

11 February 2014

The Director, Justice Policy
Department of Attorney General and Justice
GPO Box 6
SYDNEY NSW 2001

By email: justice_policy@agd.nsw.gov.au

Dear Sir or Madam

Proportionate Liability Model Provisions

This submission is made in response to the consultation on the model provisions developed by the Standing Council on Law and Justice (SCLJ) and the invitation from the Director-General, Mr Cappie-Wood, of 24 January 2014.

Finity Consulting strongly supports adoption of the model provisions and encourages each government to enact them promptly. In regard to two specific issues:

- We strongly support prohibition of contracting out
- Regarding the insurance risks noted on page 20 of the RIS, we are of the view that the risk of an adverse insurance response is extremely low and that consistent legislation in all Australian jurisdictions is likely to be attractive to professional indemnity insurers by reducing uncertainty.

Historical Background and Reasoning

Finity personnel were heavily involved in the program of tort reform during the early part of the last decade, including advising Federal and several State and Territory governments.

The first thrust of the reforms was on personal injury torts, and the second thrust was on economic loss torts (including proportionate liability). Given the extent of the changes and the speed with which they were made it is remarkable how few problems have arisen that have necessitated further legislation.

Proportionate liability always has been, and still is, one of the most complex and difficult areas of civil liability law. It results in over-representation in litigation, complexity in contract negotiations and some continuing uncertainty in the professional indemnity insurance sector. We are not surprised, therefore that the governments and SCLJ find themselves in the current situation and urge them to now adopt model legislation.

Tue 11 February 2014 2:19 PM

Finity Consulting Pty Limited
ABN: 89 111 470 270

www.finity.com.au
www.finityconsulting.co.nz

Sydney
Level 7, 155 George Street
The Rocks NSW 2000
Ph: + 61 2 8252 3300
Fax: + 61 2 8252 3399

Melbourne
Level 3, 30 Collins Street
Melbourne VIC 3000
Ph: + 61 3 8080 0900
Fax: + 61 3 8080 0999

Auckland
Level 27, 188 Quay Street
Auckland 1010
Ph: + 64 9 363 2894
Fax: + 64 9 363 2895



The issue is not one of major significance in the economy, the community or the insurance market place generally although it may be of considerable significance to individuals or businesses in dispute. Nevertheless the benefits of improving this aspect of civil liability are clear and warrant support.

Who is Finity?

Finity Consulting is an actuarial and insurance consulting firm based in Australia and specialising in the general insurance sector. As Trowbridge Deloitte, principals of the firm provided extensive advice to governments and others during the tort reform era.

Since that time we continue to be involved with various aspects of professional indemnity and civil liability issues including many affecting professional services. We have worked for the Professional Standards Councils and also for professional organisation seeking to have schemes approved under the Professional Standards legislation.

If further information is needed, please contact David Minty on 02 8252 3347 or by email at david.minty@finity.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Minty', written in a cursive style.

David Minty

Fellows of the Institute of Actuaries of Australia

A handwritten signature in black ink, appearing to read 'G Atkins', written in a cursive style.

Geoff Atkins

