



Lies, damned lies and statistics*

Eight months have now elapsed since the insurance industry began its campaign for tort reform in Australia. Given the time that has expired it is illuminating to examine the claims that insurers and their proxies have made to support their campaign.

The insurance industry's campaign is founded on three principle assertions:

- Australia is undergoing a litigation explosion fuelled by aggressive plaintiff lawyers advertising 'no-win, no-fee' terms;
- Public liability claims have skyrocketed from 55,000 in 1998 to 88,000 in 2001;
- The average value of public liability claims have increased faster than inflation.

These claims are alarming. The insurance industry claims that these factors are the cause of recent massive hikes. Their remedy, naturally enough, is that tort reform is needed to reign in the tort system so as to make insurance more affordable for the Australian community.

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Given the time that has passed since these claims were first made, and the massive amount of time and effort expended by the insurance industry in perpetuating these claims, there must be massive evidence to support their claims, right?

Wrong! The focus of my message this issue is to expose the extent to which the insurance industry has lied to the public in relation to each of the above claims.

The So-Called 'Litigation Explosion'

At the time these claims were made by the Insurance Council of Australia (ICA), they had no evidence to support them.

According to the Australian Productivity Commission, civil litigation has declined significantly over the last three years (on average at 4% per annum).¹ This data aggregates all forms of civil litigation.

In late 2001, APLA initiated inquiries with Australian court registries to ascertain what, if any, evidence was available on personal injury litigation per se.

Our research revealed that several states have experienced no or little increase in the last five years and, in some cases, litigation rates have declined over that period.

For example, the Victorian County Court data shows that 2001 rates are lower than 1997 rates; the Queensland combined courts data shows little increase since 1995; in Western Australia there was a decline in 1999-2000; and in Tasmania the latest data shows about 40% less litigation than in 1998.

Insurance industry actuaries, Trowbridge, in a draft report to the Working Group of Heads of Treasury on 21 May 2002, claimed that most courts have had an increase in writs filed over the last 10 years.² They failed to point out that this is, of itself, quite meaningless.

Firstly, over the same period, the Australian population increased by two million people.³ In the same period the adult (and hence, litigating) population increased at a much greater rate due to the aging nature of the population and hence, an increase in litigation would be expected by population growth alone.

Secondly, they failed to appreciate that some of the most significant alterations in litigation rates are due to changes in the jurisdiction limits of courts, resulting in a transfer of work from one court to another⁴ and from legislative changes that have created artificial volatility.

Thirdly, if increases in litigation rates over the last decade were a cause

behind recent increases in premiums (as claimed) then why did public liability premiums decline by approximately 35% between 1993 and 1998?⁵

In other words, the litigation data clearly demonstrates that the massive and recent hikes in premiums since 1998 cannot be justified by increases in litigation rates.

The objective data disproves the claim that premium increases are due to a litigation explosion.

The Alleged Explosion in Public Liability Claims

Throughout their campaign, the ICA has repeatedly relied on Australian Prudential Regulation Authority (APRA) statistics to prove that claims under public liability policies massively increased from 55,000 claims in 1998 to 88,000 claims in 2001.

What the ICA neglects to mention is that gross claims data is meaningless unless it is expressed either as a percentage of claims per policy or claims per \$100,000 of premium income raised.

For example, APRA's data reveals that between 1992 and 2001 the number of public liability policies issued in Australia increased on average by 13% per annum, while in the same period the number of claims increased at only 9% per annum. In other words, the rate of claims per policy has decreased significantly over the last decade.

Indeed, Trowbridge consulting do not even agree with the ICAs claims. In their report of 27 March 2002 to a meeting of federal and state ministers, they analysed Insurance Statistics Australia data to calculate the rate of claims per \$100,000 of premium income raised and found that public liability claims have decreased by approximately 20% since 1995.⁶

The Increase in Average Cost of Claims Paid

Different commentators from the insurance industry have claimed that the average cost of claims paid has increased significantly. Trowbridge, who

examined this issue in a report to Heads of Treasury, found that the average cost of claims has increased faster than inflation. Once again, this claim is of itself meaningless.

Firstly, in conducting their analysis Trowbridge excluded nil claims from the analysis⁷ and then failed to adjust for substantial increases in policy excesses and deductibles over the period of their analysis. This means that the average cost of claims would increase as an artefact of the way in which the data was analysed, thereby making their findings meaningless.

Secondly, comparison of average claims paid with inflation is akin to comparing apples with bananas. Inflation is a retrospective indicator, whereas claims paid include a component for both past and future loss. In other words, the average cost of claims paid are expected to increase at a rate faster than inflation because claims include a component to compensate for future loss.

In short, insurers have not told the truth, the whole truth and nothing but the truth in this campaign. Indeed, they have used statistics throughout this campaign '...like a drunken man uses lamp-posts – for support rather than illumination'.⁸

While we are on the subject of misrepresentation of evidence, let me briefly mention the crisis in obstetrics. Over the last couple of years different parties have claimed that litigation is driving obstetricians out of the profession. I am sure some of you may have heard about the bumper sticker that says, 'Let your lawyer deliver your baby?'

The Vice-President of the Royal Australian College of Obstetrics and Gynaecology, Dr Ken Clark, recently addressed a New Zealand conference about the growing shortage of doctors specialising in obstetrics and the fact that this may cause some provincial units to close due to lack of specialist staff.

A report on the reasons he gave for the shortage did not mention a lack of money or litigation. It seems that a sur-

vey undertaken by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists disclosed that lifestyle was the real reason why people did not want to undertake obstetrics. Dr Clark attributes this in part to the increasing number of women trainees who either did not, or could not, perform on-call work.⁹

Figures never lie. But people do distort figures for their own purposes. So next time you are at a party and someone rabbits on about the latest urban myth about litigation take the time to set them straight.

I look forward to seeing everyone again at the next APLA National Conference in Hobart between the 17 and 20 October 2002. ☐

Rob Davis

Footnotes:

* Benjamin Disraeli 1804-81.

¹ Australian Productivity Commission Report 2001, Table 9A.1

² Trowbridge Consulting Draft Report of Working Group of Heads of Treasury, 21/5/02, page 58.

³ Australia Bureau of Statistics, 2001 Year Book Australia, Table C4.3, page 171.

⁴ This is particularly obvious in the Queensland chart on page 56 where increases in the District Court jurisdiction resulted in rates declining in the Supreme Court and increasing in the District Court, with insignificant overall increase when both courts data is combined.

⁵ Trowbridge Report to Meeting of Ministers 27 March 2002, Fig. 10, page 27.

⁶ Trowbridge Report to Meeting of Ministers 27 March 2002, Fig. 2, page 13.

⁷ Trowbridge Consulting Draft Report of Working Group of Heads of Treasury, 21/5/02, page 62.

⁸ To adopt a phrase that is attributed to Andrew Lang, 1844-1912.

⁹ Otago Daily Times, 5/7/02, 'Lack of Obstetricians Worry' by Fiona Clarkson, page 6.