

My name is Christine Saunders I attended the Public Hearing in Brisbane on the Tuesday the 12/04/2011.

Ms Patricia Scott chaired the hearing  
Mr John Walsh via Skyp

Firstly I would like to congratulate the Productivity Commission on the level understanding that you have for the need for a National Disability Insurance Scheme. I also found that your empathy with those who addressed the hearing was apparent and sincere, thank you for that as it helped restore some semblance of dignity.

I addressed the public hearing raising concerns for my youngest daughter Bonnie who has Angelman's Syndrome, although this submission is about the form of insurance that the committee is proposing.

My interest was first raised when Mr Kerry Splatt spoke on the submission of common law as apposed to Tort Reform as a base for the Insurance Model.

As a family we were directly disadvantaged by the introduction of the Tort Reforms on medical indemnity.

### **Where do my two older children fit into the proposed National Disability Insurance Scheme.**

Jo-anne, my 27 year old daughter, is dying of Rheumatic Heart Disease as a result of undiagnosed recurrent Rheumatic Fever over a period of 8 years while supposedly being looked after by trusted doctors.

Kylie, my 25 year old daughter, is in a state of chronic illness due to St Vitas Dance, (Sydenham's Chorea), as a result of undiagnosed recurrent Rheumatic Fever over a period of 8 years while supposedly being looked after by trusted doctors.

Jo-anne was four years old and Kylie was two years old when after a severe impetigo infection they contracted Rheumatic Fever, because it was not treated at the onset by the doctors it became recurrent Rheumatic Fever.

At the onset if one or two courses of penicillin had been prescribed it would have prevented the long term devastating outcomes for both Jo-anne and Kylie and the blow out in costs for the Government Social Welfare and Health.

Over the eight years Jo-anne and Kylie and myself where subjected miss treatment by the medical profession ranging from my being neurotic and the girls being hypochondriacs and referring to their theatrical abilities and putting it on.

Christine

I lodged a complaint with HCCC and they found three counts of negligence against four doctors involved.

- Failure to diagnose
- Failure to proscribe medicine once diagnosed
- Failure to refer to specialist for treatment

I can provide the full history that I provided to the HCCC to the Productivity Commission if you would like to peruse it, but as it was 18 pages long plus all the medical and pathology documents, this will be at your discretion. I also give you legal permission to request the information and findings from the HCCC,

**Complaints by Mr Christopher Hughes and Mrs Christine Hughes in respect to their Children Kylie Hughes and Jo-anne Hughes (Against XXXXXXX Medical) Centre File NO 97/00020 I have not named the centre**

**Why are the HCCC findings inadmissible in court? There should be no need to litigate if the HCCC has found fault.**

I approached a legal firm in NSW in 1998 about taking on Jo-anne and Kylie's case and they agreed to on No Win No Pay, this still however meant that I had to pay for lodgment fees, medical reports and expert opinions etc.

By this time my marriage was over and I was effectively a single mum, (I resumed my maiden name Saunders), trying to look after my daughters. I had years earlier already given up my career due to the severity of my girl's illness to care for them.

When my solicitors served notice to the doctors involved they handed it over to their insurance company United Medical Protection who responded with a letter saying 'UNITED is prepared to consider claims on an unlitigated basis'.

When the Tort Reforms went through this offer was retracted with words along the lines of 'let her fight for it'.

My legal advice was that they would put me through 'hell' and UNITED would drag up every thing that they could against me and 'by the way it would no longer be a No Win No Pay case and I would have to come front up with all the costs'.

I had no way of being able to pay for up front legal costs and became so depressed at failing my girls for not being able to protect them from the Doctors medical negligence, Insurance Companies and Solicitors I gave up.

It wasn't until at the Public hearing when I heard Kerry Splatt speak, that I thought anyone else was aware of the total injustice that the Tort Reforms brought about for people like my children that were affected.

Christine

Jo-anne is no longer able to work as she is so compromised from her heart condition until she has heart valve replacement, how do I pay for that?

Kylie is on a disability pension and as Kylie can not afford to have a car she relies on me to take her to medical appointments and shopping. She also struggles because of the cost of living and often needs financial assistance, again how do I pay for that?

**What Kerry Splatt said at the hearing was true if the Tort Reform is the only option for claiming many other people like my daughters will be sentenced to a life as welfare recipients, try living on \$800.00 a fortnight and tell me how comfortable life would be.**

The Tort Reform may have been Bob Carr's and John Della Bosca greatest task and earned them Forbes magazine description as 'a giant slayer'.

To quote from Bob Carr's diary available on Wikipedia

**'I have cost the law profession hundreds of millions.** First, freeing business conveyancing from lawyers' monopoly in 1995. {Then} the reforming of accident compensation (cost them hundreds of millions alone) in 1999. Now cutting them out of the action on workers comp. **It's not worth being Premier unless you can take privileges off the undeserving.'**

It seems to me that on the path of being giant slayers the Tort Reform **Protected Insurance Companies profits and Protected negligent Doctors.**

**The doctors are all doing well for themselves and still are practicing**

#### **Medico Legal Society of NSW Inc Via Web site**

Mr Allan Hunter the General Manager of the Professional Services Division of United Medical Protection

#### **Talking about Claims Numbers Pre Reform and Post Reform NSW**

Case Type	Claim Numbers		
	Pre Reforms	Post Reforms	% Change
Litigated	932	404	-57%
Unlitigated	183	144	-21%
Disciplinary	188	270	44%

**Jo-anne and Kylie are 2 of these statistics how many other people have inadvertently suffered under the Tort Reform?**

Christine

**We were never giants but we were still slain in the process when the Government took away any right that we had under Common Law, unless you had the money and the energy to fight.**

Which I did not have and my children were too young to defend themselves or pay for their defense.

If the muted offer had come through for my children of 650,000 each before the reforms went through it would have allowed me with the public trustee:

- to provide top health insurance for the girls which would have allowed them specialist treatment they required and be covered for bills for heart surgery etc
- an investment into a super fund of 200.000 for each child
- at the time the balance would have brought 2-3 houses for them in Lismore, or Coffs Harbour, or 2 houses in Byron Bay for each child

The girls would have had the benefit of life long financial security and be able to pay for medical treatment.

Now they are faced with a bleak future and are still heavily reliant on me to assist them and are reliant on the public health system and welfare.

### **Mr Rod Hodgson Australian Lawyers Alliance**

Also addressed the Public Hearing and I read his transcripts with interest, as I was unable to stay for the full hearing.

Mr Hodgson, page two paragraph two

‘The themes of self-determination and empowerment are at the heart of many or most of the submissions from entities representing disabled people. It’s the alliance’s view that the abolition or curtailment of common law rights is an anathema to self-determination and empowerment. The reduction or extinguishment of common law rights often heralds lowest common denominator outcomes. The common law has proven itself to be a resilient and flexible vehicle for allowing people to get on with their lives with less bureaucratic interference, and it’s accordingly the alliance’s view that any scheme which removes existing rights, as distinct to adding to them, ought to be fundamentally opposed.’

This really does back up my outcomes for Jo-anne and Kylie and I think the most important thing for the Productivity Commission is to look at a Hybrid Scheme being introduced.

Christine

In the case of medical indemnity the following is a proposed model;

- NDIS takes up the primary care of the person affected by medical indemnity under its charter.
- NDIS sets up a panel to help families place a complaint to HCCC to determine whether negligence was involved.
- HCCC once determined that negligence was involved, have their powers broadened to not only discipline the doctors but to have their findings made open to NDIS.
- NDIS then advises the family of their legal rights to pursue a claim under common law and when successful with the claim, NDIS is reimbursed for the monies paid out in the primary care role.
- Common law solicitors working with NDIS would determine what should be the national bench mark figures for the basic claims as in cost of care for the client.
- Insurance companies will be bound by the national bench mark figure for the basic claims as in cost of care for the client. This will streamline time frames for claims and may even result in less court time as in most cases it can be an unlitigated claim
- If a claim does go to court a cap should be placed on the legal fees of any given claim for the basic cost of care for the client.
- It must be made clear to the insurance company that this claim is for the basic cost of care and that the person or their representatives can not be stopped from making an additional claim for further compensation.
- If the families then wish to pursue a further claim for loss of income and pain and suffering they can do so. This may seem like a doubling up but if the basic cost of care for the client is addressed that is of the most importance.

This same framework can be set up for motor vehicle accidents, public liability and workers compensation claims.

By establishing a model like this the immediate needs of the client are covered when most needed for early intervention, physiotherapy, medical equipment and support etc.

If the NDIS is to take on the full financial responsibility for the client when no fault is found that in itself will be an enormous cost.

Why should the NDIS be financially burdened further when there is a fault found and the Insurance companies representing the Indemnified parties are liable?

Thankyou for your time

Christine