

# APLA WA report

Sukhwant Singh, Friedman Lurie Singh, Perth

APLA (WA) is running a campaign focussing on the following issues:

1. opposing further changes to the Workers' Compensation and Rehabilitation Act 1981 as amended by the 1997 legislation;
2. persuading the relevant Minister, Mr Graham Kierath, to improve various aspects of the current workers' compensation legislation for the benefit of workers;

## Further changes to workers' compensation law

The Workers' Compensation and Rehabilitation Amendment Bill 1995 was drafted and introduced at its first reading in Parliament sometime prior to November 1996 proposing various changes to the current workers' compensation law. A brief summary of those proposed changes appear in a previous APLA (WA) Report.

One significant proposed change was the redefinition of "future pecuniary loss" to "future loss of earnings" thereby increasing the difficulty that an injured person would have in meeting the threshold currently of \$103,717 when applying for permission to commence an action for damages against an employer.

The announcement in November 1996 of State elections in WA in December 1996, resulted in the legislation being kept on hold and to date the legislation has not been progressed in Parliament. Rumours are abound in the legal industry that further significant changes will be made to the 1995 Bill but other than the Minister's office indicating that the bill is "under review", no details to date have been forthcoming.

Rumours currently circulating suggest that the Minister is considering increasing the current threshold of \$103,717 to about \$200,000 and additionally to re-define "future pecuniary loss" to the more restrictive "future loss of earnings".

Nothing is certain at this stage and I would recommend to members in WA that applications to court under section 93D(4) of the Workers' Compensation and Rehabilitation Act 1981 should be made as soon as possible before the law changes because there remains a good possibility that any proposed changes of law will not be backdated and will not apply to pending proceedings and application in court. Of course, nothing can be definite until an Act is passed!

## Increased Awareness

APLA (WA) considers that there should be public awareness of the compensation rights of Ministers and Members of Parliament and those of ordinary injured workers. Clearly the government is gearing itself for a further attack on the compensation rights of workers and we wonder why a worker should continue to bear the brunt of an inefficient system implemented by the Government.

In a newspaper article that appeared in the West Australian on Wednesday 5 March 1997, Mr Kierath was reported as denying workers' compensation costs were blowing out because of problems with his law and questioned the performance of insurance firms. SGIO Insurance, which reportedly has 25% of the WA workers' compensation market, was quoted as saying that premiums for business would rise an average 10% and up to 30% in some cases because of a blowout in common law claims. SGIO called on Mr Kierath to restrict access to the courts by doubling or removing the threshold of \$103,717 of future income loss that workers have to prove in order to sue their employers over accidents. Mr Kierath was reported as denying that common law claims were greater than expected and said that

no "big changes" were needed to his 1993 law.

It is interesting to note that the Government has remained completely silent throughout the debate on workers rights on what rights Ministers and Members of Parliament have to compensation in the event they are injured. Such rights are provided by the Joint House Insurance Commission and a summary of the provisions of the cover is as follows:

- full medical cover (workers only get up to \$31,150);
- capital sum to \$290,000 in the event of death or injury by accident adjusted annually with movement in the CPI (workers cannot have an unrestricted similar right and must prove either a 30% disability or \$103,717 loss before they can make a claim);
- disability or maims benefit based on a percentage of the capital sum (workers' also get a lump sum schedule 2 benefit but this is severely restricted);
- the insurance premiums are paid by the WA tax payer and in 1993 exceeded \$13,000 per Minister (worker is not entitled to funding for private insurance);
- Ministers can "double dip" i.e. they can claim insurance payments and in addition claim damages for injuries suffered against a negligent person (workers cannot double dip between the workers, compensation system and a damages claim);

There is clearly one law for Ministers and Members of Parliament and one law for the ordinary workers.

## Refinements to the Law

APLA (WA) has been raising matters with Mr Harry Neesham, executive director of Work Cover and Mr Graham Kierath on improvements to the Workers' Compensation Legis-

lation including the following: enhanced rehabilitation services for injured workers; vocational services for injured workers unable to return to employment for the purposes of actually seeking alternative employment (we have suggested that Mr Kierath set up a separate department within his Ministry to deal with this); high medical fees and charges charged by medical service providers under the workers' compensation system (with the result that the current statutory limit of \$31,150 for medical benefits is easily exhausted).

I call on all APLA members particularly those in WA to contact me with suggestions for further refinements and improvements in the system such that we can improve the lot of the injured worker.

Please write to me at Friedman Lurie Singh, GPO BOX K862 Perth WA 6842 or by facsimile (09) 421 1953.

*Sukhwant Singh is President of the WA branch of APLA.*

## Lack of legal aid

*Continued from page 1*

of compensation for any damages, costs or expenses paid or payable to the Plaintiff or her family pursuant to the Human Pituitary Hormones Trust Account Trust Fund. This Fund was announced by the former Minister for Health in 1994 to provide for medical costs, support and counselling in the instance that a recipient contracted CJD.

4. The Defendants agree to pay APQ's legal costs. The settlement result was not the objective of the litigation.

The litigation produced a result which provides some satisfaction in that our clients will not be required to establish liability if they contract CJD and such claims will proceed as an assessment of damages. The settlement proposal allows clients to avoid the consequences of the proceedings in the UK last year where the High Court held that if a hormone recipient contracted CJD, having been treated

either prior to or both before and after 1st July 1977, then common law damages were denied. However, if treated after 1st July 1977, then the UK Defendants had been negligent and damages were recoverable. We understand that both parties in that UK litigation have lodged appeals against various aspects of the judgment.

It was clear that the Commonwealth feared that a decision in favour of APQ would establish a precedent with consequences broader than just for CJD litigants.

Our clients who elect not to accept the settlement proposal are free to proceed with their litigation.

APLA's public support of our criticism of the inequitable position APQ was placed in without legal aid, assisted in flushing out the settlement proposal. When no legal aid is available and contentious issues such as liability for psychiatric injury are in question, advances by the law to accommodate modern problems will only continue to occur slowly and not without risk and cost to plaintiff lawyers.

## APLA Exchange – can you help?

We act for a plaintiff who has a claim against a medical practitioner. The **Medical Defence Union** has indicated that they would be indemnifying the Doctor until recently when they advised that because the Doctor has died they will only indemnify to the value of the estate which they tell us is significant.

Any practitioners who have had a similar experience please contact Chris Wright at Murray Lyons & Co, on (070) 51 4477.

We represent a client who suffered severe burns when undiluted Dettol was applied to her skin. We have had the Dettol analysed, and the analysis is normal.

We would appreciate an exchange of information with anyone who has conducted a similar claim as we believe that the **Dettol** must have reacted with some other substance which was present, as it had

been used undiluted on our client before without adverse effects.

If any member can help would you please contact Jennifer Eastick or Ric Alexander, Cahills, DX 55014, Bendigo, Ph: (03) 5443 9344.

We request information on exposure of foetus to **Debendox**, a morning sickness pill prescribed to mothers during pregnancy in the early 1980's resulting in birth of children with defects such as blindness or deafness.

Contact Tiffany Laslett at Friedman Lurie Singh, GPO Box K862 Perth WA 6001.

Ph: (09) 325 6133, fax: (09) 421 1953

We would be interested in receiving any in-

formation in relation to the trial of **Betamethasone** and **TRH (ACTOBAT)**, which I understand took place in Australia between 1990 and 1993. I am particularly interested in whether there have been any published results.

Please contact Thomas Sherley at Hansons Solicitors, PO Box 356 Wollongong East, NSW 2520, DX 5152 Wollongong. Ph: (042) 264 266, fax: (042) 280 091



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