

(i) We agree with your comments at page 19 that persons wishing to pursue frivolous, vexatious or fraudulent claims are not: "...deferred by the risk of an adverse cost order". But there is no doubt that the existing indemnity cost rules do deter meritorious claims and prejudice the negotiating position of meritorious plaintiffs.

(j) We agree with your comments on page 19 that: "*Changes to the cost rules for civil proceedings should focus on the need to ensure that the rule does not impede access to the court system by people who may suffer substantial hardship if required to pay costs of by people pursuing litigation that is in the public interest.*" Hence our position that the indemnity cost rule must go as it does all of these things already.

(k) We generally endorse the sentiments expressed in your "Draft Recommendations" at pages 21 and 22 to the extent that they seek to alleviate the harshness of the indemnity cost rule as it impacts on the average plaintiff. We dispute the adequacy and the means of your suggested reform. We believe that the approach recommended by the commission is unworkable in that it imposes on a plaintiff the burden of applying for *a priori* certification of "substantial hardship" at the commencement of the action. Defendants will vigorously oppose such applications for certification, a process that will result in a "financial circumstances" hearing and the potential for unnecessary delay and expenditure by all parties. It will give defendants an opportunity to harass already risk-averse plaintiffs in the witness box in the hope of making them even more reluctant to go to trial. A better alternative would be to impose a one-way shift in favour of plaintiffs, subject only to defendants being able to convince the court, at trial, that the plaintiff should pay the successful defendants costs because the plaintiff's claim was either frivolous, vexatious or fraudulent.

APLA's position:

The rule that "costs shall follow the event" should be modified in personal injury, compensation of relatives, public interest and professional negligence actions (by individuals) to provide for a one-way shift in favour of the successful plaintiff. This rule should only be subject to the court's discretion to award costs against a plaintiff in cases of fraudulent, vexatious or frivolous claims.

Development of WA Branch of APLA

Sukhwant Singh, WA

In about January 1992, Sukhwant Singh, of solicitors, Smith Williamson Singh, decided that a specialist association of personal injury lawyers was required to focus on the reform and applicability of law relating to personal injury claims and to promote the interests of injured persons in Western Australia generally. While the Law Society had an effective personal injury committee, that committee had balanced representation from lawyers acting for injured persons and for insurer-defendants. The integrity of the Law Society was such that it was not possible to promote solely the interests of personal injury lawyers and injured persons.

In April 1992, Sukhwant Singh approached several colleagues in the profession to discuss the formation of an association for lawyers interested in personal injury law. An initial meeting was held on 10 June 1992 at Friedman and Lurie's office. Those present were Sukhwant Singh, Leonard Cohen, Neville Friedman, Jeff Lurie, Jim McManus and Stewart Yesner. Plans were put in place for the formation of the association, a general meeting was called for (all interested persons being essentially lawyers predominantly acting for injured persons) and a meeting held on 4 August 1992 when a resolution was passed to form the Association. The name proposed and accepted was the "Association of Lawyers for Injured Persons" was formed. An initial working committee was formed and the work of the infant association began on 11 August 1992.

The present steering committee was formed on 27 November 1992 and consists of Sukhwant Singh (Convenor), Henry Christie (Treasurer), Debbie Andrews, Gulshan Chopra, Leonard Cohen, Matthew Glossop, David Hoffman (Editor, Newsletter), Kathryn Holloway, John Howe, Jeff Lurie, Jeff Potter and Stewart Yesner. This steering committee will dissolve as soon as ALIP is formally set up as a WA branch of APLA, which is expected to occur in the next few months.

Mission Statement

The mission statement of the association approved on 27 November 1992 is as follows:

1. To promote full and prompt compensation for personal injuries.
2. To foster and develop co-operation and exchange of information between lawyers acting for personal injury claimants in Western Australia.
3. To promote and develop expertise in the practice of personal injury claims.
4. To promote law reform for the benefit of personal injury claimants.

Membership

Membership of the association is restricted to legal practitioners and paralegal practitioners who practise predominantly for injured persons, with a right in the Committee to terminate membership if, in the view of the Committee, a member does not for the time being practise in the area of personal injuries predominantly for injured persons.

If you wish to obtain further information about the soon-to-be WA Branch of APLA, please contact Mr Singh, on (09) 325 7755.

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Western Australia: Legislative Update

Sukhwant Singh, WA

1. Motor vehicle claims

1.1 This is a brief summary of the present law enacted by the *Motor Vehicle (Third Party Insurance) Amendment Act 1994*:

- (a) a person injured in a motor vehicle accident continues to have a claim for damages against the driver of another vehicle provided the injury occurred in the course of driving;
- (b) there are now restrictions on damages for non-pecuniary loss as follows:
 - (i) the maximum claim as at 30 June 1994 is \$200,000;
 - (ii) an amount of \$10,000 is deducted from the award for pain and suffering and loss of enjoyment of life, as at 30 June 1994;
 - (iii) there is a reduced deductible for pain and suffering and loss of enjoyment in respect of an award between \$10,000 and \$40,000;
 - (iv) each of the figures above are increased by a percentage calculated under the Act each year, effective 1 July 1994;
- (c) non-pecuniary loss is defined to include pain and suffering, loss of amenities of life, loss of enjoyment of life, curtailment of expectation of life and bodily or mental harm and the amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded;
- (d) there are now restrictions on damages for provision of home care services;
- (e) the Act does not apply to causes of action arising before 1 July 1993;
- (f) there are restrictions on solicitors' costs and, in most cases and in effect, only an appropriate court schedule applies or a determination in force under the *Legal Practitioners Act 1893*. Costs agreements charging hourly rates no longer apply.

2. Industrial accidents

2.1 The present law came into force in respect of workers' claims against employers by the *Workers' Compensation And Rehabilitation Amendment Act 1993*.