

# Introduction

## Establishment of the inquiry

1. The price of public liability insurance premiums has been a matter of ongoing debate over recent years. Every so often, a media report would comment on the growing tendency in Australia to litigate, or a substantial award for an injury would spark public discussion. Occasionally, the perceived trend in litigation would be held to ‘witness a rising tide of civil suits’ with Australia compared to the US.<sup>1</sup> Warning signs of trouble in public liability insurance were also registering elsewhere.

2. In November 2000, the NSW Report of the Public Bodies Review Committee found that:

There appears to be clear evidence that the number and cost of claims against councils are increasing. Further, all predictions are that the insurance market is ‘hardening’ and councils will be forced to pay much more for their insurance in the foreseeable future.<sup>2</sup>

3. This observation was borne out during the following year not only in relation to local councils but across a range of activities. During 2001, a greater sense of urgency crept into the reporting on public liability with suggestions that some councils may decide not to have playgrounds, or that local shows would close because of high public liability insurance costs.

4. As the year progressed, the implications of the collapse of HIH, a major Australian insurance company, became clearer and concerns about insurance premiums heightened.<sup>3</sup> In April 2001, the media reported premium rises of up to 40 per cent for replacement cover for professional indemnity and public liability insurance.<sup>4</sup> By May 2001, reports suggested that professionals such as lawyers, engineers and architects faced increased premiums for professional indemnity.<sup>5</sup>

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1 The media reports are too numerous to cite here, but see for example: editorial, *Australian Financial Review*, 17 February 2001; Tom Morton, ‘Risky Business’, *Age*, 17 February 2001; Paul Heinrichs, ‘That’s no playground, it’s a legal minefield’, *Sunday Age*, 18 February 2001; Diana Bagnall, ‘The Blame Game’, *Bulletin*, 20 March, vol. 119, p. 26.

2 Parliament of New South Wales, Report of the Public Bodies Review Committee, *Public Liability Issues Facing Local Councils*, November 2000, p. 7.

3 The company was placed into provisional liquidation in March 2001.

4 See ‘HIH collapse puts charities, legal aid under pressure’, *Sydney Morning Herald*, 25 April 2001; John Breusch, ‘HIH leaves local councils in the lurch’, *Australian Financial Review*, 30 April 2001; ‘Disaster, Why Every Business Will be Hurt by HIH’, *Australian Financial Review*, 12 May 2001.

5 See for example, Trudy Harris, Andrew White, ‘Insurance premiums to rocket’, *Weekend Australian*, 19 May 2001; Sharon Kemp, ‘Insurer’s failure triggers big jump in premiums’, *Age*, 29 May 2001; Anne Lampe, ‘The rise and rise of insurance premiums’, *Sydney Morning Herald*, 29 May 2001.

During the following months stories appeared in the press of huge increases in premiums that threatened small business, community and sporting groups and adventure tourism.<sup>6</sup> There were accounts of the cancellation of public events such as festivals. With the terrorist attack in New York on 11 September came speculation that the Australian domestic market would suffer from an expected increase in reinsurance rates.<sup>7</sup> By year's end the situation appeared to worsen with media accounts of 'staggering' increases in public liability insurance premiums.<sup>8</sup>

5. As problems began to emerge in the public liability and professional indemnity area, the situation with medical indemnity, in particular, deepened during 2001 with fears that some doctors, notably those practicing obstetrics, were contemplating resigning their positions because of the escalating costs of insurance.<sup>9</sup> By December 2001, the situation had so deteriorated that the Prime Minister, Mr John Howard, announced plans for a medical indemnity summit in early 2002.

6. The upheaval in the area of medical indemnity was felt even stronger when serious concerns were raised in February 2002 about the viability of Australia's major medical defence organisation, United Medical Protection.

7. On 3 February 2002, the Minister for Revenue and the Assistant Treasurer, Senator the Hon Helen Coonan, offered to host a meeting 'to coordinate the exchange of information about the affordability and accessibility of public liability insurance among relevant Ministers'. The meeting was to be held on 27 March 2002.<sup>10</sup>

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6 The articles are too numerous to cite here, but see for example: Madeleine Milford, 'Huge liability rises hit Tassie', *Mercury*, 9 July 2001; Richard Baker, 'Insurance costs threat to adventure tourism', *Age*, 30 July 2001; Michael McGuire, 'Insurance crisis hits grassroots', *Australian*, 12 October 2001; Adrian Rollins, 'Insurance rise hits adventure tourism', *Age*, 29 October 2001; Geesche Jacobsen, 'Clubs, charities crippled as premiums soar', *Sydney Morning Herald*, 31 October 2001; James Wakelin, 'Huge rise in NT insurance costs', *Northern Territory News*, 22 November 2001.

7 Jacquie Hayes, 'Counting the cost of terror', *Weekend Australian*, 29 September 2001.

8 Allan Dick, 'liability wipeout', *The Land*, 13 December 2001; Claire O'Rourke and Stephanie Peating, 'Insurance costs crippling us, say sport groups', *Sydney Morning Herald*, 19 December 2001.

9 Julie Robotham, 'Top rural doctors resign as indemnity crisis grows', *Sydney Morning Herald*, 18 January 2001; Leah De Forest, 'Doctors warn of crisis as Govt Steps in', *Canberra Times*, 20 January 2001; Annie White, 'Crisis! What crisis?', *Australian Doctor*, 20 April 2001, p. 31; Leah De Forest, 'Home-birth midwives lose insurance', *Canberra Times*, 10 July 2001.

10 Press Release, C3/02, Senator the Hon Helen Coonan, Minister for Revenue and the Assistant Treasurer, 'Commonwealth proposes meeting on public liability insurance', 3 February 2002.

8. The issue of insurance premiums, however, remained at the forefront of public attention particularly in March with the prospect that some ANZAC Day marches would be cancelled because of high premiums.<sup>11</sup>

9. It is against this background of mounting community and business concern about the availability of appropriate insurance cover at an affordable price that the Senate resolved to have the matter examined.

10. On 20 March 2002, the Senate referred the following matter to the Senate Economics References Committee for inquiry and report:

- a) the impact of public liability insurance for small business and community and sporting organisations; and
- b) the impact of professional indemnity insurance, including Directors and Officers Insurance, for small business;

with particular reference to:

- c) the cost of such insurance;
- d) reasons for the increase in premiums for such insurance; and
- e) schemes, arrangements or reforms that can reduce the cost of such insurance and/or better calculate and pool risk.

## **Conduct of the inquiry**

11. The Committee advertised the inquiry in the *Financial Review* on 5 April and in the *Weekend Australian* on 6 April 2002, calling for written submissions to be lodged with the Committee by 13 May. The Committee also wrote to relevant Commonwealth Government Ministers, state Premiers and territory Chief Ministers drawing attention to the inquiry and inviting submissions. In addition, the Committee notified various academics, organisations and people interested in matters dealing with public liability and professional indemnity insurance about the inquiry.

12. The terms of reference and other information about the inquiry were also advertised on the Committee's internet homepage at <http://www.aph.gov.au/senate/committee/>

13. A total of 166 submissions was received. A list of submissions is contained in Appendix 1. All but five of the written submissions were made public documents.

14. Apart from the material contained in written submissions and in oral evidence presented to it, the Committee drew on a range of information contained in reports and

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11 For example see Media Release, Senator John Cherry, Australian Democrats, Community Services Spokesman, 'Senate set to inquire into public liability insurance', 19 March 2002; *Australian*, 19 March 2002, *Herald Sun*, 19 March 2002; *Canberra Times*, 19 March 2002.

reviews from various committees of inquiry, and from comments and articles by people directly involved with public liability and professional indemnity matters.

15. After initial consideration of the submissions, the Committee began public hearings on 8 and 9 July in Canberra. These hearing were followed by further hearings in Melbourne and Sydney. Details of the hearings and the witnesses who appeared at them are contained in Appendix 2. The Hansard transcript of evidence taken at the hearings was made available on the internet.

16. The Committee continues to receive submissions and supplementary submissions. These later submissions have generally reinforced the evidence already received by the Committee and indicate that for many the problems caused by high premiums still remain.

### **Complementary reviews**

17. The Committee is aware of the number of separate reviews and inquiries now taking place into public liability insurance. These include a panel of experts chaired by the Hon. Justice David Ipp, which has recently reported on the law of negligence; the ACCC's brief to monitor and report on premium costs; and the Productivity Commission's study into claims management. The Committee accepts that much of their work will traverse and in some cases examine at greater depth specific matters that are dealt with in this report. Nonetheless, the Committee feels strongly that it has a responsibility to ensure that the voice of the broader Australian community is heard on this matter. The inquiry has taken evidence from business people, community and volunteer workers, and representatives from a wide range of professions. They have been able to make known their views, experiences and concerns and to put forward their solutions for the Committee's consideration. This inquiry has certainly facilitated open public debate. Also, rather than focus on specific aspects, the inquiry provides an overview of key issues.

18. The Committee also appreciates that the states and territories and the Commonwealth Government are taking steps to address the problems. Some of their measures are being introduced in stages. The Committee is in a position to look at these developments but cannot assess their effectiveness at this early stage other than to place them in the broader context of reforms that are taking place across the nation. It can comment on the complementarity of reform between the states and between the states and the Commonwealth.

### **Structure of the report**

19. The report reflects on recent developments in public liability and professional indemnity insurance that have given rise to the present problems. It also assesses the direction being taken by the various jurisdictions and the insurance industry in meeting the challenge caused by rising premiums and the difficulties being experienced in obtaining adequate cover.

20. This report is divided into the following three broad parts:

- A general introduction that describes the current situation in the public liability and professional indemnity insurance industry in Australia and its implications for Australian society and the business community. This includes a summary of recent developments in the overarching global and domestic insurance industry and the implications for the Australian insurance market.
- An analysis of the underlying causes of the current problems and an appreciation of the measures being taken to address them. This part is further divided into sections that deal with the rise in the number of claims and the increase in the amount of awards or settlements.
- An examination of the regulatory framework in which the insurance industry operates which includes an assessment of the data currently available on the industry. This part also considers the role of APRA, the ACCC and ASIC as regulatory bodies concerned with various aspects of the insurance industry and the adequacy of consumer protection.

## **Acknowledgments**

21. The Committee wishes to express its appreciation to everyone who contributed to the inquiry by making submissions, providing other information or appearing before the Committee at public hearings.



## **Part I**

### **The current situation in the public liability and professional indemnity insurance industry in Australia**

This section of the report provides a general introduction that describes the current situation in the public liability and professional indemnity insurance industry in Australia and its implications for the business and the wider Australian community. It provides a wide representation of views from the medical profession, accountants, financial advisers, surveyors, engineers, retailers, community, sporting and volunteer groups, and local councils.

It also includes a summary of recent developments in the overarching global and domestic insurance industry and the implications for the Australian insurance market.

