

## Stateline Victoria

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Transcript

### **Are the government's insurance reforms leaving legitimate victims without compensation?**

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CAROLINE MOORE, FOOD POISONING VICTIM: People are genuinely hurting and the attitude does seem to be "Tough luck, live with it" and I just don't think that's fair.

KATE ARNOTT, REPORTER: Last month, Caroline Moore became one of hundreds of people hit by food poisoning after eating dips from these Turkish restaurants in Brunswick. She says she endured a week of vomiting, diarrhoea and cramping before ending up in hospital with bleeding kidneys.

CAROLINE MOORE: It was the sickest I have ever felt in my life, I was so cranky and angry and just in pain and everything was just really, really difficult.

KATE ARNOTT: Because Caroline and most of the other victims of the food poisoning outbreak will recover, they can't claim compensation for pain and suffering. Changes to the Victorian law in 2003 mean victims have to prove their injury is permanent and represents more than 5% impairment.

CAROLINE MOORE: I think it's appalling purely because people go out to eat and they go with a fair expectation that they're not going to be sick. And now it's basically saying, well you're not getting compensation, tough luck, it's almost like your fault for going out.

KATE ARNOTT: The Turkish restaurants are likely to be charged with breaching the Food Act and could be fined up to \$500,000 although victims will get none of that.

JOHN CAIN, LAW INSTITUTE OF VICTORIA, CEO: We're very concerned that Government initiatives have denied victims significant rights.

JOHN LENDERS, FINANCE MINISTER: Nobody in Victoria is prevented from suing and anybody who says to the contrary is loose with the truth. Anyone who suffers an economic loss of any sort can still go to the courts as they always have in Victoria, they can still recover for any medical costs, they can still recover for any lost income and that has not changed. This thing called General Damages which is a non-economic loss can only now be achieved if there is a serious ongoing injury and that's a matter of definition.

KATE ARNOTT: But while people can sue for economic loss and medical costs, lawyers say running such a case is not worth it for many victims, especially pensioners and low income earners who use the public health system. So the only way to win some compensation was to sue for pain and suffering. Lawyers have mounted a strong campaign against the reforms, prompting the insurance industry to question their motives.

PETER JAMVOLD, INSURANCE COUNCIL OF AUSTRALIA: Perhaps it's got something to do with the tens of millions of dollars in fees that the lawyers have lost because of the liability legislation or perhaps it's because the lawyers really are concerned about people's rights to sue.

JOHN CAIN: This is not about lawyers. This is about injured victims who have legitimate and significant injuries being properly compensated.

KATE ARNOTT: The drop in the number of compensation claims filed in the County Court of Victoria in the year after the reforms were introduced was dramatic. Personal injury writs involving public liability fell from 1734 to 40, medical negligence cases went from 1798 to 44 and dog bite claims slid from 42 to zero.

JOHN CAIN: I don't think anybody expected it to be as significant as it was. A lot of the information coming out from the actuaries and others was that it would lead to a 15% or 20% reduction in the number of claims. What in fact we've seen is an 80% reduction in claims lodged at the County Court and that's alarming.

JOHN LENDERS: These reforms have been a success. They were designed to restore confidence to the insurance industry and to the people's ability to sue. A lot of people had no insurance because the system wasn't working properly.

KATE ARNOTT: But Marie Marsden says the system still isn't working properly because she's been denied compensation for pain and suffering despite breaking her leg and ankle.

MARIE MARSDEN, VICTIM: I'm very disappointed. I've been a Labor supporter all my life and very disappointed.

KATE ARNOTT: Marie slipped into this drain in Ballarat while getting out of a car a month after the reforms were introduced. She says she didn't see the opening because it was covered with leaves. Marie had to spend months in a wheel chair and on crutches and will have a metal plate in her ankle for the rest of her life. She wanted compensation from the local council for pain and suffering but a medical panel set up to assess the extent of injuries found hers weren't permanent, meaning she didn't fit the criteria to sue.

MARIE MARSDEN: Oh, I'm permanent. I wake up every morning and my left leg is like just ordinary. I wish I could be crossing the road better and running, not running but able to do things that I usually do. I miss it, I miss having the mobility.

JOHN CAIN: If you take away common law rights then one of the likely outcomes is that there'll be less emphasis on safety, there will be less emphasis on protection for those involved in activities in public places and that is a real concern to us as a community.

KATE ARNOTT: The Government says one of the main reasons for introducing the reforms was to ensure the future of community groups, sporting clubs, tourism operators and councils who couldn't afford soaring insurance premiums.

JOHN CAIN: We have seen little or no evidence of the reduction in premiums. We have seen substantial increases in insurance companies profits and we're seeing victims

missing out on compensation. It's simply not fair.

PETER JAMVOLD: There are a whole load of assumptions there which aren't correct. For a start, premiums are moderating, the JP Morgan Deloitte survey which came out in October last year showed that definitely rates are easing and the expectation for this year and for 2006 are that they will decline.

KATE ARNOTT: There'll be a better picture of where premiums stand when the Australian Competition and Consumer Commission releases its latest review of the insurance industry's pricing practices at the end of the month. Even so, the State Government says the reforms are here to stay but with strong lobbying from lawyers, there are signs it is willing to compromise. The Finance Minister will hold a forum of stakeholders in April at which lawyers have been asked to provide case studies.

JOHN LENDERS: We're certainly prepared to look at whether the system is travelling smoothly but we need data. We think the balance is right but we'll continue to look at exceptional cases - where we can tweak it or improve it.