

14 October 2005
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TORT REFORMS COST HEALTH \$10M: REPORT

Taxpayers are now paying medical expenses and social security payments for injured people unable to claim compensation after it was revealed that changes to tort law last year had deprived the public health system of millions of dollars.

A report by the Australian Competition and Consumer Commission shows that medical expenses of an injured person that previously would have been paid by insurers are now being left to the public health system because claims such as those for pain and suffering can not be made because of the tort law changes. Lawyers warn the results are the tip of the iceberg, with injured people who are unable to recover money now receiving social security instead.

The ACCC's fifth report on its monitoring of public liability and professional indemnity insurance says recoveries by the Health Insurance Commission from injured people for the cost of medical care fell 26 per cent in 2004-05. While recoveries fell 10 per cent in the previous year because of a new HIC policy to make recoveries only from compensation claims greater than \$5000, the ACCC says the cut from \$38 million to \$28 million in 2004-05 is "consistent with tort reforms affecting the number and size of compensation payments".

The amount lost is only a fraction of total health expenditure in Australia, which last year reached \$78.4 billion, but it would have paid for a number of federal health-related programs. These include an asthma management program that provides incentive payments and resources to general practitioners, which had a budget of \$8.3 million in the past financial year, the annual cancer research budget of Cancer Australia - about \$4.3 million - and a skin cancer national awareness campaign costing \$5.5 million.

The reduction of recoveries has been seized on by the Law Institute of Victoria as evidence that changes to tort law have gone too far.

"In a period when the public health system is under enormous pressure, it seems absurd that the governments, both state and federal, through their legislative programs of **tort law reform**, have deprived the the public health system of such a large amount of money," Law Institute of Victoria chief executive John Cain said in the Law Institute Journal.

Mr Cain said the figures in the ACCC report were the tip of the iceberg. "The health sector effectively provides a subsidy to the bottom line of insurers and the government should move quickly to put an end to it," he said.

Insurance Council of Australia deputy chief executive Dallas Booth said it was too early to jump to the conclusion that the drop in HIC recoveries was due to tort changes.

It could also be due to the nationwide drop in motor accident claims, which were largely unaffected by the changes.

"The cost of the public health system is measured in billions of dollars and \$10 million is unlikely to put the health system at considerable risk," Mr Booth said.

"However, it is fair to say that the advice received by ministers in November 2002 on the potential impact of the lpp [Justice DA lpp] proposals was that they would potentially be felt in a reduction in HIC recoveries. This is essentially confirming that outcome."

The ACCC also found that the average public liability insurance premium fell 5 per cent in 2004, with most insurers expecting more falls of the same order. Previously, the average premium had remained stable in real terms between 1997 and 1999 and rose significantly from 2000. In Victoria, public liability claims in the County Court reached 2300 before the introduction of restrictions in 2003 but fell to less than 100 last year.

"Factors identified by insurers as leading to reduced premiums in 2004 included increased capacity and thus competition in the market, changes to liability rate structures, tort reforms and improved risk management," the report says.

Australian Lawyers Alliance president Richard Faulks said the burden of supporting accident victims would also be shifted from insurers to taxpayers in areas beyond health.

MAIN FINDINGS OF THE REPORT

- * Public liability and professional indemnity premiums fell 5 per cent last year and similar falls are expected this year.
- * The number and cost of public liability insurance claims in 2004 were lower than they would have been if tort changes had not been implemented.
- * The number and frequency of claims incurred by insurers have remained relatively stable since 2002; there has been a slight increase in property damage claims and decrease in personal injury claims.