

C O N T E N T S

Romeo	1
President's report	2
Social Security payments reduced for pain and suffering?	3
Liability for sporting injuries	10
Legal Reform in Australia	15
Skiing accidents	18
Volenti on high?	19
Golfing injuries	22
Plaintiff planning points in sporting litigation	24
NSW Sporting Injuries Insurance Scheme	29
NT Balloon crash	30
The journey from Counsel to Acting Judge	31
Case notes	35
• Accident Investigation Reports...	
• Equal Opportunity Tribunal of NSW...	
• Anderson v Mount Isa Basketball Assoc....	
• The limits of practice directions	
• Win for Melbourne wharfie	
• Ballooning verdicts	
Plaintiff law in Victoria	40
Shock changes to Vic. TAC	41
SA Motor Accident Commission	43
APLA campaigning in the West	44
APLA Exchange	46

APLA National Council

Peter Carter	National President
Roland Everingham	National Secretary
Ron Pearce	National Treasurer
Catherine Henry	Stephen Lieschke
Brian Donovan QC	Ruth Carter
Audrey Jamieson	Sukhwant Singh
Geoff Coates	Matthew Glossop
Rob Davis	Michael Higgins
James Hebron	

Two thousand by 2000: a matter of weight

Peter Carter, APLA National President



Peter Carter

It is becoming increasingly clear that our small organisation must assume the largest share of the burden of repelling the sustained assaults by business and government on the rights and freedoms of ordinary Australians.

We are drawn to this task as the defence of the individual is innate in the makeup of conscionable Lawyers. Our job is made particularly difficult, however, by the public's lack of understanding of the importance of their rights and the commitment and risk demanded of those whose vocation it is to uphold them.

APLA's ability to confront the marauders is largely a function of the weight it is able to wield, which in turn depends on the size of its constituency and its visibility.

To increase the mass of our constituency, the weight of our overall presence in the community, public education and profiling must be high priorities for APLA.

There are a number of things members can themselves do to help achieve this.

- Identify yourself to colleagues and clients as an APLA member. This demonstrates that you are serious about your commitment to your injured clients.
- Talk about the organisation and its aims at professional and other gatherings such as school information gatherings. Every time a widely held misconception about compensation rights is publicly corrected, you create more potential advocates for our cause.
- Encourage other eligible members of your firm and other firms to join APLA. It goes without saying that the weight of our impact is aided by a growing and active membership.
- Educate your clients through mailouts and newsletters as to the issues confronting them and the potential tragedy of the cavalier attempts by government to steal away their basic rights.

We saw in the recent Victorian campaign just what level of public activity members were capable of generating in defence of our ideals. It is just as important for us to be as effective in issue creation as we were then in defence.

With APLA's limited resources we must be careful to choose those activities which will achieve the greatest benefit and which can be efficiently conducted. Some of the programs which APLA is working to put in place over the coming weeks to best tactically exploit our resources are:-

- **Media presence.** The recent appointment of a Media Officer will maximise the effective communication of our social and political imperative and allow the early identification of media opportunities.
- **Visits program.** Senior APLA personnel will conduct personal visits on key MP's and shadow ministers. It is essential that we try to commit government and opposition members on a range of issues important to members. This is particularly important in the Federal area given the forthcoming election.
- **Law school liaison.** With the insidious infiltration of large defence organisations into law schools through endowments and recruitment programs, it is more important than ever that undergraduates be presented with an alternative view of the legal environment. We will introduce projects to raise the student awareness of APLA.

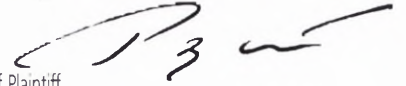
- **Civil Justice Foundation.** This organisation is being established by APLA with a view to receiving donations and bequests from members' clients. The aim is to develop a sizeable financial resource which can be channelled in years to come towards worthy pro-rights projects and campaigns. Members can consider offering the Civil Justice Foundation as

a possible beneficiary when taking instructions from clients mindful to make charitable bequests.

If the members and the organisation can implement these identified targets, then we are on track to becoming the most

powerful law association in Australia and one of its most effective lobby groups.

The target of 2,000 members by the year 2000 is achievable but requires the weight of all of us at the wheel. ■



New APLA President - Peter Carter As foreshadowed in the April issue of Plaintiff, Peter Semmler resigned as APLA President at the April meeting of National Council. The APLA Vice-President, Peter Carter, was elected by Council to fill the vacancy and will hold office until the election at the AGM in October.

Social Security payments reduced for pain and suffering?

Brendan Sydes, Sydney

As part of the 1998 budget, the Commonwealth Government has proposed changes to the way non-economic loss payments are treated for Social Security purposes. Under the proposals, certain non-economic loss payments will be treated as income.

The current situation

Under the existing provisions of the *Social Security Act*, a lump sum payment that does not include a component for economic loss is treated as "income" only in the fortnight in which payment is received for allowances (Job Search Allowance etc) and disregarded altogether for pensions.

If a payment for economic loss is paid in instalments, each instalment is treated as income in the fortnight in which it is received.

Lump sum payments that are wholly or partly in respect of economic loss, on the other hand, attract an obligation to repay past pension and allowance payments and may preclude an entitlement to a pension or benefit for a fixed period after the receipt of the lump sum payment.

The proposed changes

The changes outlined in the budget affect the treatment of non-economic loss

payments. These payments include common law damages awards or settlements that do not include a component of damages for economic loss. Also included are lump sums for permanent impairment, permanent disability or pain and suffering available under statutory compensation schemes.

Under the proposal, due to be implemented in June 1999, any amount of a lump sum payment for non-economic loss in excess of \$10,000 will be treated as ordinary income spread over one year (26 fortnightly payments) from the date of receipt of the lump sum.

For example, a disability support pensioner who receives a payment of \$25,000 for sexual assault under the *NSW Victims Compensation Act 1987* would be treated as receiving an income of \$577 per fortnight for the twelve months after receipt of the lump sum. In this case and many others the effect of treating the damages or compensation payment as ordinary income over a twelve month period will be to disqualify or at least substantially reduce the injured person's entitlement to means tested Social Security benefits.

Under the proposals, the only way to avoid a non-economic loss payment being treated as income for Social Security purposes is if the compensation is paid in

instalments. Even then, any initial payment in excess of \$10,000 will be treated as income spread over the following 26 fortnights and the whole of any subsequent instalment in excess of \$2,000 will be treated as income in the fortnight of receipt. Advising clients in cases where instalment arrangements do not conform to an initial payment of less than \$10,000 and subsequent instalments of less than \$2,000 will be very difficult, particularly if the client has other sources of income that need to be taken into account.

The rationale for the changes

According to the budget paper, the rationale for the changes is as follows:

- increased incentive for injured people to choose periodic payment of pain and suffering compensation. This seems to assume a level of choice that is simply not available in most statutory compensation schemes, let alone in claims that are not regulated by statute.
- increased pressure for insurers and compensation authorities to make periodic payments. It is not clear what evidence there is to support this assertion. In cases of even fairly moderate non-economic loss payments, instalments at a level low enough to ►



Brendan Sydes