

## INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

**Organisation:**

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**Subject:** Submission to Personal injury compensation legislation lodged by Peter JOHNSON

**Summary**

## **Submission to Parliamentary Inquiry into Personal Injury Compensation Legislation**

I am a parent of a child attending a public school and a lawyer working in the area of personal injuries.

The Civil Liability Act 2002 reforms have impacted on schools and school communities with respect to excursions involving recreational activities. The Civil Liability Act 2002 introduced the legal concept of "risk warnings", and provides that there is no duty of care for recreational activities where risk warnings are given. It also provides for contractual waivers in respect of duty of care for recreational activities. These provisions advantage providers of recreational activities and unintentionally disadvantage schools and parents. Frequently providers of recreational activities are now requiring schools to ask parents to sign forms which are aimed at relieving the provider of its duty to take reasonable care and skill.

This creates a threefold problem. Firstly, schools are put in the position that, in order for the excursion to proceed, they need to ask parents to consider signing the provider's form, and must inform the parents that if they fail to do so, their child will be excluded from excursion. This tends to leave the parents with little choice. I myself was placed in this position regarding my son's attendance at a three day school excursion. Of course many parents sign the form not fully appreciating the implications of what they have signed.

The second problem is that in the past when accidents arose at the provider's facility, liability often ended up being shared between the provider and the school. Now, where risk warnings and contractual waivers have been used by the provider, liability will end up being borne solely by the school unless it also has relied upon a risk warning or asked parents to sign a waiver. Public schools naturally would be reluctant to ask parents to allow the school itself to contract out of its duty of care regarding recreational activities. Non-government schools would also have problems in this regard.

Third, and of most concern, unless the potential harm concerned results from the contravention of a provision of law that establishes specific practices or procedures for the protection of personal safety, once the risk warning is given, the provider can be lax about safety without fear of legal consequences. There are many areas of the recreation industry without laws specifically directed to specific safety practices and procedures. The (unintended) effect of the legislation may be to lessen the safety standards of the providers of recreational activities, and this is of most concern where the activities are provided for children.

Some parents who understand the implications of a risk warning or waiver will refuse to sign with the consequence that their child cannot attend the excursion. This does not assist general community concern about the limiting of opportunities of recreational activities for children.

One solution would be to exempt school organized recreational activities from the risk warning and waiver of contractual duty provisions of the Civil Liability Act. This seems right and proper given that providers should be bound by a duty to exercise reasonable care and skill when dealing with the safety of children.

Peter Johnson  
Solicitor  
9 March 2005