

Councils' accident liability bills soar

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People who tripped over footpaths and children hurt in playground falls are among 14,000 litigants who have won more than \$38 million in damages from Sydney's councils.

The number of claims has soared by 100 per cent over the past five years, and the size of damages has also increased — up from an average of \$20,000 10 years ago to between \$200,000 and \$400,000 now.

Personal injuries account for 42 per cent of all public liability claims, yet account for more than 73 per cent of the cost to councils.

The latest available figures, which are based on 19 councils' costs over the past 10 years, were part of a joint submission three metropolitan council insurance pools submitted to the NSW Government 18 months ago.

They pushed for legal reforms to cap liability claims, but, despite a review a State Government working party carried out last year, the councils said nothing has been done.

Councils have closed playgrounds, replaced equipment and diverted much needed revenue from funding creches and other community services to defending and paying the growing number of cases being brought before the courts.

Lawyers enticing litigants with "no win, no fee" deals and the "benevolent" attitude of judiciaries, who show a "Robin Hood" philosophy to helping claimants, explain why the number of claims and costs are escalating, the submission said.

The report said a significant proportion of claims were from people who had tripped on uneven footpath and road surfaces. But with more than 144,000 kilometres of rural and

metropolitan routes, the job of maintaining the roads is huge.

Replacing torn shoes to paying medical expenses was enough for some people, Waverley Council's general manager, Mr Michael McMahon, said.

"But for others, once they see the dollar signs in their eyes it's like winning the lottery," he said. "And it's tax free."

Lawyers take about 60 per cent of their client's claim, Mr McMahon said.

In Fairfield a woman was awarded several hundred thousand dollars after she slipped and broke her leg on a community centre floor. The award was made, even though the council found shreds of paper on the sole of her shoes and claimed she had slipped on a paper napkin. But a man lost his \$200,000 claim after he tried to sue the council when he took a short cut through a private garden and hurt himself as he jumped the fence and fell into a council drain.

Now councils are fighting back.

Fairfield said it had won 70 per cent of cases in the past five years. Improved risk management underpinned much of the success, the council's manager of governance and risk, Mr Andrew Armitstead, said.

While the council was sensitive to bona fide claims, Mr Armitstead warned that people risked having to pay the council's costs if the courts ruled in their favour. Fairfield has already approached the Sheriff's Office in a bid to recoup its costs against one unsuccessful litigant.

"What are councils supposed to do? Do we close down sporting fields? Do we stop people playing cricket? I don't think so, but that's what we're coming to," Mr Armitstead said.

again to convince his son to give up the shot gun, which he again refused to do. Zalewski and another police officer then approached Turcarolo's bedroom with guns drawn. Turcarolo refused to come out but invited the police to enter his room. Zalewski then opened the door and saw Turcarolo, looking straight at them, sitting on the floor with the shot gun resting in his lap. He had one hand on the barrel and the other on the trigger. Both police pointed their guns and shouted at Turcarolo to drop the gun. Turcarolo was hit by shots from both police officers and injured. Sgt Zalewski gave evidence that he was lowering himself to get out of the line of the shotgun but the gun was still aimed at him. When Turcarolo made a movement, both police fired, believing that he was about to shoot them. Turcarolo denied that he either intended or attempted to shoot. He stated that he was falling asleep when he heard something like "would you come out". The gun had been pointing toward one wall and when he turned in the other direction at the call, the gun ended up pointing at the doorway."

Negligence in police shooting, or not?

Hansen J wrote the leading judgment and the other two judges agreed.

The central issue considered was whether there was a breach of the duty of care (see 572ff). In deciding whether there was a breach, the court considered whether a reasonable man in Zalewski's position would have foreseen that his conduct involved a risk of injury. Hansen J found that the test had been met. At 573 he said:

"In my opinion it was open to the jury to conclude that when Zalewski responded to the situation by opening the door and confronting and shouting at the respondent (Turcarolo), it was foreseeable that the respondent might point a possibly loaded gun at one or both of them or that in moving or reacting in this or some other way the police officers or one of them may fire a shot or even be shot at. It is to be remembered that Zalewski understood the respondent had twice pointed the gun at his father. By opening