

An English Viewpoint

**Alison Brooks and Christine Marsh,
Kingsley Napley Solicitors, London**

As the only English lawyers attending APLA's inaugural National Conference in Noosa last October, we felt in somewhat of a minority! Fortunately, we did not have to suffer too many Pommie jokes and the warmth of the Australian hospitality and Queensland sunshine more than met our expectations.

We departed Australia with the feeling that in so many respects our legal systems were similar but were also struck by some quite significant differences. Australia clearly has some problems akin to the United States in geographical terms. The logistical efforts required to organise special interest groups within Australia is something we would not envy – English lawyers find it difficult enough travelling to London for such meetings!

We were extremely impressed by the enthusiasm shown by many lawyers and can already see events in Australia being mirrored in England with our own battle against cuts in the Legal Aid system. This has been balanced somewhat by the introduction of conditional fee agreements. English lawyers are fortunate when entering into a conditional fee agreement to have the availability of insurance backing to meet the Defendant's costs and the Plaintiff's disbursements if the case is unsuccessful at the end of the day. We are also allowed to charge up to 100% uplift on our usual costs, although capped at 25% of the total damages recovered. Therefore the financial risks taken by Australian lawyers without these "comforts" would certainly concern many of their English counterparts.

As medical negligence specialists we were extremely surprised by the recent decision of the High Court of Australia which has continued to limit access to patients' medical records particularly in light of forward-thinking Australian decisions which have significantly attacked the Bolam test applied by the English Courts. The impression we gained was that Australian Plaintiffs faced greater hurdles at the beginning in terms of access to records and medical experts but could expect to receive a more favourable response once they got through the door of the Court.

The diversity of compensation awards between different States was clearly of concern to many members. Plaintiffs in the UK are perhaps more fortunate in knowing that at least their compensation will not depend on whether they are injured in London or Liverpool. Interestingly, although general

damages are capped, the maximum awards for injuries of the utmost severity in the UK, although we were warned not to have an accident in South Australia!

We noted there was concern to preserve Plaintiffs' awards during their lifetime which has been partially answered in the UK by the introduction of structured settlements. Members may be aware that this provides a tax free annuity guaranteed during the Plaintiff's lifetime. Although once purchased it removes flexibility for investment of those damages used to purchase the annuity, many Plaintiffs have welcomed this option because of the security it provides as well as the tax free benefit.

Finally, as members of APIL (Association of Personal Injury Lawyers in the UK) we would like to commend the benefits of such an organisation which provides a strong and united voice for Plaintiff lawyers to meet effectively the continuing challenges in the field of personal injury law. We hope to return to APLA's National Conference in 1997 although suspect that following our glowing reports of the last conference, there will be strong competition amongst our Partners.

Medical Resources on the Internet

Bill Madden, Blessington Judd, Sydney

Those of you practising in the medical negligence area with access to the internet may be interested in the following web sites.

The first site¹ is maintained by the **American Medical Association**.

The publications home page includes an enormous volume of material including internal medicine, dermatology, hypthalmology, neurology, head and neck surgery. The web site has both abstracts and full text material. A tailored search engine is available.

Another excellent site is that maintained by Avicenna² which provides access to the Medline Database.

Both web sites require registration however no fees are payable for registration nor searching of the database.

1 www.ama-assn.org

2 www.avicenna.com