GREEN TRIANGLE INJURED PERSONS SUPPORT GROUP INC

"A helping hand - close at hand"

"Supporting and advocating on behalf of Workcover, and TAC injured victims"

President: Iain J. Grant, PO Box 433, Portland, 3305. Ph/Fax 55234550. Email: iain@injuredpersons.org.au

Secretary: Shane Rowe, PO Box 433, Portland 3305. Ph 0414485405. email: shane@injuredpersons.org.au

In Warrnambool: contact, Peter Bartlett, on mobile 0417122834, email: peter@injuredpersons.org.au

Also in Warrnambool: contact, Alan Lyon, Ph. 55620525

In Northern Melbourne Area: contact, Les Loades on Ph. 57721824, email: les@injuredpersons.org.au

In Geelong: contact Di Schoe on Ph. 52821125, email: di@injuredpersons.org.au

In Geelong: contact Geoff Hicks on Ph. 52756068

In Dunkeld: contact Sue Haselden on Ph. 55772625

In Ballarat: contact Peter White on Ph. 53495572

Or visit our website at www.injuredpersons.org.au

SUBMISSION TO THE

PRODUCTIVITY COMMISSION

INQUIRY INTO

NATIONAL WORKERS COMPENSATION

&

OCCUPATIONAL HEALTH

&

SAFETY ARRANGEMENTS

WHERE WE ARE

The Green Triangle is a regional concept loosely based on an area encompassing Mt. Gambier in South Australia, up to Horsham, and Hamilton in the North, across to Warrnambool in the East, and back to Portland on the coast. It is often used as a regional promotional area, based on the deep water Port of Portland.

WHAT WE ARE

The Green Triangle Injured Persons Support Group Inc. is a support and advocacy group originally set up for people within our region to assist with those injured victims having claims under both the Victorian Workcover Authority, or Transport Accident Commission legislation.

Over the last 18 months, we have been asked to facilitate other support groups outside our region, as injured victims become more and more marginalised by a system, put in place to assist them to manage and control their injuries, but fails miserably to deliver even that much. Rehabilitation, and retraining to assist in a return to work, are at best, a joke.

Our group originally started as a sub-group of the South West Injured Persons Support Group, in 1997, and became incorporated as the Green Triangle Injured Persons Support Group on 11 April 2000, after the original group folded.

OBJECTIVES OF OUR GROUP

- Provide a support group for injured persons and their families
- Promote self esteem amongst injured persons
- Assist in keeping the family unit together by supporting the family as a whole
- Lobby Government/s, Department/s, and other bodies constantly, to keep them aware of the difficulties injured persons and their families have to endure
- Act in the interest of all members no matter how small their problems seem
- Review all areas of the compensation systems, and undertake to lobby Government departments regarding difficulties within the systems, which we have to overcome
- Refer the injured to other Departments and/or agencies, which can provide them with further financial support, and/or benefits
- Monitor and report, unethical practices, and/or conduct, of individuals acting for, or on behalf of, a body associated with the Victorian Workcover Authority, or the Transport Accident Commission
- Notify the injured of changes to legislation, and entitlements

- To be as pro-active as possible in reporting unsafe work practices, and/or workplaces, to the relevant Authority

- To be as pro-active as possible in lobbying for the inclusion of dangerous roads, bridges, and intersections, in the allocation of funding through the "Black Spot" Program, to enable remedial work to be undertaken to make the area safer

- Work with the relevant Department, and/or Authority, on behalf of the injured and the family [keeping their anonymity if requested to do so]

- Seek and supply, all written information on all Workcover, and T.A.C. services available

- Advise injured people of their rights, responsibilities, and obligations, under the current legislation, or regulations

- Research and review, all areas of legislation, and submit written recommendations for change to the relevant Authority

- Supply injured persons, and their families, with all relevant information

- Provide guest speakers at our meetings, relevant to our aims of supporting injured persons under both Workcover, and T.A.C.

- Act to increase community awareness of the V.W.A., and T.A.C., support services, and/or shortcomings

- Network, and provide, information and support for groups, outside our own, that have the same interests

- Facilitate the establishment of new groups, or sub-groups, to better deliver our aims to as wide a population base as possible, for a totally volunteer organization

- To work pro-actively with all other stakeholders, offering services to all injured persons, however that injury was acquired, to ensure that our children, friends, and acquaintances, do not end up injured like us.

<u>We are in regular contact with other like-minded groups such as:</u>

Injuries Australia
Headway [for those with acquired brain injuries]
Industrial Deaths Support and Advocacy
Victorian Road Accident Support Association
The Action Committee for Traffic Injured Claimants
Work Injured Resource Centre of South Australia
The Collective of Self Help Groups
The Chronic Illness Alliance; and their associated groups.
Glenelg [Shire] Disability Action Group

"Supporting and advocating on behalf of Workcover and TAC injured victims"

NATIONAL FRAMEWORKS

It is the belief of our group that while a National Scheme at first glance has merit, our experience with the state based Workcover of Victoria scheme, leads us to advocate caution.

It is our experience that the scheme, which the VWA is seen as the embodiment of, and which is based in Melbourne, is seen as too remote from our region to be easily accessible. That was one of the primary reasons for setting up our group. In addition, it enabled the "tea and sympathy" approach, while dispensing advice. In fact, a lot of that advice is contained in Workcover's own printed material, which we hand out free of charge, in addition to our own in-house publications.

Our outlying groups are seen as "first contact" groups in the main, with the objective of a local face on a state issue, which has the advantage again of dispensing tea and sympathy, with as much advice as can be given by that local group. Where the problem looms larger that they can handle, the problem is passed back to Portland either by phone or email, and an answer given the same day if possible.

These groups are supplied with copies of Workcover publications, forms, etc, and our own publications, as well as having an up to date copy of the Victorian Workcover Claims Manual, and a copy of the Accident Compensation Act 1985 [as amended from time to time].

We do not see this scenario working with the same degree of efficiency, as a centralised system based in Canberra, or any other city.

Having said that, however, I hasten to add that a degree of uniformity across Australia would be of immense help in understanding a complex problem, made even more vexatious by differing schemes in every state.

It would also help the anomalous situation that we have in our region where, if a worker does not earn at least 10% of their annual income in South Australia, then they cannot claim for compensation in South Australia. You then have the ridiculous situation where Victoria refuses compensation, because the injury happened across the border in South Australia.

It would appear that while reciprocal agreements are in place between Victoria and New South Wales, none exists, at least to the same degree, between Victoria and South Australia. Whilst this is a simplistic overview of the situation, and that other factors do impact upon that scenario, nevertheless it does cause major problems for meatworkers, vineyard workers, shearers, and others.

Your concept of a more co-operative approach between states therefore, does have a great degree of merit.

It is indeed difficult enough to ensure consistency of treatment regimes, and the timely supply of daily livings aids and assistance within Victoria, so I shudder to think what a more centralised system would produce.

The developing of further national guidelines, standards, codes of practice, and codes of conduct, should proceed as quickly as is practicable, in an endeavour to at least standardise OH&S regulations throughout Australia. Differing standards can only result in major, often unintentional discrepancies in those standards, within national companies, and indeed international companies as well.

A mutual recognition model where multi-state employers are permitted to pay premiums to one state, with recognition by all states may result in the intentional exploitation of the state with the cheapest premiums, and the slackest protocol standards.

While not suggesting for a minute [much] that employers would rort this type of system in an ideal world, nevertheless experience in the real world would suggest that is exactly what would happen.

Likewise, an expanded Comcare model could also lead to rorts by companies, endeavouring to deflate their costs for employee protection insurance.

I also foresee problems with a uniform template model where the Commonwealth and States pass “mirror” legislation to ensure uniformity.

This group has had input into the “Review of the Laws of Negligence” at federal level last year, and more recently into the “Wrongs & Limitation of Actions Act (Insurance Reform) Act before Victorian state parliament at this very moment.

Both of these reviews were supposed to ensure commonality between the Commonwealth and all states. Your quoted, “mirror image”, of legislation. However this is far from the truth, and very far from the reality, with again, differing laws in all areas.

I must admit this sort of thing used to be blamed on a Liberal, against Labor, legislative loggerheads. However, with Labor now in power in all states, the same pigheadedness still prevails between states.

In the past this has resulted in the good old “leapfrog” manoeuvre where various pressure groups lobby their state parliament on the basis that such and such a state now enjoys far superior benefits under their legislation than does ours.

During the resultant inquiry, comparisons are made between the other state’s legislation to gain an understanding of what works and what doesn’t. During this process, bargaining takes place between parliament, and pressure groups, as to what constitutes “best practice” currently. “Best Practice” seems to have become an excuse for all sorts of nefarious schemes!

So, when the dust settles in both Houses, and the legislation is passed, and signed into law by Royal Assent, other pressure groups in other states play the leapfrog game again, because “theirs is now better than ours!”

Definitely, degrees of uniformity will be the death of games like that!

I might add that the pea and thimble game played by various insurance companies should equally be outlawed. This is where injured victims are refused daily living aids, remedial therapy, and refunds of out of pocket expenses, until such time as the injured victim guesses, or is appraised of their rights under law, and so are able to find the gold nuggets of information, so carefully hidden from them.

If national OH&S Regulations can be standardised; if benefits to injured victims can be standardised; if injured victims will be guaranteed of early intervention, and care appropriate for their condition and situation; and if Return to Work Guidelines can be standardised and guaranteed to work; then, and only then, will an even more remote system be countenanced.

Outside of the immediate metropolitan area, including major centres like Geelong and Ballarat, most of the so-called early intervention will remain unavailable to injured victims.

Our group grows ever weary of trying to explain to injured victims that what Workcover promises, and what Workcover is forced to provide, through recalcitrant, parsimonious, recidivist employers, and insurance companies, that the reality differs markedly in the extreme.

The catch-cry in Victoria used to be “Workcare doesn’t work, and doesn’t care.” It now seems to injured victims that the new catch-cry should be, “Workcover certainly doesn’t work, and most of the time doesn’t cover.”

All the promises in the world are not worth a tuppenny damn, if the system put in place to provide fair and adequate compensation and care cannot be forced to work in the best interests of the poor blighted injured victims.

And yes, we do acknowledge that there is a very small percentage of “bludgers” in the system. However, our group does not, as a general rule, see them, because if they are cunning enough to rort the system, they certainly don’t need our help. In fact our group works pro-actively against any that do not seem totally genuine, and have in the past, had a quiet word in Workcover’s ear to ensure that they are investigated to prove that they are genuine.

It is our best interest to do this because rorters reflect on all other injured victims, and makes it doubly difficult to access our legitimate entitlements.

National Self-Insurance

It is our belief that many self-insurers are not being held to account as rigorously as are those under the auspices of group insurers i.e. Insurance Companies.

It is our further belief that many self-insurers fail to operate within the confines of the Accident Compensation Act 1985, and at present, are not required to act in accordance with the guidelines set out in plain language in the Victorian Workcover Authority’s Claims Manual.

It is in fact difficult enough to hold Insurance Companies to the Claims Manual, which has been provided "as a guide to interpreting the Act." Insurers generally claim the Manual is "set in stone," when they wish to use it against a claim's authenticity. However, those same Insurance Companies claim it is a "guide only," if injured victims endeavour to claim their just entitlements.

The Workcover system, however styled, and under whichever jurisdiction, cannot be allowed to operate as at present, as two different tiers of application. Currently it also operates in an ad hoc style with self-insurer claims managers often offering different "rewards" to injured victims who have, to all intents and purposes, the same injury.

A major self-insurer in Portland has a claims manager who is also a wonderful diagnostician, able to diagnose a person's injury from across the street. He also refuses to spell out return to work programs, treatment available, medical and like claimable expenses, or daily living aids available for use until a recovery is attained. The doctor employed at the plant has a habit of suggesting one course of action, which is often overturned after consultation with management.

Management of that plant have also recently warned all injured employees that if they are seen attending our meetings, or otherwise talking about the plant's work injury record, it will place their jobs in severe jeopardy. Since then, we have not seen any of their employees, or had phone calls, or any other contact with them. Paranoia is apparently alive and well in some sectors.

We have in the past reported dangerous work practices, and dangerous work areas at 2 self-insurer employers in our city, to the Regional Office of Workcover. Our information suggests that the incumbents of that office have phoned a couple of days before inspections, giving ample warning to bolster work crews and apply band-aid solutions to dangerous areas etc., so the employer can claim that they are in the process of addressing the problem. Our advice has been that these areas are again allowed to degrade.

Injured victims have a right to be informed of their entitlements, as well as having their obligations under the law spelled out to them, and supplied with written confirmation of those details.

In the past where breaches of the OH&S Act have been reported to us, we have endeavoured to meet with the firms concerned. If they refuse to meet with us, we have no alternative but to report them to the VWA.

It is our contention that self-insurers should adhere to the same injury reporting protocols as Insurance Companies do. At present they only have to supply a statistical return quarterly, and by electronic means. Workcover do not have any way currently of verifying those statistics, as they do not have to report details such as the injured victim's name, age, address, detailed diagnosis, or detailed prognosis, as required to be supplied by Insurance Companies.

Until, and unless, self-insurers are made to abide by these protocols, deceptive reporting of injuries will continue to take place.

At present, anecdotal evidence points to a culture where injured employees are collected from home, taken to their place of work, and ensconced in the canteen with a cuppa, a bickie, and the daily papers. When they are finished, they are then returned to their homes, and marked as having attended work on that day, which in the strictly legal sense, they have attended. The action however is morally bankrupt!

There has never been a self-insurer, whose licence to operate as a self-insurer comes up for renewal, having that licence, or right, taken from them. When VWA has been questioned about the re-licensing criteria, we are told that they are fully investigated. There is no transparency to the renewal, and no opportunity to lodge an objection.

In the past, whenever we have tried to have allegations about self-insurers investigated, we have been told unless, and until, whistle blowers are prepared to supply a written signed submission, then those allegations will not be investigated.

How stupid can you get? As if someone is going to put his job on the line to that degree. Especially knowing that the written complaint, with their names still attached, will be supplied to the self-insurer to investigate the allegations in-house, or so we are told.

The concept of self-insurance should be expected to deliver a far better service, right across Australia. It may well be that because of the piecemeal approach by the States, then that is the major contributing factor in a less than perfect system.

It would certainly be a major help to self-insurers, if there were some consistency, right across the full spectrum of the various insurance jurisdictions. It would allow for a standardised system, that may well be better able to provide a more consistent, and better service, to their injured victims.

It would be a moot point as to whether States would allow an employer to insure in one jurisdiction, and be able to claim an indemnity in all other States.

The V.W.A. has informed us that they are working towards a system of greater accountability, and adherence to the Claims Manual, as well as the Act, by self-insurers. A small step, but a positive one. We have also been told that the V.W.A. is working towards greater detail in the reporting of injury statistics, so self-insurers may be able to be held to account more easily on the treatment of individuals.

News just to hand, is that VWA is to undertake a "Review of Self-Insurance Arrangements in Victoria," commencing in July 2003. It may appear that our efforts have not been in vain after all!

The OH&S model

Standardising of all OH&S guidelines across all jurisdictions should be a goal actively being pursued.

More employers than ever are now fully conversant with V.W.A.'s efforts to improve OH&S awareness. Anecdotal evidence also suggests that employees are more aware

of their own responsibilities, and are actively pursuing OH&S issues to make their own workplace and methods comply with all legislation. This has in part been union led, but many individuals are making a point to find out about safety issues for themselves, and making sure that their employer knows of their concerns, and that these situations are being rectified quickly. It is after all, in their best interests to do so.

Heightened awareness of workplace deaths is also having a beneficial effect on workplace safety, and safe work practices.

Nobody should die at work. All people have a right to expect that their loved one be returned to them at knock-off time, in the same robust good health, that they left in for the commencement of their shift. All employees have a right to expect not to be killed, or indeed injured, by employers cutting corners on safety.

Those recidivist employers, and there are a few, that completely disregard safety protocols should expect that severe punitive actions will impact heavily on their wallets.

Recidivist employers should not be rewarded for killing their employees either, as is the case now, instead of only injuring them. If they have an employee severely, or catastrophically injured, they face punitive increases in their premiums each year. However if they kill their employee outright, they are generally only given a small fine, and are free to walk away laughing!

This group supports any tightening of manslaughter in the workplace regulations, and/or laws.

Another issue is workplace inspections by Workcover personnel. There will continue to be high incidences of work place injury and death, for as long as inspections remain reactively, instead of being undertaken proactively. While we continue to have workplace inspections, only performed after a workplace incidence of sufficient significance, then the issue of OH&S in all areas remain suspect.

Now that may well be a tall order, and no doubt the bean counters will hold sway about the expense of it all, but quantify for me please; just what is a life, or catastrophic injury worth?

The injured victims can tell you; grief counsellors can tell you; the families can tell you; but who listens to those whinging bludgers, as we are so very often portrayed?

Reducing the regulatory burden and compliance costs

In a perfect world we would not need to be over regulated to the point of the perceived strangulation of some businesses'. Historically, it is a matter of record that we would still be using children as chimney sweeps; still be using children instead of pit ponies to bring up the coal and tin from the mines, and we'd still have the notorious "poor houses", without any such regulations.

At every milestone in history where laws have been passed to prevent the exploitation of children and other workers, we hear the same wailing; the same breast beating; and see the same metaphoric putting on of sackcloth and the smearing of ashes, as the same cry goes up. We'll all be ruined! [Said Hanrahan, if the rains don't come soon!] Sorry, got a bit carried away just then.

And at every historical milestone, business has busied itself to work within [mostly] the constraints of the new legislation, and continue to produce a profit. Isn't the making of a profit, what business is all about?

It is indeed a shame that because of the very few, who will exploit every loophole in every law, that the rest of the presumed worthy and honest traders, have to suffer the iniquity of over regulation, "just to be on the safe side!"

Of course it adds to the overheads of each and every enterprise. Of course there should be less regulation. But what are the alternatives open to us? Do we continue with the good old Aussie "she'll be right mate?" Do we continue to count the dead, and injured, as just another statistic to be collated, but ignored?

No, while there is still the odd mongrel out there who continues to operate completely oblivious to the current regulations, and who continue to flout those few laws that they actually know about, then regulations, and laws, are the only safeguard for the hundreds of injured victims, injured through no fault of their own, and who may be able to sue for negligence.

If those laws were not to exist, there would not be any avenue of recourse to justice, and compensation for injury, loss of enjoyment of life; the absolute and all encompassing pain of chronic injury; the all consuming world of depression where it feels as if your very insides are being chewed to pieces by rats; and often the loss of your wife and children, who cannot stand idly by and see their life partner suffer like a dog.

There are no statistics collated by any authority that I am aware of, that collects figures on suicide, and/or family breakdown, among the work injured victims. Our group hears of so many within these categories, who see no way forward, but the comfort of the very blackness that seems reflected in their very souls. And yes! As another injured victim/statistic, I do know what that means. Harsh words are the province of the harsh realisation of what serious injury can bring. And that is only the tip of the iceberg.

The short answer? Regulation may be a burden, but tell me, what is the alternative?

Access and coverage

In reference to your note on the exclusion of coverage for employees, I must confess that where a small business provider especially is concerned, it is my belief that they should be covered along with their employees. A local garage recently closed, putting 3 employees out of work, because of the cost of insuring his employees, separately from himself.

It would appear that this chap was paying a double amount of insurance unnecessarily, when the bosses' component could well have been included in the one cover. He is now an employee in a field outside of that as a mechanic, while his employees had to search for other employment as well. Less hassles, and just as much money, was his reasoning.

As to access by employees to insurance cover, that presumes that all employers are good corporate citizens, and actually pay premiums to the appropriate Workcover authority.

A case in point was a member of our group who had racked up expenses of $3000.00, while continuing to receive remedial care, but no reimbursement of costs from her employer. It appears that the employing company traded under a number of $2 shelf company names, while playing the thimble and nut trick again. Catch us, if you can just guess where the money is hidden.

Luckily, our group enjoys a very good working relationship with the VWA, who visit regularly every 3 months. The member was able to sit down and explain her plight, and an investigation, and a few months later, the firm was taken to court, and received a significant fine for not being registered, and not paying premiums, or the employee's out of pocket expenses either.

This group finds it rather annoying to hear the constant cry of small business representatives, bewailing the anecdotal evidence, that they believe proves that their employees are rorting the system. While we acknowledge a very small number do rort the system, it is in no way as widespread, as small business spokespersons would have us believe.

In fact the reverse is true, if statistics are anything to go on. Not relying on anecdotal evidence!

We have already agreed that standardisation of all workers compensation systems, OH&S regulations, etc., are a worthy goal to pursue, but if you can get all States, Territories, and the Commonwealth to agree on this, or any other matter, then you are a better man than I am Gunga Din!

Access to a universal WorkCover system is about as "pie in the sky," as our universal health care system is becoming!

The increasing use of labour hire companies, and sub-contractors, who operate outside the usually accepted framework of normal workplace practices, will increasingly affect, and reduce, injured victims access, and rights, to fair and equitable compensation, because they are currently not covered by Workcover.

Where business seeks to hide, through filibuster and obfuscation, meaningful statistics on workplace deaths and injury, there will never be any meaningful, relevant, and consistent statistics that can be used in any useful way for research purposes about Workcover.

Our group is currently arguing with VWA, that the system of collection of statistics on workplace deaths is flawed, and inaccurate. Statistics compiled by the Industrial Deaths and Advocacy group [IDSA], and our own group, shows that 24 deaths have occurred in the workplace to the 14 acknowledged by VWA, as having occurred this calendar year.

Benefit structures [including access to Common Law]

The current rush by Federal and State governments to limit access to Common Law, and to cap eligibility, and monetary amounts of compensation, are an extremely worrying trend.

It would appear to members of our group that the insurance companies are doing a well-practiced con job on the Australian public. There is no crisis within the insurance industry, other than of their own making.

The HIH debacle did contribute to some problems through the heavy discounting of premiums to gain market share, and obtain a positive cash flow. Other insurers were forced to follow in the wake of this disaster in waiting, and cross subsidise their losses on premiums, with windfall gains on investments. Greed was good!

Nor was there any real exposure to the catastrophe that occurred on the 11th September 2001. According to press releases of the time what little exposure that one or two companies had to that awful disaster, was offset by reinsurance with other overseas insurance companies. So why the lies, and why blame that as an excuse for their own bungling?

Prior to 2002, local insurers made massive profits in 4 out of 5 years. Major increases were happening from 1999, and profits were up, claims were down, and life was one long party. Statistics collated by the Australian Plaintiff Lawyers Association, from returns supplied to the Prudential Regulatory Authority by the insurance companies prove the extent to which insurance companies will go, to feather their own nests, at the expense of injured victims every where.

In the current downturn of profits on investments, insurers now want governments to pass legislation that will increase their profits, while at the same time reducing all benefits to injured victims. And all because of a lack of fiduciary care, blunders, and plain old incompetence by their investment tycoons. Or should that be cartoons?

As to the concept of workers sharing the insurance burden, it is plainly obvious what will happen. Already there is a culture of, "accidents don't happen to me, or any of my mates." Accidents happen on other worksites, to other people, and invariably, in other industries. Ten foot tall, and bullet proof we are. So why take out insurance to safeguard my earnings? Why indeed, take out superannuation for my future? This is truly a discussion for another time, and another place. Nah! She'll be right. Did it myself, and look where that got me!! Banging away on a computer in the middle of the night trying to protect others from the same stupidity as myself, that's where!

In all sincerity, I do not believe that any system is going to work any better than what we have already. Let's pull all stops out, and make the system we already have, work as well as the dewy-eyed legislators think that the system does!

Again, in all honesty, I don't think that the issue of Common Law is as problematical as it is made out to be by some union protagonists. And I say that in all sincerity, without detracting from the extremely good work that unions do on behalf of their injured members. However, it is our belief that most injured victims do not have recourse to Common Law.

The perception is that Workcover is a no fault, non-adversarial system. What a joke. Common Law only seems to further antagonise, and inflame, the adversary that is Workcover, in a system put in place to supposedly compensate, and assist, injured victims.

Access to Common Law is only available to those injured victims that are able to prove negligence on the part of their employer, as I have said previously. If you cannot prove negligence, you don't have any access to the large, lump sum payments, held up by the media as an example of windfall profits from the system. Never let the truth get in the way of a good story, particularly when you can rub your viewing audiences collective noses in how lucky these injured victims are, to have won all those dollars in profit, because they were lucky enough to be injured in the first place.

I find it an interesting point that under the Traffic Accident Commission [TAC] legislation, there is provision for Common Law claims. At no time has it ever been suggested that Common Law claims are bankrupting that system. In fact, it is known that the State government skims off many millions of dollars, which it sees as excess to TAC's needs every year. So why the paranoia about Common Law bankrupting Workcover? Not more deliberate misinformation surely? Trust me, I'm from the Government!

More importantly, does this explain the TAC's increasingly parsimonious attitude to claimants within their jurisdiction?

Cost sharing and cost shifting

Already there exist examples of cost shifting from the States, to the Commonwealth. It happens when injured victims are treated in Public Hospitals, where the cost of treatment is paid for, or subsidised, by the Commonwealth.

It happens when chemists refuse to bill insurance companies, for the total cost of the many drugs injured victims are forced to take. This refusal results in the injured paying the Pharmaceutical Benefits Scheme subsidised cost, or the Health Care Card subsidised cost, of medications, resulting in the Commonwealth subsidising the State run Workers Compensation schemes.

Why do claimants not pay full price, and then claim it back from their insurer agent? Surprisingly to some, the full, unsubsidised cost of drugs, are often horrifically expensive. No one on a severely reduced income can afford to pay up front, and then be forced to wait the allowable 28 days before the insurer agent is required to

reimburse that cost. If they could afford to pay that sort of cost, they could afford to not be in the system at all.

Why do chemists refuse to bulk bill insurance companies for medication? Because individual clients accounts can be up to 9 months behind in reimbursement by the insurers. No chemist can afford to have that amount of money outstanding on dozens of different accounts, without his/her business going belly up. Faults in the system? Cost shifting onto the Commonwealth? Nah!

Another form of cost shifting occurs when injured victims have to avail themselves of, I believe, Commonwealth subsidised taxis, to be able to travel to non-Workcover appointments. The reason that public transport cannot be accessed easily is their compensable injury. But Workcover refuses to acknowledge that expense is related to their compensable injury, so no assistance available there!

If the injured victim is denied access to Workcover until, and unless, they access the court system, who pays for their upkeep?

Medicare [Read the Commonwealth] covers the costs of remedial therapy, and visits to various doctors.
The Commonwealth pays the Pharmaceutical Benefit Subsidy on their medication.
The Commonwealth pays by way of the dole or a Disability Support Pension [DSP] for their daily keep.

So what happens when, and if, the injured victim has his day in court? Any judgment handed down by the courts for either a lump sum under Common Law, or for weekly payments, is held up until such time as Centrelink takes back what has been paid to the claimant.

Fair enough. But can the Commonwealth claw back what it has also paid out for medication and/or remedial therapy, and various doctors' fees? No, of course it doesn't have a leg to stand on apparently. Been there and done that as well, have I.

So who wins out of this situation? The insurer, and the employer, that keeps bleating about the costs involved in providing Workcover, that's who. Oh, and so does the Workcover system win, which must be a great saving for them every year, and yet another impost on everyone across Australia, but not the employers.

When our group brought this to the notice of the Minister of the time, the reaction was that the Commonwealth could afford it, and that they were only Liberals anyway in Canberra. At least he was honest about his views on the matter I suppose.

The other cost shifting is a little harder to explain in plain language, because it is an abstract concept. Stick with me on this please.

Firstly, the employee pays for his own insurance through employers arguing for discounting the allowable wage increases at arbitration, because of the increased cost that that the increased wages will bring to bear on the Workcover levy. Their argument is that they can only afford x amount of dollars for both, or their business will suffer. So there is a trade off between the two.

Secondly, the employee pays for his own insurance by virtue of the discounted wage he is paid while on compensation, be that 75% if unable to work, but only 65% if he shows any work capacity, whether a job is available or not.

Thirdly, the employee pays for his own insurance through heavily discounted "wage" increases each year while remaining on benefits. And when calculated, the increase is based on the quarterly increase closest to their anniversary date, not the annual increase in the "Average Wage of All Employees in Victoria" as it should be. It is our contention that these increases are less than that of published figures for the increase to the CPI.

All the percentage figures relate to a percentage based amount of the Average Pre-Injury Earnings of the employee in the 12 months prior to injury.

The Tax Departments treatment of Workcover payments as income is a very sore point with recipients of weekly payments of compensation as well.

Remember, that in a Common Law settlement, no tax is payable until, and unless, that money is banked and commences to earn interest on that compensation. Then tax is payable only on the interest component.

However, although our weekly payments are also compensation, the Tax Department refuses to acknowledge that it should be classed as compensation, and as such, should only be subject to any tax payable on any interest earned, as with the lump sum.

This group maintains that since those payments are also compensation they should not be taxed as earnings, until, and unless again, that money commences to earn interest.

Again, a two tiered system, but our arguments have fallen on deaf ears so far.

Another issue has been raised about the methodology used to set compensation levels, being the Average Weekly Earnings, of the injured victim, over the previous 12 months, to set the pre-injury level of compensation.

In this particular instance, the woman had returned to work after 3 months off on unpaid leave after giving birth. Her arrangement with her employer was that she would return to work at half time for a few months, before taking on full time hours again.

Through no fault of her own she was injured, and now finds her compensation reduced, taking into account the twin factors of 3 months without pay and part time work. It is expected that this woman will not be able to be rehabilitated back into the workforce for some years. As a single mother, she now finds herself dependent on a "top up" from the Commonwealth, because of the discounting of her Workcover compensation.

In another scenario, a worker who assisted his union to argue a wage case review, which resulted in a substantial wage increase, found that the increase became effective

during his 12 months of makeup pay, but he received no benefit from it at all when calculating his Average Weekly Earnings, pre-injury.

It has also come as a shock to some injured victims that once they claim compensation, that for the duration of that compensation, no contributions are made to their compulsory superannuation, by their employer. In our group we have several members whom it is acknowledged will never be able to return to paid employment, thereby missing out on a considerable amount of money at the end of their working lives. They will become totally reliant on the Age Pension at age 65, because they have no compulsory superannuation, or any hope of saving for their old age, by virtue of the heavily discounted weekly compensation payments.

How will they survive I hear you ask? Well they had just better get used to cat food rissoles and/or cat food stew, I guess!

All of the above examples clearly show a form of cost shifting that would not usually be envisaged by legislators, or anyone else.

I have had the advantage of being able to review some of the submissions already sent in. I would refer to that of the Small Business Organizations of Australia Ltd, and submitted by Mike Potter.

I wholeheartedly agree with his proposition that fraud within the system, means less money available for the care of those who need it.

He also postulates the theory that workers compensation insurance has been burdened by large claims, and that lack of reserves are now causing the rise of premiums. Whilst I recognise that this is the public perception gained from media beat ups of massive windfalls, or lottery style settlements, the evidence does not support that assertion, as I have detailed elsewhere in this document.

And whilst I can see the reasoning behind his call for minor claims to be paid for by Medicare, to lessen the impact on small businesses premiums, it cannot be supported that this type of cost shifting from the state based system of Workcover, into the federal arena, and paid by for by all taxpayers, will gain public approval, or support. It cannot, and will not.

I do not know the detail of the Workcover system operating in the ACT, but here in Victoria, the first $500 or thereabouts, of a claim, is already the responsibility of employers to pay. This may well be the first area of any standardisation that should be tackled.

I do however support the main thrust of his submission.

Early intervention, rehabilitation and return to work

Sorry, can’t stop laughing!

Early intervention, despite what it says in the glossy brochures, is a foreign concept outside the hallowed halls of Workcover. How can early intervention exist when the majority of Workcover claims are refused as a matter of course?

Injured victims can sit around twiddling their thumbs for years, until their claims eventually gravitate to a court of law and their injuries are accepted as compensable. By which stage, surprise, surprise, their condition has become chronic, and recognised as long term.

Their struggle for legitimacy, results in a depressive overlay on top of their injuries, because of their despair at the lack of understanding, lack of remedial treatment, lack of proper care because they cannot afford it, and often lack of medication because of the cost as well.

As their condition deteriorates through lack of care, marriages and partnerships fail, and people take their lives in despair of any assistance.

This group received the glossy posters, and interactive CD last year when the new return to work guidelines were promoted. I asked a representative of Workcover what difference to the old system was foreseen, and was castigated as being negative. We still have the same people, sitting behind the same desks, taking their own time, to process the same claims, and nothing, I repeat nothing, has changed.

And nothing will change with rehabilitation either, while we have the same poorly trained, too interested in lining their own pockets, idiots with medical degrees, playing silly buggers with our lives! You cannot pretend that they are at all interested in injured victims, and their right under law to fair and adequate compensation and care.

We note that Independent Medical Examiners are often quite confused between those injured victims that should be reviewed under AMA 2 still, and those injured victims that should be reviewed under AMA 4.

Rehabilitation providers are generally sham companies, which profess to be separate from the insurance companies, but share the same premises, and the same phone number. They are set up by, and for, the insurers, as a well-documented way of keeping costs to an “acceptable” level.

And the VWA has the gall to tell us that it’s their [VWA’s] money, not the insurers, who are only the service providers. What a cosy, incestuous, little arrangement!

Return to work is a great concept if, and when, it can actually be made to work. It is our group’s experience that once a person is injured, the employer refuses to countenance any type of return to work protocol.

This happens in both large and small businesses. Small business usually do not have a clue as to their responsibilities under law, which requires that the person is accepted back at their place of employment, in meaningful employment. Also that when a return to light duties is recommended, that they are required to place that person on modified duty, not back into the same position as before the injury. They often fail to

realise that any recurrence, or aggravation, of the original injury will mean further time lost, with the resultant increase in premiums.

Larger companies are usually more aware of the requirements to be met under law. However we have been notified of instances where the person is allowed to be returned to light duties, and is reassigned in most cases, to the modified duty that is required. However, when the period of makeup pay is reached, and where the person remains on light duties, then the employer begins to shift them into often boring, repetitive work, with the aim of “encouraging” the person to resign.

That thereby conveniently absolves the employer of any hint of underhanded conduct, and leaves the person unemployed, and unemployable.

I say unemployable, because when searching for a new job they have to answer truthfully if they have had a previous claim under Workcover. They answer yes, and suddenly the position dissolves in front of their eyes. This is illegal, as I understand the law, but nevertheless it does happen.

In the past there have been instances where the employee has not appraised their new employer of their previous claim history, and when found out, are summarily dismissed for telling lies on their application form, and thereby misleading their employer.

Is this a lose, lose, situation?

It has also been pointed out by one of our members, that there can be a degree of secondary trauma in dealing with an uncaring employer. There is often a culture of blame on the employee for allowing themselves to be injured, and thus causing a heavy financial impost on the company.

Lack of care, and understanding, of the injured victims needs are often manifest, even after a client may have attacked an employee, as has happened to an employee of the Department of Health and Community Services. To rub salt into the wound, trained professionals who are supposed to be caring and sharing with clients, fail to carry that attitude through to fellow employees.

Additionally, Post Traumatic Stress Disorder needs to be handled in a very different manner to the present exhortations to get a grip, and get over it. PTSD can manifest itself after many, and differing scenarios.

It may be as a result of an attack by a client as above. It may be as a result of watching your best friend in the workplace, experience a catastrophic injury, or even death. Each, and every one of us reacts differently to each of these mind-boggling events. And like depression, it is totally misunderstood; even by those who believe that they are qualified to pass judgement on the sufferer. Time indeed heals all wounds, and that is exactly the latitude that needs to be given to these suffering souls. There are no quick fix, easy solutions.

Dispute resolution

Any, and every, dispute is required to be sent for Conciliation in Victoria, and certain time lines apply for different disputes to "hurry" this procedure along. Disputes cannot progress to court, without a Conciliation hearing to dispense a "Certificate of Genuine Dispute."

Since no claim greater than $2000.00 can be conciliated on either, as I understand it, you can imagine the number of certificates issued over a year.

In addition, since most disputes centre around the fact that if the insurer says no, and you maintain they should say yes, and then you have the makings of another bureaucratic blunder.

To complicate proceedings even further, the Conciliator cannot make a binding decision, or force one party or the other to back down. They are merely there to arbitrate if possible, but really only as another step on the weary road to your just entitlements.

It is only recently that the law in Victoria was changed, so that under performing Conciliators could be sacked. Prior to this, a majority sitting of both Houses of Parliament only, could stand them down. Begs the question though. How can you tell if they are under performing if they are unable to do anything else other than put a rubber stamp on a piece of paper containing an agreed decision?

The whole thing's an expensive farce really.

Do these differences give rise to significantly different outcomes with different Conciliators, and different advocates for the injured victim? Of course! There is no standardisation that I am aware of. If you are lucky to find the Conciliator is on your side, you might have a small win, but if they are against you? Well!

And this then is the nub of the matter of standardisation. It all depends on who the human element is on a particular day, in a particular place, in all these scenarios.

Premium setting

If you are running an unsafe workplace, with unsafe work practices, then you deserve to have all the punitive measures available brought to bear against you.

If your place of employment is an unsafe industry with a high incidence of workplace injury, or death, then it has to be realised that not only you, but also the rest of the industry, need to work co-operatively to ensure the safety of all your employees, in all those work places. That is the law. You have to provide a safe working environment.

Industry weighting of premiums is a vexed issue, and has been heavily criticised by employers in the past. And I do agree that if sections of that industry work effectively and diligently to remove dangerous work places and work practices, they then should

be recognised, by discounting their particular premiums. The downside of course, is that the rest of the industry would have further increases in punitive action taken against them.

It must be recognised that certain sections of various industries have still got the attitude that injuries have always happened in our industry, so they shrug their shoulders and walk off mumbling about bureaucrats sticking their noses into their industry, where they are definitely not wanted.

Attitudinal change, often only comes after generational change.

The role of private insurers in workers compensation schemes.

I reiterate, there cannot be room for a duality of systems providing supposedly comparable compensation within the one jurisdiction, for that is what we have today.

A duality of benefits, of assistance for injured victims around their homes, of treatment received etc, has no place in either Victoria, or any other State, Territory, or Commonwealth jurisdiction.

In the past some of our members had whinged about the stereotypical young blond straight out of school, who was in effective control of not only our entitlements, but also our very lives.

This was of particular concern where entitlements were delayed or refused, often, just on the whim of the case file manager.

The frustration so engendered led to harsh words from recipients, which led to even less assistance from the case manager. Case managers were often rude, and uncaring to the point of being totally bitchy to injured victims, resulting in even more bad feelings, which engendered an atmosphere of “them against us.”

It is generally acknowledged that case file managers only have access to the VWA Claims Manual, and only supervisors, and above, ever see a copy of the Act if they are lucky. It is known that case file managers often confuse the two documents, leading invariably to the “set in stone” attitude to the Claims Manual.

Since July last year, there have been new guidelines governing the number of files case file managers are expected to handle. Long terms injured are to be given expert assistance from in-house medical personnel, and in-house solicitors will also be reviewing our files. To the best of my knowledge nothing seems to have changed, at least from a consumer perspective.

The insurance industry seems unable to get past the mindset of an adversarial system, steeped in the tradition of saying no on principle, when we are assured Workcover is a “ no fault, non-adversarial system.”

It is often acknowledged that the insurance companies stuff us about, because they can. They hold the whip handle, and we have to jump to their tune, or pay the price.

Redemption payments

Up until the middle of last year redemption payments were possible to acquire, under the Accident Compensation Act 1985, but extremely hard to access, there being less than a handful allowed since 1985.

In a general mail out to Workcover recipients, they were offered a form of redemption of future earnings, but that the amount was staged according to age, and heavily discounted to the point where the injured victim could only redeem about a third of their entitlement, that they would have received if they had stayed in the system.

If the injured victim elected not to take the redemption payment at the time, they, and all other injured victims, had the right to a redemption removed from them in a "take it or leave it" condition, spelled out in the offer.

As a result, very few people took up the offer to cash their entitlement in, and get out of the system forever. Financially, they had no option but to stay in the system, and remain stuffed about by the system.

Where a permanent and serious injury is identified, and failing a visit to Lourdes and a possible subsequent miracle, they would never return to work. Faced with this situation, many injured victims had endeavoured to redeem future weekly compensation, to enable them to pay off a mortgage, and so secure the family home.

This avenue, though laudable, has now been taken from them.

Private investigators

We have been fortunate that the VWA has recently released new guidelines for Private Agents, together with a new Code of Conduct. This should remove some of the cowboys from the system hopefully.

VWA has taken the decision that the use of Private Agents will no longer be the first action of choice, but used only if doubts are raised, anonymously, or otherwise, of injured victims true state of health, and/or rorting of the system in other ways. This may mean situations like claiming medical and like, in excess of their needs and entitlements.

This Code of Conduct is seen as a major initiative, and follows a great deal of lobbying on our group's part, with the VWA, and various Ministers from both sides of the House.

Conclusion

If standardisation within all areas of delivery of service, in OH&S guidelines, in work practices, and work places, is the goal, then let us all work firstly to make the system we have at present work, before we add another layer of bureaucracy.

Let each and every jurisdiction start to make systems put in place by caring governments, start to deliver fair and adequate compensation for all injured victims, without exclusion, rancour, or favouritism.

Each government is convinced that the laws that they have passed are to the benefit of all the injured. They have been led to believe that those laws enacted to assist the injured, are in fact working the way that they were designed to do.

No government believes that laws enacted to assist the injured, have in any way been detrimental to the type, style, and amount of compensation, which should rightly be being delivered, to those injured.

My major beef throughout this document has been about making the existing laws work for the benefit of those they were intended to help.

At present they do not, and cannot, until there is a change in attitude in those responsible for the delivery of services to the injured victims, who are hurting enough with their injuries, without being even further hurt by an uncaring public, who often see compensation as some type of reward for being injured.

I firmly believe that this group has managed to make a difference to the way the work injured are viewed, and we have also made inroads into the quality of the delivery of services to those people as well.

This group operates on a shoestring budget of considerably less than most people earn in a month. If it were not for the work of the many volunteers that make up our group, advocacy, and support, for injured victims, and their families, would cease to exist.

The majority of our volunteers are work injured, or traffic accident injured, and are able to empathise more readily with those who seek out our assistance.

We prefer not to take sides in political debates, instead much preferring to side with injured victims.

This group acknowledges the assistance and support of all political parties, and politicians, the Victorian Workcover Authority, Workcover Assist, the Traffic Accident Commission, local government, law firms, Victorian Trades Hall Council, Unions, Union Assist, Advanced Medical Transport [for non urgent medical transfers], and other service providers.

As a recipient of the munificence of the Victorian Workcover Authority, and its agents, I have no desire to see my children, or friends, or acquaintances, or even my sworn enemies, suffer a workplace injury, because I know what all that entails in pain and suffering, loss of friends, loss of workmates, loss of incentive, loss of dignity, loss of identity, loss of self esteem, loss of life's opportunities, loss of the enjoyment of your children, often the loss of our wife, partner and very being, and very often the loss of a life either by accident or design.

If you truly want to know all there is to know about the Workcover systems right across Australia, then please go and ask an injured victim, if you have the courage to!

Iain J. Grant
President
GTIPSG

“Supporting and advocating on behalf of Workcover and TAC injured victims”

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GREEN TRIANGLE INJURED PERSONS SUPPORT GROUP INC

"A helping hand - close at hand"

"Supporting and advocating on behalf of Workcover, and TAC injured victims"

President: Iain J. Grant, PO Box 433, Portland, 3305. Ph/Fax 55234550. Email: iain@injuredpersons.org.au
Secretary: Shane Rowe, PO Box 433, Portland 3305. Ph 0414485405. email: shane@injuredpersons.org.au
In Warrnambool: contact, Peter Bartlett, on mobile 0417122834, email: peter@injuredpersons.org.au
Also in Warrnambool: contact, Alan Lyon, Ph. 55620525
In Northern Melbourne Area: contact, Les Loades on Ph. 57721824, email: les@injuredpersons.org.au
In Geelong: contact Di Schoe on Ph. 52821125, email: di@injuredpersons.org.au
In Geelong: contact Geoff Hicks on Ph. 52756068
In Hamilton: contact Kim O'Connor on Ph. 55721638
In Dunkeld: contact Sue Haselden on Ph. 55772625
In Ballarat: contact Peter White on Ph. 53495572
Or visit our website at www.injuredpersons.org.au

28-5-2003

SUBMISSION ON "WRONGS AND LIMITATION OF ACTIONS [INSURANCE REFORM] BILL

PREAMBLE

I am somewhat puzzled by comments made by Mr. Rob Hulls, the Attorney-General in July 2002 claiming "massive rises in Public Liability premiums are a con by insurers", and his current stance on legislation introduced to the Victorian Parliament agreeing to cap payouts for injury and setting a new entry level before a claim can be made. (Source Melbourne Herald Sun, Wednesday, July 10, 2002)

Further he made it known that "he had slammed the door on the industry's demand for tougher laws for personal injury, saying there would be no NSW-style clampdown on claims in Victoria." (Source Melbourne Herald Sun, Wednesday, July 10, 2002)

It would appear to our group that the two views expressed are diametrically opposed, and one can only wonder what brought about this massive change in opinion, that is so strong, so convincing, that he now proposes the introduction by a Labor Government, that which he so roundly castigated at a Federal level, and the Liberal Party for introducing similar legislation.

In February of 2002 this group received documents that contained figures collated by the Australian Prudential Regulatory Authority, proving that premiums began to rise dramatically as far back as 1999. In 2000, premiums rose by 15 to 20 per cent. Prior to this premiums were artificially deflated by insurers such as HIH, discounting premiums in a desperate bid for market share, and to ensure cash flow.

Prudential regulation was very slack at this time, and insurers were mostly insolvent, by modern prudential standards. The increasing amalgamations of insurers [which is still ongoing] gave those insurers a veneer of profitability.

However, massive returns on investments had kept the wolf from the insurer's doors, by cross-subsidising losses incurred by under selling insurance to the general market.

In the 5 years to 2002, figures are available for insurance companies, which, as a group, had made massive profits for 4 of them. Investment income to that point had risen, total premiums had risen, and profit after tax had risen. It now appears that due in part to stupidity, and more likely, incompetence, they now have a turn-around situation where their premiums have to subsidise their massive losses on investments.

It is for this reason, and this reason only that the government has been wooed by the insurance sector, and hoodwinked into believing, against all the available evidence, that it is Public Liability insurance that has "blown their figures out of the water." I do not believe it, and neither should members of parliament! Maybe the

insurers should follow the lead of Workcover, and "Work Smarter, Not Harder," and then none of us would get ripped off!

The Premier of Victoria, Steve Bracks, Second Reading Speech

Whilst this group agrees with the Ministers assertion that HIH in part caused major problems for the insurance sector, we do not believe that any insurer in Australia had a major exposure to the events of September 11, 2001. What little insurance was paid out was offset as a direct result of Australian companies claiming re-insurance from overseas companies. At least that was the claim by the insurers then.

We have a firmly held belief that where community groups have little or no risk attached to their operations, premiums should be lower than if they had exposure to high risk activities like football, and other high impact sports. Historically, this has been how insurers have set their premiums. Now they are claiming that all insurance carries the same risk, and ergo, we can charge what we damn well like.

Our group's own Public Liability insurance is a case in point, having only moved upwardly by a few dollars per annum, in accordance with increases in the CPI, as we are presumably seen as very low risk.

If Government has actively "facilitated new insurance arrangements, … changes to institutional and regulatory arrangements, …. providing insurance of last resort for limited periods, and finally to an extensive package of legislative reforms", then why does Government feel it needs to keep spoon feeding the insurance industry with even more legislation? Why even more controls? Is it just a case of gee, we got it wrong first time round and buggered it up, so gee, we better get it right this time around, and so keep fiddling at the edges every time the insurance industry taps them on the shoulder, or what?

I note that the Minister refers to the 255 page Ipp Report and undertakes to implement the major portion of that Report. As I understand the situation, the Federal Government has implemented its changes as a result also of the Ipp Report. To what extent has the Federal Government legal jurisprudence over legislation effected at State level? Will the legislation contained in the Reform Bill be supportive/sympathetic to Federal Legislation? If both levels of Government have implemented the major portion of the Ipp Report, why does the State Government feel it necessary to enact supportive/sympathetic legislation as well?

The Minister's statement that groups are operating without proper insurance begs the question as to the legality of that action, and should not there be legislation, compelling groups to be so insured?

This group firmly believes that to structure levels of impairment according to the AMA 4 [American Medical Assessment version 4] to be a retrograde step, and will make the Public Liability arena a similar dog's breakfast that constitutes fair and equitable compensation, as Workcover, where even the doctors employed by the Victorian Workcover Authority flounder in confusion. It should also be stated that many American states are moving their assessment of injuries back under AMA 2, from AMA 4, as they too have found it too repressive and unworkable.

The current over-reliance on the "proof" of negligence in cases of injury would seem to preclude those injuries that occur, not as a direct result of provable negligence, but that nonetheless happen without a negligence component, regardless. The injured victim remains injured, remains in pain, remains without affordable remedial treatment, and without that proof of negligence, and remains uncompensated? The fault remains not of the injured victims doing, but the fault of

circumstances that a thinking person would expect is the fault of some other person, identity, consortium, or other controlling body. It is very difficult to prove "negligence," as is proved by the experience of the Workcover and TAC systems for anyone endeavouring to sue under Common Law.

There is absolutely no proof that legislation enacted at Federal level, and in other states, has led to any reduction in insurance costs, in fact I believe that the reverse is true. The only losers in this equation will be injured victims!

As to the alteration of the limitation of time in which to bring an action against an insurer, I can only quote from our submission to the Federal Government on this very same issue.

"Inasmuch, and insofar as we are affected, we would seriously counsel against any reduction, or limiting, of the principles of Common Law, as established by prior protocols, and precedents, that have been tested in courts of law, and established, over many, many years."

We firmly believe that any applications limiting access to, and claims under Common Law, will be judged as reprehensible, retrograde, and a heinous miscarriage of accepted levels of quantifiable justice.

I find it interesting that the Minister has again used " the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victorian" as a method of calculating payments for "gratuitous care" under section **281B. Calculation of damages** contained in the Bill.

This is effectively the same rate as that employed by Workcover in determining any increases to compensation annually payable to injured victims under that legislation. This method uses a statistical formula inclusive of hours worked and not paid for; junior and apprentice wages; part-time and casual wages; male and female rates of pay, which when combined, discounts any increase dramatically to the level of 1% to 4% annually. It is also historical in nature and ensures that recipients are always at least 12 months behind anyone else's increases to the Basic Wage, and other adjustments in line with rises in the CPI.

This differs markedly from the formula that is used to set Federal Parliamentarian's wage increases, which are based on the average weekly earnings of all adult males, ensuring a whopping 17% increase recently. This then automatically flows on to State Parliamentarians, the Judiciary, and heads of Commonwealth Government, and State Government Heads of Departments. Lucky them!

But this is an argument for another time, and in a different forum.

I note that under Section 28LZL, it will apply some provisions of the Accident Compensation Act 1985, as it refers to the appointment and use of Medical Panels.

It is to be hoped that those "Medical Experts" so appointed will also be constrained by the new regulations governing the ethical conduct of Medical Practitioners appointed as Independent Medical Examiners under section 112 of the Accident Compensation Act of 1985, and further amplified in the Victorian Workcover Authority's Claims Manual. These arrangements are contained in a Policy Paper promulgated in December 2002, and I believe, since adopted.

This paper prevents medical appointees giving an "opinion", but rather ensures any judgements are based on fact only. Medical opinions have no place in courts of law, or in any method impacting directly on attendant care given to the victim. And indeed an opinion is just what the Minister is attempting to avoid, which he insists will be the basis of so-called vexatious litigation.

I do not believe that this Bill will be in the best interests of the community, or that it will provide fairness to the plaintiff. I do see it providing an unnecessary advantage to the insurance industry however.

Mr. Robert Clark, Shadow Attorney-General in reply.

Although I dislike taking sides in any political debate, I find that I must concur with the Shadow Attorney-General, in that he believes that the Government is indulging in far too much haste, in a desperate attempt to get this legislation in place by the end of June 2003. The Government has allowed too little time to adequately peruse the Bill, and too little time after it receives Royal Assent in which to implement these reforms.

I was taught to be cautious a very long time ago, and in this instance one can only question why the inordinate haste at this late hour? It reflects badly on the ruling governing party. And one must question as to whether the Attorney-General is wearing too many hats to allow him to adequately address his many portfolios?

I remain unconvinced that there will be any downward movement in premiums as a result of this legislation, and reiterate my belief that this legislation, will only give cart blanche to the insurance industry, to use this as an excuse to load even greater imposts onto unsuspecting community groups, amongst others. I further believe that the insurance industry is engaging in a massive con job.

Anyone who believes that the $50 million savings expected by the industry, will be passed on to the public, then they have little or no understanding of the business world outside of the cosy precincts of the parliamentary building.

I now refer to the examples of conditions that the Government expect to be covered under the 9% threshold, and can only agree that the claims are outrageous.

Our experience of what constitutes serious injury under AMA 4 is that you have to be bloody near dead to receive any real benefit from the compensatory body applicable. The listed examples would be laughed out of any suitably qualified medical practitioner's office, not to mention laughed out of any court of law. The further listed examples in the Melbourne Herald Sun, on Wednesday, May 21, 2003, are also hardly believable. I have seen chronic back injuries, and with the victim on incredibly high doses of painkillers assessed as below the 12% used in the back injury example.

As to the stated fear that this will shift costs onto the Federally funded Medicare system, I would seriously doubt that the governing party cares two hoots about it. I had posed this very question to Bob Cameron during a meeting with him to discuss various problems with Workcover. I had accused the then Minister responsible of trying to offload injured victims onto the Disability Support Pension, to which he replied that he could not see a problem with that scenario because they were Liberals in government federally and he didn't care as a result anyway.

Beware the man who says, "I'm from the Government, and I'm here to help you. Trust me."

Conclusion

In an article in the Melbourne Herald Sun of Wednesday May 21, 2003, written by Sarah Henderson, and regarding this piece of legislation she seems to have got the measure of the Premier, and the Government, down pat. As a lawyer, she has managed to present the proposed changes in an easy to understand manner. I have to

concur with her assessment, and indeed others, that the legislation is ill considered and full of anomalies.

In light of the Second Reading speech, and the reply by both the Shadow Attorney-General, and the Leader of the National Party, among others, I would hesitate to give unqualified support to this legislation in its current format.

I further believe that the constant debasing of entitlements under the umbrella phrase of Common Law will have an adverse affect on Workcover, and TAC legislation at some point in the future.

Our members have a constant, and recurring fear of any changes that may impact on their own situation. Every time a change is mooted we hear the same old catch cry of this will make things easier; make things better for injured victims. And every time when we have had a chance to read the fine print, we have found our entitlements further eroded.

As a consequence, I firmly believe that none of our members would be able to support this iniquitous piece of legislation that appears parsimonious in the extreme.

Yours Sincerely,
Iain J. Grant
President, GTIPSG

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President: Iain J. Grant, PO Box 433, Portland, 3305. Ph/Fax 55234550. Email: iagrant@datafast.net.au
In Warrnambool: contact, Peter Bartlett, on mobile 0417122834, email: pbartlett50@hotmail.com
In Melbourne: contact, Les Loades on Ph. 95110967, email: megandles@bigpond.com
In Geelong: contact Di Schoe on Ph. 52821125, email: schoeres@geelong.hotkey.net.au
In Geelong: contact Geoff Hicks on Ph. 52756068
In Hamilton: contact Kim O'Connor on Ph. 55721638
In Dunkeld: contact Sue Haselden on Ph. 55772625

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REVIEW OF THE LAW OF NEGLIGENCE

The Green Triangle Injured Persons Support Group Inc has, as its primary focus, the support of, and advocacy on behalf of, those injured victims having claims under Workcover, or Transport Accident Commission legislation in Victoria.

As such, we would not normally be concerned with changes to tort law relating to Public Liability Insurance.

However we note with a great deal of concern the consideration of:-

(a) Limiting liability arising from personal injury;
(b) Limiting quantum of awards for damages;
(c) Forcing persons to carry their own risk, or self insure;
(d) Reducing the statute of limitations to 3 years from time of injury
(e) Limiting professional negligence, by negligence or omission;
(f) Limiting, or exempting, not-for-profit organisations.

Our group has little expertise in the legal field, however given our limited knowledge, and experience, we would make the following comments with regard to the proposed changes mooted within your Panel's Terms of Reference, and in accepting submissions on the Principles Based Review of the Law of Negligence.

Point 2. Inasmuch, and insofar as we are affected, we would seriously counsel against any reduction, or limiting, of the principles of Common Law, as established by prior protocols, and precedents, that have been tested in courts of law, and established, over many, many years.

Point 3 (d) We do not support the concept of retrospectivity in endeavouring to apply current laws, prior to the date when it received assent, and was signed into law, unless the phrasing of the law specifically included a clause allowing such retrospective application of that law.

Point 3 (f) As a not-for-profit organisation, run for, and by, our members, who volunteer their services, we envisage difficulties in a blanket exemption for all "not-for-profit" organisations. While small community based organisations like ours are not experiencing meteoric increases in our Public Liability Insurance, by virtue

of being an extremely low risk group, we do have doubts about so-called “not-for-profit” sporting associations that represent the optimum end of the risk market.

A lot of these reputed “not-for-profit” organisations also use the funds that they raise to pay some staff, and/or sports persons, and as such, it is our belief that they should be categorised differently to others who do not pay wages; rewards; honorariums, and suchlike.

In a similar vein, fetes, and other such gatherings that provide a mix of entertainment such as Merry-go-rounds; Pony Rides; Dodgem Cars; Aunt Sally, or Coconut Shies; or other more intensely interactive pursuits that have an element of risk, as well as the usual array of stalls, could be seen to be at a higher insurance risk level than others.

However, where the activity is purely for the entertainment of the community, and is seen far and wide as a popular tourist draw card, bringing much needed funds into small towns, villages, and regional cities, then it is our perception that they too should be entitled to have their risk of exposure to litigation protected in some form, or another. Most of the activities at these types of community efforts are low risk and deserve to be quarantined from any liability arising out of negligence on the part of the individual who is injured.

Lawbreakers who suffer injury during the execution of their crimes should be quarantined from any access to the courts of law to claim for any such injury sustained. Likewise any person injured while under the influence of intoxicating liquors, or drugs, and/or who injure themselves by virtue of their own stupidity, should also be quarantined from access to Public Liability Insurance.

Point 4. Our group is unaware of the interconnectivity, interdependence, or interaction of the Trade Practices Act 1974 on the Public Liability Act, when impacting upon the Common Law Principles. Therefore, our group cannot make any comment in that regard.

In regards to Point 5, if the statute of limitations were to be amended, or revoked, insofar as it applies to Public Liability Insurance, there would still be the requirement by solicitors, and insurers, that the injured person’s medical condition be stabilised sufficiently, according to accepted practice, prior to any appearance in court. This requirement is historical, and rests on the principle of sufficient care, concern, and interest, in the well being of the individual being taken into account, and being given the appropriate level of care needed, with the costs of that treatment being adequately provided for in any settlement.

It is of major concern to our committee that were this, and any other limitations to tort law be acquiesced to, as to what flow on to other areas of law could, or should, be expected given the insurer communities rapid use of any excuse to reduce their exposure to the possibility of having to actually pay out on an insurance policy? This postulation is historical in nature, and proof of insurers nefarious fiscally devious nature.

Were there to be a capping of the amount of any settlement, it may seriously, and unintentionally, result in “catastrophic injuries” not being adequately provided for, or such capping would diminish the appropriate level of care accordingly.

We also have concerns that the injured will not have their needs adequately addressed, through over regulation of payouts where insufficient “up-front” monies would be provided to adequately supply renovations to an existing structure, and/or provision of those aids needed to be adequately cared for, and supported by.

It has also been mooted in the daily press that consideration of the amount of payout would be seriously curtailed by referral to a drip-feed system of staged payments. On the face of it, we have no serious concerns with the concept, excepting that there is also an expectation that those staged payments would be awarded “free of Tax” status.

However, it has been our experience within our own particular area of expertise, that the Australian Taxation Department is diametrically opposed to consideration of the application of that Taxation Act [however styled] with appropriate Tax relief for staged payments. Where our members are in receipt of staged payments, on a weekly basis, the Taxation Department has historically treated those staged payments as income. That staged payment is, for all intents and purposes, compensation for injury, loss of wages, pain and suffering etc., and as such should be being treated as Tax free, the same treatment as is afforded to a lump sum payment, prior to, and until, it starts to earn interest.

Similarly, that attitude is also mirrored by Centre Link when assessing compensation/income in calculating any “top up” payments, or eligibility for a Concession Card, or any other relief that they might claim from the Federal Government.

Our group has approached the Tax Department on that basis, and endeavoured to change existing policy regarding the “free of tax” concept when applied to weekly payments of compensation. To date the Treasurer, and his Department, remain to be swayed from their present entrenched position. This could be explained in simple terms as evidential of the Department fearing an enormous loss of taxation payments, were this to become accepted practice right across the board.

Anecdotal evidence suggests that a limited number of persons have been successful in having their requirement to pay tax on their weekly compensation payments waived, at the penultimate moment, on the steps of the courthouse, when those persons have mounted a specific challenge regarding their personal payments. A member of our organisation is almost ready to mount his own claim on the basis of evidence available.

Our group has had made available to it, documents that suggest that the insurers are indulging in a great deal of filibuster in an attempt to conceal the real facts as to why there is currently a need for disproportionate increases to the premiums they wish to charge as a direct result of their own collective stupidity, and incompetence. The Australian Plaintiff Lawyers Association, from documents made available by the insurance industry to the Prudential Regulatory Authority, has collated those figures. Those figures indicate that the cost of personal injury

insurance has been raised in a disproportionate rate to the claimed increase in adjudicated payments, and the purported increase in the number of claimants. Figures collated by the Prudential Regulatory Authority disprove the Insurance Industries claimed figures and clearly point to obfuscation on the part of the Insurance Industry in trying to mislead the general populace.

Our group finds it interesting that the Melbourne Herald Sun carries within its financial pages today [Wednesday 31-7-2002] a report that the I.A.G. [Insurance Australia Group] has released to the media information that they are considering an expansion of their business to include Public Liability Insurance, and Professional Indemnity Insurance. While they have qualified their press release to state that this is dependent on the NSW Government rolling over, and giving in to the Insurance Industries demands, nevertheless, clearly, they foresee an opportunity to make huge profits from this sector, while maintaining:-

(a) A straight face; and
(b) Keeping up the pretence that this sector is a non profit making area of insurance underwriting; and,
(c) Trying to keep the company afloat while such luminaries within NRMA, such as Nick Whitlam, do their damndest to white ant the companies within the group, from the inside.

Clearly, the current situation has been orchestrated by an industry devoid of any morals. It is also clear from published figures that any shortfall in profits claimed by insurers is as a direct result of insufficient fiduciary care by Directors of those companies, and a dereliction of duty by those same finance investment personnel who now seek to hide their impropriety by blaming Public Liability Insurance for their fiscal woes. Clearly the public is being taken for a very expensive ride in a transparent attempt to salve the angst of investors that are baying for answers as to why their share prices, and dividends, are in the basement.

If this inquiry truly seeks answers, and a solution, to the outrageous and misleading statements emanating from the Insurance Sector, then they are clearly being led on a false trail and are looking in the wrong area.

I reiterate, that we, as injured victims of accidents not of our choosing, can see a widening of these mooted changes, that will eventually overwhelm legislation put in place to protect, and care for, those injured in work place accidents, and motor vehicle accidents. In that eventuality, God help us all!

Iain J. Grant
President