

AUTOMOBILE ACCIDENT COMPENSATION IN AUSTRALIA

**ANALYSIS OF A THEORY FOR THE DIVERSITY AMONGST THE
STATE SCHEMES**

TIM CHANNON

DOCTOR OF JURIDICAL SCIENCE DISSERTATION

2002

CERTIFICATE OF AUTHORSHIP/ORIGINALITY

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

Signed:

Production Note:

Signature removed prior to publication.

ACKNOWLEDGEMENTS

I would like to acknowledge the following people who have assisted in the preparation of this work: Dr Richard Pincus and Associate Professor Phil Griffith for their early input to the work, Pam Stewart for agreeing to co-supervise, Dr Andrew Fronsco for a number of useful research leads, the staff of many libraries including the NSW Law Reform Commission and Attorney General's libraries and particularly the Transport Accident Commission library in Victoria, the staff of the Victorian Public Records Office and the Victorian Parliamentary Counsel's Office for assisting me to finally come into possession of a copy of the Arnold Report, my daughters Harriet and Adelaide for giving up their father's time, McMahons National Lawyers for time and resources and Professor Sam Blay for getting me back on track and without whose assistance and encouragement this work would never have been completed. Finally, I would like to thank my wife, Dr Tracy Newlands, both for many years of forbearance and for her invaluable editorial input.

TABLE OF CONTENTS

| | Page |
|--|------------|
| ABSTRACT | |
| 1. INTRODUCTION | 1 |
| 2. COMPENSATION AND THE REQUIREMENTS OF JUSTICE | 8 |
| 3. THE BENEFITS AND DRAWBACKS OF THE TORT SYSTEM | 22 |
| 4. BENEFITS AND DRAWBACKS OF NO-FAULT AUTOMOBILE ACCIDENT COMPENSATION SYSTEMS | 54 |
| 5. HYBRID COMPENSATION SYSTEMS | 77 |
| 6. THE DIVERSITY IN AUSTRALIAN AUTOMOBILE ACCIDENT COMPENSATION LEGISLATION | 112 |
| 7. CHAPMAN AND TREBILCOCK'S THEORY FOR THE DIVERSITY OF AUTOMOBILE ACCIDENT COMPENSATION SYSTEMS | 181 |
| 8. A CRITICAL ANALYSIS OF CHAPMAN AND TREBILCOCK'S THEORY FOR THE DIVERSITY OF AUTOMOBILE ACCIDENT COMPENSATION SYSTEMS | 219 |
| 9. TESTING CHAPMAN AND TREBILCOCK'S THEORY | 268 |
| 10. APPLYING THE THEORY TO THE EVIDENCE | 281 |
| 11. CONCLUSION | 357 |

ANNEXURE A

Reports and Debates Considered as Part of This Study.

ANNEXURE B

Chapman B. and Trebilcock M.J., 1992, "Making Hard Social Choices: Lessons From the Auto Accident Compensation Debate" *44 Rutgers Law Review* p797.

SELECTED BIBLIOGRAPHY

ABSTRACT

There are different notions of justice that support different reasons for compensating people injured in automobile accidents. The 'traditional' method of compensating such persons is the tort system, which involves accident victim proving that fault of some other person caused their injury. This system is not a compensation scheme per se, but a means of shifting losses in accordance with community expectations. This system was criticised during the 20th-century for its inequity, expense and delay. Alternative compensation systems developed which supplement or replace tort as a means of access to compensation. These are divided into 'hybrid' systems – add-on, threshold and choice no-fault – and 'pure' no-fault. There are numerous arguments for and against each system and no one scheme has emerged as the system of choice internationally. In Australia, which is a Federation of states and territories, each jurisdiction has a separate scheme. The majority are fault based but with variations in benefit structures. There is also an add-on no-fault system in Tasmania, a threshold no-fault system in Victoria and a pure no-fault scheme covering residents of the Northern Territory. This pattern of diversity could be expected because of reluctance to embrace change when alternatives are not universally viewed as superior. Chapman and Trebilcock argue that the diversity signifies political instability that is not seen in other areas of law such as workplace injuries, products liability and medical malpractice. They hypothesise that because appreciation of facts surrounding automobile accidents and core values within communities across a Federation such as Australia should be similar, the probable reason for diversity is the existence of majority voting cycles and sequence dependent outcomes. A critical analysis of Chapman and Trebilcock's reasoning shows that their basic premise is faulty. An examination of the evidence from the structure of each

Australian scheme, and the scheme reviews and debates on points of change during the period from 1970 to date, demonstrates that in relation to Australian automobile accident compensation schemes, Chapman and Trebilcock's theory is probably wrong, and the diversity is a result of rational democratic political processes.