claimant's needs, not the relationship between the insurer and the service provider. Any commercial relationship between the insurer and the service provider is not a factor to be considered when selecting a service provider".

The Motor Accidents Authority has not received any complaints to date alleging a conflict of interest between an insurer and their service provider.

**Recommendation 7:**

That the Motor Accidents Authority review its information strategy regarding its complaints handling procedures, and that the Motor Accidents Authority publish on its web-site appropriate information regarding the making of complaints regarding New South Wales compulsory third party insurers, and otherwise make the information available to members of the general public.

**Response:**

The Motor Accidents Authority has commenced a review of its complaints handling procedures. It is anticipated that an information package about making complaints about compulsory third party insurers will be available on the Motor Accidents Authority website by the end of this year.

**Recommendation 8:**

That the Motor Accidents Authority review the *Claims Handling Guidelines* to determine whether the Guidelines, or any other Guideline issued by the Motor Accidents Authority, should be amended to ensure that insurers provide appropriate information to potential Nominal Defendant claimants.

**Response:**

The Motor Accidents Authority proposes to amend the *Claims Handling Guidelines* to require an insurer to respond to a claimant's reasonable request for information and assistance in making a claim, including a Nominal Defendant claim. It is anticipated that this amendment will proceed with other amendments under consideration and be implemented by the end of this year.

**Recommendation 9:**

That the Motor Accidents Authority continue to monitor the number of whole person impairment disputes referred to the Medical Assessment Service for resolution with a view to further reducing, if possible, the number of disputes regarding whole person impairment.

**Response:**

The Motor Accidents Authority continues to monitor the number of whole person impairment disputes referred to the Medical Assessment Service. The Motor Accidents Authority has also implemented the following initiatives with a view to further reducing the number of disputes concerning whole person impairment:

- **Whole Person Impairment Awareness Project.** This project, which commenced in February 2005, is designed to improve understanding of the method for assessing whole person impairment by parties to disputes and their representatives as well as 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 and therefore may not need to be referred to the Medical Assessment Service, as well as to better identify those borderline disputes that clearly do need to be referred to the Medical Assessment Service for assessment.
- **Reasons for Rejecting Non-Economic Loss Damages.** The Motor Accidents Authority is committed to the principle of encouraging insurers to provide clear reasons for rejecting a claimant's entitlement to non-economic

loss damages when their injuries are considered to result in impairments below the whole person impairment threshold. The Motor Accidents Authority is currently consulting with insurers regarding proposed amendments to the *Claims Handling Guidelines* to give effect to this principle.

**Recommendation 10:**

That the Motor Accidents Authority, on receipt of the final report of the Justice Policy Research Centre into user perceptions of the Motor Accidents Assessment Service, prepare a response outlining any changes the Motor Accidents Authority intends to make to the administration of Motor Accidents Assessment Service, and identifying any possible amendments to *Motor Accidents Compensation Act 1999 (NSW)*, in light of the findings of the Justice Policy Research Centre, and that the Motor Accidents Authority provide this response to the Committee.

**Response:**

The Motor Accidents Authority is currently considering the final report of the Justice Policy Research Centre on stakeholder perceptions of the Medical Assessment Service and Claims Assessment and Resolution Service. It is anticipated that a response to the Justice Policy Research Centre's findings will be available for the Committee by the end of 2007.

**Recommendation 11:**

That the Motor Accidents Authority monitor the implementation of the revised Motor Accidents Authority *Guidelines for the Assessment of Permanent Impairment*, and that the Motor Accidents Authority report to the Committee on the implementation of the Guidelines in the course of the Committee's next review.

**Response:**

The Medical Assessment Service is developing a monitoring mechanism to identify the types of injuries that are being assessed as greater than 5% but less than 10% whole person impairment. The Motor Accidents Authority will report on its monitoring of the implementation of the revised Motor Accidents Authority *Guidelines for the Assessment of Permanent Impairment* in its 2006-2007 Annual Report.

**Recommendation 12:**

That the Minister for Commerce review the operation of the *Motor Accidents Compensation Act 1999 (NSW)* in respect of problems associated with the non-binding status of some Motor Accident Service assessments, with a view to identifying any possible legislative changes.

**Response:**

As a result of legislative changes which took effect in October 2006, the medical assessment of future treatment needs is now binding. This reform addresses a key concern identified in the Committee's report. The Government is also considering further legislative change in response to the Committee's recommendation.

**Recommendation 13:**

That the Motor Accidents Authority report to the Committee on its further efforts to analyse the impact of the costs regulation on claimants with a view to determining whether the regulation significantly disadvantages claimants at the expense of insurers.

**Response:**

The Motor Accidents Authority has previously reported to the Committee on the difficulties encountered in obtaining information about lawyers' billing practices in its earlier attempt to assess the impact of the costs regulation on claimants. As clear evidence could only be obtained from information held by lawyers, the General Manager of the Authority has written to the President of the Law Society of NSW requesting co-operation in accessing the necessary lawyer file information to jointly commission an independent assessment of the impact on claimants of the 'opt-out' provision of the cost regulation. This process would also assist the Authority to give further consideration to the anecdotal concerns raised in relation to the costs impact on claimants when litigation is initiated by insurers following a Claims Assessment and Resolution Service assessment.

**Recommendation 14:**

That the Motor Accidents Authority remain in consultation with key user groups, including representatives of the legal profession, insurers and assessors, with a view to ensuring the continual improvement of the Medical Assessments Service and the Claims Assessment and Resolution Service.

**Response:**

The Motor Accidents Authority has established the Motor Accidents Assessment Service Reference Group to provide a representative consultative forum between the Motor Accidents Authority and its key stakeholders on significant issues of policy and procedure and to contribute to continuous improvement in the timely and cost effective resolution of disputes. The Motor Accidents Assessment Service Reference Group comprises representatives from the insurance industry, legal profession, medical assessors, claims assessors and the Motor Accidents Authority and meets at least quarterly.

**Recommendation 15:**

That the Motor Accidents Authority consult with all interested stakeholders, including the New South Wales Parliament Joint Standing Committee on Road Safety, prior to finalising the Road Safety and Rehabilitation Strategic Plan.

**Response:**

This recommendation is supported. On 25 September 2006 the Manager, Injury Prevention and Management, Motor Accidents Authority and Principal Advisor, Road Safety, Motor Accidents Authority appeared before the Joint Standing Committee on Road Safety in its inquiry into the road safety situation in New South Wales over the period 2000-2006. During the public hearing the Motor Accidents Authority representatives outlined the current strategic directions and priorities of the Motor Accidents Authority in the area of road safety.

**Recommendation 16:**

That the Motor Accidents Authority report to the Committee on the reasons for its decision to discontinue general road safety research grants, and on the merits of the Motor Accidents Authority funding a scheme to promote the development of early career road safety researchers.

**Response:**

A review of injury prevention programs in 2005 by McGrath Nicol & Partners recommended that the Motor Accidents Authority minimise funding for general research. The rationale behind this recommendation was that such projects often did not yield sufficient results for the development of countermeasures. It was also found that research required a long term commitment and that this may be a more appropriate function for agencies other than the Motor Accidents Authority.

The Motor Accidents Authority will continue to fund and commission research on priorities specific to the compulsory third party scheme. This could include research into program development for areas such as children, young people and vulnerable road users such as pedestrians and motorcyclists.

The Motor Accidents Authority already provides infrastructure funding of up to \$120,000 per annum to the Injury Risk Management Research Centre at the University of New South Wales. One Injury Risk Management Research program involves the supervision of students undertaking PH.D studies. This program promotes the development of early career road safety researchers.

**Recommendation 17:**

That the Motor Accidents Authority advise the Committee of the implementation of the recommendations of the Country Road Safety Summit that required action by the Motor Accidents Authority.



**Response:**

In response to recommendation 3.4 of the Country Road Safety Summit –*The Government undertake and /or support research into fatigue and performance monitoring and detection technology* - the Motor Accidents Authority engaged the NSW Injury Risk Management Research Centre to undertake a literature review on the status of research into fatigue performance monitoring and detection technology. The Roads and Traffic Authority routinely conducts fatigue research and monitors emerging fatigue detection technologies that are being developed around the world. This information is used to ensure that new fatigue strategies are being explored where appropriate and that New South Wales driver fatigue policy is based on worlds best practice.

**Recommendation 18:**

That the Motor Accidents Authority continue to work with interested stakeholders to develop a meaningful measure of health outcomes as a criterion of effectiveness of the New South Wales motor accidents scheme.

**Response:**

The Motor Accidents Authority has contracted KPMG to facilitate the development of options to maximise a health outcomes approach to the compulsory third party scheme. The issues that will be considered include:

- **Cost of treatment and rehabilitation.** Both the quantity and quality of services will be considered. The Motor Accidents Authority will be reviewing the delivery of health services across a range of injury types in the motor accidents scheme. This will include considering program fees and the use of outcome measures for fee agreements and/ or regulation.
- **Evidence based practice.** Particular emphasis will be placed on earlier identification of those injured people with poorer prognosis, to allow for differential medical management and intervention to improve long term health outcomes.
- **Return to work.** This will involve identifying potential system barriers to return to work and to create incentives for employers and injured workers to participate.

It is anticipated that there will be consultation on possible options with motor accident scheme insurers and health providers by October 2007.

**Recommendation 19:**

That the Motor Accidents Authority continue to work with interested stakeholders to promote improved health outcomes in the New South Wales motor accidents scheme, including in respect of anxiety, chronic whiplash, spinal injury and brain injury.

## **Response:**

This recommendation is supported. In 2006 the Motor Accidents Authority finalised its review of the Guidelines for the Neuropsychological Assessment of Mild and Moderate to Extremely Severe Traumatic Brain Injury in consultation with representatives from the medical colleges, medical professional organisations, legal representative bodies and the insurance industry. The Guidelines set out the process for assessing and reporting cognitive impairment following traumatic brain injury and are designed for use by neuropsychologists, clinical psychologists, medical providers, rehabilitation providers, claimants' solicitors, compulsory third party insurers and their solicitors.

There are four separate Neuropsychological Assessment Guidelines. These include Guidelines for the neuropsychological assessment of children with mild traumatic brain injury; children with moderate to extremely severe traumatic brain injury; adults with mild traumatic brain injury and adults with moderate to extremely severe traumatic injury.

The report on the *Health Outcomes of Claimants with Whiplash Associated Disorders* was completed and published in April 2007. The study, commissioned by the Motor Accidents Authority, provides a comparative analysis of the health outcomes of people with whiplash as a result of a motor vehicle accident at two years post injury. The Motor Accidents Authority will review the *Guidelines for the Management of Acute Whiplash Associated Disorders* in the light of the study findings.

Work is continuing with the Department of Ageing, Disability and Homecare to jointly manage the Community Participation Program. The program involves the trial and evaluation of a model of service co-ordination to improve the community participation of people with a newly acquired spinal cord injury who live in New South Wales. Under the project, participants receive assistance to move back into the community for up to twelve months after leaving hospital. Management of the project has now been transferred to the Lifetime Care and Support Authority.

During 2007 the Motor Accidents Authority will review the *Anxiety Guidelines*, which are designed to assist general practitioners and other health care professionals involved in the care of people with anxiety conditions following a motor vehicle accident.

## **Recommendation 20:**

That the Motor Accidents Authority review its role in respect of the provision of trauma care services for persons injured in motor accidents in New South Wales to determine whether the Motor Accidents Authority can contribute to placing trauma care services on a more sustainable basis.

**Response:**

The Government has committed to providing \$7 million in Motor Accident Authority funding for Careflight to expand its Head Injury Retrieval Trial to the Central Coast. Further consideration is being given by the Motor Accidents Authority to assist in partnerships with other stakeholders in the field of trauma care services.

**Recommendation 21:**

That the Minister for Commerce review the operation of section 81 of the *Motor Accidents Compensation Act 1999* (NSW) in light of the decision of the NSW Court of Appeal in *Maile v Rafiq* [2005] NSWC 410, with a view to determining whether the section should be amended to ensure that motor accidents disputes are resolved expeditiously.

**Response:**

It should be noted that the Motor Accidents Authority already monitors compulsory third party insurers' compliance with their obligations under section 81 of the *Motor Accidents Compensation Act 1999*. The operation of section 81 of the Act is subject to ongoing consideration in the light of court decisions.

**Recommendation 22:**

That the Minister for Commerce develop an information strategy to bring the existence of the gap between compulsory third party and public liability insurance to the attention of New South Wales compulsory third party policy holders and policy brokers.

**Response:**

The Motor Accidents Authority has updated its website to provide information advising of the possibility of such a gap. The Motor Accidents Authority has previously raised the issue with the Insurance Council of Australia and the potential for gaps in public liability insurance is under consideration by the insurance industry.