

Proposed transfer of personal injury matters to the District Court

APLA NSW branch composed the following submission to Mr Laurie Glanfield, Director-General, NSW Attorney-General's Department in May 1997 in response to the proposal to move personal injury cases from the Supreme to the District Court.

APLA is strongly opposed to the transfer of personal injury cases from the Supreme to the District Court. Any such transfer would indicate that the Government considers that personal injury actions are less important than disputes between corporations or litigation concerning the damage to the reputation of wealthy public figures or the trials of those charged with serious criminal offences.

Apart from reasons of social equity it is APLA's view that the District Court lacks the resources necessary to deal with an avalanche of large and complex matters, (e.g. there is no provision for transcripts, no proper facilities for juries, grossly inadequate space for exhibits, grossly inadequate lifts), not to mention the relative inexperience of the District Court Judges and Acting Judges in dealing with lengthy and complex matters.

The transfer would also, in our view, greatly prejudice the gains made in the District Court in providing speedy trials for cases suited to that jurisdiction. The inevitable delays would cause particular prejudice to plaintiffs who have been injured in motor vehicle cases. section 79(1) of the Motor Accidents Act in effect precludes damages for non-economic loss unless the plaintiff's ability to lead a

normal life is still significantly impaired as at the date of trial.

Proposals

APLA's proposals are:

- 1) That the efficiency of the Supreme Court be improved in line with the practices successfully adopted in the District Court.
- 2) That additional Justices be appointed to hear Common Law actions.

If the transfer of cases from the Supreme Court to the District Court is to proceed then APLA's submissions are similar to those made on behalf of the Law Society and the Bar Association.

Specifically APLA's submissions would be:

- 1) The jurisdiction of the District Court be increased to \$500,000 to apply retrospectively.
- 2) The new jurisdictional limit to apply to personal injury cases only.
- 3) "Personal injury" not to include medical negligence matters.
- 4) Certain other matters to be exempted from the transfer, namely:
 - a) Matters already in the Long Matters List. (Those currently in the List or prospective matters).
 - b) Matters considered to be complex.
 - c) Country matters already listed.
 - d) Interstate matters.
- 5) Any transfer to be staggered with the oldest matters to be transferred first i.e. the pre-DCM matters.
- 6) The threshold for the imposition of a costs penalty to remain at \$150,000.

- 7) That solicitors on the record in the matters to be affected by the retrospective transfer to be given 28 days notice so they have the opportunity to make an application to have matters retained in the Supreme Court on proof of sufficient cause e.g. complexity, imminence of hearing date etc. Such applications to be listed in a special motions list.
- 8) The District Court to provide adequate facilities including:
 - a) The transfer of administration to the Ground Floor to ease pressure on the lifts.
 - b) Increase the number of working lifts.
 - c) The provision of adequate storage and procedures for the safe keeping of exhibits.
 - d) Appointment of additional Judges.
 - e) The provision of adequate transcript facilities.
 - f) The provision of facilities to accommodate Juries.
- 9) All pre-DCM matters in the Supreme Court to be listed for call-over with a view to having such matters referred to Supreme Court Arbitrators for determination.

If you would like further information, please contact NSW President Catherine Henry at Craddock Murray & Neumann, or phone (02) 9283 4755, fax (02) 9283 4180, cmn@hutch.com.au, or contact APLA's Policy Officer, Simon McGregor on phone (03) 9629 9778.

Medical negligence special interest group

The NSW group met on 19 June 1997 and was addressed by Dr Richard Bryant on the issue of Post Traumatic Stress Disorder ("PTSD").

Dr Bryant raised many issues about detection of PTSD and its various manifestations. In particular, he discussed how PTSD is by definition linked to a particular event. In this way it can be distinguished from other types of psy-

chological disorders where causation is less clear.

A report of the meeting will be sent to members of the group and the next meeting will be held on 15 July 1997 at Blessington Judd, Level 9, 45 Clarence Street, Sydney.

If any APLA members wish to attend the meeting or join the Medical Negligence Special Interest Group, please telephone Rebecca O'Connell on (02) 9238 6000.