Government Response

To the Standing Committee on Public Accounts Report No. 22

Inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011

Presented by
Mr Andrew Barr MLA
Treasurer

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ACT Government Response

Government Response to the Standing Committee on Public Accounts Report No. 22:
Inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011.

Introduction

The Standing Committee on Public Accounts conducted an inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011 (the Bill). The main objectives of the Bill are to amend the *Road Transport (Third-Party Insurance) Act 2008* (the Act) to further the objectives of the Act and to harmonise certain provisions with those of New South Wales. In particular, to:

- Establish an evidence-based statutory entitlement process for motor accident victims to receive payment of medical expenses. This would replace the existing system for claiming damages for non-economic loss.
- Harmonise provisions for calculating compensation for economic and non-economic loss arising from injuries caused by motor vehicle accidents.

This Government Response addresses the 13 recommendations of the inquiry report. The Government has agreed with two recommendations, notes six, agreed in principle to four recommendations and disagrees with one recommendation.

Responses to Committee Recommendations

Recommendation 1

> *The Committee recommends that the 28 day timeframe for notice to be given to the injured person's insurer, as required under section 72 of the Road Transport (Third-Party Insurance) Act 2008, be amended to provide some discretionary extension where there may be a good reason why a crash victim has not been able to give the notification within that time.*

ACT Government Position

Agreed

Section 72 of the Act provides for early payment of up to $5,000 for medical expenses for persons who are injured and not at fault in motor vehicle accidents. Eligibility for the early payment is subject to the injured person notifying his or her insurer and providing certain information within 28 days after the motor accident.

The Act already makes provision for extension of time limits for compensation claims under Chapter 4 of the Act while a claimant is under a legal disability (as that term is defined in the Limitation Act 1985). The Government will seek the next available opportunity to amend the Act to provide that an injured person is not required to comply with the 28 day notification period set out in section 72 of the Act while the person is under a legal disability.

The Government will also consider extending the early payment scheme to all motor crash victims, irrespective of fault.

Recommendation 2

> *The Committee recommends that the ACT Government (and the CTP Insurer) should more widely promote the availability of early payment for treatment of motor crash injuries as provided for under section 72 of the Road Transport (Third-Party Insurance) Act 2008.*

ACT Government Position

Agreed

The 2008 reforms were accompanied by a communication program. The Government will consider a further communication strategy aimed at raising community awareness and informing persons who have been injured in motor accidents of the provisions for early payment for medical expenses under section 72 of the Act.

Recommendation 3

> *The Committee recommends that the ACT Government review the provisions concerning compulsory conferencing in the Road Transport (Third-Party Insurance) Act 2008 to determine a more practical approach.*

ACT Government Position

Agreed in Principle

Clauses 12 to 14 of the Bill are intended to clarify the procedures in section 139 of the Act regarding the certificate of readiness and the compulsory conference. The Government will further consider these provisions, in the context of the proposed amendments, to establish an approach which is practical and consistent with the policy intent.

The policy intent is that the parties should:

1. Exchange full information.
2. Then hold a compulsory conference.
3. Then, if necessary, bring court proceedings.

This process aims to discourage parties from withholding information immediately prior to or during court proceedings. The insurer is compelled by law to provide third party insurance and the insured person is compelled by law to buy insurance. It is therefore appropriate that the principles of model litigation, including fair treatment and transparent information exchange, are applied to both the insurer and the insured.

The Committee's report cites evidence from lawyers to the effect that the requirement in the Act that parties exchange certificates of readiness for trial 7 days prior to the compulsory conference raises technical and ethical difficulties for lawyers because certification is required to occur before the parties bring court proceedings for damages.

Clause 14 of the Bill would amend section 139 (3) to clarify that the certificate of readiness for trial is a certificate under the Act and not a certificate under court rules. Section 136 of the Act provides that the compulsory conference is to occur before a claimant for a motor accident claim brings a court proceeding. Then section 139 provides that the certificates of readiness are to be given 7 days before the compulsory conference. The intention is that certificates of readiness are to be given before court proceedings are brought; it is the Government's understanding that there would be no technical or ethical dilemma.

The Government further notes that the requirement to indicate readiness for trial prior to the compulsory conference has been retained in section 51B (5) (d) and section 51B (6) (a) of the *Motor Accident Insurance Act 1994* (Qld) and not removed as suggested by the Committee report at paragraph 3.24.

Recommendation 4

> *The Committee recommends that the ACT Government in response to this report should either: (a) detail an alternative mechanism to using the AMA Guides as a definitive threshold for determining non-economic loss impairment; or (b) detail how the use of AMA Guides will be modified to address the issues raised concerning their sole use as a measure of impairment for non-economic loss.*

ACT Government Position

Noted

Introducing a threshold for non-economic loss aims to turn the incentives around and channel injured people below the threshold into early treatment and rehabilitation options.

The purpose of introducing a statutory minimum impairment threshold specific to non-economic loss is to promote certainty and predictability in this category of damages which is often considered to be subjective.

An injured person can still claim for both past and future loss of earnings, the full cost of their medical treatment and rehabilitation, the cost of home and vehicle modifications and attendant care where that is required. Non-economic loss damages will continue to be payable for the more seriously injured, that is, those above the permanent impairment threshold.

The amendments proposed in the Bill provide that the American Medical Association Guide to Evaluation of Permanent Impairment 5th edition (AMA 5) would be used to determine the 15% impairment threshold for an injured person's eligibility to get compensation for non-economic loss if no impairment guidelines have been notified.

The Government notes the issue raised in the Committee report that the AMA Guides do not assess the effect of injuries on a person's ability to continue to engage in an occupation and enjoy quality of life. They only assess relative ability to perform daily living functions, and accordingly are relevant to personal injury liability. Therefore, the Government believes that use of the AMA Guides, as are used in other jurisdictions (for example, AMA 5 is used in the ACT and NSW Workers Compensation Schemes) represent the most effective way of assessment.

Notwithstanding, the Government will explore the feasibility of complementing the AMA Guide with objective measures for assessing the effects of an injury on a person's ability to continue to engage in an occupation and enjoy quality of life.

Recommendation 5

> *The Committee recommends that the statutory discount rate, as per section 155A of the Road Transport (Third-Party Insurance) Act 2008, remain at three per cent.*

ACT Government Position

Noted

The ACT is the only jurisdiction not to have prescribed a discount rate for future economic loss lump sum damages, so the 3% discount rate set by the High Court in 1981 still applies. The Bill proposes a 5% discount rate. NSW and QLD have prescribed a 5% discount rate. Victoria has prescribed a 6% discount rate.

The Government may consider the issue of discount rates in the context of wider proposals for reforms relating to lifetime care for catastrophic, traumatic injury and disability.

Recommendation 6

> *The Committee recommends that the ACT Government, to the extent that this work does not already take place, should keep a watching brief on all jurisdictional reviews of compulsory third party insurance schemes.*

ACT Government Position

Noted

It is normal practice for the Treasury Directorate to keep a watching brief on all jurisdictional reviews of compulsory third party insurance schemes. The Treasury Directorate regularly participates in inter-jurisdictional consultation on schemes and proposals for change in all Australian jurisdictions and New Zealand.

Recommendation 7

The Committee recommends that the ACT Government advise the ACT Legislative Assembly of:

(a) how it intends to address the issue of lifetime care for people catastrophically injured, in the context of the development by the Commonwealth of proposals regarding the introduction of a National Disability Insurance Scheme (NDIS); or

(b) in the absence of a NDIS, how it will examine the feasibility of lifetime care for people catastrophically injured in motor vehicle crashes.

ACT Government Position

Agreed in Principle

The Territory is participating with other jurisdictions to progress the development of both:

- a National Disability Insurance Scheme to cover long-term care and support of people with disability and in this respect the Territory has been successful in becoming a launch site for an NDIS pilot in 2013;
- a National Injury Insurance Scheme such as that proposed by the Productivity Commission in 2011 to provide long-term care and support for people who experience catastrophic injury as a result of motor vehicle, work, medical, criminal and general accidents.

Recommendation 8

The Committee recommends that, if the National Disability Insurance Scheme (NDIS) does not proceed in a timely fashion, the ACT Government should examine the feasibility of introducing a no-fault lifetime care scheme for people who suffer catastrophic injury.

ACT Government Position

Agreed in principle

See responses to recommendations 5 through 7 inclusive.

Recommendation 9

The Committee recommends that after considering the findings of the:

(i) Standing Committee on Public Accounts inquiry into the Road Transport (Third Party Insurance) Amendment Bill 2011;

(ii) Statutory review pursuant to section 275 of the Road Transport (Third Party Insurance) Act 2008; and

(iii) NSW Government's internal review of the NSW CTP insurance scheme,

the ACT Government may choose to bring forward or propose reform to the ACT CTP Insurance Scheme – but that the Road Transport (Third Party Insurance) Amendment Bill 2011, is not supported.

ACT Government Position

Noted

The Government is disappointed at the Committee's recommendation to not support the Bill in its existing form. The Government remains concerned about the broader cost impacts on households and motorists of the current scheme on significantly increasing premiums.

The Government will continue to consider reforms to the ACT CTP scheme, depending on progress with developments in other jurisdictions, and in the context of the Commonwealth proposals for a National Disability Insurance Scheme (to cover long-term care and support of people with disability) and a National Injury Insurance Scheme (to provide long-term care and support for people who experience catastrophic injury).

The legislative scheme for compulsory third party insurance will be the subject of ongoing, incremental reform in response to changes in local and inter-jurisdictional policy development and economic and industry circumstances.

Recommendation 10

> *The Committee recommends that the Road Transport (Third-Party Insurance) Amendment Bill 2011, in its current form, should not be supported by the ACT Legislative Assembly.*

<u>ACT Government Position</u>

Disagree

The Government is disappointed at the Committee's recommendation that the Bill should not be supported in its existing form. The Government remains concerned about the broader cost impacts on households and motorists of the current scheme on significantly increasing premiums.

Recommendation 11

> *The Committee recommends that any significant changes to NSW CTP insurance legislation should automatically trigger an internal government review of the ACT CTP insurance legislation. The conclusions of these reviews should be tabled in the ACT Legislative Assembly.*

<u>ACT Government Position</u>

Noted

As signalled in the Government's response to recommendation 9, the Government will continue to consider potential CTP reforms in light of changes in other jurisdictions. In particular, the legislation will need to be reviewed again in line with any possible progress of the NIIS.

Recommendation 12

> *The Committee recommends that the ACT Government should place greater emphasis on achieving 'Vision Zero' within the transport system.*

<u>ACT Government Position</u>

Agreed in Principle

In November 2011, the ACT Government released its ACT Road Safety Strategy. The *ACT Road Safety Strategy 2011-2020* is influenced by the Swedish Government's *Vision Zero* policy, which ultimately aims for no one being killed or seriously injured within the road transport system.

There are three main strategic goals for the Strategy:

- Reductions in ACT road trauma that meet National Road Safety Strategy objectives
- An ACT community that shares the responsibility for road safety
- Agencies and stakeholders working together to improve road safety

The Strategy and *ACT Road Safety Action Plan 2011-2013* address strategic road safety goals and objectives through an integrated approach using a range of education, encouragement, engineering, enforcement, evaluation and support measures.

Recommendation 13

The Committee recommends that the ACT Government establish a consultative working group comprised of appropriate experts in CTP insurance scheme design from all sectors to propose an alternative scheme or model that supports a culture in the scheme of all stakeholders working to the best advantage of the scheme itself. The working group, amongst other things, should consider:

a) alternative compensatory mechanisms to damages for non-economic loss (NEL) that have the effect of restoration for injured people; and

b) alternative mechanisms for controlling premium costs other than limiting access to common law.

<u>ACT Government Position</u>

Noted

The Government has in the past and will in future continue to consult broadly with experts in the field, appropriate stakeholder representatives and bodies, and with the other jurisdictions.

2012

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS REPORT NO. 22
INQUIRY INTO THE ROAD TRANSPORT (THIRD-PARTY INSURANCE) AMENDMENT BILL

TABLING SPEECH

Presented by
Andrew Barr MLA
Treasurer

Mr Speaker,

As Members will be aware the Government's response to the Standing Committee on Public Accounts Report No. 22, Inquiry into the *Road Transport (Third-Party Insurance) Amendment Bill 2011* (the CTP Bill), and (the PAC Report) was tabled out of session on 9 August 2012 in accordance with standing order 154A.

The Government's response was tabled in this way for the benefit of Members, in anticipation of the debate during this sitting period of the Government's CTP Bill.

I seek leave formally to table the Response in session at this time, and to make a short statement.

Mr Speaker,

Members will have seen the Response agrees with three of the Report's Recommendations, agrees in principle with five recommendations, notes four Recommendations, and disagrees with one recommendation.

Reform of the CTP system is a complex issue, and I thank the Committee for their efforts to contribute to the policy debate around these reforms.

We are, however, disappointed that the Committee has recommended that the Assembly should not support the Bill.

Mr Speaker,

CTP premiums have risen very significantly in the last few years. We need only consider the recent increase of around $50, or 10 per cent, which will come into effect on 1 September this year, to see that.

Mr Speaker,
We now have 263,000 premium paying motorists in the ACT. These reforms aim to reduce the costs for all 263,000 of them.
Getting the framework right to encourage competition in CTP providers is one such way to achieve this.

Introducing competition puts downward pressure on prices, and it facilitates the creation of better products. Without efforts to encourage competition, our scheme will continue to be unfair and unsustainable.

We will continue to see significant premium increases such as the most recent increase.

This reform is also aimed at providing a system that focuses on return to health, for that very small number unfortunate to be in some way involved in a crash.

The Government remains committed to this reform, a reform that has very wide benefits.

Mr Speaker,
For all the claims and counterclaims of those who made submissions to the PAC Report, the numbers speak for themselves.

Something is deeply wrong with our CTP system when Canberrans are practically guaranteed nationally high CTP premiums.

Further reform of the CTP arrangements in the ACT is necessary in the interests of scheme members, that is, the Canberra community, as well as future claimants.

That is why the Government cannot agree with the Committee's recommendation that the Bill should not be supported at this time.

I will now turn briefly to address some specifics of the debate around this Bill.

<u>No Access to Compensation</u>

First, concerns were raised that individuals will not be able to access compensation under the legislation.

This is not so. Every person negligently injured in a motor crash in the ACT will remain entitled to, and be able to access, compensation.

Further, the Bill facilitates access to the medical attention that accident victims require and deserve.

And of course, it provides a direct pathway to judicial review in connection with impairment assessment disputes, preserving a right to contest access to non-economic loss and obtain a court decision with respect to it.

<u>Massive Insurer Profits</u>

Second, concerns were raised that insurers will reap massive profits.

I am advised the CTP Regulator has not permitted NRMA's profit to increase since the inception of the 2008 CTP Act, notwithstanding its monopoly position.

Further, the NSW data shows that medical and rehabilitation expenditure under that scheme is more than double that which is paid under the ACT scheme.

By contrast, the proportion of claims for non-economic loss and legal fees expenditure in the NSW scheme is almost half of that in the ACT.

Mr Speaker,
The Government has considered the Committee's report carefully. Many of the committee's recommendations make sense, and we have agreed, fully or in-principle, with those recommendations.

Some of the committee's recommendations reflect activities and processes the Government has for a number of years, and will continue to undertake as a matter of course. These include:

- monitoring developments in CTP schemes in NSW and the other jurisdictions (recommendation 6),
- communication activities to publicise and educate on the features of the CTP arrangements (recommendation 2); and
- activities to promote road safety in the ACT including supporting 'Vision Zero' within the ACT transport system (Recommendation 12). Members will recall that Mr Corbell tabled the ACT Road Safety Strategy 2011-2020 and Road Safety Action Plan 2011-2013 on 15 November 2011.

Other recommendations raised useful suggestions, and the Government welcomes them.

It is particularly pleasing to see strong support in recommendations for the early payment of up to $5,000 of medical expenses, as introduced by Part 3 of the 2008 CTP Act, and for this to be more widely promoted and in addition, made more flexible.

Notwithstanding the views of some at the time who suggested reform was unnecessary, it appears these have been successful in starting a reform process. But the premium increases over recent years indicate that further reform is needed.

As to Government information, for the information of members, approximately 300,000 brochures about the availability of early payments were distributed through Canberra Connect shopfronts and posted out with all registration renewals in 2009-10.

Nevertheless, the Government accepts the Committee's suggestion. The Treasury Directorate will seek the active co-operation of NRMA Insurance and ACT medical practitioners to publicise this scheme and its benefits further.

The Government would welcome it if those of our legal community who take out advertising space could promote the scheme as well.

With regard to recommendations seven and eight, concerning the NDIS and NIIS, the Public Accounts Committee has asked the Government to advise how we propose to address lifetime care, either in the context of the NDIS/NIIS, or as a stand-alone ACT scheme.

As Members would be aware, the ACT has been chosen as a launch site for the NDIS. In this context, I am pleased to advise Members of the Government's continued commitment to introduce no-fault lifetime care into the ACT through this important initiative.

We will continue to work to explore and develop these arrangements, including the NIIS, in conjunction with other jurisdictions to progress these important reforms.

Mr Speaker,

In NSW, the 1999 reforms, which the Government's Bill emulates in large part, paved the way for the successful introduction of that state's Lifetime Care Scheme in 2006. Without similar reform to the existing CTP law in the ACT, there is no realistic prospect of a lifetime care scheme being affordable in this jurisdiction.

Mr Speaker,

The Government is also aware that some are advocating that we shift to a risk rating approach for our CTP premiums. The Government considers that this would have a significant and disproportionate impact on older and younger drivers. These drivers are often those on lower-incomes, who could least afford the increased premiums.

It would make little sense to segment our small CTP pool more finely than it currently is, when the major issue is the fact that our pool is small compared to the risk profile. Changes such as risk rating would be more beneficial once a competitive market exists, and for that, we must shift the risk profile.

Mr Speaker,
For the information of members, as outlined in our response to the PAC Report, the Government will be proposing some amendments to the CTP Bill. It would be more relevant to speak about those issues at the time of the debate.

I hope that Members will support the Government's amendments and after reviewing the Government's response to the PAC Report, likewise see fit to support the Bill in its entirety.

I commend the Government's Response to the Assembly.