

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

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Subject:

Summary

COUNTRY WOMEN'S ASSOCIATION OF NEW SOUTH WALES



SUBMISSION TO THE INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION SUBMISSION TO GENERAL PURPOSE STANDING COMMITTEE NO.1, LEGISLATIVE COUNCIL OF NSW

TO: General Purpose Standing Committee No 1
Attention: Mr. Steven Reynolds

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**Inquiry into personal injury compensation legislation
Submission to general purpose standing Committee No.1,
Legislative Council of NSW**

General consequences of changes

While we acknowledge the good intentions of the changes to personal injury compensation, we are concerned about some, no doubt unintended, consequences.

Some of these are:

- The capping of insurance payouts have led to surging profits for insurance companies(IAG'S insurance profits jumped 50% to \$518 million, in first half of 2004-05), with very little if any reduction in premiums
- There has been a shift in the cost of catastrophic injuries from the insurance companies to the federal government(social security), the state government(health costs) and the family of those so injured
- A compensation climate in NSW, which the Chief Justice Jim Spiegelman described as having been insurer driven and questioned whether it had gone too far.

There has, in recent times, been seen to be a need for a no fault insurance scheme, to insure those catastrophically injured in public liability incidents, not covered in any way by current schemes. Premier Bob Carr was quoted as proposing that this scheme would be funded by a levy on third party insurance and workers compensation premiums. (SMH, 11/2/05) This would seem to be another bonus for the insurance industry and an unfair targeting of two groups in the community – employers and motor vehicle owners - rather than being funded by the whole of the community and the insurance companies.

We have a real concern that the cost of insurance cover is becoming out of reach for community groups, wage earners and those on social security. We believe that one of the reasons for this is the high cost of litigation and feel that the “no win – no pay” system is responsible for a great deal of unnecessary and often frivolous litigation. We all pay, in terms of increased insurance premiums. We believe that there has been a decrease in this legal involvement since the reforms to the system, but there is still room for improvement.

Impact on employment in rural and regional communities.

- Workers compensation insurance is still a great disincentive to potential employers and to present employers considering expanding their workforce. The premiums and the paperwork appear to continually increase and OH&S regulations are become more and more onerous. For example, on farms, employers are expected to fence off dams, fuel storage areas, parts of yards, etc. Employees are given the impression that the employer should have foreseen any possible contingency and put into

2. The impact on community events and activities, and community groups

The cost of public liability insurance has become prohibitive and has had a profound effect on the ability of community groups to function and community events to be run. Too many events that communities held almost traditionally have had to be cancelled; while some, such as Carols by Candlelight, have again been run (often, however, without candles), others such as the annual billycart championships in country towns have died. Small clubs dependent for survival on the volunteer efforts of their members have had to increase subscriptions, losing members and therefore viability in the process.

An example of this is a small model aeroplane club in the Hunter. Insurance cover has more than doubled since 2001. Membership has dropped. Pensioners can afford to pay for membership to the club but not insurance to enable them to fly. All they can do is watch others fly and attend meetings. They will soon lose interest. Juniors cannot afford to join – and so a harmless leisure activity run by the community is doomed. The same is happening to sporting clubs of many kinds – and we bemoan the fact that our young, old and families have nothing to do – especially in rural areas where incomes are depressed anyway because of the drought.

The closure of council run playgrounds and the removal of potentially unsafe equipment has been another consequence of increased public liability concern. Councils are removing a great deal of equipment from small neighbourhood playgrounds and building, instead, large “state of the art” regional playgrounds.

3. The impact on insurance premium levels and the availability of cost-effective insurance

Premiums and paperwork appear to continually increase and OH&S regulations are become more and more onerous. For example, on farms, employers are expected to fence off dams, fuel storage areas, parts of yards, etc. Employees are given the impression that the employer should have foreseen any possible contingency and put into place measures to prevent something brought about by the employee’s own carelessness or refusal to follow procedures (eg. helmets on bikes, sunscreen)

We are concerned about the amendment which disallows the earning capacity of someone over 65 to be considered in awarding damages. In a world where our Prime Minister, among others, is encouraging workers to keep working well into their 70’s, this would appear to be discriminatory, divisive and unfair.

The rehabilitation requirements cause difficulty for rural small business owners and farmers. While it is a very good idea to ease a worker back into the workforce, often there are no positions, for example, for an office worker on a farm and the employer has to pay another worker as well as the injured one.

4. The level and availability of Compulsory Third Party motor accident premiums required to fund claims cost if changes had not been implemented in 1999; and the impact on the WorkCover scheme if changes had not been implemented in 2001

The premiums for this insurance continue to increase – could there be some form of no claim bonus as for comprehensive motor vehicle insurance?

There is still no coverage for injury from uninsured drivers. We are unsure how this could be covered but surely there could be some form of pro bono coverage by insurance companies.

In conclusion, we believe that the changes initiated by the legislation of 1999 and 2001 have mostly positive, but the issues outlined above still need addressing.