Speech by

Hon. D. HAMILL

MEMBER FOR IPSWICH

Hansard 16 May 2000

MOTOR ACCIDENT INSURANCE AMENDMENT BILL

Hon. D. J. HAMILL (Ipswich—ALP) (Treasurer) (5.31 p.m.): I move—

"That the Bill be now read a second time."

Since 1936, Queensland has provided a Compulsory Third Party (CTP) motor vehicle insurance scheme based on the principles of common law. In 1994, the scheme underwent a significant reform focusing on the availability of rehabilitation and early resolution of claims. The current scheme is underwritten by seven private insurers and premium rates are determined by Government.

In April 1999, the Government, in granting approval for an increase in CTP premiums effective from 1 July 1999, announced a review of the scheme, recognising that the current trend of premium increases was unsustainable. The 1999 increase followed a significant premium rise in 1996. The terms of reference for the review were to examine the fundamentals of the scheme including scheme design, affordability and the role of Government. A review of the Motor Accident Insurance Act 1994 in terms of the National Competition Policy Agreement was also undertaken. Actuary and former CEO of Suncorp, Mr Bernard Rowley, chaired the review committee and the members were Mr Noel Mason, former CEO of RACQ; Mr Henry Smerdon, former Under Treasurer; and Mr Walter Tutt, practising solicitor.

I would like to place on record my sincere appreciation of the efforts of the committee members and the staff of the Motor Accident Insurance Commission during the process of the review and I also thank the members of the public and other interested parties who contributed to the process.

Arising from the review, and with the intent of curtailing the rise in the numbers of small claims, an amendment to the Act to prohibit the soliciting of injured persons to make claims was passed by the Parliament and received assent on 14 December 1999.

The main findings of the review committee were that, while there were emerging pressures and issues which needed to be addressed, the scheme had performed reasonably well, being able to sustain full common law rights within a generally affordable set of premiums. However, premium increases in the past three years had placed pressures on affordability. Key recommendations in the report and the resultant proposed amendments relate to strategies to ensure the affordability and efficiency of the scheme into the future.

The review committee recommended the establishment of an affordability index for the scheme. The Bill bases the index on the percentage that the highest amount set by an insurer for a Class 1 vehicle represents relative to average weekly earnings and sets the index at 45%. The Bill stipulates that, if the affordability index is exceeded, the Motor Accident Insurance Commission must make a report to the Minister on the effect of current trends and may recommend any changes it believes are necessary to counter any undesirable trends. As soon as practicable after receiving this report, the Minister must lay a copy of the report before the House.

The Bill adds to the functions of the commission the responsibility to monitor the efficiency of the scheme and, in particular, the proportion of the funds of the scheme paid to claimants or applied for their direct benefit. The review committee considered that the proportion of premium paid to injured parties, which has averaged around 63% over the past five years, is too low. It is anticipated that the proposed amendments in relation to claims management efficiencies, legal costs and insurer competition will improve efficiency by at least 5%.

The National Competition Policy aspect of the committee's report indicated that the current CTP scheme would not satisfy the NCP public benefit test. Accepting that there should be greater competition in the scheme, the committee considered various models operating in other Australian States and overseas. In most States, the model is delivered by a Government-run monopoly, with a single insurer monopoly in the ACT. Queensland and New South Wales are the only States with multiple insurers.

The "green slip" system operating in New South Wales, while providing for competitive premium-setting, does inconvenience motor vehicle owners somewhat in requiring that they obtain CTP insurance independently of the motor vehicle registration payment transaction. The committee was also conscious of the likely added scheme costs which could ensue with individual underwriting and was mindful of the relatively low costs associated with the delivery of the product through the Queensland Transport motor vehicle registration system. Other benefits flowing from the linkage of CTP insurance with motor vehicle registration are the reduction in the level of unregistered/uninsured vehicles and the general convenience the system offers to motor vehicle owners.

The committee recommended the introduction of a competitive premium model, referred to as the vehicle class filing model, where each insurer is required to file a premium for each vehicle class every three months, within a floor and ceiling premium range determined by the Motor Accident Insurance Commission. Prior to the commission setting the floor and ceiling ranges, it is required to seek submissions from the insurance industry and major motoring organisations on factors which these organisations consider may impact on these ranges. At least once every year, the commission is also required to obtain an actuarial analysis of the scheme and, at least once every quarter, obtain an actuarial review of current trends which could affect the financial soundness of the scheme.

Following the commission advising insurers of the floor and ceiling ranges, each licensed insurer is then required to file a premium for each class of motor vehicle. Failure by an insurer to file a rate for each class within the ranges determined by the commission could see the insurer's licence withdrawn. This provision is critical for the stability of the scheme and will disincline insurers who might, for commercial reasons, wish to opt in and out of the premium-setting process.

The Bill provides for the continued fixing by regulation of levies for hospital and emergency services and the Nominal Defendant as well as the scheme administration and the Queensland Transport administration fee. The main change is that they will be set as monetary amounts as opposed to the current percentage of premium. It is proposed that all levies and fees be itemised on the motor vehicle registration notice.

The review committee received a number of submissions suggesting that there are many barriers to an insurer gaining market share and that the process for changing insurer needed to be made more flexible for the motor vehicle owner. To facilitate the process, the Bill provides for a nomination of change of insurer to be made at any time during the year, taking effect at the next renewal date. There is no limit to the number of times the registered owner may nominate a change and the nomination may be made in any way acceptable to Queensland Transport. In fact, the motor vehicle owner will be able to do this over the phone and, no doubt, eventually on-line through the Internet. With the flexibility to change insurer, it is important that the registration database is the definitive record as to the insurer on risk. This carries through to the 30-day period of grace which comes into effect if a renewal is not paid on or before the due date. The latest nominated insurer on the database is the insurer at risk for a 30-day period of grace.

With the introduction of the competitive premium regime comes a range of premiums and the possibility that registered owners may not always select the right rate for their nominated insurer. The Bill proposes that, where a payment is less than the total amount payable but within specified tolerances, Queensland Transport may accept the payment. Queensland Transport then deducts from the payment the full amounts for registration and CTP-related levies and fees, with the balance of the amount being forwarded to the insurer. The insurer is responsible for any follow-up of the short-payment. It is important that the number of unregistered and therefore uninsured vehicles is not increased owing to the rejection of payments which are marginally short.

It is recognised that this is a compromise with a deregulated premium regime delivered through the Queensland Transport system, but it would be unreasonable for Queensland Transport to have to bear the consequences of payment shortfalls where, under a regulated premium regime, it had a system in place which did not allow short-payments of more than $1. The Motor Accident Insurance Commission will closely monitor trends in the incidence of short-payments to ensure the system is not exploited to the point where it impacts on the overall level of premium rates. In the future, it may be that changes are introduced which will enable an adjustment to the period of registration/insurance to correlate with the total amount paid.

The Bill provides for a change in the way levies and administration fees are collected and remitted to the commission. Currently, levies and fees form part of the premium and are remitted to the commission by the insurers. Being part of the insurance premium, they attract GST. The new method

which separates the levies and fees from the premium and has Queensland Transport remitting them direct to the commission will save the motorist having to pay GST on these components.

Since 1988, liability in respect of a trailer has been covered under the policy of insurance on the hauling vehicle. In 1994, in recognition of the gaps in cover, in particular liability arising from an accident involving an unattached trailer, the legislation provided for gratuitous insurance cover by the Nominal Defendant but limited cover to accidents in Queensland. There still remained problems outside of Queensland in which a Queensland registered trailer was unattached or hauled by a vehicle registered in another State which did not have the trailer extension on the vehicle's policy of insurance.

This Bill extends the cover provided by the Nominal Defendant Australiawide for trailers with a gross vehicle mass of 4.5 tonnes or less. Trailers over 4.5 tonnes in gross vehicle mass will retain through the Nominal Defendant the existing gap cover for accidents in Queensland. However, optional insurance will be available to owners who require Australiawide coverage. This cover will be the same as afforded trailers registered under the Federal Interstate Registration Scheme. It is important to note that the Nominal Defendant cover only comes into effect if there is an unprotected liability. In other words, there cannot be a circumstance of dual insurance.

The Bill contains significant modifications to the existing claims process to facilitate early notification of claims, accessibility to the scheme without necessarily involving legal assistance, early rehabilitation intervention and earlier settlement of claims. The requirement for an accident to have been reported to the police before a claim can be brought will aid early decisions on liability and, to some degree, reduce the incidence of fraudulent claims. A simple notice of accident claim form will provide access to the scheme. The current section 37 notice is too complex for most claimants to complete without legal assistance. The new form incorporates a medical certificate to assist in identification of injuries and early rehabilitation provision. The insurer retains the right to seek further information about the claim or the circumstances of the accident through an additional information form and the claimant is required to comply with any reasonable request for information by the insurer within a specified time frame.

To reduce the number of medical reports currently obtained by claimants and insurers, the Bill provides a process for agreement on selection of an independent specialist to provide a report and empowers the Motor Accident Insurance Commission to establish panels of medical experts to be utilised by the parties at their discretion.

The provision to introduce a mediation facility in the rehabilitation process should assist both claimant and insurer to resolve potentially disputable rehabilitation issues. It will not be a prerequisite to application to the court for determination of an issue, but may reduce the need to involve the court. This clause of the Bill also clarifies the position in respect of the impact of the provision or funding of rehabilitation by the insurer on the assessment of damages awarded to the claimant. The Bill provides that, before the claimant brings an action in a court for damages for personal injury arising out of a motor vehicle accident, there must be a compulsory conference of the parties. The advantages are that a compulsory conference provides a chance to negotiate meaningfully for early resolution of the claim and reduces legal costs where the claim settles as a result of the process. The conference may be initiated by either party and can be used to incorporate cost penalties where a claim does not settle.

Failure to settle at a compulsory conference requires each party to exchange mandatory final offers, which remain open for 14 days. If the matter proceeds to court, each party must submit its mandatory final offer to the court in a sealed envelope. The court must not read the offers until it has decided the claim and then must have regard to the offers in making a decision about costs. In cases where the claimant is legally represented, the claimant's solicitor is required, before the conference is held, to give the claimant a costs statement detailing legal costs payable up to the conference stage, an estimate of legal costs if the matter goes to trial and a statement of the impact on costs relevant to the award of damages and the mandatory final offers made by the parties.

This clause of the Bill also places restrictions on the time for bringing an action to within 60 days after the conclusion of the compulsory conference or within a further period agreed by the parties or fixed by the court within the 60-day period mentioned. This will ensure that, if the matter is not settled at a conference, it moves quickly to trial.

The review committee was concerned that awards for loss of consortium and loss of servitium were being made for relatively minor/temporary injuries, resulting in some claimants receiving more than what is arguably fair and reasonable compensation. Loss of consortium/servitium claims in many respects are simply scheme add-ons. The Bill provides that the court must not award damages for loss of consortium/servitium unless the injured person has died as a result of the injuries or general damages for the injured person are assessed at $30,000 or more. Further, the provision places an upper limit for such damages at three times average weekly earnings per week.

In an endeavour to contain costs in relatively small awards of damages, provision has been made to direct the court to apply principles which limit the awarding of legal costs where damages are

less than $50,000. The legal costs are dependent on whether the award is equal to or less than the insurer's final offer, less than the claimant's final offer but more than the insurer's final offer, or is equal to or more than the claimant's final offer. This clause also limits the inclusion of costs to those incurred from the date on which proceedings commenced. This initiative will impact onto negotiated settlements as well. Whilst this provision may appear to be discriminatory, it is important to ensure that the more seriously injured claimants receive appropriate benefits and that the greater proportion of the funds available in the scheme are not diverted to increasing numbers of relatively minor claims. An alternative approach would be to introduce thresholds as an attempt to bar minor claims, and it is important to note that under legislation the claimant continues to have a right to claim even for minor injuries.

The review committee was concerned about the implications for the scheme of an escalation of awards for economic loss, particularly following the Blake case in South Australia. The committee considered that those on high incomes could reasonably be expected to arrange separate income protection and should not look to a CTP scheme to maximise the level of protection. The Bill provides for an upper limit on economic loss at three times average weekly earnings per week. It is intended that this upper limit apply to claims arising out of motor vehicle accidents in Queensland, whether damages are assessed in Queensland or elsewhere. The concern here is that a very wealthy person with a huge earning capacity may be visiting this country and be injured in a motor vehicle accident in Queensland but may sue for damages in his or her own country. A provision has been included to protect the scheme from such a large negative impact by giving the insurer a right of recovery from the claimant if the award exceeds the maximum allowable under Queensland legislation. This approach might appear to be unusual but it guarantees unlimited indemnity for the insured. It in no way compromises the position for the insured.

Amendments are made to the existing legislation in respect of recoveries by insurers, including the Nominal Defendant. The insurer is entitled to recover as a debt from the driver costs associated with a claim that are reasonably attributable to the driver's inability to effectively control the motor vehicle because of the consumption of alcohol, a non-medicinal drug or a combination of the two. This approach ensures damages are paid to the injured party and the onus is on the insurer to establish a right of recovery.

The policy of insurance is modified to make it clear that the policy does not cover an employer's liability and also extends the exclusion to pay damages for an injury that arises gradually from a series of incidents. A typical claim that might be excluded would be a person who does a long distance drive seated in a defective seat. The scheme is not designed for claims such as this.

The review committee identified fraud as a serious issue in personal injury compensation schemes. Insurers indicated that they would support strengthening of the provisions of the legislation to empower the Motor Accident Insurance Commission to prosecute fraudulent claims. Currently, the Act deals only with misleading statements or documents or interfering with certain documents. The WorkCover Act 1996 in Queensland, the Motor Accidents Compensation Act (New South Wales) and the Transport Accident Act (Victoria) have strong provisions dealing with fraud. The provisions included in this Bill are modelled on those in the WorkCover Act 1996.

The main body of amendments is to take effect from 1 October 2000 while sections which relate to the limits on awards for economic loss and the transitional arrangements are to take effect from 1 July 2000. The reason for the earlier commencement date for the economic loss provisions is the recognition of the greater exposure to risk resulting from the high influx of overseas visitors for the Olympic Games.

The Government has initiated a very wide-ranging overhaul of the CTP scheme. The NCP segment of the review report identified certain aspects of the current scheme which might be classified as anti-competitive. This Bill includes amendments which remove the restrictions on payment of commission by insurers, the minimum market share requirement and the five-year embargo on insurer re-entry into the CTP market. These amendments, together with competitive premium setting and easier access for nominating a change of insurer, provide a model which satisfies the public benefit test requirements of the NCP process.

This Bill recognises and protects the rights of people injured in motor vehicle accidents where negligence is established and, at the same time, ensures that the cost of the scheme to the motoring public is continually monitored. The Bill should provide competitive premiums and reduce the incidence and costs of minor claims. It has a built-in mechanism for further review of the scheme should the affordability index be exceeded. I commend the Bill to the House.