

Accident Compensation Committee

1. At the time of going to press consideration is being given to the two green papers issued late in September by the New South Wales government, one on options for reform of the Transport Accident Compensation Scheme, the other options for reform of the New South Wales Workers Compensation Scheme. The government has announced its intention of putting into operation amendments to both schemes by the 1st January. Why this rush? No explanation has been given. Why both matters are being considered together is not presently clear. The two schemes of compensation relate to different areas of injury and are quite different in purpose and concept. The production by the government of the two papers has been accompanied by, in association with other significant issues, an attack upon the integrity of the Bar with allegations of self interest and vested interests being commonly made. These attacks no doubt are being made in an attempt to neutralise any opposition that the Bar may show to any scheme the government proposes no matter how wide ranging the changes may be. The Bar Council has accepted that such challenges might be made as part of the normal political ploys in circumstances where opposition to government proposals might be anticipated.
2. Compensation for motor accidents and compensation for workers injuries, other than the common law right of a worker to sue at common law for negligence when injured, raise different problems, particularly in the present context. Such defects as are seen in the motor accident compensation system appear to be purely financial being the result of the government's failure over a number of years to fix an appropriate premium to fund the motor traffic accident scheme on a fully funded basis. Until about 1982 the motor traffic compensation scheme was financed on a fully funded basis. In 1982 the government changed to a pay-as-you-go funded basis together with some other minor alterations to the scheme. This change and the failure of the government to fix an adequate premium to fund the scheme whether on a fully funded or pay-as-you-go basis has resulted in the motor traffic accident fund producing in 1985 a deficit in excess of one billion dollars.
3. The workers compensation scheme has in recent years, it is said, become excessively expensive. It would appear, however, subject to actuarial investigation presently under way, that changes recently made to the method of fixing the premium for a workers compensation insurance policy have been defective and have produced some considerable inappropriate inflation of the premium rates. However the Association takes the view that a number of amendments to the workers compensation scheme may well be appropriate at this stage. Every social security scheme of which the workers compensation scheme is one, needs review from time to time to ensure that the benefits payable under that scheme are reasonable in accord with the circumstances existing from time to time.
4. On motor traffic accident questions the Bar Council earlier this year adopted a basic policy which was then passed on to the government of the day. That policy is:
 - (a) The fundamental common law right of a citizen who is injured by default of another to be properly compensated for what has been suffered and lost as a result of the injury should be retained.
 - (b) The right of a citizen to have this compensation assessed by the ordinary Courts of the land should be retained.
 - (c) No alterations to the law applicable to compensation for injuries should have any retrospective operation or effect.Those principles are not incompatible with a concurrent no-fault scheme of compensation for motor vehicle accident and permit flexibility in relation to the proper reform of the techniques of assessment and awarding of damages.
5. It is not possible in detail to set out all the activity in which your Council has been engaged in relation to consideration of the proposed government changes. However the following is a brief resume of the major activities which to date have been directed primarily towards the motor vehicle accident scheme since until the issue of the green paper, little or nothing was known of what the government proposed to do about workers compensation despite expressions of disquiet throughout the year in the commercial community at the level of workers compensation premiums:
 - (i) Two major submissions including actuarial figures have been made to the State government. One was presented personally to the then Premier Mr. Wran, Q.C., the other delivered more recently to all members of the government with copies for information for the senior members of the Parliamentary Opposition. Copies of these are available to members.
 - (ii) A great deal of research has been done including the briefing and obtaining of reports from actuaries on various aspects of the financial side of the scheme.
 - (iii) A very well attended seminar was held at the Women's College at the University of Sydney with papers delivered by representatives of the insurance industry and the trade union movement, the medical profession, by members of the Bar and Law Society and a Supreme Court Judge. All speakers expressed strong opposition to the abolition of the "lump sum" method of assessing damage. Members of the New Zealand trade union movement were particularly critical of the New Zealand compensation scheme saying explicitly that it was a scheme not to be followed under any circumstances in Australia.
 - (iv) There has been continual co-operation and discussion with the Law Society on the issues involved.
 - (v) There has been constant talk and discussion with members of trade unions and the insurance industry on the issues involved.
 - (vi) The advice of public relations consultants has

been sought to ascertain the best and most effective method of developing and explaining to the public the opposition to the abolition of the common law right for damages.

- (vii) There has been constant contact with various members of the press and the media in an attempt to inform them of the true position and grounds of opposition to certain changes on the part of the Bar Association.
 - (viii) A submission to the government on the issue of workers compensation changes is presently under way. A copy of it will be available to members in due course.
 - (ix) The difficulty of having the issues presented by the media compelled the Council reluctantly to take paid advertisements on radio and in the press.
6. Anticipating earlier in the year that funds might be necessary to allow the Bar to put its case to the public a call was made for voluntary donations to a "fighting fund," and subsequently a levy for this purpose was imposed by the Bar Council. The proceeds of that levy are administered separately to the Association's funds. A statement of the position of that fund to date appears in the annual accounts. Payments from the fund in excess of \$1,000 are made only upon resolution of the Council. It is proposed to distribute any remainder of the fund pro rata to contributors. This levy and the use to which it has been put, did not meet with universal approval of members. This is inevitable given a topic with social and political implications. Nonetheless an association with over a thousand members cannot act only where opinion is unanimous.

Legal Aid

The activities of the Legal Aid Committee during the past year have, primarily, been aimed at intercession on behalf of individual barristers, where, for one reason or another (and the reasons have been most diverse) the relevant legal aid authority has failed to meet the barrister's full claim of fees, together with liaison with, and lobbying of the legal aid bodies.

The confusion arising from the different requirements of the A.L.A.O. and the Legal Aid Commission, and their differing scales and method of payment, has been increased by speculation surrounding the long delayed merger of the two bodies. The Federal Government's publication of the Legal Aid Task Force Report and the lack of precise indication by the Government of its intentions has caused great apprehension.

This has led to a most difficult year. Nonetheless, it has been possible during the year to negotiate with the Legal Aid Commission an increase in the existing scale and a recognition of the need for greater flexibility in the implementation of that scale in criminal matters. Direct liaison between the Committee and the Senior Officers of both the A.L.A.O. and the Legal Aid Commission has been set up to facilitate intercession by the Bar Council in individual cases.

Much remains to be done in terms of a readjustment of the Legal Aid Criminal Law scales and submissions seeking a rate of Legal Aid fees more in accord with the necessities for those briefed in Legal Aid matters are presently being prepared.

Library

The Library Committee has continued its policy of upgrading and extending services/materials available to members within the budgetary constraints necessarily imposed upon it by the Council.

From October this year the self arrangement of the textbook collection will be altered. Previously, textbooks were arranged in one sequence; alphabetically under the name of the original author. To assist members who like to browse the collection, books will now be shelved by reference to subject, though within each subject heading the books will be arranged alphabetically as before.

Due to the heavy demand for photocopying facilities a new Rank Xerox 1040 photocopier has been installed. The new copier complements the present machine which is still the best photocopier available for copying from large bound volumes.

An agreement was reached at the beginning of the year between the Law Courts Library and the Bar Association to allow barristers' staff to once again use the Law Courts Library. Members are reminded that this facility only enables staff to photocopy materials. Books can only be removed from the library to courts by either the barrister or his/her instructing solicitor.

It was agreed that a course in instruction in the materials and systems of the Law Courts Library would be conducted by the Bar Association's Librarian. To date 80 clerks, secretaries and receptionists have attended the course.

The Committee is pleased to note that the Library is receiving extensive use especially from those members whose chambers are outside Wentworth and Selborne, as well as country and interstate members.

The Library collection now contains extensive source materials covering all fields of law relevant to the practice of members of the Association. Materials that are not available in the Library's collection can be obtained on inter-library loan.

An extensive submission has been lodged with the Law Foundation for funds to purchase sets of The Building Law Reports; Canadian Criminal Cases; Butterworths Company Law Cases (UK) and Queensland Reprinted Statute service.

Investigations are under way with a view to assessing the possibility of providing terminals in the library to enable members to access CLIRS and/or LEXIS. The Committee is hopeful that this will be achieved in a manner which will enable the library staff to provide a service in this regard at reasonable cost to members seeking to utilise it.

Members are again reminded in the strongest terms that marking of materials borrowed from the library, even if only in pencil, is totally unacceptable. Unfortunately, it is a practice that is still occurring.

Further, members are advised that they must return borrowed materials within the time limits set by the Librarian. Failure to do so only causes extra work for the staff and frustration to other members seeking access to such materials. Accordingly, members must, if only in deference and fairness to fellow members, return borrowed materials within the limits referred to. This is a matter of basic courtesy and consideration to others.

It is appropriate for the Committee to publicly recognise the unstinting efforts of the library staff, Mrs. Farmer, Miss Willard and Miss Ackland, during the past year. Without their unfailing courtesy and assistance the library could not possibly have provided the high standard of service to members which has been achieved. The gratitude of all concerned is accordingly acknowledged.

Reports from Bar Council Committees

New Barristers

The expanded committee met regularly throughout 1986 under the continued chairmanship of O'Keefe, Q.C. The committee conducted a successful malt whisky tasting in the Common Room in May; the function was well attended by a large number of members including Judges and popular demand seems to indicate that a similar function could be conducted each year. Additionally, the committee conducted a short informal gathering of readers and other members following the readers' practice management workshop on 14 August 1986. O'Keefe, Q.C. and other members of the committee participated in the workshop which was the first of its kind to be conducted within the Reading Programme. Readers who attended considered the workshop to be of benefit as well as the informal party which provided them with an early opportunity to meet other readers and more senior members of the Bar.

As in previous years the committee held another open forum seminar for new barristers in the Common Room. A number of matters of interest were raised for discussion and were referred by the committee to the Rules Committee; those items, together with other recommendations for change made by the committee resulted in various amendments to the Association's rules.

More recently, the Council has adopted a recommendation by the Committee that a "Meet the New Silk" function be held shortly after the announcement of new silk in 1986. The function will be in the format of a 'fifteen bobber' and will be conducted for the purpose of congratulating the successful applicants for silk and to introduce them to the Bar in a semi-formal manner. It is also hoped that the function would have the further effect of promoting the corporate identity of the Bar as a whole.

Whilst the attendance of new barristers at the functions conducted in 1986 was highly encouraging and productive, it appears that only a modest proportion of members of less than five years seniority took advantage of these occasions. The committee envisages a similar programme of meetings and functions for 1987 and it is hoped that more new barristers will involve themselves.

In addition to their participation at meetings and functions, members are also strongly encouraged to bring matters of interest to the committee's attention.

Listing

- The perennial problem of delays in the Supreme Court common law list has been the subject of continuous discussion between Slattery CJ at CL and Court officers and the Association's listing sub-committee consisting of Gormly QC, Cummins Qc, Carr and Biscoe. There are regular meetings between the two groups.
- The problems arise from:
 - The number of cases;
 - The fact that the common law list has to supply judges for common law, the Court of criminal appeal, the administrative division, the commercial causes jurisdiction, country circuits and any stray enquiry. The judges' workload is therefore extremely heavy and stretched to the limit, particularly when it is considered that at any one time there may be judges sick or on leave.

- Below is a table of the listing statistics for 1985 and to September 1986. It will be seen that in 1986 the number of not reached matters increased considerably. This appears to have been the result of an experimental policy of listing more cases for hearing in the hope that by listing cases there would be a greater settlement rate. The Bar Council supported this experiment which has turned out to be not very successful and the number of cases being listed is now fewer, in an attempt to reduce wastage of time and costs in having many not reached cases.
- The list for long cases (cases lasting more than five days) is already booked up into June 1987. As a result of a request from the Bar that list has been retained despite some misgivings by Slattery CJ at CL. It seemed to the Bar that this was the only way long cases could be assured of a hearing. Slattery CJ at CL and his officers are inclined to the view that the existence of the long list upsets the balance of the list and would prefer to see it go but are prepared to leave it in position for the time being.
- Consideration is to be given to changes to the callover procedure with the introduction of compulsory conferences before a judge for the purpose of settlement negotiations.
- Generally lists in other jurisdictions seem to be working reasonably smoothly, though some complaints have been received particularly about the operation of the District Court Commercial list on which there have been discussions with the Chief Judge who at this stage wants the system to remain in place for further experience.

1985

MONTH	TOTAL MATTERS LISTED	NOT REACHED JURY	NOT REACHED NON JURY	NOT REACHED MOTOR VEHICLE ASSESSMENT	TOTAL % NOT REACHED ALL MATTERS
JANUARY AND FEBRUARY	JURY NON-JURY M/V ASS TOTAL	105 75 86 266	29	8	— 37 = 14%
MARCH	JURY NON-JURY M/V ASS TOTAL	102 58 49 209	20	4	8 32 = 15.3%
APRIL	JURY NON-JURY M/V ASS TOTAL	81 50 48 179	6	1	2 9 = 5%
MAY	JURY NON-JURY M/V ASS TOTAL	68 60 67 195	7	6	3 16 = 8.2%
JUNE	JURY NON-JURY M/V ASS TOTAL	96 54 59 209	14	6	3 23 = 11%
JULY	JURY NON-JURY M/V ASS TOTAL	68 59 52 179	13	Nil	Nil 13 = 7.5%
AUGUST	JURY NON-JURY M/V ASS TOTAL	71 44 53 168	3	4	Nil 7 = 4.1%
SEPTEMBER	JURY NON-JURY M/V ASS TOTAL	63 54 55 172	5	2	Nil 7 = 4.7%
OCTOBER	JURY NON-JURY M/V ASS TOTAL	65 53 57 175	12	5	Nil 17 = 9.71%
NOVEMBER	JURY NON-JURY M/V ASS TOTAL	62 63 53 178	5	Nil	2 7 = 4%
DECEMBER	JURY NON-JURY M/V ASS TOTAL	65 56 50 171	18	6	4 28 = 16.37%

MONTH	TOTAL MATTERS LISTED	NOT REACHED JURY	NOT REACHED NON JURY	NOT REACHED MOTOR VEHICLE ASSESSMENT	NOT REACHED ALL MATTERS
FEBRUARY	JURY 93 NON JURY 109 M/V ASS 77 TOTAL 279	20	7	9	36 = 12.90%
MARCH	JURY 102 NON JURY 92 M/V ASS 89 TOTAL 283	41	18	11	70 = 24%
APRIL	JURY 96 NON JURY 76 M/V ASS 97 TOTAL 269	31	15	8	54 = 20%
MAY	JURY 106 NON JURY 71 M/V ASS 85 TOTAL 262	26	9	11	46 = 17%
JUNE	JURY 65 NON JURY 72 M/V ASS 81 TOTAL 218	28	23	11	62 = 28%
JULY	JURY 90 NON JURY 78 M/V ASS 83 TOTAL 251	32	10	4	46 = 18.32%
AUGUST	TOTAL 191	20	14	7	41 = 21%
SEPTEMBER	JURY 69 NON JURY 70 M/V ASS 74 TOTAL 213	13	10	3	26 = 12%

Prospects and Problems of Reading and Continuing Legal Education

The most important development in reading in 1986 has been the expansion of the Reading programme to include on-the-feet training for new barristers.

Readers are now required to prepare exercises which are heard in a simulated Court constituted by Judges or counsel. Most involve the drafting of originating process as well as preparation for Court.

Earlier this year, the Chairman and a number of members of the Reading Committee attended a full day of such exercises. The Committee has perceived a need to incorporate more of this type of training in its programme with emphasis on the correct form of affidavit evidence, adducing evidence-in-chief, cross-examination, and the presentation of cases in court rather than technical legal arguments alone.

Earlier this year the Bar Association was financially assisted by the Law Foundation of New South Wales in purchasing video equipment, for which help we are most grateful. The video equipment enables the Readers to review their taped performance with other Counsel. It is a most valuable teaching aid.

While the programme has expanded the number of readers enrolled therein has decreased. In 1985 105 Readers were enrolled in the two programmes. In 1986 only 70 have enrolled.

The downturn in the numbers admitted as practising Barristers is believed to be influenced by the lack of initial Reading accommodation and the lack of affordable accommodation after the reading year has concluded.

This problem, perhaps the greatest facing readers, is also causing concern to the Reading and Accommodation Committees. The Accommodation Committee has canvassed the views of Readers about the problem and is attempting to devise a workable solution.

Multiple admission dates also continue to cause problems, particularly in the administration of the programmes.

Non-attendance by Readers at lectures is also a problem. Many Readers are away on circuit for weeks at a time, and others schedule conferences for lecture times. This problem adds strength to the suggestion that there be some

certification at the completion of the period of Reading or at least a more stringent application of Rule 98 (b) of the Bar Rules (A reader shall not, during a period of three months commencing on the date of his enrolment in the Reading Programme, appear in any Court or Tribunal other than with, or with the approval of, or on behalf of, his Master).

On the whole, however, the prospects for the programme look good. The willingness of Judges, Counsel and Court Officers to participate in the programme is a credit to the New South Wales Bar and Judiciary. Comments by Readers about the programme are overwhelmingly favourable, and every attempt is made to accommodate suggested changes which benefit Readers.

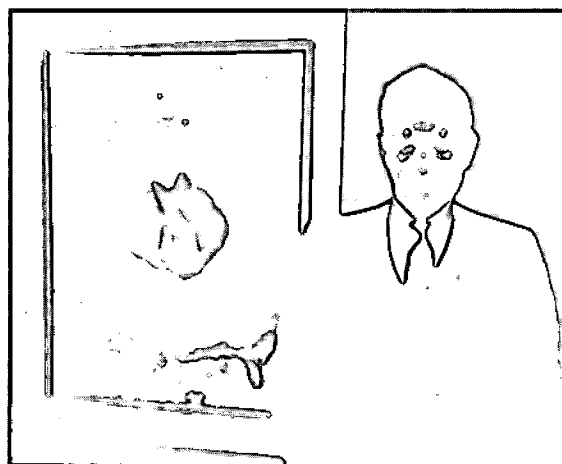
1986 has perhaps seen more CLE seminars than ever before. First, there was the series of seminars on Evidence Law Reform, organized in conjunction with the Australian and New South Wales Law Reform Commissions.

These were followed by Professor Irving Younger's visit in June, and more recently of course Linton Morris QC's popular lecture on Jury Trials.

Much of the material published in the Australian Bar Review to date has been drawn from the Bar's CLE programmes.

In addition, the reading notes have been advertised for sale to all members and selective reading papers have been more particularly advertised.

It is the aim of the Legal Education Committee to increase the availability of CLE seminars, and it is to be hoped that the demand for them will also increase. Any suggestions members may have for CLE topics and speakers will be welcomed by the Reading Committee.



Professor Irving Younger before his lecture at the Bar Association on 10 June 1986.

Obituaries

With deep regret the Association records the names of those members and ex-members who have died since the last report.

L.F. Osborne
R.L. Migodzinski
The Honourable H.L. Cantor Q.C.
G.T.A. Sullivan Q.C.
M-L Hervic
L.G. Tanner Q.C.
The Honourable Mr. Justice Murphy