

Submission on how Queensland CTP Insurance Should be Improved

by

Julie Middleton
73 Lawson Street
Morningside QLD 4170

8 February 2020

Content

The Fairness of Personal Injury Insurance	3
Background	3
The warnings.....	4
Insurers' Profitability.....	5
Contracting Out Employment Services	6
Checks and Balances	6
Welfare Reforms.....	7
The Impact of State and Territory Legislation	10
Workers' Compensation	10
Motor Vehicle Accidents.....	10
The Centrelink Compensation Charge	11
Conclusion.....	12
References	15
Annexures	17
Annexure A - Precedent.....	18
Annexure B - Australian Bureau of Statistics - Population Statistics	19
Annexure C - Australian Taxation Office Statistics for Tax Revenue.....	20
Annexure D - Statistics from the Department of Social Services.....	22
Annexure E - Queensland Statistics - Population and Welfare Recipients	23

The Fairness of Personal Injury Insurance

There is a cost to every accident injury and someone has to bear that cost. But when an injury is caused by another person, or by the negligence of an organisation or business, public liability or professional indemnity insurance will not provide appropriate compensation. And you have a right to know this.

The premise of insurance is to pool risk and redistribute that risk among a number of parties. Insurance is a contract to provide protection against the probable chances of loss. The insured buys insurance and the insurer undertakes to pay the insured or their beneficiary in the event that the insured suffers loss through the occurrence of an event covered by the insurance policy.

Common law used to determine the amount of compensation that applied. But since the politicisation of personal injury law, insurers now take significantly less responsibility – and there is a greater burden on the public purse.

An increasing number of injured parties have wound up on welfare. They're being paid the Newstart Allowance. They're also exempt from looking for work, under a Mutual Obligation Requirement. And the Government is not doing well with an explanation.

Background

The so called "insurance crisis" that resulted in the states and territories introducing reform legislation which substantially changed common law entitlements was attributed to media reports that suggested a degree of panic. However, it could be argued that the insurance industry manufactured the crisis atmosphere in the first place.

Between 1999 and 2002, the cost of public liability and professional indemnity insurance increased significantly. Factors at the time were:

- the World Trade Centre attacks in the United States on 11 September 2001 that resulted in at least \$40 billion in insurance losses
- the near collapse of United Medical Protection
- the collapse of HIH Insurance Limited (HIH)
- and the insurance industry not being sufficiently regulated.

On 2 July 2002, the Government announced its review of the law of negligence. The Negligence Review Panel was chaired by the Hon Justice David Ipp. The other committee members were Professor Peter Cane, Dr Don Sheldon, a medical practitioner, and Mr Ian Macintosh, the Mayor of the Bathurst City Council. The primary purpose of the review was to reduce the number of litigated claims and the amount of compensation that courts could award to injured claimants.

The Federal Government led the charge in promoting a Review of the Law of Negligence, but the Review was jointly sponsored by the Federal and state governments. Governments in all jurisdictions were involved.

Three states – New South Wales, Queensland and the Australian Capital Territory – also introduced cost capping in personal injuries litigation. Cost capping is legislation that imposes a cap on costs in any ‘claim for personal injury damages’ and includes the costs of all legal services: solicitors’ fees, agent’s fees and counsel’s fees.

But when defendants win cases, their costs are not capped at all.

The insurers' reform strategy in the United States was similar. Under the Reagan administration, a well-orchestrated campaign was run to reform personal injury laws. During 1986 – 1987, premiums on many liability insurance lines took a rapid upturn while some types of liability insurance were removed.

The insurance industry was not satisfied with its victory over personal injury law reforms. The cost of home insurance then increased rapidly from 2004. Over the 12 years to 2016, home insurance premiums had risen by a huge 139%.

The warnings

In October 2002, a report prepared by Senator Aden Ridgeway of the Australian Democrats warned against the law reforms, citing the US experience. Alternatives suggestions were put forward, including [better regulation](#) of the industry.

Professor Allan Fels was Chairman of the Australian Competition and Consumer Commission (ACCC) from its inception in 1995 and resigned on 30 June 2003. An article titled [‘Tort Reform and Consumer Protection’](#) by Professor Fels explained his scepticism.

Reporting the law reforms

The Australian Government asked the ACCC to monitor the costs of the law reforms. They were specifically asked to consider government measures aimed at reducing and containing legal and claims costs. The ACCC omitted the statutory refund obligations and profitability of insurers. The [reports are available here](#):

At the time of the ACCC fifth monitoring in July 2005, the ACCC had in its possession a [report produced by Cumpston Sarjeant Pty Ltd](#), which was commissioned by the Law Council of Australia, detailing the insurers' profit increase.

In fact, the ACCC report made reference to Cumpston Sarjeant Pty Ltd’s reports in the following clumsy statements:

“Two recent reports by consulting actuaries discuss insurers’ profitability and the effect of tort reforms.

"The ACCC has not reviewed the data, assumptions or findings of either of these reports as part of its monitoring program."

The reports are fundamentally flawed because the ACCC consulted with global insurers that make significant political donations to the two major parties, undermining the integrity of the report. The reports are misleading and deceptive. Important information has been omitted. Statements contained in or omitted from the reports are likely to create a false impression.

Insurers' Profitability

A report by PricewaterhouseCoopers titled "[Insurance Facts and Figures 2007](#)" stated:

"The general insurance industry posted strong profits for the fourth year running following the dramatic turnaround in the sector's profitability in 2001-2002, with the industry maintaining positive underwriting results in 2006. Over the past three years, the direct insurers have generated returns on shareholders' equity in excess of 20 per cent."

An article published on 14 April 2007 by The Australian, "[Liability of flawed law reform](#)" stated:

"People suffering the same injury can be given different compensation payouts depending on whether they are covered by the Civil Liability Act, the Motor Accidents Compensation Act or the Workers Compensation Act."

"The general insurance industry's return on net assets in the year to last December was a healthy 19.4 per cent. And that was no fluke. The year before it was 21.4 per cent, according to figures compiled by the Australian Prudential Regulation Authority."

"The number of civil claims lodged in the nation's courts has been slashed by 75,376 since 2000-01. More than half of that reduction was in NSW, where Productivity Commission figures show civil claims have fallen by 39,959 cases."

The KPMG Australia's annual [General Insurance Industry Review](#), released on 18 November 2018, showed the insurance industry's profits rose by 4 percent to \$5.01bn in 2018, building solidly on last year's exceptional results, which saw a 25 percent increase.

Could all this extra profit be extra taxation revenue for the country? No way.

On 14 December 2018, the ABC published an article, stating: "[One third of large Australian companies paid no tax, ATO data shows](#)." The article refers to 2,109 entities monitored by the ATO in data covering 2016-2017, and it refers to the Multinational Anti-Avoidance Law (MAAL). The ABC article provided details of the 2,109 entities, including global insurers and those that the ACCC consulted for its reports.

Contracting Out Employment Services

The name associated with contracting out employment services has changed.

- 1998-2009: Job Network, which cost around \$1 billion each year.
- 2009-2015: Job Services Australia (JSA) and cost of \$1.3 billion each year
- 2015-2020: Jobactive which cost \$7.3 billion.

In his submission to the Productivity Commission's Independent Review of the Job Network Inquiry in 2002, [Dr Victor Quirk](#) stated:

"JN / Centrelink treatment of unemployed people is so systematically bad that it raises the question: is this the intention? Such a notion conforms disquietingly with Therborn's model of 'brazilianization', whereby the conspicuous immiseration of an unemployed underclass is used to pressure those in employment to accept harder working conditions to avoid losing their jobs and joining the underclass themselves."

"In Therborn's model, fear of unemployment is a tool for driving down wages to maximize profits (sustaining a decadent elite)."

In February 2019, the Jobactive Senate Inquiry found the system was "[not fit for purpose](#)" and "failing those it intended to serve". Participants are gaining employment in spite of Jobactive, not because of it. The \$7.3 billion employment scheme has a punitive approach to welfare.

Checks and Balances

At the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, held in September 2018, Chief Executive of the Insurance Council of Australia, Robert Whelan, stated [they lobby for their industry's interest](#). In the 1990s, the government intended to introduce a statutory code of conduct; however, the lobby group was successful in obtaining self-regulation.

The Commissioner, the Honourable Kenneth Madison Hayne AC QC, delivered the Commission's final report on 4 February 2019. Included in the changes recommended by the Report was reducing the [power imbalance between financial services entities and consumers](#).

Both the general insurance and life insurance industries are dominated by a few large insurers with a collection of insurance brands. Most workers have Income Protection insurance organised as part of their superannuation arrangements. Income Protection benefit periods are limited. Typically they're for two years, five years or to age 65.

Policies with longer wait periods and shorter benefit periods can have lower premiums. The preferred plan would be a brief waiting period around one week. Plans limited to two or five years are woefully short, in view of the current issues with insurance.

Wealthy insurers, IOOF and AMP, had their shares hardest hit as a result of the Royal Commission. But unbelievably, at the end of 2018, [IOOF had \\$137.8 billion](#) in funds under management, [up 10 percent in the previous six months](#).

Welfare Reforms

Welfare reforms were introduced to curb the costs to taxpayer funds by keeping the Newstart Allowance (NSA) and restricting access to the Disability Support Pension (DSP).

From 1 July 2006, the Howard government's Welfare to Work reforms had work-test eligibility requirements for new DSP claimants who were assessed as being able to work between 15 and 30 hours a week. These claimants were placed on the lower rates of Newstart payments for the unemployed. Existing DSP recipients were 'grandfathered' from the 2006 reforms.

The *Family Assistance and Other Legislation Amendment Act 2011* (Cth) introduced the requirement that people who make a claim (or are taken to have made a claim) for DSP on or after 3 September 2011, and who do not have a severe impairment, must have actively participated in a Program of Support (POS). Many DSP claimants would need to have been participating in a POS for at least 18 months in the three years before claiming the DSP. A designated provider for the POS is fully or partly funded by the Commonwealth. An exemption period will not count towards the 18 month period.

Only about 15 per cent of DSP applications are now approved. The vast majority are rejected. To have a DSP claim approved, 20 points are needed from the Impairment Table:

- (a) DSP claimants, whose impairments are assessed as attracting at least 20 points under the Impairment Tables with no 20 points under a single Table, need to participate in a POS in order to qualify for a DSP.
- (b) A person will have a severe impairment if the person's impairment has been assessed under the Impairment Tables and assigned an impairment rating of 20 points or more, of which 20 points or more have been assigned under a single Impairment Table. A person with a severe impairment will not be required to have actively participated in a POS.

The number of points under an Impairment Table depends on whether you have a mild (5 points), moderate (10 points), severe (20 points), or extreme (30 points) impact. Your health problems may only be assigned a rating if they are fully diagnosed, treated and stabilised and likely to last for at least two years.

The current impairment tables are here <https://guides.dss.gov.au/guide-social-security-law/1/1/i/10>

Partial Capacity to Work for recipients of Newstart Allowance was introduced in 2006. The percentage of Newstart recipients - with assessed work capacity of under 30 hours per week - has increased to 37.5% up to 2018 figures, as shown below.

Year	Australian Population	DSP Recipients	% Population on DSP	NSA Recipients	NSA - Incapacitated	% NSA Recipients Incapacitated
2007	20,825,108	714,156	2.9%	417,793	30,417	7.3%
2008	21,246,516	732,367	3.0%	399,401	54,339	13.6%
2009	21,688,777	757,118	3.1%	520,194	74,427	14.3%
2010	22,028,695	792,581	3.2%	553,893	91,178	16.5%
2011	22,336,907	818,850	3.2%	527,480	98,707	18.7%
2012	22,730,432	827,460	3.4%	549,773	116,174	21.1%
2013	23,125,167	821,738	3.4%	660,673	150,727	22.8%
2014	23,472,790	830,454	3.5%	727,778	180,646	24.8%
2015	23,813,144	814,391	3.5%	753,291	206,764	27.4%
2016	24,186,299	782,891	3.5%	759,292	230,444	30.3%
2017	24,598,900	758,911	3.4%	752,430	245,775	32.7%
2018	24,898,152	756,960	3.4%	722,923	271,421	37.5%

The Productivity Commission's report of the [public inquiry](#) into Disability Care and Support was released on 10 August 2011. [Appendix "K The disability support pension"](#); includes:

Table K.5 The gap between Newstart and DSP payments is widening

Year	DSP	Newstart	Newstart payment as share of DSP
	\$ per fortnight	\$ per fortnight	%
1980	116	116	100.0
2011	729	475	65.1
Projected 2020 ^a	1036	593	57.2
Projected 2040 ^a	2271	972	42.8

The [Department of Social Services Welfare Reform Budget 2017-18](#) includes:

"For the first time, there will be one set of rules for working age income support payments. This will ensure long-term employment becomes the desired outcome for Australians who enter the welfare system in a moment of need."

"8400 Sickness Allowance recipients will transfer to the JobSeeker Payment at the same payment rate and will be exempt from mutual obligations according to the level assessed by a medical professional."

Sickness Allowance is a short time payment for a medical condition. The entitlement is for the first 28 weeks of sickness if you work for an employer. The above statement relating to exemptions for Sickness Allowance appears somewhat misleading. Currently those on Newstart Allowance with illness or injury can have exemptions.

Parliament of Australia, Parliamentary Budget Office, [Disability Support Pension, Historical and projected trends Report](#) no. 01/2018 includes the following:

"From 1991-92 to 2016-17, expenditure on the DSP has grown by 145 per cent in real terms. Most of this growth has been driven by increased recipient numbers, which have contracted in recent years."

"up until the mid-2000s, growth in the number of people on the DSP was relatively stable and strong."

"The main driver of the slowdown in DSP expenditure has been policy measures, which have focussed on stemming the flow of people onto the payment. In particular, new compliance and assessment measures, which applied from 1 January 2012, have led to a sharp decline in the number of people being assessed as being eligible for the payment."

"Our current projections for expenditure in 2027-28 are \$4.8 billion lower than our 2017-18 Budget projections."

"The DSP is one of the largest programs of Australian government spending totalling \$16.3 billion in 2016-17. It comprises a significant portion of the largest single area of government expenditure - social security welfare."

"Tightening the eligibility criteria around the DSP may reduce direct expenditure on the DSP, but from a whole-of-government expenditure perspective this may be partly offset by expenditure increases on other payments such as Newstart which is paid at a lower rate."

"From 2001-02 to 2004-05 there were around 71,000 new DSP recipients each year. This number then declined with the introduction of the Welfare to Work package introduced in the 2005-06 Budget."

The states and territories introduced legislation depriving the injured of the right to fair and proportionate compensation. At the same time they created a more complicated and restrictive claims process.

The Commonwealth then introduced Welfare Reforms to deny the injured access to adequate welfare payments and conditions. All the while, governments have remained silent about the financial impact to the budget of the personal injury law reforms and state and territory legislation for workers' compensation and motor vehicle accidents.

We are told the eligibility age for the Aged Pension must increase due to the impact of ageing on the budget. But statistics confirm an actual increase of only 0.9 percent from 1997.

The Impact of State and Territory Legislation

Reforms in the areas of workers' compensation and motor vehicle accident compensation have greatly reduced the compensation payable to injured people.

Workers' Compensation

All eight Australian states and territories have their own workers' compensation scheme and there are three Commonwealth schemes: Australian Government employees, Australian Defence Force (ADF) and Seafarers.

[Statistics from Safe Work Australia](#) identifies a decline in serious claims reported for workers' compensation. This can be achieved by changing the definition of serious personal injury, and/or changing the legislation.

SWA report for 2017 has the number of serious Australian workers' compensation claims in 2016-17 as 106,260 and the incident rate of serious claims per 1,000 employees as 9.3. The median compensation paid for a serious claim? Just \$11,500.

The Australian Government Productivity Commission Inquiry Report No 27, dated 16 March 2004, National Workers' Compensation and Occupational Health and Safety Frameworks, includes:

"[WorkCover Queensland](#) believed that there would be a 'loss of benefits' under any national scheme that restricted access to common law settlements and said 'the creation of a level playing field for statutory benefits comes at the expense of common law rights [in models A to C]' (IRsub. 225, p. 5)."

Motor Vehicle Accidents

A report dated 26 May 2017 titled, 'The cost of road crashes in Australia 2016', completed for Senator Alex Gallacher by Frederick Litchfield, an intern with the Australian National University's internship program, has figures for the total social cost of road crashes. The report includes the following:

- The estimations are that there were 32,300 serious injuries and 224,104 minor injuries sustained from road crashes in 2016. Some 620 people per week are seriously injured in crashes on our Australian roads.
- the report used a willingness to pay method of estimating the cost of road crashes, with the outcome being an average cost per fatality of \$7.8 million, per serious injury of \$310,094 and cost per minor injury of \$3,057.

The number of serious work place injuries for 2016 was 107,380. Thus we can estimate the number of serious motor vehicle accidents as around 30 percent of workplace injuries.

To reiterate the above, the median compensation paid for a serious workers' compensation claim was \$11,500. That is almost \$300,000 less than the willingness to pay cost.

The Centrelink Compensation Charge

Under the *Social Security Act 1991* (Cth), if an individual has an accident, for which he/she may be able to get compensation and applies for Centrelink income support, there is an obligation to pursue a compensation claim. There are further obligations under the *Health and Other Services (Compensation) Act 1995* (Cth) for statutory refunds to Medicare.

The Centrelink Compensation and Damages form (MOD C) needs to be completed in the event that an applicant or their partner is entitled to receive compensation. This form is part of the claim for payment documentation to be provided to Centrelink when individuals apply for payments. What should automatically follow would be monitoring and reporting by the Australian Government Department of Human Services.

Centrelink reporting on revenue from statutory refunds is a necessity for determining the success or otherwise of the reforms. The annual revenue figures from 1992; as well as the percentages for paid and unpaid claims would be available; they are just not being made accessible to the public.

The injured are being forced to deal with insurance companies, solicitors and government departments. Once in the system, the injured can be trapped there for up to ten years - many on a Newstart Allowance.

Anyone with an injury or illness will usually have a diminished capacity to handle stress. These victims should not be significantly inconvenienced or out of pocket. And a taxpayer should be reimbursed the component for their economic loss, which is loss of wages or loss of future earnings.

But there are two separate calculations for what the Commonwealth is to reimburse:

1. If a court or tribunal awards compensation after a full and contested hearing, Centrelink will use the court's ruling on the lost earnings or diminished capacity to earn to determine the compensation.
2. If a claim is settled with a lump sum by consent, and it includes compensation for financial loss - including lost income or being unable to work in the future - 50% of the gross lump sum payment will be the compensation part.

For example, if your lump sum was \$100,000, the Centrelink compensation part would be \$50,000, even if you did not receive the total \$100,000. The 'preclusion period' is the period of time when the compensation recipient cannot receive a social security income support payment because of their lump sum payment. The period usually starts from the date of injury.

The argument for compensation recovery is that welfare recipients can't be double dipping.

But is the government double dipping?

Taxation is payable on compensation for lost salary or wages. From the information provided on the Australian Taxation Office (ATO) website, statistics for Individuals is only reported as one income type. Where taxation is made up of such things as: lump sum compensation, interest on investments and dividends, these separate amounts are not reported.

Conclusion

When governments make an arrangement with players in the insurance industry, and legislate to protect that industry, they have an obligation to be transparent and accountable. We are entitled to know if our elected representatives made the right decision, and whether or not they accurately gauged the public view or considered the public interest in doing so.

Rather than insurers being subject to reasonably close scrutiny by regulatory authorities and consumers, insurers have had the privilege of anonymity while making allies of the regulating authorities, so it seems.

Court proceedings include the names of the parties and their counsels and solicitors, but not the name of the insurer. Insurers avoid scrutiny when they negotiate a confidential settlement. And insurers' anonymity allows wrongful conduct to continue.

It could be argued that public insurers, as legislators, are self-regulated. But when an independent entity reports to the government AND is funded by the government, its independence could be perceived as somewhat questionable.

Having insurers' responsible for determining the work capacity of an injured worker is highly improper - as is having insurers pay for surveys for government policy changes.

Our legal system no longer provides adequate compensation for accidental injuries. We need a system that adequately compensates the injured for loss of income. But more importantly, we need a humane and ethical system. Any compensatory income for those with injury or illness ought to be sufficient to cover immediate medical and rehabilitation costs.

There is a huge indirect cost to the economy for employment services. Outcomes have fallen short. Charities have been picking up the slack. Tort reform does not mean there are fewer injured people.

The perception of what the public thinks about Newstart recipients is a result of misinformation. The reality is that now around 40 percent of Newstart recipients have been assessed by Centrelink as being incapacitated. If they were to challenge Centrelink's decision, many could be eligible for the DSP. These individuals would only be assessed by Centrelink after a DSP claim form was submitted.

Governments generally have been pushing for self-regulation, deregulation and less red-tape. But welfare recipients and the employment service industry are suffering because of punitive compliance arrangements and are overburdened with red-tape. No employment service would be better than what we have now.

By private and public insurers pushing to water down legislation for compensation, they are taking a short-sighted approach. Insurance is a lucrative business and there would be a saving on the administration costs by having one national compensation scheme. There would still be jobs in the industry, but the jobs would be with the national compensation scheme rather than with the insurers. Selling this idea to Australians would be tricky, considering the track-record of federal and state governments.

In his book, *Doing Away With Personal Injury Law*, author Stephen Sugarman states:

My first-step plan treats personal injury victims in two groups - the 90 percent who suffer minor or moderate injuries and the 10 percent who **suffer the most serious injuries**.

Damages for pain and suffering, so-called general damages, should be barred in most personal injury cases involving temporary disability. Specifically, a threshold requirement should be adopted of at least six months of disability or serious disfigurement or impairment.

This proposal is meant to eliminate pain and suffering recoveries in most cases - I estimate 80-90 percent of current personal injury claims - in which people are disabled for less than six months."

Temporary Disability Insurance

A generous temporary disability insurance program (TDI) is at the center of my first-step proposal for short-term income replacement in cases of disabilities arising from both off-and-on-the-job injuries and illness. After a one week waiting period, workers would recover through TDI nearly all of their lost net wages for up to six months, subject to a weekly ceiling of twice the state average weekly wage.

The TDI plan should provide benefits, on an after-tax basis, equal to 85 percent of the employee's pre-disability earnings.

Incentives for Providing Health Benefits

If an employer adopts an employee health care plan that meets certain minimum standards, that employer should be exempted from having to provide medical benefits under its workers' compensation plan to its workers who are temporarily disabled through a job injury.

In July 1974 the Whitlam Government commissioned an inquiry chaired by Sir Owen Woodhouse into a national broad-based no-fault accident compensation scheme, which would have replaced state and territory workers compensation schemes. The bill was in the Australian Parliament when the Whitlam government was dismissed on 11 November 1975.

There was opposition from the Senate, the insurance industry, the trade unions and the legal fraternity. The proposed funding was criticised.

Some countries have legal protection insurance to cover legal costs and expenses in case of an unforeseen legal matter. A Netherlands survey identified a perceived higher quality of service from lawyers who provided services through legal protection insurers. Having a lack of confidence in the legal system is not good for the public. By limiting the legal professional in assisting the injured, promotes inequality. It's undermining justice.

The United States and Canada have the Better Business Bureau, a non-profit corporation that uses an Accredited Businesses system to assign rankings to businesses, charities and non-profit organizations. Australia could adopt a similar system for rankings and it would then include insurers and solicitors.

What appears to be lacking is a public awareness of the impact on the injured as a result of the law reforms. If a website for compensation reviews had been set-up to survey victims and their experiences, there would be a source of evidence to show if the reforms were justified, or if they should be rolled back. Any such survey ought to have had the name of the insurers noted on the records.

If the same legislation continues and the injured are kept on Newstart, employees will be expected to work longer if they intend to access the Aged Pension. That is what the public ought to be told.

The underlying cause of the increase of Newstart recipients - with incapacity - appears to be linked to the personal injury law reforms. This must now be investigated and a subsequent report made available to the public. The injured have been forced to endure inhumane exploitation and the economic cost of the current system is unsustainable. The system needs to change.

The United Nations Sustainable Development Goal (SDG) 16 is providing access to justice for all and to promote human rights. All individuals should have access to justice, not just the well-to-do.

The Auditor General should now be requested to report on the economic cost of the personal injury law reforms.

References

1. Available and affordable improvements in liability insurance following tort law reform in Australia, December 2006 by Commonwealth of Australia 2006
2. Joint communiqué: ministerial meeting on public liability Sydney (2 October 2002) 1 <<http://www.treasurer.gov.au/atr/content/publications/2002/20021002.asp>> at 23 November 2006.
3. Senate Economics References Committee Supplementary Report into the National Insurance Crises, Senator Aden Ridgeway.
4. Allan Fels, Tort Reform & Consumer Protection <http://classic.austlii.edu.au/au/journals/PlaintiffJIAUPLA/2002/97.pdf>
5. Professor Allan Fels AO & Professor David Cousins AM, Australia's general insurance industry Submission 23 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance
6. RBR 16/01 High Court Abolishes Negligence Immunity for Highway Authorities by Nicolee Dixon Research Brief 16/01 June 2001 <https://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2001/rbr1601nd.pdf>
7. ACCC - Public liability and professional indemnity insurance, Fourth monitoring report January 2005 by Commonwealth of Australia 2005 <https://www.accc.gov.au/publications/public-liability-professional-indemnity-insurance-reports>
8. ACCC - Public liability and professional indemnity insurance, Fifth monitoring report July 2005 by Commonwealth of Australia 2005 <https://www.accc.gov.au/publications/public-liability-professional-indemnity-insurance-reports>
9. High insurer profits allow better benefits to the injured by Cumpston Sarjeant Pty Ltd
10. National Legal Aid, *Submission to Senate Economics Legislation Committee Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill*, 14 August 2009, APRA, Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2016, Explanatory Statement
11. APRA, Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2016, Explanatory Statement
12. The Australian, Liability of flawed law reform by Chris Merritt, 14 April 2007 <https://www.theaustralian.com.au/news/inquirer/liability-of-flawed-law-reform/news-story/1a708ab6cd1069ce83f6748f4a96f7b6>
13. Insurance Facts and Figures 2007 by PricewaterhouseCoopers https://www.pwc.com/industry/insurance/assets/factsfigures_may07.pdf
14. ABC News, One-third of large Australian companies paid no tax, ATO data show, <https://www.abc.net.au/news/2018-12-13/one-third-of-australian-companies-paid-no-tax-ato/10614916>
15. KPMG, General Insurance sector profits edge up 4 percent in 2018, 18 November 2018 <https://home.kpmg/au/en/home/media/press-releases/2018/11/general-insurance-sector-profits-edge-up-4-percent-in-2018-19-november-2018.html>
16. Final Report, Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry by Kenneth M Hayne, Commissioner, 1 February 2019
17. IOOF profit up 200 per cent despite Royal Commission criticism, written on the 19 February 2019 by Business News Australia <https://www.businessnewsaus.com.au/articles/ioof-profit-up-200-per-cent-despite-royal-commission-criticism.html>
18. Recent Developments in Australian Negligence Law: Implications for the Insurance Industry by Chief Justice, 8 May 2003 by Paul de Jersey AC

19. Michelle Castle, Costs Capping in Personal Injuries Litigation, January/February 2007 Issue 78 Precedent 47
<http://classic.austlii.edu.au/au/journals/PrecedentAULA/2007/15.pdf>
20. Productivity Commission, Disability Care and Support, Appendix K The disability support pension
<https://www.pc.gov.au/inquiries/completed/disability-support/report>
21. Parliament of Australia, Parliamentary Budget Office, Disability Support Pension, Historical and projected trends Report no. 01/2018
<https://www.aph.gov.au › media › Reports › Disability Support Pension PDF>
22. Victor Quirk, Submission No DR68 to the Independent Review of the Job Network Inquiry, 30 April 2002
<https://www.pc.gov.au/inquiries/completed/job-network/submissions/subdr68/subdr068.pdf>
23. I Want to Work, <https://docs.employment.gov.au/documents/i-want-work>
24. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/JobActive2018/Report
25. Updating Justice - The nature of personal injury, December 2015, Published by the Law and Justice Foundation of New South Wales
[http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_50_Personal_injury_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_50_Personal_injury_FINAL.pdf)
26. Safe Work Australia, 25th Edition Comparison of workers' compensation arrangements in Australia and New Zealand 2017
<https://www.safeworkaustralia.gov.au/doc/australian-workers-compensation-statistics-2016-17>
27. Injured Workers Support Network, *Workers Compensation Review*, 19 May 2014,
<https://www.injuredworkerssupport.org.au/workers-compensation-review/>
28. WorkCover Queensland, A status review 1997-2011
https://www.worksafe.qld.gov.au/___data/assets/pdf_file/0004/17419/WorkCover-Queensland-Status-Review.pdf
29. Productivity Commission Inquiry Report No 27 dated 16 March 2004, National Workers' Compensation and Occupational Health and Safety Frameworks
See: <https://www.pc.gov.au/inquiries/completed/workers-compensation/report/workerscomp.pdf>
30. WorkCover Queensland Annual Report 2017-2018,
<https://www.injuredworkerssupport.org.au/workers-compensation-review/>
31. Frederick Litchfield, The cost of road crashes in Australia 2016, Australian National University
32. Personal Injuries Proceedings Bill 2002 Explanatory Notes
33. Ashley G Jones, Pre-Court Personal Injuries Procedure in Queensland, 2nd edition
34. <https://www.democracyco.com.au/our-projects/compulsory-third-party-act/>
35. Motor Accident Insurance Commission Annual Report 2018-19. See:
<https://maic.qld.gov.au/publications/annual-report-2018-19/>
36. Law Society of New South Wales, The National Profile of Solicitors 2016 Report dated 24 August 2017 by Urbis Pty Ltd
37. Stephen D Sugarman, Doing away with personal injury law, (Quorum Books, New York) 1989
38. <https://www.pc.gov.au/inquiries/completed/executive-remuneration/report/executive-remuneration-report.pdf>
39. Allan Fels, Tough Customer, (Melbourne University Press) 2019
40. Department of Social Services Welfare Reform Budget 2017-18
<https://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/budget-and-additional-estimates-statements/budget-2017/welfare-reform>
41. Parliament of Australia, Parliamentary Budget Office, Disability Support Pension, Historical and projected trends Report no. 01/2018
<https://www.aph.gov.au › media › Reports › Disability Support Pension PDF>

Annexures

Annexure A - Precedent

In *Behman v Fogg* [2019] QDC231 the plaintiff was diagnosed with Graves' disease after a motor vehicle accident but the medical profession did not relate the stress from the accident as being the environmental trigger for her Grave's disease. The plaintiff was injured in a motor vehicle accident while driving south along the Pacific Motorway at Springwood, Queensland, on 3 October 2015. The plaintiff found out in June 2016 that she was pregnant. Thyroid test ought to have been taken at that time. It was not until June 2018 that the plaintiff was diagnosed with Graves' disease.

In *Rotherham v Accident Compensation Corporation* [2014] NZACC 297 the Court acknowledged that failure to treat Hashimoto's thyroiditis caused a personal injury to a child "in the womb". The case considered whether there was also a personal injury for Mrs Rotherham and concluded that symptoms - sore ankles, tiredness, and headaches - are likely to be a consequence of the pregnancy rather than related to the thyroidism.

An Australian legal precedent has been set for stress being related to the onset of Graves' disease in connection with a motor vehicle accident – the case *Philomena Maureen Simpson v Darcy Buckney* [1995] TASSC 45. The judge ruled in favour of the plaintiff; however, doctors did argue that Graves' disease has a genetic predisposition – she would have got the disease anyway.

Medical research has been conducted over several decades to prove the impact physical and psychological stress has on an individual's health. Research has shown that emotional stress causes changes in Thyroid function. Scientific studies have shown the impact that psychological stress has on our immune system and also our thyroid; so it should be no surprise that stress can be the trigger for autoimmune thyroid disease.

Autoimmunity is a condition where the body attacks the very organs it should protect. Out of some eighty Autoimmune Related Conditions, there are about twenty-four that are so-called Autoimmune Diseases. Some of the most prevalent autoimmune diseases are Graves' and Hashimoto's - thyroid; Type 1 Diabetes, Lupus and Multiple Sclerosis.

While a genetic risk factor is suspected, it has not yet been proven. Billions of dollars have been spent world-wide in researching the involvement of genetics. Findings are still inconclusive; no single gene being either necessary or sufficient for disease development.

Families share more than genes. The first Iraq War (1990-1991) coincided with onset of Graves' disease for both former U.S. President George H.W. Bush and his wife, Barbara. Even their dog Millie was diagnosed with an autoimmune disease, Lupus. Over a period of 16 months all three had an autoimmune disease triggered.

Research has repeatedly shown that environmental triggers are necessary for the onset of an autoimmune disease. Some documented environmental triggers are: prescription drugs, viruses and bacteria, and stress.

In this case, Ms Behmen claimed past and future loss of earnings but was only awarded \$9,600 for past economic loss. The total amount awarded for this claim was just \$35,478.

Annexure B - Australian Bureau of Statistics - Population Statistics

Year	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total Population
1992	294,230	5,957,822	168,546	3,023,198	1,455,442	469,979	4,450,217	1,658,544	17,477,978
1993	299,114	5,995,055	171,708	3,096,185	1,458,632	471,987	4,462,766	1,678,722	17,634,169
1994	302,194	6,044,819	174,908	3,166,566	1,463,089	473,499	4,472,989	1,704,649	17,802,713
1995	305,838	6,105,560	179,602	3,237,380	1,465,340	474,515	4,497,660	1,736,066	18,001,961
1996	309,629	6,176,461	184,516	3,303,192	1,469,079	475,605	4,534,984	1,768,206	18,221,672
1997	310,533	6,246,267	189,755	3,355,417	1,475,658	474,908	4,569,297	1,798,341	18,420,176
1998	311,532	6,305,799	192,905	3,404,484	1,483,270	473,430	4,606,970	1,826,440	18,604,830
1999	314,171	6,375,103	196,012	3,453,936	1,490,934	473,030	4,652,462	1,853,936	18,809,584
2000	317,235	6,446,558	199,149	3,509,458	1,497,503	473,123	4,704,065	1,879,093	19,026,184
2001	321,538	6,530,349	199,149	3,571,469	1,503,461	473,668	4,763,615	1,906,274	19,269,523
2002	324,627	6,580,807	202,251	3,653,123	1,511,567	474,152	4,817,774	1,928,512	19,492,813
2003	327,357	6,620,715	201,725	3,743,121	1,520,399	478,534	4,873,809	1,952,741	19,718,401
2004	328,940	6,650,735	202,663	3,829,970	1,528,189	483,178	4,927,149	1,979,542	19,930,366
2005	331,399	6,693,206	205,905	3,918,494	1,538,804	486,202	4,989,246	2,011,207	20,174,463
2006	335,170	6,742,690	209,057	4,007,992	1,538,804	489,302	5,061,266	2,050,581	20,434,862
2007	342,644	6,834,156	213,748	4,111,018	1,570,619	493,262	5,153,522	2,106,139	20,825,108
2008	348,368	6,943,461	219,874	4,219,505	1,588,665	498,568	5,256,375	2,171,700	21,246,516
2009	354,785	7,053,755	226,027	4,328,771	1,608,902	504,353	5,371,934	2,240,250	21,688,777
2010	361,766	7,144,292	229,778	4,404,744	1,627,322	508,847	5,461,101	2,290,845	22,028,695
2011	367,985	7,218,529	231,292	4,476,778	1,639,614	511,483	5,537,817	2,353,409	22,336,907
2012	376,539	7,304,244	235,915	4,568,687	1,656,725	511,724	5,651,091	2,425,507	22,730,432
2013	383,257	7,404,032	241,722	4,652,824	1,671,488	512,231	5,772,669	2,486,944	23,125,167
2014	388,799	7,508,353	242,894	4,719,653	1,686,945	513,621	5,894,917	2,517,608	23,472,790
2015	395,813	7,616,168	244,692	4,777,692	1,700,668	515,117	6,022,322	2,540,672	23,813,144
2016	403,104	7,732,858	245,678	4,845,152	1,712,843	517,514	6,173,172	2,555,978	24,186,299

Annexure C - Australian Taxation Office Statistics for Tax Revenue

Year	Goods & Services Tax Introduced 1/7/2000 \$ ('000,000)	Individuals & Other Withholding Taxes \$ ('000,000)	% Revenue Individuals Tax	Company Tax \$ ('000,000)	% Revenue Company Tax	Total Tax Revenue \$ ('000,000)
1990–91		\$46,330	50%	\$14,166	15%	\$93,085
1991–92		\$42,594	48%	\$13,419	15%	\$87,825
1992–93		\$43,307	49%	\$13,071	15%	\$89,231
1993–94		\$45,925	49%	\$12,700	14%	\$94,022
1994–95		\$49,568	47%	\$15,588	15%	\$105,687
1995–96		\$55,005	47%	\$18,252	16%	\$116,387
1996–97		\$60,193	48%	\$19,173	15%	\$125,814
1997–98		\$68,299	52%	\$19,406	15%	\$132,217
1998–99		\$73,935	52%	\$20,734	15%	\$141,104
1999–2000		\$78,930	52%	\$24,453	16%	\$150,695
2000–01	\$23,777	\$77,246	45%	\$31,582	19%	\$169,834
2001–02	\$26,898	\$84,636	49%	\$27,230	16%	\$174,442
2002–03	\$30,699	\$89,919	47%	\$32,752	17%	\$191,360
2003–04	\$33,195	\$97,248	47%	\$36,101	18%	\$205,440
2004–05	\$35,063	\$106,124	48%	\$40,404	18%	\$223,239
2005–06	\$37,442	\$112,771	47%	\$48,960	20%	\$241,360
2006–07	\$39,614	\$115,771	45%	\$57,100	22%	\$257,394
2007–08	\$42,424	\$123,906	44%	\$61,700	22%	\$279,317
2008–09	\$41,335	\$122,360	45%	\$60,391	22%	\$273,674
2009–10	\$43,967	\$120,070	46%	\$52,209	20%	\$262,168
2010–11	\$46,083	\$132,738	47%	\$56,262	20%	\$282,104
2011–12	\$45,861	\$148,374	48%	\$66,584	21%	\$311,268

Year	Goods & Services Tax Introduced 1/7/2000 \$ ('000,000)	Individuals & Other Withholding Taxes \$ ('000,000)	% Revenue Individuals Tax	Company Tax \$ ('000,000)	% Revenue Company Tax	Total Tax Revenue \$ ('000,000)
2012–13	\$48,596	\$156,300	48%	\$66,911	20%	\$327,836
2013–14	\$51,394	\$163,591	48%	\$67,273	20%	\$340,284
2014–15	\$54,542	\$177,860	50%	\$66,174	19%	\$353,880
2015–16	\$57,457	\$187,101	52%	\$62,897	17%	\$362,389
2016–17	\$60,023	\$193,862	51%	\$68,390	18%	\$379,270
2017-18	\$63,235	\$206,993	50%	\$84,591	20%	\$418,053

Individuals and other withholding taxes

Individuals income tax - Commonwealth salaries
Individuals income tax - General
Individuals income tax - Individuals
Individuals income tax - Social services contribution
Gross income tax withholding
Gross PAYE
Gross PAYG withholding
Gross other individuals
Individuals refunds

Source:

The data file or API can be downloaded from:

<https://data.gov.au/data/dataset/f0fb26d5-8e27-4494-85ac-1eac2da54b72/resource/ab28891e-b18e-4bba-8103-00215b517253/download/australian-government-historical-receipts-data-1901-02-to-present.xlsx>

Annexure D - Statistics from the Department of Social Services

Recipients of Newstart Allowance with an assessed Partial Capacity to Work by State / Territory												
Year	Australian Population	National Total	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Unknown	% Population on NSA with Incapacitated
2007	20,825,108	30,417	257	11,507	298	4,802	2,723	857	7,821	2,104	48	0.1%
2008	21,246,516	54,339	439	20,026	641	9,084	4,714	1,657	14,379	3,326	73	0.3%
2009	21,688,777	74,427	609	27,189	535	13,221	6,270	2,227	19,836	4,434	106	0.3%
2010	22,028,695	91,178	802	33,802	521	16,229	7,799	2,657	24,168	5,155	45	0.4%
2011	22,336,907	98,707	806	36,316	521	17,581	8,677	2,874	26,164	5,744	24	0.4%
2012	22,730,432	116,174	895	41,080	692	22,001	10,461	3,660	30,317	7,036	32	0.5%
2013	23,125,167	150,727	1,106	52,211	978	29,307	13,539	4,859	39,539	9,170	18	0.7%
2014	23,472,790	180,646	1,369	61,327	1,203	36,076	16,525	5,689	47,019	11,423	15	0.8%
2015	23,813,144	206,764	1,522	68,364	1,418	42,585	19,049	6,146	54,176	13,490	14	0.9%
2016	24,186,299	230,444	1,752	75,050	1,652	48,236	21,310	6,913	59,898	15,570	63	1.0%
2017	24,598,900	245,775	1,948	77,991	1,919	52,226	23,337	7,432	63,529	17,351	42	1.0%
2018	24,898,152	271,421	2,173	85,010	2,213	57,748	26,419	8,264	69,340	20,202	52	1.1%
2019	25,348,172	289,489	2,375	89,957	2,468	61,899	28,280	8,712	72,609	23,146	43	1.1%

Annexure E - Queensland Statistics - Population and Welfare Recipients

Queensland Statistics - Population and Welfare Recipients										
Year	Australian Population	# QLD Population	QLD %	Australian DSP Recipients	# QLD DSP Recipients	% DSP	Australia NSA - Incapacitated	# QLD NSA Recipients	% NSA Incapacitated	Total % QLD Welfare Recipients
2007	20,825,108	4,111,018	19.7%	714,156	135,863	19.0%	30,417	4,802	15.8%	34.8%
2008	21,246,516	4,219,505	19.9%	732,367	138,759	18.9%	54,339	9,084	16.7%	35.7%
2009	21,688,777	4,328,771	20.0%	757,118	144,428	19.1%	74,427	13,221	17.8%	36.8%
2010	22,028,695	4,404,744	20.0%	792,581	152,851	19.3%	91,178	16,229	17.8%	37.1%
2011	22,336,907	4,476,778	20.0%	818,850	159,960	19.5%	98,707	17,581	17.8%	37.3%
2012	22,730,432	4,568,687	20.1%	827,460	163,037	19.7%	116,174	22,001	18.9%	38.6%
2013	23,125,167	4,652,824	20.1%	821,738	162,830	19.8%	150,727	29,307	19.4%	39.3%
2014	23,472,790	4,719,653	20.1%	830,454	165,924	20.0%	180,646	36,076	20.0%	40.0%
2015	23,813,144	4,777,692	20.1%	814,391	163,962	20.1%	206,764	42,585	20.6%	40.7%
2016	24,186,299	4,845,152	20.0%	782,891	158,453	20.2%	230,444	48,236	20.9%	41.2%



ADH19-0469: Recipients of Newstart Allowance with an assessed Partial Capacity to Work by State - Annual Time Series 29/06/2007 to 28/06/2019.

As At:	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Northern Territory	Australian Capital Territory	Unknown	Total
29/06/2007	11507	7821	4802	2723	2104	857	298	257	48	30417
27/06/2008	20026	14379	9084	4714	3326	1657	641	439	73	54339
26/06/2009	27189	19836	13221	6270	4434	2227	535	609	106	74427
25/06/2010	33802	24168	16229	7799	5155	2657	521	802	45	91178
24/06/2011	36316	26164	17581	8677	5744	2874	521	806	24	98707
29/06/2012	41080	30317	22001	10461	7036	3660	692	895	32	116174
28/06/2013	52211	39539	29307	13539	9170	4859	978	1106	18	150727
27/06/2014	61327	47019	36076	16525	11423	5689	1203	1369	15	180646
26/06/2015	68364	54176	42585	19049	13490	6146	1418	1522	14	206764
24/06/2016	75050	59898	48236	21310	15570	6913	1652	1752	63	230444
30/06/2017	77991	63529	52226	23337	17351	7432	1919	1948	42	245775
29/06/2018	85010	69340	57748	26419	20202	8264	2213	2173	52	271421
28/06/2019	89957	72609	61899	28280	23146	8712	2468	2375	43	289489

Data Descriptions

Includes the following recipients:

Recipients of Newstart Allowance who are determined to be current (i.e. entitled to be paid) on the Centrelink payment system, and not in receipt of CDEP participation supplement or zero rate of payment.

Partial Capacity to Work refers to activity tested recipients with an assessed work capacity of under 30 hours per week.

Source: Services Australia administrative data.