



Inquiry into Small Business Insurance: Transparent data is needed to better understand the solution to affordability issues

Who are we?

The Australian Lawyers Alliance (ALA) is a not-for-profit association whose members are mainly lawyers, legal academics and law students. Our members regularly deal with insurers and compensation schemes to help people who have been injured because of someone else's negligence, carelessness or wrongdoing obtain the support they need.

The value of insurance

Insurance plays an important role in protecting people who are injured and ensuring the cost of someone's negligence does not fall on injured people, governments or taxpayers. Insurance is not just a business expense. It provides financial protection and helps injured Australians access medical treatment, rehabilitation and income support.

It is therefore essential that small and medium businesses, as well as not-for-profit organisations, can obtain affordable insurance so they are covered if someone is injured because of their actions.

Impacts of injury

No-one expects to be injured, and it is easy to put aside the needs of injured people until it happens to you or someone that you know. It is critical that this inquiry into small business insurance costs does not lose sight of the fact that decisions made about insurance or civil liability laws ultimately have a real-life impact on individuals and families, often experiencing one of the worst times of their life.

Some injuries have catastrophic consequences, having a life-long impact on an individual's ability to work, walk, and look after themselves and their families. But even those who will recover eventually have still had their lives disrupted through no fault of their own. An injury at any level has a financial, emotional, and physical impact. It can isolate people socially, suspend careers, and rob people of their independence.

The importance of full and fair compensation cannot be overstated. Injured people need financial support if they are to rebuild their lives. It pays for medical care, the supports needed to help someone live independently and loss of earnings if someone is unable to work.

Civil liability 'reform' (removal of existing rights)

Publicly available evidence does not support claims that rising injury claims or legal costs are driving higher insurance premiums. Better data from the insurance companies is essential to understanding what is really driving insurance costs.

The removal of rights would permanently shift the costs of injury away from insurers and those responsible for harm, and onto injured people, their families and public systems such as Medicare and the NDIS. The NDIS is facing escalating sustainability challenges. Centrelink and Medicare also have limited funding capability. Any change to rights will place these schemes under pressure at a time when they can't afford it.

Insurance companies have tried this in the past. During the “insurance crisis” in 1999-2002, insurers claimed that the costs of public liability insurance had risen to unsustainable levels. Governments changed laws to reduce protections for injured people, but the available data does not indicate that this has had a long-term impact on lowering premiums. According to the Law Council of Australia:

“The changes to personal injury laws implemented in several jurisdictions in response to the insurance crisis led to a patchwork of laws which have invariably weakened the rights of people injured due to the carelessness of others. The reforms have also enabled insurers to reap a massive windfall of profits in public liability ... due to the dramatic reduction in the number of compensable claims caused by changes to personal injury laws.”¹

Compensation is already not easily accessible for injured Australians. Thresholds and caps are placed on damages payments and already preclude some injured people from accessing fair compensation.

Our recommendations

The evidence provided to argue for the restriction of existing rights is opaque and, in our view, is largely lacking in merit. With greater transparency it is possible that some changes to insurance arrangements could assist to facilitate fairer and more affordable premiums framework. In our recommendations we have leveraged the expertise of an independent economist, case studies from our members, publicly available insurer and regulator information, as well as our 1600 legal practitioner members who work in this system every day.

The ALA recommends a staged approach of practical measures the Committee can take:

- 1. Require better data before considering reform**

The Committee should require more comprehensive datasets be provided by insurers before considering any further civil liability reform.

- 2. Improve transparency of insurance outcomes**

Require insurers to report quote and renewal outcomes by segment and region.

- 3. Explain drivers of premium changes**

Require regulator-verified analysis showing how premiums are affected by claims costs, expenses, reinsurance and insurer profit margins.

- 4. Provide detailed claims-pathway data**

Require claims process data showing timing and cost breakdowns so that claims about litigation costs can be properly tested and process inefficiencies identified.

- 5. Establish minimum insurance standards**

Introduce minimum operational insurance standards for small businesses and community organisations across the life cycle of an insurance policy.

- 6. Develop pre-litigation protocols**

The Insurance Council of Australia, the ALA and state and territory law societies should work together to develop agreed pre-litigation protocols to encourage earlier settlement of public liability claims, with the aim of speedy and fair resolution of meritorious claims outside the Court process.

- 7. Apply fair conduct guidelines to insurers**

Insurers handling public liability claims should be required to follow guidelines similar to Model Litigant Guidelines to reduce legal costs.

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¹ <https://lawcouncil.au/policy-agenda/access-to-justice/tort-law-reform#:~:text=The%20review%20was%20commissioned%20in,insurance%20rose%20to%20unsustainable%20levels.>

