

Monsters on the horizon

By Simon Morrison

TORT REFORM

The forthcoming federal election gives us a golden opportunity to educate politicians and the public about the grave imbalance that currently exists in tort laws and compensation schemes around the country.

I recently met a politician who told me that the savage tort reforms of a few years back were aimed entirely at putting the tort system 'back into balance' – a view that certainly begs the question: what type of balance did governments have in mind, exactly?

The Deloitte Morgan survey published last December describes this as being 'the golden era of profitability' for the general insurance industry, with insurers enjoying an average of 23% return on equity.

There is no doubt in my mind that governments could not have predicted the damage they would inflict on ordinary taxpayers and injured victims, as well as the massive windfall they created for the insurance industry.

One of our key objectives over the past 12 months has been to start making governments aware of the monster they have created. The campaign started with meeting attorneys-general, briefing them with some salient facts:

1. Claims numbers HAVE reduced dramatically because of tort reforms.
2. Insurer profits have soared off the back of tort reforms.
3. Taxpayers are picking up the bill. What gives me grounds for optimism is that if governments were willing to

move with such haste to correct the imbalance they perceived to exist at the time of tort reform legislation, they might be equally willing to move with the same alacrity once they become aware of the current inequity.

While we don't blame governments for the problem, we do expect them to fix the mess. And we also expect the insurance industry to play a responsible role in the correction of this imbalance. This is the new phase of our campaign.

WORKERS' COMPENSATION

With no fewer than four inquiries into workers' compensation schemes currently underway around the country, I expect national workers' compensation to be a live issue this year.

It is no secret that previous attempts to nationalise workers' compensation have been unkind to workers and, on the whole, have sought to destroy our common-law rights.

Despite the fact that the strongest workers' compensation scheme in Australia (by a country mile) permits common law access, many stakeholders remain convinced that common law is the root of all evil when it comes to structuring workers' compensation schemes.

Undoubtedly, schemes containing common law without appropriate pre-court structures, coupled with a poor culture, played a role in the deterioration of those schemes in bygone times. It is also true that we must seek to strike the right balance between statutory no-fault payments in



a scheme and common law access. I believe this can be achieved.

There are three main attributes of the common law system that allow insurers to make a good return on insurance schemes: deterrence, flexibility and finality. These ingredients simply cannot be replicated in statutory schemes.

Our task is to convince governments that careful analysis of the numbers and scheme structures reveals common law to be the friend of workers and insurers alike.

Bono, the legendary frontman of supergroup, U2, said in Australia last year (when speaking on the David Hicks issue), "you don't overcome a monster by becoming one".

We must engage in constructive dialogue with governments on these two important issues to try and banish the monsters on the horizon. ■

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