

whose grave duty it is to ensure the highest standards in the regulation and manufacture of biological products...Women seeking help for infertility, and men and women of short stature were essentially guinea pigs in an unlawful experiment...CSL did not meet the requirements of the Australian regulatory authorities...There was enough information in 1966 to indicate that the program should not have been allowed to proceed"

The Commonwealth's Response - The End of a Lengthy Battle on the Horizon

On 31 March 1998, the Commonwealth's response to the SCARC's report and recommendations was tabled in the Senate. The Commonwealth agreed with the majority of the SCARC's recommendations. It also agreed to compensate those recipients who could establish that had suffered from a psychiatric injury prior to 1 January, 1998 as a result of learning of their greater risk of CJD. The Commonwealth also acknowledge the deficiencies in the operation and oversight of the AHPHP but it continued to deny that the use of hGH and hPG during the AHPHP was experimental, a response most curious given the findings of the Allars Inquiry and the admissions made by the Department's CMO in 1994.

Recipients and their lawyers are now waiting for the Commonwealth to establish the Independent Board which will assess claims for compensation. Three million dollars is to be deposited into the Trust Fund to fund the compensate package. However, serious questions have arisen, especially in light of the recent awards in the United Kingdom, as to whether such an amount will be sufficient.

Regardless of whether compensation is forthcoming or not, many recipients will never be able to put their AHPHP experiences behind them. For some recipients and their families, the fear that they will develop and die from CJD will tragically materialise. It can only be hoped that the AHPHP has provided the authorities with a salutary lesson in the regulation of therapeutic products. ■

Notes:

- ¹ The term 'nervous shock' is used reluctantly by the author.
- ² In addition to these 'official' recipients, an unknown number of people were treated 'unofficially', some of whom remain untraced and unaware of their risk today.
- ³ The Inquiry into the Use of Pituitary Derived Hormones in Australia and Creutzfeldt-Jakob Disease, chaired by Professor Margaret Allars (the Allars Inquiry).
- ⁴ Report of the Inquiry Into the Use of Pituitary Derived Hormones in Australia and Creutzfeldt-Jakob Disease, AGPS, June 1994 (Allars Report).
- ⁵ Allars Report, pp. 505-510.
- ⁶ Ibid., p.65.
- ⁷ Allars Report, p.95.
- ⁸ Allars Report, p.360.
- ⁹ Submission of Professor M. Allars to the

Senate Community Affairs References Committee,

- ¹⁰ Section 135A. Section 135A is in similar terms to other secrecy provisions contained in Commonwealth legislation.
- ¹¹ Submission of the Australian Government Solicitor to the Senate Committee Affairs References Committee, Inquiry into the CJD Settlement Offer, p.2.
- ¹² (1984) 155 CLR 549
- ¹³ See for example Mullany NJ *Fear for the Future: Liability For Infliction of Psychiatric Disorder*, in Mullany NJ (Ed), Torts in the Nineties, Law Book Co, 1997, pp.101-173.
- ¹⁴ *APQ v Commonwealth Serum Laboratories Ltd*, Unreported, Supreme Court of Victoria, No 8546 of 1993, 2 February 1995.
- ¹⁵ Unreported, Supreme Court of New South Wales, 30 November, 1994, pp. 8-9.

After 150 planes a day, woman sues

By STEPHEN GIBBS

A Sydenham woman has won the right to sue the body which controls Sydney air traffic for hearing loss she claims was caused by up to 150 planes flying over her home each day.

An application by Airservices Australia was dismissed by the Court of Appeal yesterday, allowing Mrs Carmen Zarb to sue the authority in the District Court.

Mrs Zarb's solicitor said last night her case was "the tip of the iceberg" of a possible class action.

Mrs Zarb launched a damages action against Airservices in May 1996, claiming loss of hearing because of increased flights over her home since the opening of the third runway.

Her statement of claim alleged it owed a duty of care, which it had breached by co-ordinating flight paths which exposed her to damaging noise levels, failing to warn her that flight plans adopted upon the opening of the third runway would damage her hearing and failing to protect her from hearing loss.

The authority appealed to the District Court to have the matter struck out on the ground Mrs Zarb had failed to disclose a cause of action. That application was dismissed, appealed on the basis that Airservices was immune from suit, and dismissed again yesterday.

Her solicitor, Mr Michael

Twemlow, hailed the decision as the first legal step forward for other Sydney residents seeking compensation for aircraft noise damage.

"This proves that a simple housewife who has lived in the same small, semi-detached house for 35 years has had the courage to step forward and have her rights examined," Mr Twemlow said.

But yesterday's victory was only the first step, "because all the judge said today is this lady has a right to have her day in court".

The appeal was heard by Justice Priestley, Justice Powell and Justice Rolfe. Justice Powell dissented.

Mrs Zarb, who says up to 150 aircraft fly directly over her roof each day, will now wait for her action to be listed before the District Court.

At the earlier District Court hearing, an affidavit by Sydney Air Traffic Services terminal control unit manager Mr William Sims stated on behalf of Airservices Australia that Mrs Zarb's house was "almost exactly on the centre line" of runway 16R.

"Operational restrictions mean that certain suburbs, particularly those close to the airport, will always be exposed to a high level of aircraft noise, regardless of what noise abatement policies are put in place," Mr Sims's affidavit read.

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Sydney Morning Herald 27/8 1998. Reproduced with permission.