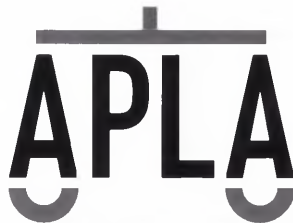


1998



ACT

Richard Faulks,
Canberra

NSW

The past twelve months has seen the continuation of full access to common law entitlements for injured plaintiffs in the ACT, where injuries have arisen out of any accident including those caused by motor vehicles or in the course of employment. Although the current ACT minority Liberal Government declared prior to election that they supported the retention of full common law rights, there is concern being expressed about some early murmurings for changes, particularly to the Workers Compensation scheme which no doubt will involve the fettering or abolition of common law rights. As a member of the Civil Litigation Committee of the Law Society of the ACT, I am endeavouring to obtain any early information concerning any Government movement so that ACT APLA members can undertake appropriate lobbying.

It has been a busy year for ACT plaintiff lawyers as the NRMA, being the sole third party insurer, has adopted a programme of settlement conferences which has led to the resolution of many matters. In the alternative, if matters cannot be resolved, our waiting lists for the hearing of industrial or motor vehicle accident claims in our Supreme Court are now shorter than six months.

The ACT Government has announced

proposed significant changes to the Criminal Injuries Compensation scheme involving the abolition of compensation for psychiatric injury, and restriction of pain and suffering payments to major injury cases only. The Government is refusing to make available the draft bill at this stage but APLA is persisting in seeking access to the legislation. Of some concern is a suggestion by the Attorney General that the changes will be retrospective.

The ACT is obviously a major "Comcare" centre and the profession has seen a clean out by Comcare of many older claims. This has resulted in many applications before the Administrative Appeals Tribunal. At this stage I am awaiting further information concerning proposed changes to the *Safety Rehabilitation and Compensation Act* which will restrict the definition of the word injury under the Act and take away further compensation rights of injured Government employees. The decimation of the Public Service has also seen a busy time for lawyers involved in employment law with many unlawful dismissal and disciplinary matters arising from the significant cutbacks. ■

Richard Faulks is the ACT Editor of Plaintiff.

1998 has been a year of consolidation for the NSW Branch. The period of strong membership growth during the previous year has meant that we have been in a position to employ staff: Tamara Dickson in an administrative/member services role and more recently, a fulltime campaign officer, Dr Hannah Middleton, who brings to the job a very strong background in policy and lobbying activities for various political organisations.

The solid infrastructure that is now in place coupled with a stronger, more active branch committee will ensure that we are well placed to fight important campaigns. Our initial focus is on the area of motor accidents litigation. Plaintiff lawyers in this state have been vindicated by the recently released independent report (*Claiming under the Motor Accidents Scheme*, produced by the Justice Research Centre) which demonstrated that we have been inappropriately blamed for any rise in costs of the Motor Accidents scheme. The challenge for APLA will be to convince the community (and the Premier, Mr Carr) that certain intransigent insurers are responsible and that the threatened capping of plaintiff lawyers' fees is entirely out of order.

The other primary focus for our newly appointed campaign officer is in

Branch Reports



**Catherine Henry,
Sydney**

Queensland



**Rob Davis,
Brisbane**

the area of medical litigation. There are two important messages. Firstly, contrary to the line pedalled by the medical defence organisations and professional colleges, litigation *does* have a very necessary role to play in the maintenance of standards within the medical profession and secondly, that legislative/political intervention is urgently required in order that patients are able to access their own medical records.

Services for members have increased during the year and are becoming both more accessible and profitable. Our morning litigation seminars are now held both in different areas of Sydney and in regional NSW upon request. In addition, seminar audiotapes and papers are available to all NSW members. We have started planning our own state conference in March on the central coast and we are looking forward to hosting the 1999 national conference here in Darling Harbour. ■

In July 1998, APLA Queensland members elected the new state committee for the 1998-1999 year. I wish to congratulate those who nominated and were re-elected to the Executive positions and the committee and welcome new committee members, Rashelle Seiden (barrister) and Glen Ferguson (solicitor).

The work load of the existing committee continues to increase, with the current committee already involved in a record number of other positions in the practicing legal profession. These positions include the Australian Law Council's Consumer Law Committee, the Queensland Law Society Council, various committees of the QLS (including the PI Specialist Accreditation Committee, the Accident Compensation Committee, the Criminal Law Committee), industry committees such as the Motor Accident Insurance Practitioner Liaison Committee, and worker and consumer support groups such as the Worker's Rights Coalition, etc. While the workload from these committees can be overpowering, it is nonetheless essential that APLA maintains and extends its voice in all areas of influence within our society if we are to ensure that the interests of our clients and our members are protected.

As intense as this work is, these functions only form a small fraction of the workload I expect of the State Committee.

I am regularly both amazed and humbled by the willingness, not only of my committee members, but also of all APLA members to make sacrifices for their clients and the profession. I am also indebted to all those legal partners and families who have supported the contributions made by APLA members State wide. This commitment and support is what makes APLA such a strong and dynamic organisation.

Over the last year we continued to show strong membership growth. Our recent first Annual Conference was an outstanding success resulting in numerous new members and a healthy influx of funds. Over the last year we have also again participated in a vigorous campaign for the restoration of full common law access to injured workers. Notwithstanding record demands on APLA's financial resources during the last year, APLA Qld remains in a healthy financial position.

This year has also seen several other significant APLA victories. Among them were the introduction by the QLS of PI specialist accreditation, the QLD Government's provision of legislation for 'free' on the Internet, and increased public awareness of the dangers of school bus travel to the State's children. I look forward to sharing in APLA's future accomplishments in the year ahead. ■

Victoria



Audrey Jamieson,
Melbourne

South Australia

Over the last six years, Victorians have been confronted with one attack after another on the rights of plaintiffs to seek fair and just compensation for personal injuries. The last 12 months has been no exception, with ongoing attacks on the rights of the injured.

Not content with the abolition of pain and suffering claims for victims of crime and the restricting of access to common law to workers injured in industrial accidents, the Victorian State Government has now abolished the right of Victorian workers to seek redress through the common law.

For workers injured in industrial accidents prior to 12 November, 1997, access to the common law is still possible. Fault and "serious injury" is a pre-requisite to such access but the statutory limitation has been curtailed to within 6 years or 31 December 2000, whichever is the earlier. Further, the injured worker must establish that they have a "serious injury" before proceedings can be issued and the procedural requirements imposed by the amendments to the legislation, virtually require the plaintiff to submit their whole case to the insurer in this application. Even when the insurer decides to issue a "serious injury" certificate, the worker is compelled by further procedural requirements to attend a compulsory conference and the insurer and the worker are obliged to make offers and counter-offers within strict limits. Many other restrictive procedural amendments have been included into the *Accident Compensation Act* including that plaintiff lawyers are not entitled to recover their solicitor/client costs (in those matters that manage to proceed to Court beyond all the proce-

dural restrictions) without an order of the Court.

Personal injury litigation for victims of motor vehicle accidents has also undergone a turbulent 12 months. Some of it positive, some of it negative. Some would say that the war is yet to begin.

In December 1997 the Transport Accident Commission ceased instructing an external panel of solicitors and established its own internal TAC Law. Although now entering the third trimester since its inception, a pool of experienced practitioners appointed by TAC Law indicate that a positive working relationship between TAC Law and plaintiff practitioners is possible.

Various amendments have also occurred to the *Transport Accident Act* including a mirroring of the *Accident Compensation Act* in the introduction of the use of the 4th Edition of the *AMA Guides* with the exception that chapter 15 dealing with chronic pain is excluded. More significantly, amendments imposing a strict 12 month review period to the Victorian Civil & Administrative Tribunal on decisions of TAC have removed the extension of time provisions previously allowed by *Bell's* case.

On a more positive note, we have continued to increase our membership in Victoria despite the confirmed attack on plaintiffs' rights. Attendances at the Litigation at Sunset seminars and the Victorian State Conference have been encouraging. However, greater numbers are required if plaintiff lawyers want to be perceived as a formidable force in the next attack on plaintiffs' rights. ■

APLA has just completed a successful campaign to resisting major cutbacks to the rights of motor vehicle accident victims to claim damages. With only one week of prior warning before a Bill was tabled, APLA was able to quickly organise a campaign committee, funding, actuarial advice and a media adviser/lobbyist. We were then able to explain to the politicians the drastic consequences of these so-called "reforms". APLA proceeded on a principled basis and resisted pressure from interests associated with the compulsory third party insurer, to enter into deals or negotiations to compromise the rights of the injured.

Our position was supported by the Labor Party, the Australian Democrats, and by the Past President of the APLA SA Branch, Nick Xenophon, now an influential upper house member.

Whilst we successfully resisted this latest attack on the common law rights of ordinary citizens, we are concerned that the attacks will continue. It appears that the "tort reform" being pushed by the U.S. insurance industry is being viewed as a model that should be adopted here. We are likely to face

Northern Territory

James Hebron, Darwin

**Stephen Lieschke,
Adelaide**

WA



**Sukhwant Singh,
Perth**

further proposals to codify and restrict common law systems of compensation by such measures as "opting out" cover, or a no-fault system with dramatically reduced available damages. Similar attacks have already been successful in South Australia when all common law rights for injuries due to an employer's negligence were abolished.

APLA in South Australia has also been busy in the workers compensation area. The major issue we now face is legal uncertainty as to an injured worker's ability to retain their weekly payments for more than two years. At a recent meeting we discussed the evolving case law in this difficult area, and strategies to assist with successful litigation. We are also working towards an amendment that will both remove the uncertainty and hopefully protect a larger proportion of partially incapacitated workers. There have also been important developments in the area of rehabilitation with injured workers gaining rights, to pursue particular rehabilitation options such as retraining. ■

Dramatic events have been occurring in Western Australia relevant to the Government's *Workers Compensation and Rehabilitation Amendment Bill* 1997. Mr Graham Kierath, the Minister for Labour Relations responsible for the almost relentless campaign against injured workers rights, was a casualty in the July 1998 reshuffle of government and lost his portfolio. He was replaced by a lawyer, Mrs Cheryl Edwards, who has promised to keep an open mind on the subject.

The West Australian reported on 15 August that Mrs Edwards was looking at alternatives for reforms to WA's injury compensation system without closing the so-called "second gateway". Rumours abound that her decision is imminent and that she will ultimately support the closing of the gateway. It is not surprising that she should be strongly lobbied by the insurance industry to reconsider her stand, however these are only rumours at this stage.

John Gordon (Slater & Gordon) was quoted in the West Australian saying that the State Government's move to close the second gateway for workers' compensation was an attempt to bail out its insurance company mates and that insurers' bad business practices should not be protected at the expense of injured workers. John blamed discounting policy premiums and a failure to make adequate provision for common law claims for lower profits.

Brian Nugawela (Friedman Lurie Singh) gained further publicity for injured workers in an article on August 15 when he accused the insurance industry of trying to dupe the government into slashing workers' rights by manipulating statistics on common law injury payouts and "making a mint" by delaying payments to earn more interest.

Insurers say that the cost of common law claims has "mysteriously" blown out, yet an examination of all District Court decisions since 1993 shows that this is utter nonsense. Mr Nugawela pointed out that in hundreds of cases deals were done by insurers to redeem ongoing workers' compensation payments by disguising them as common law claims. He was quoted as saying "there has been no such blowout in reality only a manipulation or mis-management of statistics which disguises the redemption of workers' compensation claims as common law settlements".

APLA WA has continued to lobby politicians and to gain as much publicity as possible for injured workers. We have also been campaigning against SGIO's claims that the workers compensation system is to blame for its alleged \$12m loss when it is clear that it is SGIO's own investment policies which have resulted in the poor result. APLA is urging shareholders of SGIO to raise the issue with the company's management. ■

The past year has seen a number of developments in the Northern Territory Branch of APLA. Membership has more than doubled and this is the largest growth rate of any APLA branch.

The official opening function of the Northern Territory Branch was held at Parliament House in April 1998. APLA was opened by Mike Reid MLA standing in for the Attorney General, and Peter Semmler QC gave an inspiring paper on Damages for Injury to the Mind and the importance of

retaining what limited common law right remain to residents of the Territory.

1998 also saw APLA in the Territory start to get on the front foot in lobbying the Government. APLA made submissions in relation to a variety of issues in the Territory including amendments to the *Work Health Act*, the certification of rehabilitation providers, and it has also stepped up its profile with radio appearances and letters to the Northern Territory Law Society's magazine *Balance*.

Although the smallest branch of APLA bar the ACT, the difficulties facing APLA members in the Territory are dramatic. Common law rights are limited and although a small branch, APLA NT has set its sights high. While lobbying to protect the common law rights that remain, APLA is also lobbying for a review of the *Motor Accident Compensation Act* and a review of the *Work Health Act* in an effort to try to revive some common law avenues of address. ■