
ACPAC 2005 – 8th Biennial Conference
Day 2 – Session 3

Public liability changes

Presenter: Ms Gay Thompson MP, Chair, Economic and Finance Committee,
South Australia



Parliament of South Australia

Economic and Finance Committee

ACPAC Conference, Brisbane 2005

Ms Gay Thompson MP, Presiding Member

Tuesday, 8 February - Session 3, 2pm.

Public Liability changes

Good Afternoon

This year will mark the fourth anniversary of the 11 September 2001 attacks in the United States, an event that precipitated, amongst other significant changes in the everyday lives of Australians, an often fevered debate about the provision, availability and future of public liability insurance. While the events of September 2001 were not the single cause of the apparent crisis in public liability – rather a focus point for trends that had been building for a decade - one of the results of this debate was the enacting of legislation in jurisdictions across the country seeking to amend the way in which public liability was defined and/or regulated in

an attempt to preserve aspects of Australian life that appeared to be threatened by an explosion in premiums and a contraction in providers.

The “patchwork picture” of legislation across the country, to use the words of Mark Doepel in his review of national tort law reform, arose in the wake of the 15 November 2002 meeting of Federal and state governments which saw in-principle agreement on consistent but separate state and Federal legislation rather than one uniform scheme across all jurisdictions. With much of this legislation having been in operation for between one and two years across the country, it is perhaps a useful time to consider how these reforms are –and, indeed, *if* they are – affecting both the availability and cost of insurance in the manner intended by legislatures.

In South Australia, the first wave of relevant legislation was passed in 2002 in the form of the *Recreational Services (Limitation of Liability) Act 2002* and the *Wrongs (Liability and Damages For Personal Injury) Amendment Act 2002*. A subsequent series of reforms came into effect in May 2004 through the *Law Reform (Ipp Recommendations) Bill* which led to the consolidation of previous changes and existing law in the new *Civil Liability Act*. Incorporated into these Acts were mandatory review provisions under which the Economic and Finance Committee was given the responsibility of inquiring into the efficacy of the legislation on the provision and cost of insurance in South Australia.

For the initial wave of legislative changes this period of review and investigation has arrived. According to the provisions in the *Wrongs (Liability and Damages For Personal Injury) Amendment Act*, the Economic and Finance Committee must investigate and report to the Parliament on the effect of the amendments on the availability and cost of public liability insurance as soon as practicable after the completion of 2 years from the Act's commencement. There is an identical time frame for the *Recreational Services (Limitation of Liability) Act*, with the review in that case seeking to investigate and report to the Parliament on the effect of the Act on the availability and cost of insurance for providers of recreational services.

Whilst the two-year period for the *Wrongs (Liability and Damages For Personal Injury) Amendment Act* expired December 2004, the *Recreational Services (Limitation of Liability) Act* will not have actually operated for two years until July 2005. Nevertheless, the Committee resolved to conduct both inquiries simultaneously and commenced in December 2004 with an eye to producing a combined report later this year. As much of the information relating to these Acts will overlap, the later timeline has not prevented inquiries into the industry being initiated and the information gathered used in the analysis of the effects of both Acts.

The South Australian legislation up for review had, as its intention, significant changes to way in which liability was determined and acted on in order to

constrain the perceived decrease in insurance affordability – both for individuals, the community in general and, particularly, recreational organisations.

The *Wrongs (Liability and Damages For Personal Injury) Amendment Act*, in general terms, applied thresholds and caps to personal injury damages claims and attached a general damages points scale that had previously only applied to the compulsory third party insurance scheme. The Act also included limitations on the persons and contexts in which damages for nervous shock may be awarded.

The *Recreational Services (Limitation of Liability) Act* stipulates that providers of recreational services may apply to the Minister to register a code of practice – which they may develop, meeting certain requirements – governing particular and defined recreational services. The Act states that such a code may modify the duty of care owed by the service providers to consumers. One of the major elements of the review will be ascertaining the numbers of codes of practice registered and their impact on the organizations involved.

The second stage of the reforms, which commenced in May 2004 (and which is slated to be reviewed in 2007), implemented several of the Ipp

Recommendations including:

- Defining negligence to include failure to exercise reasonable care or skill, including a breach of a tortious, contractual or statutory duty of care;

- Codifying a threshold for liability in respect of a risk at “not insignificant” rather than “fanciful”;
- The recommendations relating to contributory negligence; and
- Amending the defence of voluntary assumption of risk.

The list goes on, but the effect of the legislation is to complete the overhaul of South Australian tort law to reflect the principles of the November 2002 meeting and, ultimately, facilitate the provision and affordability of insurance.

In the period since reforms of this kind have been implemented across the country the debate over their effectiveness has continued unabated. Indeed, the reason a review process such as that mandated for the Economic and Finance Committee is to contribute to that debate but from the perspective of the legislature that initially enacted the changes. In this way the Committee, and the Parliament, have a chance not only to contribute to the debate but to materially affect the legislation at its core.

As for the debate itself, particularly in the media, to say that skepticism has been one of its principal features would probably be verging on understatement - which, of course, reflects the role of commentators to interrogate laws as they see fit. Commentators such as Alan Jones have been vociferous in their criticism of the tort reform process; his assertion in the journal *Plaintiff* last year that the process, of which he is extremely critical, has been viewed by politicians as an

opportunity to “make heroes of themselves by arguing they are pursuing tort law reform” when, apparently, “if it wasn’t for some bureaucrat writing what they say, I don’t believe that they would be able to utter two credible sentences on the issue” is perhaps typical. Yet even without that kind of invective, the observations of journalists, such as *The Australian’s* Mark Westfield, that the reform process has coincided with unprecedented profits in the insurance sector – and so soon after the same sector claimed to be in crisis as a result of the previous common law regime – and continuing increases in the cost of insurance have been common and will be of particular interest to the Committee in the course of its review.

To this end the Committee is looking forward to the upcoming Ministerial Forum on Insurance Issues on the 25th of this month, which is scheduled to discuss “the impact of tort reform”, as well as the release in May of aggregate reports requested by that Forum, and being administered by APRA, which promise to provide comprehensive comparative information on insurance premiums and costs, broken down by state. In addition the Committee has already begun soliciting information from peak industry and government bodies in the area and, ultimately, will seek submissions from individuals and organizations at the other end of the equation – those paying the premiums.

While in the South Australian context the Committee is aware that, in response to the Government’s legislation, a consortium of major insurers under the label

Community Care Underwriting Agency entered the South Australian market in 2003 to provide public liability insurance to not-for-profit organizations, it remains to be seen what detailed information will show as to the condition and cost of insurance in the state over the past 2 years.

I might also add that in conjunction with this mandated review, the Economic and Finance Committee has sought information on other models of dealing with this issue around the world. One scheme of recent interest has been the New Zealand Accident Compensation Scheme (ACS) which provides accident cover for all New Zealand citizens, residents and temporary visitors and under which people cannot sue for personal injury other than for exemplary damages. The scheme is funded by premiums paid by employers and earners, and by drivers through the fuel pump and license fees. The Committee has only just scratched the surface in its examination of this scheme and it would be interesting to gain the perspective of the New Zealand representatives attending this conference, and something we will endeavour to do.

While the reform of public liability insurance in Australia has been marked by often heated debate over recent years, for its part the South Australian Economic and Finance Committee is looking forward to its review of our state's contribution to these reforms and continuing the debate but also seeking to improve the provision and affordability of insurance and, by extension, the quality and security of the lives of South Australians.

I know this issue is a critical one for all parliaments so I look forward to your comments and invite discussion in the time we have left.

Thank You.

Ms Gay Thompson MP

Presiding Member

Economic and Finance Committee

ACPAC 2005 – 8th Biennial Conference
Day 2 – Session 3

*Keynote Address – Report on the establishment of the
Public Sector Governance and Accountability Research Centre*

Presenter: Professor Kerry Jacobs, Director PSGARC, La Trobe University

8th BIENNIAL CONFERENCE

**AUSTRALASIAN COUNCIL OF PUBLIC ACCOUNTS
COMMITTEES**

**THE PUBLIC SECTOR GOVERNANCE AND
ACCOUNTABILITY RESEARCH CENTRE**

**KEYNOTE ADDRESS
BY
PROFESSOR KERRY JACOBS
La Trobe University**

Tuesday 8th February 2005

2.30 pm

The Public Sector Governance and Accountability Research Centre La Trobe University

Introduction

The Public Sector Governance and Accountability Research Centre at La Trobe University is, in many ways, a child of ACPAC. The initiative for the centre's establishment came from a resolution of the 7th ACPAC conference in Melbourne. It is for that reason that I welcome this opportunity to report to this conference on the progress of the centre.

In recent years it has become a trend for our political leaders to make speeches about "governance" and "accountability". This interest in governance is not restricted to the Australian government as this is now a major theme in the writings and pronouncements of organisations such as the World Bank and UNDP. However, the initiatives which have been established to improve governance generally focus on changes to the bureaucracy or involve strengthening the watchdogs which are outside of the parliamentary system. The danger is that the dignity and integrity of parliament and therefore the core process of democracy is undermined. Little effort has been focused on improving legislative capacity, particularly the functions of the PAC, or like Committees, which to our mind must be central to good governance. The comparison would be a discussion of governance which failed to address the role and significance of the board of directors in a company. Another danger is the focus only on anti-corruption. While stopping corruption is clearly an important objective, it is easy to tar all politicians with the same brush. The consequence is that anti-corruption campaigns generally turn their back on parliamentary systems and propose alternative structures and measures which also undermine parliamentary democracy.

Our vision is that the La Trobe Public Sector Governance and Accountability Research Centre would be a voice for good governance within parliamentary systems and would highlight the importance of strengthening parliamentary democracy. However, this is only possible in partnership with you and by adopting a peer-to-peer model involving both academic and practitioner input.

The La Trobe University Public Sector Governance and Accountability Research Centre is different from other university based research centres for public sector management and governance as it is not just an academic exercise but a synthesis of academic and practical concerns. Its primary focus is the members and staff of Public Accounts Committees rather than Public Sector managers; the parliament rather than the bureaucracy. As such we hope to serve the needs of the Parliamentary members of Public Accounts committees. Therefore your encouragement, support and active participation in our endeavours is very welcome. In turn, we hope to actively support and encourage the work and roles of PAC members and support staff.

Foundation Principles

The 7th ACPAC Conference resolved to investigate the formation of an international body of Public Accounts or like Committees to be known as the International Conference of Public Accounts Committees (ICPAC). The resolution proposed four key roles for ICPAC.

1. The exchange of practice information across the regions;
2. Development of accountability standards and approaches;
3. Development and introduction of Best Practice frameworks;
4. Development of training material for members of Public Accounts or like Committees and staffs.

ACPAC also appointed Peter Loney MP, the then Chair of ACPAC, to examine the feasibility of an ICPAC being held in 2006. Peter was convinced that the key to meeting the goals of ACPAC was to underpin the ICPAC with an independent, academic research base. He approached La Trobe University to seek its support for the establishment of such a research centre in Melbourne. On 7th June 2004 the Council of La Trobe University established the centre within its Faculty of Law and Management. I was appointed as Foundation Director. We have also established an Advisory Committee of those who were directly involved in its foundation, Peter Loney as the chair, Clayton Cosgrove, Mike Moore and Bruce Bennet from New Zealand, and Tony Sheehan from Victoria. We hope that this group will be extended with time.

Within Australia and New Zealand we have a reservoir of expertise in many of the issues of public sector governance and accountability. However, there exists an opportunity to share these insights with others. We hope that the Centre will become a repository of this information and will facilitate the communication, learning and development of standards of best practice for the function of public accounts committees and for issues of public sector governance and accountability generally.

Building on the key roles spelled out by ACPAC, the aims of Centre include:

1. Promoting research, teaching and practice that contributes to accountability, openness and transparency of government in Australia, New Zealand and the Asia-Pacific region.
2. Strengthening public accountability and governance by researching the role and function of Public Accounts and like committees and the activities of independent Auditors-General.
3. Exploring issues of accountability and governance within the public sector generally.
4. Promoting the training of postgraduates in research in the field of public sector accountability and governance.
5. Establishing links with academics, practitioners, politicians and institutions and enhance the networks which seek to promote public sector accountability.
6. Providing research, development and academic support for parliament, parliamentary committees and parliamentary officers in issues of accountability and governance.
7. Providing training for the parliamentary members and staff of Public Accounts and related committees.

Activities to date

Funding

La Trobe University has undertaken to provide the basic academic staff costs of the centre from within its existing budget. In addition, it has provided the funds necessary to create a Research Fellowship within the centre. The costs of any new research or teaching undertaken by the centre must, however, be met from external funding. To this end we have approached a number of outside organisations seeking their support. All those that we have approached have been supportive of our proposals but most of them are still considering them. An exception is KPMG, which has very generously agreed to undertake a major research project for us at their cost, Tatterersall's and Unitec in Auckland who have provided financial support.

Research

Our first task was to establish a data base of current practices and policies of Australian and New Zealand PACs. This data-base is central to support the role of the centre as a repository of knowledge on PACs, to provide the basis for academic research and the basis for training and support to PAC members.

Some valuable information is available from the internet and we have used that as the means of establishing a data library. However the collection of data in that way is always far less rigorous and effective than is the case when it is collected 'face to face'. Accordingly we have commissioned KPMG to undertake a major study into the structure, procedures of PACs in Australia and New Zealand. As I have already indicated, they have agreed to do this at no cost to the centre. The study has a steering committee drawn from both the Research Centre and KPMG which will address the following topics.

- Legislation governing PAC establishment and powers;
- PAC membership, appointment and party representation processes, including practices around the selection and representation of Committee chairs;
- PAC staffing, funding and resources;
- PAC functions and powers;
- Working practices and meetings;
- The nature of each PAC's relationship with Parliament, Auditor-General's, other Committees, the public sector and other bodies;
- Hearing and reporting processes and practices; and
- Significant challenges / changes in recent history.

Many of the delegates here will be invited to participate in this study. It will be led by Tom Moloney. Tom is a Senior Manager in KPMG's Government Advisory Services group and has over 10 years experience in providing accounting and financial management advice and assistance to the public and private sector. He has had significant involvement in the financial management and accrual budgeting reforms implemented within the Australian Government. In particular he has assisted the Department of Finance and Administration in the implementation and ongoing preparation of the accrual budget, monthly and annual consolidated financial statements, encompassing all Australian Government agencies.

We look forward to your co-operation in this study and hope that its Report, which will be released at the proposed inaugural International Conference of Public

Accounts Committees in 2006, will prove to be a useful reference point to all PAC members.

We have a number of PhD students and staff associated with the research centre who are involved in projects directly related to the work of the centre. Firstly, Joanne Lye is currently studying issues relating to performance measurement and organisational learning in the context of the Victorian Water Industry. Sajjad Khan has just started his PhD focused on the operation of the PAC in Bangladesh, Claire Beattie has just begun work on a study of the performance measurement system in the New Zealand tertiary education system, and Prem Yapa, a senior lecturer at La Trobe and a member of the centre is currently conducting a study of the role of the PAC in Sri Lanka.

We have made an offer of appointment to our Research Fellowship and the appointee will commence soon. The appointee has both a strong academic background, with research experience relating to PACs and parliamentary systems and work experience in the parliamentary context. We are sure that the Fellow will contribute significantly to the development of a strong base of research and publication within the centre.

ICPAC

One of the initial motivations for the research centre was the establishment of a 2006 ICPAC conference. The centre is providing support to the Working Party set up by the 7th conference of ACPAC to examine the feasibility establishing an International Conference of Public Accounts Committees and of holding its inaugural conference in 2006. To that end we have been seeking out alternative funding sources for ICPAC. We have also held preliminary talks which we hope will lead to the inaugural conference being held in Singapore. It is intended that that conference will consider and adopt a foundation charter for ICPAC.

Networking

We have held personal meetings with a number of local and international agencies and individuals. The prime objective has been to secure funding and financial support however it is also important to promote the work of the research centre. To date, we have held discussions with:

- AusAID,
- Commonwealth Parliamentary Association,
- Commonwealth Secretariat,
- Department of Foreign Affairs and Trade,
- World Bank,
- Auditor-Generals of Victoria and of New South Wales,
- Chairman of the Commonwealth Joint Committee of Public Accounts and Audit Committee,
- Chair and members of the Singapore PAC.

Seminars & Workshops and Conferences

The centre conducted a seminar at the La Trobe Graduate School of Management for a group of bureaucrats from Qingdao in China.

Members of the centre have presented papers at seminars at La Trobe University and at the National Conference of the Association of Public Accounts Committees in

Nelspruit, South Africa and at Academic conferences relating to public sector management in Singapore and in Oslo Norway.

Future Plans

From the beginning it was clear that it was beyond the ability of one research centre to address the issue of governance and accountability. We hope that over time we can form an international network of academics and others who are able to research in this area and to contribute to the legislative capacity building and development in their regions. In particular we hope what similar groups might develop in Europe, in Africa, in Asia and in the Americas who will share in the development of this work and support the development of a global network.

Workshops and training seminars

The capacity of Public Accounts Committees to be instrumental in achieving high standards of ethical governance through holding governments to account has long been recognised. However the need to equip the committee members to ensure that they can adequately carry out their, increasingly onerous, duties has been overlooked for decades. That need was well recognised by ACPAC's 7th Biennial Conference and it is our hope that PSGARC will be able to fill that gap. Our principal means of doing so will be through our provision of workshops and seminars for PAC members and their staff. These will, of course, draw on the centre's academic research but, just as importantly, they will always incorporate the involvement of PAC members drawn from a number of jurisdictions. Our reason for this is that we are convinced that there is no 'one-size-fits-all' when it comes to PACs. We are also convinced that it is only through peer group discussion that the most effective policies and practices for a specific PAC will be determined.

One further point about workshops. While we believe that the workshops will provide an excellent learning experience for those who attend them we do not believe that they should be used as an externally imposed 'training tool'. Accordingly, while we would value an external agency such as the World Bank, or for that matter AusAID, suggesting that it would be appropriate for the members of a PAC from a particular country to attend a PSGARC workshop, we would only provide such a workshop at the invitation of the country concerned.

Conclusion

This Centre represents the first serious attempt any where in the world to provide academic support to PAC members and we are hopeful that it will gain the support that it needs to be a true, independent resource for members of Public Accounts Committees everywhere. As a starting point I would like to invite all delegates present who are interested in keeping informed on the work of the centre and in participating in our projects to become Associate Members of the research centre.

Public Sector Governance & Accountability Research Centre

8th Biannual Conference
Australasian Council of Public Accounts Committees

Professor Kerry Jacobs
La Trobe University

Governance and Accountability

Public and private sector hot topics
Political interest
– Linked to aid and development
– Can't give money without accountability
Global interest
– World Bank
– UNDP
– Commonwealth Secretariat

Governance Initiatives

Focused on
– Bureaucracy
– Policing & elections
– External to parliament
Ignore
– Parliamentary capacity and democracy
– PAC and other parliamentary committees
Anti-corruption
– Undermine parliamentary democracy?

	Vision
	<p>Voice for good governance within parliamentary systems</p> <p>Strengthen parliamentary democracy</p> <p>Synthesis of practical and academic concerns and skills</p> <p>Serve the needs of parliamentarians and parliamentary staff</p> <p>Need your support and participation</p>

	Foundation Principles
	<p>7th ACPAC Conference in Melbourne.</p> <p>Resolution to form an International Conference of Public Accounts Committees (ICPAC)</p> <p>Key role for ICPAC</p> <ul style="list-style-type: none">- Exchange of information across regions- Development of accountability standards & approaches- Best Practice- Training material for PAC members & staff

	ACPAC Conference
	<p>Appointed Peter Loney</p> <p>Needed academic base</p> <p>Approached La Trobe University</p> <p>Research centre established within the Faculty Law & Management on 7th June 2004</p> <p>Members & associate members</p> <p>Advisory board</p>

ns of the Centre

Research, teaching & practice contributes to accountability, openness and transparency of government

Strengthen public accountability & governance by researching the role and function of PACs (& like) and AGs

Explore accountability & governance generally

Training of postgraduates

Academic support to PACs

Training for PAC members & staff

nding

La Trobe University

- Facilities & salary
- Cash grant
- Research Fellow

Unitec Auckland

KPMG scoping work

Tattersall's

MG project

Current Best Practice – base data

- Practices & policies of NZ & Aus PACs
- Steering committee

Areas & issues

- Legislation
- PAC membership & staff
- Functions, powers and working practices
- Relationships
- Hearings and reporting processes
- Challenges and changes

Research

Joanne Lye
– Performance measurement & organisational learning in Victorian Water Industry

Sajjad Kahn
– Accountability in the Bangladeshi PAC

Claire Beattie
– Performance measurement in the New Zealand higher education system.

Other Research

Prem Yapa
– Study of the PAC in Sri Lanka

Kate Jones (Research Fellow)
– Plan research
– Develop KPMG material
– Australian Parliamentarians & Professionalism
– Reform & role PAC

Networking

2006 ICPAC conference – Singapore
– Funding & resources

Commonwealth Parliamentary Assn
Commonwealth Secretariat
Accounting Profession (CPA & Firms)
AG, PAC members & chairs
DFAT & AusAid
World Bank

Workshops & conferences

Done

- Anti-corruption Chinese Delegation
- Singapore & Oslo Academic (me)
- Nat Assn PACs Nelspruit South Africa (P)

To do

- Workshops for PAC members & staff

Conclusion

First serious attempt in the world to provide academic support to PAC members

- Others will follow our example

Need your support to make this effective

Become an independent resource for PAC members

Invite those interested to become associate members of the centre.
