

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

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NSW

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Subject:

Summary

Local Government
Association of NSW



Shires Association
of NSW

DRAFT SUBMISSION TO
LEGISLATIVE COUNCIL
GENERAL PURPOSE STANDING
COMMITTEE NO. 1

INQUIRY INTO PERSONAL
INJURY COMPENSATION
LEGISLATION

Introduction

The Local Government Association of NSW and the Shires Association of NSW welcome the opportunity to offer comment to the Inquiry into Personal Injury Compensation Legislation.

The Associations are particularly pleased to offer comment having been centrally involved in expressing vocal concern about the state of personal injury compensation law and practice from the late 1990s, in providing a focused local government view on the public liability issues from 2001 and in working with the State Government in seeking to find legislative solution thereafter.

The Local Government Association of NSW and the Shires Association of NSW represent general purpose councils, county councils and Regional Aboriginal Land Councils in NSW. The mission is to be credible, professional organisations representing local government, providing services to councils and facilitating the development of an efficient, effective, responsive, community-based system of local government in NSW.

The Associations understand that the terms of reference for the inquiry are:

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; and
5. Any other issue that the Committee considers to be of relevance to the inquiry.

The Associations are not in a position to address all the points set out in the Terms of Reference and will limit comment to impact on community events and activities, and community groups and impact on insurance premium levels and the availability of cost-effective insurance.

Generally it needs to be noted that since the legislative reforms the level of concerns amongst councils about public liability issues in particular have diminished and this would indicate that those reforms were very important steps in addressing what was becoming a public liability crisis for councils and the communities they serve.

Background

As mentioned earlier the Associations were centrally involved in the public liability legislative reform processes.

In June 2002, the Associations were very pleased the State Government's *Civil Liability Act 2002* passed through the Upper House as originally introduced (see *Local Government Applauds Passage of Public Liability Legislation* Media Release Friday, 7 June 2002).

At that time the Local Government Association President, Councillor Peter Woods OAM, stressed the public liability reforms provided a mechanism for immediate relief to councils and their communities, noting that the Associations had worked very closely with the NSW Government and Premier to

address the spiralling costs of insurance premiums and multiplicity of public liability claims facing Local Government and community organisations. Cr Woods noted the legislation received the bipartisan support it so rightly deserved. Cr Mike Montgomery, President of the Shires Association of NSW, congratulated the NSW Government, and the Opposition, in leading the nation in addressing the public liability problem and prompted the other states to follow this lead, noting the legislation was welcome short term relief for councils and the communities they represent. Local Government maintains the insurance crisis is a national issue and we will continue to seek a national compensation scheme on behalf of councils. Cr Montgomery asserted that we must bring back the principle of personal responsibility for liability and keep it out of the courts.

Later in September 2002, the Associations wrote to the Premier and applauded the direction being taken by the NSW State Government regarding reforms of public liability legislation setting out the Associations considered views on the Bill which became the *Civil Liability Amendment (Personal Responsibility) Act 2002*. Local government appreciated the inclusion of Part 8 in the Bill, relating to the liability of public and other authorities, which will significantly reduce a council's exposure to liability. The Associations were delighted and relieved at eventual inclusion of new provisions for special non-feasance protection for roads authorities.

Impact on Community Events and Activities, and Community Groups

Generally Local Government believes that the reforms embodied in the *Civil Liability Act 2002* and *Civil Liability Amendment (Personal Responsibility) Act 2002* have had a positive impact on community events & activities, and community groups. At a minimum it appears to have arrested what the Associations identified as the dangerous and alarming trend where many councils could give a number of serious examples of community events ceasing or being under threat in 2002.

But it must be said despite this legislative reform there was still concern in some Local Government circles the following year as was demonstrated in Shires Association of NSW Annual Conference 2003 category 2 motion 160. This motion read as follows: That this conference requests the Shires Association to continue to press the State and Federal Government for assistance for rational and equitable public liability insurance premiums before community groups and events cease to exist. The note from sponsoring Council was as follows: Wentworth Shire has concerns that although Federal and State Governments are introducing legislation designed to manage public liability claims, insurance premium costs continue to rise and to grow. Thankfully the reforms have begun having the desired effect as these concerns have subsided significantly in the past two years.

The Associations support the following points made by Jardine Lloyd Thompson, in their capacity as Insurance Broker to Local Government and managers of the NSW Local Government Mutual Liability Scheme (referred to as Statewide Mutual):

- since the enactment of the *Civil Liability Amendment (Personal Responsibility) Act 2002* Insurers have been more willing to provide cover for community events and community groups because they gain comfort from the immunities provided to volunteers under the terms of Part 9, Clauses 59 – 61 of the Act.
- a number of specialty Insurers have been established to offer Public Liability Insurance to community groups and not-for-profit organisations and these Insurers are offering cover at affordable rates, greatly reduced from those on offer prior to the Legislation being enacted.

But it is fair to say that there remain some concerns that the only way some community events and activities survive is through council support. For example, Nambucca Shire Council points out: Despite the legislative changes, the exposure to incidents involving public liability claims and the cost of insurance premiums is such that in smaller rural coastal areas such as the Nambucca Shire, many community events need to be organized and conducted by Committees of Management appointed by

Council. This expands the cost of insurance Council's Public Liability/ Professional Indemnity Policy. By resolution Council spells out the delegation and the purpose of the Committee and such Committees are required to inform Council in writing of its proposed program before the event so that items may be approved by Council's insurers before the event. Committees in Nambucca include the Showground, sports fields and various festivals. This demonstrates how a small rural community relies very heavily on the support of its local government authority.

Impact on Insurance Premium Levels and the Availability of Cost-Effective Insurance

The Associations believe whilst it is still too early to have seen the full effects of the legislative reforms wash through system and the market, there are far less concerns amongst councils about spiralling public liability insurance premium levels for their activities and the activities of non-government groups in their communities. The Associations highlight the early advice from Jardine Lloyd Thompson to the State Government on Statewide Mutual (the self-insurance scheme covering most councils), that London reinsurers were more prepared to offer reinsurance since the civil liability reforms in NSW (see *Premier Carr releases data on Government's public liability and insurance reforms* News Release 12 August 2003). This trend continues as the Associations understand the situation. The Associations support Jardine Lloyd Thompson's observation that a number of specialty Insurers have been established to offer public liability insurance to community groups and not-for-profit organisations at affordable rates, reduced from those on offer prior to the legislative changes.

However, there have been some concerns aired since the legislative reform. Whilst councils' concerns about their own premiums have subsided somewhat, there are occasional concerns about the premiums of non-government organisations with whom councils have close relations. For example, the Local Government Association of NSW Annual Conference 2003 Motion No: 237 stated:

That the Local Government Association lobby the State Government to assist the volunteer Surf Life Saving movement with the financial burden created by rising Public Liability Insurance premiums.

The note from sponsoring Council: Recently insurance companies have advised Surf Lifesaving Australia that their insurance premiums for the 2003/2004 surf lifesaving season has been increased by \$1.3 million dollars. This is money Surf Lifesaving Australia does not have and because of the very short notice given, this amount has not been budgeted for by Surf Lifesaving Australia. As the surf lifesavers carry out a voluntary, emergency service for the community, the State Government should be covering the insurance costs from State Government funds. It is unreasonable that the Surf Lifesaving Clubs who comprise men and women already paying club membership fees, patrolling the beaches voluntarily, and putting in many hours of training, should be also be required to fund the increase in insurance premiums.

The Associations also support the Jardine Lloyd Thompson's comments relating to the impact of legislative change on premiums, which are as follows:

Insurers, in the years leading up to the enactment of the Legislation, have sustained substantial underwriting losses. There can be no better example of this than Statewide Mutual itself, which has been operating for over 11 years and has only just returned to a modest surplus of \$4,016, as at 30 June 2004. Given that Statewide is a Mutual and has no profit motive, it is difficult to see where insurers involved in public liability are attracting huge profits. The facts speak otherwise.

Since the Legislation, the results have improved, but it is early days yet, because of the long-tail nature of liability claims. Additionally, Insurers must still recoup the losses in past years to be in a position to continue into the future. However, the signs are there that

premiums will reduce in the future, provided the Legislation remains unchanged, and provided the Courts abide by its intention.

Since the introduction of the NSW *Civil Liability Act 2002*, the expectation of windfall settlements has dramatically reduced and injured plaintiffs are willing to accept reimbursement of “out of pocket” expenses in settlement of their claims against Councils.

Any amendment to the current threshold limits will see a return to the windfall mentality, bringing with it an increase in claims cost with a commensurate increase in insurance and reinsurance premiums.

The threshold table as contained in the Legislation does not penalise those plaintiffs who have sustained serious injury. Major claims still occur and the seriously injured plaintiff will still receive substantial compensation when the defendant is found to be negligent.

Whilst it is outside the Terms of Reference the Associations are encouraged by the recent announcement by Premier Bob Carr that a proposal of a no-fault compensation scheme for the catastrophically injured was still under consideration. As the Associations understand it the Government is working on a detailed plan to deal with hundreds of catastrophic injuries each year. It will see that, regardless of fault, those people are looked after. This in turn may assist not only those that are catastrophically injured but have further impacts on the overall insurance market.

Concluding comment

The Associations are on record as strong supporters of the legal reforms embodied in the *Civil Liability Act 2002* and the *Civil Liability Amendment (Personal Responsibility) Act 2002*.

The evidence available to the Associations in what is still a relatively short period since the reforms were introduced, strongly suggests that these were important and well targeted reforms. These reforms and some market responses have addressed the threat to most community events and activities and non-government organisations, and relieved some of the pressure on insurance premiums. There are still some problems with some non-government organisations having to rely on councils or seek significant support from the State Government as outlined above, but is unlikely these can be addressed by further legislative reform.

The Associations do not have any compelling evidence available to them which suggest there is any need to undo the reforms set out in *Civil Liability Act 2002* and *Civil Liability Amendment (Personal Responsibility) Act 2002*.