

# APLA in the news

# Workers face compo cuts

## Landmark ruling on injuries

By Industrial Reporter  
MICHAEL FOSTER

EMPLOYEES who are injured more than once at work are facing big cuts to their compensation.

A landmark ruling by the Full Bench of the Workers Compensation Tribunal has found that every injury a worker suffers on the job should be taken into account when assessing lump sum payouts.

Previously, this only applied to multiple injuries arising from the same accident.

The Australian Plaintiff Lawyers Association said the decision "highlights the lack of logic" of the regulation and called for it to be scrapped.

The association's president, Mr Stephen Lieschke, said the decision meant the more often workers were injured the less compensation they would be entitled to.

"This decision further erodes workers' rights," he said.

An industrial law firm, Duncan and Hannon, said the State Government needed to move urgently to ensure proper compensation was awarded.

The case involved a former plasterer, Mr Leon Mitchell, 57, who injured his left elbow in 1991. His WorkCover claim was accepted.

He returned to work but, as a result, he placed a greater strain on his right arm.

### CASH CUTS

How the new system would work:

□ EXAMPLE ONE: Construction worker suffers a back injury in 1991. He is rehabilitated but suffers a shoulder injury working as a site supervisor five years later.

Before decision: \$27,000. After decision: \$23,000.

□ EXAMPLE TWO: A butcher cuts off an index finger on the job in 1993. Four years later he suffers a back injury while at work.

Before decision: \$25,000. After decision: \$19,000.

This caused an injury two years later. A second claim was accepted in 1994 but WorkCover argued that the two injuries were linked and that the lump sum payout should be reduced as a result.

Mr Mitchell appealed, claiming they should be treated as separate injuries.

However, on Monday last week, the Full Bench ruled that all payments for subsequent injuries should be reduced regardless of whether or not they were linked to the original injury.

Duncan and Hannon partner, Mr Patrick Boylan, said the law had gone "horribly wrong".

"It is unfair, inequitable and unintended," he said. The assistant secretary of the United



**OUTRAGED:** Ms Hogan... injuries not their own fault.

Trades and Labor Council, Ms Michelle Hogan, said the decision was "outrageous", claiming it discriminated against workers employed in dangerous occupations where the risk of injury was high.

"It is undermining the rights of those workers simply because they get injured through no fault of their own," she said.

It is understood that WorkCover has instructed its agents not to act on the decision until the corporation and the State Government have had an opportunity to review it.

A spokesman for the Minister for Government Enterprises, Dr Armitage, said WorkCover was examining the implications of the decision.

## Medical litigation

Dr Kasby (Letters, November 3) claims lawyers and increasing litigation are responsible for the rising costs of medical defence subscriptions.

Litigation has increased. Yet the cases won or settled by patients have arisen from claims, supported by medical evidence, that the standard of practice was not good practice.

Patients also are forced to commence litigation merely to gain access to their own medical records denied them by doctors failing to inform them what went wrong during their medical treatment.

The figures quoted, therefore, need to differentiate between claims made and reported and those pursued to finalisation. Many claims are discontinued once medical records have been produced during litigation.

Premiums have increased. However, two government reviews (Tito, 1995, and the Victorian Law Reform Committee, 1997) have concluded that if there is a "crisis" in the area of medical litigation, the cause is the incidence of medical negligence, not the number of legal claims.

Doctors' claims of escalating premiums also need to be seen in context. Obstetricians' premiums (the highest, according to Dr Kasby, due to their risk exposure) have risen to about \$36,000 a year.

But this figure needs to be set against very high annual gross incomes for obstetricians, often in excess of \$300,000 a year. The public is not given this information: financial data maintained by the medical defence organisations (MDOs) is very zealously guarded.

Both government reviews have commented adversely on the refusal to release the data needed to substantiate a blow-out in claims and premiums. A similar review being conducted in NSW has encountered the same reluctance to release supporting financial data on grounds of "commercial sensitivity".

It's time the public were told all the facts.

**Catherine Henry,**  
NSW Branch President,  
Australian Plaintiff  
Lawyers Association,  
November 6 Sydney.

Sydney Morning Herald

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The Adelaide Advertiser 14/9 1998. Reproduced with permission.

# Schools face legal lesson

By DAVID SOLOMON

SCHOOLS, and particularly non-government schools, are now in danger of being sued for failure by students to learn, according to Brisbane lawyer and educationist Keith Tronc.

Students also might be able to sue their schools if they had been bullied by other students and the schools had taken insufficient action.

Speaking at the Plaintiff Lawyers Association annual conference on Hamilton Island, Dr Tronc yesterday said there had been a number of cases in the United States where students had sued schools on the grounds of their educational failure.

These long-established US trends were beginning to show up in Australia.

He said that while courts had gen-

erally taken the view that a school was only one of the agencies

learning or teaching, or teacher, who failed.

Dr Tronc was not a procedure education competitive ket.

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# Assault on tobacco

By DAVID SOLOMON

AUSTRALIAN lawyers are planning international, national and state actions to attack transnational tobacco companies.

The Australian Plaintiff Lawyers Association meeting on Hamilton Island at the weekend formed a special interest group to plan and co-ordinate a series of strategies aimed at the companies.

The strategies include preparing an action through the newly established International Criminal Court, lobbying the states and territories to introduce tobacco control legislation and trying to persuade health funds and trade unions to begin litigation aimed at recovering huge damages from the tobacco industry.

Chairman of the group, barrister Neil Francey, who has won several court actions against tobacco com-

He believes it would have jurisdiction because tobacco products are causing a huge and increasing death toll throughout the world, and the situation is rapidly worsening in developing countries.

He says the World Health Organisation estimates that about three million people die each year from smoking related diseases.

Based on current trends, the WHO considers the death toll will rise to 10 million a year by the year 2025, seven million of them in developing countries.

"No other consumer product in the history of the world has even come close to inflicting this degree of harm on the world community," Mr Francey said.

"If anything else posed a threat to life of this magnitude, whether human induced or naturally occurring - be it world war, genocide, ethnic cleansing, natural disaster - it would demand international action."

directors of the major transnational tobacco companies were being charged with a crime of humanity if the death toll the WHO predicted.

He said they now must have knowledge of the consequences of their activities and be charged unless they try to end the trend.

Mr Francey was already in the field of tobacco litigation. He prepared a brief of reasons to be served on the tobacco executives and served the prosecutor re-

On the domestic front, Mr Francey already has been successful in getting the states and territories to introduce tobacco control legislation. The commission

Courier Mail 17/10 1998. Reproduced with permission.

## APLA Conference news

Courier Mail 19/10 1998. Reproduced with permission.

IN Evan Whitton's piece Dr Richard Tjong, the chairman of the insurer who pays successful medical negligence claims, reveals he has no concern for the plight of those injured by negligent medical procedures.

The common law provides independent and apolitical assessment of individual cases. An injured person must show negligence and that the negligence caused their injury. This standard is fair to both sides and has been found by the latest independent review to be the best overall system (see the Victorian Law Reform Committee's Legal Liability of Health Service Providers, May 1997).

Before methods of limiting compensation payable to injured persons are considered, we should look at the profitability of insurers and their conduct of litigation. In parts of Australia patient access to records is denied, indemnity of negligent

doctors is not compulsory and only paltry settlement offers are made prior to trial.

The public also has the right to information which would allow insurers of escalating costs to be placed in a proper context. Premiums for obstetricians are about \$36,000 a year. Yet, this figure needs to be set against very high annual gross incomes for obstetricians, often in excess of \$300,000 per annum.

Financial data maintained by the medical defence organisations is zealously guarded with both the three most recent government reviews, between 1995 and 1998, having commented adversely on the refusal of those medical defence organisations to release data.

**JOHN WATTS**  
National Chairman,  
Medical Negligence Group  
Australian Plaintiff Lawyers  
Association  
Sydney

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## HEAD TO HEAD: Should seat belts be fitted to all existing buses?

**GEOFF COATES**  
Australian Plaintiff  
Lawyers Association



**Yes** VICTORIA knows the tremendous impact seat-belt laws have had on the road toll. The *Herald Sun's* campaign 30 years ago saved a lot of lives and one of the reforms was the compulsory wearing of seat belts in cars. Some of our most vulnerable citizens - the elderly and school children - are the greatest users of bus services. At a time when most of us consider air bags a vital addition to car safety, we let our children sit and stand unrestrained in buses. Even minor collisions cause facial injuries as young children are catapulted into the seat in front of them. There is expense in fitting seat belts to buses but better a cost in money than in lives.

**KEVIN NORRIS**  
Executive director, Bus  
Association Victoria



**No** BUS AND COACH travel is the safest form of land transport, according to the Federal Office of Road Safety. While the bus industry has been willing to adopt vehicle design safety measures long before the law requires, for safety and economic reasons it will not retro-fit seat belts.

The federal road safety office guidelines for voluntary fitting of seat belts suggest it is far safer to have no belts than fit lap belts. Lap/sash belts cannot be fitted to buses unless the seats and body structure are modified. This costs \$35,000 to \$80,000, depending on the age of the bus. Most customers also want to sit three children in two adult seats. We cannot meet the market if seat belts are fitted.

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