

**Submission
No 42**

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

Organisation: Australian Industry Group

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Subject:

Summary



20 March 2005

The Rev. Gordon Moyes MLC
Chair
Legislative Council General Purpose Standing Committee No 1
NSW Parliament
Macquarie Street
SYDNEY NSW 2000

Inquiry into Personal Injury Compensation Legislation

Thank you for the opportunity to make a submission to the Inquiry.

Australian Industry Group (Ai Group) is a national industry association with 8500 members, from multinationals to SMEs, in the manufacturing, engineering, construction, ICT, labour hire, airlines, printing and related service sectors.

Ai Group has been a concerned advocate for reform in the area of significant business cost represented by personal injury compensation. Ai Group welcomed the tort reforms made by the NSW Government as a significant step forward to alleviating the burden of public liability insurance that was placed on business following the difficulties with the world reinsurance market following the tragic events of 11 September 2001.

While this is encouraging there are some issues of concern surrounding public liability insurance.

Firstly, evidence has emerged from our members that those who use labour hire or independent contractors are being requested to pay either higher premiums, or a higher excess component on their public liability insurance.

The higher premiums and excesses appear to be driven by two causes.

The first cause is an emerging trend for employees of labour hire firms, when working on client sites, electing to pursue claims for injuries or illnesses caused on the client site against the client's public liability insurance rather than the labour hire employer's workers compensation insurance. This is based on the perception that public liability is more attractive jurisdiction for claimants than workers compensation.

We are aware of at least one trade union actively encouraging their members to seek legal advice on this alternative form of claim for a workplace accident. Whilst that in itself is not sinister, it does highlight the capacity for structural flaws in the legislative regime to be quickly exploited.

The second cause appears to be that the workers compensation insurers for labour hire providers, and for other employers who provide workers who work at another employer's premises, are becoming more aggressive in seeking recovery from the public liability insurance of the company where the work is being performed. Insurers are passing on this cost to the host company in the form of increased premiums. Essentially, it represents a cost shifting exercise from the workers compensation insurer to the public liability insurer with the employer footing the cost. Unfortunately, there is little or no corresponding reduction in workers compensation costs as premiums in that area are being held more or less constant in order to pay off the accumulated deficit of the scheme, still estimated at over \$2 billion.

Ai Group is of the view the Government should consider legislation to close these loopholes. Specifically, incidents where the claimant is covered by workers compensation insurance should be dealt with under the workers compensation system not the public liability system. Recoveries from public liability insurance to workers compensation should also be abolished. The workers compensation system is designed to cater for injuries that occur at work with its concentration on injury management and rehabilitation to return to work, the public liability system does not have the same emphasis.

Secondly, there is also an emerging trend for making personal injury claims under the Motor Vehicles Compensation system rather than workers compensation, in cases where a vehicle is involved in what is ostensibly a workplace accident. The recent case of *Pender*, wherein a specialised mine vehicle was held to be a vehicle for the purposes of the MVCA shows this trend. It creates a lottery system for workplace compensation where some claimants may have different rights, solely as a result of the circumstances of the workplace accident they have suffered.

Both this issue and the public liability problem outlined above threaten to effectively undermine the integrity of the changes to workers compensation system introduced in recent years and further undermine employers' faith in the stability of insurance costs generally in NSW.

The **third** problem that has been identified by some of our members is that micro employers are still finding affordable public liability insurance extremely difficult to find. Small employers who often employ less than 5 employees report that a number of domestic insurers are declining to insure them and they are forced to either operate without insurance or consider finding insurance from international providers, often at an exorbitant cost.

We trust this provides you with a picture of some of the issues faced by employers in this area.

We would be please to make a personal appearance before the Inquiry on the above matters.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Goodsell', written in a cursive style.

Mark Goodsell
DIRECTOR - NSW