

## **INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION**

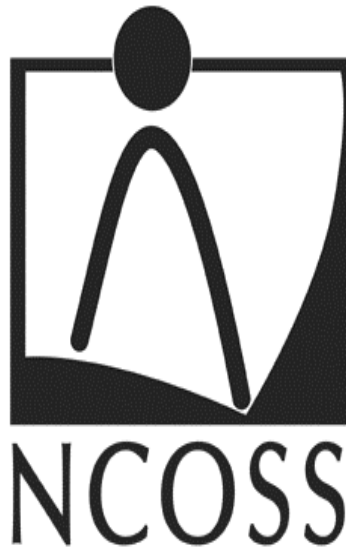
**Organisation:** Council of Social Service of New South Wales  
**Name:** Ms Sandra Handley  
**Telephone:** 02 9211 2599 x 104  
**Date Received:** 11/03/2005

---

**Subject:** Submission to Personal injury compensation legislation lodged by Sandra Handley

**Summary**

**Submission to the Legislative Council Inquiry  
into Personal Injury Compensation Legislation**



**March 2005**

Council of Social Service of NSW (NCOSS),  
66 Albion Street, Surry Hills, 2010  
Ph: 02 9211 2599, Fax: 9281 1968, email: [sandra@ncoss.org.au](mailto:sandra@ncoss.org.au)

## **1.1 Introduction**

The Council of Social Service of NSW (NCOSS) is an independent non-government organisation and is the peak body for the social and community services sector in NSW. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in New South Wales. It was established in 1935 and is part of a national network of Councils of Social Service which operate in each State and Territory and at Commonwealth level.

NCOSS membership is composed of community organisations and interested individuals. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 85,000 consumers and individuals. Member organisations are diverse, including unfunded self-help groups, community centres, chronic illness organisations, local Indigenous community organisations, church groups, and a range of population-specific consumer advocacy agencies.

The NCOSS Insurance Program is funded by NSW Treasury to assist not for profit organisations obtain affordable insurance and to provide education and information on insurance and risk management to the social and community services sector. Operating since September 2002, the Program has assisted more than 2,000 organisations with insurance enquiries and information. During this time, a considerable amount of information has been gathered about community organisations and their insurance issues.

## **1.2 Social and Community Services Sector and Insurance**

NCOSS is particularly concerned with the availability of cost-effective insurance as well as the impact of increased public liability premiums on community organisations, events, and activities.

The impact of increased public liability premiums has been extensively reported in the media over the past two years. Unfortunately, community organisations continue to be adversely affected by increased premium costs. NCOSS receives at least 4 calls a week from organisations stating that they cannot afford the premiums and are considering closure or cutting services to pay for premiums. Several smaller not for profit organisations have closed down due to unaffordability of insurance.

In particular the premium increases have affected those groups who do not receive funding but need public liability insurance to rent rooms at local venues or because it is considered "unsafe" operating without public liability insurance.

For example, NCOSS was contacted recently by a person who runs an unincorporated social group that organises dances and picnics for local housing estate tenants. Originally setting up as a support group (a community development initiative of the local community centre) it has grown into a social group with 57 members. The group is currently uninsured and is considering closing down as the members are all pensioners and cannot afford the premiums.

NCOSS also receives calls from people who want to set up a new community group, however when they learn of the cost of public liability insurance they decide it is too much for them to take on.

The current situation is stifling community initiatives and is definitely adversely affecting the community and social well-being of many people across NSW.

22% (16) of respondents to NCOSS' 2005 Insurance Survey cited examples of organisations cutting services or closing down because of insurance premiums.

Responses included:

- *Closed vacation care service*
- *Cancelled annual camping excursion and other youth week activities*
- *Cancelled a local youth music festival weekend, community festivals and self-defence for young woman*
- *Some [local] organisations have either closed down or had to be auspiced*
- *Market days*
- *Small groups using meeting space cannot meet because they don't have public liability insurance*
- *We have cancelled all activities outside the confines of our actual centre*
- *Cancelled community fun run*
- *Cancelled [the local] billycart derby*
- *Cancer volunteers fundraising group*
- *We can no longer run a Safe Play Space*
- *We have to limit the types of fundraising events we can put on now – cancelled the bushdance and market day*
- *We are fundraising to meet our insurance costs*
- *[Local] History Society closed in 2004 as they could not afford their premiums*

The majority of funded not for profit organisations, providing much needed community services, do not receive extra funding to assist with increases in insurance premiums, therefore service delivery and/or other operational support is cut to enable the payment of premiums.

NCOSS believes that rural and regional communities have been, and continue to be, more adversely affected than metropolitan areas. It is with certainty that any closure of any service in a rural community will adversely impact on members of those communities including necessitating travel to the next nearest services, which may mean having to travel hundreds of kilometres.

### **1.3 Community Sector Insurance Premiums**

In November 2003, NCOSS conducted a sector-wide insurance survey, which received 254 responses. The survey showed public liability premiums increased by 33% on average between 2003 and 2004 (93 organisations answered this question). 12% (11) of organisations showed increases of over 100%, with the highest increase being reported at 716%.

A further survey conducted in March 2005 received 70 responses. This survey reported public liability premiums increasing by 9.68% on average between 2004 and 2005 (32 organisations answered this question). Twelve organisations (37.5% respondents to that question) showed increases of 14% or more with two of those organisations showing increases of more than 50%. On the other hand, 8 organisations (25% respondents to the question) showed decreases of 14% or more including one that showed a decrease of more than 50%. Only 2.86% (2 survey respondents) had made a claim on public liability since 2001 (neither respondent showed a significant increase in their 2004 premiums). It is suspected that some of these decreases come from organisations moving to off-shore insurers.

The figures received from the NCOSS Surveys are considerably higher than those reported in the Inquiry's Information Sheet which showed 17% for 2003. Recent figures released by APRA indicated a 4% increase in public liability premiums for 2004. The sector appears to be experiencing increases of more than double this figure.

### **1.4 Personal Injury Tort Reform**

One major effect of the civil liability tort reform for the not-for-profit sector is that more insurers are now willing to offer them public liability insurance. In the past year, NCOSS has not received any reported incidences of not for profits being refused public liability insurance. However as reported earlier while the percentage increase in premium prices is levelling out, an average increase of almost 10% for 2004 on top of the 33% average for 2003 and 60% for 2002, is still leaving many organisations struggling.

It has been reported that the number of civil liability matters in the District Court has decreased significantly however insurers are still biding their time, saying it will take at least 5 years from the passing of the Act before they can be sure that the Act is effective. This means that premium reductions will not be expected until 2007 at the earliest.

NCOSS is concerned that while the civil liability and personal injury compensation reforms have cut back rights of people injured, it has not delivered the cheaper premiums that were proposed as the exchange.

It appears that while tort reform has had some impact on court filings, the fear of personal responsibility has actually increased in the community and again NSW communities are paying the price.

There is a high level of misunderstanding in the community sector about civil liability, especially the results of tort reform. Community service organisations are now refusing to undertake basic services for clients because of the fear of litigation and results of that litigation on their premiums. As well, NCOSS has anecdotal reports of committee members leaving organisations because they are worried they will be sued for negligence. NCOSS is also aware of organisations that will no longer drive clients to doctor's appointments or take them shopping. Some children's services now refuse to assist children administer ventolin puffers and several Councils no longer have playground equipment in their parks.

## **1.5 Proposed Catastrophic Injury Scheme**

NCOSS is concerned that NSW has developed a compensation system whereby if a party is injured in or by a car, at work or through a third party's negligence (under reduced circumstances) they can sue for compensation, however any other injuries become the sole responsibility of the injured person and their carers.

There has been a lot of discussion about a proposed no-fault catastrophic injury scheme to support people with major injuries and therefore reduce reliance on litigation and the need to find negligence in an injury.

There has been no community consultation on the scheme. Recent reports in the media show the scheme will only deal with catastrophic injuries stated as: quadriplegic, paraplegic or those who sustained severe brain damage. It appears those that lose limbs, sight or incur other life changing injuries will not have access to any assistance. It also was stated that the scheme will cover cost of home care for victims of severe accidents; however there was no mention of other costs being covered. While this Scheme will assist some people, NCOSS believes that a wider accident compensation scheme such as the NZ Accident Compensation Scheme is needed.

NCOSS is also concerned about statements that the Scheme is likely to be funded through increased compulsory third party vehicle and workers compensation premiums. This would be problematic for community organisations in that workers compensation premiums in particular have already increased dramatically over the past two years, without resultant increases in funding, leaving community organisations in financial stress.

## 1.6 Workers Compensation Reform

NCOSS has received a high proportion of calls from organisations who have received large increases under their workers compensation insurance premiums.

The recent amendments to the NSW Workers Compensation scheme have provided the workers of NSW access to a fairer, more equitable scheme and will, ultimately, work toward achieving a reduction in the overall WorkCover deficit.

Unfortunately it has had an undesired spin-off for organisations in the not for profit sector. Currently this sector is experiencing rises in premiums, for a number of different reasons, of between 15% and 100% which, unfortunately, cannot be recovered from the organisations funding body. (*NCOSS Workers Compensation Survey 2004*) (*unreported*)

These unplanned increases have had the unwanted result of reducing the level of service provision as organisations attempt to juggle their competing insurance priorities.