

APLA campaigning in the West

Sukhwant Singh, Perth

Workers' Compensation

Following on from the summary of steps taken by APLA in WA relating to proposed changes in workers' compensation law in WA (see *Plaintiff* 26, April 1998) APLA has sent out to as many members of Parliament as possible in both Houses of Parliament letters enclosing the national brochure of APLA and pointing out its aims and objectives. It is essential that APLA be "introduced" to as many members of the legislative assemblies as possible and for APLA to become actively the voice of the legal profession representing the interests of injured persons.

APLA will follow up with targeted letters to members of Parliament to counter the mis-information provided by insurers on the need for changes to the workers' compensation laws.

The current campaign by the insurers is to use inaccurate statistics to inflate the cost of the workers' compensation system and point to the "increasing" costs as the reason for controlling and ultimately eliminating common law claims. The Honourable Minister for Labour Relations and insurers talk of these costs and of

"studies" into the escalating costs but no-one seems prepared to release any "studies" to APLA and it is believed that the statistics have been doctored in the following way:

- a) the statistics include medical and para-medical treatment costs (which themselves include the cost of reports provided by the medical service providers to the insurers!). These costs are not legal costs, and are incurred independently of any common law claim;
- b) the statistics do not make a distinction between the **extra** cost of common law claims on top of workers' compensation claims which under the present or under the proposed changes to the workers' compensation system, would in **any event** have been incurred and include schedule 2 lump sum payments (ie. the true cost of common law claims should be claims specifically paid out on common law claims and should not include workers' compensation claims payable in any event);
- c) many workers on workers' compensation claims do not have common law

claims (as a result of the 1993 changes) but lump sum workers' compensation payments to them under the workers' compensation system (not under common law claims) appear to be added on to the statistics as part of the overall cost of "common law" claims.

Until the insurers and Government are prepared to be accountable to the public and disclose the "studies" and the "statistics" upon which their arguments are based, it is not possible at this stage to "punch holes" in their arguments. Indeed, it will not be surprising if that is their precise objective. In the 1996 campaign against the then proposed changes in the law (which were not progressed by government) APLA produced a table of Comparison of Entitlements of Ministers and Injured Workers to Compensation, comparing the compensation entitlements of Members of Parliament in Western Australia under insurance policies paid for by the tax payer through the Joint Committee of the Houses of Parliament through SGIO Insurance and the table is reproduced below.

Ministers and injured workers to compensation (Minister's entitlements as in 1993)

Subject	Minister's Entitlements	Injured Workers Entitlements
"Double Dipping" allowed? (Claim for compensation and damages)	Yes	No
Personal accident insurance	Yes - paid by West Australians (premiums over \$13,000.00 per Minister)	No - worker pays (if s/he wants it)
Personal Accident / Workers Compensation		(only as given below)
• Limit of liability from any one event	\$1.5m	(accident + illness) \$103,717.00
• Capital Sum (accident)	over \$280,000.00	not applicable (see above)
• Capital Sum (illness)	over \$175,000.00	\$31,115.10
• Medical Expenses	\$ 200,000.00	Nil (rehabilitation expenses up to \$7,260.18)
• Additional Expenses	\$ 15,000.00	(not covered)
• Personal Liability	\$ 1 Million	(percentage of Capital Sum above)
• Disability/maims benefit	(percentage of Capital Sum)	
Other Claims		Yes
• Additional Damages Claim	Yes	Yes - worker can only claim if he has 30% loss of function of whole body or likely * "future pecuniary loss" of \$103,717.00 (*this part under further government attack)
• Damages Claim against "employer" restricted? (additional to insurance / workers compensation)	No (insurance benefits only and in any event better than workers compensation)	

The Government has also chosen to ignore the concerns expressed in the Report of Chief Justice's Task Force on Gender Bias dated 30 June 1994 which recommended a "thorough review of laws relating to workers' compensation and damages for personal injury be conducted in order to identify comprehensively those parts of the law which discriminate directly or indirectly against women, and to formulate recommendations which can lead to necessary legislative changes" (recommendation 8, para 60, page 161). The report goes on to state as follows (page 192, para 63-67):

63. *The introduction of a monetary threshold will deprive many injured workers on low levels of earnings of a common law claim. Injured workers on low levels of earnings (the majority of whom are women) will be significantly disadvantaged in meeting the Act's monetary threshold because their future economic loss, or loss of future wages, will obviously be less than that of higher earning workers. Women make up the majority of low income earners in Western Australia, due largely to the fact that almost half of employed women work on a part-time basis.*
64. *According to the Australian Bureau of Statistics' 1991 Census of Population and Housing (WA), 44% of employed women worked less than full-time hours and more than 60% of employed women earned \$60,000.00 or less. Conversely, some 85% of employed men worked on a full-time basis and 62% of employed men*

earned more than \$60,000.00.

65. *The average weekly earnings for men employed on a full-time basis, (ie about 85% of them) is approximately \$35,000.00 per annum.*
66. *The average weekly earnings for women employed on a full-time basis (ie almost half of them) is approximately \$8,000.00 per annum.*
67. *70% of part-time workers are women
30% of part-time workers are men*

Motor Vehicle Accidents

The discussions with the Insurance Commission of Western Australia are essentially finalised and it is expected that the Insurance Commission will issue the policy shortly. Members are urged to contact the Insurance Commission directly for copies of the policy in its final form.

It is hoped that the implementation of the policy will be undertaken genuinely by all parties concerned as the ultimate objective of the policy is to provide real and tangible benefits for injured workers by speeding up the resolution process and reducing the stress of litigation on an injured person.

Legal Costs

This issue is probably the most important from APLA's point of view. Almost every campaign commenced by the legal profession, not necessarily APLA alone, is faced with an allegation from some sector of the community that the legal profession seeks to feather its own nest and is not affected by the real concerns of the com-

munity.

APLA has previously expressed its view that it is about time the legal profession grabs the bull by the horns and deals solely and in a focussed way with issues relating to legal costs. It is absolutely crucial that WA members of APLA sit down and look at legal costs, the expressed concerns of the community in WA and how the entire issue of legal costs should be addressed.

APLA is of the view that the initiative should come from the Law Society in WA and has urged the President of the Law Society to hold a crisis meeting on costs and bring together with views of the profession, prepare a discussion paper for circulation and ultimately put forward suggestions for reform to the Government.

In the absence of a response from the Law Society, APLA needs to consider whether it is appropriate that APLA itself raises the issue. Members are urged to contact Sukhwant Singh on 9325 6133 with their views urgently and by 30 June 1998 to enable a policy document to be formulated.

Committee Membership

Members interested in joining the APLA (WA) Committee should contact me as soon as possible. ■

Sukhwant Singh, Partner at Friedman Laurie Singh, is President of APLA WA Branch and a National Councillor.
Phone 08 9235 6188 or **email** fls@11net.net.au

National Media Officer: Rebekah Kay

Simon McGregor, Policy Manager

I am pleased to advise members that APLA has secured the services of former television journalist Rebekah Kay to be our first Media Officer. Rebekah worked for the ABC on their current affairs program *Attitude* and has held various other PR, government and freelance positions. She studied journalism at Royal Melbourne Institute of Technology (RMIT), and has also partially completed a Bachelor of Laws from Flinders University,

where she was also on the State Executive of the National Union of Students.

In addition to conventional media work, Rebekah will contribute to APLA's lobbying program and provide training and PR resources within APLA. For fun she likes to watch current affairs programs as she is a self described political junkie. Rebekah will work from APLA's Melbourne office.

