

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

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**Subject:**

**Summary**

**LEGISLATIVE COUNCIL  
INQUIRY  
INTO PERSONAL INJURY  
COMPENSATION  
LEGISLATION**

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**SUBMISSION**

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## **TERMS OF REFERENCE**

That General Purpose Standing Committee No. 1 inquire into, and report on, the operations and outcomes of all personal injury compensation legislation (including but not limited to: claims by persons injured in motor accidents, transport accidents, accidents in the workplace, at public events, in public places and in commercial premises but not including claims by victims injured as a result of criminal acts) approved by the Parliament of New South Wales from 1999 with particular reference to:

1. The impact on employment in rural and regional communities.
2. The impact on community events and activities and community groups.
3. The impact on insurance premium levels and the availability of cost effective insurance.
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.
5. Any other issue that the Committee considers to be of relevance to the inquiry.

## **THIS SUBMISSION**

This submission will address the following sections of the Terms of Reference:

1. The impact on employment and regional communities;
2. The impact on community events and activities, and community groups;
3. The impact on insurance premium levels and the availability of cost effective insurance.

## **SUMMARY OF SUBMISSION**

### **1. THE IMPACT ON EMPLOYMENT AND REGIONAL AND RURAL COMMUNITIES**

It is the author's contention that changes to personal injury compensation legislation over the past half a dozen years or so have led to an adverse and detrimental effect on employment in rural and regional communities both of professional solicitors and of secretarial support staff.

Further, it is also contended that employment has been affected in a number of service industries in rural and regional areas.

### **2. THE IMPACT ON COMMUNITY EVENTS AND ACTIVITIES AND COMMUNITY GROUPS**

Community groups are finding it more and more difficult to continue with their traditional events and activities and are finding that more of the funds they raise for worthwhile charitable purposes have to be syphoned off to pay for rising and escalating public liability insurance costs.

### **3. THE IMPACT ON INSURANCE PREMIUM LEVELS AND THE AVAILABILITY OF COST EFFECTIVE INSURANCE**

Contrary to pronouncements from the New South Wales State Government insurance premium levels have not substantially decreased or in some instances have not decreased at all and the availability of cost effective insurance is almost non existent.

# 1. THE IMPACT ON EMPLOYMENT AND REGIONAL AND RURAL COMMUNITIES

## Introduction

To properly and accurately assess the impact on employment in regional and rural communities because of changes in personal injury compensation legislation it is necessary to look at the historical background to the legislative changes.

## Relevant Legislation

Motor accident law was significantly affected by the *Motor Accidents Compensation Act 1999* which commenced on 5<sup>th</sup> October 1999. The New South Wales government then introduced the *Health Care Liability Act 2001*. The Government then changed the *Workers Compensation Act 1987* by abolishing the Compensation Court of New South Wales on 31<sup>st</sup> December 2001 and replacing it by the Workers Compensation Commission on 1<sup>st</sup> January 2002. Injuries sustained by injured workers on or after 1<sup>st</sup> January 2002 are assessed differently, and more severely, than any injuries sustained on or prior to 31<sup>st</sup> December 2001. The *Public Liability Act 2002* was introduced into Parliament at the end of May 2002 and made retrospective to 20th March 2002.

## Substantial Effects

After the commencement of the *Motor Accidents Compensation Act 1999*, in the first 3 years, only 8.4% of injured motor accident victims received compensation for pain and suffering. In other words 91.6% of persons injured in motor vehicle accidents were eliminated from the compensation system and denied damages for pain and suffering (also known as non economic loss). On 27<sup>th</sup> November 2001, just before the Compensation Court of New South Wales was abolished, the New South Wales State Government severely restricted and effectively abolished common law claims in workers compensation matters and also, somewhat surprisingly, abolished commutations. However the most draconian piece of legislation enacted in New South Wales was the *Civil Liability Act 2002*. The Daily Telegraph newspaper in New South Wales, the self appointed epitome and arbiter of good public judgment, started and led a campaign which eventually forced the Premier Bob Carr to make his now infamous

speech on 20<sup>th</sup> March 2002 when he promised to effect changes to the public liability compensation system.

Justice Simon Sheller has since described some of the new provisions as "cruel" and the Chief Justice Jim Spigelman has questioned whether the State's negligence reforms have gone too far. The statistics for all civil actions commenced in Dubbo District Court since 1996 are as follows:

1996	98 matters
1997	98 matters
1998	148 matters
1999	179 matters
2000	182 matters
2001	260 matters
2002	147 matters
2003	78 matters
2004	44 matters

From the 2001 calendar year to the end of the 2004 calendar year there has been a reduction of 83% in matters commenced in Dubbo District Court. This would have been as a result of the combination of the elimination of common law claims under the *Workers Compensation Act 1987* as and from 27<sup>th</sup> November 2001 and the effect of the provisions of the *Civil Liability Act 2002* as and from 20<sup>th</sup> March 2002. However from the author's own personal experience there is no doubt that the reduction in matters filed in Dubbo District Court since the introduction of the *Civil Liability Act 2002* can substantially if not entirely be attributed to the provisions of the *Civil Liability Act 2002*.

It defies logic and common sense not to recognise that excluding 91.6% of motor accident injured persons and 83% of public liability victims was not a fair, rational and reasonable thing to do even assuming that some percentage, say even 10%, of persons in each area may have been rorting the system or receiving unjustified and unwarranted benefits. Talk about smashing a peppercorn with a sledgehammer! To eliminate 10% of unjustified claims the New South Wales State Government has "thrown the baby out with the bathwater" by eliminating not just that 10% but another

70% or 80% of genuinely injured persons who have been so injured through no fault of their own. It is ironic that in its haste to help various insurance companies the State Government has failed to realise that when an injured person cannot recover damages it is the New South Wales State Government that pays the often astronomical health bills for that injured person and it is the Federal Government that meets the cost of social security benefits.

### **Elimination of Compensation Court of New South Wales**

When the Compensation Court of New South Wales went on circuit to Dubbo it generally came to Dubbo for one week. There were about seven sittings of the Compensation Court in Dubbo each year. There was the equivalent of eight barristers and eight solicitors from Sydney in town during each of the weekly sittings each spending about \$1,500.00 per week on accommodation, meals, taxi fares and other weekly items. About \$168,000.00 per annum was injected into the local economy which evaporated and went out of the town when the State Government abolished the Compensation Court on 31 December 2001.

It is difficult to calculate the flow on effect. However it is said that for every \$1.00 spent in a community it has a multiplier of 4 which would take \$672,000.00 per annum out of the Dubbo economy which would have caused either loss of employment by existing employees or lack of replacement employees when natural attrition occurred.

Now, add to that the effect of reduced District Court sittings and more than \$1 million per annum is no longer flowing into the Dubbo economy.



## 2. **THE IMPACT ON COMMUNITY EVENTS AND COMMUNITY GROUPS**

The media, particularly the print media, have a lot to answer for in the way that they sensationalised allegedly excessive personal injury claims during 2002 and 2003. It is now ironic that in 2004 heading into 2005 the same print media is now finding that community groups are having to stop or severely curtail their activities. There was an article in the Dubbo Weekend Daily Liberal on 15 May 2004 a copy of which is annexed hereto and marked with the letter "A". It highlights the impact on a small business trying to operate a tourist attraction in a regional city.

There was another newspaper article on 12 September 2004 in the Sun Herald which is annexed hereto and marked with the letter "B" which is self explanatory. There was an article in the Sydney Morning Herald on 10 February 2005 entitled "Insurers are the real winners from negligence reforms" which is again self explanatory and annexed hereto and marked with the letter "C".

In Dubbo insurance premiums have meant that certain third parties and outside events have not been able to be supported by Rotary clubs because their public liability insurance policies have been made more restrictive to only cover the actual parties to the policy. Even then the Rotary clubs are required to carry out specific and individual risk assessments in respect of each activity that they undertake. This is ridiculous and forces a charitable organisation to spend more time doing paperwork than actually being free to perform their service activities in the community.

### **3. THE IMPACT ON INSURANCE PREMIUMS AND THE AVAILABILITY OF COST EFFECTIVE INSURANCE**

To make themselves look good when it was realised that the changes to the laws of negligence would hurt community groups the State Government pulled together the NRMA Insurance Limited, QBE Insurance and Allianz Australia to form the Community Care Underwriting Agency. This was supposed to be a joint initiative between those three organisations as a specialist agency offering public liability insurance in response to the lack of availability of public liability insurance for Not For Profit Organisations.

Community Care Underwriting Agency developed specific underwriting guidelines that set out the criteria on which they provided liability insurance. Many organisations did not even get a look in with CCUA yet alone get to the stage of receiving a quote on a premium. One such group was the Dubbo Dance U.S. Tour Squad Incorporated which was a group of parents who formed themselves into a fundraising group to try and raise funds to assist their children in travelling to America for a dance tour. Midway through 2004, after starting under the auspices of the Rotary Club of Dubbo Macquarie, the fundraising group was told that because of changes to the conditions of its public liability insurance policies Rotary could no longer take under its wing or its umbrella a group such as the fundraising group. As a result of that the Dubbo Dance U.S. Tour Squad Incorporated applied to CCUA for an insurance quote but was told:

"It is with regret that we advise that your organisation does not fall within our underwriting guidelines and thus we are unable to be of assistance at this time".

(letter dated Wednesday 23 June 2004)

If a parents fundraising group holding movie premiere nights, garage sales and the selling of chocolates does not qualify as a community organisation which should receive insurance cover from CCUA then I don't know what does!

## CONCLUSION

This author has been horrified from the very beginning in 2002 when Joe Hockey and then Helen Coonan on behalf of the Federal Government and thereafter Bob Carr on his white horse, armour glistening in the sun, began charging to the "defence" of the community – all in the name of pandering to perceived public opinion and trying to pick up votes.

The author has contributed to the debate wherever possible. Annexed hereto and marked with the letter "D" is a copy of an article from the Dubbo Weekend Daily Liberal dated Saturday 2 February 2002 and another story in the Dubbo Daily Liberal dated 1 March 2002 annexed hereto and marked with the letter "E".

The author has been saying from the very beginning that changes to personal injury compensation legislation would detrimentally affect regional and rural towns and cities causing, amongst other things, unemployment. This view was rubbished by Ms Lisa Hampshire on ABC local radio in Dubbo on 10 May 2002 (refer attached letter and annexure from the Australian Broadcasting Corporation dated 8 January 2003 – annexures "F" and "G").

I have sent material to Alan Jones for use on his program and I enclose herewith and annex hereto a copy of an email dated 17 March 2003 (annexure "H") and the reply from Alan Jones dated 20 March 2003 (annexure "I").

The insurance industry is now trying to calm the growing concern about the huge profits being raked in by insurers and the Government is now trying to calm the fears of the general public by foreshadowing the introduction of a no fault scheme benefits system for those who are catastrophically injured.

It is all too late. Regional and rural New South Wales in particular will again bear the significant brunt of the changes and local community groups and organisations will just struggle on as best they can.

There are several avenues which could be explored to ameliorate the impact and the effect of these draconian and harsh laws but there is no expectation that either the current ALP State Government or a new New South Wales Coalition Government in 2007 will have the will to make any such changes.

It just stinks!

1 March 2005

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