



## Trade Practices Amendment (Personal Injury and Death) Bill 2004

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## Trade Practices Amendment (Personal Injury and Death) Bill 2004

**Date Introduced:** 9 December 2004

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** 28 days after Royal Assent

### Purpose

The purpose of this Bill is to amend the *Trade Practices Act 1974* (TPA) to prevent individuals recovering damages for personal injury and death where there has been a contravention of Part V Division 1 of the TPA.

### Background

The public liability insurance crisis

In 2002, the Federal, State and Territory Governments put in place a series of measures to solve the public liability insurance crisis. The review of the law of negligence, which was announced by the Government in May 2002, was one such measure.<sup>1</sup> The final report of the review<sup>2</sup>, in this digest referred to as the Ipp Report, was released in September 2002.

The amendments contained within the Bill give effect to Recommendation 19 of the Ipp Report. Recommendation 19 states that:

The TPA should be amended to prevent individuals bringing action for damages for personal injury and death under Part V Div I.

### Nature of the public liability insurance crisis

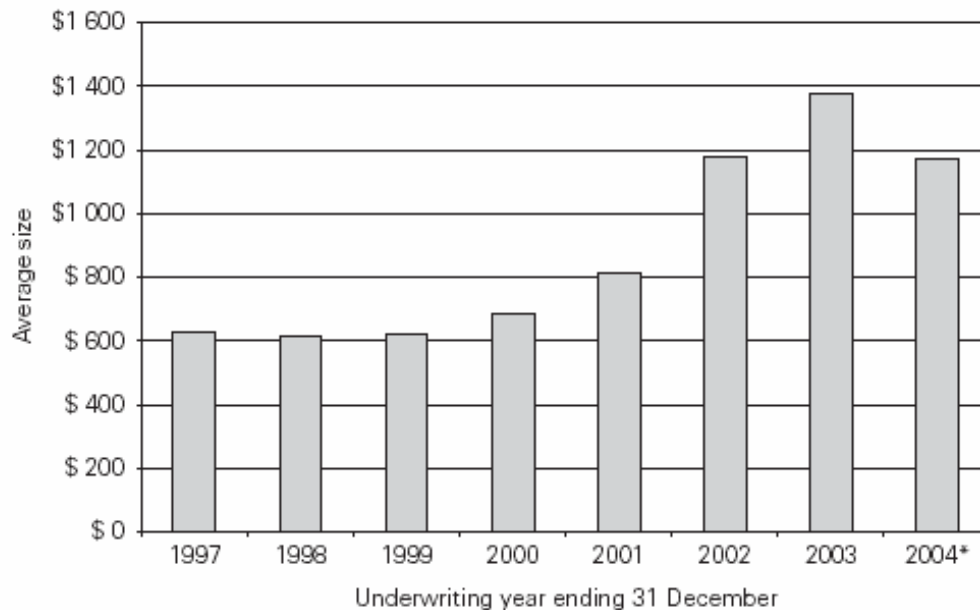
Public liability insurance has been described by Trowbridge Consulting as ‘insurance for claims by third parties (the public) for personal injury or property damage caused by or attributable to the negligence of the insured’.<sup>3</sup>

The crisis in public liability insurance reached its height in 2002-2003. The ACCC’s most recent report on insurance pricing notes that average insurance premiums were stable between 1997 and 1999 at around \$620 and they then increased substantially between 1999 and 2003. In 2003 premiums were on average \$1366.<sup>4</sup> This rapid increase is illustrated in the following table.<sup>5</sup>

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**Chart 3.4 Average premium—real terms—public liability—1997 to 2004\***

Notes: \* 1 January to 30 June 2004.

Data is shown in real terms adjusted to 30 June 2004 values using AWE index.

Derived by ACCC from responses provided by seven insurers.

In March 2002 in a report to the Government, the Trowbridge Consulting Group noted that the insurance crisis was having the most significant impact on community events, sporting events, tourism and leisure operations, the retail industry and local non-government community groups that operate under the umbrella of local government.<sup>6</sup> The report states that these groups were finding it particularly difficult to obtain affordable public liability insurance.<sup>7</sup> Significant anecdotal evidence indicates that the operation of community groups and recreational activities across the country were under threat of closure or had in fact closed as a result of the insurance crisis.<sup>8</sup> Submissions to the Senate Economics References Committee (SERC) which was inquiring into the insurance crisis argued that such closures would have significant detrimental social consequences.<sup>9</sup> The SERC also noted that the crisis was impacting negatively on small business.<sup>10</sup>

### Causes of the crisis

Due to the lack of accurate statistics at the time of the crisis, it was difficult to gauge its true cause however a number of factors were identified as contributing to it.

The collapse of HIH insurance in 2001<sup>11</sup>, terrorist bombings on 11 September 2001<sup>12</sup> and a poor investment environment were identified as factors leading to the crisis.<sup>13</sup>

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It was also argued that there was a clear link between the insurance crisis and personal injury laws. For example, the Assistant Treasurer, Senator Helen Coonan argued that:

There is a widely held view that the current problems in the insurance market are due in large part to the operation of the legal system. It is clear that the broader community is dissatisfied with the seemingly random nature of court awards. There is also a strong perception that an increasing culture of blame has emerged within our society. This has led individuals to seek redress through the legal system where in similar circumstances in the past, the individual would have been more prepared to assume responsibility for the consequences of their own actions.<sup>14</sup>

### **Cyclical insurance market**

Insurance analysts viewed the crisis as being part of the cyclical nature of the insurance market. For example, in March 2002 Trowbridge Consulting described the insurance market in the following way:

Insurance markets are renowned for their cyclical nature, with extended periods (say three to five years) of stable or reducing premiums, followed by a shorter period (usually two or three years) of rapidly increasing premiums....<sup>15</sup>

In their view the highly priced insurance premiums during the insurance crisis formed part of the cyclical nature of insurance premium pricing.

### **The need for Government intervention**

Although Trowbridge Consulting was of the opinion that the high insurance premiums formed part of the insurance cycle they went on to argue that intervention was required if more affordable premiums were to become available in the short term. In their report to the March meeting of Commonwealth, State and Territory insurance Ministers, Trowbridge Consulting argued that:

Occasionally, however, the market cycles are so severe that insurance becomes unavailable to some customers, or only available at prices that the customers regard as unaffordable or unjustified. We have such a situation now....<sup>16</sup>

While this phenomenon can be regarded as the peak (or trough) of an insurance market cycle, it is nevertheless to persist for another year or two at least unless there is some external stimulus to or intervention in the market.<sup>17</sup>

### **Parameters of the negligence review**

In response to the crisis, the Ipp review of negligence law was commissioned. When commissioned, the Ipp review received widespread support from all Governments on the basis that it was imperative that all Governments considered it imperative that any immediate response to the perceived crisis in liability insurance was required.

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The Ipp review was asked to examine personal injury law and to suggest reforms to the law which would have the effect of decreasing the size and frequency of damages for personal injury. The review's terms of reference stated that:

It is desirable to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death.<sup>18</sup>

The review was clearly aimed at easing the pressure on public liability insurance premiums by decreasing injured persons' access to compensation.

As noted above, the review was announced in May 2002 and the final report was released in September 2002. It would appear that the time taken to consider the issues was extremely short. The outcomes of the negligence review were drawn together in the Ipp Report. The Ipp Report recommended significant changes to the law of negligence in Australia. In particular the Ipp Report suggested that the rules relating to standard of care, causation and remoteness of damage should be amended, the effect being to make it more difficult to establish negligence. The report also recommended that rules relating to damages awards needed to be modified, with the modifications including thresholds and caps on damages where negligence had been established.

Many of the Ipp Report's recommendations have been implemented by the States and Territories, who have legislative responsibility for negligence laws. When implementing the Ipp Report's recommendations, the Premier of New South Wales the Hon Bob Carr, reflected the feelings of many of the States and Territories when he stated that:

A diverse range of community groups, charities and organisations from across NSW including Coffs Harbour's Big Banana, the Cobar pool and the NSW Farmers Association have endorsed the State Government's public liability reforms.....

These reforms will reinstate personal responsibility, reduce the culture of blame and avoid the 'Americanisation' of the NSW Legal system.

Our reforms mean we can all continue to enjoy the simple pleasures such as swimming at the beach and community shows and fairs.<sup>19</sup>

### **Commentary on the Ipp Report**

The uncertainty with respect to whether the negligence law review has been an appropriate response to the issue was reflected in an article published in the Australian Bar Review, authored by the chair of the negligence review, Justice Ipp, who wrote that:

There is no conclusive evidence that the state of the law of negligence bears any responsibility for this situation [the insurance crisis]. But the fact is that insurance companies are not prepared to provide the necessary insurance (or are only prepared

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to provide it at unaffordable rates), because of the unpredictability of the law, the ease with which plaintiffs succeed and the generosity of courts in awarding damages. There is evidence to suggest that the insurance crisis is at least partly attributable to the conduct of certain insurance companies but that is not to say that the state of the law of negligence has not contributed to the current state of affairs.<sup>20</sup>

In a recent speech the Justice of the High Court, Michael Kirby argued for balance in personal injury law stating that:

We have to be very careful in pushing the notions of personal responsibility forward, in court decisions and legislation. We have to beware that we do not remove entirely the role of the common law as a standard setter for carefulness and accident prevention in our society.....

Whilst in Australia we roll back the entitlements of those who suffer damage, in the name of “personal responsibility” we have to be careful that we do not reject just claims and reduce unfairly sharing of risks in cases where things go seriously wrong.

There has also been significant media attention which has focused on some of the negative aspects of the law reforms. Some newspaper articles have suggested that there should be a more principled approach to tort reform noting that the reforms are inconsistent with other areas of personal injury law such as workers compensation law and have not been implemented uniformly among the states and territories and.<sup>21</sup>

### **The insurance crisis – an update**

In July 2002, Senator Ian Campbell, the Parliamentary Secretary to the Treasurer, asked the ACCC to monitor the costs and premiums in the public liability and professional indemnity sectors of the insurance market on a six monthly basis. The ACCC was in particular asked to monitor the impact of insurance premiums resulting from measures taken by governments to reduce and contain legal and claims costs.<sup>22</sup> The ACCC has now released the fifth of its price monitoring reports. The report reveals that the insurance crisis has abated.

The ACCC report noted that between the year ending 31 December 2003 and the half year ending 30 June 2004:

- average public liability premiums decreased by 15 per cent
- the average size of claims settled decreased by 11 per cent, and
- most insurers experienced a fall in the frequency of claims.

In relation to a fall in the frequency of claims, most of the insurers surveyed attributed this fall to an increase in the levels of the excess on insurance policies and a change in the portfolio mix. Only one insurer surveyed suggested that the law reforms may be acting to remove small claims and hence reduce claim frequency.

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The ACCC price monitoring report did not contain a discussion regarding whether insurers considered that the fall in the size of claims and insurance premiums was attributable to the law reforms.

In a recent article in the Australian Financial Review, Alan Mason, who is the executive director of the Insurance Council of Australia, wrote that ‘But we can say with confidence that tort reform has had a positive effect on the market. Price increases have moderated and availability has improved.’<sup>23</sup>

In relation to future insurance premium pricing, the ACCC’s price monitoring report noted that the insurers made the following comments:

- In the short term, the majority of insurers surveyed expected tort law reforms to have some impact on costs and premiums.<sup>24</sup>
- Most insurers expected reforms to have an impact on claims costs and premiums in the future although they considered it was too early to tell the extent to which reforms may act to reduce claims costs, and<sup>25</sup>
- Some insurers were concerned that the success of the reforms would depend on courts’ attitudes when awarding damages and whether plaintiff lawyers would find ways of circumventing the reforms.<sup>26</sup>

## Amendments to the Trade Practices Act proposed in the Trade Practices Amendment (Personal Injury and Death) Bill 2004

### **Part V Division 1 Trade Practices Act 1974**

The amendments in the Bill relate to Part V Division 1 of the TPA.

Part V Division 1 of the TPA contains key consumer protection measures, the most commonly used ones being those that deal with misleading and deceptive conduct<sup>27</sup> and false and misleading representations.<sup>28</sup> Examples of other provisions in Part V Division 1 of the TPA include those provisions that deal with bait advertising,<sup>29</sup> harassment and coercion<sup>30</sup> and pyramid selling.<sup>31</sup> Part V Division 1 does not contain those provisions that regulate the supply of defective products.

Where provisions in Part V Division 1 of the Act are breached, a person may recover damages for any loss they have suffered as a result of a contravention of the provision.<sup>32</sup> Damages may be for purely economic loss (such as damage to property) or may be to compensate a person for personal injuries or death brought about by a breach of the provisions. In addition, consumers may seek injunctive relief,<sup>33</sup> non-punitive orders,<sup>34</sup> punitive orders,<sup>35</sup> and remedial orders.<sup>36</sup>

The Australian Competition and Consumer Commission (ACCC) may take legal proceedings (referred to in the legislation as ‘representative actions’) on behalf of a person who has suffered loss, where any of the provisions in Part V Division 1 are breached.<sup>37</sup>

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Criminal proceedings may also be brought against persons who have breached any of the requirements (apart from section 52 – misleading and deceptive conduct) in Part V Division 1 of the Act. A contravention of section 52 is not a criminal offence.

Part V Division 1 of the TPA is also replicated by all the States and Territories in their own consumer protection legislation.

### **Proposed amendments**

As noted above, this Bill gives effect to Recommendation 19 of the Ipp Report. This is the second attempt by the government to legislate for this change. The first attempt was in the Trade Practices (Personal Injury and Death) Bill 2003 (2003 Bill) which was introduced into Parliament in 2003. Debate on the 2003 Bill ended in a deadlock after the Australian Labor Party (ALP) and the Australian Democrats (Democrats) proposed amendments to the Bill and these amendments were rejected by the Government. The 2004 election was called and the 2003 Bill lapsed. As a result the Trade Practices (Personal Injury and Death) Bill 2004 (2004 Bill) was introduced into the House of Representatives.

The 2004 Bill proposes that the TPA be amended so that individuals will not be able to recover damages for personal injury and death brought about by conduct in breach of Part V Division 1 of the Act. The 2004 Bill also proposes to remove the ACCC's powers to bring actions on behalf of individuals to recover damages for personal injury and death.

Under the amendments proposed in the Bill, an individual will still be able to recover damages for economic loss suffered as a result of conduct that breaches Part V Division 1 of the Act. Similarly the ACCC will be able to bring representative actions on behalf of individuals to recover damages for economic loss.

Criminal proceedings may still be brought if a person suffers personal injury or dies as a result of conduct in breach of Part V Division 1 of the TPA. Of course, criminal proceedings will not be able to be brought where there is a contravention of section 52, as it is not a criminal provision. In addition, a court may issue an injunction, or make punitive or non-punitive orders where the provisions have been breached and this leads to personal injury or death.

The 2004 Bill is slightly different to the 2003 Bill. The amendments in the 2004 Bill provide an exemption for smoking and tobacco product cases. Therefore where a person suffers personal injury or dies as a result of smoking or using tobacco products, they will continue to be able to take legal proceedings under Part V Division 1 of the TPA. Note however that this cause of action must be brought within three years from the date that the illness/injury was discovered. Similarly, the ACCC will continue to have the power to bring representative actions in smoking and tobacco cases.

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### **Ipp Report's arguments in favour of the amendments**

The Ipp Report has argued that Part V Division 1 of the TPA must be amended to prevent individuals bringing actions for personal injury and death under this part of the Act. The report argued that this change is necessary so that one of the key objectives of the negligence review (that is to limit liability and quantum of damages pay outs), is not undermined by plaintiffs relying on the TPA to recover damages where damages could not be recovered under the law of negligence.

The Ipp Report acknowledges that plaintiffs have 'rarely relied' upon Part V Division 1<sup>38</sup> to recover damages for personal injury or death. The Ipp Report suggests that once its recommendations which relate to the laws of negligence have been implemented and it becomes more difficult to recover damages in negligence, Part V Division 1 of the Act may be used as an alternative way to recover damages for personal injury and death.<sup>39</sup> To illustrate this point, the report cited the example of incorrect advice from architects and engineers leading to the collapse of a structure with the result that a bystander is killed or injured, as being a possible circumstance where a cause of action could be brought under Part V Division 1 of the TPA.<sup>40</sup>

The Ipp Report argued that it is not appropriate to recover damages for personal injury and death under Part V Division 1 of the Act as fault is not an element in the provisions in this part of the Act. In relation to section 52 the report stated that:

Under s52, however, the plaintiff can succeed merely by proving that the statement was misleading or deceptive, even if the defendant made the statement with the utmost care and with complete honesty.<sup>41</sup>

The report suggested that a party should have to prove fault on the part of the defendant before being able to receive compensation.

The report also argued that when Parliament enacted Part V Division 1, it did not envisage that plaintiffs would institute proceedings, under that part, to recover damages for personal injury or death.<sup>42</sup> Therefore recommendation 19 of the Ipp Report would not alter the policy objective of Part V Division 1 of the Act.

### **Trade Practices (Personal Injury and Death) Bill 2003**

As noted above, the Trade Practices (Personal Injury and Death) Bill 2003 was extensively debated in the Senate in late 2003 and early in 2004. The debate ended in a deadlock after the ALP and the Democrats proposed amendments to the Bill and these amendments were rejected by the Government.

#### **Position of the opposition**

During the debate, the ALP and the Democrats put forward a number of arguments that they considered were important to consider in weighing the merits of the proposed amendments.

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Labor argued that it was important to maintain the protections contained within Part V Division 1 of the TPA. Senator Conroy stated that:

‘the TPA....has encouraged companies to put an emphasis on consumer safety. In Labor’s view, the complete removal of this incentive as proposed in the bill runs the risk of undermining the high standard of behaviour that consumers have come to expect’<sup>43</sup>

The ALP questioned whether retaining the protections in Part V Division 1 would undermine tort law reforms

The government has argued that the toughening of negligence laws by that states will encourage plaintiffs to explore using the Trade Practices Act. Despite this claim, no evidence was submitted to the committee indicating that the number of personal injury claims being instituted under the TPA has increased since the state reforms were enacted. Given that some of these reforms, such as the Civil Liability Act in New South Wales have now been in operation since June 2002, that is, over a year now—any trend towards the increased use of the TPA should have become evidence by now<sup>44</sup>

This position was supported by the Australian Democrats. Senator Ridgeway argued that the bill was a speculative response to the insurance crisis

In fact, the Trade Practices Act has had no impact on premium pricing in the past, and we are only debating this bill today because of assumptions about the future<sup>45</sup>

The ALP considered that the amendments in the Trade Practices Amendment (Personal Injury and Death) Bill 2003 were unnecessarily broad. The ALP proposed alternative amendments. These amendments would bring the damages regime for contraventions of Part V Division 1 of the TPA into line with the damages regime that applies in cases of negligence. In particular, the ALP proposed that the recent reforms to the damages regime which had been carried out by the States and Territories as part of the tort law reforms should be applied to actions under Part V Division 1 of the TPA. This, Labor suggested, would stop forum shopping by potential litigants and would preserve the rights of consumers.

In the course of debate on the Bill, Senator Conroy stated the following

In Labor’s view, the key problem is that personal injury damages are capped under state and territory law but not under the TPA. If forum shopping is to emerge at some future stage this will be the key driver. In our view the danger can be addressed by pursuing an option....that damages for personal injury as a result of a breach of part V division 1 should be aligned with those available under the relevant state or territory civil liability law<sup>46</sup>

At the time of the debate, the *Trade Practices Amendment (Personal Injuries and Death) Act 2004* (TP Act 2004) had not been introduced into Parliament. However following its

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introduction it was clear that the ALP's proposed solution was broadly similar to the changes proposed in this subsequent TP Act 2004 for calculating damages under other parts of the TPA. [See discussion below for explanation of the *Trade Practices Amendment (Personal Injuries and Death) Act 2004*].

#### Government's position

The Government reiterated many of the points made in the Ipp Report, in the course of the debate on the 2003 Bill and made some additional arguments highlighting what they saw as the imperativeness in implementing the Bill.

During the course of the debate the Government argued that the TPA was a real avenue for personal injury claimants to use to recover damages. Senator Coonan stated that:

The Trade Practice Act, on my understanding is pleaded frequently in cases involving personal injuries. However according to the Law Council, between 1989 and 2002 there were some nine reported cases where a personal injuries claim was decided on the basis of misleading and deceptive conduct.<sup>47</sup>

Implicit in the Government's argument is that even though the TPA has not been used frequently in the past, as a result of tort law reforms making access to negligence claims more difficult, Part V Division 1 could be used more frequently, thereby undermining the effects of the tort law reforms and placing further upward pressure on insurance premiums.

The Government made the point that the position held by the ALP at the Federal level was inconsistent with what had 'been requested and agreed to by the state and territory Labor governments as a necessary and essential underpinning to the reforms they have put in place.'<sup>48</sup>

The reforms in the Bill were also linked to the medical indemnity crisis by the Government. Senator Coonan argued that

As well as providing a range of subsidies and other assistance directly to doctors, tort law reform is seen as a key part of an integrated solution to the very complex problem of medical indemnity<sup>49</sup>

The Government therefore pointed out that if these amendments were not supported and tort law reforms were undermined, this could have an adverse effect upon the medical indemnity crisis.

#### **Trade Practices (Personal Injuries and Death) Act 2004**

The *Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004* (2004 Act) (note, not to be confused with the Bill), inserted a new Part VIB into the TPA. The new Part VIB sets down principles for calculating damages for personal injury and death

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where there has been a contravention of parts of the TPA, other than Part V Division 1, (such as Part VA – defective goods).

The provisions in the new Part VIB are an Ipp Report recommendation. The Ipp Report recommended that where provisions in the TPA, other than Part V Division 1, are breached and this leads to personal injury or death, damages should be calculated applying the same principles that the Ipp Report recommended should be used for calculating damages in negligence cases.<sup>50</sup> The provisions in Part VIB set out those principles for calculating damages. Further information regarding the provisions in the 2004 Act can be obtained from the digest on the Trade Practices Amendment (Personal Injuries and Death) Bill 2004.<sup>51</sup>

### State and Territory law reforms

As noted above, Senator Coonan argued that the changes proposed in the Bill were requested and supported by the states and territories. The states and territories have provisions in their legislation that mirror Part V Division 1 of the TPA. To date, only three jurisdictions have amended their legislation to mirror the changes proposed in this Bill.<sup>52</sup>

## Main Provisions

The amendments to the TPA are contained within Schedule 1.

The main amendment is **item 2** of the Bill which inserts a **new sub-section 82(1AAA)** into the TPA which states that a person cannot recover damages for a contravention of Part V Division 1 where the loss or damage results from death or personal injury. Item 2 also inserts a new sub-section 82 (1AAB) which implements the smoking and tobacco products exemption. **Item 3** defines smoking and tobacco products.

Sub-sections 87(1) and (1A) of the TPA give the court power to make remedial orders for conduct covered by several parts of the TPA including Part V, Consumer Protection. Sub-section 87(1B) gives the ACCC power to bring representative actions on behalf of individuals who have suffered loss or damage as a result of conduct in contravention of several parts of the TPA including Part V.

**Items 4-7** amend sub-sections 87(1) and (1A) and inserts proposed subsection 87(1AB) into the TPA to ensure that individuals cannot commence proceedings and the ACCC cannot bring representative actions to recover damages for loss due to personal injury or death under section 87 of the Act.

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## Concluding Comments

The amendments in this Bill implement Recommendation 19 of the negligence review, so that individuals will be prevented from recovering damages for personal injury and death brought about by a breach of Part V Division 1 of the TPA.

These amendments reduce consumer rights under the TPA. These amendments do however close a loophole in the law that has the potential to undermine the Ipp Report's recommendations and hence the Government's policy response to the insurance crisis.

The insurance crisis has abated and some may therefore argue that these amendments are unnecessary. Those who support these amendments suggest however that premium pricing may again increase if the reforms to negligence laws are undermined by claimants relying on other avenues of legal redress such as Part V Division 1 of the TPA.

The Bill is also a reminder of the broader policy issues at play and in particular whether the review of the laws of negligence has achieved the correct balance between premium affordability and access to compensation for those who are injured. This question is particularly pressing given the fact that the review that led to the overhaul of the countries personal injury laws was completed within such a very short period of time and was a reaction to a crisis in the insurance market.

## Endnotes

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- 1 'Liability Meeting Makes Significant Progress', *Media Release*, Senator the Hon Helen Coonan, Minister for Revenue and Assistant Treasurer, 30 May 2002.
- 2 Review of the law of negligence final report (Ipp Report), September 2002, [<http://revofneg.treasury.gov.au/content/review2.asp>].
- 3 Trowbridge Consulting, *Public Liability Insurance; Analysis for Meeting of Ministers 27 March 2002*, 26 March 2002, p. i.
- 4 Australian Competition and Consumer Commission, *Public liability and professional indemnity insurance*; fourth monitoring report, *January 2005*, p. 2.
- 5 Table is from the Australian Competition and Consumer Commission, *Public liability and professional indemnity insurance*; fourth monitoring report, *January 2005*, p. 15.
- 6 Trowbridge Consulting, *op cit.*, 26 March 2002, p. 30.
- 7 *ibid.*, p. 30.
- 8 Senate Economics References Committee, 'A review of public liability and professional indemnity insurance', October 2002, pp. 10–13.
- 9 *ibid.*, pp. 10–13.

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- 10 *ibid.*, pp. 13–14.
- 11 *ibid.*, p. 31.
- 12 *ibid.*, pp. 29–30.
- 13 *ibid.*, pp. 30–31.
- 14 Senator the Hon Helen Coonan, ‘Insurance Premiums and Law Reform—Affordable Cover and the Role of Government’, *The University of New South Wales Law Journal*, vol 25, no 3 2002.
- 15 Trowbridge Consulting, *op cit*, 26 March 2002, p. 4.
- 16 *ibid.*, p. 4.
- 17 *ibid.*, p. i.
- 18 *Review of the Law of Negligence Final Report*, Canberra, September 2002.
- 19 Strong community response to public liability reforms’, *News Release*, Premier of New South Wales Australia, September 4 2002.
- 20 Justice David Ipp, Negligence – ‘Where lies the future?’, *Australian Bar Review* (2003) 23 p. 159.
- 21 Robert Pelletier, ‘Tort reform needs injection of fairness’, *Australian Financial Review*, 4 February 2005, p. 60, Alan Mason, ‘Vital to balance premiums and payouts’, *Australian Financial Review*, 29 October 2004, p.57.
- 22 Australian Competition and Consumer Commission website, *Public liability and professional indemnity insurance—fourth monitoring report*, [<http://www.accc.gov.au/content/index.phtml/itemId/378570/fromItemId/11872>], 18 February 2005.
- 23 Alan Mason, *op cit*.
- 24 Australian Competition and Consumer Commission, *op cit.*, p. 40.
- 25 *ibid.*, p. 40.
- 26 *ibid.*, p. 40.
- 27 Section 52 of the *Trade Practices Act 1974* (TPA).
- 28 Section 53 of the TPA.
- 29 Section 56 of the TPA.
- 30 Section 60 of the TPA.
- 31 Section 61 of the TPA.
- 32 Section 82 of the TPA.
- 33 Section 80 of the TPA.
- 34 Section 86C of the TPA.

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- 35 Section 86D of the TPA.
- 36 Section 87 of the TPA.
- 37 Section 87 of the TPA.
- 38 When making this assertion the report made particular reference to section 52 of the TPA.
- 39 Ipp Report, p. 74.
- 40 *ibid.*, p 77.
- 41 *ibid.*, p. 76.
- 42 *ibid.*, p. 73.
- 43 Senator Conroy, *Senate Hansard*, 15 October 2003, p. 16466.
- 44 Senator Conroy, *Senate Hansard*, 15 October 2003, p. 16466.
- 45 Senator Ridgeway, *Senate Hansard*, 15 October 2003 p. 16469.
- 46 Senator Conroy, *Senate Hansard*, 15 October 2003, p. 16467.
- 47 Senator Coonan, *Senate Hansard*, 1 December 2002, p. 18550.
- 48 Senator Coonan, *Senate Hansard*, 1 December 2003, p. 18549.
- 49 Senator Coonan, *Senate Hansard*, 1 December 2003, p. 18541.
- 50 *Explanatory Memorandum, Trade Practices (Personal Injury and Death) Bill 2004*, p. 13.
- 51 Dudley Susan, *Digest No 114 Trade Practices (Personal Injuries and Death) Bill (No. 2) 2004 Bills*, 2004, [<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd114.pdf>.]
- 52 The jurisdictions which have amended their legislation are: New South Wales in the *Civil Liability Amendment (Personal Responsibility) Act 2002*, Queensland in the *Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2003* and Tasmania in the *Civil Liability Amendment Act 2003*.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

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