

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

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Subject:

Summary

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Reverend the Hon. Dr Gordon Moyes, MLC
Chair, General Purpose Standing Committee No. 1
Legislative Council
New South Wales Parliament
Macquarie Street
Sydney NSW 2000



Dear Rev. Moyes

Insurance Australia Group welcomes the opportunity to make a submission to the General Purpose Standing Committee No. 1 inquiry into personal injury compensation legislation in New South Wales. The company notes that the Committee has released comprehensive Terms of Reference, seeking comment on a broad range of policy issues. Insurance Australia Group's submission will be restricted to those areas where the company has specialised knowledge or experience that can beneficially inform the Committee's deliberations (*numerical references in this submission will correspond with those used in the Terms of Reference*).

Insurance Australia Group

Insurance Australia Group (IAG), formerly NRMA Insurance Group, is Australia's largest general insurance company (by reference to premium written) owning leading retail brands including NRMA Insurance, CGU, SGIO, SGIC and Swann insurance. IAG is a fully diversified insurance group operating in every Australian state and territory and has been listed on the Australian Stock Exchange under its current name since January 2002. The Group's market capitalisation exceeds \$AU10 billion.

Insurance Australia Group and personal Injury schemes

Workers' Compensation

WorkCover NSW, a statutory authority, is responsible for the administration and operation of the New South Wales Workers' Compensation Scheme. The authority is responsible for the application of all relevant legislation and has a reporting responsibility to the Minister.

In 2000, NRMA Insurance applied for a New South Wales workers' compensation licence and in March 2001 acquired the HIH Workers' Compensation business. In October 2002 Insurance Australia Group announced the acquisition of CGU/NZI, taking effect on 1 January 2003, and the following month also acquired Zurich's NSW Workers' Compensation business.



sgio



Compulsory Third Party

Compulsory Third Party insurance (CTP) is a compulsory insurance for owners of all registered motor vehicles in New South Wales. It is the mainstay of New South Wales Motor Accidents scheme. The Motor Accidents Authority (MAA) oversees the scheme's regulatory framework and operating conditions - with reference to relevant legislation of the New South Wales Parliament.

CTP is a fault based system where liability for claims rests with the insurance policy covering the at fault vehicle. Compensation payments are financed through CTP premiums. The current scheme only applies to those accidents occurring after 1 July 1989.

Insurance Australia Group is one of many participants in the New South Wales market and sells CTP policies through its NRMA Insurance brand.

Recent reforms to Personal Injury Legislation in New South Wales

Following growing community concern about access to and affordability of Public Liability Insurance, federal and state governments met to discuss possible ways of addressing emerging problems. A ministerial meeting on Public Liability Insurance was held on 30 May 2002 with all jurisdictions represented; the meeting resolved to appoint an expert panel to review Australia's law of negligence.

Chaired by Justice David Ipp, the (Ipp) report was released in October 2002 and contained 61 recommendations for change and formed the basis for legislative reform in New South Wales.

The *Insurance Issues Working Group of Heads of Treasuries* (IIWG) prepared a companion research document containing actuarial advice to assist each of the governments in their reform of tort law as it affected personal injury claims and assess the potential financial implications of the Ipp recommendations. The quantity of data available for this exercise was not optimal and in some instances qualitative comment took the place of projected figures.

The New South Wales Parliament responded to this process by passing the *Civil Liability Amendment (Personal Responsibility) Act 2002*. This Act amended the *Civil Liability Act 2002* and the *Mental Health Act 1990*. Those provisions relating to proportionate liability await enactment until the Commonwealth passes complementary legislation.

Pt. 3: The impact on insurance premium levels and the availability of cost-effective insurance

Premium levels – assessing the costs

There are a multitude of factors that contribute to insurance premium levels and determine the attendant issue of availability. Arguably, the most basic function of an insurer is to assess risk and convert that into an appropriately priced product - the concept is simple, yet the mechanics less so.

Insurers price products before the final cost is known. Factors such as weather patterns, investment returns, changing regulation and shifting community attitudes towards risk can take some time to manifest, yet judgments need to be made before such outcomes are known.

The pricing challenge becomes more complex in personal injury insurance due to its 'long-tail' nature. Long-tail refers to the fact that claims on personal injury insurance can be made many years after the premium is paid. Insurers, in effect, must sell their product some years before they know how much the product will eventually cost. Future and unknown costs of personal injury insurance include litigation expenses and having to provision for indeterminate damages assessments for non-economic loss by the judiciary.

In short, a policy written today is not priced on the basis of the current cost of claims but on an *estimate* of future costs.

IAG has publicly maintained that the insurance industry has an obligation to act responsibly in the area of premium pricing; in that regard, IAG Chief Executive Officer, Michael Hawker, has stated that ***"...it is absolutely critical that the industry acts responsibly...we've always said that once you start to generate over the cycle an adequate return on capital, you've got to give it back to your customer."***¹

Monitoring Premium Levels

At a meeting of Commonwealth, State and Territory Insurance Ministers in May 2002, a formal reference was made to the Australian Competition and Consumer Commission (ACCC) to monitor premium prices in liability classes.

The Commonwealth provided the ACCC with a standing brief to report on a six monthly basis for two years to enable an assessment of whether the insurance industry was adjusting premiums to take account of cost savings.²

¹ IAG CEO, Mike Hawker, *Australian Financial Review* pg3, 25 February 2005

² Joint Communiqué, Ministerial Meeting on Public Liability, Melbourne, 30 May 2002, pg 2

The final ACCC report from the initial brief was released in February 2005; in recognition of the time required for the effects of tort reform to manifest and to ensure the benefits of the reforms are passed on to consumers, the Assistant Treasurer has subsequently extended the ACCC's monitoring role for a further three years, to report at 12-month intervals.³

A full history of the ACCC's brief and copies of its reports can be reviewed at:

<http://www.accc.gov.au/content/index.phtml/itemId/378570/fromItemId/11872>

The most recent ACCC report (January 2005) found the average public liability premium for period of 31 December 2003 to 30 June 2004 had **"...decreased by 15 per cent, reversing the trend of substantial increases experienced since 2000...."**⁴

This report does not consider premium levels for the period subsequent to June 2004. Since that period covered in the last ACCC report, IAG subsidiary, CGU Insurance, announced it would reduce commercial public liability rates by 10 per cent in New South Wales, Queensland, South Australia, ACT and the Northern Territory.

The announcement followed a similar decision in July 2004 to reduce commercial public liability rates by 10 per cent in Victoria, Western Australia and Tasmania; the decisions were taken in anticipation of the benefits of recent tort reforms (see *attached media release*).

Pt. 4: Compulsory Third Party premiums and the 1999 scheme changes and NSW WorkCover and the 2001 changes

Compulsory Third Party Insurance

Assessments of the current CTP scheme are better informed by having regard to the scheme's history and its subsequent developments. Attached to this submission is a graph of the affordability index that measures the CTP premiums charged by NRMA Insurance against average weekly earnings from 1992 to 1999.

The New South Wales CTP Scheme has been subject to a number of reforms since 1992; the graph shows that there was a sharp increase in premiums in 1995. The major driver behind this increase was a substantial rise in the number and quantum of awards for non-economic loss for compensation for minor injuries.

Over time, the initial threshold, introduced to prevent small claims from receiving compensation for non-economic loss, had been eroded by judicial decisions that allowed minor claims to receive damages by effectively eliminating the threshold.

Prior to 1995, a claimant seeking compensation for non-economic loss (general damages for pain and suffering, loss of enjoyment of life, loss of expectation of life, disfigurement) had to meet a 'verbal' threshold of having their ability to lead a normal life significantly impaired for at least 6 months and a 'monetary' threshold of \$15,000.00 (no general damages were awarded for claims which had their non-economic loss assessed as \$15,000 or less).

³ Media Release, Assistant Treasurer, the Hon Mal Brough, 17 February 2005

⁴ ACCC Fourth Monitoring Report Jan. 2005 pg viii

As there was also a cap on non-economic loss payments and minor injuries received proportionately more damages than were intended by the legislation, as a result of these judicial decisions more claims were generated against the scheme than the legislators or actuaries had anticipated.

Action was taken to address this issue in 1995 and amendments were made to the legislation that introduced a tougher verbal threshold (ability to lead a normal life significantly impaired by more than 12 months) and a sliding scale for damages linked to an assessment of the severity of loss as a percentage of the most extreme case.

These measures resulted in a decrease in the number of small claims receiving compensation, as a result CTP premiums declined and started to stabilise.

Despite these signs of stabilisation, the Government considered that premiums were too high and a more long lasting solution to provide a stable, lower cost scheme was required. In 1999, following a review by Mr. Shelley Miller, the scheme was further amended, in this instance by the Motor Accidents Compensation Act 1999.

The task of the review was to recommend changes to the 'scheme design' that would deliver a \$100 reduction in the average CTP premium (which in June 1999, was approximately \$430).

Critically, the legislation introduced a threshold for non-economic loss which was to be assessed according to an objective measurement of whole person impairment according to Guides based on the American Medical Association Guides to Permanent Impairment (AMA Guides). An objective assessment such as this acts to insulate from judicial interpretations the scheme's objectives and remains the purview of appropriately qualified independent medical assessors.

Other changes introduced by the 1999 Act included a focus on early notification and early treatment (which enhances rehabilitation and shortens claims' duration), caps on economic loss and changes to the dispute resolution procedure to encourage earlier informal and less costly dispute resolution through MAS (the Medical Assessment Service) and CARS (the Claims Assessment Resolution Service) run by the MAA. As well as establishing dispute resolution facilities designed to reduce litigation in the Courts, the Act introduced regulated legal and medico-legal costs.

The combination of these scheme design features has resulted in reduced claims costs and scheme stability which has been reflected in a further downward trend in premiums. IAG maintains that the establishment of effective thresholds that are capable of objective measurement and independent assessment are critical to containing scheme costs.

The affordability index graph clearly shows the effectiveness of the 1995 amendments in stabilising premiums and the longer term effectiveness of the 1999 legislation in reducing premiums

Without the 1999 amendments it is unlikely that affordability would have improved as markedly from the 51.5% of AWE in September 1999 to the 34.4% of AWE enjoyed by the community as at December 2004.

Whilst it is not necessarily possible to attribute all the improvement in affordability since 1999 to the 1999 amendments, it is likely the biggest single factor.

Workers' Compensation Insurance

The New South Wales Government licenses IAG (trading as CGU Insurance) to issue Workers' Compensation policies and manage claims on behalf of *WorkCover*. However it does not set premiums, nor does it 'own' the liabilities of its clients under the scheme. CGU therefore has not made any professional assessment of the impact on premiums or the impact on the *WorkCover* Scheme if the 2001 changes had not been made.

However, from a general insurance perspective, CGU believes that the amendments made in 2001, which to a large extent, mirror some of the amendments made to the CTP Scheme, have been very beneficial for the Scheme. In particular, CGU believes that the introduction of an objective threshold based on an assessment of whole person impairment according to the AMA Guides is more effective than a table of maims or a percentage of the most extreme case, in assessing permanent impairment and determining the appropriate compensation for it.

Furthermore, the amendments to the dispute resolution procedures have resulted in a less adversarial scheme that has reduced associated legal costs and the proportion of scheme funds going to legal service providers, without any reduction in the benefits payable to workers. In addition, projects to better monitor the quality and necessity for medical and allied treatments funded by the scheme are also being implemented to assist in keeping claim costs at affordable levels, without having to alter the entitlements of the injured.

While CGU is not able to comment directly upon the level that workers' compensation premiums would have been without both the amending 2001 legislation and the continuing efforts of all parties to keep claims costs under control, it is certain that these costs (and therefore premiums) would have been significantly higher in the absence of legislative reforms.

Without constant attention to ensuring that these costs are kept at reasonable levels, the percentage of wages that must be paid in premiums could become an excessive burden upon employers, impacting their international competitiveness and damaging Australia's economic performance, to the detriment of all workers, injured or otherwise.

Ultimately, CGU believes that the current regime strikes a fair and appropriate balance between the rights of injured workers and needs of industry

Conclusion

Insurance Australia Group regards the inquiry as a beneficial opportunity for parliamentarians and the broader New South Wales community to be informed of the many issues associated with insurance premiums and availability, particularly in assessing the benefits of recent reforms to personal injury compensation legislation.

IAG is available to discuss the contents of its submission during the public hearings planned by the committee. If you have any questions regarding this document or require further information, please call Dallas McInerney (ph: 02 92928253) of my team.

Yours sincerely,

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Insurance Australia Group